



Association for the Promotion  
of the Right to Difference



دمج الجمعية التونسية للعدالة و المساواة  
Damj, l'association tunisienne pour la justice et l'égalité



جمعية المرأة المعاصرة و طفل الغد  
Association Femme Moderne et Enfant de demain



القطب المدني للتنمية و حقوق الإنسان  
Pôle Civil Pour Le Développement Et Les Droits De L'homme  
Civil Pole For The Development And The Human Rights



**Tunisia**  
**Joint Submission to the UN Universal Periodic Review**  
**41<sup>st</sup> Session of the UPR Working Group**

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**By Association for the Promotion of the right to difference-ADD**

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1 The Association for the Promotion of the right to difference (ADD) is a non-governmental and non-profit organization, that was established on April 15, 2011 with the primary aim of defending universal human rights and democracy in Tunisia. Its general activities are based on defending the right to difference when it comes to cultural and linguistic freedoms as well as gender parity.

2 Access Now is an international organisation that works to defend and extend the digital rights of users at risk around the world. Through representation around the world, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the continued openness of the internet and the protection of fundamental rights. By combining direct technical support, comprehensive policy engagement, global advocacy, grassroots grantmaking, legal interventions and convenings such as RightsCon, we fight for human rights in the digital age. As an ECOSOC accredited organisation, Access Now routinely engages with the United Nations in support of our mission to extend and defend human rights in the digital age

3 DAMJ The Tunisian Association for Justice and Legality is a non-profit non-governmental organization, created in 2011, by a group of young activists. DAMJ is the Tunisian Association for Justice and Equality working for the inclusion, defense of minorities and marginalized groups including the LGBTQI++ community by celebrating the individual, strengthening the community and promoting his integration into society.

1. ADD for the promotion of the right to be different<sup>1</sup>, ARTICLE 19, Access Now<sup>2</sup>, DAMJ<sup>3</sup>, Tunisian League for the Defense of Human Rights<sup>4</sup>, , Youth in the service of women in Kasserine,<sup>5</sup> Unity in Diversity <sup>6</sup>, Voix d’Eve<sup>7</sup>, Al-Karama Association for the Arab Family<sup>8</sup>, The Civil Pole for development and human rights networks <sup>9</sup>, Association of Rural women<sup>10</sup>, Observatoire Chahed<sup>11</sup>, and Association HOUMETNA<sup>12</sup>, welcome the opportunity to contribute to the process of the fourth Universal Periodic Review (UPR) through the present report on the assessment of Tunisia's respect for its international obligations in the field of human rights.

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4 Tunisian League for the Defence of Human Rights (LTDH), Tunisian association that work to observe and defend political and civil Rights, economic and social rights, Immigration, Justice's independence, and requests for liberating prisoners

5 Youth in the service of women in Kasserine (JSFK), founded in 2016 aims to defend women’s rights in all fields and sectors, targeting most of the age and community segments. Its main activities: Alma Center for Listening for Women Victims of Violence Its services center on “listening, reception, guidance, guidance, free legal advice and social worker and psychologist, and it aims to empower women to legally enable them to access justice and on awareness campaigns to simplify the legal references that protect the human dignity of women

6 Unity in Diversity ( UDD) has been created in 2014 and aim to promote a culture of Coexistence and the acceptance of the other. To reach this goal some actions are the promotion of a spirit of unity, abolishing any forms of discrimination, building the capacity to serve community.

7 Voix d’Ève is a non-profit, feminist association created in 2012 based in Sidi Bouzid with the aim of allowing women to carry its voices and take its rightful place in society. its members are driven by a desire to promote critical and constructive reflection on the status of women in Tunisia to ensure effective participation in development in all areas: cultural, social, economic and political.

8 Al-Karama Association for the Arab Family (AKFA) in southern Tunisia, a human rights development association dealing with women and the family. It was establishment on 2014 and aimed to Contribute to the sustainable development of the Tunisian family Raise awareness of human rights and develop the spirit of citizenship and volunteerism Networking with the different components of civil society inside and outside Tunisia

9 The Civil Pole for development and human rights networks ( CPDHR) was established in October 2013 . It was the initiative of a group of activists who came from a variety of associations and believed strongly in networking as a crucial means to empower and strengthen the emerging Tunisian civil society.

10 Femme Rurale Jendouba, created in 2013, aims to strengthen the primary role of rural women in the family, social and political life. It is active to help women to achieve the balance between their responsibilities, family obligations, and assert their identity so that she can ensure their happiness, to support the role of rural women in the development of the region, support education and media attention, social and cultural aspects related to the environment and work to develop and maintain through events and activities and programs of the organization and environmental projects developed and controlled by business-specialized entities and individuals.

