



Tunisia's Compliance with the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment

RELATING TO VIOLENCE AGAINST WOMEN

Submitted by The Advocates for Human Rights,

a non-governmental organization in special consultative status with ECOSOC
and

MRA Mobilising for Rights Associates,

a non-governmental organization based in Rabat, Morocco¹

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I. Reporting Organizations

1. **The Advocates for Human Rights** (“The Advocates”) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates is committed to ensuring human rights protection for women around the world. The Advocates’ Women’s Human Rights Program has published 25 reports on violence against women as a human rights issue, frequently provides consultation and commentary on drafting laws on domestic violence, and trains lawyers, police, prosecutors, and judges to implement new and existing laws on domestic violence effectively.

2. **Mobilising for Rights Associates** (“MRA”) is an international nongovernmental women’s rights organization based in Rabat and currently working in Morocco, Tunisia, and Libya. MRA collaborates with grassroots level women’s rights activists and organizations to promote women’s full enjoyment of their human rights through changes in laws, structures, relationships, and culture. Together with its partners, MRA creates and implements long-term strategies to address the diverse causes of discrimination against women and develop meaningful, effective solutions. Its multidimensional strategies include popular human rights education, legal accompaniment, cause-lawyering, action-research, national law reform, and international advocacy. By engaging with local actors at different levels, MRA fosters micro-level changes in culture and relationships to support activism for macro-level legal and institutional reform.

¹ We thank Mounira Balghouthi, civil society activist from Kairouan, Naama Nsiri, attorney from Sfax, and Khadija Arfaoui, freelance feminist researcher and activist from Tunis for their contributions to this report.

II. Tunisia's Obligations under the Convention Against Torture

3. Tunisia ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention) on September 23, 1988.² The Convention defines torture in Article 1 as severe mental or physical pain or suffering that is intentionally inflicted either by a State actor or with the consent or acquiescence of a State actor for an unlawful purpose.³ The Convention also obligates Tunisia to protect victims from domestic violence and hold perpetrators accountable in: Article 2 (non-derogable requirement of effective legislative, administrative, judicial or other measures to prevent acts of torture, including acts by private actors; Article 4 (acts of torture must be identified as offenses under criminal law and receive the appropriate penalty); Article 7 (criminalized cases of torture should be submitted to authorities for prosecution); Article 12 (prompt investigation by impartial and competent authorities); Article 13 (victim's right to complain and to have their complaint examined by competent authorities, State's obligation to protect victim and witnesses); and Article 14 (victims' right to redress and compensation, including rehabilitation).

4. The Committee against Torture has clarified that domestic violence falls under the purview of the obligations set forth in the Convention.⁴ Violence against women, such as domestic violence, contravenes the Convention when the government fails to prevent such violence from taking place and does not prosecute or punish perpetrators of the violence.⁵ As stated in General Comment No. 2:

... where State authorities or others acting in official capacity or under color of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with this Convention, the State bears responsibility and its officials should be considered authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates

² United Nations, *Treaty Collection*, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=treaty&mtdsg_no=iv-9&chapter=4&lang=en (Accessed: July 15, 2015).

³ The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984), available at <http://www2.ohchr.org/english/law/cat.htm>, (last visited December 5, 2015).

⁴ U.N. Committee Against Torture (CAT), *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2, paragraph 18, available at <http://www.unhcr.org/refworld/docid/47ac78ce2.html> (last visited December 5, 2015).

⁵ The Advocates for Human Rights, StopVaw, available at http://www.stopvaw.org/Convention_against_Torture_and_Other_Cruel_Inhuman_or_Degrading_Treatment_or_Punishment_CAT.html (last visited October 9); see also, Amnesty International, "Broken bodies, shattered minds: Torture and ill-treatment of women", March 2001, available at <http://www.amnesty.org/en/library/asset/ACT40/001/2001/en/b68fe481-dc5f-11dd-bce7-11be3666d687/act400012001en.pdf>.

and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or *de facto* permission. The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation and trafficking.⁶

