

Civil Society Parallel Report

“The rights and freedoms of vulnerable groups during the sanitary and political crisis”

I. General Context:

- a. In the midst of a health crisis due to Covid-19, the Tunisian socio-economic atmosphere experienced a sharp decline where the sense of stability and security declined. The Tunisian state was not equipped on the governance and institutional levels to deal with the pandemic's effects on the Tunisian people. Public medical facilities lacked the human resources, funding, and equipment to deal with such a crisis, testimonies of infected people being rejected from hospitals circulated, and many found themselves seeking refuge in private healthcare facilities. This situation alienated those who could not afford private healthcare and further reinforced the gap between the economically privileged and underprivileged. During this time, the government instated an economic pension of 200dt (67.85\$) for those in need, an amount that couldn't in any way, cover the needs of those who found themselves jobless during this crisis.
- b. After the 30-day deadline, the President of the Republic “Kais Saied” issued Presidential Decree No. 109 of 24 August 2021 extending the exceptional measures relating to the suspension of Parliament's activities. Quickly, this decree was followed by Presidential Decree No. 117 of 22 September 2021 on exceptional measures that suspend the application of the Constitution except “the preamble of the Constitution, its first and second chapters and all constitutional provisions which are not contrary to the provisions of this Presidential Decree” which continue to be applied in accordance with Article 20 of the said Decree. The two decrees are based on section 80 of the Constitution, and they read it quite broadly, whether it be at the level of the “imminent danger” that underlies entry into the state of exception or at the level of the “measures”. that the President is authorized to take in order to ensure the return to the normal situation and the end of this state of exception. In the absence of the Constitutional Court, which, according to the Constitution, has the role of monitoring the appropriateness of exceptional measures, the President remains the sole master on board. The extension of the state of exception and its interruption depends on its sole will. This period, regardless of its legal or political qualification, has seen a number of derogations from the foundations of democracy and the rule of law. First derogation, suspension of all powers of the Assembly of People's Representatives (ARP), and the lifting of the immunity of Deputies, which was accompanied in Decree No. 117 by the abolition of the Provisional Review Body for the Constitutionality of Draft Laws. Then, the dismissal of the head of government who obtained the confidence of the ARP and the concentration of executive power in the hands of the President. Similarly, the illegal searches of the National Anti-Corruption Authority, the seizure of its documents, and its placing under the supervision of the Ministry of the Interior. Finally, the repeal of

the Superior Council for the Judiciary and its replacement by a provisional Superior Council whose weakened composition, diminished powers and confiscated guarantees, make it a mere tool in the hands of the President allowing him to exercise his authority over the justice system. Analysis of the nature of these “measures” suggests that section 80 itself is no longer being applied. The agenda and action plan announced by the President spread over a year and would lead to a recasting of all the bases of the State: the political system will be the subject of a consultation or even a national referendum and the Constitution could be repealed to give way to a new supreme standard.

- c. As for civil and political rights, they have been in a sharp decline in recent years and major violations of these rights were recorded during the manifestations at the end of 2020 and beginning of 2021. The Tunisian League for Human rights recorded the following:
 - i. The arrest of 1680 young people from low-income neighborhoods
 - ii. 777 reported cases of arrest, raid, or abduction
 - iii. 126 under-age children were arrested, assaulted, and tortured
 - iv. Arrests without judicial authorization
 - v. The death of Abdeslam Zeyan, who, along with his brother, had been arrested for breaking curfew. An insulin syringe (received from the family) had been banned, resulting in his death as a result of high blood sugar, according to the forensic report.
 - vi. The torture of a citizen of “Seleana”
 - vii. The killing of "Haykel Rashidi" a citizen in the city of Kasserine after an attack with a tear gas shell that got stuck in his skull.
 - viii. Breaking the leg of one of those arrested in the Bab Sawika area while he was handcuffed.
 - ix. The interrogation of minors without the presence of a legal guardian and a lawyer.
- d. In recent years, a draconian approach to shrinking the space of civil society has taken hold both legislatively and practically. The Ministry of the Interior has tightened measures towards staff and members of associations; for nationals the granting of the national identity card bearing the function of the employee of an association and for foreigners the granting of residence cards. In addition, a draft decree-law amending Decree-Law No. 88-2011 on freedom of association is the subject of ministerial consultations, completely excluding civil society components from the process of elaboration and consultations. Even if this project maintains the declaration regime, it reinforces the intervention of the administration and gives the latter an arbitrary power ranging from the creation process to dissolution. The reading of the draft decree testifies to its arbitrary nature, which tends to restrict the scope of the freedom of association and to strengthen the control mechanisms so that civil society organizations cannot fulfill their primary vocation, namely, that of the counter-seeker.

