

Submission to the Office of the High Commissioner for Human Rights

13th session of the Universal Periodic Review

Economic and Social Rights in Tunisia

Tunisia

Joint submission by
Arab NGO Network for Development
The Forum for Social Sciences in Tunisia
The Center for Economic, Social and Cultural Rights-Tunisia

I. GENERAL BACKGROUND AND FRAMEWORK

1. After long years of violations of civil and political as well as social and economic rights, Tunisia witnessed in 2011 the people's revolution through peaceful demonstrations, bringing to the forefront their demands of respect to their fundamental freedoms, calling for democracy, rule of law and adequate policy reforms to ensure full enjoyment of their rights.

2. The Jasmine Revolution resulted in the fall of the previous regime and the launch of processes for national elections, constitutional reforms, and other change measures. Yet, there remains a lot to be achieved in Tunisia both in the legislative framework and in implementation to ensure that the Tunisian government establishes a new development paradigm that is in conformity with general obligations of State to respect, protect and fulfill human rights, including economic and social rights as well as the right to development, and which meets the demands of citizens.

3. The following submission is presented by the Arab NGO Network for Development, the Forum for Social Sciences in Tunisia, the Center for Economic, Social and Cultural Rights in Tunisia. It touches upon:

- Human rights conditions, specifically economic and social rights in the four-year cycle
- The recommendations accepted by the Tunisian Delegation in the first cycle and the status of their implementation
- Further recommendations in order to ensure full enjoyment of economic and social rights of all citizens under Tunisian jurisdiction

a) SCOPE OF INTERNATIONAL OBLIGATIONS

4. Although Tunisia is a state party to the International Covenant on Economic, Social and Cultural Rights and various ILO Declarations, the uprisings in 2011 clearly reflected the continuous violations of economic and social rights of the citizens. Tunisian people came out to the streets to demand a change to the political governance system as well as to the marginalization and discrimination embodied in high unemployment rates, poverty, unequal distribution of wealth, nepotism, increasing corruption and lack of social justice.

5. While the ratification of the Rome Statute of the International Criminal Court on 24 June 2011, and the Optional Protocol to the Convention against Torture, the International Convention for the Protection of all Persons from Enforced Disappearance and the first Optional Protocol to the International Covenant on Civil and Political Rights on 29 June 2011 represent positive developments with regard to the protection of human rights and are in line with the recommendations received in the first cycle, the effective implementation and monitoring of the treaties' articles should be immediately transformed into action, including legislative and institutional changes that allow for impartial legal remedies for persons whose rights are violated.

6. Moreover, Tunisia still did not ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights for the promotion and protection of economic, social and cultural rights.

7. The Decree of the Tunisian Council of Ministers (August 16 2011) announcing the lifting of all specific reservations on the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) is a positive and welcome step towards ensuring gender equality and the rights of women. However, the articles of the CEDAW should immediately be implemented by means

of domestic legislation whereby the needed changes to the law is undertaken as necessary.

Accordingly, we urge the Working Group and the members of the Human Rights Council to call upon the Tunisian government to:

8. Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

9. Ensure that all domestic law conform to international standards and thus make required amendments to the domestic legislation.

10. Ensure that the new constitution guarantees equality between all its citizens and is in conformity with the human rights obligations deriving from the international human rights treaties Tunisia is a party to, whereby economic and social rights and the right to development as well as gender equality and the full rights of women are fully reflected in the new constitution to be established, together with the inclusion of mechanisms that allow for judicial enforceability including needed procedural safeguards and mechanisms to empower citizens to demand enforcement.

b) INSTITUTIONAL AND HUMAN RIGHTS INFRASTRUCTURE

11. The opening of the first UN human rights office in a Mediterranean North African country took place in Tunisia (on July 14th 2011), and this reflects a positive step forward. However, the existing human rights institutions in Tunisia and their mandates necessitate alignment with the Paris Principles. Accordingly, the current reform processes undertaken in Tunisia ought to encompass as well a reform of the role of institutions dealing with human rights monitoring, protection and promotion in order to improve the efficiency and effectiveness of their work.

12. It is a positive achievement that the Tunisian transition government instituted a new Ministry for Regional and Local Development. Yet, it is crucial that the institutional structure be accompanied with democratic representation, participatory mechanisms to ensure that all relevant stakeholders are included in establishing new programmes and policies, which would reflect a human rights-based approach.

