



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés



Submission by the United Nations High Commissioner for Refugees

for the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review:

TUNISIA

I. Background information and current situation

A. Political context

Since January 2011, Tunisia has undergone profound social and political changes. Street protests over high unemployment, corruption and inflated food prices, which began in December 2010, culminated with the collapse of former President Zine El Abidine Ben Ali's 30 year regime. On 14 January 2011, following the exile of Ben Ali, a national unity government was established. The head of Tunisia's Chamber of Deputies, Mr. Fouad M'Bazaa, was sworn in as the country's interim president. Protesters, however, continued to call for a ban on the ruling secular party, the Constitutional Democratic Rally (RCD), formerly Neo Destour, and the resignation of the government formed by Mohamed Ghannouchi. Eventually, on 3 March 2011, a new Prime Minister, Beji Caid-Essebsi, was appointed by the interim president.

Tunisia's transitional government took immediate steps to ban the RCD and to confiscate its resources. It also banned the former President's "political police", including what has been known as the "state security special forces". Furthermore, three commissions were appointed: i) the National Commission to investigate violence during the riots, headed by Tawfik Bouderbala (the former president of the independent civil society organization Tunisian Human Rights League); ii) the National Commission to investigate corruption, headed by Abdel Fattah (a Special Rapporteur for the former UN Human Rights Committee and a political science professor); and iii) the National Commission for political reform, headed by Iyadh Ben Achour (an academic specializing in constitutional law).

Elections for a constitutional assembly took place on 23 October 2011. The Constituent Assembly, consisting of 217 members, will be in charge of drafting a new constitution. It will also appoint members of the executive branch and adopt legislation. The *Ennahda* party won 90 seats (41,47%) while left wing parties came second and third with 30 seats for the *Congrès pour la République* and 21 seats for *Ettakatol (Forum démocratique pour le travail et les libertés)*.

B. Protection of refugees

Tunisia acceded to the 1951 Convention Relating to the Status of Refugees on 24 October 1957 and to the 1967 Protocol on 16 October 1968. Tunisia also ratified the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa in 1989. Article 17 of the 1959 Tunisian Constitution prohibits the extradition of political refugees. A provision of the 1975 Law on Passports and Travel Documents makes an explicit reference to the 1951 Convention and the principle of *non-refoulement*. Despite this, no comprehensive

asylum system has been put in place, as there is no national refugee law to govern asylum and refugees matters. Consequently, refugees recognized by UNHCR have no automatic access to residency documents and may face challenges in their daily lives.

II. Achievements, challenges and constraints

(1) Refugee protection

In August 2011, the Tunisian Government indicated its willingness to have a national law on asylum. This decision reflects an increased awareness of human rights issues, as well as renewed interest in refugee matters following the influx of persons from Libya in March 2011.

This openness expressed by the Government represents a great opportunity to strengthen the asylum space in Tunisia. At the same time, the outflow from Libya placed an enormous strain on the country and its current limited capacity to fulfill their responsibilities under the 1951 Convention. UNHCR is therefore fully committed to assisting the development of the asylum system and has started to provide the necessary expertise to the Tunisian authorities. As a first step, a comparison of selected asylum systems was presented to the Tunisian authorities as an introduction to the process and the implications of setting up such a system. Intensive training and continued support is necessary to assist the Government to build a system that will uphold the responsibilities enshrined in the 1951 Convention and other relevant international legal instruments.

In addition, further progress has been made in formalising UNHCR's presence in Tunisia by signing of an *accord de siège* with the Tunisian Minister of Foreign Affairs on 18 June 2011.¹ This agreement will enable UNHCR to maintain offices in Tunis and southern Tunisia, as well as to put in place regional functions to ensure more coordination and harmonized approaches among other UNHCR offices across North Africa.

