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SUBMISSION TO THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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AMNESTY
INTERNATIONAL



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INTRODUCTION

Amnesty International is submitting this briefing in advance of the United Nations (UN) Committee on Economic, Social and Cultural Rights' (the Committee) review of Tunisia's third periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights (the Covenant), during its 59th session from 19 September to 7 October 2016.

The briefing is not an exhaustive review of the implementation of the Covenant in Tunisia, but highlights Amnesty International's specific concerns regarding discrimination based on gender, sexual orientation, gender identity and consensual sexual activity; sexual and gender-based violence and the protection of sexual and reproductive rights in the country.¹ In particular, the briefing focuses on Tunisia's compliance with the Covenant under Article 2: the right to non-discrimination; Article 3: on the equal rights of men and women to the rights set out in the Covenant; Article 10: the right to family protections and Article 12: the right to the highest attainable standard of physical and mental health.

Over the years, the Tunisian authorities have taken important steps to address discrimination, gender inequality, violence against women and violence against children. These include reforms of the Penal Code and Personal Status Code, adopting a national strategy to combat violence against women and enshrining women's rights in the new Constitution adopted in 2014. The new Constitution was a major breakthrough for safeguarding human rights and the gains made by the women's rights movement over the years. It ensures greater protection for women and guarantees the principle of equality and non-discrimination. In 2014, Tunisia became the first country in the Middle East and North Africa to lift all reservations to Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified in 1985, even though it maintained a general declaration that it would take no organizational or legislative action required by CEDAW if it conflicted with Tunisia's Constitution.² The Constitution also includes other important safeguards that protect the rights of LGBTI people. It guarantees the right to a private life and freedom of expression, thought and opinion.

But despite these guarantees, discrimination against women and girls as well as lesbian, gay, bisexual, transgender or intersex (LGBTI) people persists in law and practice. Consensual same-sex sexual relations continue to be criminalized and LGBTI people remain largely unaccepted by society. Women and girls who are raped are held responsible for their assault and rejected by their families and communities. Wives who are beaten by their husbands are told to remain in the abusive relationship rather than bring "shame" on the family.

Nearly half of Tunisian women (47%) have experienced violence, according to the only national survey on violence against women, conducted by ONFP (National Board for Family and Population) in 2010, and there are few signs that the situation has improved since then.³ Despite high levels of sexual and gender-based violence, investigations and accountability for such crimes lag behind.

To address these shortcomings, and improve both protection and services for survivors of gender-based violence, Tunisia's transitional government announced in August 2014 its plans to draft a comprehensive law to combat violence against women and girls. However, after a draft of the law, which included proposals such as repealing provisions criminalizing same-sex relations, was leaked to the media, work on the law stalled. The Ministry of Women, Family Affairs and Childhood was asked to redraft the law before presenting it to the Council of Minister's again. In July 2016 the Council of Ministers finally approved a revised version of the draft law, which was submitted to Parliament for consideration. The timeline for the adoption of the law is unknown.

¹ For a detailed account of Amnesty International's concerns on these issues, see Amnesty International, *Assaulted and Accused: Sexual and gender-based violence in Tunisia*, AI Index: MDE 30/2814/2015, November 2015, available at: www.amnesty.org/en/documents/mde30/2814/2015/en/; See also Amnesty International, *'I am not a monster': State-entrenched discrimination and homophobia in Tunisia*, AI Index: MDE 30/3903/2016, May 2016, available at: www.amnesty.org/en/documents/mde30/3903/2016/en/

² See the UN confirmation of receipt of Tunisia's notification: treaties.un.org/doc/Publication/CN/2014/CN.220.2014-Eng.pdf

³ See ONFP, *Enquête Nationale sur la Violence à l'Egard des Femmes 2010*, p. 45, available at: www.onfp.nat.tn/violence/e-book/violence.pdf

The review of Tunisia's periodic report by the Committee provides an opportunity for the authorities to demonstrate their determination to implement, without delay, their obligations under the Covenant.

ARTICLE 2 – NON-DISCRIMINATION (ISSUE RELATING TO GENERAL PROVISIONS OF THE COVENANT)

Under Article 21 of Tunisia's Constitution, "[a]ll citizens, male and female, have equal rights and duties, and are equal before the law without any discrimination."⁴

GENDER-BASED VIOLENCE AND MARITAL RAPE

Spousal and other family violence, particularly against women and girls, is so prevalent in Tunisia that it has become normalized. Indeed, the 2010 survey conducted by ONFP showed that violence suffered by women is most often inflicted by their intimate partner or another family member. Nearly half of the respondents said that they had been subjected to physical violence by their husband, fiancé or boyfriend at least once. One in five women had experienced psychological violence, while around the same number said they had faced physical violence at home.⁵

The most common forms of physical violence recorded by the ONFP study include: being slapped, being pushed and being hit with an object. Other violence includes having hair pulled, having one's arm twisted, being beaten with a belt or a stick, being kicked, having one's head hit against a wall, being threatened with a knife, being strangled, being tied and being burned. Amnesty International documented accounts of such violence in a report published in November 2015.⁶ In terms of psychological violence, women reported being forced to leave the house; humiliating and demeaning insults; being locked in the house; being threatened with dogs; and being forced to accept their husband bringing his lovers to the family home.