13. The establishment of the National Fact-Finding Commission on Cases of Embezzlement and Corruption is a positive achievement with regard to investigating allegations of widespread corruption, as well as further prevention of corruption. It is evident that widespread corruption practices have severely exacerbated economic and social inequalities in Tunisia and violated the rights of many in that regard. However, corruption is not a stand-alone condition but is the result of a systemic flaw in the economic, social, political, and institutional model, and its prevention is linked to reforming these models.

14. The establishment of the structure for the Transitional Justice Committee is an achievement in order to redress legacies of the mass human rights abuses in Tunisia.¹

Accordingly, we urge the Working Group and the members of the Human Rights Council to call upon the Tunisian government to:

15. Align the already existing human rights institutions with Paris Principles and improve the availability and accessibility of data and indicators relevant to human rights issues in a disaggregated level for their efficient and effective work.

16. Ensure that respecting human rights is integrated in the basics of work of all official Tunisian institutions.

¹ <http://www.tunisia-live.net/2011/11/16/transitional-justice-committee-created/>

17. Ensure the genuine transformation of all institutions in Tunisia in order to operate in full respect of human rights and revise all the policies and tactics of the former administration to align with Tunisia's human rights obligations.

18. Ensure that the mandate, composition, resources, and powers of the National Fact-Finding Commission on Cases of Embezzlement and Corruption are clearly defined with participation of all relevant stakeholders in a transparent and democratic process, and in line with the United Nations Convention against Corruption.

19. Ensure the efficient and effective work of the Transitional Justice Committee from the time of previous regimes including the current system and that the scope of work covers not only civil and political rights but also economic and social rights²

c) CONSTITUTIONAL AND LEGISLATIVE MEASURES

20. The Tunisian people undertook a successful democratic election of a constitutional council (October 23, 2011), which will establish a new constitution. While writing a new constitution corresponds to the legitimate demands of the Tunisian people, it is important that this new Constitution becomes a powerful and practical document that plays a central role in ensuring the establishment of a more just society that genuinely concerns itself with social and economic rights and justice.

Accordingly, we urge the Working Group and the members of the Human Rights Council to call upon the Tunisian government to:

21. Taking into consideration that the previous Tunisian constitution included several articles tackling the full enjoyment of economic and social rights but fell short in implementation, it is necessary that the Constitution aims at healing the inequalities and discrimination of the past, thus establishing a society based on democratic values, social justice and fundamental human rights, and improving the quality of life of all citizens.

22. The Constitution should also ensure that constitutional values of human dignity, equality, freedom and respect are well integrated and implemented in practice, together with the inclusion of mechanisms that allow for judicial enforceability including needed procedural safeguards and mechanisms to empower citizens to demand enforcement.

23. Follow a transparent and participatory process in drafting the new Constitution and ensure that the new Constitution fully respects obligations deriving from international treaties that Tunisia is a party to and that it becomes a tool to establish social justice.

d) POLICY MEASURES

24. While the 12th National Development Plan, covering the period 2010-2014, declared intentions to strengthen the national economy and focus on job creation, increasing revenue and enhancing Tunisia's positioning and influence on the regional and international scenes, the implementation fell short of addressing peoples' rights

² This has been a constant call from Tunisian League for the Defense of Human Rights, the Tunisian Association of Democratic Women, the group of "25 Lawyers" (an association of Tunisian lawyers formed to ensure the independence of the judiciary), UGTT (General Union of Tunisian Workers), the National Union of Tunisian Journalists.

and development challenges while further exacerbating the violations of peoples' economic and social rights leading to the 2010 revolution.

25. While the revolution have called for democratic reforms at all fronts, the Jasmine Plan that was announced by Ministry of Finance in September 2011, is a plan developed by the transition government while democratic, multi-stakeholder, and nation-wide consultations on economic and social policies still did not accrue. At the same time, this plan was presented to the G8 meeting (Marseille 2011) as the basis for negotiations around possible loans and financial assistance to be received by Tunisia. After years of economic and social marginalization, it is essential that the processes of developing economic and social policy in Tunisia be done in a democratic representative manner that ensures integration of Tunisia's obligations under international Covenants on human rights. It is important to note that the Jasmine plan include controversial plans to impose market-based models on public monies that are at the center of Tunisia's human rights obligations, such as the use of pension fund money and retirement accounts for market-based interventions to finance industrial zones and large infrastructure projects (see p. 5 of the Jasmine Plan).

