



Tunisia

Amnesty International submission to the UN Universal Periodic Review

13th session of the UPR Working Group, May-June 2012

Follow up to the previous review

At the time of its first Universal Periodic Review in April 2008, in spite of a feeble review of its human rights record, Tunisia failed to indicate its position on many of the recommendations made by other States, including on issues that have come to the fore in the intervening period, such as restrictions on freedom of expression and assembly¹ and the ability of civil society and trade unions to operate freely.²

Since the ousting of former President Zine El Abidine Ben Ali, some positive steps have been taken by the caretaker government to implement several of the recommendations made during the previous review. For example, the government has ratified a number of human rights treaties, as detailed below, and has withdrawn reservations to Convention on the Elimination of All Forms of Discrimination against Women. It has also amended repressive provisions in the Press Law.

Amnesty International considers, however, that the 2008 review failed to adequately address key human rights concerns in Tunisia. Similarly, the recommendations made did not reflect the seriousness of the violations, including as evidenced by the demands of the people who participated in nationwide protests beginning in December 2010 and continuing into January 2011, and the response of the Tunisian authorities, including excessive use of force, arbitrary arrests and torture and other ill-treatment. Tunisia's upcoming UPR is an opportunity to constructively influence the country's reform process and to make meaningful recommendations to help shape institutions and a legal framework with human rights at the core.

Normative and institutional framework of the State

Ratification of international human rights treaties

Since former President Ben Ali stepped down in January 2011, the caretaker government has ratified several key international treaties, including the Optional Protocol to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Rome Statute of the International Criminal Court.³ However, Tunisia has yet to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death

penalty.

While these are positive steps, Amnesty International regrets that few steps have been taken to translate into national law the obligations enshrined in the treaties. The Personal Status Code, for example, still contains discriminatory provisions against women, especially in relation to inheritance and child custody.

National Legislation

Tunisia's 1959 Constitution was suspended on 23 March 2011, awaiting the election of a national constituent assembly tasked with writing a new constitution and appointing a new government. The National Constituent Assembly, which held its opening session on 22 November 2011, now has a unique opportunity to address the shortcomings of the old Constitution and ensure that fundamental human rights guarantees are included in the new constitution.

The interim government has amended several national laws. New laws on freedom of the press⁴ and freedom of audiovisual communications⁵ have led to the amendment of the defamation provisions included in the old press law. This means that charges of defamation can no longer be punished with imprisonment, although defamation remains a criminal offence punishable with large fines. The offence of "distributing false information" previously used to repress opposition has not been removed. The law on associations⁶ has been amended to remove restrictions on forming or belonging to associations, and to decriminalize "services" provided to an "unrecognized" association. Although the new law on torture seeks to bring the definition of torture in line with the definition included in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it includes a statute of limitations of 15 years, which is contrary to international law, as codified in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

However, repressive laws remain that have yet to be repealed or amended. Although these have not been used by the caretaker government to the same extent as under the rule of former President Ben Ali, they remain in force. Reform of the justice and security sections, once the authorities' tools of repression, is a key priority. The Law on the Organization of the Judiciary must be brought in line with international standards to guarantee the independence of the judiciary. As it currently stands, the law stipulates that the President is the Head of the High Council of Magistrates, and decides on the assignment, dismissal and promotion of judges and the security of tenure of judges (*inamovibilite*) in violation of international standards.

The Interior Ministry has set out a "road map" for reform of the police; however, this makes no reference to investigations or other action against police responsible for past abuses. Although the Department of State Security, also known as *police politique*, was ostensibly disbanded, there is a lack of clarity as to what has happened to its members. Amnesty International is concerned that no vetting system has yet been put in place.

The law regulating meetings, processions, parades, demonstrations and gatherings is also yet to be amended to ensure that the freedom of assembly is guaranteed and that this law cannot be used, as it was under the former President, to repress peaceful protest.⁷

The law on counter-terrorism includes an overly broad definition of terrorism, which in the past was abused to criminalize peaceful dissent.⁸ The new authorities have shown a willingness to amend the counter-terror law, including by setting up a committee to amend the law; however, in the meantime the controversial law remains in force. An amnesty was declared in February 2011, which resulted in the release of many political prisoners and prisoners of conscience. However, there is as yet no program of reparation for arbitrary detention.