- e. The situation of personal data protection is quite vulnerable in Tunisia. Admittedly, we are beginning to see the establishment of a culture of protection among several stakeholders:
- i. Public structures internalize data protection standards in their normative production. Yet also, the implementation of public information systems like the “EVAX” database, which are carried out in a spirit of privacy by design with the support of the National Instance on the Protection of Personal Information (INPDP). This is also the case in the processing of data and is apparent from the requests for authorization submitted by these bodies to the Court, but also from the requests for continuous opinions on various aspects such as those relating to data protection and access requests the information. The court structures are also beginning to react effectively and positively to the aspects of personal data protection and the court has confirmed on appeal the decisions taken by the body in the management of the files submitted to it.
 - ii. Television, radio, written, and digital media often deal with the problem in relation to the respect of the norms of protection of personal data on the occasion of the current events witnessed by Tunisian society.
 - iii. As for citizens and despite their addiction to social networks and mainly Facebook, they are increasingly aware of their rights to have their data preserved. They refuse in their relations with public and private persons to communicate their personal data without first inquiring about the purpose of the processing and the measures taken to protect them. On the other hand, the increase in the number of complaints to the INPDP for violations of standards is a good criterion for the initiation of a culture installation among the persons concerned.
- f. In Tunisia, the right of access to information was first enshrined in Decree-Law No. 2011-41 of 26 May 2011, on access to administrative documents of public bodies. Section 3 of the Act provided that “Every natural or legal person has the right of access to administrative documents (...) both by proactive disclosure and disclosure of the person concerned, subject to the exceptions provided for in this Order”. Subsequently, the right of access to information was enshrined as a fundamental (constitutional) right in Article 32 of the 2014 Constitution, which states that “The State shall guarantee the right to information and the right of access to information”. This right was implemented by Organic Law No. 2016-22 dated 24 March 2016 on the right of access to information, which came into force on 29 March 2017. Organic Law No. 2016-22 dated 24 March 2016 on the right of access to information recalls in its article 1 that it must make it possible to strengthen the principles of transparency and accountability, particularly as regards the management of public services, to improve the quality of public service and to strengthen trust in public bodies, to strengthen public participation in the development, monitoring and evaluation of public policies, and to strengthen scientific research. The right of access to information also covers a very broad

field since it applies not only to the public administration, but also to the Presidency of the Republic, the Presidency of the Government, the Assembly of People's Representatives, to the various ministries, and even to the Central Bank, to private law bodies responsible for managing a public service or benefiting from public funding, and to judicial bodies (Supreme Judicial Council, Constitutional Court, Court of Auditors) and more broadly to constitutional and independent public bodies. As for the Organization responsible for ensuring respect for the right of access to public information in Tunisia, it is the National Access to Information Authority (INAI-Tunisia) that is responsible by law for this mission. The access to information authority in Tunisia is an independent public authority, with legal personality and financial autonomy, created by the Organic Law no. 2016-22 of 24 March 2016 on the right of access to information in order to guarantee the exercise of this constitutional right. In view of this, the body is endowed with a judicial and monitoring mission in terms of access to information, and consists of a council, of which its 9 members, were elected by the Assembly of People's Representatives (ARP) 18 July 2017 and appointed pursuant to Government Decree No. 2017-918 of 17 August 2017.

