

**UNIVERSAL PERIODIC REVIEW (UPR) STAKEHOLDER
SUBMISSIONS**

MINORITY RIGHTS GROUP INTERNATIONAL

in partnership with :

Association pour la promotion du droit à la différence, Terre d'Asile Tunisie, Unité Dans la Diversité

Submission in the framework of the Universal Periodic Review of

TUNISIA

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I. Introduction

1. This submission to the Working Group on the Universal Periodic Review (UPR) ahead of review of Tunisia at the 41st session is based on information gathered by Minority Rights Group International in Tunisia, in partnership with Unité dans la Diversité, Association pour la Promotion du Droit à la Différence and Terre d'Asile Tunisie. The report provides information about the situation of human rights in Tunisia with a focus on minorities and other marginalised groups including persons belonging to ethnic or religious minorities, indigenous people, migrants, asylum-seekers, and Lesbian Gay Bisexual, Trans Queer and Intersex (LGBTQI+) persons.
2. This submission is written in the context of increased political and social tension, accentuated by the impact of the Covid-19 pandemic on the already fragile social and economic situation in Tunisia. This context and the impact of the pandemic aggravated the social and legal challenges faced by the populations covered in this report, in particular with regard to their right to health. Existing difficulties have worsened due to an economic crisis that has impacted all segments of Tunisian society, and which has led to a prolonged period of protests across the country in 2021.
3. While a number of measures have been taken by the Tunisian authorities since the last UPR to improve the overall human rights situation in the country, progress continues to be slow.

II. Previous UPR Cycle's Recommendations

4. Of the 248 recommendations it received during the third cycle of the universal periodic review (UPR) in May 2017, Tunisia supported 189 and noted 59. In particular, Tunisia accepted a number of recommendations particularly relevant to the situation of minorities, including recommendations about the fight against all forms of discrimination, strengthening freedom of expression, association and peaceful assembly, as well as upholding freedom of religion or belief. While Tunisian authorities have taken some steps to implement some of these recommendations, a number of pieces of legislation and policies continue to seriously undermine and violate the aforementioned rights.

III. Legal framework

A. International obligations

5. Tunisia has bound itself to international obligations to protect, respect and fulfill the human rights of all persons belonging to minorities on its territory without discrimination of any kind, based on UN and regional treaties to which it is a party.
6. Tunisia is party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (CESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC).
7. Additionally, Tunisia is party to the African Charter on Human and Peoples' Rights and to the Arab Charter on Human Rights.

B. Domestic Law

8. Article 21 of the 2014 Constitution provides that “all citizens have equal rights and are equal before the law without any discrimination”ⁱⁱ, without specifying on which grounds discrimination is prohibited.
9. However, a number of pre-2014 Constitution's laws contain discriminatory elements against groups of citizens, including through the criminalization of homosexuality in the Penal Code, as well as the loose use of a series of articles from the same Code based on concepts such as “outrage to public morality” (article 226bis of the Penal Code). After the adoption of the new Constitution in 2014, 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; contains provisions to prohibit gender-based discrimination in certain domains
- Organic law n ° 2018-50 of 23 October 2018, relating to the elimination of all forms of racial discrimination.

10. Tunisia does not have a comprehensive anti-discrimination legislation covering all grounds, such as, but not limited to, gender, religion or belief, ethnicity, language, disability, sexual orientation and gender identity. A number of members of Parliament have proposed an initiative aiming at the adoption of a new Code of Individual Rights and Freedoms, which would prohibit all forms of discrimination, including based on sexual orientation. The proposed initiative was largely inspired by the 2018 report of the Commission on Individual Freedoms and Equality (COLIBE), an entity created to review Tunisian legislation in order to put it in line with the new Constitution and international human rights standards. The draft Code contains provisions guaranteeing the right to life, dignity, physical integrity and thought, the right to freedom of religion or belief and academic freedom. Since then, the parliament did not discuss the text and it is still pending with no date scheduled for discussion.

