



STATELESSNESS AND NATIONALITY POLICY IN TUNISIA



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STATELESSNESS AND NATIONALITY POLICY IN TUNISIA

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I. Introduction

Statelessness is defined as the *condition* of not being considered a national by any state under the operation of its laws. This condition, however, may be the result of a human rights violation that always leaves stateless persons without the full enjoyment of their human rights.¹ This is because, across the world, nationality is treated as a threshold criterion for entitlement to basic human rights such as legal identity, housing, employment, education, and healthcare. In a series of reports since 2018, the International Human Rights Clinic (IHRC) at Boston University has considered the citizenship and nationality regimes in Middle East and North Africa (MENA) countries and whether they are sufficient to protect against statelessness. This Report analyzes the achievements and gaps in Tunisia’s laws and policies that concern statelessness. Though a sound foundation for reducing and preventing statelessness is in place in Tunisia, the risk of statelessness persists for certain vulnerable populations—namely irregular migrants, refugees, and survivors of human trafficking. The report traces these gaps to specific barriers in Tunisia’s domestic law and proposes amendments to Tunisia’s laws and policies that would, if implemented, close the gaps identified for those at a heightened risk of statelessness.

Tunisia, more so than any other country in the MENA, has taken proactive steps to recognize and protect against statelessness. Tunisia is a party to both the 1954 Convention on the Status of Stateless Persons (1954 Convention), and the 1961 Convention on the Reduction of Statelessness (1961 Convention).² Aside from Libya, which has also ratified both Conventions, Tunisia’s status as party to both sets it apart from other MENA states with regard to its commitments under international law to the reduction of statelessness.³ Tunisia has also moved towards achieving gender equality in its Nationality Code through a 2010 amendment, which responded to civil society’s push for reform by providing Tunisian mothers the right to automatically confer their citizenship to their children.⁴

Tunisia’s birth registration procedure, though cumbersome for certain populations, is still more protective than those elsewhere in the MENA, and covers the vast majority of children

¹ The definition of statelessness used in this report is discussed in Section 1.B. *infra*.

² Tunisia acceded to the 1954 Statelessness Convention on July 29, 1969. U.N. Convention Relating to the Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117 (*hereinafter* 1954 Statelessness Convention), Accession by Tunisia, Depository Notification (Aug. 13, 1969) Ref. C.N.1U0.1969.TREATIES-2, <https://treaties.un.org/doc/Publication/CN/1969/CN.140.1969-Eng.pdf>. Tunisia acceded to the 1961 Statelessness Convention on May 12, 2000. U.N. Convention on the Reduction of Statelessness, Aug. 30, 1961, 989 U.N.T.S. 175, Accession by Tunisia, Depository Notification (May 24, 2000) Ref. C.N.311.2000.TREATIES-2, <https://treaties.un.org/doc/Publication/CN/2000/CN.311.2000-Eng.pdf> (*hereinafter* 1961 Statelessness Convention).

³ Algeria also ratified the 1954 Statelessness Convention on July 15, 1964. 1954 Statelessness Convention, Sept. 28, 1954, 360 U.N.T.S. 117, Accession by Algeria, Depository Notification (July 15, 1964), <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20V/V-3.en.pdf>.

⁴ On December 1, 2010, Law No. 2010-55 repealed Article 12 and replaced it with Article 6, which remains in the Nationality Code today. Article 6 provides that a child born to a Tunisian mother is Tunisian—regardless of whether the child is born in Tunisia or abroad, and regardless of the nationality of the child’s father. *See* CODE DE LA NATIONALITÉ TUNISIENNE, art. 6, 2018 [*hereinafter* NATIONALITY CODE].

born in the country.⁵ Despite commendable practices regarding gender equality and birth registration, some of Tunisia’s domestic laws and policies fall short of the state’s international legal obligations. This Report highlights the laws and policies which place migrants and refugees at heightened risk of becoming stateless and deprives stateless persons of protection in Tunisia.

Because of its location on the Mediterranean coast, Tunisia has long been considered an important country of transit for migrants on their way to Europe. Increasingly, however, Tunisia has also become a destination for migrants, including asylum seekers and trafficked persons.⁶ In 2019, the number of international migrants in Tunisia reached 57,445.⁷ In 2023, the United Nations High Commissioner for Refugees (UNHCR) reported that over 9,400 asylum seekers and refugees are registered by UNHCR in Tunisia.⁸ Unfortunately, Tunisia’s laws and policies relevant to migration and citizenship acquisition have not been revised to reflect this change in its migration profile, rendering many provisions of Tunisia’s legal framework outdated and insufficient to combat and prevent statelessness in the country. As this report goes to publication, this regrettable status quo is exacerbated the government’s rhetoric regarding migrants as sources of instability for the country.⁹

The conclusion of this Report is that Tunisia’s existing laws and policies fail to reduce and prevent statelessness despite safeguards in its domestic legal framework and its commitment through ratification of several international legal instruments. In addition, its failure to adopt national legislation to protect and provide a pathway to citizenship to refugees and stateless persons creates a risk of statelessness for long-term migrants on its territory. As the number of migrants in Tunisia continues to rise, so does the number of migrants who are criminalized for lack of proper documentation.¹⁰ Tunisia’s laws, policies, and social reluctance to legally

⁵ Statistics indicate that “99% of children are registered at birth in the civil status records.” See ARAB INSTITUTE FOR HUMAN RIGHTS, انعدام الجنسية في تونس: دراسة قانونية [Statelessness in Tunisia: A Legal Study], 64 (2020) (on file with author) [hereinafter AIHR STATELESSNESS STUDY] (citing UNFPA, *KNOWLEDGE BRIEF ON COMPLETENESS OF BIRTH REGISTRATION IN TUNISIA, 2000-2018* (2021), https://tunisia.unfpa.org/sites/default/files/pub-pdf/knowledge_brief_on_birth_registration_in_tunisia.pdf).

⁶ There was a 66% increase in the number of non-Tunisians residing in Tunisia between 2004 and 2014, from 35,192 to 53,490 individuals. See Migrants Refugees, *Country Profiles: Tunisia* <https://migrants-refugees.va/country-profile/tunisia/> (last visited Dec. 28, 2022).

⁷ GLOBAL IMMIGRATION DETENTION OBSERVATORY, *TUNISIA IMMIGRATION DETENTION DATA PROFILE* (2020).

⁸ UNHCR, *Tunisia*, <https://www.unhcr.org/en-us/tunisia.html> (last visited Apr. 21, 2023).

⁹ The Tunisian president repeatedly asserted that the increase of migrants from sub-Saharan Africa was part of a conspiracy to change Tunisia’s demographics, sparking a wave of violence against black migrants in late February and early March 2023. Reuters, “Tunisia’s Saied Denies Racism but Repeats View That Migration Is a Plot,” REUTERS, (Feb. 23, 2023) sec. Africa, <https://www.reuters.com/world/africa/tunisias-saied-denies-racism-repeats-view-that-migration-is-plot-2023-02-23/>; Elizabeth Hagedorn, “US Racial Justice Envoy Calls out Tunisian President’s ‘incendiary’ Rhetoric,” AL-MONITOR, (Mar. 8, 2023), <https://www.al-monitor.com/originals/2023/03/us-racial-justice-envoy-calls-out-tunisian-presidents-incendiary-rhetoric>.

¹⁰ For example, in the spring of 2020, Tunisia saw an increase in arrivals from Algeria—what followed was an increase in arrests of nationals from Côte d’Ivoire, Senegal, Guinea, and Somalia. See Matt Herbert, *Losing hope: Why Tunisians are leading the surge in irregular migration to Europe*, GI-TOC (Jan. 2022) (noting that economic hardship in sub-Saharan countries has prompted an influx of migration to Tunisia).

integrate forced migrants work together to increase the vulnerability of certain groups of migrants, including their risk of statelessness.

A. Methodology

This Report relies on legal and factual research on issues of nationality and statelessness in Tunisia conducted between September 2021 and July 2022. To ensure accuracy, extensive desk research was cross-referenced and supplemented by interviews with informants with expert knowledge of Tunisia’s nationality laws and procedures. Desk research involved analysis of the written laws, policies, and rhetoric around citizenship in Tunisia, consideration of the relevant international and regional law, and review of reports, studies, and other materials from civil society organizations and academics working in and outside of Tunisia and the MENA region. Informants included representatives of United Nations and non-governmental organizations, lawyers, and academics, whose work involves forced migration and access to nationality in Tunisia, as well as individuals whose lived experiences and circumstances expose them to the gaps identified through our research.¹¹ All but four of the interviews were carried out over a video or telephone conference.¹²

To better understand practitioners’ perspective and to share findings, IHRC organized a workshop in Tunis on 23 June 2022 in collaboration with the Minority Rights Group International (MRG). The workshop brought together informants to this study, attorneys in private practice and representatives of civil society whose work touches on the problem of statelessness.¹³ Representatives of UNHCR, the International Organization for Migration (IOM), the Tunisian judiciary, the Arab Institute for Human Rights (AIHR), Hawiati-MENA Statelessness Network, and Boston University School of Law’s IHRC spoke about their work, Tunisia’s progress in protecting nationality rights and the challenges at present. Attorneys in private practice shared experiences from their work on birth registration. Insights shared by practitioners are referred to throughout this report. Four additional interviews were conducted in person in Tunis in June 2022. In addition, twenty-one of the participating lawyers responded to a feedback survey sent after the event.

The Report is structured as follows. Part I continues with an explanatory note on the use of the term ‘statelessness’ and related terminology. Part II provides a brief historical background of Tunisian nationality laws through the state’s changing political and migration history, and an

¹¹ For a list of organizations and individuals interviewed, see Appendix III.

¹² Informants signed a disclosure or confidentiality agreement indicating their preference for how their statements could be used in this report. The options included full disclosure of the source’s identity and affiliation when reporting information, exclusion of specific portions of the information shared from the report, and provision of information “for background only.”

¹³ The workshop was held in Hotel Al-Mouradi Gammarth in hybrid format. In attendance in person were forty-nine individuals, including attorneys in private practice and other representatives of civil society and the United Nations High Commissioner for Refugees. Fifteen civil society organizations were represented at the event.

overview of the groups identified as particularly vulnerable to statelessness in the country. Tunisia's obligations regarding nationality and the reduction of statelessness under international, regional, and domestic law are laid out in Part III. The remainder of the Report explores what is missing in Tunisia's legal framework (Part IV.A), what barriers to inclusion and enjoyment of nationality exist within law and policy (Part IV.B), and how laws and policies are implemented on the ground, including their impact on vulnerable groups (Part V). The final section (Part VI) concludes and summarizes recommendations to reduce and prevent statelessness in Tunisia.

B. Note on Legal Terminology

For the purposes of this Report, citizenship refers to having identity documents and recognition by a state as a citizen under its domestic laws. While acknowledging the existence of distinctions between the concept of 'nationality' and 'citizenship,' this Report occasionally uses the two terms interchangeably. The definitions of other key concepts employed in this Report can be found in Appendix I (Glossary).

The 1954 Convention Relating to the Status of Stateless Persons defines as stateless "a person who is not considered as a national by any state under the operation of its law."¹⁴ This definition is considered a norm of customary international law (CIL).¹⁵ Persons who fall within this definition are often referred to as '*de jure*' stateless, though the phrase "*de jure*" does not have legal significance.¹⁶ It is used to distinguish the phrase "*de facto*" stateless, referred to in the Final Act of the 1961 Convention on the Reduction of Statelessness; this term "is not defined in any international instrument" and is not a component of any treaty regime specific to stateless persons.¹⁷ Nonetheless, UNHCR commentary has interpreted it to apply to "persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country."¹⁸ This Report proceeds on the assumption that the definition of a stateless person as a norm of CIL does not make any distinctions along the lines of "*de facto*" or "*de jure*." The determination of whether a person is considered a national under the operation of a state's law is "authoritatively interpreted as being both a question of fact and

¹⁴ 1954 Statelessness Convention, *supra* note 2.

¹⁵ See Int'l Law Comm'n, Draft Articles on Diplomatic Protection with commentaries, 48-49, U.N. Doc. A/61/10 (2006) (noting that the definition of Article 1(1) provided by the 1954 Statelessness Convention is considered to have acquired a customary nature); see generally UNHCR, Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention Relating to the Status of Stateless Persons, U.N. Doc. HCR/GS/12/01 (Feb. 20, 2012).

¹⁶ UNHCR, HANDBOOK ON THE PROTECTION OF STATELESS PERSONS UNDER THE 1954 CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS 5 (2014).

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 5. But see Hélène Lambert, *Stateless Refugees*, in THE OXFORD HANDBOOK OF INTERNATIONAL REFUGEE LAW 797, 811 (Cathryn Costello, Michelle Foster, and Jane McAdam eds., 2021) (arguing that '*de facto* statelessness' is a discredited notion).

law.”¹⁹ A person or population considered to be ‘at risk’ of statelessness would not meet the legal definition of stateless, but the circumstances of such person or population indicate there is a “considerable chance that statelessness will arise if preventive action is not taken.”²⁰

In Tunisia, stateless persons, and those at risk of statelessness, are primarily vulnerable migrants and refugees. The latter group are also entitled to protection by virtue of their status in Tunisia through the provisions of the 1951 Convention Relating to the Status of Refugees²¹ and the 1967 Protocol Relating to the Status of Refugees.²² In addition, persons of ‘undocumented nationality’ (sometimes referred to as ‘evidentiary statelessness’ or ‘unperfected citizenship’) may lack the means to fully prove their nationality status²³ or may remain un-registered with the government for other reasons often linked to discrimination.²⁴

Worldwide, the key causes of statelessness are gaps and conflicts in nationality laws, legacies of colonization, consequences of state succession, intergenerational transmission of statelessness, arbitrary deprivation of nationality, and restrictive administrative practices (for example, in relation to issuance of documents necessary to prove nationality).²⁵ Given the range and complexity of causes, each presents differently depending on the context. The following sections provide the necessary background for this Report by examining the relevant history and demographics of Tunisia.

¹⁹ LAURA VAN WAAS, AMAL DE CHICKERA, AND ZAHRA ALBARAZI, INST. ON STATELESSNESS AND INCLUSION, THE WORLD’S STATELESS 40 (2014) [hereinafter ISI, THE WORLD’S STATELESS].

²⁰ LEGAL AGENDA, NATIONALITY AND CASES OF STATELESSNESS IN THE MIDDLE EAST AND NORTH AFRICA 18 (2016).

²¹ Tunisia acceded to the 1951 Convention Relating to the Status of Refugees on Oct. 24, 1957. U.N. Convention Relating to the Status of Refugees, 28 July 1951, 189 U.N.T.S. 137, Accession by Tunisia, Depository Notification (Oct. 24, 1957) <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20V/V-2.en.pdf>.

²² Tunisia acceded to the 1967 Protocol Relating to the Status of Refugees on Oct. 16, 1968. U.N. Protocol Relating to the Status of Refugees, 28 Jan. 31, 1967, 606 U.N.T.S. 267, Accession by Tunisia, Depository Notification (Oct. 16, 1968) <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20V/V-5.en.pdf>.

²³ While “there is no universally agreed upon definition of nationality,” the International Court of Justice has defined nationality as “the legal bond based on a social fact of attachment, a genuine connection of existence, interests and feelings, together with mutual rights and duties” and the “juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as the result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State.” *Nottebohm Case (Liech. v. Guat.)*, Judgment, 1955 I.C.J. 4, 23 (Apr. 6). *See also* AFR. COMM’N. H.P.R., THE RIGHT TO NATIONALITY IN AFRICA 13 (May 2014) (noting in particular that “where nationality is concerned, the relationship between the individual and the State must be effective: the individual must enjoy all the rights and be bound by the obligations which the State’s legislation grants to or imposes on its citizens.”).

²⁴ *See* WENDY HUNTER, UNDOCUMENTED NATIONALS BETWEEN STATELESSNESS AND CITIZENSHIP 5 (2019) (defining and analyzing ‘undocumented nationality’ and ‘evidentiary statelessness’). *See also* Noora Lori, *Statelessness, ‘In-Between’ Statuses, and Precarious Citizenship*, in THE OXFORD HANDBOOK OF CITIZENSHIP 745, 746 (Ayelet Shachar et al., eds., 2017) (examining the concept of ‘precarious citizenship’ to refer to the structured uncertainty of being unable to secure permanent access to citizenship rights). There are multiple factors inhibiting access to citizenship for both migrant populations and state nationals including: (1) structural factors and global trends (such as identity management infrastructure, biometric identification mechanisms, climate change, and economic development/inequality), (2) institutional factors (including the role of the private sector, state security apparatus, representation (e.g., via census data), and type of government regime), and (3) individual factors (such as geography/place of birth, race and ethnicity, individual socioeconomic status, and relative social status). *Id.* at 747.

²⁵ ISI, THE WORLD’S STATELESS, *supra* note 19, at 27-28.

II. Historical, Legal, and Demographic Context

A. History of Tunisian Nationality

1. Overview of Tunisia's Political History and Nationality

The territory of the modern state of Tunisia was ruled by several empires before Tunisia became independent in 1956. Over the centuries, Berbers (Amazigh people), Arabs, Romans and Ottomans constructed the cultural heritage of Tunisia. Though in the 19th century France established formal political control over Tunisia, during the same period the colonial interests of Italy and Great Britain also intersected in Tunisia, due to its strategic location.

The contemporary concept of citizenship in Tunisia derives from the French civil code and Sharia law traditions.²⁶ Tunisia was part of the Ottoman Empire between 1574 and 1881. Since the beginning of the 18th century, as a territory (beylic) of the Ottoman Empire, Tunisia was governed by the Beys of the Husaynid Dynasty, who remained in power after the French took over from the Ottomans, until Tunisian independence in 1956. It was during the Husaynid Dynasty's rule that the idea of Tunisian nationality first emerged as an identifiable category.²⁷

Despite the promulgation of the Ottoman Empire's first nationality law in 1869, it was never applied in Tunisia, though various developments indicated the existence of a Tunisian nationality long before Tunisian independence.²⁸ For example, court records and other historical documents recount the so-called "Scemama Affair," concerning the estate of a Jewish official of the province of Tunisia, Scemama, who died in Italy in 1873.²⁹ In determining whether a Jew could be considered Tunisian many years after his absence from Tunisia, the Tunisian authorities asserted that Tunisian nationality was non-denominational—that Tunisian nationality applied to non-Muslims and Muslims alike.³⁰ The Italian court agreed, finding that a Tunisian Jew could not, by law, rescind his Tunisian nationality despite having left his homeland long before his death. This historical vignette illustrates the relative autonomy that Tunisia's local rulers enjoyed in deciding who was "Tunisian" within the Ottoman Empire. Though the Husaynid Beys were only quasi-sovereign, they maintained independent diplomatic ties with European governments and concluded treaties with Italy and Britain.³¹

Following the establishment of the French protectorate with the treaty of Bardo in 1881, and the Convention of Marsa in 1883, France allowed the Husaynid Bey nominal autonomy to

²⁶ KENNETH PERKINS, A HISTORY OF MODERN TUNISIA 135–59 (2nd ed. 2014); Fatma Ben Slimane, *Définir ce qu'est être Tunisien. Litiges autour de la nationalité de Nessim Scemama (1873-1881)*, 137 REVUE DES MONDES MUSULMANS ET DE LA MÉDITERRANÉE 31 (May 12, 2015).

²⁷ Slimane, *supra* note 26.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ LEON CARL BROWN, THE TUNISIA OF AHMAD BEY (1974).

govern Tunisia as he had under Ottoman rule.³² Though Tunisia was not incorporated as a French territory, unlike its neighbor, Algeria, a French “resident minister” held most political power.³³ In the first years of French control over Tunisia, the judicial system that the French established created considerable advantages for those holding French or European citizenship, thanks to the perpetuation of a system of “capitulations” extended by the Ottoman Empire to foreign residents of its territories. Many Tunisians, both non-Muslim and Muslim, obtained passports and consular protection from Italy or Great Britain for the privilege of being treated as foreigners by the French courts in their own home country.³⁴

Eventually, to avoid special treatment and consular protection for “native” Tunisians, France pushed for the codification of Tunisian nationality, in keeping with the French civil law tradition, to facilitate the colony’s administration.³⁵ In June 1914, the Bey of Tunisia adopted the first written decree defining Tunisian nationality.³⁶ The Decree defined a Tunisian, somewhat circularly, as “any individual residing in Tunisia who does not enjoy the status of citizen, or French or foreign subject, by virtue of treaties or conventions binding the Tunisian Government.”³⁷ Under the same decree, a Tunisian was also “any individual born in Tunisia or abroad to a Tunisian father, or, if the father is unknown, to a Tunisian mother, before or after the promulgation of this decree and residing in Tunisia or abroad.”³⁸ This decree limited the ability of persons born and raised in Tunisia to local parents to claim the nationality of other European countries. Notably, gender discrimination in the transmission of nationality existed in this first decree in the same formulation as it appeared in the French nationality law in force at the time. The final decades of the French protectorate were marked by increasing assertion of Tunisian national identity. Relatively few Tunisians opted to take French citizenship but the right of those who did to be interred in Muslim cemeteries became a focal point for a campaign organized by the Destour party, which eventually ignited the movement for independence.³⁹

Supporters of independence in Tunisia were active since the beginning of the 20th century but their efforts to assert sovereignty only bore fruit in the 1950s.⁴⁰ Soon after independence in 1956, the leader of the pro-independence movement, Habib Bourguiba, was elected president and proceeded to concentrate power in his hands. He ushered in a “presidential monarchy” that lasted for three decades.⁴¹ Bourguiba was ousted by Zine El Abidine Ben Ali through a bloodless

³² MARY DEWHURST LEWIS, *DIVIDED RULE: SOVEREIGNTY AND EMPIRE IN FRENCH TUNISIA* (2014).

³³ Mary Dewhurst Lewis, *Geographies of Power: The Tunisian Civic Order, Jurisdictional Politics, and Imperial Rivalry in the Mediterranean, 1881–1935*, 80 *J. MOD. HIST.* 791 (2008).

³⁴ *Id.*, at 117-18.

³⁵ *Id.*

³⁶ Nationality Decrees issued in Tunisia and Morocco, *Mémoire Présenté Au Nom Du Gouvernement de la République Française*, 1921 *PCIJ*, at 4-5 (Nov. 8) [*hereinafter* The Beyical Decree].

³⁷ *Id.*

³⁸ *Id.*

³⁹ Mary Dewhurst Lewis, *Necropoles and Nationality: Land Rights, Burial Rites, and the Development of Tunisian National Consciousness in the 1930s*, 205 *PAST & PRESENT* 105 (2009).

⁴⁰ PERKINS, *supra* note 26, at 135–59.

⁴¹ *Id.*, at 137.

coup in 1987.⁴² During his twenty-three years as president, Ben Ali moved to further centralize power around himself, and to suppress dissent.⁴³ While civil and political rights were greatly restricted during Ben Ali’s rule, Tunisia maintained a secular identity. Tunisian laws at the time, though they did not reflect prevailing social norms, were seen as “revolutionary” in protecting gender equality and equal rights for women.⁴⁴ The first fifty-five years of Tunisian independence also witnessed significant migration out of Tunisia, and changes in nationality law reflect this.⁴⁵ Indeed, the Tunisian government’s policy at the time was focused on encouraging labor migration out of Tunisia, while surveilling Tunisian migrants’ activities abroad.⁴⁶ At the same time, Tunisia hosted many students from elsewhere in Africa, whose numbers grew in particular during the decade (2003-2014) when the headquarters of the African Development Bank was moved to Tunis from Abidjan in the Ivory Coast.⁴⁷ Tunisia also opened its doors to the Palestinian Liberation Organization (PLO) whose headquarters moved to Tunis between 1982 and 1991, with the majority of staff arriving in 1984.⁴⁸ It is believed that most Palestinians who make up today’s Palestinian community in Tunisia are people who came during this period, in addition to university students and those who remained after obtaining their university degrees in Tunisia.⁴⁹ Though Tunisia never signed the Casablanca Protocol (see section IV.A.1, *infra*), it welcomed Palestinians as residents and has allowed their naturalization, albeit without a transparent policy that would allow those Palestinians in Tunisia unable to naturalize to know why their applications for naturalization are stalling for decades.⁵⁰

⁴² Mustapha Letaief, Rule of Law Quick Scan Tunisia: Prospects and Challenges, HIIL RULE OF LAW QUICK SCAN SERIES (Nov. 2012), <https://www.hiil.org/wp-content/uploads/2018/09/Rule-of-Law-Quick-Scan-Tunisia.pdf>.

⁴³ *Id.*

⁴⁴ Maaïke Voorhoeve, *Law and Social Change in Tunisia: The Case of Unregistered Marriage*, 7 OXFORD J. LAW & RELIGION 479, 482 (2018).

⁴⁵ See section II.A.2. *infra*. Importantly, France, the former metropole and major recipient of Tunisian migrants, did not remove the prohibition on dual nationality from its nationality law until 1973. Loi N° 73-42 Du 9 Janvier 1973 Complétant et Modifiant Le Code de La Nationalité Française et Relative à Certaines Dispositions Concernant La Nationalité Française (n.d.) (accessed Nov. 6, 2022); Françoise De Bel-Air, *Migration Profile: Tunisia*, 08 EUR. UNIV. INST. POLICY BRIEF (Dec. 2016), https://cadmus.eui.eu/bitstream/handle/1814/45144/MPC_PB_2016_08.pdf

⁴⁶ *Id.*

⁴⁷ Mehdi Cherif, “L’intégration Des Etudiants et Stagiaires Africains En Tunisie,” *Génération Transition* (blog), March 25, 2020, <https://medium.com/g%C3%A9n%C3%A9ration-transition/lint%C3%A9gration-des-etudiants-et-stagiaires-africains-en-tunisie-2d7c32bea845>.

⁴⁸ Khawla Bou Karim, “The Palestinians of Tunisia: Political Tension Controls the Decision to Grant Citizenship,” *Daraj*, July 26, 2020, <https://daraj.media/50911/>.

⁴⁹ *Id.* A 2019 report from the Palestinian Central Bureau of Statistics estimates that out of over a million Palestinians who live in Arab countries that are not neighbors of Palestine, only 1400 Palestinians reside in Tunisia, though this number likely does not include the student population. Arabi21, “إحصائية جديدة توثق أعداد الفلسطينيين وأماكنهم بالعالم,” (“A new statistic documenting the number of Palestinians and their places in the world”) (September 7, 2019), <https://arabi21.com/story/1205996/%D8%A5%D8%AD%D8%B5%D8%A7%D8%A6%D9%8A%D8%A9-%D8%AC%D8%AF%D9%8A%D8%AF%D8%A9-%D8%AA%D9%88%D8%AB%D9%82-%D8%A3%D8%B9%D8%AF%D8%A7%D8%AF-%D8%A7%D9%84%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86%D9%8A%D9%8A%D9%86-%D9%88%D8%A3%D9%85%D8%A7%D9%83%D9%86%D9%87%D9%85-%D8%A8%D8%A7%D9%84%D8%B9%D8%A7%D9%84%D9%85>.

⁵⁰ Bou Karim, *supra* note 48.

In December 2010, Mohamed Bouazizi, a young street vendor, set himself on fire in outrage and protest of the corruption and abuse by local officials.⁵¹ Bouazizi's self-immolation unleashed the Jasmine Revolution, as it became known-- the most significant wave of popular protest that the Arab World has witnessed in the 21st century.⁵² Ben Ali's regime began to crumble under pressure from the mass protests, and he was forced into exile in January 2011. Thereafter, a process of political transition to a pluralistic democracy began in Tunisia. The move toward democratization was enshrined in the new Tunisian Constitution of 2014, which created a semi-presidential model of government.

Ten years after the Jasmine Revolution, Tunisia was again on the brink of serious political and economic turmoil, precipitated by years of economic stagnation and the impact of the COVID-19 pandemic.⁵³ On July 25, 2021, President Kais Saied, elected in a landslide in 2019, moved to suspend the Tunisian Parliament (known as the Assembly of People's Representatives) and to greatly increase his authority.⁵⁴ In the year that followed, President Saied dissolved parliament and ruled by decree, setting the stage for the drafting of a new constitution. In addition to greatly increasing the powers of the presidency, Saied dissolved the High Judicial Council and turned against media outlets and journalists accused of acting to destabilize the country.⁵⁵ After two months of popular consultation online, and a three-week drafting period, President Saied presented a new constitution, and scheduled a referendum on it for July 25, 2022.⁵⁶ The new Constitution and the rushed process of its elaboration were widely criticized by the opposition and external observers.⁵⁷ Substantively, the new Constitution reflects the President's governance approach in that it strips power from the Parliament and concentrates it in the hands of the President, whose actions cannot be subject to control by the legislators.⁵⁸ Importantly, several independent institutions created by the 2014 Constitution, such as the Human Rights Commission have been removed from the new text. While the substantive rights

⁵¹ Mohamed Bouazizi: Tunisian street vendor and protester, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/biography/Mohamed-Bouazizi> (last visited Dec. 29, 2022).

⁵² Jasmine Revolution: Tunisian History, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/event/Jasmine-Revolution> (last visited Nov. 6, 2022).

⁵³ HUMAN RIGHTS WATCH, Tunisia: President's Seizure of Powers Threatens Rights (July 27, 2021), <https://www.hrw.org/news/2021/07/27/tunisia-presidents-seizure-powers-threatens-rights>.

⁵⁴ *Id.*

⁵⁵ Sarah Yerkes and Maha Alhomoud, *One Year Later, Tunisia's President Has Reversed Nearly a Decade of Democratic Gains*, CARNEGIE ENDOWMENT FOR INT'L PEACE (July 22, 2022), <https://carnegieendowment.org/2022/07/22/one-year-later-tunisia-s-president-has-reversed-nearly-decade-of-democratic-gains-pub-87555>.

⁵⁶ أمر رئاسي عدد 578 لسنة 2022 مؤرخ في 30 جوان 2022 بتعلق بنشر مشروع الدستور الجديد للجمهورية التونسية موضوع الاستفتاء المقرر 25 جويلية 2022, (Presidential Decree No 2022-578 relating to the publication of new draft constitution) (June 20, 2022), <https://perma.cc/8A4N-D97K>.

⁵⁷ See e.g., INTERNATIONAL COMMISSION OF JURISTS, FUNDAMENTALLY FLAWED: TUNISIA'S 2022 CONSTITUTION-MAKING PROCESS, QUESTIONS & ANSWERS (June 2022), <https://icj2.wpenginepowered.com/wp-content/uploads/2022/07/Tunisia-draft-constitution-question-and-answer-briefing-2022-ENG.pdf>.

⁵⁸ HUMAN RIGHTS WATCH, Q&A: Tunisia's Constitutional Referendum (July 14, 2022), <https://www.hrw.org/news/2022/07/14/qa-tunisia-constitutional-referendum> (cataloguing key features of the new Constitution and highlighting its problematic aspects, including the process of its elaboration).

enshrined in the 2014 text have not been amended, the new text restricts their exercise if they infringe on “public security and public morals,” a move that civil society actors claim allows sweeping justifications for violating human rights.⁵⁹

On July 25, 2022, a record-low turnout of Tunisian voters overwhelmingly approved the new Constitution.⁶⁰ It is unclear how the major legal and institutional changes of 2021-22 will affect access to Tunisian citizenship and the country’s policy on statelessness. President Saïed issued Decree 2021-117 in September 2021 on the organization of powers during the state of emergency, expressly reserving for himself the right to issue decrees regulating nationality.⁶¹ Anecdotal accounts and data released to the public through information requests indicate that access to naturalization is severely limited, though there has been an increase in both applications for, and decrees of, naturalization since 2011.⁶² Prior to the Jasmine Revolution, data provided by the government shows that both applications for naturalization and their approvals were scarce, not exceeding one hundred per year.⁶³ In 2020, Kais Saïed naturalized over a hundred individuals, including 34 Palestinians, whose naturalization was announced as compatible with their right to return.⁶⁴

Stable institutions and respect for the rule of law are general requisites for a state’s effectiveness in protecting its population’s rights. At the time of writing, the structure and functioning of Tunisia’s democratic institutions are undergoing an overhaul, in the face of the post-2011 reforms, many of which had not been completed. One aspect of this institutional landscape relevant to the present study is the Tunisian Constitutional Court, an organ which has yet to materialize seven years after its codification.⁶⁵ The 2014 Constitution, and the Constitution approved in July 2022 both envision the establishment of a Constitutional Court, which could

⁵⁹ FTDES, بيان الجمعيات والمنظمات التونسية لا لدستور الانفراد بالحكم (Statement of Tunisian associations and organizations) (July 7, 2022), <https://ftdes.net/ar/non-a-la-constitution-de-la-regle-unilaterale/>.