As of March 2011, thousands of persons fled Libya as a result of the conflict there. Both third country nationals and Libyans came to Tunisia seeking safety. Tunisia adopted a generous open door policy towards both groups. Most third country nationals were assisted with return to their countries of origin while Libyans were given *de facto* temporary protection in Tunisia. UNHCR did not receive any reports of *refoulement* of Libyans during that period or after. Those third country nationals who expressed concerns in returning to their countries of origin have been accommodated in a camp in the South of the country, where UNHCR undertakes refugee status determination and seeks durable solutions for this population, primarily through resettlement. It should be noted that third country nationals who arrived as part of the influx have been allowed to enter Tunisia, even if they were not in a possession of proper travel documents. However, as of September 2011, Tunisia resumed application of its regular immigration rules, by which third country nationals without adequate documentation, including persons holding UNHCR asylum-seeker or refugee certificates, may not be able to access the country. UNHCR Tunisia has been able to ensure access for most cases through interventions with the authorities.

¹ As a background, it may be recalled that upon request of the Tunisian Government, UNHCR had commenced its operations in Tunisia in 1957 to assist Algerians fleeing the war in Algeria at the time. As the operation was quickly concluded in 1962 when most Algerians returned home, UNHCR's presence in Tunisia was thereafter limited to an Honorary Representation for more than four decades.

(2) Statelessness

Tunisia is a party to the *1954 Convention on the Status of Stateless Persons* since 1969 and has acceded to the *1961 Convention on the Reduction of Statelessness* on 12 May 2000.

Upon accession to the 1961 Convention, the Government of Tunisia submitted reservations, whereby it declared that it does not consider itself bound by the provisions of article 11 concerning the establishment of a body responsible for assisting in the presentation of claims to obtain nationality and by those of article 14, which provides for the competence of the International Court of Justice. The Government of Tunisia also made a declaration relating to article 8, which is in effect a reservation. Article 8 prohibits the deprivation of an individual's nationality if it would render them stateless. The Governments of Finland, Germany, Norway, Sweden and the Netherlands² expressed their objections to this declaration made by the Government of Tunisia on article 8 of the 1961 Convention.³

Citizenship issues are regulated by the *Code de la nationalité Tunisienne* issued by the *Décret loi* n° 63-6 of 28 February 1963, amended by the Law n° 2002-4 of 21 January 2002 and by the Law n° 2010-55 of 1 December 2010. This last amendment allows Tunisian women to transfer nationality to their children, even if the father is not Tunisian and regardless of their location inside or outside the country. This new legal provision has therefore fully eliminated discrimination against women as regards conferral of nationality to their children.

Article 16 of the *Code de la nationalité* foresees the loss of Tunisian nationality for the foreign woman who acquired it through marriage with a Tunisian national when the marriage is annulled. This provision does not contain any safeguards against statelessness in case the spouse does not have another nationality or cannot reacquire her former nationality, if she lost it due to her marriage with a Tunisian national.

UNHCR Tunisia has no indications as to the extent to which this provision leads to statelessness situations, as there are no official statistics available and no cases have been reported to UNHCR.

III. Recommendations

In view of the above, we would like to suggest to the Office of the High Commissioner for Human Rights to consider referring in its compilation report the following recommendations aimed at enhancing the protection of persons of concern to UNHCR in Tunisia:

Issue 1: Follow through on the process that has already started to adopt national asylum legislation and put in place an asylum procedure in accordance with international standards with the overall aim being that the State is responsible for providing effective protection to asylum-seekers and refugees.

² Objections to this declaration were made Finland, Germany, Norway, Sweden and the Netherlands on 7 August 2008, 15 May 2001, 23 May 2001, 23 May 2001 and 6 June 2001 respectively.

³ In view of the Ministerial meeting to be held in Geneva on 7 and 8 December on the occasion of the 50th anniversary of the 1961 Convention, UNHCR suggested to the Government of Tunisia to declare that it would consider removing its reservations.

- Issue 2:** Maintain a humanitarian approach towards persons fleeing the situation in Libya and seeking access to safety and asylum in Tunisia.
- Issue 3:** Consider withdrawing the declaration relating to article 8 of the 1961 Convention on the Reduction of Statelessness, as well as the reservations relating to article 11 and, eventually, article 14.
- Issue 4:** Consider amending article 16 of the *Code de la nationalité*, in order to introduce a safeguard against statelessness in case of annulment of marriage.

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