11 The Observatory is an organization created in 2011 to support of democratic transformations. Its active in the framework of the observations of the elections, and electoral operations, by preparing reports for this purpose, provide legal assistance to voters and candidates to guarantee their rights to concrete participation in the elections. The organization, train the components, observers, observers, and all those involved in the field of electoral observation and in electoral disputes. And support the development of the legislative system related to elections and the construction of democratic institutions, the dissemination and the training on democratic culture, concepts and values, and support the struggle to succeed in transforming democratic conditions, achieving transitional justice, fighting corruption and fighting the effects of tyranny.

12 Houmetna Association was created in January 2015, and works to promote creative citizenship capable of helping the modern civil state and establishing the values of democracy, pluralism and acceptance of others that lead the renunciation of violence and tensions.

2. This report stems from an assessment of Tunisia's application of its voluntary commitments through the ratification and accession to international conventions and the protocols annexed to them, as well as the extent to which Tunisia has enforced and implemented the recommendations it supported before the Human Rights Council in Geneva on the occasion of its third UPR in 2017.

3. To achieve the envisaged goals, ARTICLE 19 and its partners organized a consultative meeting in Tunisia 26 February, to discuss the extent to which Tunisia is fulfilling its commitments in the field of the freedom of assembly and association, freedom of religion and belief, and violations of the rights of women and sexual and gender minorities.

4. This contribution revolves around the following topics:

- The political and constitutional context
- Freedom of peaceful assembly and of association
- Freedom of religion or belief
- Violations of the rights of sexual and gender minorities
- Violence against women

## **1. The political and constitutional context**

**1.2** The Tunisian Constitution enshrines important guarantees for fundamental freedoms.<sup>13</sup> In order to implement these guarantees, reforms at the institutional and legislative level had to be carried out, through the establishment of constitutional institutions as stipulated in its Article 27, as well as through the reform of obsolete legal texts out of line with guarantees for fundamental freedoms. More than 6 years after the promulgation of the Constitution, this reform process remains incomplete, due to political interests and instability, which have hindered the establishment of the Constitutional Court, and the reform of the legislative framework in contradiction with the Constitution.

**1.3** On 25 July 2021, President Saied declared a state of exception, suspending the powers of the Assembly of the Representatives of the People (Parliament)<sup>14</sup> and waiving the immunity of its members. The President also took other exceptional measures under the guise of curbing the COVID-19 pandemic<sup>15</sup>, restricting fundamental freedoms, including freedom of assembly, while Tunisia is marked by a sensitive and critical socio-political and economic context, including the increase of protest movements.

**1.4** Since 25 July, exceptional measures taken hinder the normal functioning and continuity of State institutions and have created an environment which threatens fundamental rights. The suspension of parliament affected the process of reform of the legal framework to be compliant with the Constitution.

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<sup>13</sup> Chapter II of the Constitution.

<sup>14</sup> Presidential Decree No. 80 of 2021 of 26 July 2021 on the suspension of the competences of the Assembly of the Representatives of the People.

<sup>15</sup> Presidential Decree No 83 of 2021 dated 30 July 2021 related to provisional measures to fight Covid 19.

**1.5** The state of exception constitutes an exceptional danger,<sup>16</sup> and the measures to be taken by Tunisia must not last longer than the exception itself.<sup>17</sup> However, the President has taken legislative action that threatens constitutional achievements in terms of fundamental rights and freedoms. It should be noted, the suspension of the Superior Council of the Judiciary and its replacement under a Decree-law No. 11 of 2022 dated 12 February 2022 related to the creation of the Temporary Higher Judicial Council,<sup>18</sup> clearly threatens the independence of judicial power and consequently fundamental rights and freedoms.

## **2. Freedom of peaceful assembly and of association**

**2.1** During the last UPR, Tunisia supported a recommendation<sup>19</sup> to strengthen legislation related to freedom of assembly and association. Tunisia has not amended the legal framework relating to the freedom of peaceful assembly and of association to be in conformity with international standards and the Tunisian Constitution, which is guaranteed in its Articles 35<sup>20</sup> and 37<sup>21</sup>.

**2.2** The Tunisian legal framework relating freedom of peaceful assembly consists mainly of Law No. 69-4 of 24 January 1969 regulating public meetings, processions, parades, demonstrations, and gatherings<sup>22</sup>, Decree No. 78-50 of January 26, 1978, regulating the state of emergency,<sup>23</sup> and the Penal Code.<sup>24</sup>

**2.3** Law No. 69-4 of 24 January 1969 has not been amended while it contains provisions in violation of the Constitution and international standards<sup>25</sup>. This law confers absolute discretionary power to the authorities to prohibit or authorize demonstrations<sup>26</sup>, and may be prohibit by decree any demonstration likely to disturb public security and order<sup>27</sup>, which is a broad concept that allows arbitrary and abusive use. Moreover, this Decree-law restricts the holding of spontaneous events<sup>28</sup>, and involves heavy criminal penalties,<sup>29</sup> against those who have organized or participate in an unauthorized or prohibited demonstration.<sup>30</sup>

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16 Article 4 of the International Covenant on Civil and Political Rights

17 European Commission for Democracy through Law

:[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD\(1995\)012-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD(1995)012-e)

18 Available here:

<https://urlz.fr/hHoY>

19 No 125.92 Accelerate the implementation of the laws on the freedom of expression, assembly and association and to ensure alignment with international standards, including under possible emergency measures (Finland)

20 "Freedom of peaceful assembly and demonstration is guaranteed"

21 "The freedom to form political parties, trade unions and associations is guaranteed.»

