



Tunisia's Compliance with the International Covenant on Civil and Political Rights
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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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.

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.

Tunisia fails to uphold its obligations under the International Covenant on Civil and Political Rights (ICCPR)

1. As a State Party to the ICCPR, the Tunisian government has an obligation to guarantee the enjoyment of certain basic rights regardless of a person's race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 2). Furthermore, the rights set out in the covenant must be guaranteed equally to men and women (Article 3). The Tunisian government is obligated to treat all persons equally before the law without any discrimination on any ground, including sex, (Article 26), and to protect all persons from hate crimes based on their identity (Article 20). Finally, the ICCPR mandates that no person shall be subjected to torture or to cruel, inhuman and degrading treatment or punishment (Article 7) or subjected to any form of slavery (Article 8).

I. Tunisia fails to uphold international standards of non-discrimination and denies women their rights under the ICCPR.

2. In its List of Issues Prior to Reporting, the Human Rights Committee ("Committee") requested information on "the current impact of the prohibited customary marriage practice known as *orfi*." The Committee also called on Tunisia to "explain its consequences for women's ability to enjoy their Covenant rights."²
3. In its Sixth Periodic Report, the government of Tunisia states that customary marriages are prohibited by law. These marriages have "no effect" except in the case of:
 - Establishing filiation
 - Establishing that bigamy has occurred, which is deemed to have commenced from the date of the issuance of the marriage license
 - Prohibiting marriages contracted between close relatives³
4. While polygamy is illegal under Tunisian law, the UN Working Group on discrimination against women in law and practice has expressed concern about the growing practice of customary or *orfi* marriages which may be used as a means of circumventing the formal system to create a polygamous marriage.⁴ Concluded verbally and without a written contract, such marriages frequently occur in rural areas distant from the public administration. They place women in vulnerable situations when the "husband" abandons them and their children with no rights stemming from legal marriage. The

² International Covenant on Civil and Political Rights, *List of Issues prior to the submission of the sixth periodic report of Tunisia*, U.N. Doc. CCPR/C/TUN/QPR/6. (27 April 2018). ¶ 9.

³ International Covenant on Civil and Political Rights, *Sixth periodic report submitted by Tunisia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2019*, U.N. Doc. CCPR/C/TUN/6. (28 June 2019) ¶ 88.

⁴ Human Rights Council, *Report of the Working Group on the issue of discrimination against women in law and in practice: Mission to Tunisia*, (May 30, 2013), U.N. Doc. A/HRC/23/50/Add.2 ¶ 12.

practice has increased since the revolution, including among well-educated and urban Tunisians,⁵ reaching as many as 1200 marriage contracts in 2018.⁶

II. Tunisia fails to protect women from violence against women, particularly from all forms of intimate partner violence (IPV).

5. In its Concluding Observations following Tunisia's last review in 2008, the Committee acknowledged the government had taken some steps to prevent domestic violence. Nevertheless, the Committee called on Tunisia to take further steps to protect women who are victims of violence.⁷
6. In its List of Issues Prior to Reporting, the Committee requested information on measures to combat violence against women and domestic violence in Tunisia, and on steps toward criminalizing domestic violence and marital rape. The Committee specifically requested information on: (a) the number of complaints filed that concern different forms of violence against women, including domestic violence and sexual violence; (b) the investigations into and prosecutions of those complaints; (c) the convictions handed down; (d) the number of protection measures granted, if any; and (e) the compensation awarded to victims.⁸ The Committee also requested information on the results of and funds allocated to the Organic Act No. 2017-18 on the elimination of violence against women and the National Strategy to combat violence against women.
7. In its sixth periodic report, Tunisia outlined reforms under the Act on Eliminating Violence Against Women, which was enacted in August 2017 and entered into force in February 2018. The Act includes provisions to prevent violence against women, including amendments to the Criminal Code. The Tunisian government highlighted trainings, awareness-raising programs, and victim services as part of the National Strategy to combat violence against women at different stages of their lives.⁹
8. Violence against women is a widespread problem in Tunisia. **In 2016, 53.5% of women who participated in a survey reported that they experienced violence in public places.**¹⁰ 78% reported psychological violence, 75.4% reported sexual violence, and 41.2% reported physical violence. Furthermore, 60 percent of women in Tunisia experienced domestic violence.¹¹ Though the December 2010-January 2011 revolution

⁵ Tunisia: 'orfi' or temporary marriage making a comeback, Gagrule, Oct. 1, 2013, <http://www.gagrule.net/tunisia-orfi-or-temporary-marriage-making-a-comeback/>.