III. Analysis: The rights of minorities and marginalised groups:

1. Black persons

11. In its last UPR, Tunisia accepted six recommendations addressing racial discrimination, which urged the State to “criminalize racial discrimination and enforce laws which protect the rights of the black population” and to “accelerate the process of adopting a relevant legislative and regulatory framework combating racial discrimination”.ⁱⁱ
12. Tunisia adopted in 2018 a new law that criminalizes racist speech, incitement to hatred and discrimination. The legislation was approved, after a lengthy debate, with 125 members of parliament voting for it, one against and five abstaining.ⁱⁱⁱ This law

provides the legal grounds to combat discrimination based on race, color, ancestry, national or ethnic origins.

13. The country's black population has long been subjected to racial discrimination, which, although now criminalised by law, is still a widespread phenomenon. Black remains largely invisible and suffer from a deficit in participation in the country's public and political life.
14. Apart from providing legal protection (including inter alia the criminalization of discrimination on the basis of race, color, ancestry, national or ethnic origin), the 2018 Law requires the development of public policies and practices to to spread the culture of human rights and equality in collaboration with different sectors, such as health, media, sports and education, to combat racial discrimination (art.3 and 4). This law also requires to the establishment of a national committee to combat racial discrimination under the supervision of the Minister of Human Rights (art.11). However, four years after the adoption of the law, no measure has been taken in to establish such a committee.
15. Black persons in Tunisia not only suffer from widespread poverty, exclusion from the job market and limited access to higher education, but they are also largely absent from politics, media and other areas of public life. In Southern Tunisia, the situation is particularly problematic, as the black community sometimes lives in isolated areas that lack infrastructures and are far from health centers and other public services, such as Gosba village. A 2016 report by Al Jazeera revealed the existence of separate buses for black and white students in the city of Sidi Maklouf in the South of the country. This *de facto* segregation is reinforced by a continued taboo around mixed marriages.
16. While Tunisia expressed support for many of the recommendations made during the last UPR to adopt a relevant legislative and regulatory framework for combating racial discrimination, in terms of implementation, apart from the adoption of the Law No. 2018-50 of October 23, 2018: on the elimination of all forms of racial discrimination, little if anything else has been undertaken during the reporting period to implement

these recommendations. The recommendations have been therefore partially implemented.

17. In light of the above, MRG and its partners urge States to recommend to Tunisia to:

- 1) Adopt a comprehensive legislation prohibiting all forms of discrimination, including discrimination based on gender, ethnicity, religion or belief, 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, including the establishment of the national committee to combat racial discrimination.**
- 3) Establish the national committee to combat racial discrimination, in line with the 2018 law. Such a committee should be granted with appropriate budget and human resources to properly be able to monitor of cases of discrimination, as well as develop and implement policies that proactively combat racism in Tunisian society, in collaboration with civil society.**

2. LGBTQI+ persons

18. In its last UPR, Tunisia accepted two recommendations addressing the human rights situation of LGBTQI+ persons and noted 19 recommendations. The two accepted recommendations called on the Tunisian authorities to “immediately cease the practice of forced anal examinations of lesbian, gay, bisexual, transgender and intersex persons, which are contrary to its obligations under the Convention against Torture”.

19. Additionally, Tunisia has noted 19 recommendations regarding the repeal of article 230 of the penal code that criminalises homosexuality and constitutes the legal ground used by state agents to target and harass the LGBTQI+ community.