22 Available here: <https://legislation-securite.tn/fr/law/41068>

23 Available here: <https://legislation-securite.tn/fr/law/41237>

24 See more here: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/61250/60936/F1198127290/TUN-61250.pdf>

25 See [report](#) of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, in his visit to Tunisia on 2018

26 Article 2 imposes in addition to the indication of the places of assemblies and the itinerary, "the banners or flags that would be carried", the declaration must be submitted to the headquarters of the Governorate after the signature of at least two persons and who must be domiciled in the district where meeting must take place.

27 Article 7 and 12

28 Article 2 dispose that declaration must be submitted at least three days and a maximum of fifteen days before the date of assemblies.

29 Article 33 - The provisions of article 53 of the Penal Code do not apply to the offenses provided for in this Act.

30 the penalties incurred in Chapter V range from a fine 15 days to 5 years' imprisonment

**2.4**The state of emergency in Tunisia, in force continuously and systematically since 2015,<sup>31</sup> based on Decree 78-50, which limits freedoms. Under this Decree, regional governors could impose restrictions on movement and prohibit gatherings where necessary for “the maintenance of security and public order.”<sup>32</sup>. They could also suspend association’s activities, that “obstructs the work of the public authorities”<sup>33</sup>. In addition, The Minister of Interior may order house arrest against anyone deemed to “hamper public order and security”<sup>34</sup>. Those concept justifying restrictions that remains vague and allows arbitrary and abusive use.

**2.5** The Penal Code has provisions used to muzzle freedom of peaceful assembly. These include Articles 79, 117, 125 and 312 which criminalize respectively, participation in a gathering likely to disturb the public peace<sup>35</sup>, rebellion committed by more than 10 unarmed persons<sup>36</sup>, insulting or violence against a public official<sup>37</sup>, violation of health measures in time of epidemic<sup>38</sup>.

**2.6** In accordance with international standards, freedom of peaceful assembly implies that assemblies should in principle be managed without the use of force<sup>39</sup>. Even in cases of violent acts by isolated individuals, the State has a positive obligation to protect protesters, and to ensure that security forces use force only when absolutely necessary and in a proportionate manner. However, there has been an intensification of repressive measures targeting protestors, particularly since the proliferation of COVID-19, which coincided with the deterioration of the socio-political and economic situation in the country, and which involved the prohibition of all public assemblies under presidential decrees.

**2.7** Repressive measures and violence have been deployed by the authorities against demonstrators<sup>40</sup> for defying the prohibition of assemblies, by automatic dispersal of assemblies, using of disproportionate force<sup>41</sup>,intimidation and arrests. There have also been repressive measures against those circulating publications calling for demonstrations or supporting protest movements<sup>42</sup>. Allegations of excessive use of force against demonstrators by the security forces have not been promptly and thoroughly investigated:

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31 Since 2015, 37 presidential decrees have been issued, [the last one was on February 15, 2022](#) and extends the state of emergency until December 2022

32 Article 4 of Decree 78-50

33 Article 7 of Decree 78-50

34 Article 5 of Decree 78-50

35 Article 79. - Anyone who takes part in a gathering likely to disturb the public peace and whose object is to commit an offence or to oppose the execution of a law, coercion or judgment shall be punished by two years' imprisonment.

36 Article 117.- The penalty is three years' imprisonment and a fine of two hundred dinars if the rebellion was committed by more than ten unarmed persons.

37 Article 125.- Anyone who, by words, gestures or threats, is guilty of insulting a public official or similar in the exercise or in connection with the exercise of his functions shall be punished by one year's imprisonment and one hundred and twenty dinars in the exercise of his functions.

38 Article 312- Anyone who contravenes the prohibitions and prophylactic or control measures ordered in time of epidemic shall be punished by six months' imprisonment and one hundred and twenty dinars.

39 Human Rights Committee's General Comment No. 37 on Article 21 of the International Covenant on Civil and Political Rights

40 ARTICLE19, Tunisia: Tunisian authorities must respect citizens' right to peaceful protest and freedom of expression : <https://urlz.fr/hDA3>

41 HRW, Tunisia: Police Violently RepressEd Protests :

<https://www.hrw.org/fr/news/2021/02/05/tunisie-la-police-violemment-reprime-des-manifestations>

42 January 17, 2021Ahmed was arrested after posting a Facebook post calling for protests for "inciting civil disobedience". See more, Annual report of the civil collective for individual freedoms, March 2020-March 2021, more details here : <https://ftdes.net/rapports/liberteindi2021.pdf>

