



**TUNISIA:**  
**Submission to the Committee on Economic, Social and Cultural Rights**  
*Relating to the ESC Rights of Women*

**for the 59th Session**  
**(19 September – 7 October 2016)**

**by**  
**The Advocates for Human Rights,**  
a non-governmental organization in special consultative status with ECOSOC since 1999  
**and**

**MRA Mobilising for Rights Associates,**  
a non-governmental organization based in Rabat, Morocco<sup>1</sup>

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**I. Reporting Organizations**

1. **The Advocates for Human Rights** (“The Advocates”) is a volunteer-based non-governmental 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 22 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 non-governmental 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

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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.

## EXECUTIVE SUMMARY

3. Violence against women in Tunisia is widespread and systemic. Within the country there are high levels of domestic violence, physical violence, and sexual violence, and the Tunisian Penal Code lacks any comprehensive legislation to combat violence against women. In 2010, it was reported that “one in six married women has faced sexual violence at least once in her life, mostly by her intimate partner.”<sup>2</sup> In the same year, 47.6 percent of Tunisian women ages 18 to 64 had been subjected to at least one form of violence in their lives.<sup>3</sup> Despite these high rates of violence against women, very few women report this violence to the authorities. Furthermore, the cultural and social norms of Tunisia often result in inadequate law enforcement response in cases of violence against women, either refusing to file complaints or, if the perpetrator is a spouse, pressuring the victims to reconcile privately with their attacker rather than take legal action. 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.<sup>4</sup>
4. The Tunisian Penal Code contains a loophole through which a perpetrator of sexual violence may avoid prosecution by marrying his victim. 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. Recent reports suggest that despite the fact that polygamy is illegal in Tunisia, there may nonetheless be a practice of customary or *orfi* (verbal, non registered) marriages as a means of circumventing the formal system to create a polygamous marriage.<sup>5</sup> Such marriages place women in vulnerable situations when the “husband” abandons them and their children with no rights stemming from legal marriage.

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<sup>2</sup> Amnesty International, *Assaulted and Accused: Sexual and gender-based violence in Tunisia*, 21, (Nov. 2015), available online at <https://www.amnestyusa.org/sites/default/files/tunisia-assaulted-and-accused-report.pdf> (accessed July 8, 2016).

<sup>3</sup> Office National de la Famille et de la Population, *Enquête Nationale sur la Violence à l’Egard des Femmes en Tunisie:: Rapport de l’enquête* (Tunis, December 2010), available online at <http://www.medicities.org/documents/10192/54940/Enqu%C3%A0te+Nationale+Violence+envers+les+femmes+Tunisie+2010.pdf> (accessed January 6, 2016).

<sup>4</sup> 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 online at [http://www.onfp.nat.tn/liens/violence\\_nord\\_ouest\\_resultats\\_2015.pdf](http://www.onfp.nat.tn/liens/violence_nord_ouest_resultats_2015.pdf) (accessed January 6, 2016).

<sup>5</sup> U.N. 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, available online at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/141/67/PDF/G1314167.pdf?OpenElement>

5. Tunisian law also fails to adequately protect women from sexual harassment and provide proper legal recourse for the victims. A woman who files a complaint for sexual harassment could potentially be sued for defamation as well as being criminally prosecuted. The threat of these potential repercussions often leads women to drop their claims of sexual harassment rather than risk being sued or prosecuted if they fail to win in court. Statistics available on the number of prosecutions for sexual harassment show that very few cases are successful.<sup>6</sup>
6. The practice of human trafficking is also a significant issue within Tunisia. Due to the lack of comprehensive laws against human trafficking, the State party relies on less extensive and less specific legislation already in the Penal Code to combat and investigate human trafficking. In the judiciary year of 2012-2013, there were a total of 1,279 recorded cases of trafficking in persons in Tunisia, 540 of which were for sexual crimes.<sup>7</sup>

