

Minority Rights Group International

**In partnership with the Anti-Discrimination Points Network:
Damj, Association pour la Promotion du Droit à la Différence,
Association Tunisienne de Prévention Positive, By Lhwem,
Danseurs Citoyens Sud, Mawjoudin, Mnemty**

Review of the 6th Periodic Report of TUNISIA

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Minority Rights Group International (MRG) is a non-governmental organization (NGO) working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. Our activities are focused on international advocacy, training, publishing and outreach. We are guided by the needs expressed by our worldwide partner network of organizations, which represent minority and indigenous peoples.

MRG works with over 150 organizations in nearly 50 countries. Our governing Council, which meets twice a year, has members from 10 different countries. MRG has consultative status with the United Nations Economic and Social Council (ECOSOC), and observer status with the African Commission on Human and Peoples' Rights (ACHPR). MRG is registered as a charity and a company limited by guarantee under English law: registered charity no. 282305, limited company no. 1544957.

Damj pour la Justice et l'Egalité is a non-governmental and non-profit organization established in 2011 working for the inclusion and the defense of minorities and marginalized groups including the LGBT community.

L'Association pour la Promotion du Droit a la Difference (ADD) is a non-governmental and non-profit organization established in 2011 with the primary aim of defending universal human rights and democracy in Tunisia.

Mnemyt is a Tunisian association, registered since 2013, concerned with the fight against all forms of racial discrimination. Its work contributed to the establishment of a legal framework for the protection of black Tunisian men and women.

L'Association Tunisienne de Prevention Positive (ATP+), created in 2014, is a young organization which fights and militates for the rights of people living with HIV as well as key and vulnerable populations.

By Lhwem is a cultural and artistic social association officially created in 2017. It is based on the experience of Tunisian artistic movements that emerged after the 2011 popular uprising.

Danseurs Citoyens Sud is a non-profit, non-governmental association created in 2015 in Tunisia to promote alternative culture and help establish a culture of citizenship based on the principles of human rights.

Mawjoudin – We Exist registered since 2015 as a not-for-profit NGO, works towards achieving equality, human rights, bodily rights and sexual rights for the LGBTIQI+ community and other marginalized groups and individuals.

I. INTRODUCTION AND CONTEXT

1. Minority Rights Group International (MRG), in partnership with the Anti-Discrimination Points network (*Points Anti-Discrimination*) including Damj, Association pour la Promotion du Droit à la Différence, Association Tunisienne pour la Prevention Positive, By Lhwem, Danseurs Citoyens Sud, Mawjoudin, and Mnepty, welcomes the opportunity to submit information to the Human Rights Committee to inform its review of the 6th periodic report of Tunisia.
2. This submission focuses on discrimination against individuals on the ground of their ethnicity, religion, sexual orientation or gender identity in Tunisia. It is based on the documentation of cases collected by the Anti-Discrimination Points through interviews and focus groups in 2019, as well as desk-based research and interviews conducted by MRG in 2018. Despite positive legal changes, discrimination remains an every-day reality for members of certain groups. Our Anti-Discrimination Points have collected and documented a total of 266 cases of discrimination only in the year 2019 on the two following grounds: racial discrimination (including discrimination against black Tunisian citizens as well as Sub-Saharan migrants) and discrimination on the basis of sexual orientation or gender identity.
3. Article 20 of the 2014 Tunisian Constitution affords international treaties ratified by the government a status superior to that of laws and inferior to that of the Constitution. Domestic law in conflict with international treaties is however routinely applied and mobilized by judges, such as certain sections of the Penal Code that violate ICCPR provisions as described below.
4. Since the 2011 revolution, Tunisia has successfully established a functioning democracy and taken a number of positive steps to promote human rights in the country, including the inclusion in the 2014 Constitution of provisions in line with human rights standards. This has been followed by a number of other legislative changes that have benefitted Tunisia's minorities, including the passage of the Organic Act No. 50 of 2018 on eliminating all forms of racial discrimination.¹
5. Despite these encouraging developments, many religious communities continue to face discrimination. While the right to freedom of religion or belief is guaranteed in the Constitution, in practice the only minorities currently recognized are the Christian and Jewish communities. Other groups that are not recognized, such as Bahá'í, face significant restrictions on their ability to worship freely. Pre-revolutionary legislation on apostasy is also still used to penalize Tunisians who have chosen to convert to Christianity or to identify as atheist.
6. For decades, successive Tunisian governments have defined its national identity as Arab and Muslim. This has not only marginalized religious minorities but also side-lined the country's indigenous Amazigh population through a long process of assimilation. The preamble and article

¹ Organic Act No. 50 of 23 October 2018 on eliminating all forms of racial discrimination. Available at: http://www.legislation.tn/detailtexte/Loi-num-2018-50-du-23-10-2018-jort-2018-086_2018086000501.

39 of the 2014 Constitution describe the country's identity as 'Arab-Muslim' with no mention of its indigenous Amazigh community, which is largely treated as culturally assimilated. There are therefore no concrete guarantees of indigenous rights in general or Amazigh rights specifically.