- Between January and February 2021, civil society recorded 1500 arrests, including 500 minors<sup>43</sup>, during and on the sidelines of the protests that broke out throughout the country, while the Ministry of Justice presented statistics denoting that only 968 people were arrested, including 44 people on trial.<sup>44</sup>The main charge against the arrested demonstrators involves penalties range from a fine of 50 dinars to 6 years in prison. On the basis of Penal Code and Decree No. 78-50 of 26 January 1978, regulating the state of emergency and Decree-Law No. 2020-9 of 17 April 2020 on measures related to Covid-19.
- On 25 January 2021, Mr. Haykel Rachdi, a young protester, died of a serious head injury after a police intervention during a protest in Kasserine on January 18, 2021, as well as an alleged beating of some protesters. No investigation into the death of the young protester has been opened.
- On 9 June 2021, a young demonstrator was beaten before being driven naked in a police van during a police intervention to disperse a demonstration in Saïdi Hassine. No security forces were arrested, although a judicial investigation was opened.

**2.8** We also note proliferation of police attacks during demonstrations, against journalists which reveal a political will to deter and limit the right of journalists and therefore the public to access to information related to the demonstration<sup>45</sup>.

- On 27 February 2021<sup>46</sup>, about thirty journalists were attacked by demonstrators from a political party, and these assaults took place in the presence of police officers, who did not react.
- On 1 September 2021<sup>47</sup>, a dozen journalists were attacked during the dispersal of protesters by security forces, even as they showed their professional cards and wore their distinctive vests.
- On 14 January 2022,<sup>48</sup> twenty journalists were attacked by security forces while covering a demonstration in Tunis. We note that there has been no investigation into these attacks and crimes committed against journalists which remain unpunished.

**2.9** The right to freedom of association is regulated by Decree-Law No. 2011-88, on the organization of associations which constitutes an achievement of post-revolution Tunisia. Decree-Law No. 2011-88 guarantees to every individual residing in Tunisia the right to form an association<sup>49</sup> and provides for the protection of associations against any harmful discrimination or abusive measure following the legitimate exercise of their rights by the

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43 Report of LTDH on the arrests, violence and charges against those arrested:

<https://inkyfada.com/wp-content/uploads/2021/03/Rapport-de-la-LTDH-arrestations-et-violences-du-140121-au-060221.pdf>

44 For more details see: <https://inkyfada.com/wp-content/uploads/2021/03/Chiffres-arrestations-et-condamnations-ministe%CC%80re-de-la-Justice-et-DGPR.png>

45 For more details see, Inkyfada, Violence, confiscation of premises, lack of information: journalists tell: <http://freeassembly.net/wp-content/uploads/2016/09/UNSR-Implementation-Checklist-for-Managing-Assemblies-FRENCH-final.pdf>

46 RSF, Tunisia : Dozens of journalists attacked and harassed during a demonstration in support of the government: <https://rsf.org/fr/actualites/tunisie-des-dizaines-de-journalistes-agresses-et-harceles-lors-dune-manifestation-de-soutien-au>

47 SNJT, press release: <https://www.facebook.com/snjt.tunisie/photos/a.1501676556773034/2955054421435233/>

48 FIJ, Tunisia: twenty journalists attacked on the sidelines of a demonstration: <https://www.ifj.org/fr/salle-de-presse/nouvelles/detail/category/press-freedom/article/tunisie-une-vingtaine-de-journalistes-agresses-en-marge-dune-manifestation.html>

49 Article 8

competent authorities.<sup>50</sup> It also outlines a declaration regime in which<sup>51</sup> an association is deemed legally constituted from the day of sending a registered letter with acknowledgment of receipt.<sup>52</sup> The association acquires a legal personality from the date of the publication of the announcement in the Official Journal of the Republic of Tunisia (JORT)<sup>53</sup>. Moreover, this decree-law does not confer to the administration any prior control, relating association's activities or functioning. The Administration is only entitled to establish infractions committed by associations and could take certain measures<sup>54</sup>.

**2.10** Despite the guarantees provided by Decree-Law No. 2011-88, we note some abusive administrative practices, in that the administration persists in exercising prior control to prevent the legal formation of an association, or by sabotaging their functioning, targeting especially associations promoting the rights of minority groups.

**2.11** As an example, the “Bahá’í Association” had its creation opposed by the Presidency of the Government. In 2013, the association had filed a declaration for its creation<sup>55</sup>, but the Presidency of the Government refrained from acknowledging receipt, the JORT refrained from publishing the announcement, and a request had been sent by the administration to the association to change its name. This opposition clearly constitutes a violation of freedom of association as guaranteed by Constitution<sup>56</sup> and regulated by Decree-Law No. 2011-88, in that the administration does not have prior control and therefore does not have the right to oppose the constitution of an association.<sup>57</sup> It should be noted that the name of the association refers to a religious minority, and the justification put forward by the administration was that the associations were not supposed to be of a religious nature<sup>58</sup> and that this domination constituted incitement to hatred, intolerance and discrimination based on religion. While the association has not even started these activities, such a finding should be based on its activities and the status of the association, in accordance with Article 4 of Decree-Law No. 2011-88<sup>59</sup> and not on its name, especially since its status clearly indicates its commitment to full respect for human rights, peaceful coexistence and unity. On 21 February 2019, the Administrative Court ruled in its favor and annulled the decision of the administration<sup>60</sup>, and an appeal against the judgment of the Administrative Court was lodged on 17 July 2020<sup>61</sup>.