## II. Analysis of Tunisia's Compliance with the International Covenant on Economic, Social and Cultural Rights

### A. *List of Issues para. 18, Sexual Harassment (Article 7: The right to just and favorable conditions of work)*

7. In para. 27 of the List of Issues, the Committee on Economic, Social and Cultural Rights ("the Committee") asks the State party to "indicate what steps have been taken to combat sexual harassment in the workplace and to encourage women to report it."<sup>8</sup> The Committee made no comment on this in its Concluding Observations during Tunisia's last review in 1999.
8. **Tunisia has some legislation to combat sexual harassment.** In its State Report, Tunisia asserts that the criminalization of sexual harassment in the workplace falls within the purview of Article 226 *bis* of the Penal Code, which states that "any person who publically affronts moral values or public decency through their actions or words, or intentionally offends others in a morally reprehensible manner shall be punishable by six months of imprisonment and a fine of 1,000 dinars."<sup>9</sup> The State party says this Article "thus criminaliz[es] all acts of sexual harassment against any person, both in and outside of the workplace."<sup>10</sup>
9. Sexual harassment is punishable with a year imprisonment and 3000 dinar fine under Article 226*bis* of Tunisia's Penal Code, as amended in 2004. Article 226*quarter*, however, provides

<sup>6</sup> Amnesty International, *Assaulted and Accused: Sexual and gender-based violence in Tunisia*, 57 (Nov. 2015), available online at <https://www.amnestyusa.org/sites/default/files/tunisia-assaulted-and-accused-report.pdf> (accessed January 4, 2016)

<sup>7</sup> Annex to State Report, Article 10, Table No. 4.

<sup>8</sup> U.N. Committee on Economic, Social and Cultural Rights, *List of issues in relation to the third periodic report of Tunisia* (hereinafter referred to as "List of Issues"), (March 31, 2016), U.N. Doc. E/C.12/TUN/Q/3, ¶ 18.

<sup>9</sup> U.N. Committee on Economic, Social and Cultural Rights, *Third report of States parties due in 2000: Tunisia* (hereinafter referred to as "State Report"), (June 30, 2015), U.N. Doc. E/C.12/TUN/3, ¶ 40.

<sup>10</sup> State Report, ¶ 40.

that the victim's complaint is necessary for the public prosecutor to initiate proceedings. Further, under Article 226(4), "anyone accused of sexual harassment may not only request reparations for damages incurred, but also initiate a defamation lawsuit, which carries with it criminal penalties punishable by up to two years' imprisonment and a fine."<sup>11</sup> In other words, a woman who files a complaint for sexual harassment could potentially be sued for defamation as well as being criminally prosecuted.<sup>12</sup>

10. **However, this legislation has not proven effective.** Activists have "welcomed the law concerning sexual harassment but expressed concern that it linked sexual harassment to safeguarding manners, lacked an adequate definition of harassment and did not contain adequate provisions for investigating allegations."<sup>13</sup> Statistics available on the number of prosecutions for sexual harassment show that very few cases are successful: one conviction during the 2008-09 judicial year and 14 convictions during the 2012-13 judicial year.<sup>14</sup> In the 2012-2013 judiciary year, there were 172 sexual harassment cases in first instance courts and appeal courts, 14 and 158, respectively.<sup>15</sup>
11. 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.<sup>16</sup> One in five women reported having been the victim of domestic violence at work, with 47.1% reporting verbal abuse and 29.4% reporting physical violence by their spouse.<sup>17</sup>

**B. List of Issues para. 27, Violence against Women (Article 10: Protection of the family, mothers and children)**

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<sup>11</sup>Erin Collins, "Challenges for Women's Access to Justice: A Tunisian Case Study," *Michigan Journal of International Law*, Vol. 37, (Feb. 4, 2016), available online at [http://www.mjilonline.org/challenges-for-womens-access-to-justice-a-tunisian-case-study/#\\_ftn7](http://www.mjilonline.org/challenges-for-womens-access-to-justice-a-tunisian-case-study/#_ftn7) (accessed July 26, 2016).

<sup>12</sup> Erin Collins, "Challenges for Women's Access to Justice: A Tunisian Case Study," *Michigan Journal of International Law*, Vol. 37, (Feb. 4, 2016), available online at [http://www.mjilonline.org/challenges-for-womens-access-to-justice-a-tunisian-case-study/#\\_ftn7](http://www.mjilonline.org/challenges-for-womens-access-to-justice-a-tunisian-case-study/#_ftn7) (accessed July 26, 2016).

<sup>13</sup>AmelGrami, "Gender Equality in Tunisia," *British Journal of Middle Eastern Studies*, Vol. 35, No. 3, Gender and Diversity in the Middle East and North Africa (Dec., 2008), 358, available online at <http://www.jstor.org/stable/20455615>.