⁶⁰ FRANCE24, Tunisia Approves New Constitution in Vote with Low Turnout (July 26, 2022), <https://www.france24.com/en/africa/20220726-tunisian-president-hails-constitutional-referendum-set-to-boost-executive-power>.

⁶¹ Décret Présidentiel n° 2021-117 du 22 septembre 2021, relatif aux mesures exceptionnelles (Presidential Decree No. 2021-117 of 22 September 2021, on exceptional measures) (Sept. 22, 2021).

⁶² Yasmin Houamed, ‘A Foreigner in My Own Country:’ *The Unguaranteed Right to Tunisian Citizenship*, INKYFADA BLOG (July 10, 2020), <https://inkyfada.com/en/2020/07/07/tunisian-nationality-lawwith>; Frida Dahmani, *Obtenir la nationalité tunisienne ? Une vraie Chakchouka – Jeune Afrique*, JEUNEAFRIQUE (March 8, 2017), <https://www.jeuneafrique.com/mag/407091/societe/obtenir-nationalite-tunisienne-vraie-chakchouka/>.

⁶³ The few naturalizations that occurred were often through the provision for granting citizenship to persons of exceptional abilities or contributions to Tunisia. The Ben Ali regime was known to use facilitated naturalization provisions to grant nationality to professional sports players. Interview with Yasmin Houamed (Mar. 3, 2022).

⁶⁴ For announcement of the naturalization decrees, see LAPRESSE, *Le président de la République signe un décret portant octroi de la nationalité tunisienne à 135 individus* (July 6, 2020), <https://lapresse.tn/67338/tunisie-le-president-de-la-republique-signe-un-decret-portant-octroi-de-la-nationalite-tunisienne-a-135-individus/>; see, also, Palestinian Return Centre, *Tunisian President Grants Citizenship to 135 People Including 34 Palestinians* (July 7, 2020), <https://prc.org.uk/en/news/2369>.

⁶⁵ Loi organique n° 2015-50 du 3 décembre 2015, relative à la Cour constitutionnelle (Organic Law No. 2015-50 of 2 December 2015, on the Constitutional Court) (Dec. 3, 2015), https://cdn.accf-francophonie.org/2019/03/tunisie-Loi_organique_n2015-50.pdf.

adjudicate the constitutionality of laws already passed.⁶⁶ Unfortunately, since 2015, the legislature has failed to elect judges to the court, while a so-called “provisional instance” exists instead, whose competence does not extend to the review of laws already passed.⁶⁷ Since constitutionally-guaranteed rights are often at stake in the acquisition and loss of nationality, this institutional vacuum is a serious cause for concern.

2. The Tunisian Nationality Code

The Tunisian Nationality Code was first introduced in 1956, shortly before Tunisia became independent. The original text of the 1956 Nationality Code closely tracked the language of the 1945 French Nationality Ordinance.⁶⁸ Under this law, a Tunisian by operation of law was a child born to a male heir in the royal family, to a Tunisian father, or to a Tunisian mother and unknown or stateless father. The child of a Tunisian woman born to a foreign father abroad could also opt for Tunisian nationality if successfully registered before reaching the age of majority.⁶⁹

In 1963, a modified Nationality Code was enacted by Habib Bourguiba. This Code enshrined the concept of secular Tunisian national identity, believed to reflect Bourguiba’s embrace of nationalism in the Arab world at the time.⁷⁰ The 1963 Nationality Code was amended in 1971, 1975, 1984, 1993, 2002, and 2010.⁷¹ The first amendment of 1971 adds what are now articles 63 and 65. Article 63 gave the Minister of Justice the power to issue certificates of Tunisian nationality. Under certain conditions, Tunisian consular posts and cantonal judges were also authorized to issue certificates of Tunisian nationality. Article 65 regulates the recourse available to applicants when the request for certificate of nationality is refused. The amendments in 1975 and 1984 both concerned conditions under which Tunisian nationality could be renounced or lost because of service to a foreign government.⁷²

⁶⁶ Cf., CONSTITUTION Jan. 26, 2014, art. 120, para. 4 (*hereinafter* CONSTITUTION OF 2014) and CONSTITUTION July 25, 2022, art. 125(3) (*hereinafter* CONSTITUTION OF 2022). Though the new Constitution modifies the scope of review and membership of the Constitutional Court, both constitutions empower courts to refer cases to the Constitutional Court for determination of their compliance with the Constitution.

⁶⁷ Hana Ben Abda, *The Provisional Instance of Tunisia: An Insufficient Substitute for a Constitutional Court*, IACL-IADC BLOG (July 15, 2021), <https://blog-iacl-aadc.org/2021-posts/the-provisional-instance-of-tunisia-an-insufficient-substitute-for-a-constitutional-court>.

⁶⁸ GIANLUCA P. PAROLIN, CITIZENSHIP IN THE ARAB WORLD: KIN, RELIGION AND NATION-STATE 93-95 (2009); Ordonnance N° 45-2441 du 19 octobre 1945, Portant Code de la Nationalité Française (1945 French Nationality Ordinance) (Oct. 19, 1945), <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000333980/>.

⁶⁹ Houamed, *supra* note 62.

⁷⁰ Hassan Ramoun, إنسانيات/INSANIYAT, 62 التفكير في الثورة في تونس و العالم العربي. أي محتوى لأي توافق تاريخي, 11 (2013), <https://journals.openedition.org/insaniyat/14286#>.

⁷¹ Décret-loi N°63-6 du 28 février 1963 portant refonte du Code de la Nationalité Tunisienne, modifié par la loi n°2010-55 du 1er décembre 2010 (Decree-Law No. 63-6 of February 28, 1963, as amended by law No. 2010-55 of December 1, 2010); AIHR STATELESSNESS STUDY, *supra* note 5.

⁷² Code de La Nationalité Tunisienne, Ch. III § I (1963) (*hereinafter* NATIONALITY CODE OF 1963).

The most recent amendment in 2010 enabled women to pass on their nationality to their children by operation of law, on the same terms as Tunisian men.⁷³ The foundation set by the original Article 6, along with gradual revisions, paved the way for this amendment. The Nationality Code of 1963 already allowed Tunisian mothers to transmit their nationality to children whose fathers are foreigners, if such children were born in Tunisia.⁷⁴ In 1993, the law was amended to give the right to mothers to pass on their nationality when a child was born abroad to a Tunisian mother and a foreign father outside of Tunisia. Such children could obtain Tunisian nationality if both parents made a request one year before the child reached the age of majority.⁷⁵ The 2002 amendment to Article 12 of the Nationality Law expanded access to this procedure by allowing a unilateral request by the mother, where the father was dead, missing, or incapacitated. Article 12 has since been repealed by the 2010 amendment, which has placed men and women on equal footing in the transmission of nationality to their children.

Still, as discussed below in Section IV, difficulties remain for the children born abroad to Tunisian mothers and non-Tunisian fathers.⁷⁶ In 2016 and 2019, media reported on efforts to facilitate Tunisian citizenship acquisition for adult children of Tunisian mothers born abroad, but these efforts did not result in concrete changes.⁷⁷

Another significant move toward gender equality in family law with potential repercussions in nationality law, was the abrogation in 2017 of an administrative regulation restricting Tunisian women's ability to marry foreign non-Muslim men.⁷⁸ At the time of writing, however, the Nationality Code does not achieve parity between men and women when it comes to the transmission of nationality to their spouses.⁷⁹

⁷³ Loi n° 2010-55 du 1er décembre 2010, modifiant certaines dispositions du code de la nationalité tunisienne (Law No. 2010-55 of December 1, 2010, amending certain provisions of the Tunisian nationality code). Other Maghreb countries have amended their nationality laws to achieve more gender-equal nationality rights. Delphine Perrin, *Immigration and Citizenship Law in the Maghreb: Turning Aliens into Citizens*, EUR. UNIV. INST. WORKING PAPERS (2011).

⁷⁴ NATIONALITY CODE OF 1963, *supra* note 72, at Ch. I § I.

⁷⁵ Mounira M. Charrad, *Tunisia at the forefront of the Arab world: Two waves of gender legislation* 64 WASH. LEE L. REV. 1513 (2007).

⁷⁶ See Loi n° 2010-55, *supra* note 71, at art. 4 (requiring that those who have reached the age of majority by July 2010 may claim their Tunisian nationality through declaration within a year from the December 2010); Houamed, *supra* note 62 (describing the difficulty of claiming Tunisian nationality for children born to Tunisian mothers and foreign fathers outside of Tunisia after 2011).

⁷⁷ *La simplification d'octroi de la nationalité tunisienne au centre d'un entretien Essid/ Mansour* (The Simplification of Granting Tunisian Nationality at the Center of an Essid/Mansour Interview), G-NETNEWS (June 17, 2016), <https://news.gnet.tn/archives/actualites-nationales/la-simplification-de-loctroi-de-la-nationalite-tunisienne-au-centre-dun-entretien-essid-mansour/id-menu-958.html>; S Mourad, *Tunisie: Projet de loi de révision du code de la nationalité, réserves du ministère de la Justice* (Tunisia: Bill to revise the nationality code, reservations of the Ministry of Justice), TUNISIE NUMERIQUE (May 16, 2019), <https://www.tunisienumerique.com/tunisie-projet-de-loi-de-revision-du-code-de-la-nationalite-reserves-du-ministere-de-la-justice/>.

⁷⁸ *Tunisia Lifts Ban on Muslim Women Marrying Non-Muslims*, AL-JAZEERA (Sept. 14, 2017), <https://www.aljazeera.com/news/2017/9/14/tunisia-lifts-ban-on-muslim-women-marrying-non-muslims>.

⁷⁹ NATIONALITY CODE OF 1963, *supra* note 72, at arts. 13, 14.

B. Populations of Concern

At the outset of this project, desk research suggested several groups in potentially vulnerable situation in Tunisia. These included groups of irregular migrants, and those Tunisia-born individuals belonging to racial, ethnic, religious, or linguistic minorities. These groups are marked by social vulnerabilities that may place individual group members at risk of statelessness or perpetuate their statelessness. Individuals falling within more than one of these categories were assumed to be particularly vulnerable. Research findings concerning these groups, and the impact of Tunisia's legal framework on their exposure to risk of statelessness are discussed below in Section V.D.

1. Sub-Saharan Migrants⁸⁰

Foreign university students from Sub-Saharan Africa have been a constant presence since before the Jasmine Revolution, and it was official state policy to attract them during the Ben Ali regime.⁸¹ The Association of African Students and Trainees in Tunisia has existed since the 1980s, and nowadays it estimates that approximately 10,000 students from 25 African countries reside in Tunisia.⁸² Migration from Sub-Saharan African countries to Tunisia intensified after the removal of visa requirements for citizens of several African countries, including Gabon, South Africa, Guinea Bissau, Equatorial Guinea, Namibia, Burkina Faso, DRC, CAR, the Congo, Botswana and Zimbabwe.⁸³ These visa-free regimes were created, in part, to encourage the return of foreign students who came to Tunisia in higher numbers before the Revolution.⁸⁴ Despite the official welcome, migrants from Sub-Saharan countries face systemic racism and discrimination in Tunisia.⁸⁵

In addition to the migrants arriving at regular border crossings and airports, African migrants streamed into Tunisia after the start of the Libyan civil war in 2011.⁸⁶ More recently,

⁸⁰ The term “Sub-Saharan” has been noted as inaccurate as well as discriminatory, in that it does not map onto the geography of the African continent and is used only to distinguish black Africans from Arab Africans. Still, we chose to use this term because of its prevalence in scholarship and publications of human rights organizations, as well its use by our interlocutors. A more descriptively accurate term would be simply Black migrants.

⁸¹ Katharina Natter, *Tunisia's Migration Politics throughout the 2011 Revolution: Revisiting the Democratisation–Migrant Rights Nexus*, 43 *THIRD WORLD QUARTERLY* 1551 (2022).

⁸² MIXED MIGRATION CENTRE, *MIGRATING AND DISPLACED CHILDREN AND YOUTH IN TUNISIA: PROFILES, ROUTES, PROTECTION, AND NEEDS* (2021), https://mixedmigration.org/wp-content/uploads/2021/07/MMC_Save-the-Children_Tunisia_EN.pdf.

⁸³ Yassine Bellamine, *Levée du visa pour 7 pays par le ministère des Affaires Étrangères : d'étranges décisions*, *NAWAAT* (Apr. 27, 2015), <https://nawaat.org/2015/04/27/levee-du-visa-pour-7-pays-par-le-ministere-des-affaires-etrangeres-detranges-decisions/>; *20 nouveaux pays exemptés de visa d'entrée en Tunisie*, *BUSINESS NEWS* (Nov. 28, 2014), <https://www.businessnews.com.tn/20-nouveaux-pays-exemptes-de-visa-dentree-en-tunisie.520.51603.3>

⁸⁴ Wagdy Sawahel, *Tunisia in new bid to attract Sub-Saharan students*, *UNIV. WORLD NEWS* (Sept. 1, 2017), <https://www.universityworldnews.com/post.php?story=20170901073522789>.

⁸⁵ Natter, *supra* note 81.

⁸⁶ As an oil-rich country, Libya had historically attracted migrant workers from across Africa, including from Tunisia. See INTERNATIONAL ORGANIZATION FOR MIGRATION, *Humanitarian Response to the Libyan Crisis: February–December 2011 Report* (2012), <https://publications.iom.int/books/humanitarian-response-libyan-crisis>.

worsening humanitarian conditions, climate disruptions, and hunger have pushed even more migrants to travel to Tunisia, most intending it as a way station *en route* to Europe.⁸⁷ Many of these migrants arrive with the assistance of smugglers or coerced by traffickers, known to destroy or withhold trafficked persons' identity documentation.⁸⁸

These features of the Sub-Saharan African migrant population, when combined with restrictive nationality laws in countries of origin, expose the children of migrants born in Tunisia to statelessness.⁸⁹ This could be the case in any one of the following situations: (1) where the countries of origin lack diplomatic representation in Tunisia,⁹⁰ (2) where mothers were trafficked and lost proof of their nationality, (3) where mothers are unaware that birth registration for nationality purposes requires a consular process, (4) where nationality laws require a birth certificate that includes both parents' names and nationalities in order to register a birth abroad.⁹¹

2. Persons of Concern to UNHCR⁹²

Many refugees and persons in refugee-like situations who remain outside of their country of origin for years are at risk of statelessness when their host country does not provide a path to permanent legal integration.⁹³ Historically, Tunisia has not hosted large refugee populations for extended periods, but the number of persons of concern to UNHCR registered in the country in 2022 was the highest on record.⁹⁴ This number, of just under 10,000 individuals, has steadily

⁸⁷ MIXED MIGRATION CENTRE, *supra* note 82.

⁸⁸ TERRE D'ASILE TUNISIE, *Portraits de Migrants* (2016), <https://www.france-terre-asile.org/images/stories/newsletters/Portraits%20de%20migrants.pdf>.

⁸⁹ For broader discussion of mechanisms, see Laura van Waas, *The Children of Irregular Migrants: A Stateless Generation?* 25 NETH. Q. HUM. RTS. 437 (2007).

⁹⁰ Many African countries do not have a diplomatic presence in Tunisia. These include Benin, Central African Republic, Chad, the Gambia, Guinea, Sierra Leone, Togo, and others. Outside of Africa, Tunisia and Syria had severed diplomatic ties between 2012 and 2023, but in April 2023, the two countries announced that their respective embassies would reopen. Al-Monitor, *Syria, Tunisia to Reopen Embassies as Arab Thaw Grows with Assad*, (April 12, 2023), <https://www.al-monitor.com/originals/2023/04/syria-tunisia-reopen-embassies-arab-thaw-grows-assad>. Syria is the country of origin of 3400 recognized refugees in Tunisia at present. UNHCR, *Country Operations: Tunisia*, https://reporting.unhcr.org/operational/operations/tunisia#_ga=2.160995771.707025277.1685353659-1008081463.1685353659 (last visited May 2023).

⁹¹ Such is the case in African countries that prohibit dual nationality. Most international migrants and asylum seekers in Tunisia nowadays come from Cote d'Ivoire, which is also a country known for strictly enforcing a ban on dual nationality. For information on limitations on dual nationality, see BRONWEN MANBY, *CITIZENSHIP LAW IN AFRICA: A COMPARATIVE STUDY* 74-76 (3rd ed. 2016). For data on the countries of origin of asylum seekers in Tunisia, see UNHCR, *Tunisia: Latest Updates*, <https://reporting.unhcr.org/tunisia?year=2021#toc-narratives> (last visited May 2023) (“At the end of 2021, Ivorian nationals represented the largest asylum seeker population group.”).

⁹² The main categories of persons of concern to UNHCR are refugees, returnees, internally displaced people, stateless persons, and others of concern. See UNHCR, *GLOBAL REPORT 2021: THE STORIES BEHIND THE NUMBERS* (2021), <https://reporting.unhcr.org/globalreport2021>.

⁹³ Sophie Nonnenmacher & Ryszard Cholewinski, *The Nexus between Statelessness and Migration*, in *NATIONALITY AND STATELESSNESS UNDER INTERNATIONAL LAW* 247-63 (Alice Edwards & Laura van Waas eds., 2014).

⁹⁴ As of May 2023, UNHCR reports a total of around 10,000 persons of concern in Tunisia. See UNHCR, *Refugee Data Finder*, <https://www.unhcr.org/refugee-statistics/download/?url=2jjY89> (last visited May 2023). The absolute and relative (to total population) number of persons of concern to UNHCR in Tunisia is lower compared to all other

increased over the past five years. As discussed below, Tunisia has strong commitments to refugees under international law, but they are not reflected in a domestic legal framework, leaving UNHCR as the quasi-host of all refugees recognized in Tunisia.⁹⁵ Tunisia's nationality and migration laws, as written, do not contain any mention of integration mechanisms for refugees and stateless persons, such as pathways to lawful residence or Tunisian citizenship.⁹⁶ These factors taken together make it more likely that persons of concern to UNHCR who can neither return to their country of origin nor resettle to a third country, may be at risk of statelessness.

LGBTQI+ asylum seekers and refugees who arrive in Tunisia are believed to be in a particularly vulnerable situation because Article 230 of the Penal Code criminalizes homosexuality in Tunisia, authorizes forced anal testing, and imposes a three-year prison sentence on those convicted.⁹⁷ This law is often used in conjunction with Article 226 of the Penal Code that prohibits conduct contrary to "morality," and leads to the detention and arrest of people based merely on how they are perceived by the police.⁹⁸ Rejected LGBTQI+ asylum seekers and LGBTQI+ refugees who are denied resettlement thus face higher barriers to permanent residence or naturalization in Tunisia because their identity is criminalized.

UNHCR's official data for Tunisia does not identify any stateless persons.⁹⁹ This is in line with most MENA countries with extensive stateless populations, such as Lebanon.¹⁰⁰ In light of problems with official data that fails to quantify statelessness, it is necessary for further research to look beyond reported numbers.¹⁰¹

countries in the MENA region, except for the Gulf states of Bahrain, Kuwait, Oman, Qatar, and the United Arab Emirates. See UNHCR, *Middle East and North Africa*, <https://reporting.unhcr.org/mena> (last visited March 2023).

⁹⁵ See *infra* Sections III.A and V.D; see also UNHCR, *Tunisia: Latest Updates*, *supra* note 91 ("While refugees can access basic social services, the non-recognition of refugees' legal status by the authorities deprives the majority of them (except for holders of valid passports) of other rights, such as access to national social programmes and services, formal employment, livelihood opportunities and private sector services.")

⁹⁶ See *infra* Sections III.A. and IV.A.

⁹⁷ The government committed in 2017 to end the use of forced anal tests. Julie Barret, *Homophobie d'État: la Tunisie promet d'arrêter les examens anaux forcés*, TETU (Sept. 22, 2017) <https://tetu.com/2017/09/22/homophobie-detat-tunisie-promet-darreter-examens-anaux-forces/>.

⁹⁸ LE COLLECTIF CIVIL POUR LES LIBERTÉS INDIVIDUELLES, *Communiqué: Encore un 17 mai dans l'homophobie et la transphobie légales et institutionnelles* (May 16, 2019), https://www.hrw.org/sites/default/files/supporting_resources/ccli_communique_17mai_vf.pdf.

⁹⁹ UNHCR, *Tunisia: Latest Updates*, *supra* note 91.

¹⁰⁰ Despite extensive and verified reporting on statelessness in Lebanon, UNHCR data indicates no stateless persons reside in Lebanon. See UNHCR, *Refugee Data Finder*, <https://www.unhcr.org/refugee-statistics/download/?url=eu1hfQ> (last visited March 2023); see also BOSTON UNIVERSITY INTERNATIONAL HUMAN RIGHTS CLINIC, *THE CAMPAIGN TO END STATELESSNESS AND PERFECT CITIZENSHIP IN LEBANON* (2020), https://www.bu.edu/law/files/2021/03/The-Campaign-to-End-Statelessness-and-Perfect-Citizenship-in-Lebanon_FINAL.pdf.

¹⁰¹ UNHCR, *UNHCR Statistical Reporting on Statelessness* (Oct. 2019), <https://www.unhcr.org/5d9e182e7.pdf> ("UNHCR reports on 3.9 million stateless people, but this is known to be an underestimate and a global figure of at least 10 million is used. However, this figure is not based on robust or transparent demographic methods and, as a result, its use to track progress on reducing statelessness and for policy, programming or advocacy purposes is limited"); Heather Alexander, *The Ethics of Quantifying Statelessness*, in *STATELESSNESS, GOVERNANCE, AND THE PROBLEM OF CITIZENSHIP* (Tendayi Bloom & Lindsey N. Kingston eds., 2021).

3. Foreign Victims of Human Trafficking

The passage of anti-trafficking legislation in 2017 was a significant stride toward assisting persons who were trafficked. The law permits the regularization of the migratory status of trafficking victims, but temporary stay is only available to allow initiation of court proceedings against the perpetrator.¹⁰² Foreign victims of trafficking are granted one month, renewable once, as “a period of recovery and reflection” during which they cannot be repatriated, but otherwise their voluntary repatriation is encouraged.¹⁰³ There is currently no provision in the Anti-Trafficking Law that allows for foreign trafficking victims to become naturalized.

Foreign victims of human trafficking have been taken to Tunisia from several countries, including Algeria, Burkina Faso, Cameroon, Cote d’Ivoire, Guinea, Madagascar, Mali, Uganda, Senegal, Sierra Leone, Togo, Japan, and the Philippines.¹⁰⁴ They typically arrive in Tunisia on visitor or student visas. They face sexual exploitation, forced labor and forced child criminality. Trafficking victims often have their identity documents confiscated, accumulate penalties for the overstay of their visas, and are at risk of detention and deportation.¹⁰⁵ Combined with the lack of protection available to them in Tunisian law—in the form of regularization and/or naturalization—victims of trafficking and their children are at risk of statelessness.

4. Children of Single Migrant Mothers

Migrant women who have children outside of wedlock face social stigma and ostracization in Tunisia, and their children can be at risk of statelessness.¹⁰⁶ This risk may be present when the mothers cannot complete the special process for birth registration mandated by Tunisian law for single mothers. It could also arise when the mothers’ countries of origin require a father’s name to register a child as a national. Mothers in such situations have been known to leave their children in Tunisian orphanages where the children face an uncertain future once they attain majority.¹⁰⁷

5. Children of ISIS Affiliates

Tunisia had the world’s highest number of ISIS fighters per capita, estimated at between 4,500-6,000, and is now faced with the return of those who left to fight in Libya, Syria and

¹⁰² Loi organique n° 2016-61 du 3 août 2016, relative à la prévention et la lutte contre la traite des personnes arts. 61, 64 (Organic Law No. 2016-61 of 3 August 2016, on the prevention and fight against trafficking in persons).

¹⁰³ *Id.* at arts. 64, 65.

¹⁰⁴ U.S. DEP’T STATE, *2021 Trafficking in Persons Report: Tunisia* (2021), <https://www.state.gov/reports/2021-trafficking-in-persons-report/tunisia/>.

¹⁰⁵ TERRE D’ASILE TUNISIE, *supra* note 88, at 34-6.

¹⁰⁶ *In Tunisia, Unmarried Mothers are Outcasts. One Fund Grantee is Working to Change That*, FUND FOR GLOB. HUM. RTS. (2019), <https://globalhumanrights.org/stories/in-tunisia-unmarried-mothers-are-outcasts-one-fund-grantee-is-working-to-change-that/>

¹⁰⁷ *Id.*; *Tunisia: Situation of women who have had a child out of wedlock*, IMMIGR. AND REFUGEE BD. OF CAN. (2014), <https://www.refworld.org/docid/549ab8b94.html>

Iraq.¹⁰⁸ Children taken with their parents who traveled to join ISIS abroad or children born to Tunisian ISIS affiliates must be allowed to return to their country of nationality.¹⁰⁹ By 2019, some 970–1,500 former ISIS affiliates had returned to Tunisia from Libya, most “undetected” and of their own volition. At the time, an estimated 36 Tunisian children were still in Libyan prisons with their mothers, and 160 were believed to be held in camps and prisons in Syria and Iraq.¹¹⁰

Children born to Tunisians on ISIS territories or children born to Tunisian women and ISIS-affiliated fathers are at risk of statelessness because, though entitled to Tunisian nationality under the Nationality Code, they face barriers in obtaining birth registration and proving their nationality.¹¹¹ Identity documents, including birth certificates, issued by ISIS authorities are not recognized by other states, which makes proving and acquiring nationality difficult.¹¹² Loss of identity documents in ISIS territories also places children and their mothers at risk.

These difficulties in registering a birth and proving nationality are compounded by the push-back from Tunisian society to the return of these children to Tunisia.¹¹³ Amidst calls for the deprivation of the nationality of those who left to fight for ISIS are also accusations and concerns that the children pose a security threat to Tunisia.¹¹⁴ At the same time, there are concerns about the lack of rehabilitative and integration assistance for those wishing to return, including children.¹¹⁵ The Tunisian Foreign Affairs Ministry has stated that it “‘attaches special importance’ to the cases of the detained children,” but repatriation so far has fallen short of the obligations Tunisia owes to its underage nationals in Libya, Syria and Iraq.¹¹⁶ These troubling developments compel further inquiry into the status of children born to ISIS-affiliated parents.

III. Legal Framework Relevant to Statelessness

Tunisia’s obligations concerning stateless populations and those at risk of statelessness within its jurisdiction fall into three areas: Tunisia’s domestic law, international law and the

¹⁰⁸ Lila Hassan, *Repatriating ISIS Foreign Fighters Is Key to Stemming Radicalization, Experts Say, but Many Countries Don’t Want Their Citizens Back*, FRONTLINE (Apr. 6, 2021), <https://www.pbs.org/wgbh/frontline/article/repatriating-isis-foreign-fighters-key-to-stemming-radicalization-experts-say-but-many-countries-dont-want-citizens-back/#tunisia>.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Nadim Houry, *Children of the Caliphate: What to Do About Kids Born Under ISIS*, HUM. RTS. WATCH (Nov. 23, 2016), <https://www.hrw.org/news/2016/11/23/children-caliphate>.

¹¹² *Id.*; Interview with OHCHR (Feb. 28, 2022).

¹¹³ Mongi Saidani, *Tunisian President Slammed for Receiving ISIS Children at Carthage Palace*, ASHAR AL-ASWAT (Jan. 26, 2020), <https://english.aawsat.com/home/article/2099981/tunisian-president-slammed-receiving-isis-children-carthage-palace>.

¹¹⁴ *Tunisia: Scant Help to Bring Home ISIS Members’ Children*, HUM. RTS. WATCH (Feb. 12, 2019), <https://www.hrw.org/news/2019/02/12/tunisia-scant-help-bring-home-isis-members-children>.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

regional law of the League of Arab States, the African Union, and the Organization for Islamic Cooperation. International treaties and conventions, including the regional conventions are approved and ratified by the president and “have a status superior to that of laws and inferior to that of the Constitution.”¹¹⁷

A. International and Regional Law

Numerous international and regional treaties protect the right to nationality and address statelessness. This section discusses those treaties to which Tunisia is a State Party—in the U.N. system, as one of the member states of the LAS, and as part of the AU. In addition to setting out the relevant provisions of the treaties, this section also includes the dominant interpretation of the provisions, as well as “soft law” principles that Tunisia has accepted.

1. The Right to Nationality

The Universal Declaration of Human Rights (UDHR) provides for the human right to nationality in Art. 15(1), which states that “[e]veryone has the right to a nationality.” It also enshrines the right to preserve one’s nationality in Art. 15(2), which provides that “[n]o one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”¹¹⁸

Though states are free to regulate acquisition and loss of nationality, this freedom is restricted by states’ obligations under several international treaties that Tunisia has ratified, notably the 1954 Convention on the Status of Stateless Persons (1954 Statelessness Convention) and the 1961 Convention on the Reduction of Statelessness (1961 Statelessness Convention).¹¹⁹ Under Article 32 of the 1954 Statelessness Convention, Tunisia is obliged to “as far as possible facilitate the assimilation and naturalization of stateless persons.” This involves “expedit[ing] naturalization proceedings and... reduc[ing] as far as possible the charges and costs” of the proceedings for stateless persons. The 1961 Statelessness Convention, because of its focus on the progressive reduction and prevention of statelessness, imposes greater restrictions on states’ freedom to regulate nationality. Article 1(1) requires States Parties to “grant its nationality to a person born in its territory who would otherwise be stateless,” though this grant can be subject to

¹¹⁷ TUNISIA’S CONSTITUTION OF 2022, art. 74. On July 25, 2022, about a third of all registered voters approved President Kais Saied’s new Constitution which changes Tunisia’s political system from semi-presidential to fully presidential. See HUMAN RIGHTS WATCH, *supra* note 53. The new Constitution does not change the status of international law (superior to ordinary laws, but inferior to the constitution). The 2022 Constitution does, however, place international treaty ratification among the responsibilities of the President with a relatively circumscribed role for Parliament.

¹¹⁸ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948). Though the UDHR is a non-binding instrument, several of its provisions are considered customary international law. Whether the “unfettered right to nationality” is considered CIL is unclear. The Inter-American Court of Human Rights, in a 1984 advisory opinion, held it to be “generally accepted today that nationality is an inherent right of all human beings.” Advisory Opinion on Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica, Advisory Opinion OC-4/84, Inter-Am. Ct. H. R. ¶32 (Jan. 19, 1984).