20. Members of the Lesbian, Gay, Bisexual and Trans (LGBTQI+) community continue to face discrimination and violence from law enforcement agents as well as society. Arbitrary arrests based on suspicion of same-sex relations continue to take place, while those detained on this ground are regularly harassed, assaulted or threatened with anal examinations. Transgender individuals commonly face violence and threats of violence by relatives and the population at large. They do not receive protection from the authorities nor from law enforcement agencies, and on the contrary, they are commonly subjected to arbitrary arrests and detention and assaulted by law enforcement officials. These individuals also encounter obstacles when trying to access basic social services, because the gender assigned at birth mentioned in the national ID does not correspond with their gender presentation and name.
21. In a recent report from the network of Anti-Discrimination Points, 326 out of a total of 651 reported cases of discrimination identified in 2020 were related to the victim's sexual orientation or gender identity or gender expression. 13.5 % of the identified cases concerned trans women. The absence of a legal recognition of trans-identities combined with the societal homophobia and transphobia force trans women in particular into a situation of great insecurity and vulnerability, as they face challenges in accessing housing, education, employment and healthcare.
22. Human rights defenders, and particularly LGBTQI+ rights activists, are often subjected to insults and harassment on social media, escalating to death threats. Instead of providing protection to human rights defenders, police and security forces are regularly targeting and harassing them.
23. In February 2021, the Tunisian police arbitrarily arrested the queer and feminist human rights activist Rania Amdouni after she filed a complaint against a police officer who was harassing and bullying her in the street based on the way she looked and her gender expression. According to Ms. Amdouni's lawyer, she had been facing consistent harassment by police officers both in the street and online on her social media accounts. This harassment caused her to suffer severe mental health consequences.

24. On 4 March 2021, Rania Amdouni received a six-month prison sentence. Her conviction was based on “violating the general morals” and “insulting a governmental employee”. After spending almost 3 weeks in prison, she was released following a major support campaign from civil society organizations. Following her release, Ms. Amdouni sought asylum in France, where she currently resides.

25. While Tunisia has noted many of the recommendations made during the last UPR, which focus on the decriminalization of homosexuality and has supported the recommendation to end the practice of the anal examination, no measure has been taken to put an end to these violations. The authorities continue to target and discriminate against LGBTIQ+ people and anal examinations continue to be used in order to supposedly prove homosexual conducts.

26. In light of the above, MRG and its partners urge States to recommend to Tunisia to:

1) Abolish art.230 of the Penal Code criminalizing 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 based on their real or perceived sexual orientation or gender identity.

2) Hold accountable the perpetrators of human rights violations and ensure a safe and inclusive public space for everyone – and in particular for persons from minority groups such as the LGBTIQ+ community.

3. Religious or belief minorities

27. In its last UPR, Tunisia has accepted a recommendation to “establish an interreligious council to facilitate interreligious dialogue and harmony”. Other than this recommendation, that is partially implemented Tunisia did not receive any recommendation regarding the rights of religious minorities.

28. The Tunisian government is still reluctant to recognize the existence in Tunisia of other religions besides the officially recognized ‘Abrahamic’ religions of Islam, Christianity and Judaism, such as the Bahá’í faith. 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 defense of minority rights.

29. 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. The Prime Minister refused their request because of the inclusion of ‘Baha’i’ in the name of the association as it is deemed “discriminatory”. Whereas, this criterion is not applied to other associations that include “Islamic” for instance in their names. They went to the administrative tribunal to appeal this decision, but at the time of writing, no verdict has been handed.
- The same association that is being denied registration then started a procedure before the Tribunal of First Instance to obtain recognition. Their case was rejected by the court on the ground 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 faces and asking for the recognition of their faith, in particular the National Spiritual Assembly. So far, they have not received a reply.

30. The community has also petitioned the Minister of Local Affairs in May 2017 to get the permission to establish a cemetery for followers of the Baha’i faith in Tunisia, to ensure the respect of their dignity as well as their rights as Tunisian citizens to have a burial that respects their religious beliefs. . This request was based on Article 6 of the Tunisian Constitution of 2014, which guarantees freedom of religion, or belief as well as Tunisian law No. 97-12 of 25/7/1997 relating to cemeteries and burial places. Almost five years after this petition, their demand has remained unanswered. The lack of recognition faced by the Baha’is also leads to the impossibility for them to register

worship and gathering centers. In 2008, the Tunisian Mufti issued a fatwa against the Baha'i faith, stating that Baha'ism is a sect outside of Islam, which contradicts Islam. This fatwa has contributed to the discrimination faced by the Baha'i community in Tunisia.