Accordingly, we urge the Working Group and the members of the Human Rights Council to call upon the Tunisian government to:

26. Fully cooperate with OHCHR and relevant UN bodies in the development of national human rights action plans, which revises and reforms the previous structures including the security and justice system in Tunisia and establishes a monitoring mechanism for its implementation with accurate flow of information to relevant stakeholders, including civil society organizations.

27. Ensure that the adoption of new economic and social programs, including revising the socio-economic policies, fully respects and integrates the obligations deriving from the International Covenant on Economic, Social and Cultural Rights, human rights principles and principles of sustainable development and are developed with an inclusive, transparent and democratic approach, with all relevant stakeholders involved in the process, including civil society groups and women's groups.

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS OBLIGATIONS

A. COOPERATION WITH HUMAN RIGHTS MECHANISMS

28. The first cycle revision of Tunisia highlighted the lack of cooperation with the Committee on Economic, Social and Cultural rights with regard to overdue reports and implementation of recommendations. Since then there has been no further engagement with the Committee from the side of the Tunisian government.

29. It is a positive achievement that by February 28, 2011 Tunisia extended a standing invitation to Special Procedures.

Accordingly, we urge the Working Group and the members of the Human Rights Council to call upon the Tunisian government to:

30. Cooperate with UN human rights mechanisms, including the Committee on Economic, Social and Cultural Rights (CESCR) and submit its due reports with accurate and updated data.

31. Continue to cooperate with Special Procedures mechanism of the Human Rights Council, particularly with the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights, and

to consider an investigation of the implications- on the human rights and development front- of past and any new agreements/programmes signed with international financial institutions, such as the \$500 million loan approved by the World Bank in June 2011 under the instrument of Development Policy Lending.

B. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

a. Equality and non-discrimination

32. For decades, Tunisia faced the monopolization of economic and political power in the hands of the ruling power, which privileged only a certain circle close to the ruling elites while disregarding the right of the rest of the citizens. Thus, inequalities and discrimination was reflected in all practices, from decision-making processes to the actual implementation of the legislation, causing violations of human rights of the majority. Furthermore, systemic corruption and lack of efficient monitoring mechanisms contributed to the inequalities between citizens and thus to the illegitimacy of the Ben Ali government.

33. Although not supported with accurate data, and to the contrary of the official data produced by the previous Tunisian government, the increasing regional and gender disparities with regard to standards of living, poverty levels, employment opportunities and in general with regard to the enjoyment of economic and social rights are clear in Tunisia, which indeed became the root causes of the uprisings and necessitate revising policy measures accordingly.

Accordingly, we urge the Working Group and the members of the Human Rights Council to call upon the Tunisian government to:

34. Ensure the accessibility and availability of data and indicators in a disaggregated manner (based on gender, age, regions) for better reflection of the current rights and development situation and avoid basing policy making and new development programmes/plans on the incorrect data used by the ex-government.

35. Ensure that the principle of equality is well articulated in the new Constitution and well implemented with adequate policies respecting the human rights of all citizens and residents in Tunisia.

36. Ensure the full implementation of the new law on the right to access information.

b. The right to adequate standards of living

37. Inequitable distribution of wealth combined with corruption, nepotism and exclusion of several social groups from the decision-making process was common in Tunisia. Thus, on the contrary to the recommendation Tunisia received during the first cycle of UPR revisions with regard to sharing its best practices in the alleviation of poverty and establishment of the delicate balance between economic, social and cultural rights, the current context indicates an urgency for revising the previous economic and social models and shifting the policy approaches to meet the rights, needs, and necessities of all Tunisia's citizens.

38. The poverty rate - previously estimated at 3.8% - has been reassessed at 10% at the national level. If the same rate of difference applies to the gap between regions, then it is likely that the Center-West regions are experiencing a poverty level close to 30% the gap between Center and West regions will be close to 30³, signaling stark

³ EMHRN report Tunisia after 14 January and its social and political economy, Euro-Mediterranean Human Rights Network, June 2011, p.14, available at

violations of the right to adequate standard of living for most of the Tunisian people and clear violation of the principles of non-discrimination and equality.