¹¹⁹ 1954 Statelessness Convention, *supra* note 2; 1961 Statelessness Convention, *supra* note 2.

conditions listed in Article 1(2) such as requiring habitual residence of at most five years, or requiring that the individual had always been stateless. Articles 5 and 6 condition an individual's loss of nationality—via marriage, adoption, or loss of nationality of parent—upon “their possession or acquisition of another nationality.” Article 8(1) prohibits states from depriving an individual of their nationality if that loss would render them stateless, though under 8(3) states “retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right” upon specified grounds.¹²⁰ Tunisia, at the time of acceding to the Convention, did submit a Declaration retaining its right to deprive individuals of their nationality upon enumerated grounds, such as conviction of a crime against Tunisia's security, conviction of a crime in Tunisia or abroad carrying an imprisonment sentence of five or more years, etc.¹²¹ Finland, Germany, Norway, Spain, Sweden and the Netherlands all objected to Tunisia's declaration because it “restricts one of the essential obligations of the Convention in a way contrary to the object and purpose of the Convention.”¹²² Since the adoption of the 2014 Constitution, which prohibits deprivation of nationality, the force of this Declaration is unclear. Similar provisions on statelessness are also present in regional instruments, such as the Covenant on the Rights of the Child in Islam, which in Article 7 obligates State Parties to the Covenant to “make every effort to resolve the issue of statelessness for any child born on their territories or to any of their citizen outside their territory.” Though without the force of law, the League of Arab States' 2018 Arab Declaration on Belonging and Legal Identity is a significant recent policy

¹²⁰ These grounds, which must have been in place in the national law at the time of ratifying the Convention, include:

- (a) that, inconsistently with his duty of loyalty to the Contracting State, the person
 - (i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or
 - (ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State;
- (b) that the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.

¹²¹ The full declaration reads: “The Republic of Tunisia declares that, in accordance with article 8, paragraph 3, of the [Convention], it retains the right to deprive a person of Tunisian nationality in the following circumstances as provided for in its existing national law:

1. If he occupies a post in the public service of a foreign State or in foreign armed forces and retains it for more than one month after being enjoined by the Government of Tunisia to leave the post, unless it is found that it was impossible for him to do so.
2. If he is convicted of an act held to be a crime or an offence against the external or internal security of the State.
3. If he engages, for the benefit of a foreign State, in acts which are incompatible with his status as a Tunisian national and which are prejudicial to Tunisia's interests.
4. If he is convicted in Tunisia or abroad for an act held to be a crime under Tunisian law and carrying a sentence of at least five years' imprisonment.
5. If he is convicted of evading his obligations under the law regarding recruitment into the armed forces.
6. If it is discovered, subsequent to issuance of the naturalization certificate, that the person concerned did not fulfil the conditions required by law allowing him to be naturalized.
7. If the alien has made a false declaration, employed fraudulent means, or knowingly submitted a document containing a false or incorrect statement for the purpose of obtaining naturalization.”

¹²² Convention on the Reduction of Statelessness, *supra* note 2, Sweden: Objection to the Declaration Made by Tunisia upon Accession, <https://treaties.un.org/doc/Publication/CN/2001/CN.575.2001-Eng.pdf>

development in the MENA region, introduced at an LAS ministerial conference in Tunis under the patronage of the President of Tunisia. It urges LAS member states to take efforts to “reduce statelessness in the context of the international obligations of member states and the application of the Sustainable Development Goals.”¹²³

Regulation of nationality is also limited by the principle of non-discrimination. Article 9 of the 1961 Statelessness Convention provides that a State Party “may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.” The prohibition on racial discrimination has been recognized as *erga omnes* in international law—that is obligatory on all states to ensure—and is also provided for in the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) to which Tunisia is a party.¹²⁴ Article 5(d)(iii) obliges States to “undertake to prohibit and to eliminate racial discrimination... and to guarantee the right of everyone...in the enjoyment of...civil rights, in particular...the right to nationality.”¹²⁵ Additionally, discrimination against women is addressed by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), whose Article 9 requires that States “shall grant women equal rights with men to acquire, change or retain their nationality;” ensure that “neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband;” and that women and men are granted equal rights “with respect to the nationality of their children.”¹²⁶ Tunisia ratified CEDAW on September 20, 1985 with several reservations and a declaration—that it withdrew on April 17, 2014.¹²⁷

Lastly, the Convention on the Rights of Persons with Disabilities (CRPD), ratified by Tunisia on April 2, 2008, prohibits discrimination on the basis of disability.¹²⁸ Article 18 on

¹²³ Arab Declaration on “Belonging and Legal Identity,” League of Arab States, ¶ 14, Feb. 28, 2018, <https://www.unhcr.org/eg/wp-content/uploads/sites/36/2021/06/Final-Ministerial-Conference-Declaration-on-Belonging-and-Identity-English.pdf> (*hereinafter* Arab Declaration on Belonging and Legal Identity).

¹²⁴ U.N. International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S 195, Accession by Tunisia, Depository Notification (Jan. 13, 1967) <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-2.en.pdf>. Tunisia ratified the Convention on January 13, 1967, without any reservations.

¹²⁵ *Id.* art. 5.

¹²⁶ U.N. Convention on the Elimination of All Forms of Discrimination against Women art. 9, Sept. 3, 1981, 1249 U.N.T.S 13 [*hereinafter* CEDAW], Accession by Tunisia, Depository Notification (Sept. 20, 1985), <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-8.en.pdf>.

¹²⁷ The withdrawn declaration to Article 15(4) read:

- (1) The Tunisian Government declares that it shall not take any organizational or legislative decision in conformity with the requirements of this Convention where such a decision would conflict with the provisions of chapter I of the Tunisian Constitution.

Of the various reservations it later withdrew, the reservation to Article 9(2) on nationality read as follows:

- (2) The Tunisian Government expresses its reservation with regard to the provisions in article 9, paragraph 2 of the Convention, which must not conflict with the provisions of chapter VI of the Tunisian Nationality Code.

¹²⁸ U.N. Convention on the Rights of Persons with Disabilities, May 3, 2008, 2515 U.N.T.S. 3, Accession by Tunisia, Depository Notification (Apr. 2, 2008), <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-15.en.pdf>.

liberty of movement and nationality requires States to “recognize the rights of persons with disabilities...to a nationality, on an equal basis with others, including by ensuring that persons with disabilities (a) have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability; [and] (b) are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement.”¹²⁹

In 2018, the U.N. General Assembly, with Tunisia’s vote in support, adopted the non-binding Global Compact on Refugees (GCR) as a framework for heightened responsibility-sharing, which explicitly recognizes the importance of civil and birth registration as a means to prevent statelessness for refugee populations.¹³⁰ The same year, Tunisia also voted for the General Assembly’s adoption of the Global Compact for Safe, Orderly and Regular Migration, which provides protections against statelessness to all migrants through birth registration, and for gender equality between men and women in the transmission of nationality.¹³¹

Although the African Charter on Human and Peoples’ Rights of the African Union does not contain a provision on the right to nationality, the African Commission on Human and Peoples’ Rights has stated that the right to nationality is implied in Article 5 of the Charter and is “essential to the enjoyment of other fundamental rights and freedoms under the Charter.”¹³² The Draft Protocol to the African Charter on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa also includes the provision that “everyone has the right to a nationality.”¹³³ The Draft Protocol also provides for non-discrimination, though it subordinates gender equality in nationality transmission to national laws or national security concerns.¹³⁴

The League of Arab States’ 2004 Arab Charter on Human Rights establishes protection for the right to a nationality in Article 29, which states that “[e]veryone has the right to nationality. No one shall be arbitrarily or unlawfully deprived of his nationality.”¹³⁵ Article 29(2)

¹²⁹ *Id.* art. 18.

¹³⁰ G.A. Res. 73/151, Global Compact on Refugees ¶ 82 (2018) (Dec. 17, 2018), <https://www.unhcr.org/5c658aed4.pdf>.

¹³¹ G.A. Res. 73/195, annex, Global Compact for Safe, Orderly and Regular Migration, ¶ 20(e) (Dec. 19, 2018) (recognizing the objective of strengthening measures “to reduce statelessness, including by registering migrants’ births, ensuring that women and men can equally confer their nationality to their children, and providing nationality to children born in another State’s territory, especially in situations where a child would otherwise be stateless, fully respecting the human right to a nationality and in accordance with national legislation.”).

¹³² Afr. Comm’n on Human and Peoples’ Rights Res. 234 on the Right to Nationality, 53rd Ordinary Session, (Apr. 9-23, 2013). Article 5 of the African Charter on Human and Peoples’ Rights states: “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status.”

¹³³ Draft Protocol to the Africa Charter on Human and People’s Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa (June 2018).

¹³⁴ Tunisia is bound by CEDAW’s article 9 which provides for unconditional gender equality in the acquisition, change, or transmission of nationality. *See* CEDAW, *supra* note 126, at art. 9.

¹³⁵ League of Arab States, Arab Charter on Human Rights, 12 INT’L HUM. RTS. REP. 893, Mar. 15, 2008 (*hereinafter* ArCHR).

also refers to gender equality in nationality, though it conditions gender equality on conformance with domestic law. The LAS also published an Arab Model Law on nationality in May 2021, whose provisions draw on regional and international standards such as the ICCPR, European Convention on Human Rights, the Arab Charter on Human Rights, and the Arab Declaration on Belonging and Identity. In 2021, the General Secretariat of the LAS and the Minister of Justice of the Republic of Tunisia, Hasna Ben Slimane, recommended that the Arab Regional Action Plan on Belonging and Identity be referred to “the Arab Justice and Interior Ministers’ Councils for adoption.”¹³⁶

1. Rights of the Child

A child’s right to nationality is protected under Article 24(3) of the International Covenant on Civil and Political Rights (ICCPR)—ratified by Tunisia on March 18, 1969—which states that “[e]very child has the right to acquire a nationality.”¹³⁷ Article 24(2) provides that every child be registered immediately after birth and have a name.¹³⁸ The Human Rights Committee’s (HRC) General Comment No. 17 stated that the purpose of Article 24(3) is “to prevent a child from being afforded less protection by society and the State because [he is] stateless, [though] it does not necessarily make it an obligation for States to give their nationality to every child born in their territory.”¹³⁹ The Comment explained that states’ obligations include “adopt[ing] every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when [she is] born.”¹⁴⁰ It underscored the prohibition against “discrimination...under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents.”¹⁴¹

The Convention on the Rights of the Child (CRC), ratified by Tunisia on January 30, 1992, provides in Article 7 that a child “shall be registered immediately after birth and shall have the right from birth to a name, [and] the right to acquire a nationality,” and also requires States to ensure that these rights are implemented, especially when a “child would otherwise be

¹³⁶ LAS, Final Recommendations: Towards an Action Plan on Belonging and Legal Identity (May 25, 2021), <https://www.unhcr.org/eg/wp-content/uploads/sites/36/2021/06/Final-Recommendations-Towards-PoA-on-Belonging-25052021.pdf>.

¹³⁷ International Covenant on Civil and Political Rights (ICCPR) art. 24, Mar. 23, 1976, 999 U.N.T.S. 171, Accession by Tunisia, Depository Notification (Mar. 18, 1969), <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-4.en.pdf>.

¹³⁸ *Id.*

¹³⁹ U.N. Human Rights Committee (HRC), CCPR General Comment No. 17: Article 24 (Rights of the Child), ¶ 8 (Apr. 7, 1989), <https://www.refworld.org/docid/45139b464.html>.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* The HRC recently found the Netherlands to be in violation of Article 24(3) for its assigning “unknown nationality” to a child at his birth and the perpetuation of this status for 10 years, which violated the maximum residency requirement of 5 years. *D.Z. v. the Netherlands*, Communication No. 2918/2016, HRC (Oct. 19, 2020), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/130/D/2918/2016&Lang=en.

stateless.”¹⁴² Article 8 of the CRC requires states to respect the child’s right to “to preserve [her] identity, including nationality” without any unlawful interference, and to “provide appropriate assistance and protection, with a view to re-establishing speedily [her] identity” in a case where a child has been “illegally deprived of some or all of the elements” of identity.¹⁴³

Children’s right to nationality is also specifically addressed in the 1961 Statelessness Convention and the Convention on the Rights of Persons with Disabilities (CRPD). The 1961 Statelessness Convention provides in Article 1(3) that a child born in the territory of a state to a mother who is a national of that state shall acquire the nationality of its mother if the child would otherwise be stateless.¹⁴⁴ Article 18(2) of CRPD specifically requires that “children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, [and] the right to acquire a nationality.”¹⁴⁵

With regard to regional instruments, a child’s right to nationality is protected under the African Charter on the Rights and Welfare of the Child in its Article 6.¹⁴⁶ Though Tunisia has not ratified the Charter, it is a signatory, which means that Tunisia is barred from acting in a manner contrary to the object and purpose of the Charter.¹⁴⁷ Article 6 provides that every child (1) shall have the right to a name from birth, (2) shall be immediately registered after birth, and (3) has the right to acquire a nationality.¹⁴⁸ Paragraph 4 of Article 6 provides for *jus soli* acquisition of nationality for children born on a state’s territory who would otherwise be stateless.¹⁴⁹

The Organization of the Islamic Conference (OIC) adopted the Covenant on the Rights of the Child in Islam, which contains several key provisions relating to the right to nationality and identity such as Article 7, which provides that a “child shall, from birth, have right to a good name, to be registered with authorities concerned, to have his nationality determined.”¹⁵⁰ The Covenant obliges State Parties to “make every effort to resolve the issue of statelessness for any child born on their territories or to any of their citizens outside their territory.”¹⁵¹ These documents establish the agreed-upon framework of nationality rights in the region. Since their

¹⁴² U.N. Convention on the Rights of the Child art. 7, Sept. 2, 1990, 1577 U.N.T.S. 3, Accession by Tunisia, Depository Notification (Jan. 30, 1992),

<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-11.en.pdf>.

¹⁴³ *Id.* at art. 8.

¹⁴⁴ 1961 Statelessness Convention, *supra* note 2, at art. 13.

¹⁴⁵ Convention on the Rights of Persons with Disabilities, *supra* note 128, at art. 18.

¹⁴⁶ *African Charter on the Rights and Welfare of the Child* art. 6, Nov. 29, 1999 (*hereinafter* African Children’s Charter).

¹⁴⁷ Tunisia became a signatory on June 16, 1995. Vienna Convention on the Law of Treaties, Jan. 27, 1980, 1155 U.N.T.S. 331 [*hereinafter* VCLT], Accession by Tunisia, Depository Notification (June 25, 1971), <https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XXIII/XXIII-1.en.pdf>.

¹⁴⁸ African Children’s Charter, *supra* note 146.

¹⁴⁹ *Id.*

¹⁵⁰ Org. of the Islamic Conf., *Covenant on the Rights of the Child in Islam* art. 7, June 2005, OIC/9-IGGE/HRI/2004/Rep.Final.

¹⁵¹ *Id.*

adoption further regional efforts have been pursued to strengthen nationality rights, including the Sharjah Principles on the Protection of Refugee Children, which provides in Article 3 for “[a]ll refugee children to be registered and documented at birth in countries of asylum.”¹⁵²

In October 2016, the LAS held a Regional Expert meeting on “Our Children, Our Future: Belonging and Identity.” This was followed by a ministerial meeting in Tunis in February 2018 that introduced the Arab Declaration on Belonging and Legal Identity, which calls for the right of all children to enjoy a legal identity, including a name, family relations and a nationality.

2. Rights of Women

The 1958 Convention on the Nationality of Married Women, acceded to by Tunisia on January 24, 1968, sets out the nationality rights of married women.¹⁵³ Article 1 of the Convention requires that “neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife.”¹⁵⁴ Under Article 2 “neither the voluntary acquisition of the nationality of another State nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national.”¹⁵⁵ Article 3 further provides that the alien wife of a state’s national may acquire the state’s nationality upon request “through specially privileged naturalization procedures.”¹⁵⁶

As already mentioned, Article 9 of CEDAW prohibits discrimination based on gender in the right to acquire, change, retain, or confer nationality.¹⁵⁷ The Committee on the Elimination of all Forms of Discrimination Against Women (the CEDAW Committee) asserted that Article 9 is “essential to the enjoyment of the full range of human rights by women.”¹⁵⁸ It recognized that “[w]omen continue to be more likely than men to seek to change their nationality to that of their foreign spouse upon marriage to a foreigner and are therefore at greater risk of statelessness if there is a gap in nationality legislation” that requires or allows for renunciation of nationality.¹⁵⁹ It also emphasized that discriminatory nationality laws against women can place their children at

¹⁵² Sharjah Principles - Investing in the Future: Protecting Refugee Children in the Middle East and North Africa ¶ 3 (Oct. 16, 2014), <https://data.unhcr.org/en/documents/details/42309>.

¹⁵³ Convention on the Nationality of Married Women, Feb. 20, 1957, 309 U.N.T.S. 65. Accession by Tunisia, Depository Notification (Jan 24, 1968), <https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XVI/XVI-2.en.pdf>. Tunisia submitted a declaration as to Article 10 of the Convention: “For any dispute to be referred to the International Court of Justice, the agreement of all the parties to the dispute shall be necessary in every case.”

¹⁵⁴ *Id.* at art. 1.

¹⁵⁵ *Id.* at art. 2.

¹⁵⁶ *Id.* at art. 3.

¹⁵⁷ CEDAW, *supra* note 126.

¹⁵⁸ CEDAW Committee, General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality, and statelessness of women, ¶ 51 (Nov. 5, 2014), <https://www.refworld.org/docid/54620fb54.html>.

¹⁵⁹ *Id.* In addition, the Committee set out in ¶¶ 60-61 the various ways in which women and children can become stateless because of a state’s non-performance of its obligations under Article 9.

risk of statelessness “when [the] mothers are prevented, on an equal basis with fathers, from transmitting their nationality to their children.”¹⁶⁰ Lastly, it noted how naturalization criteria, such as language proficiency and economic self-sufficiency, indirectly discriminate against women who may have faced difficulties in meeting these criteria because of being women, and emphasized that non-discrimination “also applies to processes of statelessness determination.”¹⁶¹

Tunisia is also party to the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the Maputo Protocol), which it ratified on August 23, 2018. Article 6(g) provides that, upon marriage, women have the right to retain their nationality or to acquire the nationality of their husband. Article 6(h) provides for equality between men and women with respect to the nationality of their children, but makes exceptions for when this provision is contrary to national legislation or contrary to national security concerns.

In October 2017, Tunisia participated in the LAS Arab Conference on Good Practices and Regional Opportunities to Strengthen Women’s Nationality Rights in Cairo, and signed on to the Conference’s Concluding Declaration which calls on member states to address gender discrimination in nationality laws and ensure gender equality in the acquisition and transmission of nationality.¹⁶²

3. Rights of Stateless Persons

As noted above, Tunisia acceded to the 1954 Convention on the Status of Stateless Person on July 29, 1969. The Convention defines the term “stateless person,” and provides for civil, social, economic, and cultural rights that States must afford to stateless individuals to varying degrees, such as on par with nationals or foreigners generally, and which are subject to varying requirements, such as lawful presence, habitual residence, etc. The contents of the 1954 Stateless Convention were initially meant to be covered by an omnibus convention on the rights of refugees, stateless persons, and internally displaced persons (IDPs). Eventually, stateless persons and IDPs were removed from the scope of what became the 1951 Convention Relating to the Status of Refugees, and hence, several provisions on the protection of refugees were carried over almost verbatim to the Statelessness Convention, though there are some differences in the level of protection afforded. Generally, the protections afforded to refugees are higher than those afforded to stateless persons in the two conventions.¹⁶³ Though the 1954 Convention does

¹⁶⁰ *Id.* at ¶54.

¹⁶¹ *Id.* at ¶¶ 55, 11.

¹⁶² League of Arab States, the First Arab Conference on Good Practices & Regional Opportunities to Strengthen Women’s Nationality Rights (Oct. 1-2, 2017), <http://equalnationalityrights.org/images/zdocs/Final-Declaration-of-the-Arab-Conference-on-Nationality-English.pdf>.

¹⁶³ Upon its independence from France, Tunisia succeeded to the 1951 Refugee Convention, *supra* note 21, on October 24, 1957, and signed onto the Organization of African State’s 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa in 1989. U.N. Convention Relating to the Status of Refugees, 22 Apr. 1954, 189 U.N.T.S. 137, Accession by Tunisia, Depository Notification (Oct. 24, 1957), <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20V/V-2.en.pdf>; Convention Governing the Specific Aspects of Refugee Problems in Africa, 10 Sept. 1969, 1001 U.N.T.S. 45, Accession by Tunisia, Depository Notification (Nov. 17, 1989), <https://www.refworld.org/docid/3ae6b36018.html>.

not contemplate a supervisory institution or mechanism covering stateless individuals, the 1961 Convention, in its Article 11, does call on States Parties to establish a body “to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority.” In 1975, the United Nations General Assembly issued Resolution A/RES/3274(XXIX) through which it appointed UNHCR as the provisional body tasked with carrying out the functions contemplated by Article 11 of the 1961 Convention. As a result of subsequent Resolutions of the General Assembly, and through Conclusions of UNHCR’s Executive Committee (UNHCR’s supervisory and governance organ made up of member states within the UN General Assembly), UNHCR has been charged with assisting non-refugee stateless persons as a distinct population of persons of concern.¹⁶⁴

Article 1(1) of the 1954 Convention on the Status of Stateless Persons defines the term “stateless person” to mean “a person who is not considered as a national by any State under the operation of its law.”¹⁶⁵ A person who falls within the 1954 Convention definition of “stateless person” may also qualify as a “refugee” under the definition provided in the Refugee Convention. In such case, and if the state in question has ratified both Conventions, the individual must be afforded the “more favourable provisions of the Refugee Convention.”¹⁶⁶

Statelessness—lack of any nationality—is a negative concept, which may be difficult to prove and define. It is easier to prove lack of nationality of someone who was born to stateless parents than of someone who once possessed a nationality but lost it, and still harder to prove lack of nationality of someone who possesses a nationality but is unable or unwilling to avail oneself of its protections. The Convention does not address methods of proving lack of nationality, thus leaving it up to the state of residence to determine an individual’s status, though UNHCR has set authoritative standards on the procedures that states ought to follow in determining a person’s nationality or lack thereof.¹⁶⁷ A state’s determination that an individual is stateless is to be “given credence [by other states] except when there are valid reasons to assume an error or abuse,” at least with regard to certain articles of the Convention.¹⁶⁸ The Convention definition of “stateless person” is regarded by the International Law Commission as having acquired the status of customary international law, such that states are obliged to use the definition even if they are not parties to the Convention.¹⁶⁹

¹⁶⁴ Introductory Note by the Office of the United Nations High Commissioner for Refugees to the 1954 Statelessness Convention, *supra* note 2, at 4.

¹⁶⁵ See Section I.B on the legal terminology used for a discussion of “de facto” and “de jure” statelessness.

¹⁶⁶ NEHEMIAH ROBINSON, A COMMENTARY: CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS-ITS HISTORY AND INTERPRETATION (May 1955), <https://www.refworld.org/docid/4785f03d2.html> (*hereinafter* Commentary to the 1954 Convention).

¹⁶⁷ *Id.* at art. 1 ¶ 4. See UNHCR, HANDBOOK ON PROTECTION OF STATELESS PERSONS UNDER THE 1954 CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS (2014), https://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/04/CH-UNHCR_Handbook-on-Protection-of-Stateless-Persons.pdf.

¹⁶⁸ Commentary to the 1954 Convention, *supra* note 166 at ¶ 5.

¹⁶⁹ Int’l Law Comm’n, Draft Articles on Diplomatic Protection with Commentaries, II Y.B. INT’L L. COMM’N ¶3 (2006), https://legal.un.org/ilc/texts/instruments/english/commentaries/9_8_2006.pdf.

Paragraph 2 of Article (1) sets out those excepted from the definition in Paragraph 1, including: (i) those receiving “protection or assistance” from UN organs other than the UNHCR—referring to Palestinian stateless persons¹⁷⁰; (ii) those recognized by a state as possessing the rights and duties attached to that State’s nationality; and (iii) those for whom there are “serious reasons” for considering they have (a) committed a crime against peace, war crime, or crime against humanity; (b) a non-political crime outside their state of residence; or (c) been guilty of acts contrary to the principles of the UN.¹⁷¹ The state of residence of an individual accused of these acts has discretion to determine what the “serious reasons” are.

The provisions of the Convention protect stateless persons from discrimination on the basis of race, religion, or country of origin, but not “sex,” a category that was not accepted by the drafters.¹⁷² The Convention protects stateless persons from exceptional measures, “which, in time of war or threat of war...are taken by a state to curb the rights of the citizens of the state against whom these measures are directed,” and can include restrictions on freedom of movement, assembly, and association.¹⁷³ The Convention provides for acquisition of property; the freedom of association--limited to “non-political and non-profit-making associations and trade unions;” free access to courts and legal assistance; and freedom of movement, including the right to choose their place of residence.¹⁷⁴ Under the Convention, stateless persons have the right to engage in wage-earning employment with the same rights as nationals in terms of remuneration, working hours, overtime, social security, etc.; the right to housing as accorded to foreigners generally; the right to elementary education and public relief and assistance on par with nationals; and the right to secondary education on par with foreigners generally. This last provision applies only to public education and excludes private schools, and the definition of “elementary education” depends on the state’s own laws and regulations.¹⁷⁵

Most critical, the Convention requires states to issue identity papers for internal use, as substitutes for “domestic” passports, to stateless persons in the state’s territory who do not possess valid travel documents, regardless of residence or lawful presence.¹⁷⁶ It also requires issuance of travel documents for travel outside their territories to stateless persons who are lawfully within their territories, but this obligation is subject to national security or public order concerns. A state can “forbid the egress of a stateless person” for the stated reasons.¹⁷⁷ The expulsion of stateless persons lawfully in a state’s territory is prohibited, other than on national security or public order grounds. This restriction on expulsion is not applicable to stateless persons who are unlawfully in the State’s territory.¹⁷⁸ Though a provision from the Refugee

¹⁷⁰ Commentary to the 1954 Convention, *supra* note 166, art. 1 ¶¶ 8-9.

¹⁷¹ The language of these provisions was carried over from the Refugee Convention with minor changes.

¹⁷² Commentary to the 1954 Convention, *supra* note 166, art. 3 ¶ 1.

¹⁷³ *Id.* at art. 8 ¶3.

¹⁷⁴ *Id.* at arts. 13, 15, 16, 26.

¹⁷⁵ *Id.* at art. 22 ¶ 2.

¹⁷⁶ *Id.* at art. 27 ¶ 2.

¹⁷⁷ *Id.* at art. 28 ¶ 3.

¹⁷⁸ *Id.* at art. 31 ¶ 3.

Convention barring expulsion of refugees to countries where they might face threat to their life or liberty was not included in the Stateless Convention despite consideration, the customary international law principle of *non-refoulement* applies to stateless persons and was included in the Final Act of the Convention.¹⁷⁹

Lastly, as mentioned above, the Convention requires states to “facilitate the assimilation and naturalization of stateless persons” as far as possible— where “assimilation” is understood to mean “integration into the economic, social and cultural life of the country.”¹⁸⁰ The relevant article also requires that “every effort” be made “to expedite naturalization proceedings and to reduce” their cost.¹⁸¹

B. Domestic Law

Tunisia has put in place basic protections for those without nationality as well as safeguards against statelessness. These protections appear in the Tunisian Constitution, the Nationality Code, the laws governing the birth registration process and the condition, entry, and stay of foreigners, as well as several other domestic laws geared towards protecting populations at heightened risk of statelessness (children, victims of human trafficking, women, and persons belonging to minority groups). Tunisia has yet to enact domestic laws that fully implement its obligations to protect stateless persons, asylum seekers, and refugees.

1. The Constitution¹⁸²

On January 26, 2014, three years after the country revolted against former President Zine el Abidine Ben Ali, Tunisia adopted its new Constitution.¹⁸³ The new Constitution was the product of extensive deliberation, and provided for the establishment of a new Constitutional Court.¹⁸⁴ The 2014 Constitution advanced freedom of religion and enhanced women’s rights.¹⁸⁵ Article 21 states that “[a]ll citizens, male and female, have equal rights and duties, and are equal before the law without any discrimination.”¹⁸⁶

Other provisions in the 2014 Constitution deal more directly with the issue of statelessness. Article 25 states that “[n]o citizen shall be deprived of their nationality, exiled,

¹⁷⁹ *Id.* at art. 31 ¶ 9.

¹⁸⁰ *Id.* at art. 32 ¶ 2. Robinson’s interpretation is based on statements in the *travaux préparatoires* of the Convention, *supra* note 166.

¹⁸¹ *Id.*

¹⁸² Though over the course of the preparation of this report, in July 2022, a new constitution replaced the one promulgated in 2014, the substantive provisions discussed here have not changed. The updated article numbers appear in footnotes below.

¹⁸³ Rainer Grote, *The New 2014 Tunisian Constitution*, OXFORD CONST. L., <https://oxcon.ouplaw.com/page/404>.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ CONSTITUTION OF 2014, *supra* note 66, at art. 21; CONSTITUTION OF 2014, *supra* note 66, at art. 23.

extradited or prevented from returning to their country.”¹⁸⁷ Article 26 guarantees a right to political asylum and prohibits the extradition of persons who have been granted political asylum.¹⁸⁸ Article 47 states that “[c]hildren are guaranteed the rights to dignity, health care, and education from their parents *and the state*,” and requires the state to “provide all types of protection to *all children* without discrimination and in accordance with their best interest.”¹⁸⁹

2. Nationality Code

The Nationality Code is the centerpiece of Tunisia’s domestic legal framework relevant to nationality and statelessness. The first Nationality Code was adopted in January 1956, just two months before Tunisia gained independence in March of the same year.¹⁹⁰ The first draft of what would eventually become the Tunisian Nationality Code “regulated only the cases where French nationality was not involved.”¹⁹¹ When Tunisia asserted its independence, the 1956 law was abrogated and Law 7/1963 became the Tunisian Nationality Code.¹⁹² The Tunisian Nationality Code governs the process for acquisition of Tunisian nationality at birth, for naturalization of foreigners in Tunisia, for deprivation of Tunisian nationality and the circumstances under which Tunisian nationality can be lost.

a) Acquisition of Tunisian Nationality at Birth by Operation of Law

Since its original promulgation in 1956, the Tunisian Nationality Code has undergone several amendments and modifications. One of its most important amendments is in Article 6. Prior to 2010, children born to a Tunisian mother and foreign father were unable to automatically acquire Tunisian nationality at birth (*jus sanguinis*). In 2010, Article 6 was amended such that a child born to a Tunisian father, *or Tunisian mother* is Tunisian – regardless of whether the child is born in Tunisia or abroad.¹⁹³

The Nationality Code outlines two other ways by which a child may automatically acquire Tunisian nationality at birth. Article 7 deals with the principle of double *jus soli*, or “birthright citizenship.” Article 7 allows for the acquisition of Tunisian nationality at birth if a child is born in Tunisia (*jus soli*) and the child’s parents were born in Tunisia, but by paternal affiliation only.¹⁹⁴ Accordingly, “two generations of paternal descent are actually required for the *jus soli* acquisition of nationality, thus, a person’s father and paternal grandfather must both have

¹⁸⁷ This language is found in Article 31 in the 2022 Constitution.

¹⁸⁸ This language is found in Article 32 in the 2022 Constitution.

¹⁸⁹ CONSTITUTION OF 2014, *supra* note 61, at art. 52.

¹⁹⁰ PAROLIN, *supra* note 63, at 94.

¹⁹¹ *Id.* (citing Tunisian Nationality Law of 1956 at arts. 10-12).

¹⁹² PAROLIN, *supra* note 63, at 94.

¹⁹³ CONSTITUTION OF 2014, *supra* note 61, at art. 6. The same amendment repealed Article 12 which included a procedure through which the children of Tunisian mothers and foreign fathers born abroad could obtain Tunisian citizenship as minors (through parental declaration), or after turning 17.

