



مع الجمعية التونسية للعدالة والمساواة  
D a m j , l'association Tunisienne  
pour la justice et l'égalité



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## Stakeholders Report

### Universal Periodic Review of Tunisia

May 2017

### Tunisian Coalition for the Rights of LGBTQI People

Report by:

- **Damj** The Tunisian Association for justice and equality is an organization whose goal is to defend and promote the human rights of the LGBTQI people in Tunisia.
- The initiative **Mawjoudin** for equality is a Tunisian association that fights for equality and the rights of LGBTQI people.
- **KELMTY** is a coalition of LGBT Tunisian activists whose aim is to promote the values of tolerance and to defend the rights of homosexual people.
- **Chouf** is a feminist organization that defends women's bodily and sexual rights. The organization aims at strengthening the abilities of women coming from sexual, ethnic, economic and cultural minorities. Chouf also establishes the foundations of psychological, judicial and physical support for any woman and persons identifying themselves as such.
- **Shams** is an association that works for the decriminalization of homosexuality in Tunisia, struggles to fight against homophobia and attempts at initiating discussions on homosexuality in society.

With the support of the **Euro-Mediterranean Human Rights Network – EuroMed Rights**

**Co-signatories:**

- Tunisian Association of Democratic Women
- Comity of respect for liberties and human rights in Tunisian
- Tunisian Organization for social justice and solidarity
- Association of the Defense of Individual Liberties
- Promotion of the Right for Difference Association
- Kistas Organization for the Development of Democracy and Defense of Human Rights
- Tunisian Association for Positive Prevention
- Advocacy Group for the Disabled
- Tawhida Ben Cheikh Group
- Beity Association
- Dostourna Network
- Coexistence with Alternative Language and Action Movement
- Free Sight Association

Since the 2011 revolution, Tunisia has made considerable progress in terms of respect for rights and freedoms particularly those enshrined in the constitution adopted on January 27, 2014. In contrast to the progress made in terms of collective rights and freedoms (including the freedoms of association, assembly, expression ...), individual freedoms experience a decline with a substantial increase in human rights violations. More specifically, the situation of the LGBTQI community deserves special attention. In this context, the Tunisian coalition for the rights of LGBTQI people, consisting of the associations: Damj (The Tunisian Association for Justice and Equality), Chouf, Kelmti, The Mawjoudin Initiative for Equality and Shams Network with the support of the Euro-Mediterranean Human Rights Network submits this report on the occasion of the Universal Periodic Review of Tunisia scheduled for May 2017.

**A) Legal Framework**

It is essential to raise the legal question in this report, since Tunisia is expected to bring its entire existing legislative arsenal in line with the 2014 constitution and with the international conventions ratified by Tunisia. This is a prerequisite to the completion of its democratic transition and the establishment of the rule of law.

It should be reminded that Tunisia did not accede to two recommendations in its last UPR (in 2012), which requested the removal of laws that criminalize sexual activity between consenting adults of the same sex.

The Tunisian government mainly uses Article 230 of the Penal Code which states that “Sodomy ... shall be punished by imprisonment for three years.” In the Arabic version which prevails over the French version, Article 230 clearly condemns male and female homosexuality with a sentence of up to 3 years of imprisonment.

This article is unconstitutional because it is based on **discrimination on grounds of sexual orientation** while the Tunisian Constitution of 2014 in its Article 21 states that “Citizens are equal in rights and duties. They are equal before the law without discrimination.”

Even after the 2011 revolution and of the ratification of the Constitution of 2014, several people were arrested on the basis of Article 230 criminalizing sex between two consenting adults of the same sex.

To prove homosexual activities, the Tunisian authorities often resort to the ‘rectal examination’ (‘anal examination’), a practice recognized by the United Nations International Committee against Torture as **a cruel, degrading and inhuman treatment** which can amount to a practice of **torture**. This test is indeed inconsistent with Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights which states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.” The Committee of the Convention against Torture considered in its report published October 3, 2014 that virginity tests and rectal examinations are considered as acts of torture and recommended the prohibition of these acts to ensure full respect for human dignity. The anal examination is also in contradiction with Article 23 of the Tunisian constitution, «the State protects the dignity and physical integrity of the human person, and prohibits all forms of physical and moral torture ...» The practice of rectal examinations also comes in contradiction with ethics and medical codes of practice especially since it is known that this examination is performed under police pressure and usually in the presence of police officers in the examination room. In a public statement issued September 28, 2015, the National Council of the College of Tunisian doctors declared it was “deeply concerned by the conviction of a Tunisian citizen for homosexuality on the basis of a medical expertise” and said “the Council, as a guarantor of respect for medical ethics, strongly condemns any forensic examination without consent or justification, affecting the dignity and the physical or mental integrity of the person examined. “

