



UPR of Tunisia– 41st session – November 2022

Fact sheet on discrimination against minorities and other marginalised groups in Tunisia

1. INTRODUCTION

The review of Tunisia is taking place in a context of increased political and social tensions, and uncertainties about whether human rights achievements gained since the Revolution – that have been substantial, but incomplete – will be preserved and prolonged or, on the contrary, will be stalled or undermined. In such a context, Tunisia’s attitude towards its minorities and the most marginalized segments of its society will be a litmus test. This UPR is an opportunity for states to encourage Tunisia to live up to the promise of a country that seeks to realize equality and rights for all.

2. BLACK PERSONS

In 2018 Tunisia adopted a ground-breaking law (organic law no.2018-50) that criminalizes racist speech, incitement to hatred and discrimination, a first in the region. This law provides the legal grounds to combat discrimination based on race, colour, ancestry, national or ethnic origins.

To realise these rights, the law requires the establishment of a national committee to combat racial discrimination, and the development of public policies in collaboration with a number of ministries, including health, education, media and sports. However, 4 years after the adoption of the law, Tunisia has not yet established the committee and has not put in place the expected public policies.

The country’s black population has long been subjected to racial discrimination. Although this discrimination is now criminalised by law, is still a widespread societal phenomenon, partly due to the country’s historic legacy of slavery.

Black persons in Tunisia not only face 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 acute, as the black community often lives in isolated areas that lack infrastructure, far from health centres and other public services.

RECOMMENDATIONS

- ◇ 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.
- ◇ Adopt comprehensive legislation prohibiting all forms of discrimination, including on the basis of gender, ethnicity, religion or belief, language,

indigenous status, sexual orientation or gender identity, in line with international standards.

3. LGBTQI+ PERSONS

Lesbian, Gay, Bisexual and Transgender (LGBTQI+) persons in Tunisia continue to face discrimination and violence from law enforcement agents as well as society in general. Same-sex relations are criminalised under Article 230 of the Penal Code. Arbitrary arrests are conducted, including based on suspicion relying on appearance and gender expression (often accompanied by breaches of the right to private life, such as confiscation of mobile phones). Those detained on these grounds are regularly harassed, assaulted or subjected to anal examinations.

Transgender individuals commonly face violence and threats of violence by relatives and the population at large. They do not receive protection from authorities or law enforcement agencies. On the contrary, they are commonly subjected to arbitrary arrests and detention, and are assaulted by law enforcement officials. Arbitrary arrests are typically based on a loose interpretation of vague concepts that can be found in a series of articles from the Penal Code: Article 226 "public indecency"; and Article 226bis "offences against good morals or public mores by gesture or word". These individuals also encounter obstacles when trying to access basic public services because the gender assigned at birth included in national ID cards does not correspond with their gender presentation and name.

In a report issued by the network of Anti-Discrimination Points, a civil-society led initiative sponsored by Minority Rights Group International to provide support to victims of discrimination throughout the country, out of a total of 651 cases of discrimination recorded in 2020 326 were related to the victim’s sexual orientation and/or gender identity or expression. 13.5 % of the identified sexual orientation and gender identity-based cases concerned transgender women. The absence of a legal recognition of transgender identities combined with the societal homophobia and transphobia put transgender women in a particularly vulnerable position. Transgender women face significant challenges in accessing housing, education, employment and healthcare.

RECOMMENDATIONS

- ◇ Abolish Article 230 of the Penal Code criminalizing sexual intercourse between consenting adults of the same sex, and ensure that Articles 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.

- ◇ Ensure a safe and inclusive public space for everyone – and in particular for LGBTQI+ persons, including through public campaigns and by holding perpetrators of violence and discrimination accountable.

4. RELIGIOUS OR BELIEF MINORITIES

The Tunisian government has consistently failed to recognize the existence of other religions besides the officially recognized 'Abrahamic' religions (Islam, Christianity and Judaism) in the country, and in particular the Bahá'í faith.

A decree-law of 24 September 2011 relating to the creation of associations has enabled the establishment of several human rights associations, including those defending minority rights. In 2012, the Bahá'í Association of Tunisia had their request to register as a civil association refused by the Prime Minister, who claimed that inclusion of 'Bahá'í' in the name of the association was "discriminatory". Yet this criterion is not applied to other associations that include, for instance, the term 'Islamic' in their names. In 2013, Bahá'ís went to the administrative tribunal to challenge this decision and won at the first instance. The Head of Government appealed the decision before the administrative appeal court, though in March 2022, the decision in favour of the Bahá'ís was confirmed. Unfortunately the decision has not been published at the time of writing, and as a result the association is unable to register officially as yet.