Recommendations:

- Freedom of Association:
 - Protect freedom of association in accordance with international human rights standards.
 - Maintain Decree 88 as the main law regulating associations.
 - Renounce the revision of laws regulating rights and freedoms during a period of exception, in t
- Civil and Political Rights:
 - Respect for freedom of demonstration and expression
 - Stopping impunity
 - Application of Law No. 5 of 2016
 - Train police agents and judges on the human rights system.
- Protection of Personal Data:
 - Adopt as soon as possible, and in the absence of the draft submitted to Parliament, a law revisi
 - Include in teaching, but mainly at universities, aspects of personal data protection and more sp
 - Create specialized master's training at the University to develop the necessary skills to perform
 - To provide it with the human and material resources necessary for the INPDP to ensure its mis

- Access to Information:
 - The acceleration of the process of promulgation and publication in the JORT of the decrees imp
 - Continuing access to information training for access to information officers (CAI) appointed in t
 - The completion, without delay, of the process of electing the Chairman of the Board (position v
 - Strengthen the administrative and financial autonomy of the INAI.

II.

- a. Equality between men and women:

Women's rights:

- i. On September 8th, 2017, the 1973 circular prohibiting Tunisian women from marrying non-Muslims was repealed.
 - ii. A circular no. 8/1 of 23 January 2018 of the Minister of Education prohibiting non-mixed schools was adopted.
 - iii. On 11th June 2019, Law 51 was adopted to protect women farmers in means of transportation.
 - iv. Nevertheless, inequalities persist: the inheritance inequality enshrined in article 143 of the Code of Personal Status, the imposition of the wearing of the apron for girls in primary and secondary schools and not for boys, the non-institutionalized condition of women farmers in rural areas and their exposure to all forms of exploitation and physical and moral insecurity despite the adoption of law no. 2019-51 of 11 June 2019, and the return of non-mixed spaces in certain schools, especially in religious schools.
- b. Elimination of violence against women:
 - i. Despite the adoption of Law 58-2017 on the elimination of all forms of violence against women, significant public policies are struggling to be put in place to ensure the application of this legal instrument.
 - ii. Tunisia has also ratified the Additional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) and acceded to the Council of Europe Convention on the Prevention and Fight against Violence against Women and Domestic Violence (Istanbul Convention). However, the State has not undertaken anything at the legislative level to implement the Istanbul Convention.
 - iii. As for economic violence, it is alarming to know that Tunisia ranks 144th (out of 156 states) in terms of economic participation and opportunities for women. Indeed, only 28.1 percent of the female labor force is in service, compared to 75.5 percent for men. The unemployment rate for higher education graduates in the third quarter of 2020 reached 40.7 percent for women, compared to 17.6 percent for men. Women occupy 14.8 percent of senior positions compared to 85.2 percent of men. In fact, the MasterCard Women Entrepreneurs Index showed that in 2019, only 10.9 percent of companies are owned by women.
 - iv. In relation to the conditions of employment of women, Tunisia has adopted Law No. 51 of 11 June 2019 creating a category of "transportation of agricultural workers" to ensure the physical safety of workers in rural areas against fatal road accidents. This law is struggling to be enforced.
- c. Political violence and barriers to participation:
 - i. Even with the appointment of a woman (Najla Bouden) as head of the government, progress in women's political participation remains insufficient. Tunisia occupies 69th place in the world at this level. Its Parliament, currently frozen, had a female presence of 26.3 percent. The presence of women in successive governments remained low: 6 women

against 24 men in the Fakhfekh government, 8 women against 28 men in the Mechichi government, who became 4 women after the reshuffle, and 10 women against 16 men in the Bouden government.

Recommendations:

- Adoption of a public policy aimed at building more shelters for women victims of violence decentralized
- Adoption of an organic law implementing the Istanbul Convention.
- Adoption of an economic public policy aimed at improving the economic environment in Tunisia in o
- Support the participation of women in the structures of the social and solidarity economy.
- Adoption of an electoral system guaranteeing horizontal and vertical parity to ensure a significant fe
- To encourage the appointment of women as heads of administrative structures and in senior positio
- Enshrinement of legislation recognizing gender equality by prohibiting discriminatory practices again
- Adoption of legislation to protect women farmers against all forms of exploitation and injustice in th
- Implementation of concrete measures for the application of Act No. 2019-51 of June 11, 2019, regar

III.

