

OHCHR – UN Office of the High Commissioner for Human Rights

Preliminary observations on the visit to Tunisia by the Independent expert on protection against violence and discrimination based on sexual orientation and gender identity

Introduction

The mandate of the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity was established by UN Human Rights Council Resolution 32/2 in 2016. This mandate responds to the concerns of the international community about the intolerance, discrimination and particularly egregious abuses against lesbian, gay, bisexual and transgender (LGBT) people, as documented in the two reports produced in 2011 and 2015 by the High Commissioner for Human Rights and the thematic reports submitted by the mandate to the General Assembly and the Human Rights Council. The functions entrusted to me by the Community of Nations are to bring visibility to the situation of violence and discrimination against LGTB people, and to provide advice to States on effective measures to combat such violence and discrimination.

From 8 to 18 June 2021, at the invitation of the State, I visited Tunisia to study the situation of violence and discrimination based on sexual orientation and gender identity. I visited the Governorates of Tunis, Sousse and Sfax where I met many state representatives and civil society organizations, human rights defenders and LGBT people with lived experiences. I also visited the Mornaguia prison and community centres.

I would like to warmly thank the Tunisian State for its invitation to visit the country, held in the context of the State's open invitation to the Special Procedures of the United Nations Human Rights Council, and its support for my mandate. I also thank the Tunisian State for its excellent cooperation in both the preparation and conduct of the visit, its responsiveness to my methodological approach and its unhindered access to all relevant agents and geographical locations, within the framework recognized by United Nations General Assembly resolutions 68/262, 71/205 and 72/190.

I would also like to express my deep gratitude to Tunisian civil society and the LGTB community. Their dedication, professionalism and determination are a great source of inspiration for the mandate, and I greatly appreciate their generosity in sharing life experiences, perspectives, analyses and information.

The Office of the High Commissioner for Human Rights in Tunis provided excellent assistance and collaboration throughout my visit.

My visit to Tunisia is historic for many reasons. The mandate had already made visits to the Latin American and Caribbean, sub-Saharan African and Eastern European regions, but this is the first visit to a Maghreb country – a welcome opportunity to address national specificities and contribute to the considerations of the Human Rights Council on this issue. I would like to congratulate Tunisia on its determination and openness to dialogue and I welcome the determination shown by the State to respect the spirit of the Revolution and guarantee the dignity and freedom of all, including LGBT people. Tunisia's democratic path and regional leadership in the field of human rights demonstrate that issues considered sensitive can be dealt with expeditiously within the framework of a human rights-based approach. I would also like to highlight the open and transparent attitude of the state agents I met, and to thank them for addressing the issue of sexual orientation and gender identity despite the sensitivity of the subject and the taboos surrounding these issues in Tunisia.

The progress resulting from the Revolution in terms of freedom and dignity, which are reflected in the constitutional framework that enshrines the principles of equality and non-discrimination, constitute a solid foundation on which Tunisia can build to continue the advances in protection against violence and discrimination and for the full guarantee of the human rights of lesbian, gay, bisexual and trans (LGBT) persons. In this respect, I place a great deal of hope in the democratic projects under way, in particular the harmonisation of legislation with the Constitution and the international human rights treaties.

This visit was carried out in the context of the COVID-19 pandemic, which, at the end of the mission, has caused nearly four million deaths worldwide and more than 13,000 victims in Tunisia. The extraordinary support of all stakeholders testifies to the vital relevance of the issue addressed by the mandate, and I thank each of them for their important contributions throughout this extraordinary period.

General context

This visit aims to take stock of the situation of violence and discrimination based on sexual orientation and gender identity in Tunisia and to be the starting point for a process of dialogue and action to address identified challenges. I have taken careful note of Tunisia's statement at the time of the renewal of my mandate:

Tunisia firmly believes in the role played by mandate holders in developing human rights systems and promoting human rights culture in its general character in a way to develop the national legislations and in line with countries' international commitments. We believe that positive cooperation with mandate holders requires that we should be open to them and cooperate with them without selectivity or discrimination and on the basis of mutual confidence and respect and on the basis of national priorities.

One of the cornerstones of the creation of my mandate is the recognition that gay, lesbian, bisexual, trans and gender diverse persons have existed and continue to exist in all corners of the world, in all regions and countries, in all cultures and in all eras. However, in most parts of the world, their orientation or identity is at the root of the violence and discrimination they face, and these factors are often made invisible and therefore absent from state public policies. This also seems to be the case in Tunisia: during the visit, I was informed that issues relating to sexual orientation are generally considered to be extremely sensitive, with some stakeholders describing them as taboo. This appears to be related to widespread resistance to public scrutiny of sexuality issues, with comprehensive sex education being a consistently cited example in meetings with State and non-state stakeholders.

However, during our exchanges on the issue, a majority of State and non-state actors referred to the democratic and fundamental rights advances resulting from the 2011 revolution and the 2014 Constitution as the most important political and social reference points for the establishment of a rule of law system and respect for fundamental rights, including the protection of all persons from violence and discrimination, and in cases in which the latter are based on sexual orientation and gender identity. In this context, most of those interviewed highlighted the challenges of my visit in the unique context of Tunisia as an Islamic society, Maghreb, Arab, democratic and regional leader in democratization and human rights.