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50 Article 7

51 Article 11

52 Article 10

53 Article 12

54 Under article 45, the Secretary-General of the Government establishes violations of associations and may take the following measures:

Alert the association to have the offence committed lifted within a period not exceeding 30 days.

Suspension of the activity of the association, which is pronounced by decision of the President of the Court of First Instance of Tunis, after authorization on request presented by secretary general of the Government, and dissolution of the association by virtue of a judgment rendered by the Court of First Instance.

55 Which was done in compliance with the required procedures set out in Article 10 of Decree-Law No. 2011-88

56 Articles 35 and 49

57 Articles 11 and 45

58 While there are several civil Muslim organizations

59 "The association is prohibited from relying in its statutes or news releases or programs or activities on incitement to violence, hatred, intolerance and discrimination based on religion, sex or region."

60 Administrative Court Case No. 133,204 Date of Judgment 21 February 2019. [click here](#)

61 Appeal memorandum of the judgment. [click here](#)



**2.12** In January 2021, members of the DAMJ association,<sup>62</sup> in connection with their activities, were arrested, and detained following their participation in a protest in December 2020. DAMJ faced intimidation from the police and their offices were placed under constant police surveillance and, as a result of this pressure, the association emptied its offices in January 2021 and transferred all confidential documents to another location<sup>63</sup>.

**2.13** Despite the progressive nature of Decree-Law No. 88, its achievements remain threatened. In January 2022, a draft revision of Decree-Law No. 88 was drawn up by the government, following a non-participatory process, to strengthen the intervention of the administration and increases its control over the functioning and activities of associations<sup>64</sup>.

### **Recommendations relating to the freedom of peaceful assembly and of association:**

- Amend Law No. 69-4 of 24 January 1969 to bring it into line with international standards on the right to freedom of peaceful assembly and association and the requirements of the Constitution.
- Amend Decree No. 78-50 of 26 January 1978 to bring it into line with international standards on the right to freedom of peaceful assembly and association and the requirements of the Constitution with regard to the restriction of rights and freedoms under a state of emergency.
- Repeal Articles 79, 117, 125, 312 and 316 of Penal Code to fully ensure the right to freedom of peaceful assembly and association
- Bring the state of exception to an end and ensure respect for democracy in accordance with the principles enshrined in the Constitution.
- Conduct impartial, prompt, thorough, independent, and effective investigations into all allegations of excessive use of force against protestors and journalists and media workers, including by bringing perpetrators to justice and ensuring appropriate restitution, compensation.
- Train law enforcement personnel in the management of protests in accordance with international instruments.
- Ensure the proper application of Decree-Law No. 2011-88, equally and without discrimination.
- Ensure a participatory and inclusive process for the reform of laws relating to freedom of peaceful assembly and association.

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62 An association that works for the inclusion, defense of minorities and marginalized groups including the LGBTI community

63 Annual report of the civil collective for individual freedoms:

<https://ftdes.net/rapports/liberteindi2021.pdf>

64 See more here:

<https://www.fidh.org/fr/regions/maghreb-moyen-orient/tunisie/tunisie-le-projet-de-reforme-du-decret-loi-regissant-les-associations>

### 3. 3. Freedom of religion or belief

**3.1** Tunisia has adopted an official religion, based on Article 1 of the Constitution, undermining the obligation to respect the rights and freedoms protected under international law<sup>65</sup>. The protection of freedom of religion and belief as set out in Article 6 of the Constitution and as governed by Decree-Law No. 2011-115 of 2 November 2011 on freedom of the press, printing and publishing, allow for discriminatory interpretations.

**3.2** Constitutional and legislative provisions prohibit any offense to the "sacred" under Article 6 of the Constitution, and "rites" under Article 53 of Decree-Law 115 which are abstract entities involving values and symbols, whereas freedom of religion and belief protects the rights of individuals to have, practice and manifest their religion or belief. A restriction intended to ensure respect for values or to protect them against defamation or infringement cannot therefore constitute a legitimate justification.<sup>66</sup>

**3.3** Incitement to religious hatred and violence is prohibited by Article 6 of the Constitution<sup>67</sup> and regulated by Article 52 of Decree-Law No. 2011-115<sup>68</sup>. As part of the specific circumstances envisaged in article 20, paragraph 2, of the ICCPR, restrictions on incitement to hatred and violence must meet very strict criteria. These restrictions, in addition to the fact that they must be based on a sufficiently clear legal basis, must pursue legitimate aims and respect the principle of proportionality<sup>69</sup> in accordance with the Constitution.<sup>70</sup> The law must be precisely defined and applied without intent to protect religions from criticism or discriminatory effect<sup>71</sup>. Article 52 of Decree-Law No. 2011-115 has not formulated the prohibition of incitement to hatred in a clear, precise way, and in accordance with international instruments, , which has left the field open to an abusive application.