¹⁹⁴ *Id.* at art. 7.

been born in [Tunisia].”¹⁹⁵ Article 8 provides the third way in which children may automatically acquire Tunisian nationality at birth. A child born in Tunisia to stateless parents is considered Tunisian, so long as that child’s parents have resided in Tunisia for at least five years.¹⁹⁶ This is the only article in the Code to explicitly address statelessness.

Also of note are Articles 9 and 10, which provide for the acquisition of Tunisian nationality by foundlings, who are considered Tunisian at birth unless proven otherwise.¹⁹⁷ To be proven otherwise, it must be determined, before the child reaches the age of majority, that the child’s parents were foreigners.

The disparate treatment of men and women under the Nationality Code is apparent in articles 13 through 14 which regulate the transmission of nationality to foreign female spouses. Non-Tunisian women marrying Tunisian citizens enjoy access to Tunisian nationality by operation of law, though no comparable provisions exist regarding the foreign husbands of Tunisian women. Under article 14, a non-Tunisian wife may acquire Tunisian nationality upon request, provided that the household has resided in Tunisia for at least two years.¹⁹⁸ Article 13 permits the foreign wife to automatically acquire Tunisian nationality in the case where marriage to a man of a different nationality would result in her losing her original nationality, under the laws of her country of origin. Article 16 places a further limitation on Articles 13-14. Pursuant to Article 16, a woman who became Tunisian by marriage will be stripped of her Tunisian nationality if that marriage is annulled by a final decision of a Tunisian court or by a court order made enforceable in Tunisia. Finally, executive discretion, in the form of a presidential decree, can be exercised to annul the acquisition of Tunisian nationality by the foreign wife of a Tunisian man, but only within two years of the declaration to acquire nationality.¹⁹⁹

b) Naturalization

Articles 20-23 outline the eligibility requirements for naturalization. There are four requirements: (1) the individual must have resided in Tunisia for at least five years (this is known as the “five-year residency requirement” and is set out in Article 20), (2) the individual must have sufficient knowledge of Arabic (Article 23(2)), (3) the individual must have a clean criminal record (Articles 22 and 23(5)), and (4) the individual must be in good mental and physical health (Article 23(3,4)). Applications for naturalization are submitted to the Ministry of Justice. Whether an application is approved or denied ultimately depends on a decision by the

¹⁹⁵ LEGAL AGENDA, *supra* note 20, at 189.

¹⁹⁶ CONSTITUTION OF 2014, *supra* note 66, at art. 8. The 5-year residency requirement is the first of four requirements for naturalization in Tunisia. *See infra* Section A.II.b.

¹⁹⁷ A foundling is an infant who has been abandoned by his parents. *See* Mai Kaneko-Iwase, *Nationality of Foundlings: Avoiding Statelessness Among Children of Unknown Parents Under International Nationality Law*, in 5 EVIDENCE-BASED APPROACHES TO PEACE AND CONFLICT STUDIES (Vol 5, 2021), <https://link.springer.com/book/10.1007/978-981-16-3005-7>.

¹⁹⁸ CONSTITUTION OF 2014, *supra* note 66, at art. 14.

¹⁹⁹ *Id.* at art. 15.

President of the Republic.²⁰⁰ If naturalization is denied, the denial can be appealed, as specified in Articles 54-57 of the Nationality Code.

Article 21(2) facilitates naturalization for foreign men married to Tunisian women. Unlike Articles 13-14, which provide for acquisition of nationality by declaration, Article 21 requires that foreign men marrying Tunisian women meet each requirement set forth in Articles 20-23 except for the five-year residency requirement.²⁰¹ Article 21(3) facilitates naturalization for those who have provided “exceptional services” to the state.²⁰² This Article also permits naturalization for those whose acquisition of Tunisian nationality “would be of great benefit to Tunisia.”²⁰³

c) **Renunciation, Loss, or Deprivation of Nationality**

Articles 30-33 of the Nationality Code address the voluntary renunciation of Tunisian nationality, as well as the involuntary loss or deprivation of Tunisian nationality. Article 30 allows for the voluntary renunciation of Tunisian nationality. Article 32 states that a person “shall lose his Tunisian nationality” if the Tunisian provides certain services to a foreign state. Article 33 outlines other ways in which a Tunisian may lose his nationality—for example, by committing a crime against the state, threatening national security, or failing to fulfill military obligations. Article 31, importantly, stipulates that the loss of Tunisian nationality—as permitted by Articles 30, 32, and 33—can be extended by decree to the wife and unmarried minor children of the person concerned, so long as the persons losing their Tunisian nationality by association would not be deprived of any nationality at all. Thus, if a Tunisian national is married to a Tunisian woman with dual nationality, the woman could lose her Tunisian nationality by decree if her husband loses or forfeits his Tunisian nationality pursuant to Articles 30, 32, and 33 of the Nationality Code. If the wife in this hypothetical does lose her Tunisian nationality by decree, so would her children if she has any, if they, too, have dual nationality.

3. Birth Registration (Law No. 57-3)

Birth registration is the primary legal record of where a child was born and is often a prerequisite for obtaining nationality documents; thus, birth registration processes that are widely accessible are critical for preventing statelessness. In Tunisia, the birth registration process is governed by Law No. 57-3, also known as Tunisia’s Civil Status Code (“Law 57-3”).²⁰⁴ Law 57-

²⁰⁰ *Id.*; video conference interview with International Organization for Migration (IOM) Tunis (Feb. 3, 2022).

²⁰¹ *Id.* at art. 21(2). This Article applies to a foreign man marrying a Tunisian woman, so long as the Tunisian woman is residing in Tunisia at the time the foreigner submits his application for naturalization.

²⁰² *Id.* at art. 21(3).

²⁰³ *Id.*

²⁰⁴ Loi No. 1957-3 du 1957, réglementant l'état civil (Law No. 1957-3 of 1957, regulating civil status) (*hereinafter* Civil Status Code).

3 was enacted on August 1, 1957.²⁰⁵ Before this Law came into force, birth registration was optional in Tunisia.²⁰⁶ Law 57-3 made it mandatory, and set forth the steps to be followed by parents of a newborn to register the child.²⁰⁷

Registering a birth in Tunisia is a multi-step process. The first step is to obtain a birth notification issued by the facility where the birth took place. If the child was born in a hospital, the mother must present, among other things, her identity card when she is admitted for care. After giving birth and paying medical expenses, the mother will be able to retrieve her identity documents and her newborn child's birth notification form.²⁰⁸ The form should indicate the child's sex, as well as the date and time of the child's birth. For mothers giving birth outside of a hospital, the process is similar; however, instead of the hospital providing notification, Article 24 of Law 57-3 allows the on-site doctor or midwife to provide notification of the birth. If this is not an option, the municipality may issue the notification upon testimony by two witnesses present at the birth.²⁰⁹

The next step involves presenting the birth notification form to the municipality. This step must be completed within ten days of birth.²¹⁰ If the newborn's birth notification is brought to the municipality within ten days, the civil status officer in the municipality will issue a birth certificate free of charge. The birth certificate states the date, time, and place of the child's birth, as well as the domiciles and nationalities of the child's mother and father.²¹¹ If one or both of the child's parents are Tunisian, the child's nationality as Tunisian is established upon completion of birth registration.²¹²

The birth registration process outlined above describes how a Tunisian or foreign parent may register the birth of their child through the civil authorities. Under certain circumstances a parent must petition the courts to successfully register a birth. The first of these circumstances is if the 10-day deadline (as set forth by Article 22 of Law 57-3) is missed. In such situation, Article 23 of Law 57-3 provides that a late birth registration may occur "by virtue of a decision rendered by the President of the Court of First Instance in the jurisdiction [where] the child was

²⁰⁵ Fourat Dridi, *The Impact of Civil Registration on the Social Protection System: A Case Study of Tunisia*, in THE NEXUS BETWEEN CIVIL REGISTRATION AND SOCIAL PROTECTION SYSTEMS: FIVE COUNTRY PRACTICES (2020), https://crvssystems.ca/sites/default/files/assets/files/SocialProtection_5_Tunisia_e_WEB.pdf.

²⁰⁶ *Id.* at 3.

²⁰⁷ *Id.*; Civil Status Code, *supra* note 204, at arts. 22–30.

²⁰⁸ Civil Status Code, *id.* at art. 24.

²⁰⁹ *Id.* (noting "the birth of the child will be declared by the father, or, failing that, by the medical doctors, midwives, or other persons who will have attended the delivery and, when the mother has given birth away from home, if possible, by the person at whose home she gave birth"); Interview with officers at UNHCR Tunisia (Dec. 6, 2021) (stating that if the child was not born in a hospital, the mother may present to the municipality two witnesses in lieu of an official birth declaration form).

²¹⁰ *Id.* at art. 22 (noting that this deadline is extended to fifteen days for children born outside the state).

²¹¹ *Id.* at art. 26.

²¹² As discussed in Section V below, if the child's parents are foreigners, they must take the child's Tunisian birth certificate to be registered at the consulate or embassy of their country, for that child to obtain the parent's nationality, though other procedures may be needed as well.

born."²¹³ To petition the courts for a late birth registration, parents must procure a lawyer, pay fees, and present the required documents.²¹⁴ The second circumstance is when a child is born to a single mother.²¹⁵ Law No. 98-75 was added to Tunisia's Personal Status Code in 1998, and stipulates that within six months of giving birth, single mothers must petition the Court of First Instance so that the newborn can be properly registered and assigned his or her mother's surname.²¹⁶

4. Laws Relating to Migration

Cross-border migration and the rights of migrants in Tunisia is governed by Law No. 68-7 of March 8, 1968 ("Law 68-7")²¹⁷ and Decree No. 68-198 of June 22, 1968 ("Decree No. 68-198").²¹⁸ Law No. 75-40 ("Law 75-40") is also important, as it governs the issuance of passports and travel documents to refugees and stateless persons.²¹⁹ The term "foreigner" in Tunisian law encompasses both persons of foreign nationality and those lacking a nationality.²²⁰ The law does not define or extend specific protections to refugees or stateless persons, and Tunisia lacks other domestic legislation implementing its international obligations to refugees and stateless persons.²²¹ Those groups thus fall under the general provisions of Law 68-7. The regulation of migration is thus relevant to the protection of stateless persons (who may be migrants) and to the prevention of statelessness (where stateless persons born in the country are subject to its migration laws).

a) Rules Relating to Foreigners' Entry and Stay in Tunisia

Entry into Tunisia must be through a recognized border crossing with the proper travel documents in hand.²²² Article 33 of Law 75-40 stipulates that a foreigner wishing to enter

²¹³ Civil Status Code, *supra* note 204, at art. 23.

²¹⁴ The aspects of this process that pose difficulties to specific groups at risk of statelessness are described in more detail in Part IV of this Report.

²¹⁵ Loi 98-75 du 28 octobre 1998, relative à l'attribution d'un nom patronymique aux enfants abandonnés ou de filiation inconnue (Law 1998-0075 of October 28, 1998, relating to the attribution of a patronymic name to abandoned children or children of unknown filiation).

²¹⁶ *Id.* Alternatives to this judicial birth registration process for single mothers is possible for migrants from non-Muslim countries, as discussed in Section VI.

²¹⁷ Loi 68-7 du 8 mars 1968, relative à la condition des étrangers en Tunisie (Law 68-7 of March 8, 1968, relating to the condition of foreigners in Tunisia).

²¹⁸ Décret 68-198 du 22 juin 1968, réglementant l'entrée et le séjour des étrangers en Tunisie (Decree 68-198 of June 22, 1968, regulating the entry and stay of foreigners in Tunisia). Unlike the Nationality Code of 2013 and Law 75-40 on travel documents, the law and decree on migration have never been amended since their enactment in 1968, despite the drastic changes in Tunisia's migration profile since then. Section IV addresses the need to update them.

²¹⁹ Loi 75-40 du 14 mai 1975, relative aux passeports et aux documents de voyage, arts. 24, 25 (Law 75-40 of May 14, 1975, relating to passports and travel documents).

²²⁰ Law 68-7, *supra* note 217, at art. 1 (stating that its provisions apply equally to all foreigners in Tunisia—regardless of whether they have a foreign nationality, or no nationality at all)

²²¹ Section III.B discusses Tunisia's obligations to refugees and stateless persons under international treaties.

²²² Law 75-40, *supra* note 218, at art. 34.

Tunisia must have a passport or other form of official travel document issued by his or her country of nationality, or country of residence if he or she is stateless.²²³ After arriving in Tunisia, the foreigner may obtain an entry visa valid for up to three months.²²⁴ A foreigner wishing to stay in Tunisia for longer than three months must obtain a residence visa.

Reading Law 68-7 together with Decree No. 68-198 reveals two categories of residence visas: (1) the temporary residence visa, and (2) the ordinary residence visa. A temporary residence visa is issued by the Ministry of Interior to foreigners wishing to stay in Tunisia for “no more than three uninterrupted months or six non-consecutive months during a year.”²²⁵ The process for obtaining a temporary residence visa is outlined in Articles 9-12 of Law 68-7, and Articles 13-17 of Decree No. 68-198. Temporary residence visas are granted only to foreigners who have specific reasons for being in Tunisia upon proof of legal entry and proof of resources to remain there.²²⁶ If an applicant for a temporary residence visa is denied, the foreigner must leave the country, or risk expulsion by decision of the Director General of National Security.²²⁷

Ordinary residence visas are issued by the Ministry of Interior to a narrow category of foreigners wishing to stay in Tunisia indefinitely. Article 13 of Law 68-7 specifies the categories of foreigners who may be issued an ordinary residence visa. Those are: (1) foreigners born in Tunisia who have resided in Tunisia without interruption, (2) foreigners residing legally in Tunisia for five years without interruption, (3) foreigners married to Tunisians, foreigners who have Tunisian children, and (4) foreigners who have rendered appreciable services in Tunisia.²²⁸ Because Article 1 explicitly states that Law 68-7 applies to stateless individuals in Tunisia, a literal reading of Article 13 means that stateless persons meeting any of the criteria listed are eligible for receipt of an ordinary residence visa. If a foreigner’s application for an ordinary residence visa is denied, that foreigner must leave Tunisian territory, *unless* the foreigner qualifies for a temporary residence visa.²²⁹

Articles 23-29 of Law 68-7 criminalize foreigners’ failure to comply with its provisions. Specifically, Article 23 states that a foreigner may be liable for up to one year of imprisonment and fined up to 120 dinars if the foreigner does not apply for and obtain the appropriate residence visa.²³⁰

²²³ *Id.* at art. 33.

²²⁴ Decree 68-198, *supra* note 218, at arts. 6-8.

²²⁵ Law 68-7, *supra* note 217, at art. 9.

²²⁶ Decree 68-198, *supra* note 218, at art. 13.

²²⁷ *Id.* at art. 14.

²²⁸ *Id.* at art. 13.

²²⁹ *Id.* at art. 19.

²³⁰ Law 68-7, *supra* note 217, at art. 23.

b) Rules Relating to Foreigners' Exit from Tunisia

Tunisian nationals over the age of 15 who wish to leave Tunisia must have a national passport issued by the administrative authority.²³¹ Ordinary passports are issued by the Minister of the Interior, and last for five years.²³² So long as the passport holder is not drafted by the military, a wanted criminal, or a threat to “public order and security,” ordinary passports may be renewed upon expiration.²³³ Article 15 was added to Law 75-40 in November 1998.²³⁴ This Article sets forth a number of justifications for withdrawing a Tunisian national’s passport. Specifically, Article 15 states that a “valid ordinary passport may be withdrawn” from a minor either by court decision or if the minor’s parents authorize revocation, and certain indicted individuals who are released on bail.²³⁵ Requests to withdraw an ordinary passport are presented to the Presidents of the Courts of First Instance.²³⁶ Article 15 also reserves for the Court of First Instance the power to prohibit a Tunisian passport holder from leaving the country if accused of a crime, where “the passport holder's trip is likely to jeopardize public security.”²³⁷ In addition to *discretionary* withdrawals in Article 15, Article 16 stipulates that a Tunisian national’s passport *must* be withdrawn if “[t]he holder does not possess or no longer possesses a Tunisian nationality” or if “[t]he passport was obtained irregularly.”

Chapter III of Law 75-40 regulates the provision of “other travel documents” besides the Tunisian passport.²³⁸ Unlike the law and decree on migration, the provisions contained in this chapter refer to refugees and stateless persons and acknowledge the state’s obligations to issue them with travel documents. Type “B” travel documents are issued to “foreigners other than refugees.”²³⁹ Type “B” travel documents are free of charge, and provide foreigners leaving Tunisia with a one-month, non-renewable pass.²⁴⁰ Type “C” travel documents are issued to refugees under the 1951 Convention.²⁴¹ Type “C” travel documents are valid for two years, and are only renewable if the holder remains a refugee in Tunisia.²⁴² Type “D” travel documents are

²³¹ Law 75-40, *supra* note 219, at arts. 1-3; *see also id.* at art. 8 (stipulating that for children under the age of 15, the parents’ passports may be used in lieu of the child’s). Certain Tunisian nationals may travel internationally without a passport if they have Type “A” travel documents as specified in §§ 21-24 of Law 75-40. Type “A” documents are used by Tunisian nationals experiencing difficulty with their passport who wish to return to Tunisia, or by others in special circumstances—like Tunisian diplomats.

²³² Law 75-40, *supra* note 219, at art. 12.

²³³ *Id.* at art. 13.

²³⁴ This Article was added by Organic Law No. 98-77 of November 2, 1998, amending Law 75-40. Loi organique n° 98-77 du 2 novembre 1998, portant modification de la loi n° 75-40 du 14 mai 1975, relative aux passeports et documents de voyage.

²³⁵ Law 75-40, *supra* note 219, at art. 15.

²³⁶ *Id.*

²³⁷ Law 75-40, *supra* note 219, at art. 15 *quarter*, Added by Organic Law No. 2017-45 of June 7, 2017.

²³⁸ *See id.* at art. 20 (listing the types of travel documents and to whom they may apply).

²³⁹ *Id.*

²⁴⁰ *Id.* at art. 23; *see also id.* at art. 27 (noting Type A and B travel documents are free of charge).

²⁴¹ *Id.* at art. 20.

²⁴² *Id.* at art. 24.

issued to stateless persons, as defined by the 1954 Convention.²⁴³ Type “D” travel documents are valid for up to two years, and can be renewed if the holder remains stateless in Tunisia.²⁴⁴ Renewal of any type of travel document is subject to review and approval by “the authorized administrative authority to which an application for the issue or renewal of a type ‘C’ or ‘D’ travel document is submitted;” an application for renewal may be denied if the applicant is “likely to compromise public safety.”²⁴⁵

Articles 34 and 35 of Law 75-40 criminalize failure to comply with the Law’s provisions. A traveler who leaves Tunisia irregularly (either without the proper travel documents or by crossing the Tunisian border at an unrecognized border crossing), is subject to imprisonment for a period ranging from fifteen days to six months and may be fined up to 120 dinars.²⁴⁶ Repeat offenders may face double penalties.²⁴⁷

c) National Strategy on Migration

The Ministry of Social Affairs has, with the participation of civil society organizations, drafted a National Strategy on Migration (SNM).²⁴⁸ A first draft of the SNM was produced after a series of discussions on migration strategy in 2012. This draft was revised in 2015, and then again in 2017. The SNM is intended as a reference for effective governance of migration in Tunisia. Among the values it includes is “respect for the rights and dignity of migrants and their family members, regardless of gender, age, origin, or status.”²⁴⁹ It also condemns racism, xenophobia, and discriminatory administrative practices, and commits to combatting human trafficking.²⁵⁰ It states that in order to create an “enabling environment” for SNM’s implementation, interconnections need to be established between migration policy and other national policies, such as employment and training, health, environment, etc.²⁵¹

The SNM has five goals: enhancing governance in migration management; protecting rights of Tunisian emigrants and strengthening their links with Tunisia; increasing the contribution of migration to socio-economic development at local and national levels; promoting regular migration of Tunisians and preventing irregular migration; and protecting the rights of migrants coming to Tunisia, including refugees and asylum seekers. The SNM, thus, focuses mainly on Tunisians living abroad and Tunisians hoping to emigrate, but barely touches on migration into Tunisia, and even then, it focuses only on refugees and asylum seekers.

²⁴³ *Id.* at art. 20.

²⁴⁴ *Id.* at art. 25.

²⁴⁵ *Id.* at art. 26.

²⁴⁶ *Id.* at arts. 34-35.

²⁴⁷ *Id.* at art. 35.

²⁴⁸ Ministère des Affaires Sociales, Stratégie Nationale Migratoire (SNM) (July 2017), http://ote.nat.tn/wp-content/uploads/2018/05/SNM_FRA_FINALE.pdf (National Strategy on Migration).

²⁴⁹ *Id.* at 4 (translated from French).

²⁵⁰ *Id.* at 5 (translated from French).

²⁵¹ *Id.* at 6 (translated from French).

5. Laws Pertaining to Certain Vulnerable Groups

Statelessness is an intersectional phenomenon both resulting from and leading to discrimination, abuse, and human trafficking. The laws described in this section are relevant to the protection of persons without a nationality, or to the prevention of the loss of nationality as a byproduct of another rights violation. The legislation considered addresses specific vulnerable groups in Tunisian society, namely children, victims of human trafficking, women, and victims of racism.

The following are considered “Organic Laws.” In Tunisia, all legislation pertaining to human rights is categorized as organic, meaning that laws that contravening the Organic Law’s provisions are automatically void.²⁵²

a) 1995 Law on Protection of Children

Law No. 95-92 on the protection of children was drafted in 1995 and came into force in early 1996.²⁵³ The Law’s General Principles note its aims are to “promote childhood”²⁵⁴ and raise children who take “pride in [their] national identity” with a “feeling of civilizational belonging.”²⁵⁵

“Children,” as defined by the Law, are persons “under the age of eighteen.”²⁵⁶ The Law makes no distinction between children of Tunisian nationality, children of another nationality, or children lacking a nationality. Thus, under a plain reading of the Law, its provisions apply equally to any person in Tunisia who is eighteen or younger.

Article 5 of the Law stipulates that “[e]very child has the right to an identity from birth”; this Article describes “identity” as a “first name, surname, date of birth and nationality.”²⁵⁷ The Law also guarantees all children (regardless of nationality) the right to receive an education and adequate healthcare, as well as certain preventive measures and protective services to shield children from violence, prejudice, harm, and neglect.²⁵⁸ Article 28 of the Law empowers the Child Protection Delegate to enforce the preventive and protective measures if a child’s health or physical or moral integrity is at risk.²⁵⁹ Every judicial, administrative, public or private measure concerning a child should be informed by “[t]he best interests of the child.”²⁶⁰ Children under 15 accused of administrative violations or crimes may not be subject to preventive detention under

²⁵² Interview with Omar Fassatoui, Tunisian human rights attorney. (Jan. 14, 2022).

²⁵³ Loi 95-92 du 9 novembre 1995, relative à la publication du code de la protection de l'enfant (Law 95-92 of November 9, 1995, relating to the publication of the child protection code); *see also* WORLD ORGANISATION AGAINST TORTURE (OMCT), RIGHTS OF THE CHILD IN TUNISIA (2002), https://www.omct.org/site-resources/legacy/tunisia_gb_web_2020-12-11-144706.pdf (secondary source commenting on the law).

²⁵⁴ Law No. 95-92, *id.* at art. 1(1).

²⁵⁵ *Id.* at art. 1(2).

²⁵⁶ *Id.* at art. 3.

²⁵⁷ *Id.* at art. 5.

²⁵⁸ *Id.* at art. 2.

²⁵⁹ *Id.*; for a description of these protective measures, see Division IV.

²⁶⁰ *Id.* at art. 4.

any circumstances.²⁶¹

The broad definition of a child's right to an identity appears to reinforce Tunisia's obligations under various international instruments (discussed above in Section III.A) to ensure that all children on its territory are able to acquire a nationality. Importantly, it ensures that nationality or lack thereof does not hinder a child's access to education or healthcare.

b) 2016 Law on Human Trafficking

In 2016, Tunisia adopted Organic Law No. 2016-61 on the Prevention and Fight Against Human Trafficking.²⁶² In addition to criminalizing trafficking, the Law protects persons who have been trafficked by mandating medical and psycho-social assistance and allowing for the regularization of trafficking victims' legal status in Tunisia. This latter measure is critical, as prior research has highlighted the nexus between trafficking and statelessness: stateless persons are particularly vulnerable to trafficking, and trafficked persons are vulnerable to losing their nationality.²⁶³ Article 44 of the 2016 Law creates a National Authority to Combat Trafficking in Persons within the Ministry of Justice. The National Authority is responsible for several tasks, including developing a national strategy to prevent and combat human trafficking and issuing guidelines to identify trafficking victims and provide them with necessary assistance.²⁶⁴

Under Article 61, the National Authority is to inform victims "of the provisions governing judicial and administrative procedures to help them regularize their situation and obtain appropriate compensation for the damage suffered, in a language that the victim understands."²⁶⁵ This Article also calls on the National Body to "follow up on their cases with the public authorities, in coordination and collaboration with nongovernmental organizations, and provide them with assistance, if necessary, to remove obstacles to accessing their rights."²⁶⁶ Article 65 specifies that foreign victims of trafficking are returned to their home countries if it would be safe, or, alternatively, foreign victims can apply for "the extension of temporary stay in Tunisia for the purpose of initiating judicial proceedings to guarantee their rights."²⁶⁷

²⁶¹ *Id.* at art. 94.

²⁶² Loi organique 2016-61 du 3 août 2016, relative à la prévention et la lutte contre la traite des personnes, art. 1 (Organic Law 2016-61 of August 3, 2016, relating to the prevention and fight against human trafficking).

²⁶³ See e.g., Fiza Lee-Winter & Tonny Kirabira, *Dossier: The Stateless Rohingya—Practical Consequences of Expulsion*, 15 GENOCIDE STUD PREVENTION: AN INT'L J. 3 (Oct. 8, 2021)(the case of exiled Rohingya); Michiel Hoornick, *The statelessness-trafficking nexus: A case study in Thailand*, INT'L INST. ASIAN STUD. NEWSLETTER (Oct. 2020), https://www.iias.asia/sites/iias/files/nwl_article/2020-10/IIAS_NL87_4041.pdf (for the case of Thailand); Dina Marcella Mekenkamp, *Gender discrimination & the production and reproduction of Statelessness in Nepal* (July 2014) (BSc Thesis, Wageningen University & Research Centre), <https://edepot.wur.nl/312780> (considering the human trafficking–statelessness nexus in Nepal).

²⁶⁴ Organic Law 2016-61, *supra* note 262, at art. 46.

²⁶⁵ *Id.* at art. 61.

²⁶⁶ *Id.*

²⁶⁷ *Id.* at art. 65.

c) 2017 Law on Violence Against Women

In 2017, Tunisia passed the Law on the Elimination of Violence Against Women, the first law of its kind.²⁶⁸ This recent legislation is significant for all women in Tunisia but especially so for those who find themselves in most vulnerable situations, such as those women without access to documentation of their nationality, stateless or refugee women.²⁶⁹ This law explicitly classifies violence against women as a form of discrimination and a violation of human rights²⁷⁰ and specifies that a woman who is a victim of violence (and her children) is entitled to the legal protection and aid necessary to ensure her “safety, physical and psychological integrity and dignity, as well as the administrative, security and judicial measures required for this purpose.”²⁷¹

d) 2018 Law on Racial Discrimination

Organic Law No. 50-2018 (“Organic Law 50”) on the Elimination of all Forms of Racial Discrimination was adopted by the Assembly of People’s Representatives in 2018, and was the first law enacted by a MENA state to specifically penalize racial discrimination and allow victims of racism to seek redress.²⁷² Discrimination against racial, ethnic and religious minorities is a well-documented factor contributing to statelessness.²⁷³ The Law calls for the creation of a National Commission for the Fight Against Racial Discrimination within the Ministry of Human Rights²⁷⁴ and directs the state to take action to prevent all forms of racial discrimination in Tunisia.²⁷⁵ Organic Law 50 also sets out a complaints procedure for victims of racism under Article 6.²⁷⁶ If the court determines an act of racism has been committed, the perpetrator will face up to one year in prison, and/or be made to pay a fine up to \$1,000 dinars.²⁷⁷ Importantly,

²⁶⁸ *Tunisia passes historic law to end violence against women and girls*, UN WOMEN (Aug. 10, 2017), <https://www.unwomen.org/en/news/stories/2017/8/news-tunisia-law-on-ending-violence-against-women>

²⁶⁹ UNHCR, POSITION PAPER ON VIOLENCE AGAINST WOMEN AND GIRLS IN THE EUROPEAN UNION AND PERSONS OF CONCERN TO UNHCR 2-3 (Mar. 2014), <https://www.refworld.org/docid/5326ab594.html> (explaining the particular risk of domestic and gender-based violence that refugee and stateless women experience).

²⁷⁰ Loi organique 2017-58 du 11 août 2017, relative à l’élimination de la violence à l’égard des femmes, art. 4 (Organic Law 2017-58 of August 11, 2017, relating to the elimination of violence against women).

²⁷¹ *Id.* at art. 13.

²⁷² Omar Fassatoui, *Tunisia’s Law against Racial Discrimination: The Mixed Results of a Pioneering Legislation*, ARAB REFORM INST. (Feb. 11, 2021), <https://www.arab-reform.net/publication/tunisias-law-against-racial-discrimination-the-mixed-results-of-a-pioneering-legislation/>.

²⁷³ *Minorities, Discrimination and Statelessness: OHCHR and Minorities*, OHCHR, <https://www.ohchr.org/en/minorities/minorities-discrimination-and-statelessness> (last visited Oct. 8, 2022).

²⁷⁴ Loi organique 2018-50 du 23 octobre 2018, relative à l’élimination de toutes les formes de discrimination raciale, art. 11 (Organic Law 2018-50 of October 23, 2018, relating to the elimination of all forms of racial discrimination).

²⁷⁵ *Id.* at art. 3.

²⁷⁶ *Id.* at art. 6 (when a complaint of racism is filed with the public prosecutor, the prosecutor will appoint a deputy to follow up on its investigation).

²⁷⁷ *Id.* at art. 8.

Article 8 stipulates “doubled punishment” for racist acts against persons with immigrant or refugee status.²⁷⁸

IV. Gaps in Tunisia’s Laws and their Implementation

A. Gaps in Tunisia’s Human Rights Framework on Statelessness

One significant step in changing how stateless persons are treated and how the state prevents statelessness is for states to ratify international and regional legal instruments and incorporate them into domestic law. Key commitments that Tunisia has yet to make, and their relevance to the protection of stateless persons, are described in this Section.