A state of emergency was declared on 14 January 2011 and extended for an indefinite period of time in August 2011. Amnesty International has several concerns in this regard: Article 3 of Decree 50 of 1978, on the Organization of the State of Emergency, states that any extension to the state of emergency must be within a defined period of time. The most recent extension, however, is indefinite with no indication as to the period it covers. The state of emergency extends to the Minister of Interior powers to bypass normal safeguards in place to protect the basic rights of Tunisian citizens.⁹

Promotion and protection of human rights on the ground

Freedom of assembly and excessive use of force

Anti-government protests calling for freedom and better living conditions began in December 2010 and continued until the departure of former President Ben Ali. These were met with excessive use of force by security forces, resulting in the death of nearly 300 people and hundreds injured. This figure includes 72 prisoners who died in prison in incidents linked to the unrest.

Despite the change in government, protesters have on several occasions been met with excessive or unnecessary force by security officers when taking to the streets to voice their dissatisfaction with the slow pace of reform, the failure to remove from office officials connected to the previous government and the continuing harsh conditions of their daily lives. In February 2011, at least three people were reportedly killed when the security forces violently dispersed a sit-in in Kasbah, Tunis. When renewed protests began in the Kasbah in May 2011, these were again met with violence by security forces. On this occasion, journalists in particular appear to have been targeted and beaten; many also had their cameras taken and pictures deleted. Although the Minister of Interior reportedly apologized for the brutal response by security officers, the violence continued. During an attempted sit-in in the Kasbah on 15 July, at least 47 protesters were reportedly arrested and later released. Many claim they were beaten during their arrest.

Demonstrations in other towns have also resulted in violence. A 13-year-old boy was killed in July 2011 by a stray bullet in Sidi Bouzid when soldiers opened fire on anti-government protesters who had gathered in front of a military compound.

Recent months have also seen a failure by the security forces to protect people from attacks by fundamentalist religious groups. In late June 2011, protesters broke into a cinema screening the documentary film, *Secularism, If God Wills*, and reportedly attacked and harassed the audience. Security forces reportedly did not adequately respond to the incident. Following its airing of the animated film, *Persepolis*, in October 2011, the television station *Nesma TV* was attacked by angry

mobs who considered the film's depiction of God to be blasphemous. A few days later the home of the television station's owner was also attacked. Again there was reportedly a delay in the response by the police. Those who were arrested in relation to these attacks were later released without bail, pending further investigations. The owner of the television station is now facing charges of 'moral corruption' because of complaints filed by a group of lawyers.¹⁰

Torture and other ill-treatment

Although not as widespread as under the former President, Amnesty International continues to receive reports of torture and other ill-treatment. Most allegations of ill-treatment have been made by people arrested during or following protests. Accounts of ill-treatment suggest that beatings have taken place during arrests, during the transport of detainees to police stations, and occasionally in police stations as well. For example, Amnesty International has received reports that security forces have conducted late-night raids on homes in different parts of the country during which they beat some of the residents and arrested a number of them.¹¹

Impunity and continuing lack of independence of the judiciary

A Fact-Finding Commission on Abuses Committed in the Last Period¹² was set up in February 2011 to investigate human rights violations that took place during the uprising. However, at the time of this writing, the Commission had not yet published its findings -- eleven months after its establishment - and the victims and their families were still waiting for justice and reparations. Many of those injured during the protests claim they have not had the opportunity to report to the Commission. Furthermore, the Commission has stated that it will not be referring the information collected to the judiciary, unless asked to do so by individual lawyers. Amnesty International is concerned that information or evidence of serious human rights violations may not be referred for judicial investigation and prosecution.

While the human rights violations committed during the uprising fall under the remit of the Fact-Finding Commission on Abuses Committed in the Last Period, the legacy of decades of human rights abuses in Tunisia has yet to be addressed.

The judiciary is still not fully independent. Victims or their families have filed complaints against the government officials and security officers they believed were responsible for the human rights violations they suffered during the uprising. Only a small number have been summoned for questioning because the investigating judges have been unwilling or unable to enforce summons for these officials. Some judges have reported a lack of cooperation from the Ministry of Interior and the security apparatus in the investigation of these allegations. In May 2011, all complaints related to violations that occurred during the uprising were referred to military courts. The military law was amended in July 2011¹³ to give similar guarantees as in civilian courts to defendants and the victims and their families.¹⁴

Not only has the victims' right to truth and justice been lagging. For most, compensation has been inadequate, slow, or non-existent. It was only after victims and their families held several protests demanding their rights that a decree was passed on 24 October 2011¹⁵ stating that all victims were entitled to free medical treatment. Until then, injured victims are reported to have been turned away from public hospitals, to not have received adequate treatment or have had to pay for their own medication and treatment.