Emna Chargui was prosecuted based on Articles on the basis of articles 52 and 53 of Decree No. 115 of 2011, and was sentenced on 2 July 2020, by the Court of First Instance to three months in prison for inciting hatred in accordance with Article 52 of Decree No. 115 of 2011 for posting on Facebook a satirical text entitled "Surat Corona". This text speaks to the COVID -19 pandemic in a form similar to the pages of the Qur'anic text.<sup>72</sup>

**3.4** International instruments stress the importance of positive measures in the fight against intolerance based on religion or belief, including public condemnation of incitement to acts of religious hatred.<sup>73</sup> In Tunisia, speeches of intolerance and religious hatred were disseminated without any official denunciation, which may indicate tacit complicity by government agencies, or even encouragement to commit violent offences.<sup>74</sup>

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65 See Report of the Special Rapporteur on freedom of religion or belief, A/HRC/31/18

66 Human Rights Committee, General Comment No. 34: Article 19

67 Article 6 of the Constitution

68 Article 52 Decree-Law No. 2011-115 provides for a penalty of up to 3 years in prison for anyone who "directly incites hatred between genders, religions or populations by calling for discrimination and using hostile methods or violence or the propagation of opinions based on racial segregation".

69 Human Rights Committee, General Comment No. 34: Article 19

70 Article 49 of the Constitution

71 See Report of the Special Rapporteur on freedom of religion or belief, A/HRC/31/18

72 More details, see:

<https://www.article19.org/fr/resources/emna-chargui/>

73 HRC, Resolution 16/18 addresses 'combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against persons based on religion or belief'

74 Report of the Special Rapporteur on freedom of religion or belief A/HRC/31/18

**3.5** We note the case of the Bahá'í community which, following its declaration to file as an association, the Minister of Religious Affairs,<sup>75</sup> as well as the Mufti<sup>76</sup> of the Republic, issued fatwas accusing the Bahá'ís of kuffar apostates. A campaign against this community, especially after its participation with a number of religious leaders in setting up a "Pact of Coexistence<sup>77</sup>", was led by the Tunisian association of imams of mosques, and other imams in various localities, accusing the Bahá'ís of apostasy, conspiracy and traitors, in the face of the silence of the government.

**3.6** The International Covenant on Civil and Political Rights requires Governments to ensure that religious minorities are able to practice their religion freely<sup>78</sup>. Giving a special place to a religious tradition could have detrimental effects on religious minorities.<sup>79</sup>

On May 19 2017, the Tunisian Bahá'í Community sent a request to the Ministry of Local Affairs and Environment for a cemetery to bury its followers according to the rituals of the Bahá'í religion. The authorities have still not responded to this request.

### **Recommendations relating to Freedom of religion or belief:**

- Amend Articles 52 and 53 of Decree No. 115 of 2011 in a manner that is in line with international standards on the right to freedom of religion and belief and incitement to discrimination, hostility or violence
- Denounce religious hate speech targeting individuals or groups officially and promptly, including religious minorities.
- Ensure that the right to freedom of religion or belief is effectively guaranteed without discrimination to all individuals and groups, including those belonging to religious minorities

### **4. Violations of the rights of the sexual and gender minorities**

**4.1** During the last UPR, Tunisia supported 2 recommendations<sup>80</sup> to protect lesbian, gay, bisexual, transgender and intersex persons (LGBTI), against all forms of discrimination and

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75See: <https://drive.google.com/file/d/1qkKhboZeoeYdGHeizGQIWR5YkeFflwMq/view?usp=drivesdk>

76See : <https://drive.google.com/file/d/1hNCEBy9-o2QPZ8lJ3dDWDnqpeWVh2j1V/view?usp=drivesdk>

77See : [https://m.facebook.com/story.php?story\\_fbid=3120834944899640&id=1450834005233084](https://m.facebook.com/story.php?story_fbid=3120834944899640&id=1450834005233084)

78 Article 27

79 Report of the Special Rapporteur on freedom of religion or belief, A/HRC/31/18

80 Following recommendations was supported:

- N°125.48 Immediately cease the practice of forced anal examinations of lesbian, gay, bisexual, transgender and intersex persons, which are contrary to its obligations under the Convention against Torture (Ireland);
- N°126.9 Ensure the protection of lesbian, gay, bisexual, transgender, queer and intersex persons from all forms of stigmatization, discrimination and violence and abstain from random testing (Luxembourg).

violence and the practice of forced examinations, while noting 20 recommendations<sup>81</sup> to combat and prevent discrimination based on sexual orientation gender minorities and decriminalize same-sex relations. Since the last UPR, violations of the rights of LGBTI people continue and increase.