1. International and Regional Law

a) African Charter on the Rights of the Child

Though Tunisia is party to the two Statelessness Conventions and the Convention on the Rights of the Child, which specifically provides for a child’s right to nationality, it is not party to parallel regional instruments. Tunisia signed the African Charter on the Rights and Welfare of the Child (the African Children’s Charter) on June 16, 1995, but has yet to ratify it. Ratification of this treaty would be in line with Tunisia’s existing national legislation on children’s rights (see Section III above), and it would trigger the interpretation, expertise and monitoring of the African Committee of Experts on the Rights and Welfare of the Child’s (ACERWC). The African Children’s Charter provides in Article 6 that every child (1) shall have the right to a name from birth, (2) shall be immediately registered after birth, and (3) has the right to acquire a nationality. Paragraph 4 of Article 6 imposes obligations that go beyond the general obligation to reduce statelessness; for example, by requiring that states must include in their legislation *jus soli* acquisition of nationality for children born on a State’s territory who were not granted nationality by any other state at the time of their birth. The ACERWC expanded on Article 6 protections in its General Comment No. 2 and also interpreted the Article in the Kenyan Nubian Children case, where it stated that “being stateless as a child is generally an antithesis to the best interests of children.”²⁷⁹ The Commission interpreted Article 6(3) to mean that children should be able to

²⁷⁸ *Id.*

²⁷⁹ *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on behalf of Children of Nubian descent in Kenya v The Government of Kenya*, Decision: No 002/Com/002/2009, African Committee of Experts on the Rights and Welfare of the Child, ¶46 (Mar. 22, 2011), <https://www.refworld.org/cases.ACERWC.4f5f04492.html>.

acquire a nationality without having to wait until they are 18 years of age.²⁸⁰ In considering the difficulties in proving the risk of statelessness—that a child does not have, or will not acquire, another nationality—the Committee has also encouraged States to adopt legislation allowing a child born on a State’s territory to a parent also born on that State’s territory to acquire the nationality of the State.²⁸¹

The Committee also noted that States must not discriminate on the basis of “the child’s or his/her parents’ or legal guardians’ race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status,” as provided in Article 3 of the African Children’s Charter.²⁸² Additionally, the Commission placed importance on the acquisition of nationality by “children abandoned by their parents, or whose parents have died, or who are separated from their parents in case of war or natural disaster” not only for infants but also for older children.²⁸³ According to the Commission, changes to a parent’s nationality should only affect a child’s nationality when such changes are in the best interest of the child. When a parent acquires a new nationality through marriage and/or naturalization, so should the child. Still, when a parent loses or is deprived of their nationality, this should not affect the child’s nationality. Finally, when a parent renounces their own or their child’s nationality, the state is obligated to ensure that the child, and the parent, acquire another nationality.²⁸⁴

The Commission, while expanding on Article 6(4), relied on the UNHCR Guidelines on Statelessness to place the burden on the state in determining whether a child born on its territory would be stateless. The Commission also noted that “legal provisions for a child born in [a State’s] territory to acquire the nationality of the State if the parents are stateless” alone is not enough to meet the obligations under Article 6(4), because a child may be unable to acquire another nationality even if one or both parent(s) have a nationality, “due to discrimination against women with regard to conferral of nationality to children or limitations on conferral of nationality to children born abroad.”²⁸⁵

b) Casablanca Protocol on the Treatment of Palestinians

Tunisia is among the few League of Arab States (LAS) members that have not signed the 1965 Casablanca Protocol on the Treatment of Palestinians. The Casablanca Protocol provides specific protections for Palestinians.²⁸⁶ Adopted in 1965 to regularize the status of Palestinians, the Protocol requires Member States to afford Palestinians the same rights as nationals with

²⁸⁰ African Committee of Experts on the Rights and Welfare of the Child, General Comment 2 on Article 6 of the ACRWC: “The Right to a Name, Registration at Birth, and to Acquire a Nationality”, ¶ 91 (Apr. 16, 2014), <https://www.refworld.org/docid/54db21734.html>.

²⁸¹ *Id.* at ¶ 92.

²⁸² *Id.* at ¶ 94.

²⁸³ *Id.* at ¶ 96.

²⁸⁴ *Id.* at ¶ 98.

²⁸⁵ *Id.* at ¶ 101.

²⁸⁶ League of Arab States, Protocol for the Treatment of Palestinians in Arab States (Sept. 11, 1965) (*hereinafter* Casablanca Protocol).

regard to employment; the right to leave and return to the Member State; the right to freedom of movement among Member States; and to obtain and renew valid travel documents without delay.²⁸⁷ The LAS has adopted several resolutions governing the treatment of Palestinian refugees in LAS member states, among which is LAS Resolution 2600, which provided that states should afford dual citizenship to Palestinians, formally recognizing Palestinian nationality as fully compatible with the citizenship of the host state.²⁸⁸ As discussed above in Section II, Tunisia’s conduct regarding Palestinian refugees’ naturalization has been consistent with these provisions, and formal commitment would require little adaptation in state policy. Further, formal commitment would bind the state to settle issues relating to the right of Palestinians in Tunisia to work legally including in the liberal professions, which is a point of concern for the approximately 4000 Palestinians who reside in Tunisia today.²⁸⁹

c) International Convention on the Rights of Migrant Workers

Tunisia is not a party to the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention). Article 29 of the Convention provides that “[e]ach child of a migrant worker shall have the right to a name, to registration of birth and to a nationality,” regardless of whether the parent’s migratory status is regular or irregular.²⁹⁰ The Convention also requires that States Parties issue residency permits to regular migrants for the duration of their employment, and prohibits the revocation of this permit if the employment ends prior to the expiration of the permit.

The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (Committee on Migrant Workers or CMW), in a joint comment, Comment No. 4, with the Committee on the Rights of the Child has expanded on Article 29. Regarding the right of children of migrant workers to birth registration, the CMW noted that “[u]nregistered children are at particular risk of becoming stateless when born to parents who are in an irregular migration situation, due to barriers to acquiring nationality in the country of origin of the parents as well as to accessing birth registration and nationality at the place of their birth.”²⁹¹ The Committee has encouraged States to remove obstacles to birth registration, such as requiring parents to produce documentation regarding their migration status, and penalties for late birth

²⁸⁷ *Id.* at arts. 1-5.

²⁸⁸ League of Arab States, Res. 2600, Mar. 11, 1970 (*cited in* ABBAS SHIBLAK, THE LEAGUE OF ARAB STATES AND PALESTINIAN REFUGEES’ RESIDENCY RIGHTS 38-40, 43 (1998)).

²⁸⁹ *See* Bou Karim, *supra* note 48.

²⁹⁰ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, art. 29, Dec. 18, 1990, 2220 U.N.T.S. 2.; *see also* *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, U.N. TREATY COLLECTION, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&clang=en (last visited Apr. 22, 2023).

²⁹¹ Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, ¶20, Nov. 16, 2017, <https://www.refworld.org/docid/5a12942a2b.html>.

registration.²⁹² The Committee also stated that discrimination based on parents' migratory status in transmitting or acquiring nationality is prohibited, and that "all nationality laws should be implemented in a non-discriminatory manner, including with regard to residence status in relation to the length of residency requirements."²⁹³ The Joint Comment also made note of the particular vulnerability of children who are "undocumented, stateless, unaccompanied or separated from their families" to violence, such as neglect, abuse, kidnapping, trafficking, child labor, etc., and called on states to take specific measures to protect these children from exploitation and abuse.²⁹⁴

d) Convention on the Reduction of Statelessness

Though Tunisia is a party to the Convention on the Reduction of Statelessness, it retains its reservation 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 to the appropriate authorities," which has led to a lack of domestic legal framework for determination of statelessness and protection of stateless individuals. Tunisia has yet to withdraw its declaration retaining its right to deprive its citizens of their nationality on enumerated grounds, such as being a public servant of or a member of the armed forces of a foreign country; being convicted of a crime affecting external or internal security; engaging in acts prejudicial to Tunisian interests; being convicted of a crime carrying a sentence of five years' imprisonment. Since the 2014 Tunisian Constitution prohibits deprivation of nationality, this declaration has no real effect, which makes withdrawing it appropriate and feasible.

2. Domestic Law

a) Lack of Domestic Law on Refugees and Stateless Persons

As a result of the First Libyan Civil War of 2011 there was a large influx of displaced persons from Libya into Tunisia. After the 2010-11 revolution in Tunisia, the new Tunisian government signed a Cooperation Agreement with UNHCR on June 18, 2011, that recognized the mandate of the UNHCR in Tunisia.²⁹⁵ Soon thereafter, the democratically elected Tunisian government considered a draft domestic asylum law that would require Tunisia to be responsible for assessing and granting refugee status and provide the attendant protections. The Center for Legal and Judicial Studies of the Ministry of Justice started drafting the asylum law in 2011, resulting in two texts: a draft law incorporating the 1951 Refugee Convention into domestic law, and a draft decree setting up a "National Authority for the Protection of Refugees."²⁹⁶ The

²⁹² *Id.* at ¶ 21.

²⁹³ *Id.* at ¶ 25.

²⁹⁴ *Id.* at ¶¶ 39, 43-4.

²⁹⁵ UNHCR, Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: 3rd Cycle, 27th Session—Tunisia (Sept. 2016), <https://www.refworld.org/docid/5a12b5503.html> (*hereinafter* UNHCR 3rd UPR Submission).

²⁹⁶ *Id.*

National Authority would be responsible for assessing asylum claims, conducting the refugee status determination (RSD), providing protection and assistance to refugees, and halting RSD or revoking refugee status when necessary according to the law.²⁹⁷ The National Authority would comprise representatives from several Tunisian Ministries, the High Commission for Human Rights and Fundamental Freedoms, the Tunisian Red Crescent Society, and UNHCR.²⁹⁸ The draft law would authorize the Ministry of Interior to issue a temporary residence card of 3 months' duration to each person who applied for asylum with the National Authority, and a refugee residence card of 3 years' duration, renewable for the same period.²⁹⁹

Though the draft bill was never publicly available, IHRC informants have indicated that its Article 7 would provide protection to refugees and asylum seekers unwilling or unable to return to their country of nationality because of persecution based on race, religion, nationality, political opinion, or belonging to a particular social group.³⁰⁰ Article 7 also includes in its definition of 'refugee' "every stateless person who enters Tunisian territory and is unable or unwilling due to fear of returning to the country in which they usually reside."³⁰¹ No information is available about whether the draft law contains any provisions on acquisition of Tunisian nationality by stateless persons or naturalization of refugees who have resided in Tunisia.

In 2012 and 2014, an inter-ministerial working group and UNHCR examined and commented on the draft law and decree, and the texts were sent back to be finalized by the Center for Legal and Judicial Studies.³⁰² After finalization in 2016, the bill was sent to the Prime Minister's office.³⁰³ The bill has yet to become law. IHRC informants expressed that Tunisian authorities have stalled its passage due to concern that having a domestic law in place would allow Tunisia to be designated a "safe third country," and asylum seekers and refugees in Europe would be sent back to Tunisia.³⁰⁴

The lack of a domestic law means, among other things, that refugees are unable to get residence permits, and face difficulties in getting formal employment.³⁰⁵ The lack of a domestic law incorporating a definition of, and protections for, stateless persons means that stateless individuals and communities, such as the Tuareg, are left without adequate protection (discussed further in Section V *infra*). Though the term 'stateless' is mentioned in Article 8 of the Nationality Code and in Article 25 of the 1975 law relating to passports and travel documents, it is not defined anywhere in domestic law. Without a domestic legal definition and a procedure to

²⁹⁷ UNHCR, Refugee Protection Law Project Bill, Presentation (on file with author) (translated from Arabic).

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² UNHCR 3rd UPR Submission, *supra* note 295.

³⁰³ *Id.*

³⁰⁴ Interview with Hasna Ben Slimane, Former Minister to the Head of Gov't on charge of Civ. Serv. in Tunis. (Nov. 10, 2021); interview with UNHCR, *supra* note 209; written response from Monia Ben Jemia (Apr. 1, 2022) (on file with author).

³⁰⁵ UNHCR 3rd UPR Submission, *supra* note 295.

determine statelessness, the two references to the term “stateless” are unclear, as the beneficiaries of these provisions cannot be readily identified.³⁰⁶

b) Inadequate Protections for Vulnerable Migrants

Tunisia’s legal framework on migration is inadequate on several fronts. The fact that stateless persons are subject to the Law No. 68-7 of March 8, 1968 that governs the entry and stay of foreigners inevitably creates gaps for the protection of stateless persons. The laws governing migration are focused on protecting Tunisia’s external and internal security and fall short of protecting the human rights of migrants.³⁰⁷ Individuals who assist with the irregular entry into or exit of people from Tunisia are penalized, and those with knowledge of such practices are required to report to the Tunisian authorities—even lawyers and medical practitioners whose clients or patients may be irregular migrants. Migrants who enter Tunisia legally, such as through a visa-free regime, but then lose status when their residency permit expires may, under the law, regularize their status, such as by enrolling as a student at a Tunisian university. No regularization pathway exists for migrants who entered Tunisia without inspection and proper documentation. Nor are irregular migrants protected by labor laws. Employment contracts of irregular migrants have been deemed null and void by the Tunisian Court of Appeal (*la Cour de Cassation*) in decisions in 1998 and 2005.³⁰⁸

B. Barriers to Nationality that Risk Statelessness

This section provides an overview of provisions in Tunisian law which create a risk of statelessness or an unfavorable protection environment for stateless persons in Tunisia. There are numerous legal barriers to successfully acquiring or transmitting Tunisian nationality, and to regularizing legal status.

1. Barriers in Application of the Nationality Code

a) Lack of Compliance with the 1961 Convention

Article 25 of the 2014 Tunisian Constitution prohibits the deprivation of nationality.³⁰⁹ It states that “[n]o citizen shall be deprived of their nationality, exiled, extradited or prevented from returning to their country.”³¹⁰ There is growing international consensus that the deprivation of

³⁰⁶ AIHR STATELESSNESS STUDY, *supra* note 5, at 59; Interview with Yasmin Houamed, *supra* note 62.

³⁰⁷ Monia Ben Jemia, *La Répression Des Migrations Clandestines En Tunisie*, in *LE MAGHREB À L'ÉPREUVE DES MIGRATIONS SUBSAHARIENNES* 275 (Ali Bensaâd ed., 2009) (translated from French).

³⁰⁸ *Id.*

³⁰⁹ CONSTITUTION OF 2014, *supra* note 61, at art. 25.

³¹⁰ *Id.*

nationality should be avoided where it would result in statelessness.³¹¹ The Tunisian Nationality Code, however, still contains a provision allowing withdrawal of Tunisian Nationality.³¹² Chapter 3 of the Nationality Code (including Articles 30-33) outlines ways in which a Tunisian may lose his or her nationality. Articles 31-33 plainly contradict the Tunisian Constitution.

Article 32 provides that a Tunisian national “shall lose his Tunisian nationality” if he or she provides certain services to a foreign state, and Article 33 sets forth additional ways in which a Tunisian national may be deprived of his or her nationality. For example, an individual can lose Tunisian nationality by committing a crime against the state, threatening national security, or failing to fulfill military obligations. Article 31 is discussed further below as a gender-discriminatory provision of Tunisia’s nationality code, but a brief mention is necessary here because it allows certain Tunisian women married to men who lost their Tunisian nationality under Articles 32-33 to be deprived of their nationality.

To date, no reform of the Nationality Code has been initiated to harmonize it with Article 25 of the Constitution. One reason preventing reform may be the lack of clarity in interpretation of Article 25. Monia Ben Jemia, a Tunisian constitutional law expert, noted that it remains unclear if Article 25 prohibits only the loss of Tunisian nationality, or also the forfeiture—with “loss” referring to the deprivation of one’s nationality of *origin*, and “forfeiture” referring to the deprivation of Tunisian nationality by *acquisition* (either by way of naturalization or declaration).³¹³ Without clarifying what Article 25 of the Constitution really prohibits, it remains unclear which provisions of the Nationality Code must be changed, and in what ways, to be constitutional. As discussed above in Section II.A., without a functioning Constitutional Court, the necessary change is impossible.

The text of the Tunisian Nationality Code also contravenes Tunisia’s obligations under international law. Most notably, the Tunisian Nationality Code appears to violate the 1961 Statelessness Convention, to which Tunisia is a party.³¹⁴ Article I(1) of the 1961 Convention says “[a] Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless.”³¹⁵ At first glance, it seems that Tunisia’s Nationality Code does just that. Article 8 says that “the child born in Tunisia to stateless parents residing in Tunisia for at least five years” is Tunisian.³¹⁶ Setting aside that Tunisia’s domestic legal framework lacks a formal definition of “statelessness”³¹⁷ and formal statelessness determination procedures, Article 8, as written, does not incorporate the full scope of Tunisia’s legal obligations under the Convention. Instead of automatically granting nationality to children born in Tunisia who would otherwise be stateless (as recommended in the 1961 Convention), Tunisia’s Nationality Code contains an

³¹¹ LEAGUE OF ARAB STATES, REGIONAL TOOLKIT ON NATIONALITY LEGISLATION 37 (May 2021), <https://reliefweb.int/report/world/regional-toolkit-nationality-legislation-enar> (hereinafter LAS REGIONAL TOOLKIT).

³¹² NATIONALITY CODE, *supra* note 4, at ch.3.

³¹³ Written response from Monia Ben Jemia, *supra* note 307.

³¹⁴ See *supra* notes 117-136 and Part III.A.1. on the international law on the Right to Nationality.

³¹⁵ 1961 Statelessness Convention, *supra* note 2, at art. I(1).

³¹⁶ NATIONALITY CODE, *supra* note 4, at art. 8.

³¹⁷ See *infra* Part IV(B)(1)(b) Article 8 Provides Inadequate Protection Against Statelessness.

explicit barrier: the 5-year legal residency requirement for the child’s parents.³¹⁸ Though the length of the residence requirement is in line with international standards, the imposition of a requirement for legal (documented) residence runs afoul of the Convention.³¹⁹

b) Inadequate Protection Against Statelessness

Under Article 8 of the Nationality Code, a child is Tunisian if he or she is “born in Tunisia to stateless parents [who have been] residing in Tunisia for at least five years.”³²⁰ This provision is intended to protect against statelessness in line with Tunisia’s international obligations under the CRC, ICCPR, and 1961 Statelessness Convention. However, by failing to define and provide guidance on the key terms in Article 8, Tunisia has passed a provision that appears impossible to implement. While it is significant that Tunisia includes explicit safeguards against statelessness in its Nationality Code, the conditions of obtaining Tunisian nationality in Article 8 are too restrictive to fully implement Tunisia’s international obligations.³²¹

The text of Article 8 uses the term “stateless,” which is undefined in Tunisia’s domestic law. Article 8 illustrates that by leaving statelessness undefined and failing to carry out formal statelessness determination procedures, Tunisia has rendered laws intended to protect this vulnerable group without practical effect. Without a definition of “statelessness,” the group of persons to which Article 8 applies remains ambiguous, meaning that the Article itself cannot be relied on by stateless individuals, nor can it be an effective way to combat statelessness.

Further, Article 8’s requirement of *legal* residence violates Tunisia’s obligations under the 1961 Statelessness Convention and makes it difficult for children of irregular stateless migrants to obtain nationality.³²² Article 28 of the Nationality Code specifies that “the residence provided for in Articles 8, 14, 20, and 21 above must comply with the law.”³²³ This requirement is contrary to UNHCR’s “Guidelines on Statelessness No.4: Ensuring Every Child’s Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness.”³²⁴ These Guidelines clarify that nationality should be granted to those who would otherwise be stateless if they can show “habitual residence in the Contracting State for a fixed period, not exceeding five years.” Under the Guidelines, the term “habitual residence” found in

³¹⁸ NATIONALITY CODE, *supra* note 4, at art. 8.

³¹⁹ See Convention on the Rights of the Child, *supra* note 142, at arts. 3,7 (suggesting that granting nationality automatically at birth or upon application after birth is preferred).

³²⁰ NATIONALITY CODE, *supra* note 4, at art. 8.

³²¹ See Interview with Yasmin Houamed, Ed. in Chief, Broudou Mag., *supra* note 62 (mentioning that according to the Nationality Code, if one is stateless and residing in Tunisia for five years, one should acquire Tunisian nationality, but nowhere is there a definition of “stateless”); see also Interview with IOM, *supra* note 200 (noting that there is no specific legislation on “statelessness” that recognizes stateless persons with a specific protected status).

³²² NATIONALITY CODE, *supra* note 4, at art. 28.

³²³ *Id.*

³²⁴ UNHCR, Guidelines on Statelessness No. 4: Ensuring Every Child’s Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, HCR/GS/12/04, Dec. 12, 2012, <https://www.refworld.org/pdfid/50d460c72.pdf>.

the 1961 Convention is to be understood as stable, factual residence, and does not imply legal or formal residence.³²⁵ The Guidelines base this on the 1961 Convention which “does not permit Contracting States to make an application for the acquisition of nationality by individuals who would otherwise be stateless conditional upon lawful residence.”

If a child’s parents have been in Tunisia for five years without legal status, that child would likely not qualify for Tunisian nationality under Article 8, even though he or she is at risk of statelessness. In fact, if the residence contemplated is as described in the 1968 Law, even recognized stateless refugees who have validly resided in Tunisia may have difficulty establishing that their child qualifies for Tunisian citizenship.³²⁶

Article 8 also runs afoul of the 1961 Convention in requiring that a child’s parents be stateless, as opposed to simply unable to transmit their nationality. The 1961 Convention states that “[a] Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless.”³²⁷ A plain reading indicates that States Parties like Tunisia should grant nationality to children who would otherwise be without one, irrespective of the nationality status of their parents. Tunisia’s requirement that *both* parents be “stateless” and “residing” in Tunisia for a five-year period is an explicit barrier in Tunisia’s domestic legal that prevents certain newborns from acquiring Tunisian nationality at birth.

This provision fails to address the statelessness of children born to refugees in Tunisia. While recognized refugees under the 1951 Convention in Tunisia may have access to their nationality documents for a time, their ability to renew them, or to register the birth of their child, may require them to engage with the authorities of the country they are fleeing. If a child is born to two refugees while they still have the theoretical ability to exercise their nationality rights, this may bar their child’s ability to obtain Tunisian nationality. Even if engaging with the consular post of the country of origin is not an issue, registering a birth abroad often requires producing several documents, many of which asylum seekers and refugees do not possess.³²⁸ The child in this scenario is likely to remain without a nationality for some time—yet, because the acquisition of a Tunisian nationality through Article 8 is contingent on the *parents’ status*, rather than the child’s risk of becoming stateless, it creates an unnecessary barrier to obtaining nationality.

³²⁵ *Id.*

³²⁶ The question of whether refugee residence permits issued by UNHCR can qualify as meeting the “legal residence” requirement under Article 8 has apparently not been tested in the courts. Terre d’Asile Tunisia is contemplating bringing such a case. Interview with Terre d’Asile Tunisie, (June 22, 2022).

³²⁷ 1961 Statelessness Convention, *supra* note 2, at art. I(1).

³²⁸ See *infra* Part IV (B)(2) Barriers to Birth Registration.

c) Discrimination Against Women Despite 2010 Amendment

Since its independence, Tunisia has stood out in the region for its egalitarian personal status code, which endows women with rights often absent in other countries in the MENA.³²⁹ The rise of women's rights in Tunisia occurred in two waves. The first wave followed Tunisia's independence in 1956 and sought reform primarily by "top-down policies" like the Tunisian Code of Personal Status.³³⁰ The second wave of reforms began in the 1990s, owing to the perseverance and growth of Tunisian women's groups.³³¹ One of the notable outcomes of this second wave was the Tunisian government's 2010 Amendment to the Nationality Code. Civil society organizations and activists in Tunisia advocated heavily for the amendment, which provides Tunisian mothers with the right to automatically confer their citizenship to their children.³³²

The 2010 Amendment was a stride towards gender equality in Tunisia's domestic legal framework on nationality. As discussed in section II.B. above, the new Article 6 provides that a child born to a Tunisian mother is Tunisian—regardless of whether the child is born in Tunisia or abroad, and regardless of the nationality of the child's father.³³³ Even with the 2010 Amendment, some gaps remain in ensuring that Tunisia's Nationality Code is gender equal.³³⁴

(1) Deficiencies in Law No. 2010-5

The 2010 amendment of the Nationality Code provides that Tunisian mothers can *automatically* give their citizenship to their children—no declaration is needed.³³⁵ Unfortunately, however, the impact of Article 6's predecessor, Article 12, continues to affect the right of adult children of Tunisian mothers born abroad to secure their Tunisian nationality.

The 2010 Amendment applied to children of Tunisian mothers not yet born, as well as those born before 2010, who were *still minors* at the time of the amendment.³³⁶ Children in

³²⁹ Eur. Parl. Directorate International Policies, *Gender equality policy in Tunisia: Briefing Note*, PE 462.502, at 4 (Oct. 2012), [https://www.europarl.europa.eu/RegData/etudes/note/join/2012/462502/IPOL-FEMM_NT\(2012\)462502_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/note/join/2012/462502/IPOL-FEMM_NT(2012)462502_EN.pdf); Voorhoeve, *supra* note 44.

³³⁰ *Id.* The Code of Personal Status contributed to a re-interpretation of Islamic laws, and to Tunisia's move towards gender equality through reform in areas like marriage, divorce, inheritance, alimony, child custody, and adoption. *Id.* For a more complete discussion of how Tunisia's Code of Personal Status both prompted and contributed to the country's moves towards gender equality in the law, see Rayed Khedher, *Tracing the Development of the Tunisian 1956 Code of Personal Status*, 18 J. INT'L WOMEN'S STUD. 30 (2017).

³³¹ Eur. Parl. Directorate International Policies, *supra* note 319.

³³² Interview with Hasna Ben Slimane, *supra* note 304.

³³³ See *supra* Part III for a description of Article 6 and Tunisia's Nationality Code as a whole.

³³⁴ Tunisian Association of Democratic Women, *Rapport Alternatif au Septième Rapport National de l'état Tunisien sur l'application de la CEDAW en Tunisie* (Alternative Report to the 7th National Report of the Tunisian State on the Implementation of CEDAW in Tunisia), at ¶ 11 (June 7, 2021), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fCSS%2fTUN%2f45040&Lang=en.

³³⁵ Interview with Yosr Lourimi, Tunisian Lawyer, Ordre National Des Avocats de Tunisie (Jan. 30, 2022); Interview with Hasna Ben Slimane, *supra* note 304; see also *supra* Part III.

³³⁶ Interview with Hasna Ben Slimane, *id.*

those groups obtained automatic conferral of Tunisian citizenship through their mothers.³³⁷ Children born to Tunisian mothers who were eighteen years or older at the time of the Amendment were not given equal access to nationality. The amending statute, in Article 4 of Law No. 2010-55, provides that the child born outside Tunisia of a Tunisian mother and a foreign father and who has reached the age of majority may claim Tunisian nationality by declaration during the year following the entry into force of this law. Their Tunisian nationality is recorded as of the date of their declaration, as opposed to from birth, leaving them on an unequal footing from children born to Tunisian fathers.³³⁸

After the Amendment was implemented, those individuals born on or before December 1, 1992 who were unable to acquire their Tunisian mother's nationality at birth were allotted 1 year to declare their entitlement to Tunisian citizenship.³³⁹ Anyone who did not learn about the 2010 Amendment and the 1-year deadline likely missed the opportunity to register his Tunisian nationality.³⁴⁰ Tunisian attorneys and academics indicated that many persons who had reached the age of majority and were eligible to claim Tunisian nationality during this 1-year period are still without it due to lack of information about the 2010 Nationality Code Amendment and 1-year filing deadline.³⁴¹ Until all those entitled to claim Tunisian nationality are able to do so, the Tunisian government's repeal of Article 12 and adoption of Article 6 is an incomplete solution.

(2) No *Jus Soli* for Descendants of Women Born in Tunisia

Article 7, like Article 8, deals with the acquisition of nationality through birth in Tunisia. Article 7 allows Tunisian nationality through what is known as “double *jus soli*,” or the condition that one's father and grandfather were born in Tunisia.³⁴² This provision selectively excludes women born in Tunisia from passing nationality to their children. The language of Article 7 is clearly gendered, preventing the acquisition of Tunisian nationality to children born to women who are residing in Tunisia but have not been naturalized.³⁴³

This Article seems to counter the purpose of the 2010 Amendment to the Nationality Code discussed above. Article 7, like Article 8, falls short of Tunisia's obligations under the

³³⁷ *Id.*

³³⁸ Loi 2010-55 du 1er décembre 2010, modifiant certaines dispositions du code de la nationalité tunisienne, art. 4 (Law 2010-55 of December 1, 2010, amending certain provisions of the Tunisian Nationality Code).

³³⁹ Interview with Yasmin Houamed, *supra* note 62; Interview with Yosr Lourimi, *supra* note 335.

³⁴⁰ Interview with Yasmin Houamed, *supra* note 62 (noting that only 822 adults who were concerned by Article 12—born abroad to a Tunisian mother and non-Tunisian father—filed for nationality within the 1-year deadline).

³⁴¹ Interview with Hasna Ben Slimane, *supra* note 304; Interview with Yosr Lourimi, *supra* note 335; Interview with Yasmin Houamed, *id.*

³⁴² For explanation of double *jus soli* and its spread, see Graziella Bertocchi & Chiara Strozzi, *Citizenship at Birth in the World*, 21 CESIFO FORUM 3, 3-7 (2020).

³⁴³ See *infra* a discussion of the barriers to becoming naturalized in Tunisia; Interview with UNHCR, *supra* note 209 (identifying Article 7 as a “gap” in Tunisia's nationality law that goes against Tunisia's obligations under the international conventions it has ratified).

CRC’s Article 7, and Article 24 of the ICCPR, that require states to eliminate statelessness at birth in all cases.³⁴⁴

(3) Gender Inequality in Nationality by Marriage

As discussed, under Tunisian law men and women are treated differently regarding their ability to pass Tunisian nationality to a foreign spouse. Article 13 of the Nationality Code permits a Tunisian man who marries a foreign woman to automatically confer his Tunisian nationality to her, if the laws of her country of origin would revoke her nationality because of the marriage.³⁴⁵ Women acquiring Tunisian nationality this way acquire Tunisian nationality by operation of law.³⁴⁶

Nothing in Tunisian law allows Tunisian women to pass their nationality to their spouse—even if the non-Tunisian man marrying a Tunisian woman has no nationality.³⁴⁷ A Tunisian woman hoping to confer her nationality to her foreign husband must do so by naturalization, which requires a presidential decree.³⁴⁸ While non-Tunisian men in this circumstance do not need to meet the five-year residency requirement imposed by Article 20, securing a decree of naturalization is not simple.³⁴⁹ The naturalization of foreign men marrying Tunisian women involves opening an investigation into the foreigner.³⁵⁰ The investigation imposes almost all of the same conditions that are required for regular naturalization except the five-year residency requirement.³⁵¹ Thus, for naturalization to be granted, the foreign man marrying a Tunisian woman must (1) be more than 18 years old, (2) know Arabic, (3) be in good mental and physical health, and (4) have a clean criminal record.³⁵²

So long as these conditions are met by the foreign man, there is no reason for his application to be denied.³⁵³ However, according to experts, in contrast to the conferral of Tunisian nationality from a Tunisian man to his foreign wife, “if it is the man who is married to [a Tunisian] woman, [Tunisian nationality] is particularly difficult to achieve.”³⁵⁴ UNHCR affirmed that, though in theory, husbands should be able to acquire Tunisian nationality through their spouse, in practice, it does not happen.³⁵⁵ Like Article 7, this part of the Tunisian Nationality Code contradicts the spirit of Article 6. Human rights attorney Omar Fassatoui said

³⁴⁴ LAS REGIONAL TOOLKIT, *supra* note 311, at 18.

³⁴⁵ NATIONALITY CODE, *supra* note 4, at art. 13.

³⁴⁶ *Id.*

³⁴⁷ Interview with Hasna Ben Slimane, *supra* note 304.

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ Interview with Yosr Lourimi, *supra* note 335.

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ Interview with IOM, *supra* note 200.

³⁵⁵ Interview with UNHCR, *supra* note 209.

that “it’s very easy for a Tunisian mother to give her nationality to her kids, but not her husband.”³⁵⁶

The discriminatory nature of this provision has been brought to the attention of the Tunisian government by human rights organs such as the CEDAW Committee.³⁵⁷

d) Derivative Deprivation of Nationality

Two articles in the Tunisian Nationality Code allow for the deprivation or loss of a Tunisian *woman’s* nationality: Article 16 and Article 31.