Moreover, the application of Article 230 inevitably involves an infringement to the right to privacy of the Tunisian citizens which is protected by Article 24 of the Constitution “The State protects privacy, inviolability of the home and the confidentiality of correspondence, communications and personal data ...”. These practices are also inconsistent with the international commitment of Tunisia under the Universal Declaration of Human Rights whose Article 12 stipulates: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks”; as well as under the International Covenant on Civil and Political Rights, the Article 17 of which fully incorporates the aforementioned Article 12.

September 06, 2015, Marwan a 22-year-old young student was stopped by the police in the governorate of Sousse to be interrogated about a case in which he was found not guilty later on. However, he was forced under police pressure to undergo rectal examination against his will after the police searched his phone records without having a warrant to do so. They came across in his private and messages 'intimate' messages and they discovered his relationship with the victim. Marwan was brought to justice where he was sentenced to one year in prison, a sentence reduced on appeal to two months in prison after an unprecedented national and international citizen mobilization.

The case of the six young people from Kairouan also reflects gross violations of human rights by the Tunisian authorities. They were arrested at their home without a warrant. Authorities searched their personal data. In addition, they were forced to undergo rectal examinations. A decision of a maximum sentence of 3 years' imprisonment was handed down coupled with a sentence of 3 years of banishment from the city of residence. One of the six young men was sentenced to an additional penalty of six months in prison for possession of a video with 'explicit content' on his personal computer. Following the rising outrage and mobilization of civil society these sentences were reduced but still their records are not cleared.

In addition to Article 230 of the Criminal Code, the State uses Article 226a on the offence against public decency, Article 228 relating to indecent assault and Article 231 relating to solicitation and prostitution. These articles are used as tools to criminalize LGBTQI community in Tunisia. A revision of the penal code (in articles 226a, 228, 230 and 231) is required to align it with the new Tunisian constitution and the various international commitments to which the Tunisian State acceded.

It should also be mentioned that no legal recognition or special protection is available to transgender and transsexual individuals. The state does not allow for changes relating to identity in official documents (National Identity Card, passport, birth certificate ...).

Another very important element is linked to access to justice which remains a major problem for the LGBTQI community in Tunisia. LGBTQI people in Tunisia are Victims of several attacks and violent and intimidating activities. Thus, they usually prefer not to complain at risk of being arrested and imprisoned for homosexuality upon 'facial discrimination'.

In most cases when these people are faced with the police, they are forced to sign false statements under the pressure or threats of police officers.

#### **Recommendations:**

- Immediately repeal Article 230 of the Penal Code.
- Prohibit the practice of rectal examination as evidence of homosexual practices.
- Harmonize the penal code and the procedural penal code with the constitution of 2014 and the various treaties and conventions ratified by the Tunisian state.
- Allow transsexual and transgender people to be recognized in official documents relating to identity (National Identity Card, passport, birth certificate ...).
- Grant all citizens access to justice without discrimination, including that based on sexual orientation and gender identity.

## **B) Discrimination and Violence against LGBTQI People**

The principle of **equality and non-discrimination** is fundamental in the Tunisian constitution of January 2014 in Article 21: “The Citizens are equal in rights and duties. They are equal before the law without discrimination. The State guarantees the freedoms and individual and collective rights to citizens. It provides them with the conditions for a dignified life.” It is also enshrined in Article 1 of the Universal Declaration of Human Rights which states that “All men are born free and equal in dignity and rights [..]” and the African Charter of Human and People’s Rights prohibits through Article 2 the “Discrimination based in particular on race, ethnicity, color, sex, language, religion [..]” It should be reminded that the UN Human Rights committee ruled that “sexual orientation is a status protected against discrimination.”

However, in practice, discriminations and violence against LGBTQI people are numerous particularly as they are 'justified' and 'tolerated' by repressive laws that criminalize homosexuality.

Indeed, **arbitrary arrests** are often perpetrated by police with impunity against homosexual people or those perceived as such especially when it comes to transgender people. These undergo abusive police controls that lead to prosecution under articles 226a, 228 and 231 of the Criminal Code as was the case of a group of transgender people arrested in Ksar Said in November 2015.