⁶ Tunisie: 900 mariages 'orfi' parmi les étudiants, Réalités Online, Mar. 8, 2019, <https://www.realites.com.tn/2019/03/tunisie-900-mariages-orfi-parmi-les-etudiants/>.

⁷ International Covenant on Civil and Political Rights, *Concluding Observations of the Human Rights Committee Tunisia*, U.N. Doc. CCPR/C/TUN/CO/5. (23 April 2008) ¶ 10.

⁸ International Covenant on Civil and Political Rights, *List of Issues prior to the submission of the sixth periodic report of Tunisia*, (27 April 2018), U.N. Doc. CCPR/C/TUN/QPR/6. ¶ 11.

⁹ International Covenant on Civil and Political Rights, *Sixth periodic report submitted by Tunisia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2019*, U.N. Doc. CCPR/C/TUN/6. (28 June 2019) ¶ 93, 97, 98, 100.

¹⁰ Centre de Recherches, d'Etudes de Documentation et de l'Information sur la Femme, *La Violence Fondée sur le genre dans l'espace public en Tunisie*. (February 2017). http://www.credif.org.tn/images/livre_flash/volence/mobile/html5forpc.html (Accessed December 31, 2019)

¹¹ Lilia Blaise, *Tunisia Takes a Big Step to Protect Women from Abuse*, New York Times, Aug. 1, 2017, Available online at <https://www.nytimes.com/2017/08/01/world/africa/tunisia-women-domestic-violence.html>.

brought about reform for women's rights, there is a general perception that violence against women has increased since the revolution. Some sources attribute the increase to the rise of extremist Islamist ideologies in Tunisia,¹² and corresponding attitudes 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.¹³

9. **The Act on Violence Against women includes reform to key articles of the Penal Code.**¹⁴ One provision of the Act eliminates the possibility of impunity for rape if a perpetrator marries the victim. According to the Tunisian government, while the act does not specifically include the terms “marital rape” or “domestic violence,” they are criminalized within more general articles prohibiting violence against women, irrespective of the perpetrator. Penalties increase for criminal offenses such as assault or rape perpetrated against a family member.
10. Article 15 of the Act amended Penal Code article 227 to define rape as any act of sexual penetration, regardless of the nature of the penetration or the means by which it was achieved, committed against either a man or a women, without that person's consent. Article 227 makes rape punishable with life imprisonment if committed with violence or a weapon or against anyone under the age of 16. The article sets the age of consent at 16 years old.¹⁵
11. **Despite progress, the application of the new law to situations of domestic violence remains 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. The penalties for psychological and economic violence in Articles 224 bis, 18, and 19 are not sufficient to deter perpetrators.
12. The new legislation applies only to violence committed between “spouses, ex-spouses, fiancés and ex-fiancés, and does not provide protection for violence that occurs between unmarried intimate partners.
13. **Sexual relationships between unmarried persons remain illegal in Tunisia, creating barriers to women reporting violence committed in non-marital intimate relationships.** Penal code provisions criminalizing sexual relations outside of marriage prevent women from reporting intimate partner violence. Penal Code article 226 punishes “public indecency” by six months' imprisonment and a fine of 48 dinars, a provision applied in practice to sanction unmarried couples, while article 236 punishes adultery

¹² *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), http://www.onfp.nat.tn/liens/violence_nord_ouest_resultats_2015.pdf. 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*, (Mar. 6, 2014), 25. <http://euromedrights.org/publication/violence-against-women-in-the-context-of-political-transformations-and-economic-crisis-in-the-euro-mediterranean-region/>; Ikhlaf Latif, *New Law Pushes Tunisia to Protect Women*, Al Monitor, Jun. 28, 2014, <http://www.al-monitor.com/pulse/culture/2014/08/tunisia-women-victim-gender-based-violence.html#>.

¹³ Communication from local Tunisian activists to MRA (February 2016), on file with authors.

¹⁴ ¹⁴ Loi organique no. 2017-58 du 11 aout 2017, relative a l'élimination de la violence à l'égard des femmes, Art. 227 (2018), <http://www.legislation.tn/sites/default/files/news/tf2017581.pdf>.

¹⁵ Loi organique no. 2017-58 du 11 aout 2017, relative a l'élimination de la violence à l'égard des femmes, Art. 227 (2018), <http://www.legislation.tn/sites/default/files/news/tf2017581.pdf>.

with five years imprisonment and a 500 dinar fine.¹⁶ In addition, Article 36 of law n ° 57-3 of August 1, 1957 regulating civil status punishes concubinage – unmarried persons cohabitating – with three to six months imprisonment.