39. The root causes of the uprisings in Tunisia clearly indicated increasing poverty and inequalities in living standards between citizens and regions and the failure of economic and social policies established by the previous regime. Surprisingly, many of the international financial institutions and development banks have hailed the policies of the previous regime; the World Bank noted the “*remarkable progress on equitable growth, fighting poverty and achieving good social indicators*”⁴, and as late as September 2010, the IMF was still lauding Tunisia’s “*sound macroeconomic management and structural reforms over the last decade*” and even called for more of the same by “*contain(ing) public spending on wages and food and fuel subsidies*”⁵.

Accordingly, we urge the Working Group and the members of the Human Rights Council to call upon the Tunisian government to:

40. Ensure that decisions on macro-economic policies, trade, and investment policies serve the economic and social priorities that the Tunisian people identify through the constitutional processes and various national multi-stakeholder democratic dialogue platforms that coalesce in comprehensive, rights based, coherent, and forward-looking national development strategies.

41. Undertake a rights based and development rooted assessment study of the impact of foreign trade and investment agreements that the previous regime have undertaken, and take corrective measures to align these agreements with democratically identified development objectives of the country post the revolution and the election of the new government.

42. Discuss nationally and democratically a rebalancing of fiscal policy in favor of supporting investment incentives in the most needy regions and sectors, and in favor of sectors that employ skilled labor.

43. Ensure the availability and accessibility of the data on the poverty level on a disaggregated level in order to strengthen capacities to structure and implement effective policies and programmes addressing root causes of poverty and inequalities in Tunisia.

44. Ensure that the fair and equitable redistribution of national resources and equal opportunities is well integrated in the legislative and normative framework and well implemented and monitored.

45. Formulate, implement and monitor national and local sustainable development strategies with full respect of international human rights standards and the obligations of Tunisia under international human rights law.

c. The right to work

46. The economic and social policies established by the previous regime did not fuel job creation; unemployment rates remain stagnant around 14%. Yet, this official data remained controversial and not genuinely reflecting the actual unemployment level in the country, especially in light of what the revolution revealed of economic grievances among the Tunisian people, particularly of youth and women. Moreover

http://www.euromedrights.org/files.php?force&file=exe_Ra_tunisie_En_150Dpi_847268817.pdfTunisia after 14 January and its social and political economy.

⁴ World Bank country report, Tunisia

⁵ IMF Public Information Notice (PIN) No. 10/121, September 1 2010, available at: <http://www.imf.org/external/np/sec/pn/2010/pn10121.htm>

Tunisia suffered from lack of adequate unemployment benefits that caused further increase of inequities in the labor market. For example, the percentage of the unemployed receiving unemployment benefits was only 3 per cent in 2008, corresponding to only 13,000 people.⁶

47. Despite improved educational attainment among women, the gender employment gap has been persistent. In 2010 the participation rate among women was 24.8 per cent, compared to 69.5 for men.⁷

48. The unemployment rate for the college educated persons rose from 14 per cent in 2005 to close to 22 per cent in 2009, while during the same period it fell for those with no education.⁸

49. As indicated in the Jasmine Plan, the short term measures introduced by the interim government have alleviated the pressures on the labor market particularly amongst graduates the genuine solution to unemployment remain critical in long-term, especially for youth taking into consideration that university education is associated with a high rate of unemployment, reaching 40% against 24% for non-graduates⁹.

50. Tunisian labor regulations concerning hiring employees in the private sector are very flexible whereas they are excessively rigid when it comes to firing. This causes the firms to get around the regulations by making informal arrangements with the employees to facilitate any eventual firing¹⁰. On the other hand, compensation paid by employers to fired workers is rather low (17 weeks of salary) compared to one year in the MENA region¹¹. This reflects a regress on labor rights and protections, which are reflected in international agreements including the ILO agreements.

Accordingly, we urge the Working Group and the members of the Human Rights Council to call upon the Tunisian government to:

51. Ensure that tackling unemployment remains a top priority in all relevant programming and planning processes aiming at linking decent work and employment generation to a comprehensive economic reform agenda based on rebuilding productive sectors nationally and addressing wage rates and adequate rights-based social security measures.

52. Enable a national dialogue on the institutional response to inequities in the labor market.

53. Ensure that the decent work principles are respected and applied for both women and men and that persistent gender inequality is overcome with genuine respect and implementation of Constitution and relevant international treaties (i.e. ICESCRs, CEDAW) and ILO Declarations that Tunisia is a party to and that necessary legislative reforms in the current Labor Law are undertaken.