Moreover, the media scene in Tunisia is full of examples of **hate speeches and incitement to violence** against the community. Following several complaints, the HAICA (High Independent Authority for Audiovisual Communication) issued on October 26, 2015 a warning, by means of a statement against a television channel for homophobic statements specifying that “in case of repeated infringement, penalties will be heavier.”

Except that given the lack of deterrent penalties from HAICA these homophobic statements proliferate and become commonplace. On April 14, 2016, on the same TV channel, a Tunisian actor calls homosexuality a “disease.”

This hostile rhetoric against the LGBTQI community is not limited to the media sphere but is also conveyed by some officials as was the case of Mr. Lazher Akermi former Minister Delegate to the Head of Government and Mr. Abdeltif El Mekki member of the Assembly of People's Representatives and former Health Minister.

While the former Minister of Justice (dismissed a few weeks later), Mr. Mohamed Salah Ben Aissa himself had called on September 28, 2015, for the repeal of Article 230 that was contrary to the constitution and international law “After the adoption of the new constitution, it is no longer allowed to violate individual freedoms, privacy and personal choice, even sexual ones,” the President of the Republic Beji Caid Essebsi strongly opposed its removal.

The normalization of hate speeches has created a state of impunity. Since January 2011, numerous **homophobic crimes were** reported by national organizations before the silence and denial of the authorities. Contrary to what the Interior Ministry states, Massimo\* was not a victim of a crime of passion or a breaking and entering that went wrong, but according to his relatives, he was murdered in November 2014 because he was gay. In December 2015, in the Governorate of Zaghouan, a young man killed his older brother because he was homosexual.

In prisons, the situation of LGBTQI people is very alarming. In some prisons such as Mornaguia, homosexuals are subject to segregation. Men convicted for homosexuality or even for common law cases are placed in a separate building because of their sexual orientation and experience all forms of abuse. As part of the case of Kairouan, the six young men gave their testimonies to national LGBTQI rights organizations. After police brutality during their challenge and arrest, they also suffered from verbal and physical abuse and torture by the guards and fellow inmates.

### **Recommendations**

- Enact a law criminalizing all forms of discrimination as well as incitement to hatred and violence against LGBTQI people.
- Recognize hate crimes against LGBTQI people and consider these crimes as aggravating circumstances for judgments.
- Put an end to violations of the integrity and dignity of LGBTQI people in prisons. Also include the human rights values and the non-discrimination (including that based on sexual orientation and gender identity) in the penitentiary staff trainings.
- Establish facilities to provide medical, psychological, sociological and judicial guidance and support for LGBTQI people victims of violence.

### **C) Economic and Social Rights and Access to Services**

The repressive legal framework as well as discrimination and violence against LGBTQI people in Tunisia are a major source of marginalization and lack of security. This is reflected primarily by limited access of LGBTQI people to economic and social rights as well as basic services including health, education and work.

It must first be noted that specific data (segregated data) on LGBTQI people is almost completely absent; the Tunisian authorities are actually in total denial of the specific needs and problems of LGBTQI people.

#### Health Care Access:

The Tunisian Constitution stipulates in Article 38 that “Every human being has the right to health. The State shall guarantee prevention and health care to all citizens and provide the necessary means for the safety and quality of health services.”

At the last Universal Periodic Review in 2012, Tunisia accepted three recommendations on access to care (84, 85 and 89); however, the access of the LGBTQI community to health services remains limited.

Indeed, fearing legal action on the basis of Article 230 of the penal code, several LGBTQI people waive their right of access to health services especially in public health structures. LGBTQI people are actually victims of many forms of stigma and discrimination in hospitals. Degrading treatment, lack of confidentiality and medical secrecy and a non-inclusion of specific community needs are often reported by LGBTQI people who have used health facilities especially when sexual and reproductive health is concerned.

In cases of violence based on gender identity or sexual orientation, access to health care services, forensic medicine and psychological care is limited due to the lack of qualified personnel, lack of means, disrespect for privacy and safety of individuals.

Transgender people are more vulnerable to discrimination. Without adequate support many of them are turning to self-medication, exposing themselves to the risk of complications. It should be reminded also that doctors in Tunisia are prohibited to prescribe hormone therapy for transgender people.