7. The country's black population has long been subjected to racial discrimination, which, although currently criminalised by law, is still a widespread phenomenon. The community remains largely unrepresented in the country's public and political life and only two cases of discrimination have reached a court so far using this law, one of which was dismissed.
8. The Anti-Discrimination Points network has documented cases of discriminations between January and December 2019 in the governorates of Tunis, Ariana, Monastir, Bizerte, Sfax, Gabes, Medenine and Tataouine. Most cases of discrimination, violence and harassment on the basis of sexual orientation and gender identity took place in the police station (at least 20 documented cases), in the street (at least 20 documented cases), in the family or by neighbours (at least 20 documented cases).
9. As for racial discrimination, including racially motivated abuse, this took place mostly in the workplace (15 documented cases), in the street (6 cases about Sub-Saharan migrants), by neighbours (4 cases) and in the school (2 cases).

II. ANALYSIS

Anti-discrimination legislation

10. The 2014 Constitution in its art.21 provides that that all citizens have equal rights and are equal before the law without any discrimination, without specifying on which grounds discrimination is prohibited.
11. However, a number of pre-2014 Constitution's laws prohibit specific types of discrimination on specific grounds. Article 4 of the Code of Obligations and Contracts for instance provides that "the difference in worship does not create any difference between Muslims and non-Muslims with regard to the capacity to contract and the effects of obligations validly formed by them and towards them".
12. After the adoption of the Constitution, laws were adopted to prohibit two types of discrimination:
 - organic law n ° 2017-58 of 11 August 2017, relating to the elimination of violence against women;
 - organic law n ° 2018-50 of 23 October 2018, relating to the elimination of all forms of racial discrimination.

13. The latter applies to all forms of discrimination based on “race, colour, decent, national or ethnic origin or any other form of racial discrimination” (art.2). This law does not only protect Tunisian citizens against racial discrimination, but also Sub-Saharan migrants and other persons living in Tunisia who are discriminated on those aforementioned bases. However, access to the protections afforded by this law is very much limited by procedural obstacles, such as the lack of residence and work permits for many Sub-Saharan migrants, without which a case cannot be filed. The lack of papers is partially due to discriminatory and hostile attitudes from the local authorities, as well as bureaucratic impediments.
14. Tunisia does not have a comprehensive anti-discrimination legislation covering all grounds, such as but not limited to gender, religion, ethnicity, language, disability, sexual orientation and gender identity. The state reports that a number of parliamentarians have proposed the adoption of a Code of Individual Rights and Freedoms,² which would prohibit all forms of discrimination, including on the basis of sexual orientation. The code was largely inspired by the issues raised in the report of the Commission on Individual Freedoms and Equality (COLIBE) and it contains provisions for the rights to be guaranteed such as the right to life, dignity, physical integrity and thought, the right to belief and conscience and academic freedom; the mechanisms for the protection of individual rights and freedoms and especially judicial protection; and it aims at introducing amendments into the four legal Codes that are in force, namely the Code of Civil and Commercial Procedure, the Penal Code, the Code of Penal Procedure and the Code of Military Justice.

Lack of disaggregated data

15. In the state report to the Human Rights Committee no data is provided on any minority. The absence of disaggregation of national statistics and data by ethnicity or religion makes it difficult to have a comprehensive picture of the situation of minorities in Tunisia, and to assess the impact of anti-discrimination policies.
16. While official discourse tends to minimise the percentages of these communities – often following an old pre-revolution official estimate that referred to 1% of non-Arab-Muslims -, civil society organisations working with and on these communities have been referring to much higher numbers. When it comes to black Tunisian citizens, figures may amount to 10% of the population according to Mnenmy and ADAM pour l'égalité et le développement.

Discrimination against Black Tunisians

17. The discrimination faced by black persons is reflected in the everyday use of words such as ‘slave’ (*oussij*). They not only suffer from widespread poverty, exclusion in the job market and limited access to higher education, but are also largely absent from politics, media and other areas of public

² Submitted to the Assembly of People’s Representatives on 11 October 2018 under file No. 71/2018. See the website of the Assembly of People’s Representatives.

life. While underrepresented in Tunisian society, many black Tunisians are readily identifiable and subjected to verbal abuse and sometimes even violence. In Southern Tunisia, the situation is particularly problematic, as the black community sometimes lives in isolated areas, such as Gosba village. A 2016 report by Al Jazeera revealed the existence of separate buses for black and white students in Sidi Maklouf. This separation is reinforced by a continued taboo around mixed marriages.

The state report mentions that 'Immediately following the entry into force of Organic Act No. 50 of 2018, the Sfax Court of First Instance sentenced a mother of a pupil to a prison term for perpetrating the offence of racial discrimination against a teacher because of his colour.' However, in reality the perpetrator was given a suspended sentence, i.e. she was given a fine of 300 Tunisian dinars (approximately 100 euros) and sentenced to 5 months of prison if she committed another crime. This was the only case judged "in favour" in fifteen months since the law was adopted.

Another complaint was presented by an Ivorian woman, who was victim of rape under threat of death with a weapon. The Investigative Judge in April 2019, after referring the rapist to a doctor, decided that the attacker was mentally unstable and was therefore set free. Mnemty reports that the number of cases filed at the police station is much higher (7 cases at least of which they are aware of) however the timing of dealing with them is longer than what provided by law (two months according to art. 6) and thus they have not reached the court yet.