<sup>14</sup> Amnesty International, *Assaulted and Accused: Sexual and gender-based violence in Tunisia*, p. 57 (November 2015), available online at <https://www.amnestyusa.org/sites/default/files/tunisia-assaulted-and-accused-report.pdf> (accessed January 4, 2016).

<sup>15</sup> Annex to State Report, Article 7, Table No. 3.

<sup>16</sup> Association Tunisienne des femmes démocrates, *Enquete sur les conditions de travail des femmes en milieu rural* (September 2014), available online at <http://femmesdemocrates.org.tn/bibliotheque-atfd/livre-pdf/livre%20français.pdf> (accessed January 6, 2016).

<sup>17</sup> Association Tunisienne des femmes démocrates, *Enquete sur les conditions de travail des femmes en milieu rural* (September 2014), available online at <http://femmesdemocrates.org.tn/bibliotheque-atfd/livre-pdf/livre%20français.pdf> (accessed January 6, 2016).

12. In para. 27 of the List of Issues, the Committee asks for information both on the “steps taken to speed up the passage of the comprehensive bill on the elimination of all forms of violence against women and girls” and on any steps taken “to repeal articles 218 and 319 of the Criminal Code, which halt all investigations if the victim withdraws her complaint.”<sup>18</sup> The Committee also requests a description of measures taken “to avoid any stigmatization of victims of violence and to ensure that no pressure is put on victims to withdraw their complaints or agree to a reconciliation procedure.”<sup>19</sup> The Committee asks for indication of steps taken “to protect victims from their attackers, including the use of a restraining order to keep attackers away from the victim’s homes [and] to protect victim from possible reprisals.”<sup>20</sup> In its Concluding Observations from Tunisia’s last review in 1999, the Committee noted that “[w]hile the State party believes that domestic violence in Tunisia is rare, the Committee is concerned about the scarcity of official data on this phenomenon.”<sup>21</sup> The Committee recommended that Tunisia “consider ways of monitoring more closely the incidence of domestic violence, in the light of which it may need to re-examine its law and policies on this phenomenon.”<sup>22</sup>

### **Current Legal Framework**

13. **The New Tunisian Constitution:** Article 46 of the January 2014 Constitution provides in part that the “[S]tate 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.”<sup>23</sup>
14. **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 violence and rape.
15. **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

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<sup>18</sup> List of Issues, ¶ 27.

<sup>19</sup> List of Issues, ¶ 27.

<sup>20</sup> List of Issues, ¶ 27.

<sup>21</sup> U.N. Committee on Economic, Social and Cultural Rights, *Concluding observations: TUNISIA* (hereinafter referred to as “Concluding Observations”), (May 14, 1999), U.N. Doc. E/C.12/1/Add.36, ¶ 13.

<sup>22</sup> Concluding Observations, ¶ 22.

<sup>23</sup> La Constitution de la République Tunisienne (2014). Available online 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)*, (Nov. 6, 2014), U.N. Doc. CAT/C/TUN/3/Add.1, ¶ 9.

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.<sup>24</sup>

16. **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.

17. 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.<sup>25</sup>

18. **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.

19. **Marital rape is not a crime under the current Penal Code.** Furthermore, **Personal 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. 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. It reported that “one in six married women has faced sexual violence at least once in her life, mostly by her intimate partner.”<sup>26</sup> Forms of sexual violence identified by the survey “included being ‘coerced into sexual intercourse’, ‘forced to perform a sexual act that they disapprove of’, and ‘forced into sexual relations after having been beaten.’”<sup>27</sup>

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<sup>24</sup> Code Penal, available online at [http://www.legislation.tn/fr/affich-code/Code-p%C3%A9nal\\_\\_89](http://www.legislation.tn/fr/affich-code/Code-p%C3%A9nal__89) (accessed January 6, 2016).

<sup>25</sup> Amnesty International, *Assaulted and Accused: Sexual and gender-based violence in Tunisia*, 21, (Nov. 2015), available online at <https://www.amnestyusa.org/sites/default/files/tunisia-assaulted-and-accused-report.pdf> (accessed January 4, 2016).