Recommendations for action by the State under review

Amnesty International calls on the government of Tunisia to:

Normative and institutional framework of the State:

- Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
- Ensure that all international treaties ratified by Tunisia are enforceable in law by clearly stipulating the superiority of international law over domestic law in the new constitution, and by amending national legislation as necessary;
- Ensure the new constitution incorporates human rights guarantees and upholds Tunisia's international obligations, including the principle of non-discrimination, freedom of expression, association and assembly, the independence of the judiciary, protection from torture and other forms of ill-treatment, the right to life, and the protection of economic, social and cultural rights:
- Amend or abolish all laws that discriminate on the basis of race, colour, religion, ethnicity, birth, sex, sexual orientation, gender identity, political or other opinion, national or social origin, or other status;
- Amend the Law on the Organization of the Judiciary to ensure the independence of the judiciary from the executive;
- Amend the counter-terrorism law to bring it into full compliance with relevant international human rights law and standards, as well as the recommendations of UN human rights bodies;
- Amend provisions that discriminate against women in the Personal Status Code;
- Immediately lift the state of emergency;
- Abolish the death penalty.

Torture and other ill-treatment

- Make clear to all security officers involved in arrest, detention and interrogation that torture and other ill-treatment are not acceptable under any circumstances;
- Amend the law on torture to bring it in line with international human rights law, including by repealing the statute of limitations;
- Ensure effective, independent and impartial investigations of all complaints of torture or other ill-treatment and that perpetrators are brought to justice and victims receive appropriate reparation.

Freedom of assembly

- Inform the police and security officers of their duty to respect human rights at all times, including the right to freedom of expression, and to ensure all allegations of excessive use of force against peaceful protesters are investigated in a prompt, effective, and independent manner;

- Issue clear instructions on the use of force and firearms in policing, in line with international standards;
- Release immediately and unconditionally all detainees held solely for the peaceful exercise of their right to assembly;
- Ensure that any limitations to the rights to freedom of expression, assembly and association are strictly in line with international standards.

Impunity and continuing lack of independence of the judiciary

- Ensure that those identified as responsible for human rights violations are brought to justice in fair trials, without recourse to the death penalty;
- Establish a thorough, impartial and independent investigation into the human rights violations and abuses committed under the rule of former President Ben Ali, while ensuring full reparations for the victims and protection of all who provide information to the investigation;
- Undertake a fundamental overhaul of the security apparatus and make public a clear structure of the security branches including chain of command;
- Establish an oversight body to hold security forces to account for any abuses;
- Ensure the judiciary is fully independent from the executive branch of government;
- Ensure that all detainees are either charged with recognizable criminal offences and tried in accordance with international standards for fair trial, or immediately released.

¹ Report of the Working Group on the Universal Periodic Review on Tunisia, A/HRC/8/21, 22 May 2008, paragraph 7 (Sweden).

² A/HRC/8/21, paragraph 8 (Belgium, Sweden, United States of America and United Kingdom).

³ All were published in the Official Gazette on 22 February 2011.

⁴ Decree 115 of 2011 on the Freedom of the Press⁴, publishing and distribution, 2 November 2011

⁵ Decree 116 of 2011 on the Freedom of Audiovisual Communication and the creation of an independent high committee for audiovisual communication, 2 November 2011

⁶ Decree 88 of 2011 on the Organization of Associations and as corrected in the official gazette of 21 October 2011

⁷ Law No.69-4 of 24 January 1969 Regulating Public Meetings, Processions, Parades, Demonstrations and Gatherings – stipulates that the authorities must be informed before such an event takes place, which they can then forbid if they deem it likely to disturb the peace

⁸ The Law on Anti-Terrorism extends the notion of “terrorism” to include acts seen as illegitimately “influencing state policy” and “disturbing public order”, with possibly far-reaching consequences for the rights to freedom of expression, association and assembly.

⁹ The law allows the Minister to forcibly relocate individuals from one area to another if their activities are considered to be “dangerous” in the area they are residing in. The Minister also has the power to close meeting halls and can order searches at any time of day or night of shops and for the press and all forms of media and production to be monitored and censored

¹⁰ Under Article 226 of the Penal Code this is a crime punishable with six months imprisonment and a TND1000 fine (approximately US\$680)

¹¹ In Menzel Bourguiba on 18 July 2011. The raids came after a protest on 15 July, which had turned violent and which reportedly resulted in the burning of a police station.

¹² The Fact-Finding Commission on Abuses Committed in the Last Period was established under Decree-law 8 of 2011 on 18 February 2011

¹³ Decree 69 of 2011, 29 July 2011, on Amending and Completing the Military Penal Code

¹⁴ These include the right to appeal, the ability to demand personal rights, and the right of the victim to be present in open court sessions.

¹⁵ Decree 97 of 2011 on Reparations for the Victims and Injured of the 14 January Revolution