



Universal Periodic Review: Tunisia

Second Cycle

Submission to the Stakeholders' Summary

Alkarama, 21 November 2011

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1. This contribution is made in the context of the second cycle of the Universal Periodic Review with respect to the general human rights situation in Tunisia viewed in the context of recommendations made in 2008.

1. Tunisia in Transition

2. Since the departure of Ben Ali on 14 January 2011, the “new Tunisia” has been living a key transitional period relating to democracy and human rights, the goal of which is to mark a definitive break with the previous 23 years of dictatorship and human rights violations. The challenge of this transition is twofold: to shed light on the abuses committed in the past by the former repressive and corrupt regime on the one hand, and to establish the foundation of democracy and rule of law to ensure the non-repetition of past abuses on the other.
3. In the months that followed the fall of Ben Ali’s regime, Tunisian society mobilized to organize elections for the Constituent Assembly. Following the open, pluralistic elections on 23 October 2011, three political parties emerged as victors with a majority of 217 seats: *Ennahda* with 41.7% of the vote, the Congress for the Republic (CPR) with 13.82%, and *Ettakatol* (also known as the Democratic Forum for Labour and Liberties) with 9.68%. The Constituent Assembly has the mandate of writing the new constitution, to which is added the role of enacting new legislation, and controlling the government.¹ It thus has three missions: institutional, legislative, and managerial.²
4. The circumstances in which the second Universal Periodic Review of Tunisia will take place are unprecedented given the massive political upheaval that has occurred in the past year. The new authorities will have to respond to the recommendations made during the previous review in two different phases: the “Ben Ali period” (hereafter the “first period”) and the transition period post-Ben Ali (hereafter the “second period”). The new government will have to assess the status of implementation of these recommendations and commitments in the context of each of the two periods, and work to ensure that the new authorities consolidate Tunisia’s democratic achievements and address challenges that will arise.

2. The Domination of the Executive over the Judiciary: Promise of Reform?

5. During the first Universal Periodic Review (UPR) of Tunisia, civil society noted the systematic interference of the executive branch in the administration of justice.³ Nevertheless, no recommendations on the reform of the judicial system to guarantee its independence were made and the State simply made empty assurances that the system was indeed independent and that it did not have any structural dysfunctions.
6. The total control of the justice system by the executive was a reality throughout the Ben Ali period and lasted until the January 2011 revolution. This stranglehold was made possible by the repressive legal arsenal at the regime’s disposal, collaboration between prison administrators and security forces, and the passive attitude of magistrates who were submissive and corrupt. This led to the systematic violation of the rights of detainees during preliminary investigations while in police custody, and the right of litigants to a fair trial.
7. Despite some progress in the administration of justice in the “second period”, civil society has reported many irregularities, in particular in the treatment of complaints against those responsible for human rights violations which have been ignored, and the unfair trials of civilians before military courts. There is a clear need to reform the judicial system from the ground up.
8. Reform of the judicial system has become a key demand in the aftermath of the revolution. Citizens protest against a system plagued by corruption as well as by judges who wish to exercise their powers autonomously. Faced with these demands, the Minister of Justice Lazhar Karoui Chebbi has

¹ Rue 89, *Comment ça marche la première élection libre en Tunisie?* (How are the First Free Elections in Tunisia Going ?), 1 October 2011, <http://www.tunisie-radio.com/2011/10/20/comment-ca-marche-la-premiere-election-libre-en-tunisie> (accessed le 10 October 2011)

² TAP Info, *La Constituante: Missions, attributions et responsabilités* (The Constituent Assembly : Mission, Powers and Responsibilities), 22 October 2011, <http://www.tap.info.tn/fr/fr/politique/300-politique/11695-la-constituante-missions-attributions-et-responsabilites.html>, (accessed 27 October 2011)

³ Working Group on the Universal Periodic Review, *Summary of Stakeholder Information*, A/HRC/WG.6/1/TUN/3, 11 March 2008, paras. 16 and 17.