<sup>26</sup> Amnesty International, *Assaulted and Accused: Sexual and gender-based violence in Tunisia*, 21, (Nov. 2015), available online at <https://www.amnestyusa.org/sites/default/files/tunisia-assaulted-and-accused-report.pdf> (accessed July 8, 2016).

<sup>27</sup> Amnesty International, *Assaulted and Accused: Sexual and gender-based violence in Tunisia*, 21, (Nov. 2015), available online at <https://www.amnestyusa.org/sites/default/files/tunisia-assaulted-and-accused-report.pdf> (accessed July 8, 2016).

20. 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.<sup>28</sup>
21. **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.

### **Proposed Violence Against Women Legislation**

22. Since 2013, the Tunisian government has announced a pending violence against women bill, although to date the law remains to be enacted.<sup>29</sup> In its report to the Committee, Tunisia states that “The Ministry of Women is currently cooperating with concerned government civil society stakeholders, with support from United Nations agencies, to establish an outline act criminalizing all forms of violence against women.”<sup>30</sup>
23. As of the date of the submission of this report, a Violence Against Women bill had been filed with the *Assemblée des représentants du peuple* on July 27 (no. 60/2016), and is currently in front of the Rights, Liberties and Foreign Relations Commission.<sup>31</sup> The proposed reforms included in the provisions of this 43-article bill include (translated unofficially from the Arabic):
- Reforms to Penal Code articles 208, 218, 219, 222, 221, 223, and 224, that would strengthen currently existing penalties for these crimes;
  - A new Article 226-3 on sexual harassment, which would be defined as an aggression against another or acts or gestures or words of a sexual nature touching the dignity and modesty with the aim of encouraging another to fulfill sexual wishes (local activists have expressed concern about the lack of clarity of the definition in the original Arabic text);

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<sup>28</sup> *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 online at [http://www.unfpa-tunisie.org/images/stories/2014/publication/Publication%20Etude%20violence%202014\\_f.pdf](http://www.unfpa-tunisie.org/images/stories/2014/publication/Publication%20Etude%20violence%202014_f.pdf) (accessed January 6, 2016).

<sup>29</sup> 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 Sboui, *La loi contre les violences faites aux femmes en Tunisie : un processus lent*, Middle East Eye, (June 29, 2015), available online at <http://www.middleeasteye.net/fr/reportages/la-loi-contre-les-violences-faites-aux-femmes-en-tunisie-un-processus-lent-1424501485>.

<sup>30</sup> State Report, ¶ 54.

<sup>31</sup> [http://www.arp.tn/site/projet/AR/fiche\\_proj.jsp?cp=94555](http://www.arp.tn/site/projet/AR/fiche_proj.jsp?cp=94555). The text of the bill is available at [http://www.arp.tn/site/servlet/Fichier?code\\_obj=94555&code\\_exp=1&langue=1](http://www.arp.tn/site/servlet/Fichier?code_obj=94555&code_exp=1&langue=1).

- A new article 227 on rape, which would be defined as an act resulting in sexual penetration against a man or woman without their consent, with offenders punished with 20 years of prison. In the case of victims under the age of 13 lack of consent is automatically considered absent and the offender may be punished with life imprisonment;
- A new article 227 bis punishing anyone who has sexual relations with a girl under the age of 16, even with her consent, with 6 years of prison, 5 years of prison if she is over 16 years old;
- Protective measures of a maximum of 6 months that the Family Judge can extend if need be, and that can include provisions compelling the aggressor (the text is not clear if this applies to just the husband or either one of the spouses) to leave the family home in case of danger for the victim or the children, and withdraw child custody and guardianship and establish visitation rights (the text is not clear if this applies just to the husband, or to either spouse), and other provisions on marital property and financial support.
- Creation of a National Observatory on Violence against Women, under the Direction of the Ministry of Women.

24. **Concerns expressed by local activists include the fact that the bill is limited to Penal Code reforms rather than a comprehensive law with both criminal and civil provisions,** and addresses violence in the family more broadly rather than being a gender specific, violence against women law. The bill also combines a diversity of topics such as wage discrimination (article 17), underage labor (article 18), and unlawful workplace discrimination in hiring or firing (article 19, last paragraph). Concerns have also been raised about the lack of structure, lack of clarity and precision in the language, and vague provisions such as those in the procedures section providing that prosecutors will have assistants to take complaints.