5. The Committee has also recognized State party obligations to report on violence against women by private actors in communities and homes and the measures taken to prevent and punish such violence,⁷ ensure adequate care and protection for victims to avoid re-traumatization during legal procedures,⁸ provide adequate legal aid to victims lacking the necessary resources to bring complaints and make claims for redress,⁹ take measures to protect victims against intimidation and retaliation "at all times before, during and after judicial, administrative or other proceedings that affect the interests of victims,"¹⁰ and not impede the enjoyment of the right to redress through, for example, "evidential burdens and procedural requirements that interfere with the determination of the right to redress" or the "failure to provide sufficient legal aid and protection measures for victims."¹¹

6. While the Committee did not specifically reference violence against women in its Concluding Observations during Tunisia's previous review in 1998, the Committee did note with concern the wide gap that exists between law and practice with regard to the protection of human rights in Tunisia.¹² In Recommendation 102(c), the Committee called upon Tunisia to "ensure the right of victims of torture to lodge a complaint without the fear of being subjected to any kind of reprisal, harassment, harsh treatment or prosecution, even if the outcome of the investigation into his claim does not prove his or her allegation, and to seek and obtain redress if these allegations are proven correct."¹³ Notwithstanding the Committee's General Comment No. 2 and the Committee's concerns about violence against women, Tunisia's Addendum to its Third Periodic Report to the Committee (6 November, 2014) fails to address violence against women in any particular manner.

⁶ U.N. Committee Against Torture (CAT), *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2, paragraph 18, available at, <http://www.unhcr.org/refworld/docid/47ac78ce2.html> (last visited December 5, 2015).

⁷ General Comment No. 2, para. 22.

⁸ General Comment No. 3, paras. 21 and 33.

⁹ General Comment No. 3, para. 30.

¹⁰ General Comment No. 3, para. 31.

¹¹ General Comment No. 3, para. 38.

¹² U.N. Committee against Torture, *Concluding Observations: TUNISIA*, para. 96, CAT/C/TUN/3 (November 19, 1998).

¹³ U.N. Committee against Torture, *Concluding Observations: TUNISIA*, para. 102(c), CAT/C/TUN/3 (November 19, 1998).

7. In its List of Issues,¹⁴ the Committee asked Tunisia to, “In view of the concluding observations of the Committee and the lack of information provided by the State party in its reports, please indicate what measures have been taken to combat violence against women. Please also provide:

- (a) Up-to-date statistics on the number of complaints, investigations, prosecutions and convictions in cases of violence against women since the State party’s last report, indicating what percentage of these cases involved marital violence;
- (b) Information on measures taken to adopt a general law on violence against women, including acts of domestic violence such as marital rape;
- (c) Information on measures taken to amend articles 218, 227 bis and 239 of the Criminal Code, which represent a high risk of impunity for the perpetrators of violence against women, especially in a family setting;
- (d) Information on measures taken to provide compensation without any kind of discrimination, including gender-based discrimination, to women who are the victims of rape, sexual harassment or police violence, including for acts that took place during the events of December 2010 and January 2011. Please provide up-to date statistics on the number of women who have received compensation for violence inflicted on them and the amounts of such compensation;
- (e) Information on measures taken to combat the stigmatization and harassment of women’s rights defenders and the use of threats and violence against them, and on measures taken to combat judicial harassment and the stigmatization of persons who report sexual violence, including the victims of such violence. Please comment on the case of a young woman who was charged with “indecent behaviour” after lodging a rape complaint against two police officers;
- (f) Information on measures taken to curb marital violence, including any programmes set up to raise public awareness of this problem.

III. Tunisia’s Current Legal Framework

8. **The New Tunisian Constitution:** Article 46 of the January 2014 Constitution provides in part that, “The state shall take all necessary measures in order to eradicate violence against women.” Article 23 provides that “the state protects human dignity and physical integrity, and prohibits mental and physical torture. Crimes of torture are not subject to any statute of limitations.”¹⁵

9. **Currently, no specific legislation addressing violence against women exists in Tunisia.** Instead, violence against women is covered under the outdated, generally applicable provisions of the Penal Code, and rarely enforced in cases of violence against women such as domestic

¹⁴ U.N. Committee Against Torture, *List of Issues in relation to the third periodic report of Tunisia*, para. 10, CAT/C/TUN/Q/3 (January 6, 2016).