18. Apart from providing legal protection, the 2018 Act foresees the creation of public policies and practices to support the growth of a positive human rights environment and to work with different sectors such as health, media, sports and education to combat racial discrimination (art.3 and 4), as well as the establishment of a national committee to combat racial discrimination under the supervision of the Minister of Human Rights (art.11). No measures were taken in this direction so far.

Institutional framework to combat all forms of discrimination

19. Article 41 of the Human Rights Commission Act adopted in 2018 provides for the establishment of a subcommittee to combat all forms of discrimination which is not yet in place.

Right of Amazigh to use their language and register their names

20. Tamazight of Tunisia is recognised as a severely endangered language by UNESCO with approximately 10,000 speakers left. Speakers can be found mostly in 6 areas of Southern Tunisia: Tamazret, Taoujout, Djerba, Zraoua, Douiret and Chenini/Tataouine. The language is not taught

in schools, although Tunisian schools normally offer learning of several languages (French, English, Italian, Spanish and other foreign languages).

21. After centuries of assimilation, many Tunisians may identify themselves as ethnically and culturally Amazigh, although they do not speak the language, thus raising the total population identifying as Amazigh. It was forbidden to speak Tamazight during the Bourguiba era. Nowadays, there are still some cases of restrictions concerning registration of names and use of the language.
22. Article 42 of the 2014 Constitution provides that "... the State encourages cultural creativity and supports national culture in its roots, its diversity and its renewal, with a view to establishing the values of tolerance, rejection of violence, openness to different cultures and dialogue between civilizations."
23. However, texts lower in legal value and not in conformity with the Constitution are imposed at the local level as at the level of the central administration, like circular 94/33 dated May 17, 1994 which provides for "more interest granted to the Arabic language" also relating to the Arabization of road signs and administrative documents.
24. Decree Law no.85 of 12 December 1962 prevents registering Amazigh names at birth, therefore obliging individuals to register using Arab names. In an announcement the mayor of the city of Kram stated that the municipality would only accept birth registration using first names of Arab origin, 'being of Arab-Muslim origin as also stipulates the Constitution'.
25. The registration of Tamazight names in the civil registry is done at the discretion of the person working in the municipality, which means that similar requests to register names are treated differently on an arbitrary manner. A few months ago, after a man saw his request to register his son's name refused, he brought the case to the judge in Sfax, who issued a favourable judgment and allowed for the registration of a Tamazight name in the civil registry. This is the only case where the issue was brought to a court.

In 2019 a pharmacist in the city of new Matmata was threatened by the authorities for having added the word "pharmacy" in Tifinagh alphabet (Tamazigh) on his shop sign. The sign was already available in Arabic and French. The head of the police office of Matmata went with the delegate to ask the pharmacist to remove this writing by the following morning and threatened him of being pursued in justice and losing its job. The pharmacist obeyed out of fear.

We also documented an incident where two students were temporarily suspended from their school for speaking Tamazight during the break. One of the two changed school because he did not want to return.

Discrimination against Sub-Saharan students and migrants

26. Tunisia is a common destination for Sub-Saharan students, especially coming from Ivory Coast as no visa is required between the two countries. According to the Association for African Students and Interns in Tunisia (AESAT), there were 12,000 sub-Saharan students in Tunisia in 2013, but approximately half of them left in recent years due to public humiliation and verbal or physical assault, including rape.
27. Sub-Saharan migrants are subjected to ethnic profiling by police officers and are much more likely to be stopped and asked for identification.

Failure to protect the rights to legal defence for Sub-Saharan migrants

28. Law no 5 of 16 February 2016 requires the judicial police officer to inform the suspect in a language they understand of the measure taken against them when there is a charge. Moreover, every person has the right to understand when they are being questioned by law enforcement (including when they are stopped at the border). However, in most cases, for sub-Saharan migrants it is difficult or impossible to understand the charges because they do not speak Arabic. The same applies when they want to file a complaint in case of discrimination using law no.50, or for any other judicial matter (applying for legal papers etc.), because it must be done in Arabic. In order to be able to understand the charges, they would need to be accompanied by a lawyer (which they often cannot afford without the help of NGOs working on support of migrants), by an NGO or by an acquaintance that can translate for them because. In some very rare cases, the police officer or someone in the administration would translate for them.
29. According to decree n ° 68-198 of June 22, 1968, regulating the entry and stay of foreigners in Tunisia, as modified and supplemented by the decree n ° 92-716 of April 20, 1992, penalties apply for those staying over 3 months. A decree from 2018 introduced an exoneration from the penalty for registered students who do not hold a residency card due to administrative delays and it also introduced a maximum limit to the penalty of 3000 Tunisian dinars. However, if a foreigner is stopped without documents, he is subject to a decision of expulsion. Because migrants often cannot afford paying for the administrative fees as well as their flight, they are sent to prison and find themselves stuck in a situation of deprivation of their liberty. Even those who are not found by authorities and are therefore not imprisoned find themselves in a situation where they cannot leave the country because they cannot afford paying those fees. In those cases, they might have recourse to the help of organisations such as OIM to have support for voluntary return.
30. Many sub-Saharan migrants work without a contract and this creates a problem with Tunisian administration, since they are not allowed to obtain a residence permit without a work contract, and they are therefore left in a situation of irregularity on both fronts. Moreover, this exposes them to situations of vulnerability where often they are either paid less than other workers, because the

employers know they have no way of claiming their rights, or they are not paid at all and forced to work for free, under the threat of being reported to the authorities. Others who see no other option as they cannot get legal papers may recur to sex work which is criminalised by law. We have documented several cases of sub-Saharan migrants being subjected to human trafficking, servitude and exploitation.