In the cases recently documented by Amnesty International, marital rape was closely intertwined with spousal violence. According to the 2010 ONFP study, one in six married women has been subjected to sexual violence at least once in her life, mostly by her intimate partner. Forms of sexual violence identified included: being "coerced into sexual intercourse", "forced to perform a sexual act that they disapprove of", and "forced into sexual relations after having been beaten".⁷

Despite the prevalence of sexual violence, marital rape is not explicitly recognized as a crime under Tunisian legislation. Under Article 23 of the Personal Status Code, both spouses "must fulfil their marital duties according to custom". This provision is generally understood to mean that sexual relations constitute a marital obligation. Article 13 of the Personal Status Code, which prohibits the husband from compelling his wife to have sexual intercourse until he has paid his dowry, implies that, once he has paid, he can have sex with his wife as he pleases. The lack of explicit recognition of sexual violence within marriage as a crime violates the rights to equality and sexual autonomy of married women and girls. International standards

⁴ Tunisian Constitution, 2014, Article 21.

⁵ See ONFP, *Enquête nationale à l'égard des femmes en Tunisie, Rapport principal*, July 2011, available at: www.onfp.nat.tn/violence/e-book/violence.pdf

⁶ See Amnesty International, *Assaulted and Accused: Sexual and gender-based violence in Tunisia*, AI Index: MDE 30/2814/2015, November 2015, available at: www.amnesty.org/en/documents/mde30/2814/2015/en/

⁷ See ONFP, *Enquête nationale à l'égard des femmes en Tunisie, Rapport principal*, July 2010, available at: www.onfp.nat.tn/violence/e-book/violence.pdf. Under international law, rape is defined as any non-consensual act involving penetration, however slight, of any part of the body of the victim or the perpetrator with any bodily part or an object. Based on the above definition, "being coerced into sex", "being forced into sexual relations after having been beaten" and "forced to perform a sexual act that they disapprove of" constitute rape as there is a lack of genuine consent to the act.

require the effective prosecution of any acts of sexual violence, with no exemptions for perpetrators because of their marital status.⁸

Protection measures for survivors are almost non-existent. There are no laws allowing the authorities to issue orders against offenders, which could protect women from being contacted by the perpetrator and coerced into dropping complaints, or from further attacks if accompanied by appropriate police training and awareness of gender-based violence. Amnesty International research shows that many women end up living in a cycle of violence for years, whereby they file a complaint with the police or seek help from their family, before forgiving their husband and withdrawing the complaint.

When asked in the ONFP study why they chose not to report the violence and file a complaint, well over half respondents stated that violence was an “ordinary occurrence, which does not deserve to be talked about”, while some 14% said that they did not wish to bring disgrace to the family.⁹ Indeed, in the vast majority of cases, women abused by their spouses turn to their families for help but instead of support, they face pressure to preserve the interest of the family. Many women interviewed by Amnesty International described being asked by their families to be “patient” and were eventually convinced to forgive their husband.

Such discriminatory perceptions are also commonly held by police officers who lack the necessary training to intervene in cases of family violence, which they see as a private matter. There are no specialized police units to deal with family and sexual violence, and survivors usually file complaints with branches of the National Guard or the judicial police.¹⁰ The number of women police officers is low, and they tend not to work in the evenings or at night.¹¹ Some women interviewed by Amnesty International said that police officers either dismissed their reports or blamed them for the violence. In general, the police attempted to discourage them from filing a complaint, convincing them not to break up the family and to put the interests of children first. Instead of enforcing the law and protecting women from further violence, police see their role as promoting mediation and reconciliation.¹²

In many cases of spousal violence documented by Amnesty International, women reported that the police did not initiate investigations, and alleged corruption and bias in favour of their husbands. In some cases documented by the organization, when women eventually reported the violence to the court, husbands have threatened to file complaints of adultery or harm once the proceedings are over.

LAWS INADEQUATELY PROTECTING VICTIMS OF SEXUAL AND GENDER-BASED VIOLENCE

Despite some positive amendments to the Penal Code, sexual violence continues to be addressed in the framework of crimes against “decency” rather than a violation of an individual’s bodily integrity and sexual autonomy. Legislation continues to reflect discriminatory social attitudes against women and preserve the general interest of the family over the needs of survivors of violence. Further, Tunisian legislation criminalizing rape and sexual assault is restrictive, gender specific and fails to define the act of rape in a manner consistent with international human rights law and standards.

Under articles 227bis and 239 of the Penal Code, rapists and abductors of teenage women and girls – aged below 20 in the case of rape and below 18 in the case of abductions – can escape prosecution by marrying their victim provided that she gives her consent. In both cases, marriage between the perpetrator and the victim leads to the termination of proceedings. In the case of rape, prosecution resumes if divorce is pronounced at the request of the husband within two years of marriage.

⁸ In its General Comment No. 19, the CEDAW Committee has found that the definition of discrimination in article 1 of the CEDAW includes “gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately” and covers all women, “irrespective of their marital status”. The CEDAW Committee has recommended that states parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act; that states parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity, and that effective complaints procedures and remedies, including compensation, should be provided.