Article 16 states that a woman who acquired Tunisian nationality by marrying a Tunisian man will no longer have Tunisian nationality if that marriage is subsequently declared void.³⁵⁸ Though implementation of this Article is presumably rare, since it requires a finding that the marriage was a nullity from the beginning, a Tunisian attorney noted that this can create a risk of statelessness in cases where the woman’s country of origin does not permit her to regain her nationality.³⁵⁹

Article 31 allows a woman and her unmarried minor children to lose their Tunisian nationality when her husband is deprived of his—a provision which is inconsistent with the Constitution.³⁶⁰ Article 31 on its own does not raise the risk of statelessness because it conditions the deprivation of a wife and child’s nationality on their having another nationality. Even so, Article 31 is important to note because it represents the gendered provisions of the Tunisian Nationality Code. A Tunisian man can only be deprived of his nationality if his own conduct brings him within the purview of Articles 32-33. A Tunisian woman, on the other hand, can lose her nationality if it has been withdrawn from her or her husband.³⁶¹

e) Discrimination Against Migrants & Refugees

The Tunisian Nationality Code includes several barriers to the acquisition of Tunisian nationality by migrants and refugees. As this report has highlighted, Tunisia has evolved from a country that migrants predominantly transit to one of destination for migrants.³⁶² In 2019, the number of international migrants in Tunisia reached 57,445.³⁶³ In recent years, unstable political and economic conditions in Libya have also driven up the number of persons coming to Tunisia

³⁵⁶ Interview with Omar Fassatoui, *supra* note 252.

³⁵⁷ Committee on the Elimination of Discrimination against Women, Concluding observations: Tunisia, ¶ 58, CEDAW/THC/TUN/CO/6, Nov. 5, 2010.

³⁵⁸ NATIONALITY CODE, *supra* note 4, at art. 16.

³⁵⁹ Interview with Yosr Lourimi, *supra* note 335.

³⁶⁰ NATIONALITY CODE, *supra* note 4, at art. 31. Note that both the 2022 Constitution at Article 31 and the 2014 Constitution at Article 25 prohibit the stripping of nationality.

³⁶¹ Written responses from Monia Ben Jemia, *supra* note 307.

³⁶² Migrants Refugees, *supra* note 6 (stating that “[b]etween 2004 and 2014, the number of non-Tunisian nationals residing in Tunisia rose by 66%, from 35,192 to 53,490 individuals”).

³⁶³ GLOBAL DETENTION PROJECT, TUNISIA IMMIGRATION DETENTION DATA PROFILE (2020), <https://www.globaldetentionproject.org/wp-content/uploads/2020/12/Tunisia-Detention-Data-Profile-2020.pdf>.

to seek refuge.³⁶⁴ Despite Tunisia’s changing identity to a place where migrants and refugees settle, Tunisian law remains a nearly complete barrier to naturalization for most migrants.

The Tunisian Nationality Code sets forth four requirements for naturalization, two of which present extreme difficulties for refugees and migrants.³⁶⁵ The first requirement stipulates that the applicant must have resided lawfully in Tunisia for at least five years.³⁶⁶ The fact that “legal residence” is required for naturalization means that migrants out of legal status are *by law* barred from becoming naturalized—unless they apply for and are granted asylum in Tunisia.³⁶⁷

The second requirement is set forth in Article 23(2) stipulating that an applicant for naturalization must have sufficient knowledge of Arabic.³⁶⁸ Language requirements are included in many countries’ naturalization provisions; this becomes problematic, however, if language requirements have a disparate impact across racial groups. In the Tunisian context, for example, showing proficiency in Arabic is much easier for an Algerian or Moroccan migrant than, say, a native speaker of French.³⁶⁹ It is important to note that this language requirement in Article 23(2) also impacts non-Tunisian men’s ability to acquire Tunisian nationality by marriage. As discussed *supra*, foreign men marrying non-Tunisian women must still meet each requirement for naturalization other than the five-year residency requirement.

2. Barriers to Birth Registration

Birth registration is a critical step in the prevention of statelessness because a legal record of where and to whom someone was born serves as a prerequisite for obtaining nationality documents.³⁷⁰ The birth registration process in Tunisia has two barriers that prevent registration by certain vulnerable groups—namely, migrants, refugees, and single mothers. These legal barriers are (1) the 10-day deadline, and (2) Law No. 98-75 and its implementation as reported by those registering within the 10-day deadline.

a) The 10-day Deadline and Late Birth Registration

Article 22 of Tunisia’s Civil Status Code says that a child’s birth must be registered within ten days. The 10-day limit was repeatedly brought up in conversations over the course of

³⁶⁴ INTERNATIONAL ORGANIZATION FOR MIGRATION, *supra* note 86, at 2.

³⁶⁵ For the relevant provisions, NATIONALITY CODE, *supra* note 4, at arts. 20-23.

³⁶⁶ NATIONALITY CODE, *supra* note 4, at art. 20.

³⁶⁷ Written responses from Monia Ben Jemia, *supra* note 307.

³⁶⁸ NATIONALITY CODE, *supra* note 4, at art. 23(2).

³⁶⁹ The League of Arab States Regional toolkit states that laws governing naturalization must not be discriminatory, and specifies certain grounds for discrimination that are prohibited, such as race and language. LAS REGIONAL TOOLKIT, *supra* note 311, at 31.

³⁷⁰ Leah Selim, *What is birth registration and why does it matter?*, UNICEF (Dec. 10, 2019), <https://www.unicef.org/stories/what-birth-registration-and-why-does-it-matter>.

this research,³⁷¹ because it is a very short timeframe following birth, and because the option available to those who miss the deadline is highly cumbersome.³⁷²

Article 23 of the Civil Status Code outlines the process for late birth registration.³⁷³ Late birth registration is a judicial process that requires a decision “rendered by the President of the Court of First Instance in the jurisdiction [where] the child was born.”³⁷⁴ The petitioner must compile and prepare documents that include the child’s birth declaration form obtained from the hospital, or a sworn statement of birth, as well as identity documents for the mother and father, if he is present.³⁷⁵ The demand for multiple documents has been identified as a significant barrier to successful birth registration in other countries.³⁷⁶ Requiring parents to present unexpired documents often creates an insurmountable obstacle--especially for migrants and refugees without access to their countries’ consular offices.

The 10-day deadline is inconsistent with Tunisia’s obligations under international law. Tunisia is obliged under the CRC and ICCPR to register all births that occur in its territory.³⁷⁷ Without expressly preventing certain births from being registered, the 10-day deadline imposes a barrier for many who otherwise are entitled to registration in Tunisia.

b) Birth Registration Requirements for Single Mothers

Law No. 98-75, incorporated in Tunisia’s Personal Status Code, is another legal barrier to nationality. The provision affects the rights of single mothers wishing to register the births of their children by providing that they cannot automatically establish filiation upon the child’s birth.³⁷⁸ Within six months of giving birth, single mothers must petition the Court of First Instance to assign the newborn his or her mother’s surname and be properly registered.³⁷⁹

According to one attorney, the court procedure for single mothers is known as “virtual birth registration.”³⁸⁰ Petitioning the courts for “virtual birth registration” may occur in two

³⁷¹ See Interview with IOM, *supra* note 200 (noting that Tunisia’s birth registration process is particularly arduous due to its requirement of a series of steps to be followed in a particular order, within a 10-day deadline).

³⁷² This is especially the case where there are complications at birth that incapacitate the mother and require extended hospital stay. The 10-day deadline could be compared to Morocco’s 30-day deadline, and Egypt’s 15-day deadline, which have been noted as unreasonable requirements by the LSE Middle East Center. Bronwen Manby, *Preventing Statelessness among Migrants and Refugees: Birth Registration and Consular Assistance in Egypt and Morocco*, 27 LSE MIDDLE EAST CENTRE 21 (2019).

³⁷³ Civil Status Code, *supra* note 204, at art. 23.

³⁷⁴ *Id.*

³⁷⁵ Azaiz Sammoud, Written Correspondence with IHRC (Mar. 14, 2022).

³⁷⁶ Manby, *supra* note 364, at 9.

³⁷⁷ See Convention on the Rights of the Child, *supra* note 136, at art. 7(1), 8(1); ICCPR, *supra* note 131, at art. 24(2).

³⁷⁸ British Embassy Tunis, Tunisian Family Law, at 12, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/797548/Tunisian_Family_Law_-_Print_Version_Fiknal_Document.pdf (stating that “[f]iliation is not established in case of denial of a child of a married woman whose non-cohabitation with the husband has been proved, or of a child birthed by a married woman one year after the absence or death of her husband or the date of divorce”).

³⁷⁹ Law 98-75, *supra* note 215.

³⁸⁰ Interview with Faten Ben Lamine, Tunisian attorney (Mar. 28, 2022).

ways. These are discussed more fully *infra*, but for purposes of this section, it is important to note that Law 98-75 imposes unequal and unduly burdensome procedures to the birth registration process for single mothers, meaning that children born to single women may be more vulnerable to lacking birth registration, and, in turn, may be at a heightened risk of statelessness.

This provision is inconsistent with Tunisia’s international legal obligations. The CRC stipulates that children are to enjoy all rights contained in the Convention, without regard to their parents’ “race, colour, sex, language . . . or other status.”³⁸¹ Law No. 98-75 makes birth registration more difficult for children born to single mothers or mothers out of wedlock -- a clear differentiation in rights based on parents’ status.

3. Barriers in the Laws Governing Migration

Certain provisions of the 1968 Law Governing the Entry and Stay of Foreigners in Tunisia and the 2016 Anti-Trafficking Law could result in statelessness or exacerbate the risk of losing one’s nationality. The 1968 law contains highly restrictive conditions for obtaining a residence permit, and criminalizes illegal stay or entry without providing exceptions for humanitarian cases. For its part, the 2016 Anti-Trafficking law is silent on protections for those trafficked persons who are stateless or without proof of nationality.

a) Criminalization of Migration

Tunisia’s changing identity from a “transit zone” to a destination country renders the 1968 law governing the entry and stay of foreigners largely outdated.³⁸² It creates very narrow categories of “legal” migrants and inflicts criminal penalties on those who fall outside of these categories. This poses serious barriers to regularization of status for vulnerable migrants who may fall out of lawful status through no fault of their own. The absence of humanitarian migration statuses in the legal framework can lead to additional violations of the human rights of stateless persons.

A foreigner who wishes to lawfully remain in Tunisia for more than three months must have a residence visa.³⁸³ Law 68-7 together with its implementing regulation, Decree No. 68-198, provides for two categories of residence visas--an ordinary residence visa and a temporary residence visa.³⁸⁴ Neither is available to persons who entered without a valid visa or visa exemption. Ordinary residence visas are available for four narrow groups of foreigners described above in Section III.4.a.³⁸⁵ Temporary residence visas are granted to foreigners who can specify their reasons for being in Tunisia, and upon proof that such foreigners have the resources to

³⁸¹ UNHCR, *Child protection Issue Brief: Birth Registration*, (Aug. 2013), <http://www.refworld.org/docid/523fe9214.html>.

³⁸² Interview with Terre d’Asile, *supra* note 326; Interview with Representatives of the Arab Institute for Human Rights (AIHR) (Jan. 27, 2022).

³⁸³ Decree 68-198, *supra* note 218, at arts. 6-8.

³⁸⁴ Law 68-7, *supra* note 217; Decree 68-198, *id.*

³⁸⁵ Law 68-7, *id.* at art. 13.

support themselves in Tunisia.³⁸⁶ Migrants whose application for an ordinary residence visa is rejected may, be issued temporary residence visas under the law.

Migrants who stay in Tunisia irregularly—including without a valid visa—are subject to criminal penalty. A migrant may be liable for up to one year of imprisonment and fined up to 120 dinars if he or she does not apply for and obtain the appropriate residence visa.³⁸⁷ A migrant who applies for and is denied a visa must leave the country or risk expulsion by the Director General of National Security.³⁸⁸

The number of irregular, criminalized migrants in Tunisia is rising.³⁸⁹ In the spring of 2020, Tunisia saw an increase in arrivals from Algeria, followed by an increase in arrests of nationals from Côte d'Ivoire, Senegal, Guinea, and Somalia.³⁹⁰ The law thus criminalizes any stateless migrant who does not fit one of the narrow categories listed in Article 13 of Law 68-7. Even if she has been lucky enough to enter lawfully but is then denied a residence permit, she has no choice but to either stay in Tunisia illegally or risk being arrested at the border when leaving the country outside of the permitted border crossings.³⁹¹

b) Inadequate Human Trafficking Laws that Risk Statelessness

As discussed above, the nexus between human trafficking and statelessness is bidirectional: stateless persons are at a heightened risk of being trafficked, and trafficked persons are at a heightened risk of becoming stateless. Unfortunately, Tunisia's legal framework does little to prevent or protect against either of these correlations.

Stateless persons are vulnerable to being trafficked due to the “precariousness of their situation.”³⁹² As discussed above, Tunisia's legal framework does not have a straightforward path for foreigners to become naturalized,³⁹³ or to regularize their status in Tunisia.³⁹⁴ Instead, the many legal barriers in Articles 20-23 of the Tunisian Nationality Code make it nearly

³⁸⁶ Decree 68-198, *supra* note 218, at art. 13.

³⁸⁷ Law 68-7, *id.* at art. 23.

³⁸⁸ Decree 68-198, *supra* note 218, at art. 14.

³⁸⁹ MATT HERBET, LOSING HOPE: WHY TUNISIANS ARE LEADING THE SURGE IN IRREGULAR MIGRATION TO EUROPE (2022), https://globalinitiative.net/wp-content/uploads/2022/01/GI-TOC-Losing-Hope_Tunisia-Report-2021.pdf (noting that economic hardship in sub-Saharan countries has prompted an influx of migration to Tunisia)

³⁹⁰ *Id.*

³⁹¹ *Id.* (“In early 2020, however, the gradual rise in irregular migration from Tunisia spiked. Between January and December, Tunisian defense and security forces intercepted 11,789 irregular migrants attempting to depart from the country's shoreline. The surge continued to accelerate in 2021, with 23,251 interceptions recorded between January and mid-December. These arrest levels are starkly higher than 2019, when 4,795 people were intercepted, and significantly exceed those recorded in the country at any point in the past decade.”)

³⁹² UNHCR, *Trafficking in Persons*, <https://www.unhcr.org/en-us/human-trafficking.html> (last visited March 2023) (“When people are forced to flee, they leave behind more than just their homes. Being away from their familiar surroundings, they often lose their community support networks and end up being socially and culturally isolated. They lack access to basic resources and livelihood opportunities. Depending on where they flee to, they may lack a regular status. These and other factors contribute to making refugees and other forcibly displaced people an easy target for traffickers, who prey on the precariousness of their situation to exploit them.”).

³⁹³ See *supra* Part IV(B)(1)(e) for section on discrimination against migrants & refugees in the nationality code.

³⁹⁴ See *supra* Part IV(B)(3)(a) for section discussing difficulties in obtaining residence permits for migrants.

impossible to become naturalized in the country. Tunisia’s laws governing migration block most migrants from obtaining residence permits and criminalize those who remain in Tunisia irregularly. Migrants in Tunisia are thus left particularly vulnerable to trafficking. The 2021 Trafficking in Persons Report on Tunisia by the U.S. Department of State noted that those “surpassing the validity of their visa[s]” were in an “exploitative situation” in Tunisia and that “irregular migrants were [particularly] vulnerable to trafficking.”³⁹⁵

The 2016 Organic Law No. 2016-61 on the Prevention and Fight against Human Trafficking, as written, is inadequate to prevent statelessness among trafficking victims. Article 61 of the law calls on the National Body for Combatting Trafficking in Persons to help victims “regularize their situation and obtain appropriate compensation for damage suffered.”³⁹⁶ There is no specification of what “regularization” in this context means. More importantly, the law does not grant victims of trafficking who would otherwise be stateless the right to become naturalized in Tunisia.³⁹⁷

V. Impact of Gaps in Tunisia’s Laws on Vulnerable Groups

This section assesses the consequences of the implementation of the governing nationality and migration laws, and how this implementation (or lack thereof) affects groups vulnerable to statelessness in Tunisia.

A. Lack of Regulations and Transparency in Application of the Nationality Code

The Nationality Code, as discussed above in Section IV.B.1.c, establishes the general parameters of how Tunisian nationality is acquired, but many procedural gaps remain, and the text lacks information about the work of institutions involved in the process. No administrative regulations have been issued to spell out procedures.³⁹⁸ The law’s vagueness and general language stand in the way of full protection to those entitled to Tunisian nationality.

³⁹⁵ U.S. DEP’T STATE, *supra* note 104.

³⁹⁶ Organic Law 2016-61, *supra* note 262, at art. 61.

³⁹⁷ Monia Ben Jemia written response, *supra* note 294 (stating that “[a]s for victims of trafficking, the Anti-Trafficking Act [of] 2016 does not grant them this right.”).

³⁹⁸ Interview with Terre d’Asile Tunisie (Apr. 12, 2022).

1. Acquisition of Nationality for Children of Stateless Parents

Experts and desk research indicate that there is no official guidance on how one can legally demonstrate that he or she has met the requirements of Article 8 of the Nationality Code, and how one can file an application for Tunisian nationality under that provision.

According to Tunisian attorneys, an applicant for any form of nationality registration can be recognized as not having a nationality if she can present documentary proof certifying that she is stateless, such as identification documents issued by another country.³⁹⁹ Because Tunisia has no domestic asylum law or other laws that integrate its international commitments under the Statelessness Convention, the party best positioned to determine if an individual is stateless would be UNHCR. However, UNHCR, by its officers' own account, does not systematically carry out stateless determination procedures in Tunisia.⁴⁰⁰ Instead, individuals claiming to be stateless report that UNHCR determines their nationality status in a cursory manner based solely on the country that issued the documentation that asylum seekers could provide.⁴⁰¹ In one case an individual might obtain UNHCR identification listing his nationality as stateless, while in another similar case an individual's nationality is designated as the country of origin, despite his having no identity documents or recognized claim to nationality there.⁴⁰² According to our informants at Terre d'Asile Tunisie, although there are no administrative or executive orders to guide the application of Article 8 of the Nationality Code, individuals deemed stateless by UNHCR should be able to assert their child's right to nationality under Article 8 by presenting their UNHCR-issued identification to the Tunisian authorities. UNHCR identification, coupled with a valid residence permit for such stateless asylee parents, should suffice to support a claim that such asylees' child should be given Tunisian nationality under Article 8.⁴⁰³

2. Naturalization

Many who meet all the requirements still find the naturalization process inaccessible. Applications for naturalization are received first by the Ministry of Justice.⁴⁰⁴ These are passed on to the Ministry of Interior, which "helps conduct 'morality' examinations for naturalization requests."⁴⁰⁵ They are then sent to the President of the Republic, who has the power to oppose the acquisition of Tunisian nationality by decree.⁴⁰⁶ This system has been criticized for its

³⁹⁹ Interview with Faten Ben Lamine, *supra* note 380.

⁴⁰⁰ Interview with UNHCR, *supra* note 209.

⁴⁰¹ Interview with Alaa Almoumen (June 23, 2022).

⁴⁰² LAS REGIONAL TOOLKIT, *supra* note 307, at 30.

⁴⁰³ Interview with Terre d'Asile Tunisie (June 22, 2022), *supra* note 326.

⁴⁰⁴ Association des Tunisiens des Loiret, "Acquisition of Tunisian Nationality," accessed April 22, 2023, <http://adtl.org/pages/pages.php?title=acquisition-de-la-nationalite-tunisienne>.

⁴⁰⁵ *Id.*

⁴⁰⁶ NATIONALITY CODE, *supra* note 4, at art. 15.

opacity and absence of legal review, and which allows for inconsistent and arbitrary denials.⁴⁰⁷ While Articles 54-57 of the Nationality Code leave open the possibility of appealing the Ministry of Justice's denial of a naturalization application, there is no judicial review of the President's denial of naturalization.

B. Legal Exclusions of Stateless Persons and Refugees

1. Criminalization of Migrants

Because Tunisia's laws contain few pathways for legal migration, the desire to avoid criminalization compels many irregular migrants to conceal their reasons for coming to or staying in Tunisia. Some migrants indicate that they plan to attend school in Tunisia so they can fit within the category of persons eligible for a temporary residence visa.⁴⁰⁸ In order to avoid deportation, other irregular migrants may throw away or destroy any identity documents they have.⁴⁰⁹

Tunisia's migration laws place stateless migrants in a particularly vulnerable situation, with limited options for avoiding criminalization. Informants reported that in practice only students and workers with employers able to sponsor them qualify for temporary residence visas.⁴¹⁰ Stateless persons face a vicious cycle. They often lack government-issued identity documents, which tend to be the only documents that employers and schools accept to establish identity and status. Those who lack such documents cannot secure a work contract or enroll in school. They are then unable to obtain a temporary residence visa in Tunisia.

Apparently, the government has suspended the issuance of all temporary residence cards since July 25, 2021.⁴¹¹ This has resulted in many migrants falling into irregular status, making it difficult to enter into contracts for housing, and becoming vulnerable to exploitation in employment.⁴¹² The very fact of being irregular is a crime, and can result in arrest and detention. Migrant detention centers like Ourdia are not regulated by law and have been declared by Tunisian tribunals to be unconstitutional.⁴¹³

⁴⁰⁷ Houamed, *supra* note 57 (presenting data on the "sporadic nature of naturalizations, classified by year, gender, age, and country of birth"); *see also* Bronwen Manby, *Nationality, Migration and Statelessness in West Africa, A study for UNHCR and IOM*, at 92 (June 2015), <https://www.refworld.org/pdfid/55b886154.pdf> (discussing the dangers of a discretionary naturalization system).

⁴⁰⁸ Interview with Terre d'Asile Tunisie, *supra* note 401.

⁴⁰⁹ Interview with AIHR, *supra* note 382.

⁴¹⁰ Interview with Terre d'Asile Tunisie, *supra* note 401.

⁴¹¹ *Id.*

⁴¹² Interview with AESAT, (Apr. 2, 2022); Interview with Mnenmy (Mar. 1, 2022).

⁴¹³ Interview with IOM, *supra* note 200.

2. Impact of Full Reliance on UNHCR

The lack of asylum regulations and protection for stateless persons in Tunisia's domestic law means that it is UNHCR's responsibility, in partnership with the Tunisian Council for Refugees (CTR), to conduct refugee status determinations, and to provide refugee and stateless persons protection and assistance.⁴¹⁴ UNHCR-Tunisia reports funding cuts despite the continuing growth in refugee registrations in the country.⁴¹⁵ This has resulted in UNHCR closing offices--without notifying people under UNHCR protection or civil society organizations that serve them. It has also resulted in UNHCR terminating monthly assistance payments to registered individuals, causing protests and sit-in by refugees, asylum seekers, and stateless persons in front of UNHCR's offices.⁴¹⁶

C. Specific Impacts on Vulnerable Groups

This section describes how Tunisia's laws and policies relevant to statelessness affect identified vulnerable groups among the migrant and refugee communities in the country identified in Section II.B.

1. Sub-Saharan Migrants

Experts confirmed the increase of both students and others entering Tunisia from Sub-Saharan Africa. Sub-Saharan migrants whose countries of origin do not have visa-free agreements with Tunisia cross into Tunisia irregularly through the border with Libya.⁴¹⁷ Many Sub-Saharan migrants have their identity documents stolen by smugglers during their travel through Libya. Although migrants whose documents have been stolen could in principle request re-issuance by their countries' embassies, not all African countries have embassies in Tunisia.⁴¹⁸

University students from francophone countries in West Africa have reported discrimination in the issuance of residency cards.⁴¹⁹ Though initially attracted to Tunisia because of the visa-free entry regime, they find that converting their status to full-time student status or to that of postgraduate workers, involves problems not faced by other foreigners. Discrimination in the process of trying to obtain residence cards can lead black migrants to losing their lawful status and exposing them to detention, since it is a crime to remain with an expired visa. Anyone present in the country without a valid visa is subject to detention.

⁴¹⁴ UNHCR, *FAQ: Asylum in Tunisia*, <https://help.unhcr.org/tunisia/asylum-in-tunisia/> (last visited Nov. 13, 2022).

⁴¹⁵ UNHCR, *Tunisia: Latest Updates*, *supra* note 91.

⁴¹⁶ Interview with Mawjoudin (Apr. 1, 2022); *Refugees protest in Tunisia against UNHCR, demanding "immediate evacuation,"* AFRICA NEWS (Feb. 15, 2022), <https://www.africanews.com/2022/02/15/refugees-protest-in-tunisia-against-unhcr-demanding-immediate-evacuation/>.

⁴¹⁷ Interview with Mnemty, *supra* note 412; Interview with Mahmoud Kaba, (Apr. 15, 2022).

⁴¹⁸ Interview with IOM, *supra* note 200.

⁴¹⁹ Interview with Mnemty, *supra* note 412; Interview with AESAT, *supra* note 412.

Black migrants also find it difficult to register their children's births in Tunisia. Due to their irregular status and mistrust of authorities, some are unwilling to give birth in public hospitals, which in turn makes it difficult to obtain a birth certificate.⁴²⁰ By contrast, migrants from European countries giving birth in Tunisia face little to no difficulty in obtaining birth certificates and in registering the birth with the local municipality within the period prescribed by the law.⁴²¹

Sub-Saharan migrants also face increased risk of violence at the hands of the police and the community generally because of the color of their skin, as illustrated by the arbitrary arrests of nearly 300 Sub-Saharan students in early 2022.⁴²² Even after proving their legal status by showing their visas and residency cards, Black migrants were forced to stay overnight in jails and threatened with deportation.⁴²³ In early 2023, black migrants again suffered a wave of violent attacks, arguably provoked by the Tunisian President's targeting of Sub-Saharan migrants as sources of instability to Tunisia whose rising numbers the President framed as a plot to change the country's demographic makeup.⁴²⁴ Following an international backlash against the President's statements and domestic protests, Tunisia announced various measures in favor of Sub-Saharan African migrants, such as the extension of the allowed stay under a visa-waiver (from 3 to 6 months) and to facilitate the issuance of one-year residence permits for African students.⁴²⁵ In recognition of the rise in hate crimes, a new hotline was established by which any human rights violations against black migrants can be reported.⁴²⁶ At the same time, Tunisia began facilitating the return of undocumented migrants by waiving overstay fees.⁴²⁷ Though the 2018 Anti-Discrimination Law allows filing complaints for racist conduct by authorities, filing a complaint is of no practical significance if the complainant is summarily deported. The 2018 law does not provide an exemption from deportation while pursuing a claim of racial discrimination.⁴²⁸

Such discrimination and acts of violence do not necessarily generate statelessness. However, the combination of complex residency and nationality registration requirements, urgent survival needs and discrimination significantly impairs access to nationality. In the case of Ivorian migrants, who are believed to be the largest migrant group in Tunisia, the complexities of the Ivorian citizenship law, already marred by exclusion, are multiplied when Ivorian citizenship is asserted through the consular birth registration process.

⁴²⁰ Interview with OHCHR, *supra* note 112.

⁴²¹ Interview with Mnemty, *supra* note 412.

⁴²² Aida Delpuech, *Arbitrary arrests and residence permits: racist ordeals for Sub-Saharans in Tunisia*, INKYFADA (Feb. 23, 2022), <https://inkyfada.com/en/2022/02/23/residence-permit-subaharans-racism-tunisia/>.

⁴²³ Interview with Terre d'Asile Tunisie, *supra* note 398.

⁴²⁴ ArabNews - En Francais, "La Tunisie Prend Des Mesures En Faveur Des Étudiants et Migrants Subsahariens," ARABNEWS - EN FRANCAIS, (Mar. 6, 2023), <https://www.arabnews.fr/node/354951/monde-arabe>.

⁴²⁵ *Id.*

⁴²⁶ *Id.*

⁴²⁷ *Id.*

⁴²⁸ Interview with OHCHR, *supra* note 112.

2. Persons of Concern to UNHCR

In Tunisia, asylum seekers, refugees, and others of concern to UNHCR are faced with inadequate access to formal and fair employment, lack of information about the rights of refugee- and asylum-card holders, and discrimination by the police and in communities generally.⁴²⁹ They also lack the durable solution of local integration since there is no clear pathway to permanent residence and naturalization even for recognized refugees. This exposes them and especially their children to the risk of statelessness. Black, LGBTQI+ asylum seekers are particularly at risk of being arrested and detained by the police because of the intersectional forms of discrimination they face.⁴³⁰

a) The Tuareg from Libya

The Tuareg from Libya residing in Tunisia are a small group of stateless refugees whose cases were brought to the research team's attention after the launch of this study. The Tuareg people—one of the Amazigh groups—are indigenous to North Africa and were rendered stateless when nation-states and their borders cut across their nomadic routes.⁴³¹ They reside on the territories of today's Libya, Mali, Niger, Burkina Faso, and Algeria.⁴³² In 1971 the Qaddafi regime inscribed Tuaregs in Libya in a “temporary” registry intended for expatriate Libyans.⁴³³ This temporary registration, and the number associated with it remain in place and most Tuareg in Libya are in limbo, unable to access full citizenship. For decades, the Tuareg were recruited to the Libyan military with an implicit understanding that conscription would lead to obtaining Libyan nationality, though this outcome was rare.⁴³⁴ Obtaining Libyan nationality under the Libyan Arab Nationality Law of 1980 required the Tuareg to formally disclaim their identity as non-Arabs, a reason that caused some to reject the possibility of Libyan nationality, even when it was available to them.⁴³⁵ As a result of Qaddafi's recruitment of Tuaregs in the military and the relatively favorable conditions they enjoyed in Libya, Arab Libyans perceived the Tuareg as aligned with the Qaddafi regime, and after its fall, they were exposed to ill-treatment.⁴³⁶ The estimates of Tuareg numbers within Libya vary widely, between 17,000 and 560,000.⁴³⁷

⁴²⁹ Telephone Interviews with Omar Fassatoui, *supra* note 252 (Jan. 14, 2022); Mahmoud Kaba, *supra* note 417 (Apr. 15, 2022), Terre d'Asile Tunisie (Apr. 12, 2022); and Alaa Almoumen (Mar. 3, 2022).

⁴³⁰ Interview with Mawjoudin, *supra* note 417.

⁴³¹ Thomas McGee, *Libya: Stateless Tuareg demand rights and inclusion ahead of elections*, MIDDLE EAST EYE (Sept. 11, 2021), <https://www.middleeasteye.net/news/libya-tuareg-demand-rights-inclusion-ahead-elections>.

⁴³² Minority Rights Group, Tuareg, <https://minorityrights.org/minorities/tuareg/> (last visited Mar. 2023).

⁴³³ Ghadi Abdulaziz, *Libya's Forgotten Ones*, ZENITH BLOG (Mar. 23, 2021), <https://magazine.zenith.me/en/society/statelessness-libya>.

⁴³⁴ McGee, *supra* note 419.

⁴³⁵ Interview with Ahmed Saeed (June 23, 2022); McGee, *id.*

⁴³⁶ Interview with Ahmed Saeed, *id.*

⁴³⁷ Minority Rights Group, *World Directory of Minorities, and Indigenous Peoples - Libya: Tuareg* (July 2018) <https://www.refworld.org/docid/5b9fb76e7.html>.

Due to the destabilization of Libya, some Tuareg have begun crossing the border irregularly into Tunisia to seek asylum. Several families, totaling nearly 70 individuals, began coming to Tunisia, starting in 2016.⁴³⁸ Though the number of stateless Tuareg families and individuals in Tunisia is small, their presence has exposed the deficiencies of the Tunisian legal framework on asylum, and its reliance on UNHCR. This report presents their situation in some detail in order to illustrate the gaps in Tunisian law and policy.