Two young Sub-Saharans were suffocated in a construction site in Sfax because of fatigue and the exploitation which lasted for months; a young Sub-Saharan man died of a heart attack from fatigue at work; an Ivorian resident in Tunisia was working in a restaurant without receiving any salary for several months.

Incitement to racial discrimination and hatred

31. Article 52 of Decree No. 115 of 2011 on freedom of the press and publishing stipulates that “Anyone who, by using one of the methods set forth in article 50 of this decree, directly promotes hatred among races, religions or peoples by inciting discrimination, hostile actions or violence or by disseminating ideas that are based on racial discrimination shall be liable to a prison term of between 1 and 3 years and a fine of between 1,000 and 2,000 dinars.” Moreover, art.8 of organic law no. 50 against racial discrimination increases the penalty when an act of racism is accompanied by incitement to hatred, violence and segregation, separation, exclusion or threatens to do so against any person or group of persons based on racial discrimination.
32. A recent case of racism (December 2019) in the media concerned the only Tunisian black MPs, Madame Jamila Ksiksi, who was publicly compared to a monkey, an offense that is unfortunately not uncommon on social media. However, no consequences were taken. Another known case concerned Nejiba Hamrouni in 2014, the former president of the Journalists’ Union, who was publicly insulted by Islamists when they posted some caricatures of her image resembling a monkey.

Discrimination in the right to marriage of non-Muslims

33. While the Code of Personal Status is silent concerning mixed marriages, for decades an administrative directive was in place prohibiting Muslim women from marrying non-Muslim men. The directive was formally abolished in 2018. However, some officials have been reluctant to stop applying these regulations. For instance, the mayor of the city of Kram announced at a press conference held in August 2018 his decision to ban in his city hall the marriage of a Tunisian woman with a non-Muslim. He said he would only allow marriages where the latter can prove his conversion to Islam, ‘in application of Articles 1 and 6 of the Constitution and Article 5 of the Personal Status Code’.

34. Furthermore, the website of the Municipality of Tunis in both its Arabic and French versions still requires paperwork proving that a foreign male spouse has converted to Islam before the marriage is formalized: the website was not yet updated at the time of writing.
35. The stated objective of the COLIBE established pursuant to Presidential Order No. 111 of 13 August 2017 was to propose reforms to promote individual freedoms and equality in line the Constitution and international norms, including reform of the discriminatory inheritance law as well as other laws concerning gender equality. The COLIBE report, presented in June 2018, proposed several recommendations including complete equality between sons and daughters in terms of inheritance, by referring to the discriminatory nature of Article 119 and other articles in Chapter Five of Book Nine of the Code of Personal Status.
36. The report was widely criticized by conservative forces, particularly on the issues of equality in inheritance, the decriminalization of homosexuality and the abolition of Muslim/non-Muslim distinctions. The critics were so strong in certain instances that COLIBE members were subject to death threats and defamatory and degrading comments on social media, without any action on the part of the authorities to prosecute the offenders.

DISCRIMINATION AND VIOLENCE BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY

Continued criminalization of same-sex conducts

37. Lesbian, Gay, Bisexual, Trans and Queer persons remain extremely vulnerable to abuse and discrimination, since consensual same-sex conduct is still criminalised under art 230 of the Penal Code, while article 226 and 226bis of the same code, criminalizing respectively “public indecency” and “attack to public morals”, are often used to arrest, harass and intimidate non-heterosexual and non-cisgender persons, as well as sex workers. Sex work is furthermore criminalized under articles 231 (criminalising prostitution) and 232 (criminalising facilitation of prostitution) of the Penal Code.
38. Police officers rely on these articles to harass, intimidate and arrest certain citizens often simply based on their appearance which is considered not in line with social norms surrounding masculinity and femininity.
39. The criminalization of same sex conducts also put LGBTQ persons in a position of extreme vulnerability. Cases reported to our Points Anti-Discrimination illustrate this:

A victim was attacked by two people with whom he made an appointment following a Facebook conversation. When he complained to the police station, he was arrested after being reported by the two people who disclosed his sexual orientation to the police. The victim was forced to undergo an anal test and was imprisoned.

40. COLIBE proposed that the act set forth in article 230 should no longer be considered an offence or that the penalty prescribed for that offence should be reduced from a custodial sentence to a fine. Although the penalty is reduced, the second option still implies that the fined individuals are committing a wrong act they should still be punished for, whereas no one should be imprisoned or punished for simply expressing who they are.