⁹ See ONFP, *Enquête Nationale sur la Violence à l’Egard des Femmes en Tunisie 2010*, p. 68, available at: www.onfp.nat.tn/violence/e-book/violence.pdf

¹⁰ The judicial police is controlled by the Ministry of Interior but operates within the Ministry of Justice.

¹¹ Amnesty International meeting with officials at the Ministry of Interior, 24 October 2014.

¹² See Amnesty International, “6. Obstacles to Justice”, *Assaulted and Accused: sexual and gender-based violence in Tunisia*, AI Index: MDE 30/2814/2015, November 2015, available at: www.amnesty.org/en/documents/mde30/2814/2015/en/

Article 227bis of the Penal Code criminalizes the act of subjecting women and girls under the age of 20 to “non-consensual sexual intercourse” without the use of force, but fails to expressly prohibit such acts against boys and men. Under international law “non-consensual sexual intercourse” is rape regardless of the gender of the victim or the perpetrator. Article 227bis imposes a six-year prison term for the rape of girls under 15 and five years’ imprisonment if the girl is older than 15 but younger than 20.

Under Article 238, the kidnapping of children, regardless of their gender, is punishable by up to three years’ imprisonment if they are aged between 13 and 18, and up to five years if they are younger than 13. However, in the event a girl is kidnapped, under Article 239 all proceedings against the perpetrator are dropped as soon as he marries the victim. These provisions, which exempt a rapist or kidnapper from punishment if he subsequently marries the victim, are based on social attitudes that focus on protecting the family’s “honour” rather than the harm done to the victim.

The discriminatory social attitudes underpinning these provisions, which favour protecting “family honour” over the rights of women and girls, are reflected also in the response of the Tunisia government to a list of issues and questions submitted to the CEDAW Committee during Tunisia’s review of its obligations under the Convention. The Tunisian government acknowledged that, in cases of family violence and rape of victims below the age of 20, the legislation is intended “to strike a balance between women’s rights and those of the family”. The government further explained that the provision terminating the prosecution of rapists or nullifying convictions through marriage is motivated by social considerations whereby it “gives precedence to the general interest of the family and to the wishes of the victim herself, who for strictly personal and social reasons, may prefer such a solution, however advantageous it may be to the assailant, to those generally applied under Tunisian law”.¹³

In theory, a girl must consent to marriage under the conditions provided for in Articles 227bis and 239, and always has the option to refuse if she was raped or kidnapped. However, this measure does not take into account a girl’s psychological state following the abuse or the pressures she may face from her family or social workers to accept marriage. It also fails to consider the lack of support structures, including shelters, for girls who may face rejection from their families if they refuse the marriage, especially if the rape results in pregnancy, and feel pressured into marriage.

Amnesty International is concerned that Tunisian law does not adequately reflect the state’s obligation to provide special protection for children from sexual coercion and violence.¹⁴ The Convention of the Rights of the Child (CRC) defines every person under the age of 18 as a child.¹⁵ Furthermore, by allowing marriage between a teenage victim and a perpetrator, the law also permits early marriages in contravention of Tunisia’s obligations under international human rights law and standards.¹⁶

Further, Tunisian legislation fails to adequately protect women from sexual harassment. Under Article 226(3), sexual harassment is punishable with one year in prison and a 3,000 dinar (approximately US\$1,537) fine. The sentence is doubled if the crime is committed against a child or an individual in a vulnerable position due to “mental or physical deficiency”.¹⁷ The definition of sexual harassment is limited to the perpetrator’s intent to make the victim submit to his or her sexual desires instead of recognizing the harmful nature of the behaviour in itself. In addition to being inconsistent with international standards, the

¹³ See CEDAW Committee, *Written replies from the Government of Tunisia to the list of issues and questions (CEDAW/C/TUN/Q/6) with regard to the consideration of the combined fifth and sixth periodic reports (CEDAW/C/TUN/5-6)*, CEDAW/C/TUN/Q/6/Add.1, 4-22 October 2010.

¹⁴ Article 19 of the Convention on the Rights of the Child (CRC) states that “1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement”. CRC, Article 19, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

¹⁵ Convention on the Rights of the Child, Article 1, available at: www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx

¹⁶ These include: Article 16 (2) of the Convention on Elimination of All Forms of Discrimination against Women, which stipulates that “the betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage”; Article 23(2) of the International Covenant on Civil and Political Rights (ICCPR); Article 1 and Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Article 19 and Article 34 of the CRC.

¹⁷ Article 226(3) defines sexual harassment as any persistent behaviour which embarrasses another person through “the repetition of acts, words or gestures likely to harm that person’s dignity or affect his or her decency with the aim of compelling the person to submit to the sexual desires” of the offender or the sexual desires of others, “or by exerting pressure as to weaken the person’s will to resist such desires”.

requirement to prove intent by the alleged perpetrators as included in Article 226(3), renders the survivor's experiences of humiliation and intimidation irrelevant. Further, the legislation fails to recognize sexual harassment as a form of discrimination persistent in both horizontal and vertical relationships, including in the workplace and in public places.

