



Tunisia's Compliance with the Convention on Economic, Social and Cultural Rights
SUGGESTED LIST OF ISSUES RELATING TO ESC RIGHTS OF WOMEN

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

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a non-governmental organization based in Rabat, Morocco

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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 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 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 our partners MRA creates and implements long-term strategies to address the diverse causes of discrimination against women and develop meaningful, effective solutions. Our 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 our activism for macro level legal and institutional reform.

II. Issues Relating to the Economic, Social and Cultural Rights of Women

A. Violence Against Women (Art. 10: Protection of family, mothers and children)

3. In its Concluding Observations from Tunisia’s last review in 1999, the Economic, Social and Cultural Rights Committee (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.”¹ 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.”²

4. 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.³ 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.⁴ 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 having been the victim of domestic violence at work, with 47.1% reporting verbal abuse and 29.4% reporting physical violence by their spouse.⁵
5. While the ONFP nationwide survey was conducted prior to the December 2010 – January 2011 revolution, government studies, human rights organizations 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.⁶

¹ U.N. Committee on Economic, Social and Cultural Rights, *Concluding observations: TUNISIA*, para. 13, E/C.12/1/Add.36 (14 May 1999).

² U.N. Committee on Economic, Social and Cultural Rights, *Concluding observations: TUNISIA*, para. 22, E/C.12/1/Add.36 (14 May 1999).

³ 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).

⁴Id. 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).

⁵ 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%20français.pdf> (Accessed: January 6, 2016).

⁶ *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->

6. **Current legal framework.** Article 46 of the January 2014 Constitution provides in part that, “The state commits to protect women’s accrued rights and work to strengthen and develop those rights. The state guarantees the equality of opportunities between women and men to have access to all levels of responsibility in all domains..... 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.”⁷
7. **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. 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.⁸
8. 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. Additionally, articles 218 and 319 both provide that the prosecution, trial or execution of the sentence are 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.⁹
9. 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.

monitor.com/pulse/culture/2014/08/tunisia-women-victim-gender-based-violence.html# (Accessed: August 13, 2015).

⁷ <http://www.legislation.tn/fr/constitution/la-constitution-de-la-r%C3%A9publique-tunisienne>

⁸ Code Pénal, , available at http://www.legislation.tn/fr/affich-code/Code-p%C3%A9nal__89 (Accessed: January 6, 2016).

⁹ 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).

10. 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.
11. Marital rape is not a crime under the current Penal Code. Furthermore, Personal Status Code Article 23 requires both spouses to “fulfil their conjugal duties according to practice and customs”, a provision that is generally understood to mean that sexual relations constitute a marital obligation.
12. 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.
13. 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.¹⁰ Women also report a lack of trust and confidence in the justice system.¹¹
14. Since 2013 the government has announced a pending violence against women bill, although to date the law remains to be enacted.¹² Media outlets most recently have reported government statements to the effect that the bill would be presented to the Peoples’ Representatives Assembly on March 8, 2016.¹³
15. 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

¹⁰ 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).

¹¹ 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).

¹² See UNFPATunisia 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, 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>

¹³ 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).



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, Family judges generally will not grant this type of divorce unless there is a criminal conviction first.¹⁴

16. 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 2012¹⁵. 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.¹⁶

Recommended Questions Related to Violence Against Women

17. The Tunisian Government should be asked:
- What is the status of the announced specific violence against women bill? What is the timeframe for its enactment?
 - How does the Government of Tunisia plan to give full force and effect to such law? How will it be enforced and budgeted for ?
 - What steps is Tunisia taking to create a comprehensive or consolidated database on the incidence of violence against women in Tunisia?
 - Please indicate measures taken by the Tunisian government to address societal and cultural pressures that dissuade victims from reporting sexual assault, domestic violence, and other forms of violence against women.
 - What steps is Tunisia taking to criminalize marital rape?
 - What steps are being taken to provide services for victims of rape?
 - Please provide information about the number of cases of marriage of victims of rape with the perpetrator.
 - What specific civil remedies for women victims of violence to guarantee their right to housing such as a civil protection orders and orders removing the violent offender from the home does the government intend to enact?
 - Please indicate the infrastructural and practical accessibility of the only government-run shelter and hotline dedicated to victims of domestic violence.