14. Tunisian NGOs in several towns reported that women in intimate cohabitating or dating relationships will not **report** violence to the authorities out of fear of being arrested themselves.¹⁷
15. In September 2018, two young high school students (a boy and a girl) were tried on the basis of articles 226 and 226bis of the Tunisian Penal Code for “indecenty” after a school guard discovered them kissing.¹⁸
16. **Implementation of the new legislation is also lacking.** Of 35,988 cases of violence against women and girls registered with the Directorate General of Public Security in 2019, legal proceedings were initiated in 8,198 of those cases, and 515 perpetrators arrested.¹⁹
17. **Remedies available to victims under new legislation are insufficient to protect them from further harm.** Article 33 of the Act on Violence Against Women provides some protective measures for victims of domestic violence. Remedies include both a no-contact order and orders for protection. Article 34 of the same act, however, limits all protective orders to six months, and provides for only one additional protective order of the same duration. Victims effectively receive protection for a year at most.²⁰
18. **Under the Personal Status Code, victims of domestic violence face barriers to obtaining divorce.** 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.²¹
19. **Very few women victims of violence in Tunisia report the violence to the authorities.** Between 2016 and 2017, while the Ministry of Justice received 5,569 complaints of

¹⁶ Penal Code article 231 criminalizing prostitution is also often broadly interpreted and applied to unmarried couples.

¹⁷ Communication from local Tunisian activists to MRA (January 2019), on file with authors.

¹⁸ Le Collectif Civil pour les Libertés Individuelles (CCLI), *Etat des Libertés Individuelles 2018*, (Tunis, March 2019).

¹⁹ U.N. International Covenant on Civil and Political Rights, *Sixth periodic report submitted by Tunisia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2019*, U.N. Doc. CCPR/C/TUN/6. (28 June 2019) ¶ 111.

²⁰ Loi organique no. 2017-58 du 11 aout 2017, relative a l'élimination de la violence à l'égard des femmes, Art. 33, 34 (2018), <http://www.legislation.tn/sites/default/files/news/tf2017581.pdf>.

²¹ *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), http://www.unfpa-tunisie.org/images/stories/2014/publication/Publication%20Etude%20violence%202014_f.pdf.

violence against women, over half of them did not make it to court or were dropped altogether.²² Likewise, only 3.6% of women identified the police and health system institutions respectively as sources of assistance they would seek.²³ Women reported a lack of trust and confidence in the justice system.²⁴ Women also do not report domestic violence and rape 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.²⁵

20. **Due to both legal and societal pressures, women often do not report sexual violence.** Convictions for sexual violence are far below the number of actual incidents.²⁶ Penal code provisions criminalizing sexual relations outside of marriage discourage women from reporting rape,²⁷ out of fear of being arrested themselves.

III. Tunisia fails to protect women from sexual harassment.

21. **Sexual harassment is a widespread problem in Tunisia.** Between 2011 and 2015, 70 to 90 percent of women who participated in a study reported sexual harassment, especially on public transportation.²⁸ Reporting rates and prosecutions are also low due to a culture of victim blaming and harmful stereotypes.
22. **Tunisia recently amended its legislation to combat sexual harassment.** Sexual harassment is punishable with two years' imprisonment and a 5000 dinar fine under Article 226 bis of Tunisia's Penal Code, as amended in 2016. The amended article doubles the penalty for sexual harassment if the victim is a child or a descendant of the offender.²⁹ The 2017 VAW Act also removed key articles of the Criminal Code, including Article 226 quarter which allowed someone accused of sexual harassment to sue the victim.³⁰
23. **Women experience sexual harassment in the workplace.** In a survey of rural women working in agriculture, the Tunisian Association of Democratic Women found that women reported not only work-related health problems, but also sexual and other forms of harassment as well as physical, verbal, and psychological violence. One in five

²² Lilia Blaise, *'I Can Finally Dream': Tunisia Expands Protection for Battered Women*, New York Times, May 12, 2018, <https://www.nytimes.com/2018/05/12/world/africa/tunisia-womens-rights.html>.

²³ 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), <http://www.medicities.org/documents/10192/54940/Enqu%C3%AAt+Nationale+Violence+envers+les+femmes-Tunisie+2010.pdf>.