DISCRIMINATION, HARASSMENT AND VIOLENCE BASED ON GENDER IDENTITY AND SEXUAL ORIENTATION

LGBTI people in Tunisia face pervasive discrimination in law and practice, live in constant fear of arrest and prosecution, and are particularly vulnerable to violence on account of their real or perceived sexual orientation or gender identity.

Same-sex consensual sexual relations are criminalized under Article 230 of the Penal Code, which provides for a three-year prison sentence for "sodomy and lesbianism"¹⁸. Article 226 of the Penal Code, which criminalizes indecency and acts deemed to be offensive to public morals, is also used against transgender and gender non-conforming people, providing up to six months' imprisonment.¹⁹ The true scale of the application of these articles is unknown. LGBTI organizations report that approximately 60 LGBTI people, mostly gay men, are arrested every year, mostly based on gender stereotypes, such as their behaviour and appearance, and rarely because they are caught in the act. In most cases, the length of sentence ranges from six to 18 months in prison, and is sometimes reduced on appeal. In one recent case however, a group of six students, who was arrested in the city of Kairouan in December 2015 and accused of engaging in same-sex sexual relations, received the maximum penalty of three years' imprisonment for the charge of "sodomy" provided under Article 230 of the Penal Code. The men, were additionally given a five-year ban from the city of Kairouan following their release.²⁰

To obtain "proof" of same-sex sexual activity, gay men are routinely subjected to anal examinations by forensic doctors after being arrested and upon judges' orders.²¹ Although detainees have a right to refuse the examination, most men are unaware of their rights and feel pressured to agree to the test or are threatened to do so. There is no scientific basis for such examinations and they violate the prohibition of torture and other ill-treatment when carried out involuntarily and involve penetration and forced anal exams as is the case in Tunisia.²² Amnesty International believes that forced anal examinations contravene medical ethics enshrined in the Geneva Declaration of the World Medical Association and the UN Principles of Medical Ethics Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²³

Amnesty International has also found that the criminalization of same-sex sexual relations fosters violence against LGBTI people in Tunisia, and creates a permissive environment for homophobic and transphobic hate crimes as well as harassment and intimidation by family members and others in the community at every stage of their life.

LGBTI people report high levels of physical attacks and, in some cases, sexual violence. Survivors interviewed by Amnesty International in 2015 and 2016 reported being assaulted in the street and in their homes and workplace, in some cases on multiple occasions by the same individuals. They said that they were repeatedly beaten with objects, kicked and punched. In some cases, they were subjected to suffocation attempts and burned with cigarettes. Openly gay and lesbian individuals reported facing constant insults and harassment, and said that they received death threats and threats of harm either in person or through social media.

¹⁸ Tunisian Penal Code, 2012, Article 230.

¹⁹ Tunisian Penal Code, 2012, Article 226.

²⁰ The men were released on bail on 7 January 2016 and their sentence was reduced on appeal on 3 March to the one month in prison they had already served and a fine of 400 Dinar (USD198). Their ban from Kairouan was overturned. See Amnesty International, *'I am not a monster': State-entrenched discrimination and homophobia in Tunisia*, AI Index: MDE 30/3903/2016, May 2016, available at: www.amnesty.org/en/documents/mde30/3903/2016/en/

²¹ See Amnesty International, "Tunisia: Sentencing of six men for same-sex relations highlights state's entrenched homophobia", 14 December 2015, available at: www.amnesty.org/en/latest/news/2015/12/tunisia-sentencing-of-six-men-for-same-sex-relations-highlights-states-entrenched-homophobia/

²² See Amnesty International, Urgent Action, *Tunisia: Student jailed for homosexual acts*, AI Index: MDE 30/2586/2015, 5 October 2015, available at: www.amnesty.org/en/documents/mde30/2586/2015/en/

²³ World Medical Association and the UN Principles of Medical Ethics Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

LGBTI activists and members of LGBTI organizations also report facing constant insults, threats and harassment by unknown persons. With no protection from the authorities, over the years many have gone into hiding or left the country. Those who stayed have received death threats and threats of harm either in person or through social media. Amnesty International has also documented harassment of activists working to increase awareness around the prevention of HIV and other sexually transmitted infections.²⁴

Despite the high levels of violence, many LGBTI people choose not to report any incidents and attacks they have suffered out of fear of arrest and prosecution. Those who do so are often victimized by the police, and in some cases openly threatened with arrest.

Moreover, the law makes LGBTI people especially vulnerable to discrimination and violence by the police, who often exploit their vulnerability to being exposed and stigmatized by blackmailing, extorting a bribe or even sexually abusing them.²⁵ Gay men are also often forced to pay bribes to escape arrest, even though the police have no proof of same-sex relations.

The failure of the authorities to duly investigate and punish homophobic and transphobic hate crimes without discrimination undermines the confidence of LGBTI people in the ability and willingness of the state to protect them. Amnesty International urges the Tunisian authorities to fulfil their human rights obligations and ensure that a person's sexual orientation and gender identity are not barriers to realizing Covenant rights.²⁶

DISCRIMINATION BASED ON CONSENSUAL SEXUAL ACTIVITY

Other forms of consensual sexual relations between adults are criminalized by Tunisian law, including adultery and sex work.