Upon arriving in Tunisia through the border with Libya, the Tuareg first reached out to the IOM, which facilitated their housing in the migrant center in Medenine in the south of Tunisia.⁴³⁹ Some families remained there for more than a year without any formal grant of residency.⁴⁴⁰ Eventually, the families were able to register with the Tunisian Refugee Council (CTR), which is the first step any asylum seeker must take to access refugee status determination, a procedure conducted by UNHCR.⁴⁴¹ CTR appeared reluctant to refer them to UNHCR because they were seen as Libyan nationals, who generally “enjoy a favorable de facto protection environment” in their neighboring state and should only have access to refugee status determination in rare cases.⁴⁴²

After initial registration and before their refugee status determination, the Tuareg were issued cards that identified them as “stateless non-refugees.”⁴⁴³ These documents allowed freedom of movement within Tunisia. The actual refugee status determination process lasted more than two years for one informant, at the end of which he received a refugee card in January 2022.⁴⁴⁴ Being granted refugee status gives the Tuareg members protection from detention by the police and from deportation, but it does not address difficulties in obtaining legal employment or housing, forming rental contracts, etc.⁴⁴⁵

As discussed above in Section III.A, the children of stateless parents residing in Tunisia should be considered Tunisian nationals by operation of law.⁴⁴⁶ For the children of Tuareg families born in Tunisia, how parents were identified on their UNHCR-issued identity documents became particularly important. Some Tuareg parents that had not yet been granted refugee status were erroneously recorded as Libyans on their Tunisia-born child’s birth

⁴³⁸ Our interlocutors—members of the Tuareg community and representatives of their families in Tunisia—related their experience of coming to Tunisia and seeking to stay there. Interview with Alaa Almoumen (June 22, 2022); Interview with Ahmed Saeed (June 23, 2022), *supra* note 423.

⁴³⁹ Interview with Alaa Almoumen, *id.*

⁴⁴⁰ Telephone Interview with Alaa Almoumen, (Mar. 3, 2022).

⁴⁴¹ Terre d’Asile Tunisie provides comprehensive information sheets on the process on its website in several languages. Terre d’Asile Tunisie, *Les ‘Info Droits’ de Terre d’asile Tunisie #1 Asile*, <https://www.terre-asile-tunisie.org/index.php/38-actualites/actualites-mdm/770-les-info-droits-de-terre-d-asile-tunisie-1-asile> (last visited May 26, 2023).

⁴⁴² UNHCR, *FAQ: Asylum in Tunisia*, *supra* note 405; Convention relating to the Right to Property, to the Right to Work, to the Exercise of Professions and Trades, to the Right of Establishment and to the Right of Movement Rep. of Tun. – Lib. Ar. Rep. June 6, 1973, Decree No. 74-791 of August 16, 1974.

⁴⁴³ Telephone Interview with Alaa Almoumen, *supra* note 440.

⁴⁴⁴ *Id.*

⁴⁴⁵ *Id.*

⁴⁴⁶ NATIONALITY CODE OF 1963, *supra* note 67, at art. 8.

certificate.⁴⁴⁷ In contrast, another family that had obtained refugee status and received UNHCR cards that identified them as ‘stateless’ had this status listed on the birth certificate of their child.⁴⁴⁸ Without the ‘stateless,’ designation, the children born to Tuareg refugees would have neither the protections afforded to Libyan nationals nor those afforded to the children of stateless individuals. Lawyers assisting Tuareg families in Tunis had been planning to test the application of Article 8 of the Nationality Code by filing a request for registration as Tunisian with the Ministry of Justice on behalf of the children born to Tuareg refugees.⁴⁴⁹ Though legal practitioners interviewed had no knowledge of successful nationality registration under Article 8, the situation of Tuareg families with Tunisia-born children presented a good opportunity to test the enforceability of the law. Unfortunately for legal precedent on this issue, and fortunately for the Tuareg families, they were referred for resettlement out of Tunisia and decided not to pursue this process.⁴⁵⁰

Some Tuareg families that did not receive refugee status from UNHCR opted to leave Tunisia out of desperation.⁴⁵¹ The perception among the Tuareg families in Tunisia is that the delay in the RSD process occurred because Arabic-speaking refugees coming from Libya were considered “low priority,” especially when compared to refugees from other countries.⁴⁵² Importantly, even once they are recognized, refugees in Tunisia do not obtain the legal right to work, which severely hampers their ability to integrate.⁴⁵³ Instead, they have to apply for a work permit like any other migrant despite their particular vulnerabilities.⁴⁵⁴

All these factors come together to exacerbate the vulnerability of the Tuareg community. Unfortunately, children born to Tuareg families in Tunisia remain stateless despite the formal existence of a legal provision that should extend them citizenship.

b) LGBTQI+ Refugees who Cannot Resettle

Some asylum seekers and refugees arrive in Tunisia because they are fleeing persecution in their country of nationality on account of their identity as LGBTQI+.⁴⁵⁵ These individuals arrive mainly from Western Sub-Saharan African countries, such as Mali, Cote d’Ivoire, and Senegal, as well as from Libya.⁴⁵⁶ They report experiencing homophobic and transphobic

⁴⁴⁷ Telephone Interview with Alaa Almoumen, *supra* note 440.

⁴⁴⁸ *Id.*

⁴⁴⁹ Interview with Terre d’Asile Tunisie (June 22, 2022).

⁴⁵⁰ *Id.* According to our informants, this is a rational course of action for the Tuareg refugees who would not have access to full integration in Tunisian society, even if their children were to be recognized as Tunisian.

⁴⁵¹ Telephone Interview with Alaa Almoumen, *supra* note 440.

⁴⁵² *Id.*

⁴⁵³ Interview with Mahmoud Kaba, *supra* note 417.

⁴⁵⁴ UNHCR has recently worked with state agencies such as the Tunisian Association for Management & Social Stability (TAMSS) to assist refugees in achieving “self-reliance.” UNHCR, *Employment and Vocational Training*, <https://help.unhcr.org/tunisia/services-in-tunisia/employment-and-vocational-training/> (last visited November 16, 2022).

⁴⁵⁵ Interview with Mawjoudin, *supra* note 416.

⁴⁵⁶ *Id.*

remarks aimed at them, as well as threats of violence, by the staff at the Tunisian Council for Refugees, the Tunisia-based partner of UNHCR.⁴⁵⁷ These remarks include deliberate use of incorrect pronouns and dead names.⁴⁵⁸ Complaints about such conduct have been disregarded.⁴⁵⁹

While some LGBTQI+ asylum seekers and refugees, mainly from Libya, prefer to stay in Tunisia because of its cultural and linguistic similarities with Libya, the prosecution and persecution of queerness makes them candidates for resettlement in other countries, for which the average wait time is 1.5-2 years.⁴⁶⁰ Black, queer asylum seekers are particularly at risk of being arrested and detained by the police because of discrimination; the fear of police has led to reluctance in making complaints of homophobic and transphobic violence.⁴⁶¹

Though it is UNHCR's policy to refer LGBTQI+ refugees for resettlement, not all recognized refugees are accepted by resettlement countries.⁴⁶² When resettlement prospects disappear, LGBTQI+ refugees face a difficult choice from among three less-than-ideal options. They could return to their country of origin where their lives might be at risk, they could risk their lives by attempting to cross the Mediterranean by boat, or they could remain in Tunisia. This latter option may also be life-threatening, and it exposes a refugee in such situation to extremely low odds of local integration through naturalization. This in turn may mean that the refugee loses access to nationality documentation and becomes *de facto* stateless.

3. Foreign Victims of Trafficking and their Children

Though the Anti-Trafficking Law, Organic Law No. 2016-61, provides for exemption from overstayed visa penalties, the process of providing these exemptions is “slow and cumbersome.”⁴⁶³

This is aggravated by the reluctance of consulates/embassies to issue identity documents, especially to children born to victims of trafficking whose fathers are unknown.⁴⁶⁴ Lawyers, with the aid of the National Authority to Combat Trafficking in Persons, usually try to negotiate with individuals who have confiscated victims' identity documents, and if mediation with the confiscator prove unsuccessful, they turn to the embassy or consulate of the country of nationality of the trafficked person to obtain the necessary documents.⁴⁶⁵ There can be difficulties with the birth registration of children of trafficked persons. Women who have been

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.* “Dead name” is the name that a transgender person was given at birth and no longer uses upon transitioning. “Deadname Definition & Meaning - Merriam-Webster,” accessed March 31, 2023, <https://www.merriam-webster.com/dictionary/deadname>.

⁴⁵⁹ *Id.*

⁴⁶⁰ *Id.*

⁴⁶¹ *Id.*

⁴⁶² *Id.*

⁴⁶³ U.S. DEP'T STATE, *supra* note 104.

⁴⁶⁴ Interview with Mnemty, *supra* note 412.

⁴⁶⁵ Interview with Terre d'Asile, *supra* note 398.

trafficked and give birth in Tunisia to a child whose father is unknown may be unable to register the birth of the child with their embassy/consulate in cases where the embassy requires that the father register the birth.⁴⁶⁶

The U.S. Department of State noted that “[p]oor understanding of trafficking among judicial and law enforcement officials inhibited authorities from effectively using the 2016 anti-trafficking law to prosecute and convict traffickers. While the government provided some services for victims, overall government services appropriate for the needs of all trafficking victims—including male, female, and child victims—outside of major cities remained limited.”⁴⁶⁷ This indicates that although the law is written and adopted, lack of awareness on the part of Tunisian authorities severely limits its effective application.

4. Children of Migrant Mothers

A high percentage of children born in Tunisia are registered at birth in civil status records.⁴⁶⁸ Still, the process is cumbersome and opaque for many migrants, and especially so for single mothers.⁴⁶⁹ The regular procedure to register a birth within the statute’s deadline of ten days from birth is not simple, but it is even more challenging to pursue a late birth registration after the deadline has passed, or to register a child born to a single mother. In some cases, migrants’ inability to cover childbirth fees has led hospital authorities to refuse to release migrant mothers’ passports or other identity documents, a practice that can cause mothers to miss the 10-day birth registration deadline.⁴⁷⁰

a) Late Birth Registration

Though this information is not specified in regulations or other public materials, attorneys provided IHRC with the steps that parents must follow for birth registration when the 10-day deadline has passed. Once all necessary documents are in order, the mother’s request must be filed at the tribunal of the place of birth.⁴⁷¹ Filing requires payment of 80 dinars.⁴⁷² Additional fees may include those for an interpreter (≈ 120-200 Tunisian dinars), a fiscal stamp (≈ 60 dinars), and notary fees if the parent’s passport is invalid or if the mother does not have

⁴⁶⁶ Interview with Mnementy, *supra* note 412.

⁴⁶⁷ U.S. DEP’T STATE, *supra* note 104.

⁴⁶⁸ See AIHR STATELESSNESS STUDY, *supra* note 5, at 64 (“In general, according to the statistics of the Higher Institute of Statistics, 99% of children are registered at birth in the civil status records. In the Multiple Indicator Cluster Survey (MICS) for the year 2011-2012, the birth registration rate represented 98.9% of males and 99.5% of females. In another report issued in 2021 by the United Nations Population Organization, it was found that the percentage of children registered at birth rose to 100% in the period between 2000-2018.”)

⁴⁶⁹ See *supra* Part III.A for a discussion of what these steps entail.

⁴⁷⁰ Interview with Omar Fassatoui, *supra* note 252.

⁴⁷¹ This is also known as the “family chamber.” Sammoud, *supra* note 375.

⁴⁷² *Id.*

any identity documents (\approx 180 dinars).⁴⁷³ Also, petitioning the courts for a late birth registration typically requires engaging a lawyer. Some civil society organizations in Tunisia provide *pro bono* legal services to parents petitioning for late birth registration.⁴⁷⁴ If the petitioner is paying for legal assistance without the help of one of these organizations, fees range from 600-800 dinars.⁴⁷⁵ In total, fees associated with late birth registration can run to approximately 1080 dinars.⁴⁷⁶

If the applicant is able to pay these fees and file the request, the late birth registration process may take from about 6 to 18 months, and requires a minimum of three hearings before the Court of First Instance.⁴⁷⁷ If the applicant makes it through this process, denials are rare.⁴⁷⁸ Still, this outcome is not guaranteed in certain parts of the country, such as in Sfax where the court has been known to refuse late birth registrations.⁴⁷⁹

b) Timely Birth Registration for Single Migrant Mothers

Expectant migrant mothers can be reluctant to give birth in hospitals for fear of interacting with Tunisian authorities.⁴⁸⁰ After birth, if medical complications occur, they may have difficulty meeting the 10-day birth registration deadline. Later, seeking to register the birth of the child with the consulate of their country of origin can also be difficult, as the consulate staff may refuse to register in the absence of the father.⁴⁸¹

The 10-day registration deadline can prove particularly onerous for single mothers, both Tunisian and non-Tunisian. The difficulties for the child of a single mother in Tunisia begin before birth. When a woman enters the hospital to give birth she must provide, among other information, the name of her husband.⁴⁸² If no husband's name is given, this may raise suspicions.⁴⁸³ A single migrant mother from a non-Muslim country could go to the local municipality within the first ten days from birth and assert that under her country's customs marriage is not required to have a child, and attempt to secure normal birth registration.⁴⁸⁴

Instead of simply registering the child's birth with the appropriate municipal authority, single mothers from Muslim countries must go through a complicated court process to register

⁴⁷³ *Id.*

⁴⁷⁴ For example, IOM, *supra* note 200, and Terre d'Asile Tunisie, *supra* note 398.

⁴⁷⁵ Sammoud, *supra* note 375.

⁴⁷⁶ For comparison, the *monthly* minimum wage in Tunisia is about 400 Tunisian dinars. STATISTA, *Hourly minimum wage for non-agricultural workers in Tunisia from 2004 to 2022, by work week length (in Tunisian dinars)*, <https://www.statista.com/statistics/711915/tunisia-hourly-wages-for-non-agricultural-workers-by-work-week-length/> (last visited March 2023).

⁴⁷⁷ Sammoud, *supra* note 375.

⁴⁷⁸ We learned in our conversation with UNHCR that judges typically try to uphold the best interests of the child.

⁴⁷⁹ Interview with UNHCR, *supra* note 209.

⁴⁸⁰ Interview with Omar Fassatoui, *supra* note 252.

⁴⁸¹ Interview with Faten Ben Lamine, *supra* note 380.

⁴⁸² Dridi, *supra* note 205, at 5.

⁴⁸³ Interview with Terre d'Asile Tunisie (April 12, 2022), *supra* note 398.

⁴⁸⁴ *Id.*

their child's birth and pass on their name to the child. There are two types of procedures that can be followed. The first type, which is prevalent in Tunis and Sfax, is for the mother to file a case with the relevant court. The prosecutors investigate the mother's situation, the judge hears from the mother, and the court then issues a ruling.⁴⁸⁵ Interpretation services are provided for migrants. This ruling is then taken to the municipality to register the birth of the child and get a birth certificate. The second procedure requires first obtaining permission for the Judge of Civil Status of the Court to start the procedure, which does not require the mother's participation in the proceedings. The mother's lawyer meets with the judge to present documents, an explanation of the need to register the child, and a description of the mother's situation. The judge's ruling is sent to the municipality where the birth registration process is completed, and a birth certificate is issued.

Both procedures require certain documents, including a copy of the mother's passport, request to register the child, anything that proves the child's birth in a Tunisian hospital (usually a certification of live birth), and a residency card, if applicable.⁴⁸⁶ The document requirements can be particularly problematic for single migrant mothers, but lawyers working with migrant mothers who arrived in Tunisia with no documents have been successful going through the court process.⁴⁸⁷ Lawyers working with Tunisian women who have given birth out of wedlock have run into difficulties, however, especially when the father of the child refuses to acknowledge paternity. This can stall the court process even though, by law, single mothers should be able to register their child's birth with their name.⁴⁸⁸

Practitioners have succeeded in obtaining some flexibility in municipalities' application of the requirements for birth registration, notably in the cases of single migrant mothers from non-Muslim countries. Unfortunately, most migrants are not aware of the procedures required to register the birth of their child for the purposes of obtaining nationality.⁴⁸⁹ Birth registration often surfaces as a problem only when the mother is in contact with a social services provider who is assessing her and her child's needs.⁴⁹⁰ Word of mouth among migrant communities themselves can be the most effective way to educate about the need for birth registration.⁴⁹¹

5. Children of ISIS-affiliated Parents

The Observatory of Rights and Freedoms, a Tunisian human rights NGO, received data on 104 of the ISIS children in Syria, revealing that 88% of them were under 13 years old, and

⁴⁸⁵ Interview with Faten Ben Lamine, *supra* note 380.

⁴⁸⁶ *Id.*

⁴⁸⁷ *Id.*

⁴⁸⁸ *Id.*

⁴⁸⁹ Interview with Terre d'Asile Tunisie (April 12, 2022), *supra* note 398.

⁴⁹⁰ *Id.*

⁴⁹¹ Interview with Mahmoud Kaba, *supra* note 417.

78% were born in Syria.⁴⁹² The fathers of more than half of the children had died, and those of one-quarter were imprisoned. In January 2020, Tunisia repatriated six orphaned children, between the ages of three and 12, from Libya.⁴⁹³ The returns were accompanied by sharp criticism and pushback from the public.⁴⁹⁴ The rejection of these children occurred in the context of two devastating terrorist attacks in 2015 by ISIS affiliates in Tunis and Sousse which heightened fears of exposing the public to more of these by returning foreign fighters.⁴⁹⁵ Family members of foreign fighters, such as grandparents of the children taken to and born in ISIS territories, who have been demanding the Tunisian government to “Bring back our grandchildren” have had to contend with public hostility.⁴⁹⁶ In early March 2021, Tunisia repatriated 24 of its nationals — 10 women held in prisons and 14 children held either in prisons or shelters in Libya.⁴⁹⁷ More recently, several UN Special Rapporteurs called on the government of Tunisia to urgently repatriate four young Tunisian women — abducted by their Tunisian mother and brought to ISIS — and the two children born to the eldest daughter, who are held in camps in Syria.⁴⁹⁸ Their fate, as well as that of the 160 estimated to be in Syria and Iraq in 2019, is uncertain.

Tunisia has significant legal obligations regarding the children of its nationals abroad.⁴⁹⁹ As discussed above in Section III.B, Tunisia’s Nationality Code provides for automatic conferral of Tunisian nationality to children born to Tunisian fathers or mothers, and its Constitution prohibits deprivation of its citizens’ nationality and prevention of their returning home.

Civil society groups are advocating for return of such children on the basis that Tunisia and other countries have human rights obligations that require them to take proactive steps to repatriate their child nationals.⁵⁰⁰ Proactive repatriation goes beyond merely allowing children to enter their country of nationality or repatriating them on a case-by-case basis; rather, it requires

⁴⁹² مرصد الحقوق والحريات: أكثر من 140 طفلا تونسيا تتهددهم العديد من المخاطر ببؤر التوتّر , ALCHOUROUK, (Mar. 5, 2020) , <https://www.alchourouk.com/article/التوتّر-المخاطر-العديد-من-الطفلة-تونسيا-تتهددهم-العديد-من-المخاطر-ببؤر-التوتّر>.

⁴⁹³ HUMAN RIGHTS WATCH, *Tunisia: Six Orphans Brought Home from Libya: Thousands of Children of ISIS Suspects in Syria, Libya, Iraq Need Help* (Feb. 6, 2020), <https://www.hrw.org/news/2020/02/06/tunisia-six-orphans-brought-home-libya>

⁴⁹⁴ Saidani, *supra* note 113.

⁴⁹⁵ Farah Samti & Carlotta Gall, *Tunisia Attack Kills at Least 38 at Beach Resort Hotel*, N.Y. TIMES (June 26, 2015), <https://www.nytimes.com/2015/06/27/world/africa/gunmen-attack-hotel-in-sousse-tunisia.html>

⁴⁹⁶ تونس-أخبار-وطنية/695437/عائلات-ارهابيين-قضوا-في-سوريا: "أعيدو إلينا أحفادنا", MosaiqueFM (Feb. 28, 2020), <https://www.mosaiquefm.net/ar/-/اخبار-وطنية/695437/عائلات-ارهابيين-قضوا-في-سوريا-أعيدو-إلينا-أحفادنا>.

⁴⁹⁷ HUMAN RIGHTS WATCH, *Tunisia Jails Repatriated Women With Suspected ISIS Ties: Ensure Humane Treatment, Due Process, Medical Care* (Apr. 29, 2021), <https://www.hrw.org/news/2021/04/29/tunisia-jails-repatriated-women-suspected-isis-ties>.

⁴⁹⁸ Statement of Special Rapporteurs, UA TUN 6/2021, (June 21, 2021), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26360>.

⁴⁹⁹ See *supra* Section III.A.2.

⁵⁰⁰ OPEN SOCIETY JUSTICE INITIATIVE, *European States’ Obligations to Repatriate the Children Detained in Camps in Northeast Syria* (July 2021), <https://www.justiceinitiative.org/uploads/d9762590-424c-4cb6-9112-5fedd0d959d1/european-states%20%80%99-obligations-to-repatriate-the-children-detained-in-camps-in-northeast-syria-20210722.pdf>.

the state to ensure their right to nationality, issue identity documents, ensure access to consular services, and facilitate their return to their country of nationality.

It must be acknowledged that proactive repatriation is challenging in the context of children taken to, or born in, ISIS territories. Establishing a child's nationality is difficult during armed conflict, and "even more [so] in the ISIS context where reaching the nearest consulate or embassy often means crossing the border amid ongoing violence."⁵⁰¹ Even when the children and their caretaker can access consular services, proving the children's parentage is not easy. Their identity documents may have been lost or destroyed; birth documents issued to children born in ISIS territories may not be internationally recognized; and DNA tests would only serve as a recourse if there were a relation — such as a grandparent or uncle — in Tunisia seeking unification with a child thought to be their family member. Due to gender discriminatory nationality laws and policy, children born to Tunisian fathers and Syrian or Libyan mothers would normally only be entitled to their father's nationality. The father's nationality could, however, be uncertain if the father is dead, detained, or in hiding.⁵⁰² Of course, this all presumes that at least one parent is living, or that there is some indication of the parent(s)' nationality. Children who have been orphaned and carry no birth or identity documents are at an ever-graver risk of statelessness, despite Syrian nationality law's nominal protections against statelessness at birth.⁵⁰³

The Tunisian Foreign Affairs Ministry has stated that it "attaches special importance" to the cases of the detained children," but repatriation so far has come short of fulfilling the obligations Tunisia owes to its underage nationals in Libya, Syria and Iraq.⁵⁰⁴ Methods such as establishing or improving consular relations with these States, relying on non-governmental organizations with an established presence near the camps or prisons to contact those detained, and facilitating paternity and maternity verification would allow Tunisia to begin meeting its obligation to repatriate, by establishing the nationality of the children and ensuring that they do not become stateless.

Interviews revealed various problems after repatriation for Tunisian mothers who wish to pass their own names to their children born to ISIS fighters. One difficulty was the reluctance of Tunisian courts to issue late birth registration for their children.⁵⁰⁵ It appears that there are no available legal pathways to obtain late birth registration, for example, in the case of a Tunisian mother who married an ISIS fighter and followed him to Syria. The child's father has disappeared but there is no proof of his death. The child's birth was never registered in Syria, though the mother managed to obtain a statement of live birth from the hospital. A potential legal solution identified by the lawyer working on the case was for family members of the mother to

⁵⁰¹ Aïssata Athie, *The Children of ISIS Foreign Fighters: Are Protection and National Security in Opposition?*, IPI GLOB. OBSERVATORY (Dec. 18, 2018), <https://theglobalobservatory.org/2018/12/children-isis-foreign-fighters-protection-national-security-opposition/>.

⁵⁰² Houry, *supra* note 111.

⁵⁰³ *Id.*

⁵⁰⁴ HUMAN RIGHTS WATCH, *supra* note 114.

⁵⁰⁵ Interview with Faten Ben Lamine, *supra* note 380.

adopt the child. As of the time of writing, this adoption case was paralyzed on account of a judicial strike in Tunisia.⁵⁰⁶

VI. Addressing Statelessness in Tunisia

This section summarizes policies and informal practices by both governmental and non-governmental actors that are not codified, and either diminish or exacerbate the risk of statelessness and its human rights consequences. The period researched spans the years 2014-2022. Despite the extremely difficult economic situation that the country has been facing recently, and the legal uncertainty caused by recent changes to the Constitution and its impact on key institutions, Tunisia remains a good role model in the region in terms of its civil society and governmental response to, and prevention of, statelessness.

A. Positive Developments

1. Civil Society Mobilization to Prevent Statelessness

As discussed throughout, timely birth registration is essential for preventing childhood statelessness. Public institutions and civil society actors work in concert to ensure that Tunisia's legal framework operates to implement universal birth registration. As far as the legal framework is concerned, the robust system of municipal birth registration is reinforced by the legal obligation placed on all who attend the birth of a child to report it.⁵⁰⁷ The best interest of the child, which is always to have a legal identity, should govern the actions of competent authorities to enable successful registration even where the documentation presented does not fully meet the requirements of the law.⁵⁰⁸

Single migrant women cite many reasons why they fail to register the birth of their children within the first ten days, but the ones most frequently mentioned are ignorance of the process and lack of a valid passport.⁵⁰⁹ During the first year of the COVID-19 pandemic, many consular offices stopped appointments, and passport renewals were put on hold.⁵¹⁰ Advocates accompanying migrant mothers adapted by demanding the exercise of discretion on the part of municipal authorities to accept expired national documents for the purposes of birth registration.⁵¹¹ Municipalities have accepted expired documents for this purpose when

⁵⁰⁶ *Id.*

⁵⁰⁷ Civil Status Code, *supra* note 204, at arts. 22–30.

⁵⁰⁸ Sammoud, *supra* note 375.

⁵⁰⁹ Interview with Terre d'Asile Tunisie (April 12, 2022), *supra* note 398.

⁵¹⁰ Interview with Faten Ben Lamine, *supra* note 380.

⁵¹¹ Interview with Terre d'Asile Tunisie, *supra* note 398.

registration occurs within the statutory period of 10 days.⁵¹² When a mother has missed the 10-day window, and must follow the late registration procedure, she must present either a valid passport, national identity card, or consular identification.⁵¹³

Since the start of the pandemic, Tunisian courts have also applied an abbreviated late registration procedure for migrants, so that such registration can be done within six months from a child's birth.⁵¹⁴ Prior to 2020, such cases required a laborious court proceeding and a waiting period of six months.

Other important, yet informal, achievements of lawyers and legal workers contracted by Terre d'Asile Tunisie have been to procure a simpler birth registration for the children of unmarried migrant parents when they are not Muslim. When such parents can show that in their culture marriage is not a legal requirement to having a child, municipalities and courts are able to forego the conventional requirement of proof of marriage. Paradoxically, despite some recent changes of practice in big cities, this flexibility is not available to single mothers from Tunisia.⁵¹⁵ Neither is it available to single migrant mothers from Muslim countries such as Libya. The issue of late birth registration becomes particularly thorny when a child was born to a Tunisian woman abroad, and brought to Tunisia without being registered at birth.⁵¹⁶

These advances can go a long way to preserving the nationality rights of children born in Tunisia. IHRC's informal post-workshop questionnaire showed that out of 21 attorneys in private practice who attended the workshop, 13 had taken at least one case involving the birth registration of the child of a trafficked person or asylum seeker, and all were interested in taking on more cases and receiving training on protecting nationality rights.

2. Advances Against Human Trafficking

The 2016 passage of anti-trafficking legislation was an important advance in creating a system centering the rights of survivors rather than criminalizing them.⁵¹⁷ The law created an entity within the Ministry of Justice called the National Authority for the Prevention of Human Trafficking (Authority).⁵¹⁸ This unit is seen as working in good faith, despite very low budgetary allocations, to assist survivors of trafficking and ensure that the law is applied in every case. Importantly, the law provides for significant free legal support to trafficked persons which could be used in civil and criminal suits.⁵¹⁹ While the protection from deportation provided by the law

⁵¹² *Id.*

⁵¹³ *Id.*

⁵¹⁴ *Id.*

⁵¹⁵ *Id.*

⁵¹⁶ Interview with Faten Ben Lamine, *supra* note 380; *Id.*

⁵¹⁷ Organic Law 2016-61, *supra* note 262 (the law gives the National Authority for the Prevention of Human Trafficking the task of providing medical, social, and legal support to trafficked person).

⁵¹⁸ U.S. DEP'T STATE, *supra* note 104.

⁵¹⁹ Adriana Vidano, *Enquête: Entre La Côte d'Ivoire et La Tunisie, Arnaques, Trafic et Esclavage*, NAWAAT (Jan. 29, 2018), <https://nawaat.org/2018/01/29/enquete-entre-la-cote-divoire-et-la-tunisie-arnaques-traffic-et-esclavage/>.

is not tied to permanent residence, it is a strong first step in the direction of providing a modicum of security for a trafficking survivor.⁵²⁰

The Authority's work with non-governmental organizations has helped train law enforcement and judges on how to screen for possible trafficking and approach cases of alleged human trafficking. The Authority has also benefited from significant capacity-building support from UN entities.⁵²¹ To fulfill its obligations under the United Nations Convention against Transnational Organized Crime and its Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, the state created a National Mechanism for Referral of Victims and tasked the Authority with accompanying trafficked persons through a variety of interactions with the state, including the procurement of a temporary residence permit.⁵²² Equally important is the availability of support to trafficked persons who wish to return to their countries of origin.

These institutional advances will become progressively more important, as human traffickers and smugglers have redirected their routes away from Libya and started transporting migrants across the Tunisia-Libya border.⁵²³ According to legal services providers, at present the children born in neighboring Libya to trafficked women are without any recourse to register their birth and establish a nationality.⁵²⁴ Creating an avenue for such trafficked persons to acquire Tunisian nationality if they choose to settle in Tunisia would be essential to prevent the statelessness of their children.

3. Leading on Equal Nationality Rights for Women

On February 28, 2018, Tunisia hosted the League of Arab States' (LAS) Ministerial Meeting on Belonging and Legal Identity. It gathered the Arab Ministers of Social Affairs and Justice and the national mechanisms concerned with women and childhood affairs. The meeting issued the Arab Declaration on Belonging and Legal Identity, which calls for the right of all children to enjoy a legal identity, including name, nationality, and family relations, and reaffirms the joint commitment of the member states of the League of Arab States to promote and support equal nationality laws in the region. It also calls for the development of an Arab regional action plan to ensure the implementation of all its recommendations in the Arab region.

Following on the Declaration, in May 2021, the League of Arab States, and the General Secretariat of the Council of Arab Interior Ministers, in cooperation with UNHCR and the

⁵²⁰ Organic Law 2016-61, *supra* note 262, at Art. 65 ¶ 2.

⁵²¹ *Projet d'appui à l'instance Nationale Pour La Prévention de La Torture et l'instance Nationale de Lutte Contre La Traite Des Personnes*, UNDP, <https://www.undp.org/fr/tunisia/projects/projet-dappui-%C3%A0-linstance-nationale-pour-la-pr%C3%A9vention-de-la-torture-et-linstance-nationale-de-lutte-contre-la-traite-des-personnes> (last accessed Jun. 17, 2023).

⁵²² INSTANCE NATIONALE DE LUTTE CONTRE LA TRAITE DES PERSONNES, *Mécanisme National d'Orientation des Victimes de la Traite des Personnes en Tunisie*, at 5 (Dec. 15, 2021), <https://rm.coe.int/mno-fr-web/pdf/1680a4f571>.

⁵²³ Interview with Terre d'Asile Tunisie (April 12, 2022) *supra* note 398; Interview with Mahmoud Kaba, *supra* note 417.

⁵²⁴ Interview with Faten ben Lamine, *supra* note 380; Azaiz Sammoud, Intervention during IHRC-MRG Workshop in Tunis, June 23, 2022.