¹⁵ La Constitution de la République Tunisienne (2014). Available at: <http://www.legislation.tn/fr/constitution/la-constitution-de-la-r%C3%A9publique-tunisienne>. See also U.N. Committee Against Torture, *Third Periodic Report: Tunisia (Addendum)*, para. 9, CAT/C/TUN/3/Add.1 (6 November 2014).

violence and rape.

10. The Penal Code does contain some general prohibitions that may be applied to domestic violence, including provisions establishing that a spousal relationship is an aggravating circumstance for sentencing purposes in criminal assault and battery cases.

- Under Article 218, an individual who deliberately injures, strikes, or commits any other violent act or assault, shall be punished with imprisonment of one year and a 1000 dinar fine. The penalty is increased to two years and 2000 dinars if the perpetrator of the assault is a descendant or spouse of the victim. If the act is carried out with premeditation, the punishment shall be increased to a three years imprisonment and a three thousand dinars fine.
- Article 219 increases the punishment to between 5 – 10 years if the victims suffers mutilation, loss of a limb or is incapacitated as a result of the violence.
- Article 319 provides for 15 days imprisonment for violent acts without serious or lasting consequences on health, although a spousal relationship is not an aggravating circumstance for sentencing purposes in such misdemeanor level cases.¹⁶

11. However, the application of these Penal Code provisions to situations of domestic violence is limited both by the language of the law and in practice. Articles 218, 219 and 319 apply only in situations of physical violence, excluding psychological and economic violence. Further, the restrictive definition of “spouse or descendant” means that it does not apply to unmarried or divorced intimate partners.

12. Additionally, articles 218 and 319 both provide that the prosecution, trial or execution of the sentence is cancelled if the victim spouse or descendant retracts the complaint. Ministry of Justice statistics on public prosecutions of marital violence complaints show that 65-72% of complaints were withdrawn or dismissed.¹⁷

13. The Penal Code classifies rape as a crime against morality, rather than as a crime against persons. Penal Code Article 227 makes rape punishable with the death penalty if committed with violence or a weapon or on a person under age 10, and provides for life imprisonment in other cases. The article continues to set the age of consent at 13 years old.

14. Article 227 bis provides that a sexual act without violence on a girl under 15 is punished by 6 years imprisonment and 5 years imprisonment if the victim is between 15 and 20 years old. The same article goes on to provide that in both of these cases, the marriage of the offender to the victim cancels the prosecution or the execution of the sentence.

15. Marital rape is not a crime under the current Penal Code. Furthermore, **Personal**

¹⁶ Code Penal, available at http://www.legislation.tn/fr/affich-code/Code-p%C3%A9nal__89 (Accessed: January 6, 2016).

¹⁷ Amnesty International, Assaulted and Accused: Sexual and gender-based violence in Tunisia, p. 21 (November 2015), available at: <https://www.amnestyusa.org/sites/default/files/tunisia-assaulted-and-accused-report.pdf> (Accessed: January 4, 2016).



Status Code Article 23 requires both spouses to “fulfill their conjugal duties according to practice and customs”, a provision that is generally understood to mean that sexual relations constitute a marital obligation.

16. Personal Status Code article 31 provides that either spouse may seek a fault-based divorce on the grounds of material or non-material harm caused. Judges will interpret harm as including domestic violence, in addition to considering such violence as a breach of Personal Status Code Article 23 requirements that spouses treat each other with care and maintain good relations. In theory, women victims of domestic violence can file for a fault based divorce and obtain alimony, a housing allowance and compensation for damages. In practice, however, high evidentiary requirements of either a confession by the offender or a medical certificate create barriers to women seeking divorce on these grounds. Additionally, judges generally will not grant this type of divorce unless there is a criminal conviction first.¹⁸

17. Tunisian law does not currently provide for any protection or preventive remedies such as civil protection measures or exclusion orders that would remove the violent offender from the home or forbid him from having any contact with or harassing the victim.

18. Since 2013 the government has announced a pending violence against women bill, although to date the law remains to be enacted.¹⁹ One media outlet reported government statements to the effect that the bill would be presented to the Peoples’ Representatives Assembly (PRA) on March 8, 2016,²⁰ while another reported that the bill would be submitted “to the government for adoption” on March 26, 2016.²¹ As of the date of submission of this report, the status of the announced VAW bill, and whether or not it has moved along in the legislative process, remains unclear.