### **Violence Against Women in Tunisia**

25. According to the 2010 ONFP study, **47.6 percent of women ages 18 to 64 had been subjected to at least one form of violence in their lives.**<sup>32</sup> 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.<sup>33</sup> Further,

<sup>32</sup> 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 online at <http://www.medicities.org/documents/10192/54940/Enqu%C3%AAt+Nationale+Violence+envers+les+femmes-Tunisie+2010.pdf> (accessed January 6, 2016).

<sup>33</sup>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, *I in 5 Tunisian women victim of domestic violence, according to new survey*, (March 2, 2012), available online 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).



the State Report showed that in the 2012-2013 judicial year, there were 358 ruled cases of sexual crimes against women, 81 of which were rape cases.<sup>34</sup>

26. 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,<sup>35</sup> 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.<sup>36</sup> The Ministry of the Interior reported 46 women murdered in a ten-month period in 2013.<sup>37</sup>

**27. 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.<sup>38</sup> Women reported a lack of trust and confidence in the justice system.<sup>39</sup> 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.<sup>40</sup>

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<sup>34</sup> Annex to State Report, Article 10, Table No. 3.

<sup>35</sup> *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 online at [http://www.onfp.nat.tn/liens/violence\\_nord\\_ouest\\_resultats\\_2015.pdf](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*, 25, (March 6, 2014) available online 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 online at <http://www.al-monitor.com/pulse/culture/2014/08/tunisia-women-victim-gender-based-violence.html#> (accessed August 13, 2015).

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

<sup>37</sup> “Violence against women has double three times: 46 dead in ten months,” available online at <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).

<sup>38</sup> 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, Dec. 2010), available online at <http://www.medicities.org/documents/10192/54940/Enqu%C3%AAt+Nationale+Violence+envers+les+femmes+Tunisie+2010.pdf> (Accessed: January 6, 2016).

<sup>39</sup> 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 online at [http://www.onfp.nat.tn/liens/violence\\_nord\\_ouest\\_resultats\\_2015.pdf](http://www.onfp.nat.tn/liens/violence_nord_ouest_resultats_2015.pdf) (accessed January 6, 2016).

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

28. **Police often refuse to intervene when women ask for help, viewing domestic violence as a private matter.**<sup>41</sup> 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.”<sup>42</sup>
29. **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 reportedly opened in 2012.<sup>43</sup> Amnesty International reported in November 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.<sup>44</sup> Local NGO reports to MRA on the number of shelters ranged from 2 – 4.<sup>45</sup>
30. 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.<sup>46</sup>
31. 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

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<sup>41</sup>Canada: Immigration and Refugee Board of Canada, *Tunisia: Domestic violence, legislation and protection available to victims (2007-2009)*, TUN103273.FE (November 24, 2009), available online at <http://www.refworld.org/docid/4b20f04a3c.html> (accessed July 8, 2015).

<sup>42</sup> Communication from local Tunisian activists to MRA (February 2016), on file with authors.

<sup>43</sup> U.S. Bureau of Democracy, Human Rights and Labor, *Tunisia 2014 Human Rights Report*, 15-16, (2014), available online at <http://www.state.gov/documents/organization/236836.pdf> (accessed July 9, 2015).

<sup>44</sup>Amnesty International, *Assaulted and Accused: Sexual and gender-based violence in Tunisia*, 66 (November 2015), available online at <https://www.amnestyusa.org/sites/default/files/tunisia-assaulted-and-accused-report.pdf> (accessed January 4, 2016).

<sup>45</sup> Communication from local Tunisian activists to MRA (February 2016), on file with authors.

<sup>46</sup> Communication from local Tunisian activists to MRA (February 2016), on file with authors.

dismissed the case.<sup>47</sup>

32. **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.<sup>48</sup> 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,<sup>49</sup> 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.<sup>50</sup>

33. 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.<sup>51</sup>

**C. List of Issues para. 28, Article 227 bis, Polygamy, and Human Trafficking (Article 10: Protection of the family, mothers and children)**

34. In para. 28 of its List of Issues, the Committee requests information on “what steps have been taken to repeal the provision in Article 227 bis of the Criminal Code whereby, in rape cases, marriage to the victim halts the prosecution proceedings or negates the effects of a conviction, and to ensure that rape victims receive assistance and support,”<sup>52</sup> as well as “what steps have been taken to end the practice of entering customary or *orfi* marriages as a way to circumvent the ban on polygamous marriages.”<sup>53</sup> In its report to the Committee, Tunisia fails to address either issue.