Discrimination in schools, at work and in society

41. LGBTQ individuals are frequently discriminated against in schools, at the workplace and within the family, as well as from every section of society, including media and health service providers. Our fieldwork provides evidence that this leads to higher dropout rates from school, as well as less opportunities to get a job. Moreover, several individuals are abandoned by their families, sometimes because of societal shame. No policy to prevent this practice or to provide shelters to young people abandoned by their families have been put in place by the government.
42. This puts LGBTQ persons in a situation of vulnerability, where often the only option available to earn a living is to resort to sex work, which is criminalised in Tunisia under art. 231.

Anal examinations

43. LGBTQ persons still experience severe human rights abuses, despite the guarantees of individual freedom and integrity contained in art. 23 (“the state protects human dignity and physical integrity and prohibits moral or physical torture”) and art.24 of the 2014 Constitution. The continued existence of Article 230 of the Penal Code, which criminalizes homosexuality with a jail sentence of up to three years, allows for instances of torture and other degrading treatment to still be in force and legally justified. Although no official statistics are available, forced anal examinations are still carried out by doctors under the supervision of police officers.
44. The state report mentions that: “Medical examinations pursuant to article 230 are carried out only with the consent of the person concerned, and there is no presumption that that individual has perpetrated the offence. The person concerned may refuse such a medical examination. Pursuant to the Code of Medical Ethics, a forensic doctor who fails to respect the wishes of the individual concerned is liable to disciplinary action or a criminal penalty.” However, our organisations have documented many instances where victims did not know their rights and were not made aware of them and were forced to undertake anal examination. If they refuse to do so, then a presumption of “guilt” is applied.
45. Article 7 of the Code of Medical Ethics reaffirms the inviolability of physical integrity by providing that “a doctor requested or required to examine a person deprived of his liberty or to give him care cannot, directly or indirectly, by his mere presence, favour or condone an attack on the physical or mental integrity of this person or on his dignity.” Doctors should not be pressured by authorities

to undergo such procedure. The National Instance for the Prevention of Torture acknowledged in 2018 that this practice is anti-constitutional. However, authorities use the anal examination as evidence to detain, often without authorisation, and therefore undermining physical and psychological integrity.

Right to privacy of LGBTQ persons

46. According to art.29 of the Constitution “No one can be arrested or detained, except in the case of flagrant delict or by virtue of a court decision”. When police officers identify someone they believe is violating article 226 and/or article 226bis of the Penal Code, because of an appearance that does not conform with their expectations in terms of gender norms as mentioned above, they often confiscate their phones or enter their house without a warrant to seek evidence of guilt. This is a violation of the right to the protection of personal data as guaranteed by article 24 of the Constitution and the law on personal data (organic law n° 63 of July 27, 2004 on the protection of personal data).

Some judgements where personal data was used to convict and sentence to prison LGBTQ individuals:

- Judgment of the Court of First Instance of Tunis No. 12799 of June 19, 2013 (conviction on the basis of art. 230 of the Penal Code)
- Judgment of the Kairouan Court of First Instance No. 6781 of December 10, 2015 (conviction on the basis of art. 226 and 230 of the Penal Code)
- Judgment of the Court of First Instance of Sfax n ° 1757 of March 9, 2016 (conviction on the basis of art. 230 of the Penal Code)
- Judgment of the court of first instance of Tunis n ° 18/38449 of March 19, 2018 (conviction on the basis of art. 230 of the Penal Code)

47. We very much appreciate the effort of the Tunisian state to provide concrete statistical data on the number of persons convicted on the basis of art.230 of the Penal Code (annex no.6 to the state report), however our organisations report a much higher number of individuals convicted on this basis, with penalties usually amounting to 3 months of prison in dozens of cases per year. Public data on these convictions is not available. Damj alone has provided in 2019 legal assistance to 153 persons accused on the basis of art.125, 226bis, 230, 231 of the Penal Code.

Failure to protect LGBTQ persons from violence and hate crimes

48. Acting in violation of constitutional provisions, the police officers, according to the cases studied, attacked or rejected people who came to file a complaint for violence and assault on the street on the basis of their gender identity. On the 28th of January 2020, a video circulated on the internet of a trans person being violently beaten in the streets of Tunis by civilians in the presence of a police

officer who did not intervene and encouraged the behaviour. In the same context, a person suspected by the police of having committed the act of sodomy was ill-treated at the police station, his telephone was searched and was subsequently forced to sign the police report.

49. As a consequence, when LGBTQ individuals are attacked often do not report these cases of violence, considering the treatment usually granted by the authorities.

Violations of the right to a lawyer in police custody

50. The right to a lawyer during interrogation while in police custody is essential in order to avoid any overstepping by the authorities. However, we have documented a number of cases where victims of discrimination, particularly discrimination on the ground of sexual orientation and gender identity, were forced to sign the interrogation report without knowing the reason for the arrest and without giving them the time to see a lawyer.