Global Campaign for Equal Nationality Rights, organized the regional workshop under the title "Towards a Regional Action Plan on Belonging and Legal Identity." Judge and then Justice Minister of Tunisia Hassna Ben Slimane participated in the workshop, which set out a framework for national action plans to implement the principles of the Declaration.

In the last two years, members of the private bar and judges have gathered for two events on statelessness organized under the framework of UNHCR's iBelong Campaign. Finally, one of UNHCR's main implementing partners in Tunisia, the Arab Institute on Human Rights (AIHR) published an exhaustive analysis of the legal framework relevant to nationality rights in Tunisia, complete with a comprehensive list of recommendations to perfect gender nationality in Tunisia's nationality law and policy.⁵²⁵ The same study prepared in collaboration with UNHCR, reported that in 2020, there were 67 stateless persons in Tunisia.⁵²⁶

B. Remaining Concerns

1. Inconsistent Application of Critical Laws

The unfortunate corollary of discretionary aspects in the birth registration process for migrants is that the process is not uniform across the country.⁵²⁷ The individual discretion of judges and municipal offices matters significantly when deciding whether and how to treat late birth registration filings. In particular, institutions in the south of the country and outside bigger cities have been known to reject filings for late birth registration for single mothers. Similarly, our informants stressed the racially discriminatory rhetoric around the birth of children to black migrants in Tunisia.⁵²⁸

Organizations working with black migrants have denounced the additional burdens associated with converting status to a student or worker residence permit, suspecting that race plays a part in the delays experienced by Sub-Saharan African migrants.⁵²⁹ While the inconsistencies could potentially be tackled through legal claims under the 2018 Anti-Discrimination Law, the law does not protect claimants from (possibly retaliatory) deportation while their claims are in process.⁵³⁰ This is a significant lapse, especially considering that the

⁵²⁵ AIHR STATELESSNESS STUDY, *supra* note 5.

⁵²⁶ Hafidha Chekir, Intervention at Workshop on Statelessness, Tunis, June 23, 2022. Note that official UNHCR statistics still list the number of stateless persons as zero. UNHCR, *Tunisia: Latest Updates*, *supra* note 91.

⁵²⁷ This assessment was echoed in interviews with representatives of UNHCR, *supra* note 209, IOM, *supra* note 200, Terre d'Asile, *supra* note 398, and with individual informants Omar Fassatoui, *supra* note 252, Faten Ben Lamine, *supra* note 380, and Azaiz Sammoud, *supra* note 375.

⁵²⁸ Interview with Mnemty, *supra* note 412 (whereas nobody questions European foreigners' decision to have children born in Tunisia, the births of Black migrants' children are seen as parents' ploys to avoid deportation).

⁵²⁹ Observation shared in interviews with Mnemty, *supra* note 412, AESAT, *supra* note 412, Mahmoud Kaba, *supra* note 417.

⁵³⁰ It should be noted that in the wake of a wave of arbitrary detentions of African students in Tunisia in early 2022, some localities have launched projects to address negative stereotypes of migrants. Infomigrants, *Tunisia: Launching a Media Campaign to Combat Prejudice against Immigrants in Sfax*, مهاجر نيوز (Feb. 15, 2022), <https://www.infomigrants.net/ar/post/38519-تونس-منظمتان-تونسيان-تدينان-الاعتقالات-التصفية-للطلاب-الإفارقة>.

passage of the 2018 Anti-Discrimination Law was propelled by a hate crime against an Ivorian migrant.⁵³¹

Finally, though in the ten years since the Jasmine Revolution there have been significant increases in the number of naturalization applications and approvals, the process remains shrouded in secrecy.⁵³² No data exists on the nationality of all applicants for naturalization, but information that can be gleaned from naturalization decrees shows that over the course of ten years (2009-2018) the number of persons naturalized who were born in non-Arab countries, and in particular from Sub-Saharan African countries is in the single digits. Though the Nationality Code does not discriminate on the basis of ethnic origin, it is remarkable that mostly Arabs are granted Tunisian nationality.

2. Extralegal Detention and Expulsions of Migrants

With humanitarian aspects of migration entirely at the hands of international organizations such as UNHCR and IOM, the Tunisian government's migration policy has mostly been visible when it comes to border control and immigration enforcement operations. For example, the government stood by as refugees and asylum seekers in Tunisia occupied two UNHCR offices over the course of 2021-22.⁵³³ Meanwhile, advocates for detained migrants have pursued litigation to ensure their urgent release from a detention center that was ruled to be an extralegal facility by a Tunisian court in 2020.⁵³⁴ Due to the paralysis of the Tunisian judiciary in the first half of 2022, Terre d'Asile Tunisie reported that even urgent detention matters had been stalled for over six months.⁵³⁵

While most irregular migrants must pay for themselves to be deported, the most dispossessed migrants coming through the border with Libya are pushed back through collective and likely illegal expulsions.⁵³⁶

These actions and omissions on the part of the Tunisian state violate many fundamental rights, including that prolonged detention and massive pushbacks can both rob vulnerable migrants of an opportunity to pursue, preserve or assert their nationality.

⁵³¹ Interview with Mnementy, *supra* note 412.

⁵³² Houamed, *supra* note 62.

⁵³³ Press Release, UNHCR, UNHCR calls for dialogue with protesters camping outside of its office in Tunis and for restraint on all sides, U.N. Press Release HCR/2022 (Apr. 20, 2022), <https://data.unhcr.org/en/documents/details/92239>

⁵³⁴ FTDES, *supra* note 59.

⁵³⁵ Interview with Terre d'Asile Tunisie, *supra* note 398.

⁵³⁶ *Tunisia: Hundreds of Migrants, Including Pregnant Women, Deported to Libyan Desert*, FRANCE 24 (Oct. 5, 2021), <https://observers.france24.com/en/africa/20211007-tunisia-migrants-deported-libyan-desert>.

3. Stalled Draft Laws on Refugee Protection and Gender Equality

As discussed in detail above, the draft law on refugee protection was indefinitely tabled by the legislature in 2016. The passage of the law would significantly strengthen the right to nationality and position the state well to protect the rights of stateless persons. But the non-passage of the bill, or strategic inaction on it, seems to be of greater potential use to the Tunisian government, beset by accusations of illegitimacy and a turn toward authoritarianism. Moreover, it is a legitimate concern that having refugee and asylum law on the books may justify European demands that Tunisia should be treated as a safe-third country.

Finally, in 2019, the Ministry of Justice officially opposed the proposed reform of Law No. 2010-55 that would allow those born abroad to Tunisian mothers who missed the 1-year deadline to acquire Tunisian nationality.⁵³⁷ To date, no attempts have been made to revive the proposed legislation.⁵³⁸ Resistance to the amendment of such a small and symbolic aspect of access to Tunisian nationality is a warning that any more significant reform to Tunisia's nationality and migration laws is unlikely in the foreseeable future.⁵³⁹

VII. Conclusions and Recommendations

As this report has highlighted, Tunisia has increasingly become a country of destination for regular and irregular migrants, asylum seekers, refugees, and trafficked persons. This transformation from a primarily migrant sending country requires adjustments to the regulation of both migration and citizenship in Tunisia.

Among all MENA states, Tunisia is uniquely positioned to recognize and protect against statelessness, given its obligations under the Statelessness Conventions. Additionally, Tunisia has taken decisive legislative action to eliminate the most blatant forms of gender discrimination in its nationality laws. Despite these positive developments, however, Tunisia has failed to adopt any national legislation to protect refugees, asylum seekers, or stateless persons. For as long as the gaps identified in Tunisia's domestic laws and policies relating to nationality remain unaddressed, they pose a risk of statelessness for certain particularly vulnerable groups. As our research has identified, these are: all irregular migrants, but especially Black migrants; refugees,

⁵³⁷ Written responses by Monia Ben Jemia, Professor of L., Univ. of Carthage, *supra* note 294.

⁵³⁸ Tunisia's legislature was suspended in December 2021. President Saied set the next parliamentary elections for December 2022. After a record-low turnout of 11%, a runoff for the elections was scheduled for January 2023. Even fewer Tunisians participated in this second round, raising concerns about the legitimacy of the new legislature. Tarek Amara & Angus Mcdowall, *Tunisians Elect Weakened Parliament on 11% Turnout*, REUTERS (Jan. 30, 2023), <https://www.reuters.com/world/middle-east/polls-open-tunisian-election-with-turnout-under-scrutiny-2023-01-29/>.

⁵³⁹ Recent statements by President Saied characterizing the irregular migration of Black African migrants as a deliberate plan to alter Tunisian demography are further cause for concern. *Tunisia's Saied Says Migration Aimed at Changing Demography*, AL-JAZEERA (Feb. 22, 2023), <https://www.aljazeera.com/news/2023/2/22/tunisias-saied-says-migration-aimed-at-changing-demography>.

especially LGBTQI+ refugees whose resettlement claims are refused; the Tuareg from Libya; children of those affiliated with ISIS who are born abroad; children born to single migrant mothers; and foreign victims of human trafficking.

As Tunisia's migration demographics have evolved, its failure to adopt national legislation to protect against statelessness and provide protections for stateless persons has become more of an urgent issue. Tunisia's Nationality Code and migration laws were promulgated in the 1960s, and though they have undergone some amendment since, their provisions are inadequate for safe, regular, and orderly migration in and out of Tunisia. Rather than providing accessible pathways to legal residence, naturalization, and birth registration, Tunisia's domestic legal framework erects several barriers to the acquisition of nationality, and thus creates a risk of statelessness.

For stateless individuals in Tunisia, the absence of a national legal framework means that international protections available to them are applied haphazardly and with wide discretion left to decisionmakers. Of note is that Tunisia does not offer the durable solution of integration through an accessible path to naturalization for refugees and stateless persons. Although a generally good protection environment exists regarding fundamental rights such as education and healthcare, Tunisia should establish statelessness determination procedures as part of its domestic legislation and provide comprehensive protection to stateless persons.

This report concludes with five substantive recommendations for actions that should be taken to reduce the risk of statelessness in Tunisia, protect the human rights of stateless persons, and bring Tunisian laws in conformity with its international legal commitments. Tunisia's international commitments should be reviewed to eliminate irrelevant reservations to treaties already ratified and to ratify outstanding instruments. These recommendations stem from the IHRC's independent research and consultation with national and international civil society actors working in Tunisia.⁵⁴⁰

A. International Treaty Ratification and Reservations

Though Tunisia has ratified the two statelessness conventions, as well as other instruments protecting nationality rights, there are still gaps in the international legal framework governing nationality and statelessness issues. Tunisia should ratify the African Charter on the Rights and Welfare of the Child, the Casablanca Protocol on the Treatment of Palestinians, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Additionally, as a member of the African Union, Tunisia should work toward the adoption of the Draft Protocol to the African Charter on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa.⁵⁴¹

⁵⁴⁰ The conclusions of the Arab Institute for Human Rights in Prof. Chekir's study on statelessness in Tunisia are also in line with these recommendations. AIHR STATELESSNESS STUDY, *supra* note 5.

⁵⁴¹ AIHR STATELESSNESS STUDY, *supra* note 5, at 68.

In addition to ratifying these treaties, Tunisia should review the reservations and declarations it has made to the treaties it has ratified and withdraw those reservations that impede the fulfillment of Tunisia's obligations to combat statelessness, such as the reservations to the Convention on the Reduction of Statelessness, which reserve to Tunisia the power to deprive nationality, and do not require it to establish a body to receive and decide statelessness claims.⁵⁴²

B. Revision of Migration Law

Two main components are missing from Tunisia's domestic migration laws: a domestic statute on asylum and access to residence for vulnerable migrants.

1. Asylum Procedures

Regarding asylum, Tunisia should reopen for consideration and pass into law the draft law on asylum that has been tabled since 2016, which would create a domestic legal framework for asylum seekers. The law should incorporate a definition of statelessness and provide protections against the unique vulnerabilities of stateless asylum seekers in Tunisia. The mandate of the proposed Nationality Authority for the Protection of Refugees should be expanded to include statelessness determination procedures, which would aid in the proper application of the Nationality Code's Article 8.⁵⁴³ The law should provide a path to naturalization for asylum seekers and refugees, discussed below, as well as acquisition of Tunisian nationality for stateless persons in Tunisia. The law should include protections for refugees and asylum seekers, providing access to health care, shelter, work, and education in compliance with Tunisia's international obligations under the 1951 Convention and other international best practices.⁵⁴⁴

2. Regularization and Residence Rights

Tunisia should also provide a path to regularization for those migrants who enter Tunisia irregularly and broaden the eligibility criteria for ordinary residency permits, which in turn provide avenues for naturalization. Regularization is a commonsense measure in the process of formalizing a migration regime which has malfunctioned and led to the creation of significant numbers of migrants remaining without status and working in an informal economy over long periods of time. These migrants are working in an environment of high demand for migrant labor, and are de facto integrated in the society.⁵⁴⁵ The lack of regularization often leads to the

⁵⁴² The reservations to the Convention on the Reduction of Statelessness contradict the object and purpose of the Convention, in addition to being impermissible according to the provisions of Article 17. *Id.*

⁵⁴³ AIHR STATELESSNESS STUDY, *id.* at 70.

⁵⁴⁴ *Id.* at 69.

⁵⁴⁵ Amanda Levinson, Why Countries Continue to Consider Regularization, MIGRATION POL'Y INST. (Sept. 1, 2005), <https://www.migrationpolicy.org/article/why-countries-continue-consider-regularization> (reviewing the regularization programs employed by European countries since 1980); INTERNATIONAL ORGANIZATION FOR MIGRATION, REGIONAL STUDY: MIGRATORY REGULARIZATION PROGRAMMES AND PROCESSES (2021),

exclusion of the descendants of migrants from basic rights and, in states where nationality is primarily transmitted by descent (*jus sanguinis*), such as Tunisia, results in statelessness.

C. Amendments to the Nationality Code

1. Amending the Provisions on Deprivation of Nationality

Tunisia should amend its Nationality Code to remove the provisions that allow deprivation of nationality, thereby clarifying that the Constitution's prohibition of deprivation of nationality of Tunisian citizens applies to both Tunisians at birth and naturalized Tunisians. Removing those provisions would also address the heightened risk women face of losing their nationality if either their marriage to a Tunisian man is declared void, or the husband is stripped of his nationality, leading to derivative nationality deprivation of the wife and unmarried minor children.

2. Revision of Article 8

The adoption of a domestic law governing asylum seekers, refugees and stateless persons should allow for stateless status determination, a procedure necessary to identify cases where Article 8 is triggered. In parallel, Article 8 of the Nationality Code should be revised by revoking the requirement of 5 years' *formal* residency and the requirement that the parents be stateless, as suggested in the model provision in the LAS Regional Toolkit on Nationality Legislation.⁵⁴⁶ Instead of requiring legal residency, the law should provide a non-exhaustive list of permissible evidence that can be used to establish actual residency, which itself should be reduced from the 5-years currently required. Article 8 should stipulate solely that "a child who is born in Tunisia is Tunisian if the child would otherwise be stateless."

3. Extending the Deadline on Nationality Acquisition

To further its efforts in ensuring gender equality, Tunisia should pass the amendment proposed to Law No. 2010-55 that would allow those born abroad to Tunisian mothers who missed the 1-year deadline to acquire the Tunisian nationality to which they are entitled. Tunisian authorities should ensure proper and widespread dissemination of these changes accompany the amendment.

4. Ensuring Full Gender Equality

Jus soli acquisition of Tunisian nationality should also be free of gender bias. Article 7 of the Nationality Code should be revised to be gender-neutral to allow the acquisition of Tunisian

https://programamesocaribe.iom.int/sites/default/files/regional_study_migratory_regularization_programmes_and_processes_web_version.pdf (reviewing the regularization programs in Latin America in contexts where the migration profile changed from countries of transit to countries of destination).

⁵⁴⁶ LAS REGIONAL TOOLKIT, *supra* note 307, at 20-21.

nationality by children born in Tunisia if two generations on either the child’s maternal or paternal side were born in Tunisia.⁵⁴⁷ Tunisia should also make the process for non-Tunisians marrying Tunisian nationals uniform, regardless of whether the Tunisian national is a man or a woman.⁵⁴⁸ Doing so would bring Article 13 of the Nationality Code in line with the League of Arab States Regional Toolkit on Nationality Legislation, which states, “[t]hough States possess a broad discretion in the area of conferral of nationality through marriage, they must ensure that their laws allow equal conferral between men and women, as stipulated in international law.”⁵⁴⁹

5. Improvement of Naturalization Policies

Tunisia should improve its naturalization provisions and process. As mentioned above, naturalization should be made available to refugees, and there should be an expedited naturalization process for stateless individuals that provides the appropriate procedural guarantees, such as the right to an interpreter, right to counsel, and the right to lawful residence in the country during the procedure.

The requirements for naturalization, especially those factors considered during the Interior Ministry’s “morality examinations” should be clearly set out, and there should be mechanisms for administrative review at all stages of the process.

Additionally, rather than leaving the decision to naturalize fully in the discretion of the President, the law should be amended to allow automatic grant of nationality for stateless persons once the requirements have been met, and to extend the scope of judicial review of refused naturalization applications.

D. Codification of Simplified Birth Registration

Given Tunisia’s obligations under international and regional law to register the birth of each child born in the country, Tunisia should make its birth registration process more accessible and less cumbersome, by formalizing the changes established during the COVID-19 pandemic.⁵⁵⁰

As noted above, the 10-day deadline is unreasonably short, and is particularly onerous for migrant and refugee mothers. The deadline to register a child’s birth with the municipality should be significantly increased, and measures should be put in place to ensure that the issuance of declaration of birth from hospitals is never contingent on the payment of medical bills and/or presentation of the parent’s identity documents, especially for migrant and refugee parents.

The late birth registration process should be made more accessible and feasible for migrants, refugees, and asylum seekers, who need to hire lawyers, often need interpretation, must

⁵⁴⁷ AIHR STATELESSNESS STUDY, *supra* note 5, at 69.

⁵⁴⁸ *Id.*

⁵⁴⁹ LAS REGIONAL TOOLKIT, *supra* note 307, at 28.

⁵⁵⁰ AIHR STATELESSNESS STUDY, *supra* note 5, at 70.

pay costly court fees, and must present documents they may not possess—all requirements that are particularly onerous for migrants, refugees, and asylum seekers.

Additionally, the Personal Status Code should be amended, so that single mothers are able to register the birth of their child through the regular birth registration process and the child’s right to a name is protected. Tunisia should also bolster its efforts to proactively identify and repatriate those children born to ISIS affiliates who are entitled to Tunisian nationality.

E. Protection for Vulnerable Migrants

Measures that would help bring Tunisia in line with its human rights obligations would also serve to prevent cases of statelessness among those who find themselves in Tunisia against their will.

1. Decriminalizing Homosexuality

Given the risk that LGBTQ+ refugees and rejected asylum seekers who cannot resettle face in Tunisia because of its criminalization of homosexuality, the Penal Code should be revised, specifically Article 230 that criminalizes homosexuality and Article 226 that prohibits conduct contrary to “morality.” There should instead be protections in place for LGBTQ+ individuals, including asylum seekers and refugees, against harassment by state and non-state actors.

2. Path to Citizenship for Victims of Trafficking

Though there are procedural protections in place for victims of trafficking who choose to pursue judicial proceedings against their traffickers, these protections are only temporary and not available to all foreign victims of trafficking. Tunisia should provide a mechanism for foreign victims of trafficking to become legal permanent residents and, should they so choose, to become naturalized citizens through a facilitated procedure that respects trafficked persons’ vulnerabilities.

VIII. End Materials

1. Appendix I: Glossary

Asylum seeker refers to an individual who: “is claiming or applying for protection as a refugee and who has not yet received a final decision on his or her claim”; or “has not yet submitted an application for refugee status recognition (has not yet formalized the administrative requirements in national law) but may nevertheless be in need of international protection.”⁵⁵¹

⁵⁵¹ EUROPEAN UNION & UNITED NATIONS, EXPERT GROUP ON REFUGEE AND INTERNALLY DISPLACED PERSONS STATISTICS: INTERNATIONAL RECOMMENDATIONS ON REFUGEE STATISTICS 22 (Mar. 2018),

Citizenship refers to the relationship between an individual and a state. Citizenship “entitles the individual to the protection of the state and provides a legal basis for the exercise of many civil and political rights.”⁵⁵² For the purposes of this Report, citizenship is used to refer to having identity documents and recognition by a state as a citizen under its domestic laws.

Civil Registration refers to the registration of life events, including birth, marriage, divorce, and death. Civil registration is required in Tunisia to obtain identity documents proving citizenship.

Civil society organizations are community-based organizations that operate independently of any government. Civil society organizations may include those that are registered as NGOs but do not include those registered as international NGOs.

Islamist refers to persons who are considered to be Islamic political or social activists.

International non-governmental organizations (INGOs) are NGOs that carry out programming in multiple countries.

Migrant is any person “who is moving or has moved across an international border or within a state away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is.”⁵⁵³

Nationality is broadly defined under international law as “membership in a nation or sovereign state.”⁵⁵⁴ This definition is used in international and regional treaties and does not attach to a particular State’s domestic laws. Outside of international and regional treaties, nationality is alternatively defined as the overarching idea of connection between an individual and a territory.⁵⁵⁵

Non-governmental organizations (NGOs) are non-profit organizations, operating independently of any government.

Palestine refugees (as defined by UNRWA) are those “persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict [and] descendants of Palestine refugee males, including legally adopted children.”⁵⁵⁶

https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Principles_and_Recommendations/International-Migration/2018_1746_EN_08-E.pdf.

⁵⁵² UNHCR, THE STATE OF THE WORLD’S REFUGEES: A HUMANITARIAN AGENDA CH. 6, 1 (1997),

<https://www.unhcr.org/3eb7bbd04.pdf>.

⁵⁵³ IOM, *IOM Definition of “Migrant,”* <https://www.iom.int/about-migration> (last visited June 1, 2021).

⁵⁵⁴ Nationality: international law, ENCYC. BRITANNICA, <https://www.britannica.com/topic/naturalization> (last visited May 8, 2021).

⁵⁵⁵ Citizenship and Nationality, INT’L JUSTICE RESOURCES CTR., <https://ijrcenter.org/thematic-research-guides/nationality-citizenship/> (last visited Mar. 30, 2020).

⁵⁵⁶ EUROPEAN UNION & UNITED NATIONS, *supra* note 551, at 21-22 (Mar. 2018).

Stateless persons, according to the 1954 Convention Relating to the Status of Stateless Persons, are those who are “not considered as a national by any State under the operation of its law.”⁵⁵⁷ Though Tunisia is a party to the 1954 Convention Relating to the Status of Stateless Persons, it does not have a statelessness determination in its domestic legislation. The 1954 Convention binds the Tunisian state even if it does not conduct its own statelessness determinations.

2. Appendix II: Stakeholders

A. Government

National Authority for the Prevention of Human Trafficking is an agency within the Tunisian Ministry of Justice tasked with coordinating anti-trafficking efforts and composed of representatives from 13 ministries and experts from civil society.

Government (throughout this Report) refers to the Tunisian Government within the state, including its various branches, components, and agencies, regarding how it functions both domestically and internationally.

The Ministry of Interior is integrally responsible for law enforcement of Tunisia which includes regulation of Tunisia’s borders along with broad power in naturalization procedures and passport regulation.

B. Inter-Governmental Organizations

The African Union is a regional intergovernmental organization comprising all African states. The AU has a robust human rights legal framework and has been highly influential in human rights throughout the region. It also encompasses several smaller regional economic organizations.⁵⁵⁸

The League of Arab States is an intergovernmental organization in the MENA region formed of twenty-two Arab nations. It was formed in 1945 and cooperates on several economic and security issues.⁵⁵⁹

The Organization of Islamic Cooperation is a pan-Islamic organization encompassing fifty-seven member states across Africa and Asia.⁵⁶⁰

C. Non-Governmental Organizations

⁵⁵⁷ See 1954 Statelessness Convention, *supra* note 2.

⁵⁵⁸ AFRICAN UNION, <https://au.int/> (last visited Feb. 22, 2022).

⁵⁵⁹ LEAGUE OF ARAB STATES, <http://www.lasportal.org/Pages/Welcome.aspx> (last visited Feb. 22, 2022).

⁵⁶⁰ ORGANISATION OF ISLAMIC COOPERATION, <https://www.oic-oci.org> (last visited Feb. 22, 2022).

Association Defense Droit (ADD) - The association is an initiative of a group of citizens. It was created in 2011. Its mission is the active involvement of citizens in the defense of the right to be different. Projects focus on gender equality and sexual difference as well as political participation.

AESAT - Association des Étudiants et Stagiaires Africains en Tunisie – The Association of African Students and Trainees in Tunisia was formally established in 1993. It has been recognized by the Ministry of Interior and Local Development of the Republic of Tunisia under in 2007. It works to promote unity among and integration of African students and trainees, the promotion of African culture in its great diversity on Tunisian soil. Its members and come from about twenty-five countries in sub-Saharan Africa.

Association Tamaguit pour les Droits les Libertés et la Culture Amazighe – Association for Amazigh Rights, Freedoms and Culture works to further strengthen the culture of human rights and ensure that it is supported in practice to bring Tunisian laws into line with international human rights law. Among its goals is to strengthen and enrich Tunisian cultural identity by restoring the Amazigh cultural dimension in all areas of cultural life, by materially reviving Tunisia's Amazigh civilizational stock and by fighting to protect the Amazigh language from extinction.

Association Tunisienne de Défense des Droits de l'Enfant – The Tunisian Association for the Defense of the Rights of Children undertakes interventions to promote children's rights through a network approach, the encouragement of participation on part of children and youth and through a focus on risk prevention. <http://www.enfant.tn/>

Beity – an NGO whose objective is to fight against discrimination, gender violence and the economic and social vulnerability of women. It pursues its goals by implementing solidarity actions in reception, listening, social and administrative support; monitoring of physical and moral health; legal advice and legal aid; accommodation and economic and social inclusion of women. Beity also focuses on the mobilization for legislative and social change in the direction of equal rights and opportunities and the promotion of universal human rights. - <https://beity-tunisie.org/>

Euro-Med Rights – a network of organizations working in Europe and North Africa, whose mission is to strengthen the collaboration between human rights organizations from the South, the East, and the North of the Mediterranean, and to increase their influence at home and abroad. This mission is achieved by facilitating the creation of joint strategies and action plans between members, and by conveying their shared analyses and views to decision-makers and to the public. EuroMed Rights' work in Tunisia aims at reinforcing and creating synergies between national and international civil society actors, and the independent state instances in four areas:

justice reform, women's rights and gender equality, individual freedoms, and the establishment of independent institutions. <https://euromedrights.org/>

Arab Institute for Human Rights (AIHR) - an NGO founded in 1989 at the initiative of the Arab Organization for Human Rights, the Arab Lawyers Union, and the Tunisian League for Human Rights and with the support of the United Nations Centre for Human Rights. The Institute received the UNESCO International Award for Human Rights Education for the year 1992. Its objectives are to promote a culture of civil, political, economic, social, and cultural human rights, as enshrined in the Universal Declaration of Human Rights and international conventions, and to strengthen the values of democracy and citizenship. It is one of the implementing partners of UNHCR in Tunisia.

Mnemty – an organization formed in 2012, Mnemty provides legal clinics to support victims of racism in Tunisia and help them pursue justice. Mnemty's officers supervise and train lawyers on Law 50 against racial discrimination. Mnemty's agenda also includes (1) the strengthening the mechanism of judicial and non-judicial control of the implementation of human rights and of sanctions, in the event of violation; (2) Implementing Law No. 2016-61 of August 3, 2016 on the prevention and fight against trafficking of people, mainly to investigate cases of abuse of sub-Saharan migrants, and (3) Training primary school, secondary school, and university teachers about human rights with a focus on vulnerable minorities. - <https://www.facebook.com/Mnemty/>, <http://www.mnemty.org>

Terre d'Asile Tunisie – the Tunisian branch of Terre d'Asile France, established following the Jasmine Revolution in 2011. Its Tunisian presence began through a project called *Maison du Droit et des Migrations*, and focused on training cycles and meetings between associations, institutions, and researchers on the theoretical and practical, legal, social, or geopolitical aspects of mobility. Since 2014 in Tunis and 2016 in Sfax, Terre d'Asile Tunisie has been operating daytime social and legal reception service, open to all foreigners regardless of their status, nationality, or reason for coming to Tunisia. This center was created to meet migrant communities' need for direct legal and social assistance. Relying on an active and committed associative, organizational, and institutional network, it has been able to inform, guide and support many migrants until today in their journey in Tunisia. <https://www.terre-asile-tunisie.org>

D. United Nations Organizations

International Organization for Migration (IOM) is an agency affiliated with the UN that provides a variety of services to migrants; its work is to be distinguished from that of the UNHCR, which is an agency under the UN and provides services solely related to refugees.

United Nations High Commissioner for Refugees (UNHCR), also known as the UN Refugee Agency, is the organization in charge of registering non-Palestinian refugees, with the aim of providing humanitarian assistance and, where resettlement to a third country is viable, making a

refugee status determination that enables such resettlement.⁵⁶¹ A 2011 Memorandum of Understanding (MOU) between UNHCR and the Government of Tunisia governs UNHCR's mandate in the country though it has not been made public.⁵⁶²

3. Appendix III: Interviews

Telephone or video conference interviews:

1. Hasna Ben Slimane, Former Minister of Justice, Advocate for Women's Equal Nationality Rights (Nov. 10, 2021)
2. Officers at UNHCR Tunis, (Dec. 6, 2021)
3. Omar Fassatoui, Tunisian human rights attorney (Jan. 14, 2022)
4. Prof. Hafidha Chekir and representatives of the Arab Institute for Human Rights (AIHR), (Jan. 27, 2022)
5. Yosr Lourimi, Tunisian attorney, (Jan. 30, 2022)
6. Officer at the International Organization for Migration (IOM), (Feb. 3, 2022)
7. Executive Director of Terre d'Asile Tunisie (Feb. 22, 2022)
8. Officer at the United Nations Office of the High Commissioner for Human Rights (OHCHR) (Feb. 28, 2022)
9. Representative of Mnementy, (Mar. 1, 2022)
10. Yasmin Houamed, Tunisian journalist (Mar. 3, 2022)
11. Alaa Almoumen, stateless person (Mar. 3, 2022)
12. Faten Ben Lamine, Tunisian attorney, (Mar. 28, 2022)
13. Representative of Mawjoudin (Apr. 1, 2022)
14. Representative of AESAT (Apr. 2, 2022)
15. Representative of Terre d'Asile Tunisie (Apr. 12, 2022)
16. Mahmoud Kaba, Thematic Program Coordinator – Migration at EuroMed Rights, (Apr. 15, 2022)

Written Correspondence:

17. Monia Ben Jemia, Tunisian professor of law (Mar. 16, 2022)
18. President of the Ivorian Committee of Cap Bon (Apr. 3, 2022)
19. Azaiz Sammoud, Tunisian attorney (Mar. 14, 2022)

In-person Interviews:

20. Representatives of Terre d'Asile Tunisie, Tunis, Tunisia (Jun. 22, 2022)
21. Alaa Almoumen, stateless person, Tunis, Tunisia (Jun. 22, 2022)
22. Ahmed Saeed, stateless activist, Gammarth, Tunisia, (Jun. 23, 2022)
23. Faten Ben Lamine, Tunisian Attorney, Gammarth, Tunisia (Jun. 23, 2022)

⁵⁶¹ U.N. Convention relating to the Status of Refugees art. 1, Apr. 22, 1954, 189 U.N.T.S 137.

⁵⁶² UNHCR, *What We Do*, UNHCR, <https://www.unhcr.org/en-us/what-we-do.html> (last visited Mar. 2023).