



**UPR Submission
Tunisia
November 2011**

Since the last UPR review in 2008, the situation of human rights in Tunisia improved significantly. The self-immolation of Mohamed Bouazizi, a street vendor from the forlorn region of Sidi Bouzid on the 17 December 2010, ignited large scale protests that were faced by deadly police repression. After the ousting of President Zine el Abidine Ben Ali on 14 January 2011, the interim government has begun the task of reforming the legal arsenal that allowed the previous regime to stifle dissent and crack down on opponents. It has also allowed demonstrations and protests to a degree unmatched in the past. Several recommendations accepted during the UPR in 2008 have been implemented or partly implemented since Zine el Abidine Ben Ali left power.

However, the consolidation of human rights protection in the post-Ben Ali era was hampered by the police's resort to excessive force against continuing protests, delays in adopting decisive reforms toward a more independent judiciary, challenges to freedom of expression that were not properly addressed by the interim government and an alarming trend of threats against women by religious extremist groups.

1. Accountability and reform of the judiciary

The interim government took some positive steps in order to investigate crimes committed during the uprising and compensate the victims. It established a national commission to investigate abuses committed during the protests. The commission issued its preliminary report on the abuses committed between December 17, 2010 and the end of January where it identified 240 civilians killed during the uprising in towns and cities around the country, most of them by police gunfire. In addition, the commission found that 1,464 were injured in the month-long protests and scores of inmates perished in prison mutinies and fires between January 13 and 16.

On 14 September, the office of the military prosecutor announced the filing of charges against ex-President Ben Ali, the two ministers of interior who held office at the time of the uprising as well as 40 other high officers within the state security apparatus for committing intentional homicide during the uprising.

While the interim authorities improved the military justice system, most importantly by adding the possibility of appellate review, they have been slow to put in place long needed reforms of the judiciary, in order to eliminate the rules that undermine the independence of the judiciary through the composition of the High Council of the Magistrature, appointment and advancement of the judges as well as the rules for their removal and disciplines.

On the 24 of October the government promulgated a decree-law on reparation for the families of those killed during the uprising as well as those who suffered physical handicap from their injuries.

Recommendations:

- The government should ensure accountability for grave human rights abuses covering the widespread crimes committed during the 23 years of the Ben Ali era. In particular, it should ensure that an independent and effective civilian criminal justice is in place able to investigate allegations of torture by police of suspects under interrogation and hold perpetrators accountable, pursuant to its obligations under the Convention against Torture.
- The Tunisian government should also ensure fair trial standards, including the independence and impartiality of the judiciary, as guaranteed by international conventions, for all cases including those initiated against the former president, his wife Leila Trabelsi, members of his family and close allies, both in civilian and military tribunals. As a basic principle, all civilians should be tried before a civilian tribunals.
- The government should urgently undertake the long awaited reform of the judiciary by revising the law on the statute of the magistrates. It should eliminate the control that the executive branch and its appointees effectively exercised over the judges through the High Council of Magistrates.

2. Freedom of expression, press and association

During the transition period, Tunisia made significant progress in the implementation of the recommendations 7 and 8 accepted during the previous UPR in 2008 – but efforts should continue to ensure the full implementation of these recommendations in practice.

The interim government promulgated a series of laws that eliminated part of the repressive legislation that long served the Ben Ali regime to silence any genuine dissenting opinion and to squelch opposition. The decree-law on associations, promulgated on 24 September, eliminates the crime of “membership in” or “providing services to” an unrecognized organization, a provision that had been used to imprison thousands of opposition party activists. The decree-law on political parties eliminated an article stating that a party may not base its principles, activities, and programs on a religion, language, race, sex, or region, a provision used in the past to restrict the basis upon which Tunisians could found parties.

Similarly, the Press Code which contained many provisions imposing prison terms as punishment for non violent speech has been replaced by a significantly more liberal one in October 2011. However, the penal code which also contains provisions criminalizing defamation is still in effect.

On occasion, however, the interim government itself made use of surviving repressive provisions. For example, on May 29 authorities detained high-ranking police officer Samir Feriani on charges under the penal code of "harming the external security of the state" and distributing information "likely to harm public order" because he wrote a letter to the interior minister that accused current high-level ministry officials of responsibility for killing protesters during the Tunisian revolution. The Tunis military court provisionally released Feriani on September 22 and acquitted him one week later on the charge of harming the external security of the state. However, the charge of distributing false information was still pending at this writing.