Situation of LGBTQ persons in prison

51. Article 30 of the Constitution ensures that "all detainees have the right to humane treatment which preserves their dignity." We have documented the practice of putting LGBTQ individuals in separate rooms and sections in the prisons of Tunis and Sousse. This treatment is justified by the authorities as a way to protect those individuals, however they often received degrading treatment in these facilities, such as being put in solitary confinement for days. Before the revolution, prisoners in Tunis who were not from the LGBTQ community were sent to the rooms assigned to the LGBTQ individuals as a punishment; incidents of this behaviour have decreased but are still present. Moreover, LGBTQ prisoners report being regularly assigned specific chores in prison, such as cleaning toilets.

52. Trans persons are usually sent to prisons based on their assigned sex at birth. In a few instances, trans women were put in prisons with cisgender women, however they were bullied and harassed by the officers and inmates.

In the case of a transwomen put in jail in Tunis, handled by Damj, the organisation had requested that she be placed in separate facilities in order to protect her from the ill-treatment she was receiving. That request was / was not granted, and a dignified treatment was only provided when mediatic attention was brought to the case.

Right of transgenders to change their gender on official papers

53. The 2018 case handed down concerning the change of legal documents for a transgender person reported by the State is a positive and welcome step forward, however it is the only case so far and remains an exception. There were not any other judgements so far on the issue, however some

requests were presented to courts asking for change of legal documents and they are still pending answer. Moreover, there are no legal procedures to undergo gender reassignment in Tunisia.

54. Articles 226 and 226bis of the Penal Code, criminalizing “public indecency” and “attack to public morals”, are often used by police officers to target persons with different gender identity expressions, for example, in the case of trans people (identifying with a gender that does not correspond to the biological sex assigned at birth) or transvestites (identifying with the biological sex assigned at birth but who adopt ways of expressing their identity which are perceived to be specific to the other sex). The simple act of wearing makeup and nail polish may prompt the arrest of the person by police officers, on the ground that that person has assaulted decency and morality.

LGBTQ rights defenders

55. Human rights defenders, and particularly LGBTQ right activists, are often subjected to insults and harassment on social media, going up to death threats. Although the state report mentions following the case concerning the association Shams in paragraph 80, we would like to mention that members of other associations in support of LGBTQ rights are constantly exposed to hatred and death threats, especially on social media and no protection is provided by the state. On the contrary, police and security forces are often the ones targeting. Lack of security will always be a problem until art.230 is repealed as it gives law-enforcement officers the legitimacy to target LGBTQ persons and the defenders of their rights as if they were criminals.
56. As reported by Damj and Frontline Defenders, on 13 January 2020 trans woman and human rights defender Frifta was violently attacked by three men including a police officer in Tunis. Since then, no action has been taken by the police to hold the perpetrators accountable.
57. Following her defence of Frifta, as well as participation in the feminist movement Falgatna, activist Rania Hamdouni was exposed to numerous death threats and asked for the support of authorities without any response.
58. Another recent case of aggression concerned a trans man who was stopped in January 2020 by the police in Tunis near the Ministry of Interior and asked for his ID. When they spotted that his appearance did not match with the sex mentioned in the ID, they kept him for one hour, harassed him and inspected his body although he repeatedly reported having presented a request to the court to have his documents changed.

FREEDOM OF RELIGION OR BELIEF AND THE SITUATION OF RELIGIOUS MINORITIES

59. Tunisia has a long history of acknowledging equality of all citizens regardless of religion.³ However, the underlying tension between religion and secularism can be seen by the fact that while Tunisia

³ Acknowledged in Pacte de la paix of 1857, Constitution of 1861, Constitution of 1959. The jurisdictional system was unified for all citizens regardless of religion of belonging in 1957.

is described as ‘a civil state based on citizenship, the will of the people, and the supremacy of law’ (Article 2), it is also stated that ‘Tunisia is a free, independent, sovereign state; its religion is Islam, its language Arabic, and its system is republican’ (Article 1). It is not clear whether “its religion” refers to Tunisia as the state or Tunisia as in its people. Many debates at the national level took place over this interpretation since the approval of the Constitution. Although the general consensus seems to be on the latter interpretation, some still try to use this article to elevate religion to a source of legitimacy. Therefore, while there is no explicit provision that elevates religion to a source of legitimacy for political power, there is nevertheless a tension in the underlying assumption that Tunisia is a Muslim country: this results in the imposition of Islamic precepts into private areas of civic life by police and the judiciary, creating particular problems for the country’s minority population.

60. For religious minorities, while some groups such as the Jewish community have benefitted from a certain level of recognition even before the revolution, other faiths such as Bahá’í have yet to be recognized despite general legal guarantees of religious freedom already in place.

Right to change or renounce religion

61. One area of contention for Muslims is the right to renounce or change religion (*Al Ridda* in Islam). Article 6 of the Constitution states that: ‘The state is the guardian of religion. It guarantees freedom of conscience and belief, the free exercise of religious practices and the neutrality of mosques and places of worship from all partisan instrumentalization. The state undertakes to disseminate the values of moderation and tolerance and the protection of the sacred, and the prohibition of all violations thereof. It undertakes equally to prohibit and fight against calls for Takfir and the incitement of violence and hatred.’ This is however threatened by conservative forces within Tunisian society, as well as elements in the police and the judiciary. In fact, conversion is notably not a problem if a non-Muslim citizen wishes to convert to Islam, but strong societal pressures are exerted to prevent Muslims choosing another faith. While conversion is not criminalized under Tunisian law, the social taboos are so widespread that these groups generally prefer to remain hidden. Many face ostracization and even violence from their own families due to the stigma surrounding conversion. Converts may also be harassed by security forces and officials.