Under Article 236 of the Penal Code, adultery committed by either spouse is punishable by a five-year prison term and a 500 Tunisian dinar (approximately US\$255) fine. Charges can only be brought by the aggrieved spouse, who can terminate proceedings at any time. The same sentence is applied to the accomplice of either the husband or the wife. If adultery is committed in the marital home, the sentence cannot be reduced under mitigating circumstances as provided by Article 53 of the Penal Code.²⁷

While the Penal Code does not discriminate against women with regards to the punishment, in practice, adultery laws disproportionately impact women, reinforce harmful gender stereotypes, and, in some cases, deter rape victims from reporting the crime due to fear of being prosecuted if they fail to prove rape.²⁸

Some forms of sex work in Tunisia are legalized and regulated by the Ministry of Interior under a decree issued in 1942.²⁹ Women who want to work as sex workers must register with the Ministry of Interior. They must work in licensed brothels in specific areas, which they cannot leave without police authorization. They have mandatory, bi-weekly medical checks for sexually transmitted infections. They pay taxes and are considered to be employees of the Ministry of Interior. Under the same regulations, those who wish to leave their jobs must demonstrate their ability to earn a living through "honest" means, and obtain authorization from the police, thus creating multiple barriers to those who want to leave sex work.

²⁴ Amnesty International, *'I am not a monster': State-entrenched discrimination and homophobia in Tunisia*, AI Index: MDE 30/3903/2016, May 2016, available at: www.amnesty.org/en/documents/mde30/3903/2016/en/

²⁵ See Amnesty International, *Assaulted and Accused: sexual and gender-based violence in Tunisia*, AI Index: MDE 30/2814/2015, November 2015, available at: www.amnesty.org/en/documents/mde30/2814/2015/en/. Also see Amnesty International, *'I am not a monster': State-entrenched discrimination and homophobia in Tunisia*, AI Index: MDE 30/3903/2016, May 2016, available at: www.amnesty.org/en/documents/mde30/3903/2016/en/

²⁶ Sexual orientation and gender identity are recognized as among the prohibited grounds of discrimination, according to the CESCR General Comment 20., *Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/20, available at: www.refworld.org/docid/4a60961f2.html

²⁷ See Amnesty International, *Assaulted and Accused: sexual and gender-based violence in Tunisia*, AI Index: MDE 30/2814/2015, November 2015, available at: www.amnesty.org/en/documents/mde30/2814/2015/en/

²⁸ For recently documented cases see Amnesty International, *Assaulted and Accused: sexual and gender-based violence in Tunisia*, AI Index: MDE 30/2814/2015, November 2015, available at: www.amnesty.org/en/documents/mde30/2814/2015/en/

²⁹ The decree defines a sex worker as: "A woman who offers herself in return for payment; a woman who keeps company with other prostitutes, a male or female procurer; a woman who acts provocatively with obscene gestures while curbing crawling; a woman who spends time in the hotels, nightclubs, bars and theatres; a woman under the age of 50 who works as part of the cleaning staff in a brothel." Ministry of Interior Decree issued on 30 April 1942, *Réglementation de la prostitution dans la Régence*, Journal Officiel Tunisien No. 54, 5 May 1942.

Sex work outside these regulations is criminalized under Article 231 of the Penal Code. Women “who, by gestures or words, solicit themselves to passers-by or engage in prostitution, even on an occasional basis” face six months to two years in prison in addition to a fine of up to 200 dinars (approximately US\$102). The same punishment is prescribed for their clients.

The stigma and discrimination around sex work make sex workers particularly vulnerable to sexual and gender-based violence. The criminalization of their activities also makes them vulnerable to abuses by police and prevents them from speaking out and seeking judicial remedies, according to Amnesty International’s research. Sex workers working illegally are often raped, extorted and sexually harassed by the police. Some sex workers are afraid to report this abuse for fear that they might be prosecuted or exposed to family members as a sex worker. In many instances, police question and arrest women on suspicion of sex work merely on the basis of their appearance or their past history rather than observed illegal activity. Amnesty International research has also found that the police arrest or threaten to arrest suspected sex workers on the basis that they have condoms.³⁰

ARTICLE 3 – EQUAL RIGHTS OF MEN AND WOMEN (ISSUE RELATING TO GENERAL PROVISIONS OF THE COVENANT)

Article 46 of the Tunisian Constitution provides that “the state commits to protect women’s established rights and works to strengthen and develop those rights,” and guarantees “equality of opportunities between women and men to have access to all levels of responsibility and in all domains.”³¹

Women and men have equal rights when it comes to marriage, divorce and property ownership. Men can no longer divorce their wives without going to court. Thanks to the efforts of women’s rights groups in the country and amendments to the Personal Status Code in 1993, wives are no longer required to “obey” their husbands.

But although Tunisia has one of the most progressive personal status laws in the Middle East and North Africa, the Personal Status Code still contains discriminatory provisions. Husbands are still considered to be the head of the family and must provide for their wives and children as best they can, and under Article 23 of the Personal Status Code, both spouses “must fulfil their marital duties according to custom” and tradition. Women continue to also face discrimination in relation to child custody and inheritance under the Personal Status Code.