said that judicial reform was a key priority for the authorities and that he, too, would like to reinforce the branch's independence.⁴ In this context, he has presented draft law decrees governing the organization of the Supreme Council of the Judiciary (SCJ) and the revision of the organic law on the status of judges.⁵ The minister's initiatives, however, have not gone far enough to respond to the recommendations put forward by those seeking real change which aim to clean up the judiciary⁶, strength the role of the Attorney-General as "the primary prosecuting authority for a true separation of powers," and ensure that SCM members are no longer appointed by the president but rather elected.⁷

9. While the CPR and *Ettakotol* have stated that such measures – in particular the revision of the Law on the Judiciary and the appointment of judges by the executive – were some of their priorities⁸, the Union of Tunisian Judges (SMT) and the Association of Tunisian Judges (AMT) will present a "roadmap" to judicial reform. These reforms remain one of the new authorities' biggest challenge.

3. The Anti-Terrorism Law of 10 December 2003

10. During the first UPR of Tunisia there were no recommendations regarding the antiterrorist law of 10 December 2003 (Law No. 2003-75) despite the fact that its abusive use has led to numerous violations and arbitrary detentions. Only Mexico recommended that the country cooperate with the Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism⁹, a recommendation that was accepted and put in place in January 2010 when Mr Scheinin visited Tunisia. This visit was not conducted in the transparent manner required due to the withholding of information by the authorities. Only in the recent "second period" has the Rapporteur been able to carry out a second visit, which took place from 22 to 26 May 2011. During this second visit, the Special Rapporteur was able to assess the recent progress made to respect human rights while countering terrorism, as well as to identify priorities for reform.
11. Notwithstanding the absence of recommendations concerning this law and its extensive and vague definition of the crime of terrorism, it is essential to note that the Tunisian authorities have used it to persecute and arbitrarily prosecute any person in opposition to the government, in particular Islamist activists. Between 2000 and 3000 people have been convicted under this law since its entry into force.¹⁰
12. According to several Tunisian lawyers, this law has not been applied since 14 January 2011¹¹, a fact that was confirmed by Martin Scheinin during his last visit to Tunisia.¹² Those detained under this law have been released under an amnesty law of 19 February 2011.¹³
13. In the aftermath of 14 January 2011, the transitional authorities announced their support of the repeal of this "anti-democratic" legislation and many, including the Minister of Justice Mr Chebbi, have demonstrated a strong commitment to this promise to amendment or repeal it.¹⁴ On 4

⁴ Website of the Tunisian Ministry of Justice, *Le ministre de la Justice reçoit le Rapporteur spécial sur la promotion des droits de l'homme* (The Minister of Justice Meets with the Special Rapporteur for the Promotion and Protection of Human Rights), <http://www.e-justice.tn/index.php?id=896> (accessed 4 July 2011)

⁵ Website of the Ministry of Justice, *Le ministre de la Justice reçoit une délégation du Centre international pour la justice transitionnelle* (The Minister of Justice Meets with a Delegation from the International Center for Transitional Justice), 21 September 2009, <http://www.e-justice.tn/?id=950> (accessed 23 September 2011)

⁶ Mokhtar Yahyaoui, Tunisian judge, phone interview with Alkarama, 10 October 2011

⁷ Jeune Afrique, *Tunisie: avocats et magistrats exigent l'indépendance de la justice* (Tunisia : lawyers and judges demande independence of justice), 4 November 2011, <http://www.jeuneafrique.com/Article/ARTJAWEB20111104193433/> (accessed 5 November 2011)

⁸ Human Rights Watch, *A Questionnaire for candidates in Tunisia's 2011 elections*, p. 15 et 27

⁹ Recommendation put forward by Mexico and accepted by Tunisia, *Report of the Working Group*, A/HRC/8/21, Para. 83

¹⁰ Samir Dilou, President of the *Comité de soutien aux prisonniers politiques* (Committee for the Support of Political Prisoners) and current spokesperson for *Ennahda*, phone interview with Alkarama, 15 February 2011.

¹¹ Mr Mokhtar Yahyaoui, Tunisian judge, phone interview with Alkarama, 10 October 2011.