¹⁴ *Etat du Droit Tunisien sur les violences faites aux femmes et aux filles*, UNFPA and the S cretariat 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).

¹⁵ 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).

¹⁶ 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).

- Please identify whether there are plans to expand the government-run shelter to other areas within Tunisia, including rural areas.
- Has the State Party undertaken any efforts to train police, prosecutors, judges, social workers and other systems actors on violence against women, including domestic violence? Please describe.

B. Additional Violations of Art. 10 (Protection of family, mothers and children) and Art. 3 (Equality)

18. **Polygamy.** The promulgation of the Personal Status Code on 13 August 1956 abolished polygamy in Tunisia. Since the revolution, some Tunisians have proposed changing the laws to legalize polygamy.¹⁷ To date, these proposals have not resulted in changes to the laws.
19. However, 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.¹⁸ 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.¹⁹
20. **Marriage of Minor Girls .** The 1956 Personal Status Code instituted civil marriage requiring the explicit consent of both spouses. In 2007, the Code was amended to make the legal age of marriage 18 for both men and women.²⁰
21. Despite these reforms, recent media reports suggest that early marriage of girls may remain a problem in Tunisia. Personal Status Code Article 5 allows for the marriage of minors with judicial authorization²¹; between 2008 and 2013 9292 petitions to marry minors were filed, and 80% of these (7305 cases) were granted by the courts. The vast majority were for the marriage of minor girls.²²

¹⁷AL ARABIYA, *Islamist organization demands Tunisia legalize polygamy*, 30 August 2012, available at <https://english.alarabiya.net/articles/2012/08/30/235171.html> (accessed January 6, 2016).

¹⁸U.N. Human Rights Council, *Report of the Working Group on the issue of discrimination against women in law and in practice: Mission to Tunisia*, para. 12, A/HRC/23/50/Add.2 (30 May 2013) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/141/67/PDF/G1314167.pdf?OpenElement>

¹⁹“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*, 1 October 2011, available at <http://www.gagrule.net/tunisia-orfi-or-temporary-marriage-making-a-comeback/> (accessed January 6, 2016).

²⁰ Personal Status Code article 5.

²¹ PSC article 156 renders null and void any acts committed by a child under the age of thirteen, effectively establishing a threshold minimum age for marriage.

²²See Réalités, *9292 demandes de mariage de mineurs entre 2008 et 2013*, 7 September 2015, available at <http://www.realites.com.tn/2015/09/9292-demandes-de-mariage-de-mineurs-entre-2008-et-2013> (accessed January 6, 2015). See also:

<http://www.assabah.com.tn/article/107466/%D9%84%D8%A3%D8%B3%D8%A8%D8%A7%D8%A8-%D8%A7%D8%AC%D8%AA%D9%85%D8%A7%D8%B9%D9%8A%D8%A9-%D8%A3%D9%88->



The aforementioned Penal Code Article 227 bis provisions allowing for exoneration of rapists by marrying their victims under 20 years of age also would seem to promote the marriage of minor girls. Likewise, Penal Code article 239 also provides for the exoneration from prosecution or punishment for a person who, without fraud, violence or threat, abducts a minor girl and then marries the victim.

22. **Right to Inherit on Basis of Equality.** In its 1999 Concluding Observations, the Committee expressed concern that “according to the laws of inheritance, females are entitled to receive only half the inheritance of males.”²³ “The Committee strongly recommends that all men, women and children of both sexes should be enabled to enjoy the right to inherit on the basis of equality.”²⁴
23. During a country visit to Tunisia in 2013, the UN Working Group on discrimination against women in law and practice found that Tunisia’s inheritance law, “which is based on patriarchal and patrilineal family, remains discriminatory against women... This inequality is explicitly part of the CPS [Personal Status Code], with several articles recalling the principle that the male heir receives a share that is double that of a female heir.”²⁵

Recommended Questions Related to Violations of Arts. 10 & 2

24. The Tunisian Government should be asked:
- Please indicate measures taken by the government to ensure that customary marriage procedures are not used to circumvent the prohibition on polygamy .
 - Please provide the Committee with the most recent statistical data on the: 1) number of cases of marriage of minors, including age at time of marriage, gender and age difference between spouses;
 - What steps are being taken to repeal the provision that allows a perpetrator to escape prosecution by marrying his victim?
 - What steps are being taken to provide services for minor victims of rape?
 - What steps are being taken to reform the Personal Status Code to ensure that women and girls are able to inherit equally?