31. No substantial effort has been made by the Tunisian authorities since the last UPR to protect and promote freedom of religion or belief in the country.

32. In light of the above, MRG and its partners urge States to recommend to Tunisia to:

- 1) Uphold the right to freedom of religion or belief to bring the practice in line with the 2014 Constitution and with Article 18 of the ICCPR, including by the recognition of communities such as the Baha'is, as well as the right not to practice any religion or to convert.**
- 2) Allow the creation of cemeteries for the Baha'i Community in various locations in the country, allowing them to bury their dead with dignity.**
- 3) Refrain from using religious "fatwa" to justify decisions regarding other religious minorities.**

4. Amazigh people

33. In its last UPR, Tunisia accepted a recommendation to "Protect the economic, social and cultural rights of Amazigh minorities". This recommendation has been partially implemented by Tunisia through the repeal of Circular No. 85 of 1965 that prohibited Amazigh people from registering newborn children with Amazigh names.

34. The Amazigh have been affected by centuries of cultural and linguistic assimilation encouraged by nationalist state policies and are now a linguistic minority with about only 10,000 speakers, classified as a severely endangered language by UNESCO. As a result of this assimilation, many Tunisians identify themselves as Amazigh ethnically

and culturally, but no longer speak the language. The non-recognition of Amazigh language as an official language and its non-inclusion in the list of languages taught in schools constitute one of the challenges faced by the Amazigh in Tunisia.

35. In light of the above, MRG and its partners urge States to recommend to Tunisia to:

- 1) Ensure the right of Amazigh children to intercultural and bilingual education, that respects their culture and traditions, including by integrating Amazigh as a second language in schools**
- 2) Develop initiatives, in cooperation with Amazigh cultural associations, to value and raise awareness about Amazigh cultural practices.**

5. Migrants

36. During its last UPR, Tunisia accepted two recommendations “to strengthen mechanisms to track, identify and assist vulnerable migrants at borders, including minors, asylum seekers and victims of trafficking”. Tunisia committed as well to adopt legislative and policy measures to combat racial discrimination and gender-based violence, including by criminalizing such behaviors and protecting victims and holding perpetrators accountable.

37. According to Article 26 of the Tunisian Constitution, the right to political asylum is guaranteed in accordance with the provisions of the law, and it is forbidden to hand over or expel persons who have been granted political asylum.

38. Since the last UPR, Tunisia made some progress towards better protecting the rights of migrants. For instance:

- Agreements were signed between the Ministry of Social Affairs, UNHCR and civil society organisations working on the situation of refugees and asylum seekers, to

facilitate procedures for obtaining residence permits and affiliation to the National Social Security Fund for refugees and asylum seekers;

- Migrants were included in emergency assistance campaigns during the Covid-19 pandemic;
- The state and civil society organisations collaborated to facilitate access to vaccination for migrants without identity documents (vaccination cards).

39. Despite these important steps, violations of the rights of migrants, asylum seekers and refugees continue to be documented and a number of positive initiatives are currently pending and need to be adopted immediately:

- The National Migration Strategy, which mentions, among other things, the adoption of an asylum law, has still not been adopted
- The draft law on asylum has remained pending until the President's decision to freeze the parliament on 25 July 2021. Civil society experts in the field have not been involved in the drafting of the different versions of this bill.

40. Moreover, the care and protection of asylum seekers and refugees is most often left to the responsibility of international organizations and NGOs despite Tunisia's primary responsibility to ensure their rights are respected.

41. Reports show that asylum seekers and refugees are sometimes subjected to arbitrary arrests, detentions and extraditions, as was the case in 2021 of Algerian refugee Slimane Bouhafs, who was extradited to Algeria despite having a refugee status in Tunisia since September 2020 in Tunisia. Abusive and discriminatory practices on the part of the public authorities, violating their human rights obligations, have been observed. This includes deportations of migrants to the Libyan border without any identification and assistance procedure, arbitrary arrests of students and workers, even those in a regular situation, fingerprinting, and DNA sampling and other violations.