**4.2** Despite explicit constitutional guarantees for right to equality and non-discrimination<sup>82</sup>, the protection of privacy<sup>83</sup>, the dignity of the human being and his physical integrity,<sup>84</sup> the legal framework provides a legal basis to repressive practices targeting LGBTI people. Article 230 of the Penal Code<sup>85</sup> criminalizes homosexuality and in practice involves forced medical tests, in clear violation of the Constitution and international standards.<sup>86</sup>

On 15 June 2019, a minor was arrested in Mahdia on the basis of engaging of same-sex relations in a homosexuality case and underwent a forced anal medical test on 18 June 2019.

On 6 June 2020, the Kef Court of First Instance sentenced two men to two years in prison each under Article 230 of the Criminal Code.<sup>87</sup>

**4.3** The realization of the right to equality and non-discrimination depends on the full enjoyment of all individuals 'right to freedom of expression. Yet, when LGBTI persons participate in public debates s, they face restrictions and threats. This results in their enhanced invisibilization, vulnerability and marginalization.<sup>88</sup> Moreover, the lack of representation of LGBTI people in the Tunisian media, daily attacks and violence targeting LGBTI rights activists<sup>89</sup>, increased hate speeches, and threats of violence online and offline, including by

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81 For example, following recommendations was noted:

- N°126.10 Develop public awareness programmes to address stigmatization of lesbian, gay, bisexual, transgender and intersex persons (Ireland)
- N°127.36 Repeal article 230 of the Tunisian Criminal Code and eliminate discriminatory practices based on sexual orientation and gender identity, such as anal inspections (Canada)
- N°127.41 Repeal article 230 of the Criminal Code, which criminalizes same-sex relations between consenting adults and discontinue the practice of forced anal exams to prove homosexual behaviour (Norway);
- N°127.43 Eliminate all legislation that penalizes and criminalizes same sex relationships as well as all discriminatory legislation as a result of sexual orientation (Spain)
- N°127.47 Take immediate measures to derogate from norms that criminalize and stigmatize lesbian, gay, bisexual, transgender and intersex persons and investigate and sanction the perpetrators of acts of discrimination and violence against them (Argentina)
- N°127.48 Introduce legislation to protect against discrimination based on sexual orientation, gender identity and intersex status (Australia)

82 Article 21 Citizens are equal in rights and duties. They are equal before the law without discrimination.

83 Article 24 The State protects privacy, the inviolability of the home and the secrecy of correspondence, communications and personal data.

84 Article 23 - The State protects the dignity of the human being and his physical integrity and prohibits moral or physical torture. The crime of torture is imprescriptible.

85 Article 230 - Sodomy, if it does not fit in any of the cases provided for in the preceding articles, is punishable by imprisonment for three years.

86 Article 12 of the Universal Declaration of Human Rights, Articles 7 and 17 of the International Covenant on Civil and Political Rights stipulate, articles 5 of the Universal Commission on Human Rights.

87 For more details see here :

<https://www.hrw.org/fr/news/2020/07/06/tunisie-deux-hommes-condamnes-deux-ans-de-prison-pour-homosexualite>

88 ARTICLE19 Camden Principles Camden Principles on Freedom of Expression and Equality:

<https://www.article19.org/data/files/pdfs/standards/principes-de-camden-sur-la-liberte-d-expression-et-l-egalite.pdf>

89 On October 21, 2021, prominent LGBTQ activist Badr Baabou was brutally assaulted in downtown Tunis by two men, one of whom was wearing a police uniform. More details here :

<https://rightsafrika.com/2022/01/15/tunisian-lgbt-activists-fight-back-after-alleged-police-assault/>

police officers<sup>90</sup>, who remain unpunished, increasingly threaten their fundamental freedoms. For example, on 4 June 2021, an interview published on social networks, featuring a young person who speaks about his gender identity, led to an online campaign of incitement to hatred and violence, to murder threats, as well as his expulsion from his home by his parents. Since then, he finds himself on the street vulnerable to harassment and violence.

## **Recommendations relating to rights of the sexual and gender minorities**

- Repeal Article 230 of the Penal Code.
- Adopt legislative and policy measures to combat discrimination based on sex characteristics, gender identity and expression.
- Undertake gender-responsive initiatives to promote inclusion, diversity and pluralism, ensuring the full and effective participation and leadership of women and LGBTI persons.
- Conduct impartial, prompt, thorough, independent and effective investigations into all allegations of violence against LGBTI persons by the police, including by bringing perpetrators to justice and ensuring appropriate restitution and compensation.
- Work with tech companies to adapt their practices and safety measures in accordance to contextual risks and practices