- a. Since 2017, social and regional inequalities in access to healthcare have worsened. The underfunding of public structures has led to a deterioration in the quality of public health services. Tunisia ranks 91st (out of 156 states) in the ranking of states in terms of access to health and survival rates. The figures are alarming: The mortality rate at birth is 11.5 per thousand; there are only 28 mammography machines in all Tunisia in 2019. And this situation has been exacerbated by the Covid-19 health crisis.
- b. The weakening of the national reproductive health program's already remarkable performance over the years has been accentuated by the Covid-19 crisis: Already in decline in 2018, rates of contraception use have deteriorated **The right to access to healthcare (including people living with HIV)** methods decreased by 70,969 people in 8 years (from 439,549 in 2011 to 368,580 in 2019). 49.3 percent of women between the ages of 15 and 49 do not use any family planning method. Added to this is the unavailability of safe and effective contraceptives such as the intra-uterine device and the stock breaks of estrogen-progestin pills, the morning after pill, condoms, and medical abortion products. It is also alarming to note the increase in the rate of abortion refusal in public and private structures.
- c. People living with HIV experience very dangerous social and administrative discrimination, especially in hospitals. Non-Tunisians do not automatically and freely access treatment and services in public health facilities.

Recommendations:

- Making access to health services more equitable
 - Extend health insurance coverage to the 2 million people not covered (the unemployed, the elderly, etc.)
 - Develop a prospective health map to ensure local health services and fill the gap in specialist doctors
 - Improve the financing of public health facilities by increasing by 0.5 percent per year the share of the state budget
 - Modernize management and digitize all health activities by setting up accountability mechanisms
- Putting sexual and reproductive health on the national agenda
 - Develop a national plan with clear indicators for primary care supported by substantial budget
 - Ensure the availability of contraceptives including emergency contraception and condoms in pharmacies
 - Ensure the availability of medical abortion in private gynecological units/clinics;
 - To ensure the continuity of services in the management structures of women victims of violence
- Caring for people living with HIV
 - Eliminate all forms of discrimination and stigma against people living with HIV, in law and practice
 - Ensure the uninterrupted supply of antiretroviral drugs, including the pediatric form;
 - Ensuring food security for people living with HIV
 - Adapt the 1992 Communicable Diseases Act to the human rights approach.

IV.

- a. Tunisia's commitment to persons with disabilities has remained very weak. Tunisia still does not have reliable data on the number of persons with disabilities or statistics on their distribution by geographical area or by the nature of their disability (Data based on the disability card are not sufficient since not all disabled people are necessarily entitled to the card).
- b. Guideline Law 2005-83 of 15 August 2005 on the promotion and protection of the rights of persons with disabilities remains inconsistent with the Constitution and the International Conventions on the Rights of Persons with Disabilities. It does not enshrine a human rights approach and does not clearly take into account the specificities of children, women, and girls with disabilities.
- c. The lack of accessibility to public places for people with motor disabilities and information for the blind and deaf remains the major constraint that stands in the way of their "full integration into society."
- d. During the Covid-19 crisis, there has been a greater lack of specific measures to address and communicate the needs of different types of disabilities.

Recommendations:

- Adapt the 2005 law to the 2008 Convention, mainly by correcting the definition of disability.
- **People with disabilities:** review the legal framework of the disability card with a view to making it accessible to all persons with disabilities
- Put in place mechanisms to implement Decree No. 1467-2006 of 30 May 2006 on the technical characteristics of the disability card
- Develop a plan for delegates for the protection of persons with disabilities to ensure their protection

V.

- a. Following its 2017 UPR, it was recommended that Tunisia "strengthen the independence of the national mechanism for the prevention of torture and other

forms of ill-treatment, including by providing a separate and adequate budget”. to fully exercise its mandate to control the conditions of detention and the quality of the treatment of inmates in all places of deprivation of liberty, such as detention centers, prisons, rehabilitation centers for juvenile offenders, accommodation or observation centers for minors, psychiatric facilities, accommodation centers for refugees and asylum seekers, immigrant centers, detention centers, transit areas at airports and ports, the centers of discipline and the means used for the transport of persons deprived of their freedom.