54. Revise and update the unemployment statistics enabling data at disaggregated level, which would serve to analyze and assess the real gaps in employment.

d. Right to education

⁶ Tunisia: A New Social Contract For Fair And Equitable Growth, ILO available at: www.ilo.org/public/english/bureau/inst/download/tunisia_es_e.pdf

⁷ ibid

⁸ ibid

⁹ Marco Stampini and Audrey Verdier-Chouchane, "Labour Market Dynamics in Tunisia: The issue of youth unemployment", March 2011, p.12, available at ftp.iza.org/dp5611.pdf

¹⁰ Lahcen Achy "Trading High unemployment for bad jobs: employment challenges in the Maghreb" Carnegie Endowment for international peace, Carnegie papers, number 23, June 2010.

¹¹ Ibid

55. With 7% of GDP spent on education and high rate of education in the MENA region, the right to education in Tunisia was relatively better enjoyed. But the equal access to education and the lack of job opportunities for educated graduates (with a gap between number of graduates and possible job openings) created concern and became one of the main causes of the uprisings in 2011.

56. According to UNICEF estimates, during the Jasmine Revolution, basic schools have been looted, damaged or stolen in seven of out 23 regions, with serious degradations in Sidi Bouzid, where six primary schools have been looted and partially burnt.¹²

Accordingly, we urge the Working Group and the members of the Human Rights Council to call upon the Tunisian government to:

57. Immediately rehabilitate and support the infrastructure of the damaged schools and provide psychosocial support to the children who have been witnesses of the conflict and tension in that area

58. Guarantee equal access of all citizens in all regions to education and improve the relation between education and employment to promote specialization, economic diversification and employability

59. Continue revising the education curricula.

e. The right to social security

60. Although social protection system in Tunisia is comprehensive, it faced critical challenges including that the effective rate of coverage by an insurance scheme is much lower than the legal rate, which means that many citizens receive no benefits and there are significant inequalities between schemes for different groups of workers.¹³ Moreover mainly due to entitlement criteria, a substantial portion of the poor is left out of the social assistance programmes. Lastly, demographic pressures are straining the financial viability of the country's pension scheme, which is already in deficit.¹⁴

61. The very existence of eleven different pension schemes caused significant incoherence and lack of coordination and significant inequalities across sectors.

62. The AMEL (Hope) program, announced by the provisional government on 22 February 2011, aims at enabling unemployed graduates of higher education to benefit from training courses and internships in specialties defined by the labor market, in return for 200 dinars per month for one year. However, the conditions for obtaining them are very restrictive, and they actually exclude graduates who have already made contributions to social security for over a year, including all those who, while working in the informal economy or surviving on subsistence practices, had contributed by themselves to the NSSF.¹⁵

Accordingly, we urge the Working Group and the members of the Human Rights Council to call upon the Tunisian government to:

¹² http://www.unicef.org/infobycountry/Tunisia_57725.html

¹³ Tunisia: A New Social Contract For Fair And Equitable Growth, ILO available at: www.ilo.org/public/english/bureau/inst/download/tunisia_es_e.pdf

¹⁴ *ibid*

¹⁵ Tunisia after 14 January and its social and political economy, Euro-Mediterranean Human Rights Network, June 2011, p.57, available at http://www.euromedrights.org/files.php?force&file=exe_Ra_tunisie_En_150Dpi_847268817.pdf

63. Ensure that the social assistance programmes benefit all citizens benefit equally and correspond to their needs and necessities and are planned to address the root causes of social inequalities by time, rather than solely providing short-term relief.

f. The Right to health

64. The conditions of hospitals and access to quality health care were central in people's demands and in the discourse of demonstrators pointing to the regional divide.¹⁶ The Jasmine Plan confirms this problematic, stating that Tunisia still suffers from inequalities in the field of health that hinder the Human Development Index. According to the HDR 2010, Tunisia suffers from a high rate of maternal mortality that rises to 100 per 100,000 newborns.

65. Although the Ministry of health percentage of hired medical staff rose by 135% compared to last year's percentage, hospitals still suffer from the lack of equipment.¹⁷

Accordingly, we urge the Working Group and the members of the Human Rights Council to call upon the Tunisian government to:

66. Reform the health care system and ensure the availability and accessibility and acceptability of the right to health to all citizens, through supporting the infrastructure development in hospitals where seen necessary and the increase of medical equipment and redress of regional disparities.

¹⁶ *ibid*

¹⁷ <http://www.tunisia-live.net/2011/07/08/3041/>

ANNEX

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