IV. Tunisia’s Failure to Protect Women from Domestic Violence and other forms of Violence Against Women

¹⁸ *Etat du Droit Tunisien sur les violences faites aux femmes et aux filles*, UNFPA and the Secrétariat d’Etat pour la Femme et la Famille (Tunis, December 2013), available at http://www.unfpa-tunisie.org/images/stories/2014/publication/Publication%20Etude%20violence%202014_f.pdf (accessed January 6, 2016).

¹⁹ See UNFPA Tunisia at <http://www.unfpa-tunisie.org/index.php/en/news/1-actualites/268-presentation-du-premier-draft-du-projet-de-loi-integrale-sur-les-violences-faites-aux-femmes-et-aux-filles.html>; Sana Shouai, *La loi contre les violences faites aux femmes en Tunisie : un processus lent*, Middle East Eye, 29 June 2015, available at <http://www.middleeasteye.net/fr/reportages/la-loi-contre-les-violences-faites-aux-femmes-en-tunisie-un-processus-lent-1424501485>

²⁰ Buisness News, *Orange engagé auprès d’ONU Femmes Tunisie dans la campagne internationale contre les violences faites aux femmes*, 8 December 2015, available at <http://www.businessnews.com.tn/orange-engage-aupres-donu-femmes-tunisie-dans-la-campagne-internationale-contre-les-violences-faites-aux-femmes.524.60880.3>. (accessed January 6, 2016).

²¹ http://africanmanager.com/51_le-projet-de-loi-sur-la-lutte-contre-la-violence-a-legard-de-la-femme-sera-soumis-le-26-mars-prochain-au-gouvernement/ (accessed March 11, 2016).



19. In 2010, the Tunisian National Office of Family and Population (ONFP) conducted a nationwide survey that documented that violence against women is a widespread problem in Tunisia. ONFP reported that **47.6 percent of women ages 18 to 64 had been subjected to at least one form of violence** in their lives.²² Physical violence (31.7%) was reported as the most frequent type of violence experienced by women, followed by psychological violence (28.9%) and sexual violence (15.7%). The ONFP report study revealed that most violence against women is perpetrated by an intimate partner.²³

20. While the ONFP nationwide survey was conducted prior to the December 2010 – January 2011 revolution, government studies, human rights organizations, local activists and media outlets report perceptions that violence against women has increased since the revolution. Some sources attribute this to the rise of extremist Islamist ideologies in Tunisia,²⁴ and corresponding attitude among the police and others that women are responsible for violence inflicted upon them if they dressed a certain way or were in the “wrong” place.²⁵ The Ministry of the Interior reported 46 women murdered in a ten-month period in 2013.²⁶

21. Some women report experiencing domestic violence not only in the home, but also in the workplace. In a survey of rural women working in agriculture, one in five women reported

²² Office National de la Famille et de la Population, *Enquête Nationale sur la Violence a l’Egard des Femmes en Tunisie : Rapport de l’enquête* (Tunis, December 2010), available at <http://www.medicities.org/documents/10192/54940/Enqu%C3%AAt+ Nationale+ Violence+ envers+ les+ femmes+ + Tunisie+ 2010.pdf> (Accessed: January 6, 2016).

²³ Id. The intimate partner is the perpetrator of physical violence in 47.2% cases, of psychological violence in 68.5% of cases, of sexual violence in 78.2% of cases, and of economic violence in 77.9% of cases. See also Carolyn Lamboley Tunisia-live, *1 in 5 Tunisian women victim of domestic violence, according to new survey*, (March 2, 2012), available at <http://www.tunisia-live.net/2012/03/02/1-in-5-tunisian-women-victim-of-domestic-violence-according-to-new-survey/> (Accessed: July 2, 2015).