- b. Although Tunisia has ratified the CAT since 1988, then the OPCAT in 2011, and established its National Mechanism for the Prevention of Torture (MNP), the first of its kind in the MENA region, in 2013, under Organic Law No. 2013-43, we continue to see clear resistance to change among security officers and staff responsible for the supervision of inmates in general. We believe that such an attitude conditioned by a fixed security mentality inherited from the era of tyranny is due to a lack of awareness of the risks of torture and other cruel, inhuman, or degrading treatment or punishment.
- c. In the same vein, it should be mentioned that the fundamental guarantees provided by Law No. 2016-5 are not generally respected and that coercive interrogation, following the arrest of a suspect and during their custody, continues to be a common practice in police investigations. In addition, increasing police violence against peaceful demonstrators in the public space has led the INPT to monitor and document human rights violations during demonstrations and to examine more closely the conditions of police custody. The INPT also makes visits to persons under house arrest with an increase in arbitrary restrictions of freedoms by the Ministry of the Interior since the President of the Republic decreed the state of exceptional measures on 25th July 2021.
- d. In this context, the National Forum for the Prevention of Torture (INPT), the National Mechanism for the Prevention of Torture (MNP) established under the Optional Protocol to the United Nations Convention against Torture (OPCAT), is particularly threatened in its existence. Indeed, the term of the second half of the INPT members expires on May 4, 2022, and the renewal of the current members is unlikely due to the suspension of Parliament. In addition, following the first half-renewal of eight members, following the random draw on May 03, 2019, members elected by Parliament in June 2021 were not able to take an oath or take office, and the “alumni” Members who were called upon to leave the INPT simply extended their terms de facto.

Recommendations:

- The strict application of the fundamental guarantees guaranteed by law to arrested persons.
- Compliance with standards and requirements relating to the conditions of detention and the rights of detainees.
- The training of law enforcement officers in "dynamic security and respect for the rights of inmates".
- The immediate termination of the renewal process for half the members of the INPT.
- Strengthening the administrative and financial autonomy of the INPT.
- Speeding up the publication process in the JORT of Enforcement Decrees No. 2013-43.

VI.

- a. Following its 2017 UPR, Tunisia committed to strengthening mechanisms to track, identify, and assist vulnerable migrants at borders, including minors, asylum seekers, and victims of trafficking.
- b. In addition, according to article 26 of the Tunisian constitution, the right to political asylum is guaranteed according to adequate jurisdictions, and it is forbidden to deport political asylum seekers.
- c. The national migration strategy that mentions the adoption of an Asylum law

Refugees, migrants, victims of trafficking, and asylum seekers' rights:

- d. The Asylum project law has remained suspended until the freezing of the parliament in July 2021. In addition, no civil society experts were called to contribute to the drafting of the project law.
- e. The responsibility of socio-economic assistance and protection of asylum seekers in Tunisia falls onto Tunisian CSOs and INGOS despite the international commitments of the Tunisian state.
- f. Refugees and asylum seekers continue to be victims of arrests, detention, and extradition such is the case of the Algerian refugee [S.B.](#)

Recommendations:

- Ratify the international convention of the ILO on the protection of the rights of migrant workers and their families.
- Accelerate the adoption of the asylum project law including CSOs in its consultations.
- Adopt a more inclusive national migration strategy.
- Establish a protection and assistance mechanism for people rescued at sea or on land borders according to international standards.
- Establishment of a legislative framework on migration which provides for mechanisms for regularization.

VII.

- a. Following its 2017 UPR, Tunisia committed to redoubling its efforts to put in place laws and strategies to promote and protect children's rights. According to Article 47 of the Tunisian constitution, the state must provide all forms of protection for all children without discrimination and according to the interests of the child. This is governed by the Child Protection Code.
- b. Despite the firm constitutional and conventional commitment, the Tunisian

Children's rights:

- regarding the protection of children, including foreign minorities (the situation of foreign children remains governed by the general law on the status of foreigners), contains the following deficiencies:

- i. Lack of official statistics.
- ii. Failure of the social care mechanism for unaccompanied minors.

- iii. Lack of harmonization in standard operating procedures for the protection of children.

Recommendations:

- Add the status of unaccompanied minors to the legal framework and improve their care and protection
- Integrate foreign minors into all aspects of the child welfare system and into integration and social activities
- Produce clear guides for birth registration and school access.

VIII.