The marginalization of LGBTQI people and limited access to information, counseling and services in terms of health care makes them more vulnerable and exposed to risk practices as evidenced by the results of the Sero-Behavioral National surveys conducted by the Tunisian Association to fight STDs and AIDS with support from the Global Fund to Fight AIDS, Tuberculosis and Malaria. These surveys have objectified HIV prevalence among men who have sex with men at rates of 4.9% in 2009, 13% in 2011 and 9% in 2014.

#### Access to Education

Through Article 39, the Tunisian Constitution enshrines the right to education “The state guarantees the right to free and public education at all stages ... It shall ensure the dissemination of the culture of human rights.”

At the last Universal Periodic Review in 2012, Tunisia accepted three recommendations concerning access to education (70, 84 and 85). However, this access is limited for LGBTQI who are often the target of physical and moral assault, harassment and intimidation by teachers and administrative staff as well as students and pupils. This often leads to failure if not dropout from school and university, or even suspension in some cases. Note that the competent authorities have no legal or administrative framework to fight against discrimination and harassment in schools.

Furthermore, in Tunisian school curricula there is a lack of specific education programs to diversity and respect for human rights and sex education programs in particular as regards issues related to the sexual orientation and violence based on gender identity.

#### Access to work

Article 40 of the Tunisian Constitution stipulates that “Every citizen has the right to work. The State shall take the necessary measures to grant the right to work on the basis of merit and equity. (...)”

This right which is expected to guarantee financial autonomy is often hampered for some members of the LGBTQI community. Indeed, there is an employment discrimination based on sexual orientation or gender identity. Moreover, several testimonies collected by several associations helped document the lives of LGBTQI people in the workplace which is made of non-respect of privacy, personal data disclosure (forced “coming out”), abuse of power, blackmail and harassment, which could even lead to unfair dismissal or job abandonment.

## **Recommendations**

- Guarantee all citizens access to quality care and education services without any discrimination including that based on gender identity or sexual orientation.
- Guarantee the right to decent work in favorable conditions for LGBTQI people and punish all forms of discrimination in hiring.
- Introduce into the school curriculum inclusive sex education that promotes diversity and fights against all forms of discrimination.

## **D) Freedom of Association**

In October 2014, the association Shams filed its founding declaration; Indeed, Tunisia has implemented since 2011 a declaratory system for the creation of associations. However, in practice the publication in JORT (Official Journal of the Tunisian Republic) of Shams after payment of costs and acceptance of visa, has been lagging for 12 months. The association was the subject of four trials whose motives were the non-publication of statutes in the JORT despite the fact that the association had begun the necessary procedures in accordance with the law. This resulted in the pronouncement of a suspension of the association's activities for 30 days; the sentence, that later would be canceled after 5 appeal trials with the Administrative Court, reflects the judicial harassment against freedom of association when it comes to LGBTQI community rights association.

Moreover, the **advocates of human rights for LGBTQI** people face intimidation and smear and defamatory campaigns especially in the mass media and social media, as was the case with a member of Shams in December 2015 who eventually sought asylum before the inertia of public authorities after receiving several threats of murder.

In October 2015 a LGBTQI activist and a member of Shams was assaulted and dismissed by the disciplinary board of his high school in Monastir based on his sexual orientation.

## **Recommendation**

Respect the freedom of association for LGBTQI organizations and network and provide the necessary protection of. LGBTQI rights activists.

## **Conclusion**

Despite the significant gains enjoyed by Tunisians since the revolution of January 14, 2011 and the Constitution of January 27, 2014, LGBTQI people in Tunisia continue their fight for access to equal citizenship with the entire population. Victims of a repressive legislative arsenal essentially through Article 230 of the penal Code, LGBTQI people continue to endure every day all forms of stigma, discrimination and violence. This constitutes a major obstacle to the principles of Liberty, Equality and Dignity sought for by Tunisians during the 2011 revolution.

The Tunisian coalition for the rights of LGBTQI people hence calls on the Tunisian authorities to engage during the Universal Periodic Review in May 2017 to:

- Repeal immediately and without delay Article 230 of the penal code
- Prohibit the practice of rectal examination as evidence of homosexual practices.
- Revise the penal code and penal procedural code to step away from repressive logic and encourage them towards the ultimate goal of protecting the rights and freedoms of individuals
- Fight against all forms of stigmatization and discrimination towards LGBTQI community and punish any incitement to hatred and violence