In its General Comment No. 16, the CESCR stressed that equality between men and women also requires “addressing gender-based social and cultural prejudices, providing for equality in the allocation of resources, and promoting the sharing of responsibilities in the family, community and public life.”³² However, a recent government study found that women spend eight times more time than men performing household chores, including caring for children and the elderly.³³

Tunisia is one of the few members of the African Union that did not sign, let alone ratify, the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (Maputo Protocol), which further articulates women’s rights, in addition to CEDAW. Amnesty International urges the Tunisian

³⁰ See Amnesty International, *Assaulted and Accused: sexual and gender-based violence in Tunisia*, AI Index: MDE 30/2814/2015, November 2015, available at: www.amnesty.org/en/documents/mde30/2814/2015/en/

³¹ Tunisian Constitution, Article 46.

³² CESCR Committee, General Comment No. 16, *The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/2005/4, available at: www.refworld.org/docid/43f3067ae.html

³³ See Ministry of Women, Family Affairs and Childhood, *Budget temps des femmes et des hommes en Tunisie*, 2011, available at: [www.femme.gov.tn/index.php?id=7&tx_ttnews\[tt_news\]=836&cHash=f05d085b99175fe16be05c0630636dc1](http://www.femme.gov.tn/index.php?id=7&tx_ttnews[tt_news]=836&cHash=f05d085b99175fe16be05c0630636dc1)

authorities to urgently sign and ratify the Maputo protocol to guarantee the equal rights of women with men to enjoy all economic, social and cultural rights set forth in the Covenant.

ARTICLE 10 – THE RIGHT TO FAMILY PROTECTIONS (ISSUE RELATING TO THE SPECIFIC PROVISIONS OF THE COVENANT)

The Tunisian Constitution refers to the family as “the nucleus of society” and requires the state to protect it,³⁴ in line with the Article 10 of the ICESCR. Furthermore, the Tunisian Constitution explicitly also safeguards children’s rights, by granting children “the rights to dignity, health, care and education from their parents and the state”³⁵. It also stresses that “[t]he state must provide all types of protection to all children without discrimination and in accordance with their best interest.”³⁶

Tunisia has specific laws to protect children from harm and to instil procedures to ensure the best interests of children. Following ratification of the Convention on the Rights of the Child (CRC) in 1991, Tunisia adopted the Child Protection Code in 1995. This incorporates the principle of the best interest of the child in line with the CRC and establishes specific mechanisms for the administration of juvenile justice, such as the creation of specialized children’s courts and appointment of child protection delegates who can intervene when a child may be in danger.³⁷

Although Tunisian law is strong on child protection, Amnesty International is concerned that the implementation of the law remains a problem. In 2010, the Committee on the Rights of the Child expressed concern at Tunisia’s failure to monitor the quality and efficiency of the juvenile justice system and to guarantee full implementation of all provisions at all stages of the criminal justice process. It further expressed concern at the lack of adequate co-ordination between various stakeholders involved in child protection.³⁸ Indeed, child protection delegates appear to be under-resourced, so they cannot follow up adequately on the large number of cases. The workload of child protection delegates also means that there is a lack of co-ordination between their work and the courts, particularly in investigating crimes against children and in implementing necessary follow-up care and services.

Further, Amnesty International is concerned about the lack of sufficient protection and adequate services for child victims of violence and sexual abuse and that referral to psychological care is not automatic, but depends on the judge’s discretion or a request by the child’s family. Due to stigma attached to psychological treatment, families rarely make such requests. In cases where a girl who is a victim of rape marries her rapist, the child protection delegate is no longer able to intervene or push for continuing support or medical care as the girl is legally considered an adult upon marriage.

Amnesty International urges the Tunisian authorities to end impunity of the perpetrators of sexual violence against children and provide adequate protection measures and improve existing services to child victims of abuse and sexual violence.

³⁴ Tunisian Constitution, Article 7.

³⁵ Tunisian Constitution, Article 47.

³⁶ Tunisian Constitution, Article 47.

³⁷ In November 2015, Amnesty International documented that there are 24 offices of child protection delegates across the country (one in every governorate). Child protection delegates have a mandate to receive reports on “children in danger”. They assess the danger, determine the real needs of the child in danger and set priorities for the development of an individualized intervention plan to end the danger.

³⁸ See Committee on the Rights of the Child Fifty-fourth session, *Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Tunisia*, CRC/C/TUN/CO/3, 16 June 2010.

ARTICLE 12 – THE RIGHT TO HEALTH (ISSUE RELATING TO THE SPECIFIC PROVISIONS OF THE COVENANT)

The Tunisian Constitution guarantees the right to health for every person.³⁹ It requires the state to ensure “preventative treatment and health care for every citizen and provide the necessary means to guarantee the safety and quality of health services”. Furthermore, it obliges authorities to provide “those without means and those with limited income” with free health care.

However, existing social and health services for survivors of sexual and gender-based violence are limited and inadequate. Among other necessary aspects of care, survivors of rape face particular difficulties accessing pregnancy prevention and psychological support. In addition, lack of protection mechanisms, including shelters for women and girl survivors of violence, leaves survivors vulnerable to further abuse.