In November 2016, nine young Christian converts were stopped in Gafsa by antiterrorist forces and threatened if they did not renounce their faith. The security agents claimed they were targeted not on account of their religion but due to suspicious behaviour.

62. At present, all the churches in Tunisia are foreign and prayers are not led in Arabic. Converts must either go to foreign churches or attend private churches inside their homes. These gatherings are

not safe as police could raid them at any time, although at present their existence appears to be tolerated.

63. We have recorded instances of converts who were pressured to resign from the army or not join it at all, although military service is normally mandatory for all male Tunisians.

Lack of recognition for Baha'is

64. The Tunisian government is still reluctant to acknowledge other religions besides the officially recognized 'Abrahamic' religions of Islam, Christianity and Judaism, such as the Bahá'í faith.

65. The decree-law of 24 September 2011, relating to the creation of associations has enabled the creation of several human rights associations including those in defence of minority rights.

66. However, Baha'is have been so far unable to register either as a religious or civil organization. The community has three pending requests:

- In 2012, the Baha'i Association of Tunisia tried to register as a civil association advocating for non-discrimination, equality and unity. Their request was refused by the Prime Minister because of the inclusion of 'Baha'i' in the name. They went to the administrative tribunal to appeal this decision, but at the time of writing no verdict has been handed.
- They then started procedures for the same case before the Tribunal of First Instance. Their case was rejected there on the basis that the decision rests with the Prime Minister. In late 2017, the community sent a letter to the President of the Republic, the President of Parliament and the Prime Minister, denouncing the discrimination the community faced and asking for the recognition of their faith, in particular the National Spiritual Assembly. So far, they have not received a reply.
- The community has also petitioned the Minister of Local Affairs to establish a Baha'i cemetery but have yet to receive a reply.

67. The lack of recognition faced by the Bahai also leads to the impossibility to register prayer and gathering centres. The community has reported ongoing harassment and discrimination. In 2008, a fatwa was issued by the Tunisian Mufti against the Baha'i faith, stating that Baha'ism is a sect outside of Islam, which contradicts Islam.

In September 2017 a 20- year-old Baha'i was taken from his home near Monastir by police and questioned for several hours about his religion, without any apparent motive other than his faith.

68. The Baha'i marriage contract, recognized in several countries, is not recognized in Tunisia, but they can register civil marriages like all other Tunisians. Many, because they do want to operate underground, contact the municipality before their marriage and inform them that they are Baha'i.

Some municipalities then refuse to perform the civil marriage and they must look elsewhere until they find one that is willing to perform the act.

Non-believers

69. The situation today in Tunisia is particularly precarious for the country's atheists and other non-believers, who are usually identified as being culturally Muslim and for which no data is available. In fact, some prefer to stay silent out of fear of prosecution and stigmatization. Others may not consider themselves atheist but simply decide not to follow the common interpretation of Islam. Some of them have been prosecuted for the exercise of their freedom not to believe and not to practice a religion.
70. A recent example of this was the conviction of non-fasters (*fattaras*) during the month of Ramadan in 2017 on the basis of article 226 and 226 *bis* of the Penal Code (offense to decency and morals). Cases have been reported of youth being brought to the police stations because they were drinking, eating or smoking during the day in the municipalities of Ariana, Bizerte, Sfax and Beja.

Shia Muslims

71. While the Constitution and legislative texts simply refer to 'Islam' without specifying which school (for example, Article 1 of the Constitution), this refers implicitly and specifically to Sunni Islam, and in particular to the Mālikī school. Shi'a Islam remains largely ostracized and for this reason little information on the community, including population estimates, is available.

Incitement to hatred against religious minorities

72. Another area where the law is applied unevenly according to religion is with the protection of the sacred and incitement of hatred, which is generally used only to protect Islam, despite well publicized incidents of hate speech against minorities.

A call to kill Tunisian Jews was issued by a Salafi leader in 2012, provoking the reaction of an outspoken representative of the Tunisian Jewish Community, Roger Bismuth, who filed a complaint before the public prosecutor at the Tunis Court of First Instance. In August 2018 a debate was also sparked in local media and online because Ilan Raccach, a Jewish man who was in prison since July 2018, was denied kosher food following pressure on the prison by certain conservative groups who accused Raccach of being an Israel spy and the prison of treating him with favouritism. A friend of Ilan was subsequently beaten in Tunis by a group of people who also alleged he was also an Israeli spy – a not unusual accusation for Tunisian Jews due to a widespread perception that all Jews are associated in some way with Israel.