²⁴ *Expérience et vécu des femmes survivantes à la violence conjugale dans les régions du Kef, Béja et Jendouba : résultats d’une étude qualitative* (Office national de la famille et la population, 2015), available at http://www.onfp.nat.tn/liens/violence_nord_ouest_resultats_2015.pdf

(accessed January 6, 2016). See also, Euro-Mediterranean Human Rights Network, *Violence against Women in the context of Political Transformations and Economic Crisis in the Euro-Mediterranean Region: Trends and Recommendations towards Equality and Justice*, p.25 (March 6, 2014) available at <http://euromedrights.org/publication/violence-against-women-in-the-context-of-political-transformations-and-economic-crisis-in-the-euro-mediterranean-region/> (Accessed: January 4, 2016), and Business News – Tunisia, *New Law Pushes Tunisia to Protect Women*, (June 28, 2014) available at <http://www.al-monitor.com/pulse/culture/2014/08/tunisia-women-victim-gender-based-violence.html#> (Accessed: August 13, 2015).

²⁵ Communication from local Tunisian activists to MRA (February 2016), on file with authors.

²⁶ <http://www.alchourouk.com/28592/567/1/%D8%A7%D9%84%D8%B9%D9%86%D9%81-%D8%B6%D8%AF-%D8%A7%D9%84%D9%86%D8%B3%D8%A7%D8%A1-%D8%AA%D8%B6%D8%A7%D8%B9%D9%81-3-%D9%85%D8%B1%D8%A7%D8%AA:46-%D9%82%D8%AA%D9%8A%D9%84%D8%A9-%D9%81%D9%8A-%D8%B9%D8%B4%D8%B1%D8%A9-%D8%A3%D8%B4%D9%87%D8%B1--.html> (accessed March 11, 2016).

having been the victim of domestic violence at work, with 47.1% reporting verbal abuse and 29.4% reporting physical violence by their spouse.²⁷

22. Very few women victims of violence in Tunisia report the violence to the authorities.

According to the ONFP study, only 17.8% of women who had experienced violence had filed a complaint. Likewise, only 3.6% and 2.3% of women identified the police and health system institutions respectively as sources of assistance they would seek.²⁸ Women reported a lack of trust and confidence in the justice system.²⁹ Domestic violence and rape are also underreported due to social and cultural pressures, including the traditionally taboo nature of violence against women, a concern to protect the image and reputation of the victim's family, and the fear of ending up homeless.³⁰

23. Police often refuse to intervene when women ask for help, viewing domestic violence as a private matter.³¹ When they do intervene, police often try to convince women not to bring a complaint against their husband. Local activists also report delays in prosecutorial orders to police to investigate violence complaints (during which time the violent offenders are free), administrative runarounds, and pressure to withdraw complaints on the part of the police when women do attempt to report violence. Police stations are insufficiently staffed, resourced or equipped to receive women victims of violence adequately. One report indicates at least one instance where a woman complainant was arrested for "insisting too much" with the police and threatened with being charged with offense of a public officer in the exercise of his functions. Others report police telling victims of violence, "Filing a complaint will get you nowhere," "Stay at your home," "All women are victims of violence," or "That's not an assault, it's a minor injury."³²

24. An additional barrier is the lack of sufficient housing or shelter programs for survivors of violence. The first government-run shelter and national helpline dedicated to victims of domestic violence was only opened in 2012.³³ Amnesty International reported in November

²⁷ Association Tunisienne des femmes démocrates, *Enquete sur les conditions de travail des femmes en milieu rural* (September 2014), available at <http://femmesdemocrates.org.tn/bibliotheque-atfd/livre-pdf/livre%20francais.pdf> (Accessed: January 6, 2016).

²⁸ Office National de la Famille et de la Population, *Enquete Nationale sur la Violence a l'Egard des Femmes en Tunisie : Rapport de l'enquête* (Tunis, December 2010), available at <http://www.medicities.org/documents/10192/54940/Enqu%C3%AAt+Nationale+Violence+envers+les+femmes-+Tunisie+2010.pdf> (Accessed: January 6, 2016).

²⁹ Office National de la Famille et de la Population, *Expérience et vécu des femmes survivantes à la violence conjugale dans les régions du Kef, Béja et Jendouba : résultats d'une étude qualitative* (Tunis, 2015), available at http://www.onfp.nat.tn/liens/violence_nord_ouest_resultats_2015.pdf (accessed January 6, 2016).