INADEQUATE SERVICES AND OBSTACLES TO ACCESS FOR SURVIVORS OF ABUSE AND SEXUAL VIOLENCE

In order to establish proof of sexual or gender-based violence, survivors are required to obtain a medical certificate known as the CMI (certificat médical initial). The CMI, which is a forensic medical report, can only be obtained from a public institution, and must be requested by a police officer, judge or local authority representative such as a mayor or governor.

Survivors of sexual and gender-based violence are required to first report the crime to the police or a prosecutor, after which they are referred for medical examination, which can be carried out by a forensic doctor, a gynaecologist or an accident and emergency doctor. Forensic doctors are unable to examine a victim without a referral. Such a requirement is especially problematic in cases of sexual violence as it leads to delays, which can result in the loss of evidence. Further, forensic doctors are unable to provide medical treatment, which means that survivors often undergo multiple medical examinations, which not only violates their right to health but also leads to further physical and mental trauma.

When examining women, forensic doctors are often required to assess whether the survivor is a virgin, if she is accustomed to sexual intercourse, and the types of physical wounds suffered. Such tests constitute a breach of women and girls’ rights to health, privacy and non-discrimination, as well as their right to be free from torture or other ill-treatment.⁴⁰ Further, the World Health Organization (WHO) has clearly stated that virginity testing has no scientific validity and should not be used under any circumstance during the medical examination of victims of sexual assault. Amnesty International believes that such tests violate women and girls human rights, and can lead to further stigmatization of survivors.⁴¹

In March 2016, the Ministry of Health opened the first emergency medico-legal centre for victims of sexual and gender-based violence in Tunisia at Charles Nicolle Hospital in Tunis. While this is clearly a welcome move, the Tunisian authorities have yet to establish comprehensive and integrated support services to provide survivors of sexual and gender-based violence with timely access to health care across the country.

Referral pathways are almost non-existent. In general, medico-legal centres, usually the first point of contact for survivors with a medical professional, do not provide emergency contraception in cases of sexual

³⁹ Tunisian Constitution, Article 38.

⁴⁰ In January 2016 the UN Special Rapporteur on Torture, Juan Mendez, urged states to prohibit virginity testing in all circumstances, and effectively monitor and regulate practices by public and private actors in health-care and educational settings to ensure the eradication of prohibited practices including compulsory medical examinations such as forced pregnancy and virginity testing, as well as investigate, prosecute and punish perpetrators. See pages 20 and 22, A/HRC/31/57, January 2016. Available at: documents-dds-ny.un.org/doc/UNDOC/GEN/G16/000/97/PDF/G1600097.pdf?OpenElement

⁴¹ See Amnesty International, *Assaulted and Accused: sexual and gender-based violence in Tunisia*, AI Index: MDE 30/2814/2015, November 2015, available at: www.amnesty.org/en/documents/mde30/2814/2015/en/

violence. Testing for sexually transmitted infections is not available, women are not systematically referred to gynaecologists and no psycho-social support is available.

To date, the ONFP centre in Ben Arous is the only state body that specializes in providing psychological support to women survivors of violence. As a result, provision of such support falls largely to civil society organizations that run counselling and support centres.

Health institutions, including departments that perform the initial examination for the purpose of the medical certificate, rarely refer survivors to mental health practitioners, social services or legal aid organizations. Providing information about survivors' rights remains at the discretion of the examining doctor.

The police do not provide survivors of violence with any information on support services. Both the Ministry of Women, Family Affairs and Childhood and the Ministry of Social Affairs have local representatives in every governorate who can provide such information, but their offices are under-resourced and usually do not intervene in individual cases. As a result, many survivors of violence only receive adequate support once they are referred to specialized counselling centres run by civil society organizations. However, in many cases, it takes months before they are referred to such centres. Additionally, these centres are only available in major cities.

ACCESS TO SAFE AND LEGAL ABORTION SERVICES

Since 1973 Tunisian women have had the right to terminate unwanted pregnancies before completion of the first trimester of pregnancy,⁴² and abortions are available at ONFP clinics across the country. Although all women have equal rights to abortion whether they are single, married or divorced, use of such services is facing increasing social stigmatization. Evidence suggests that unmarried women are often refused abortions under the false pretext that the father's consent is required. Some married women and sex workers have also reported being dissuaded from terminating pregnancies, with staff in public clinics either claiming abortion is immoral or deliberately delaying the abortion until it is too late to perform it.⁴³ The refusal to provide safe and legal abortion services is illegal and a violation of Tunisian and international law. Such discriminatory attitudes can have adverse consequences on survivors of rape who wish to terminate unwanted pregnancies but may have chosen not to report the crime.