Obstacles to participation in public and political life for persons belonging to minorities

73. Religious and ethnic minorities are usually extremely under-represented in participation in public affairs and the lack of disaggregated data does not help in this regard.
74. Despite the fact that discrimination on the basis of religion in the recruitment of public servants is banned by law, many Tunisian Jews in practice are not represented in certain areas of employment. There is indeed a spread societal understanding that certain jobs are not meant for certain groups. As a result, for instance, many Jews believe that they cannot in practice take part in the army or hold other senior official positions. Moreover, Tunisians assuming certain functions, such as a judge or lawyer, must swear on the Quran as part of their induction ceremony. The very few Tunisian Jews and other non- Muslims who managed to overcome the considerable societal obstacles to studying law must then make this oath if they wish to continue working in this profession.
75. Along the same lines, there are just one or two black Tunisians appearing on TV, holding positions such as lawyers and judges, and there is currently only one black MP. Often black citizens report that ‘politics is for the white’.
76. According to the current Constitution, Tunisian Jews, as well as other non-Muslim citizens, are not allowed to become president of the Republic: according to Article 74, ‘Every male and female voter who holds Tunisian nationality since birth, whose religion is Islam shall have the right to stand for election to the position of President of the Republic.’
77. Apart from being overtly discriminatory against Tunisian citizens belonging to religious minorities, this article imposes a subjective criterion. The decision is in fact usually made on someone’s name (i.e. if they have a Muslim surname) without necessarily being able to know their religion, which remains a private matter, as someone from a Muslim family could have converted to another religion or be atheist without having their name changed.
78. A Jewish candidate ran in the May 2018 municipal elections in Monastir with the Muslim party en-Nahda. In November 2018, Prime Minister Youssef Chahad appointed the Jewish businessman Rene Trabelsi as Minister of Tourism –only two previous community members have been appointed to cabinet positions since independence.
79. There was no Amazigh representative in the Constituent Assembly when the 2014 Constitution was being drafted, and their call at the time to institutionalize Amazigh cultural rights was supported by just two of the 217 deputies.

SUGGESTIONS OF RECOMMENDATIONS

MRG, in partnership with the Anti-Discrimination Points suggest that the Committee call on the government of Tunisia to:

- 1) Adopt a comprehensive legislation prohibiting all forms of discrimination, including discrimination on the basis of gender, ethnicity, religion, language, indigenous status, sexual orientation or gender identity, in line with international standards
- 2) Ensure the full implementation of the 2018 Law on the Elimination of All Forms of Racial Discrimination: in particular, the national committee to combat racial discrimination should be created with appropriate budget under the supervision of the Minister of Human Rights to ensure monitoring of cases of discrimination, as well as implementation of policies that proactively encourage the elimination of racism in Tunisian society and the full participation of the country's black community, including by training judges and police officers on the application of the law. Authorities should also ensure that law no. 50 also protects sub-Saharan migrants.
- 3) Adopt a comprehensive legislation preventing and punishing incitement to violence and hatred and hate crimes, including homophobic and transphobic hate crimes.
- 4) Expedite the election of the Constitutional Court and provide it with the means to guarantee that the rights enshrined in the Constitution and in international treaties are upheld, and laws contradicting these rights abrogated.
- 5) Expedite the establishment of a subcommittee to combat all forms of discrimination, in line with Article 41 of the Human Rights Commission Act adopted in 2018.
- 6) Provide anti-discrimination trainings to police officers, judges and lawyers, health service providers, teachers and school staff, prison staff and other appropriate civil servants and take steps to prevent, measure, report, address and remedy discrimination in schools, in healthcare centers, at police stations, in courts and in prison
- 7) Ensure that Amazigh people are given active support to practice their language and preserve their culture and identity, including by allowing them to use, learn and teach their native indigenous language, and by rescinding Decree Law no.85 of 12 December 1962 forbidding the adoption of Amazigh names.
- 8) Implement law n° 2016-61 of 2016 concerning the prevention of human trafficking by strengthening the work of the National Authority for the Prevention of Trafficking in Persons by allocating an appropriate budget and to make sure cases concerning sub-Saharan migrants are properly investigated and addressed.

- 9) Abolish art.230 of the Penal Code criminalising sexual intercourses between consenting adults of the same sex, and ensure that Article 226 and 226bis of the same Code are not used to arrest, detain or harass individuals on the basis of their real or perceived sexual orientation or gender identity.
- 10) Outlaw, prevent and punish forced anal examinations as a form of cruel, degrading, and inhuman treatment
- 11) Revise national legislation to bring it in line with the 2014 Constitution and with Article 18 of the ICCPR, including by upholding the right to freedom of religion or belief of unrecognized communities such as Baha'is, as well as the right to not practice a religion or to convert. Equality before the law irrespective of one's religion, including in matters of marriage, should be guaranteed in law and practice.
- 12) Support the collection of disaggregated data, not only by gender and age but also by religion and ethnicity: this is needed to provide greater visibility and recognition to the country's minority and indigenous communities and their specific issues.
- 13) Invest in a more inclusive educational system to promote tolerance and respect for diversity: this should include incorporation in school curricula of the history of the Amazigh peoples, as well as other minority communities, such as the Jewish minority and knowledge of all human rights.
- 14) Work with all sectors of Tunisian society, including police, judiciary, religious leaders and the general public, to promote a culture of human rights: this should extend beyond the country's legislative framework to address discrimination at all levels and drive social change.