¹² OHCHR, *Counter-terrorism: UN Human Rights expert concludes follow-up mission to Tunisia*, Geneva, 26 May 2011 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11066&LangID=E> (accessed 1 June 2011).

¹³ AFP, Le Figaro, *Tunisie: amnistie générale en vigueur* (Tunisia : General Amnesty In Effect), 19 February 2011, (consulted 4 March 2011).

¹⁴ Website of the Ministry of Justice, *Le ministre de la Justice reçoit une délégation du Centre international pour la justice transitionnelle* (The Minister of Justice Meets with a Delegation from the International Center for Transitional Justice), 21 September 2009, <http://www.e-justice.tn/?id=950> (accessed 13 October 2011).

November 2011 it was announced that the Ministry of Justice had drafted a bill to amend Act No. 75/2003 on the suppression of terrorism in order to "restrict its scope to avoid any threats it may pose to individual freedoms."¹⁵

14. The CPR and *Ettakatol* announced their support for the repeal of the antiterrorist law. However, despite the commitments of different parties in support of the repeal of this legislation, no timetable to achieve this has yet been established.

4. From the Practice of Torture to a Will to Eradicate It

15. One of the main characteristics in Ben Ali's repressive arsenal was the systematic practice of torture on detainees (in particular Islamists) by all branches of the police. This was carried out with total impunity, as was mentioned in our previous report.¹⁶ While it is true that in the ten months since the fall of Ben Ali the use of torture has fallen off sharply, throughout the "first period" it was widespread and systematic.
16. During the first cycle of the UPR the authorities reaffirmed their commitments in the fight against torture and impunity for those responsible by saying that "With regard to the implementation of the Convention against Torture (...)the Tunisian Government consistently endeavours to put into practice all the mechanisms required to address violations",¹⁷ adding that "the Tunisian authorities do not hesitate to prosecute abuse of authority by law enforcement officials, in particular acts of violence and ill-treatment of which they are guilty."¹⁸ Yet it is clear that throughout the Ben Ali era these commitments were not fulfilled; torture continued to be practiced systematically by all police forces with impunity, orchestrated by the National Security Directorate. Neither the executive nor the judiciary took proactive measures to reverse the trend and prosecute those responsible. Between April 2008 and 14 January 2011, hundreds of people arrested under the antiterrorist law were tortured and their torturers were not prosecuted. Of 246 lawsuits filed against those responsible for torture between 1999 and 2009, only seven have resulted in criminal convictions.
17. After the fall of the regime, dozens of cases of excessive use of force and of torture perpetrated by the security forces (forces from Internal Security and the National Guard) that took place in the streets, police stations, and prisons were reported. The majority of cases reported after January 14 concern inmates in some prisons (Gabes, Borj Erroumi, and Mornaguia) who were victims of a campaign of reprisal launched by the prison administration.¹⁹ Other cases involve protesters such as **Oussama Achouri** and **Mohamed Sedki Hlimi**²⁰, who were beaten and tortured while in police custody. A rare case is that of an ordinary prisoner such as **Samir Abdelnasser El-Mataoui**, who was tortured by police in April 2011 on the grounds of the Charles Nicole Hospital in Tunis.²¹
18. Following the first cycle of the UPR, Tunisian authorities accepted some recommendations for the implementation of the Convention against Torture and cooperation with the UN Special Procedures. Tunisia agreed to "consider ratifying the Optional Protocol to the Convention against Torture...as soon as possible"²² and to "to consider cooperation with (...) the Special Rapporteur on the question of torture."²³ Only after the fall of the old regime were these recommendations

¹⁵ Leaders, *Interview avec le ministre de la Justice, Me Chebbi* (Interview with the Minister of Justice, Mr Chebbi), 4 November 2011, <http://www.leaders.com.tn/article/me-lazhar-karoui-chabbi-ministre-de-la-justice>, (accessed 6 November 2011)