42. Migrant populations are all the more vulnerable that Tunisia failed to adopt protective legislation. Tunisia also failed to ratify the International Convention on the Protection

of the Rights of All Migrant Workers and Members of their Families and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

43. The lack of protection for migrants – including in labour law - favors exploitative or informal work. It also forces them into undignified living conditions and exposes them to the risks of exploitation, including of human trafficking.
44. The disembarkation of migrants arrested and/or rescued at sea continues while the Tunisian State penalizes the illegal crossing of borders, and does not have an institutional framework for the protection and reception of migrants, which create very difficult situations, especially for the most vulnerable migrants (children, persons with disabilities, LGBTIQ+...).
45. The anti-trafficking law does not address the root causes of this phenomenon, does not take into account the long delays in the evaluation of cases, nor the time needed for victims to recover. The law is not operational, as its application decrees have still not been adopted.

46. In light of the above, MRG and its partners urge States to recommend to Tunisia to:

- 1) Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (127.1 - 11) and guarantee dignified and decent living conditions;**
- 2) Expedite the adoption of the asylum law and integrate civil society in the revision of the draft law**
- 3) Adopt a more inclusive national migration strategy for migrant populations in Tunisia, in consultation with concerned communities and NGOs working with them;**
- 4) Ensure that arrest and deportation procedures are not arbitrary and discriminatory and are carried out in compliance with human rights law**

and respect the dignity and integrity of migrants, particularly the most vulnerable;

5) Protect asylum seekers, refugees and victims of trafficking, victims of violence and discrimination in line with its human rights obligations, and in no case expose them to risks of prosecution and refoulement;

6) Ensure that all persons entering Tunisia have the right to apply for asylum and that they are informed of their rights and obligations.

6. Persons with disabilities

47. During its last UPR, Tunisia received 5 recommendations related to the rights of persons with disabilities and committed to "redouble efforts to promote the human rights of persons with disabilities in all areas". Similarly, the Committee of the Convention on the Rights of Persons with Disabilities presented (in 2017) a set of 40 recommendations.

48. However, discrimination against persons with disabilities persist. For instance, orientation law n°2005-83 of 15 August 2005, relating to the promotion and protection of the rights of people with disabilities, is not in line with provisions of the Constitution, nor is it in line with the International Convention on the Rights of People with Disabilities (CRPD). Indeed, this law fails to incorporate a universal definition of disability, nor does it clearly take into consideration the specificities of children, women and girls with disabilities.

49. Moreover, the absence of properly exploitable quantitative data on persons with disabilities in Tunisia makes it difficult to develop appropriate policies and actions, or to assess the effectiveness of measures taken.

50. The exclusion and marginalization of persons with disabilities are further enhanced by the lack of accessibility to public places for people with motor disabilities, and by the lack of access to information for blind and deaf people.

51. In light of the above, MRG and its partners urge States to recommend to Tunisia to:

- 1) Amend law n°2005-83, including by incorporating the definition of disability contained in the International Convention on the Rights of People with Disabilities (CRPD).
- 2) Fully integrate a human rights approach in its legislative, institutional and policy frameworks concerning disability, including by considering people with disabilities as rights holders and not as beneficiaries of services and benefits.
- 3) In all legislation and policies about disability, make sure that the specificity and specific needs of children, women and girls with disabilities are fully addressed,

Endnotes

ⁱ Oxford Constitutions, "The New 2014 Tunisian Constitution", <https://oxcon.ouplaw.com/page/tunisian-constitution>

ⁱⁱ 125.40 ; 125.41 ; 125.42 ; 125.43 ; 125.46 ; 125.47

ⁱⁱⁱ The North African Post, "Tunisia: Parliament Adopts Anti-racism Law" <https://northafricapost.com/25772-tunisia-parliament-adopts-anti-racism-law.html>