### **5. Violence against women**

**5.1** During the last UPR, Tunisia supported 39<sup>91</sup> recommendations on the protection of women's rights, in accordance with international standards. There are considerable legal achievements<sup>92</sup>, in particular the adoption of Organic Law No. 2017-58 of 11 August 2017 on the elimination of violence against women. This law recognizes and defines all types of violence against women, including economic, sexual, political and psychological violence, in addition to physical violence, and also provides for new protection mechanisms to ensure victims' access to the necessary services as well as legal and psychological assistance. This

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90 See ARTICLE19 Digital stop & search: How police scrape social data to persecute LGBT people : <https://www.article19.org/digital-stop-and-search-police-scrape-social-data-persecute-lgbtq-people/>

91 For example, following recommendations was supported:

- 125.148 Strengthen existing legislation to effectively eliminate gender-based violence, including domestic violence, with a view to better protecting victims and holding perpetrators accountable (Austria)
- 125.150 Accelerate the adoption of a general law on violence against women and girls criminalizing all forms of violence, including domestic violence and marital rape and guarantee access to justice (Belgium);
- 125.163 Adopt laws that criminalize all forms of violence against women and girls and review criminal procedures to end impunity for such violations (Portugal)
- 125.131 Further intensify its efforts in the implementation of laws and policies aimed at promoting and protecting the rights of women, children and other vulnerable groups (Pakistan);
- 125.165 Adopt a comprehensive national policy on the protection of women against all forms of violence and the creation of a supportive environment for women victims of violence by reviewing and strengthening the legal framework (South Africa)
- 125.149 Continue to address violence against women including measures to ensure that domestic violence and rapes are duly reported (Bangladesh);
- 125.135 Reinforce its national policy for gender equity and equality (Côte d'Ivoire)
- 125.169 Continue reinforcing and promoting women's rights and women's participation in cultural, social and economic life (Egypt)
- 125.161 Train members of the judiciary and law enforcement officials to make them aware of all types of violence against women, and strengthen public awareness campaigns (Liechtenstein)

92 Adoption of Law No. 2019-51 of 11 June 2019, creating a category of "transport of agricultural workers" and Law No. 2020-30 of 30 June 2020, relating to the social and solidarity economy

law also includes an important pillar of prevention, by requiring in particular the training of those involved in coming into direct contact with victims of violence, such as magistrates and police, on human rights and women's rights. And by prohibiting public and private media from trivializing gender-based violence and transmitting gender stereotypes.

**5.2** Despite this important progress, there has been a considerable increase in forms and cases of violence against women, due to a lack of implementation and application of Law No. 2017-58, particularly in terms of the protection and prevention mechanisms<sup>93</sup>. As a result, women continue to face great difficulties in obtaining justice and personal security, There continues to be problematic representation of women in the media, which has a role in changing social attitudes conducive to violence against women.

**5.3** Between 2019 and 2021, violence against women increased with an upsurge in cases of femicide. In 2019 alone, 65 thousand complaints related to violence against women were registered, of which more than two thousand relate to domestic violence<sup>94</sup>.

On May 9, 2021, a young woman Refka Charni was murdered in Kaf, by her husband. However, two days earlier, she had gone to the police and the prosecutor's office to report the violence which her husband was subjecting her to. The prosecutor's office had not ordered measures to protect her from further violence, despite the situation of danger.<sup>95</sup>

**5.4** It should also be noted that the proliferation of online harassment and abuse against women. In 2019, 80% of women said they experienced online harassment and abuse on Facebook, while 95% of them did not file a complaint. <sup>96</sup> Law No. 2017-58 covers online harassment and abuse which indicates shortcomings in the promotion and application of the said law.

**5.5** There is also an increase in the phenomenon of gender-based violence and discrimination against women journalists. In addition to economic and psychological pressures in the context of their work, these include physical and verbal violence and online harassment and abuse. Between 1 November 2020 and 25 October 2021, 220 journalists were attacked, including 86 women. Women journalists have been hacked, as a result of which their personal data has been disseminated and used for extortion<sup>97</sup>.

### **Recommendations relating to combatting violence against women :**

- Ensure the full implementation and application of Organic Law No. 2017-58 of 11 August 2017.
- Ensure that appropriate authorities are held accountable when they fail to register complaints, issue and enforce protection orders and investigate cases of violence against women

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93 See here: <https://legislation-securite.tn/fr/law/56326>

94 See more here : <https://nawaat.org/2021/05/17/violences-contre-els-femmes-ces-refka-cherni-quon-assassine/>

95 See more here : <https://www.amnesty.org/fr/latest/news/2021/05/tunisia-tragic-truth-about-domestic-violence/>

96 Exploratory study carried out by CREDIF in 2019 on "Violence against women in the digital space: Facebook as an example".

97 See more here: [2021 Annual Report on the Safety of Journalists and Impunity in Tunisia](#)

- Undertake gender-responsive initiatives to promote inclusion, diversity and pluralism, including public education campaigns, ensuring the full and effective participation and leadership of women and LGBTI persons.
- Ensure political leaders, public officials and/or authorities condemn and refrain from attacks on women journalists.