Tunisian authorities have not allowed for the establishment of Bahá'í cemeteries, despite regular requests from the community (late 2018 and March 2022). Their requests were rejected under the pretext that Bahá'ís constitute only a small number of persons, that this would threaten social unity, and that Islam is the official religion of Tunisia.

RECOMMENDATIONS

- ◇ Ensure the full respect of the right to freedom of religion or belief according to Constitutional provisions as well as Article 18 of the ICCPR, by recognising the Bahá'í community as well as the right to convert and not to practice any religion.
- ◇ Allow the creation of cemeteries for the Bahá'í Community in various locations in the country.

5. AMAZIGH PEOPLE

The indigenous Amazigh people have been affected by centuries of cultural and linguistic assimilation, encouraged by nationalist state policies. They are now a linguistic minority with only approximately 10,000 speakers, and the Tunisian Amazigh language (Tamazight) is classified as a severely endangered by UNESCO. Non-recognition of Tamazight as an official language and its non-inclusion on the list of languages taught in schools constitute a key challenge faced by the Amazigh in Tunisia.

RECOMMENDATIONS

- ◇ Ensure the right of Amazigh children to intercultural and bilingual education, including by integrating Tamazight as a second language in schools.
- ◇ Develop initiatives, in cooperation with Amazigh cultural associations, to raise awareness about Amazigh culture and traditions.

6. MIGRANTS

Migrants, asylum seekers and refugees are vulnerable to arbitrary arrests, detentions and extraditions. The lack of a protective legislation, including in labour law, favours abusive and discriminatory practices on the part of public authorities, as well as by employers in the informal work sector. The implementation of some existing laws remains slow, as in the case of the anti-discrimination law no.2018-50, which offers protection also to migrants, and the 2016 anti-trafficking law. Tunisia has not yet abolished the penalization of the illegal crossing of borders and does not have an institutional framework for the protection and reception of migrants and the most vulnerable upon arrival on its territory. Since the last UPR, Tunisia made some progress towards better protecting the rights of migrants. This includes: 1) agreements signed between the Ministry of Social Affairs, the UNHCR and civil society organisations, to facilitate procedures for obtaining residence permits and affiliation to the National Social Security Fund for refugees and asylum seekers; 2) the inclusion of migrants in emergency assistance campaigns during the Covid-19 pandemic, and collaboration between the state and civil society to facilitate access to vaccination for migrants without identity documents.

Despite these steps, violations of the rights of migrants, asylum seekers and refugees continues. A number of positive initiatives also remain to be implemented. This includes the National Migration Strategy, which mentions the adoption of an asylum law. Yet there remains no comprehensive national asylum law in place, and a draft law remains pending.

RECOMMENDATIONS

- ◇ Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and guarantee dignified and decent living conditions.
- ◇ Adopt a more inclusive national migration strategy for migrant populations in Tunisia, including the adoption of an asylum law, and involve formal consultation of civil society in this process.

7. PERSONS WITH DISABILITIES

Discrimination against persons with disabilities in Tunisia persists. The orientation law n°2005-83 of 15 August 2005, relating to the promotion and protection of the rights of persons with disabilities, is not in line with provisions of the Constitution concerning equality, nor is it in line with the International Convention on the Rights of Persons with Disabilities (CRPD). The law fails to incorporate the definition of disability under CRPD and does not adequately consider the specificities of children, women and girls with disabilities.

The absence of official data on persons with disabilities in Tunisia makes it difficult to develop appropriate policies and actions, or to assess the effectiveness of measures taken. The exclusion and marginalization of persons with disabilities is exacerbated by the lack of accessibility to public places for people with motor disabilities, and by the failure of the state to ensure access to information intended for the general public in accessible format for blind and deaf people.

RECOMMENDATIONS

- ◇ Amend law n°2005-83, including by incorporating the definition of disability contained in CRPD.

- ◇ Fully integrate a human rights approach in its legislative, institutional and policy frameworks concerning disability, including by considering persons with disabilities as rights holders and not as beneficiaries of services and aid.