²⁴ 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), http://www.onfp.nat.tn/liens/violence_nord_ouest_resultats_2015.pdf.

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

²⁶ 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).

²⁷ Penal Code articles 226 (public indecency) and 236 (adultery).

²⁸ Lilia Blaise, *Tunisia Takes a Big Step to Protect Women from Abuse*, New York Times, Aug. 1, 2016, <https://www.nytimes.com/2017/08/01/world/africa/tunisia-women-domestic-violence.html>.

²⁹ Loi organique no. 2017-58 du 11 aout 2017, relative a l'élimination de la violence à l'égard des femmes, Art. 226 (2018) Available at <http://www.legislation.tn/sites/default/files/news/tf2017581.pdf>.

³⁰ Loi organique no. 2017-58 du 11 aout 2017, relative a l'élimination de la violence à l'égard des femmes (2018) Available at <http://www.legislation.tn/sites/default/files/news/tf2017581.pdf>.

women reported that they experienced domestic violence at work, with 47.1% reporting verbal abuse and 29.4% reporting physical violence by their spouse.³¹

IV. Tunisia fails to protect victims of human trafficking

24. In its List of Issues Prior to Reporting, the Committee requested concrete information on the implementation of the 2016 law on preventing and combating trafficking in persons. Furthermore, the Committee requested information on steps taken to “adopt legislative measures prohibiting the forced labour and forced prostitution of adults.”³²
25. In its sixth periodic report, Tunisia outlined the National Strategy to Combat Trafficking in Persons for the years 2018 to 2023. According to the report, the strategy “facilitates the adoption of a comprehensive approach to trafficking, particularly in terms of implementing protection measures and providing assistance to victims. It also provides for the establishment of a database on trafficking in persons to facilitate the activities of the Authority.” Tunisia also provided information on training to stakeholders, including judges, members of the law enforcement, and government officials.³³
26. Human trafficking is a significant problem in Tunisia. There were 780 victims of trafficking in 2018 and 742 victims in 2017. In 2017 and 2018, there were 430 cases of trafficking, including 336 involving women victims. 58 of these 430 cases were referred to the judiciary.³⁴

V. Recommendations for the Government of Tunisia

27. The Advocates for Human Rights and Mobilising for Rights Associates suggest the following recommendations for the government of Tunisia:

Relating to the Act on Violence Against Women

- Increase the penalties for political, psychological, and economic violence in order to adequately hold perpetrators accountable.
- Expand the scope of relationships covered by the law that are not limited to spouses in legal marriage.
- Provide for protective orders lasting longer than six months and allow judges to issue more than two orders for protection in total.

³¹ Association Tunisienne des femmes démocrates, *Enquete sur les conditions de travail des femmes en milieu rural* (September 2014), <http://femmesdemocrates.org.tn/bibliotheque-atfd/livre-pdf/livre%20francais.pdf>.

³² International Covenant on Civil and Political Rights, *List of Issues prior to the submission of the sixth periodic report of Tunisia*, U.N. Doc. CCPR/C/TUN/QPR/6. (27 April 2018). ¶ 17.

³³ International Covenant on Civil and Political Rights, *Sixth periodic report submitted by Tunisia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2019*, (28 June 2019), U.N. Doc. CCPR/C/TUN/6 ¶ 189.

³⁴ International Covenant on Civil and Political Rights, *Sixth periodic report submitted by Tunisia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2019*, (28 June 2019) U.N. Doc. CCPR/C/TUN/6 ¶ 195.

Relating to Implementation of the Act on Violence Against Women

- Collect data and provide statistics on the numbers of women prosecuted for sexual relations outside of marriage.
- Provide adequate funding for specialized units of the National Security, the domestic violence telephone hotline, counselling services for victims, and shelters provided for in the legislation
- Provide education to rural communities about the Act and the protections they are entitled to under new legislation.
- 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.

Relating to the Penal and Personal Status Codes

- Amend the Penal Code and Civil Status Code provisions in order to abolish in both law and practice criminal prosecutions for consensual sexual relations outside of marriage.
- 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

- 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.
- 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

- 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

- Tunisia should support comprehensive prevention programs and educational programs in schools and other community organizations to change the public attitude toward domestic violence.

Recommendations Related to Access to Safe Housing and Shelter

- 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.

- 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.

Recommendations Related to Human Trafficking

- Increase the coordinated response among NGOs, police, courts, and health care providers to trafficking in order to more effectively identify and treat victims of trafficking.
- Ensure that cases of trafficking are properly investigated and prosecuted.