³⁰ Communication from local Tunisian activists to MRA (February 2016), on file with authors.

³¹ Canada: Immigration and Refugee Board of Canada, *Tunisia: Domestic violence, legislation and protection available to victims (2007-2009)*, TUN103273.FE (November 24, 2009), available at <http://www.refworld.org/docid/4b20f04a3c.html> (Accessed: 8 July 2015).

³² Communication from local Tunisian activists to MRA (February 2016), on file with authors.

³³ U.S. Bureau of Democracy, Human Rights and Labor, *Tunisia 2014 Human Rights Report*, p.15-16, (2014), available at <http://www.state.gov/documents/organization/236836.pdf> (Accessed: July 9, 2015).



2015, however, that the helpline is non-operational and the three shelters (in Tunis, Sousse and Sfax) that can take women victims of violence have limited space, provide only short-term housing, and encourage mediation with the abuser.³⁴ Local NGO reports to MRA on the number of shelters ranged from 2 – 4.³⁵

25. In order to file an assault case, women must first bring a medical certificate establishing the violence and its severity, and then go to the forensic medical doctor in a public hospital designated by the judge in order to draw up a report on the nature and length of incapacity suffered as a result of the violence.³⁶

26. Local activists report how judges are reluctant to convict husband for assault in the absence of visible physical injuries.

In one case we had, the husband would repeatedly beat his wife on her head between his two hands until she would pass out and then have to stay in bed. When she went to the public hospital, the medical report said “There is no trace of violence we can cite.” Based on this, the judge dismissed the case.³⁷

27. **There is also no comprehensive or consolidated database on the incidence of sexual violence.** Convictions for sexual violence were far below the number of actual incidents.³⁸ Penal code provisions criminalizing sexual relations outside of marriage discourage women from reporting rape, and women victims of violence from an intimate partner not their spouse from reporting domestic violence,³⁹ out of fear of being arrested themselves. Given the attitudes prevalent in society and among police that marital rape is something that does not exist and that women have a duty to obey their husbands, women report judges not taking sexual violence into account for determining harm or harm in divorce cases.⁴⁰

28. Since the revolution, there have been some cases of state-sponsored violence and threats against women that have been reported. One is the case of Meriam Ben Mohamed, who was raped by two policemen in 2012. The Tunisian Interior Ministry alleged that she had offered herself to the policemen, and she was charged with infringing good morals. After a public outcry, those charges were later dropped, and the policemen were convicted of the rapes.⁴¹

³⁴ Amnesty International, *Assaulted and Accused: Sexual and gender-based violence in Tunisia*, p. 66 (November 2015), available at: <https://www.amnestyusa.org/sites/default/files/tunisia-assaulted-and-accused-report.pdf> (Accessed: January 4, 2016).

³⁵ Communication from local Tunisian activists to MRA (February 2016), on file with authors.

³⁶ Communication from local Tunisian activists to MRA (February 2016), on file with authors.

³⁷ Communication from local Tunisian activists to MRA (February 2016), on file with authors.

³⁸ U.S. Bureau of Democracy, Human Rights and Labor, *Tunisia 2014 Human Rights Report*, p.15, (2014), available at <http://www.state.gov/documents/organization/236836.pdf> (Accessed: July 9, 2015).

³⁹ Penal Code articles 226 (public indecency) and 236 (adultery).

⁴⁰ Communication from local Tunisian activists to MRA (February 2016), on file with authors.

⁴¹ International Federation for Human Rights, *Sexual Violence in Tunisia: from denial to dawning recognition* (June 2, 2014), available at <https://www.fidh.org/en/region/north-africa-middle-east/tunisia/15425-sexual-violence-in->

V. Recommendations for the Government of Tunisia

29. The Advocates for Human Rights and Mobilising for Rights Associates recommend the following:

Recommendations related to Domestic Legislation

A. Tunisia should effectively implement its new Constitution

30. Tunisia should establish the supremacy of international human rights conventions to which Tunisia is a party and of the direct applicability and justiciability of such conventions in domestic courts.