C. Sexual Harassment (Art. 7: Right to just and favorable working conditions)

[%D9%84%D8%A5%D9%8A%D9%82%D8%A7%D9%81-%D8%A7%D9%84%D8%AA%D8%AA%D8%A8%D8%B9%D8%A7%D8%AA-9292-%D9%85%D8%B7%D9%84%D8%A8%D8%A7-%D9%84%D8%B2%D9%88%D8%A7%D8%AC-%D8%A7%D9%84%D9%82%D8%A7%D8%B5%D8%B1%D8%A7%D8%AA-%D9%81%D9%8A-5-%D8%B3%D9%86%D9%88%D8%A7%D8%AA](#) (accessed January 6, 2015).

²³ U.N. Committee on Economic, Social and Cultural Rights, *Concluding observations: TUNISIA*, para. 13, E/C.12/1/Add.36 (14 May 1999).

²⁴ U.N. Committee on Economic, Social and Cultural Rights, *Concluding observations: TUNISIA*, para. 21, E/C.12/1/Add.36 (14 May 1999).

²⁵ 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*, para. 34, A/HRC/23/50/Add.2 (30 May 2013) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/141/67/PDF/G1314167.pdf?OpenElement>. See Articles 102, 103, 104, 105 and 106 of the PSC.

25. Sexual harassment is punishable with a year imprisonment and 3000 dinar fine under Article 226 ter of Tunisia's Penal Code, as amended in 2004. Article 226 quater provides that the victim's complaint is necessary for the public prosecutor to initiate proceedings, and that "if no suit or an acquittal is obtained, the person against whom the complaint is filed may, if necessary, request reparation for damage incurred without prejudice to criminal prosecution for false accusation." In other words, a woman who files a complaint for sexual harassment could potentially be sued for defamation as well as being criminally prosecuted.
26. 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.²⁶
27. 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.²⁷

Recommended Questions Related to Sexual Harassment

28. The Tunisian Government should be asked:
- Please provide information on cases which have been brought before domestic courts involving violations of rights enshrined in the Covenant, including those related to sexual harassment.
 - What steps is the State Party taking to ensure its sexual harassment laws include the core elements as identified by UN Women?²⁸

²⁶ 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%20français.pdf> (Accessed: January 6, 2016).

²⁷ ; Amnesty International, *Assaulted and Accused: Sexual and gender-based violence in Tunisia*, p. 57 (November 2015), available at: <https://www.amnestyusa.org/sites/default/files/tunisia-assaulted-and-accused-report.pdf> (Accessed: January 4, 2016)

²⁸ The core elements of sexual harassment laws include:

- A statement of purpose, also known as a preamble, that references international, regional, and existing national protections against discrimination and violence against women;
- A broad definition that includes examples of prohibited behavior;
- Judicial and/or administrative procedures to enforce the prohibition on harassment, including confidential complaint procedures;
- Provision for effective, proportionate compensation and/or reparation related to damages and losses suffered as a result of the harassment;
- Dissuasive penalties for perpetrators;
- Placing the burden of proof in civil proceedings on the alleged perpetrator, once a prima facie case is made;
- Protections against retaliation;
- Guidance for interpretation of the law;
- Measures for prevention such as policy development, including confidential complaint procedures, and training;



- What steps is the State Party taking to reform Penal Code Article 226 quater?

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- Designated oversight body with the power to enforce the law, provide assistance to victims, collect data, and publish appropriate reports.

UN Women Virtual Knowledge Center to End Violence against Women and Girls, Core Elements of Sexual Harassment Laws, <http://www.endvawnow.org/en/articles/494-core-elements-of-sexual-harassment-laws-.html?next=495>.

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