⁴² In 1965, Tunisia became the first Muslim country to legalize abortion on demand during the first three months of pregnancy for women with five or more children. See Human Rights Council, Twenty-third session, *Report of the Working Group on the issue of discrimination against women in law and in practice, Mission to Tunisia*, 30 May 2013, A/HRC/23/50/Add.2, available at: www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.50.Add.2_A

⁴³ Amnesty International, "Is Tunisia the beacon of women's rights it claims to be?", 15 January 2016, available at: www.amnesty.org/en/latest/campaigns/2016/01/is-tunisia-the-beacon-of-womens-rights-it-claims-to-be/. Also see Amnesty International, *Assaulted and Accused: sexual and gender-based violence in Tunisia*, AI Index: MDE 30/2814/2015, November 2015, available at: www.amnesty.org/en/documents/mde30/2814/2015/en/

RECOMMENDATIONS

Amnesty International urges the Tunisian authorities to:

End discrimination based on gender, sexual orientation and consensual sexual activity in law and in practice, and bring legislation in line with international human rights law and standards

- Sign, ratify and implement the Maputo Protocol;
- Ensure that Tunisian law is consistent with its international legal obligations, is non-discriminatory and prohibits all forms of violence based on gender and sexual orientation, including against women and girls, sex workers and LGBTI people;
- Adopt a comprehensive law on violence against women and girls that includes the provision of a wide range of remedies, including protection orders, appropriate penalties, and orders for compensation of victims of violence;
- Define rape and sexual assault as a violation of an individual's bodily integrity and sexual autonomy rather than an assault on "decency". Make laws on rape or sexual assault gender-neutral and premised on the absence of consent rather than use of force or violence. The laws should explicitly recognize marital rape as a crime and be consistent with international human rights law and standards;
- Repeal provisions under Articles 227bis and 239 of the Penal Code whereby a rapist or kidnapper respectively can escape prosecution by marrying the victim;
- Repeal Article 230 of the Penal Code criminalizing consensual same-sex activity and Article 236 criminalizing adultery;
- Publicly condemn all forms of sexual and gender-based violence against women, girls and LGBTI people, whether committed by state or non-state actors in the home, the community or public sphere;
- Immediately stop the use of forced anal examinations against people accused of same-sex sexual relations as a means to obtain "proof" of anal sex;
- Immediately and unconditionally release anyone detained because of their actual or perceived sexual orientation or gender identity;
- Ensure that laws and regulations related to sex work are developed in consultation with sex workers, respect the agency of sex workers, and guarantee that individuals who undertake sex work do so voluntarily and in safe conditions, free from exploitation, and are able to stop engaging in sex work when and if they choose. In particular, regulations requiring registered sex workers to demonstrate capacity to make an "honest" living should be repealed on the basis that they are discriminatory and place unreasonable requirements on those wishing to leave sex work;

Ensure that survivors of sexual and gender-based violence have access to safe and timely avenues to report the crime

- Ensure that law enforcement officers are trained (as part of their basic training and as ongoing professional training) in gender-sensitive, best practice methods of interviewing and supporting victims who have been subjected to family and sexual violence;
- Designate or strengthen specialized police units on family and sexual violence, and ensure that they have adequate funding for their work and specialized training for their staff;
- Ensure that the police and other law enforcement officers do not intimidate, threaten or humiliate victims of family and sexual violence, either when people file their complaint or during the subsequent investigation. The police should immediately ascertain if the complainant is at risk of further violence and, if so, ensure that the victim receives appropriate protection;

- Ensure that all complaints of sexual and gender-based violence are taken seriously by the authorities, and are promptly and independently investigated without discrimination, including complaints of violence against LGBTI people and sex workers;

Improve protection measures and existing services, guarantee the right to health, non- discrimination and privacy, and provide reparations for survivors of sexual and gender-based violence

- Allocate adequate state funding for the provision of social services and medical care to survivors of sexual and gender-based violence;
- Adopt policies and procedures to ensure appropriate medical, psychosocial, economic and legal support to survivors;
- Ensure that female survivors of sexual violence have access to comprehensive and appropriate medical care, and that they are immediately provided with emergency contraception, HIV PEP (post-exposure prophylaxis), gynaecological care for injuries sustained in the assault, general medical care for other injuries, and initial psychological support. Also ensure that comprehensive medical treatment is available for male survivors of sexual violence;
- Prohibit “virginity tests”, including during medical examinations of survivors of sexual assault;
- Ensure that survivors of sexual and gender-based violence are systematically given information about psycho-social support, legal aid and judicial remedies at health facilities and police stations, and that they are referred to such services when needed and in accordance with their wishes;
- Ensure that survivors pursuing redress through the justice system are provided with information on the status of their case; legal aid and advice services; access to civil remedies and protective measures; information on available support; and how to obtain compensation and other reparations;
- In consultation with civil society, create additional mechanisms to provide safe accommodation for survivors and ensure that funds are allocated by the state to ensure the continuity of their operations;
- Make available a nationwide telephone helpline that is accessible 24 hours a day to women and girls seeking assistance, and ensure that staff are adequately trained to provide information and assistance to survivors of sexual and gender-based violence;
- Ensure that free abortion services are available to all women without discrimination as legally stipulated, and combat discrimination among staff in ONFP centres by carrying out training and awareness-raising sessions;
- Ensure that survivors of gender-based violence – including marital rape and violence perpetrated against women protesters – receive adequate reparations, and guarantee their right to all necessary medical and psychological treatment.

**AMNESTY INTERNATIONAL
IS A GLOBAL MOVEMENT
FOR HUMAN RIGHTS.
WHEN INJUSTICE HAPPENS
TO ONE PERSON, IT
MATTERS TO US ALL.**

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TUNISIA

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