- a. Following its 2017 UPR, the Tunisian state accepted the recommendation concerning the abolishing of the anal testing practice in its legal procedures. Unfortunately, the practice remained in effect.
- b. The Tunisian state has voted for the renewal of the mandate of IE SOGI in 2020, **Rights of Lesbian, Gay, Bisexual, Transgender, Intersex, and Queer people** in accordance with its policies and legislation.
- c. Article 230 of the penal code criminalizes relationships between same sex couples with up to 3 years of imprisonment.
- d. Other articles such as article 226bis of the penal code are also used to prosecute the LGBTIQ+ community and the Transgender community specifically.
- e. Between 2017 and 2021, 206 arrests against LGBTIQ+ persons were made using article 230 of the penal code. In addition, the targeting and discrimination against Queer people continued to increase.
- f. [Socio-economic violence](#) against the LGBTIQ+ community is alarming, mentioning specifically the cases for Transgender individuals who remain in precarity.
- g. There are still no laws providing protection and a framework for intersex people making their social recognition impossible.
- h. Intersex babies still suffer medical interventions without their consent or a medical need for intervention.
- i. Intersex people still lack visibility inside the human rights civil society movement and remain vulnerable to legal, medical, and socio-economic discrimination.

Recommendations:

- Abolish article 230 of the penal code.
- Stop the use of anal testing as means of proof against article 230 of the penal code.
- Prohibit the use of confidential and personal correspondences, communications, and information as evidence
- Define public morality and indecency in articles 226 and 226bis of the penal code in accordance with international standards

IX.

- a. Tunisia has signed multiple international conventions relating to environmental rights and in accordance created legislation such as the law issued on 2 August 1988 defining environmental harm and environmental crimes. Articles 45 and 129 of the 2014 Tunisian constitution indicate the right to a sane environment, sustainable development, and the rights of future generations. **The rights of people facing environmental risks:** legal texts recognizing environmental rights, the situation on the ground continues to deteriorate rapidly which is

shown in many examples:

- i. The city of “Gabes” continues to experience an alarming increase in lung cancer and respiratory diseases because of the chemical industrial complexes that are adjacent to the city, with the main chemical compound 800m away from living compounds.
- ii. The local officials of the town of “Agereb” have reopened landfills after having closed them following a judicial decree in July 2019. This landfill is the destination of all waste coming from the city of Sfax. The reopening of the landfill fueled local protests against this practice that has been negatively affecting the lives of the locals for decades.
- iii. In 2020, the Sousse port received containers of waste imported from Italy containing toxic plastic waste not conforming with the international standards for waste trade. This instance led to the resignation of the minister of Environmental Affairs in addition to a group of administrators from the same ministry.

Recommendations:

- Issue a legal code unifying all legal text relating to the protection of the environment.
- Increase and allocate the resources of local governments and institutions to guarantee its rapid implementation.
- Reinforce the legal texts protecting particular areas (environmental, patrimonial) and to ensure their effective application.
- Ensure its support for civil society organizations working on environmental rights and to provide them with the necessary resources.

X.

- a. Despite the firm constitutional and conventional commitments of the Tunisian state, all authorities, especially those concerned with the religious issue, do not recognize religious diversity within society which has been leading to multiple cases of discrimination based on religion, unbridled hate speech, and abuse against religious minorities:
 - i. Islamic preachers calling for the killing of Jews, Christians, and Shiites, and the accusation of being agents of foreign countries;
 - ii. The Assembly of the Representatives of the People, in its new parliamentary session for the year 2019, has become a source for spreading hate speech and incitement to violence;
 - iii. Arrests from policemen because of exhibiting different religious symbols and rituals (Double discrimination against women);
 - iv. Religious minorities struggle in the burial process mainly for social and religious reasons depriving the dead of a decent burial that preserves their dignity;

Recommendations:

- Recognize religious minorities and grant them the right to practice their religious rituals, including building places of worship.
- Update the religious map to know the size of religious diversity in Tunisia and to benefit from it as an economic resource.
- Initiate the revision of the contradictory and vague legislations with freedom of conscience, as well as
 - Update Law 50 on racial discrimination, to include religion-based discrimination.
 - Cancel the 1981 circular (Mazali's edict) regarding the closure of coffee shops and restaurants for religious reasons.
 - A comprehensive review of the Code of Personal Status to become more inclusive of religious minorities.