B. Tunisia should pass a Violence Against Women Law

31. The Tunisian Government should promulgate without delay a specific violence against women law that contains both criminal and civil provisions. The Tunisian Government should collaborate with a wide range of NGOs and experts in the field to ensure that any draft law contains the essential elements of an effective domestic violence law to adequately protect victims and hold perpetrators accountable, while taking care to not cause further harm to victims.⁴²

32. Reforms creating a law combating violence against women should specifically:

- expand the definition of violence against women to include physical, sexual, psychological, and economic violence, as well as constraint and deprivation of liberty;
- include a large scope of relationships covered by the law that are not limited to spouses in legal marriage, but includes others such as fiancés and ex-fiancés, and ex-husbands;
- clearly and specifically criminalize acts of domestic violence;
- eliminate the high threshold requirement of incapacity certificates for women to be able to bring a complaint for violence;
- establish civil remedies including comprehensive protection orders that are part of the civil procedure code instead of integrated into the Penal Code;
- allow courts, in protection orders, to at least temporarily order child custody and

tunisia-from-denial-to-dawning-recognition (Accessed: July 8, 2014). Ms. Ben Mohamed's book on the subject is titled *Coupable d'avoir été violée* (Guilty of having been Raped).

⁴² Additional information on drafting legislation on domestic violence and other forms of violence against women can be found at UN Women's Global Knowledge Centre on Ending Violence Against Women and Girls, available at, <http://www.endvawnow.org/en/articles/393-core-elements-of-legislation-on-domestic-violence.html> (last visited October 9, 2011); see also, Drafting Domestic Violence Laws, StopVaw, The Advocates for Human Rights, available at, http://stopvaw.org/drafting_law_on_domestic_violence.html (last visited October 9, 2011).

support to the non-violent parent, and allow courts to enter a protection order as to the child;

- create a criminal offense for violation of the order for protection with a cross-reference to any relevant provisions of the criminal laws, such as punishment for various level of offenses;
- prohibit perpetrators from possessing a firearm;
- provide for enhanced penalties for other domestic violence-related criminal offenses;
- increase police resources to respond to violence against women, including an adequate number of and sufficiently trained personnel and facilities;
- increase police powers to intervene in violence against women cases;
- include provisions on implementation of the law, including training of relevant professionals, monitoring and evaluation of the law, and funding of the implementation of the law;
- ensure that inter-agency task forces that create a coordinated community response to domestic violence are established and adequately funded to provide for effective services.

C. Tunisia should amend the Penal and Personal Status Codes

33. Reforms to the Penal and Personal Status Codes should:

- amend the Penal Code to explicitly criminalize marital rape;
- abolish criminal prosecutions for illicit sexual relations;
- abolish Penal Code provisions that allow a perpetrator of sexual violence to escape prosecution for marrying his victim;
- abolish Penal Code provisions allowing cancellation of the prosecution, trial or execution of the sentence when victims retract the complaint;
- amend Penal Code provisions to raise the age of consent to sexual relations (currently 13);
- amend Personal Status Code article 23 to eliminate the requirement that spouses “fulfill their conjugal duties according to practice and customs.”

Recommendations Related to the Justice and Legal Sectors

34. Tunisia should ensure that the State adequately and consistently supports and funds NGOs to continue regular trainings on women's human rights, domestic violence and implementation of the law for police, prosecutors, judges, social services, and child protection authorities.

35. Tunisia should increase the coordinated community response among NGOs, police, courts, the DSA, health care providers and the media.

Recommendations Related to Funding for Domestic Violence Work



36. Tunisia should continue to provide NGOs with sufficient and regular funding to realistically carry out their work on domestic violence and trainings.

Recommendations Related to Public Education and Prevention

37. Tunisia should support comprehensive prevention programs and educational programs in schools and other community organizations to change the public acceptance of domestic violence.

Recommendations Related to Access to Safe Housing and Shelter

38. Tunisia should create a legal framework and provide state financial support for shelters and housing to women victims of violence.
39. Ensure that the standard of providing a shelter/safe place for every 10,000 members of the population, located in both rural and urban areas, capable of accommodating complainant/victims and their children is upheld.
40. Strengthen the current legal framework with respect to NGO-run shelters for women victims of violence. Increase the support that the government provides to these NGO-run shelters.