The interim government failed at times to respond forcefully to assaults on free speech. On October 9, hundreds of protesters rallied against the decision by the private television station Nessma to broadcast the animated feature film *Persepolis*, which tells the story of a girl living in post-revolution Iran. The Tribunal of First Instance of Tunis will try the TV owners after a complaint was lodged on the basis of press and penal code articles criminalizing defamation of religion and assaults on public decency. The trial is scheduled to start on November 16.

Recommendations:

- The government should eliminate the relics of the repressive laws that still pervade the criminal code. In particular, it should eliminate the provision of article 121ter of the penal code, which criminalizes the spreading of false information as well as articles 245 and 248 criminalizing defamation.
- The government should take more vigorous steps to protect freedom of expression by prosecuting those who have committed violent attacks to try and prevent the broadcast of films. It should also drop charges against Nessma TV station owner on the basis of article 48 of the old press code criminalizing defamation of religions, as well as all other charges that use laws that criminalize free speech.

3. Ratification of international conventions and cooperation with international mechanisms

The interim government ratified the Rome Statute of the International Criminal Court, the International Convention for the Protection of All Persons from Enforced Disappearance and joined the Optional Protocol to the Convention against Torture and the second optional

protocol to the International Covenant on Civil and Political rights which requires states parties to abolish death penalty.

The interim government therefore implemented the recommendation accepted during the UPR in 2008 to ratify OPCAT. The interim government also implemented the UPR recommendation to cooperate with the Special Rapporteurs on torture and on human rights while countering terrorism.

Recommendations:

- The government of Tunisia should adopt implementing legislation for the Rome Statute, which will incorporate into the Tunisian law the substantive and procedural requirements necessary for cooperating with the court and implementing all of the crimes under the Rome Statute into domestic legislation.
- The government of Tunisia should also set up a national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment as required by article 3 of the Optional Protocol of the Torture Convention, in addition to allowing regular visits to be undertaken by independent international and national bodies to places where people are deprived of their liberty.
- In accordance with the second optional protocol on the ICCPR, the government of Tunisia should take all necessary measures to abolish the death penalty within its jurisdiction.
- The government of Tunisia should respond to pending requests and facilitate visits of the Special Rapporteurs on summary executions, on independence of judges and lawyers, on freedom of expression, on the situation of human rights defenders and on freedom of association and assembly.

4. Women's rights

Tunisia, long viewed as the most progressive Arab country with respect to women's rights, marked additional strides in this field. The adoption of a gender parity requirement in the Constituent Assembly electoral law required political parties to alternate male and females on each of their lists of candidates. This resulted in the election of 49 women to the Constituent Assembly out of 217 seats.

On 28 October 2011, Tunisia interim government promulgated the decree law lifting the reservations to the Convention on the Elimination of All Forms of Discrimination against Women, thus implementing the recommendation of the 2008 UPR review. However, the government maintained "a general declaration" suggesting that it might not implement reforms that conflict with Islam.

Tunisian laws protect women's equality more than do the laws of most other countries of the Arab world. The law on personal status, promulgated in 1956 by then-President Habib

Bourguiba, greatly reduced gender inequality in many facets of family life, including marriage and divorce. However, Tunisian law continues to discriminate against women in inheritance.

Tunisian authorities have applied laws in a way that deprives Muslim women the same right to marry non-Muslim men as Muslim men have to marry non-Muslim women.

In addition, many incidents of verbal and physical attacks against women have marked the transition and post-electoral periods. Particularly targeted by these attacks are the women's rights groups with strong secular leanings, intellectual women who have vocally expressed their opposition to the Islamists, as well as university teachers subjected to intimidation for their clothing.

Recommendations:

- The government should reform the personal status code to eliminate discrimination between men and women in inheritance.
- The government should enact laws that guarantee women the right to choose their husband in order to avoid interference or restrictions from judges.
- The government of Tunisia needs to undertake urgent measures to prevent future aggression against women based on their individual choices.
- The State should also lift the general reservation on the CEDAW Convention in order to avoid any sweeping or arbitrary interpretation by judges.

5. The security apparatus

Following Bouazizi's self-immolation, thousands of Tunisians took to the streets to protest against the government. These mostly peaceful protests were met by deadly police reaction. Security forces killed and wounded scores of Tunisians in the capital of Tunis and in the inland cities of Kasserine, Thala and Regueb by firing into crowds.

Police violence against protests continued after the ouster of Ben Ali, especially on January 29, February 27-28, and again at the beginning of May, when the police assaulted several demonstrators and bystanders, arbitrarily arrested them and subjected them to harsh treatment that may amount to torture.

Recommendation:

- The government should undertake reform of the security apparatus framework and implement crowd-control techniques aimed at minimizing the use of force while protecting the right of persons to assemble peacefully.