¹⁶ Alkarama, *Submission to the UPR*, 20 November 2007, http://en.alkarama.org/index.php?option=com_docman&task=doc_download&gid=19&Itemid=206, and Alkarama, *Tunisie: Alkarama ne constate aucune amelioration dans la situation des droits humains* (Tunisia : Alkarama Finds No Significant Improvement in Human Rights Situation), 2 April 2009, http://fr.alkarama.org/index.php?option=com_content&view=article&id=557:tunisie-alkarama-constate-aucune-amelioration-dans-la-situation-des-droits-humains&catid=62:rapports&Itemid=145

¹⁷ Tunisian National Report, UPR, First cycle, April 2008, A/HRC/WG.6/1/TUN/1, Para. 40

¹⁸ Tunisian National Report, UPR, First cycle, April 2008, A/HRC/WG.6/1/TUN/1, Para. 40

¹⁹ Alkarama, *Great Challenges Ahead for Tunisia, Submission to the list of issues in view of Tunisia's 3rd periodic review by the Committee against Torture*, 4 March 2011

²⁰ Nawaat, *Qui peut rendre justice à ce jeune handicapé?* (Who Can Obtain Justice for This Young Disabled Person?), 2 April 2011 <http://nawaat.org/portail/2011/04/02/qui-peut-rendre-justice-a-ce-jeune-handicape/> (accessed 16 July 2011)

²¹ Ms Imene Triki, President of the *Liberté et Équité* Association (Freedom and Equality), phone interview with Alkarama, 10 October 2011

²² Recommendation put forward by Canada and the United Kingdom, *Report of the Working Group*, A/AHR/8/21. Para. 83.

²³ Recommendation put forward by Mexico, *Report of the Working Group*, A/AHR/8/21. Para. 83.

implemented by the transitional government. Tunisia ratified several international instruments including the Optional Protocol to the Convention against Torture on 29 June 2011 and agreed to receive a one-week visit by Juan Mendez, the Special Rapporteur on Torture, between 15 and 22 May 2011.

19. If these initiatives by the interim government are to be effective, the importance of adopting measures to prevent and eradicate torture (including the establishment of a national preventive mechanism provided for in OPCAT) as well as undertaking comprehensive structural and legislative reforms cannot be overstated. Reform of the security apparatus and the establishment of an oversight mechanism are an essential priority of the new government. The fight against impunity must include independent investigations and prosecutions of perpetrators.
20. Initiatives currently being implemented to eradicate torture at its foundation should be encouraged. The Ministry of Justice has developed a specific piece of legislation to amend the Penal Code and expand the scope of Article 101bis on torture.²⁴ Mainstream political parties in the Constituent Assembly have pledged to combat the practice of torture. CPR recommended that torture should be listed as a crime against humanity in the Constitution and declared imprescriptible.²⁵

5. Recommendations

1. Undertake structural and legislative reform of the justice system to guarantee its independence from the executive branch and include the principle of tenure of judges in the future Constitution.
2. Amend organic laws No. 67/29 on the organization on the Judicial Council and the Supreme Council of the Judiciary and No. 2005-81 authorizing the president to name 9 members of the CSM.
3. Undertake comprehensive structural and legislative reforms to eradicate torture and to ensure that the absolute prohibition of torture is enshrined in the Constitution; amend article 101bis of the Penal Code concerning the crime of torture to extend its application to those responsible.
4. Open independent and impartial investigations into allegations of torture and other abuses committed during the 23-year reign of Ben Ali and ensure that those responsible are brought to justice as well as ensuring redress for the victims; adopt a preventive mechanism in a period of one year and organize regular visits to detention centres.
5. Repeal the antiterrorism law of 10 December 2003.
6. Undertake a reform of the security apparatus and guarantee that forces charged with law enforcement are educated on the respect of human rights.

²⁴ Leaders, *Interview avec le ministre de la Justice, Me Chebbi* (Interview with the Minister of Justice, Mr Chebbi), 4 November 2011, <http://www.leaders.com.tn/article/me-lazhar-karoui-chabbi-ministre-de-la-justice>, (accessed 6 November 2011)

²⁵ Human Rights Watch, *A Questionnaire for candidates in Tunisia's 2011 elections*, 20 October 2011, p. 15