35. **Tunisian Criminal Code still contains the loophole of Article 227 bis.** 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. Amnesty International published an account of a Tunisian rape victim, Amna, who felt pressured into marrying her

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<sup>47</sup> Communication from local Tunisian activists to MRA (February 2016), on file with authors.

<sup>48</sup> U.S. Bureau of Democracy, Human Rights and Labor, *Tunisia 2014 Human Rights Report*, 15, (2014), available online at <http://www.state.gov/documents/organization/236836.pdf> (accessed July 9, 2015).

<sup>49</sup> Penal Code Articles 226 (public indecency) and 236 (adultery).

<sup>50</sup> Communication from local Tunisian activists to MRA (February 2016), on file with authors.

<sup>51</sup> International Federation for Human Rights, *Sexual Violence in Tunisia: from denial to dawning recognition* (June 2, 2014), available online at <https://www.fidh.org/en/region/north-africa-middle-east/tunisia/15425-sexual-violence-in-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).

<sup>52</sup> List of Issues, ¶ 28.

<sup>53</sup> List of Issues, ¶ 28.

rapist after he impregnated her. Amna stated she “chose marriage because [she] couldn't go back to [her] family with a child unmarried.”<sup>54</sup>

36. 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.<sup>55</sup> 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. Media outlets in Tunisia have reported that the practice has increased since the revolution, including among well-educated and urban Tunisians.<sup>56</sup>
37. In para. 28 of its List of Issues, the Committee asks what the State party has done “to speed up the adoption of the bill on human trafficking mentioned [...] in the report.”<sup>57</sup> In Tunisia’s report, it states that the human trafficking law “is pending submission to the Assembly of the Representatives of the People” and that, in the absence of such a law, “provisions of the Penal Code are applied and offenders are traced in order to address issues such as clandestine prostitution, incitement to immoral behaviour and assistance in the prostitution of another person, including through deception.”<sup>58</sup> The report also says “anti-trafficking in persons unit[s] [have] been created within the sub-directorate for social prevention at the Judicial Police department to deal with trafficking cases directly,” and that these units compile “investigation reports on girls and intermediaries known to travel frequently to typical destination countries for women working in prostitution, detain them and [bring] them to justice.”<sup>59</sup> According to the report, in the judiciary year of 2012-2013, there were a total of 1,279 recorded cases of trafficking in persons, 540 of which were for sexual crimes.<sup>60</sup>

### III. Recommendations for the Government of Tunisia

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

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<sup>54</sup> Amnesty International, “Pressured to marry her rapist in Tunisia,” (Dec. 11, 2015), available online at <https://www.amnesty.org/en/latest/campaigns/2015/12/pressured-to-marry-her-rapist-in-tunisia/> (accessed July 15, 2016).

<sup>55</sup> U.N. 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, available online at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/141/67/PDF/G1314167.pdf?OpenElement> (accessed July 27, 2016).

<sup>56</sup> “Reportedly, some 1,000 marriages have been contracted in this way since 2011...” among university students. Gagrule, *Tunisia: ‘orfi’ or temporary marriage making a comeback*, (Oct. 1, 2013), available online at <http://www.gagrule.net/tunisia-orfi-or-temporary-marriage-making-a-comeback/> (accessed January 6, 2016).

<sup>57</sup> List of Issues, ¶ 28.

<sup>58</sup> State Report, ¶ 156.

<sup>59</sup> State Report, ¶ 157.

<sup>60</sup> Annex to State Report, Article 10, Table No. 4.

## **Recommendations related to Domestic Legislation**

### **A. Tunisia should effectively implement its new Constitution**

39. 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**

40. 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.<sup>61</sup>

41. 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 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;

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<sup>61</sup> 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 online 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 online at [http://stopvaw.org/drafting\\_law\\_on\\_domestic\\_violence.html](http://stopvaw.org/drafting_law_on_domestic_violence.html) (last visited October 9, 2011).

- 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**

42. 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**

43. 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.
44. 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**

45. 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**

46. 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**

47. Tunisia should create a legal framework and provide state financial support for shelters and housing to women victims of violence.
48. 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.
49. 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.