During my visit, I observed that gender-based approaches are currently being executed through gender-based approaches through public policies in many of the institutions that I visited. Some indicators also show significant progress in terms of women's participation in public spaces: women represent 35.94% of the national legislature and 40% of the judiciary. In addition, in February 2018, a new law on gender-based violence entered into force. The Law broadly defines violence against women as "any restriction denying women equality in the civil, political, economic, social or cultural spheres". The law, which has received broad support from political parties and civil society organizations, contains new provisions or amendments to the Penal Code in accordance with international best practices. It criminalizes incest, sexual harassment of women in public places and gender discrimination. The law defines sexual harassment as any act, gesture or word with a sexual connotation.

Constitutional balances are particularly important with regard to religion, and although all persons interviewed acknowledged the impact of religious thought in the implementation of social mores, most also referred to the constitutional framework provided by Article 2, which qualifies the country as a civil state, based on citizenship and the rule of law.

Tunisia has also initiated the process of harmonizing national legislation in accordance with its international commitments. The Commission for Individual Freedoms and Equality (COLIBE) was commissioned in 2017 to prepare a report on the necessary legislative reforms in the area of individual freedoms and equality in accordance with the 2014 Constitution as well as international human rights standards. The Commission's report, presented in 2018, continues to be a reference for legislative reforms in the area of non-discrimination and respect for human rights. The impact of the reforms suggested by COLIBE is unfortunately still pending. In addition, a national commission responsible for harmonizing national legislation with the 2014 Constitution and international commitments was created in 2019.

Sexual orientation and gender identity in Tunisia

There is a need to work on a better methodological and linguistic understanding of issues related to sexual orientation and gender identity. All interviewees recognized that sexual and gender diversity is part of human nature, but all referred to the weight of religion and social mores that impede its visibility in the public space. There are very significant gaps in the appropriation of terminology that qualifies these identities. In many institutions, for example, trans women have been described as gay men.

The State does not collect data or information on the realities experienced by LGTB persons. I have been informed of the resistance within the National Institute of Statistics to the idea of producing data in this regard. I also note the lack of recognition by the State of LGTB people and their realities of life in public policy. In addition to court judgments, virtually all pieces of data or information documenting the realities and challenges experienced by LGBT people are gathered and systematized by civil society organizations.

In particular, there is a general lack of awareness of the concepts of gender identity and expression as tools to describe and take into consideration the daily lives of Tunisian trans women and men whom I met and interviewed during my mission. Non-normative sexual orientations and gender identities are considered marginal in Tunisia, and while their visibility increased after the revolution, some feel that this visibility led to further rejection and marginalization at the personal level.

Even in cases where the challenges facing the LGBT community are recognized, it has been common to hear some state officials express the view that these issues are "negligible" compared to other challenges facing Tunisians, including rising unemployment among young graduates and related poverty issues, inequalities in development between different regions, economic difficulties and, more recently, the challenges of the COVID-19 pandemic. In this perspective, some have stated that there are few demands for more protection of LGBT people and that the decriminalization of homosexuality has not been included in the major demands of the Tunisian revolution and, in the face of the current realities of unemployment and economic stagnation, continue to be unimportant in the eyes of most citizens.

LGBT, queer and gender diverse people in Tunisia

I am deeply grateful to the civil society that supports LGTB people in Tunisia, and to the LGBT people who shared their life experiences with me during the visit. I was able to speak with dozens of them, who confirmed to me that despite the general legal protections for dignity and against discrimination and harassment, LGBT people in Tunisia face widespread violence, including death threats and rape. I have spoken with people who have said they have been beaten and threatened in police stations, intimidated on the street, harassed at school, discriminated against in job interviews and harassed in health centres. Most of those interviewed stated that they had been subjected to physical and psychological violence by family members in their family settings.

Homosexual men, in particular, live their lives under the threat of criminalization. They appear to be one of the most visible (or least invisible) segments of the population affected by violence and discrimination based on sexual orientation.

Lesbian, bisexual and trans women are not explicitly recognized in the formulation of public policies. I note, however, of the statement by the Minister for Women, The Family and Older Persons to the effect that the formulation of the Ministry's policies on social action and protection extends to "all women". In practice, however, I observed that such inclusive approaches do not necessarily extend to sexual or gender diversity. In some cases, the obstacle is legal (Law 58 limits protection against violence against women when the perpetrator is a man, and article 3 defines a woman as a female) and in some cases it is political, such as the lack of legal recognition of trans women as subjects of protection by the Ministry's regional centres.

Trans people are not allowed to change their name or gender markers on official documents and do not have access to health services that would allow them to make a gender transition. Tunisia's legislation on civil status is not in line with international developments towards the recognition of gender identity and makes this population invisible - especially in the figures. The non-conformity between the official identity and the social identity of trans people keeps them in a situation of great vulnerability and social exclusion.

Young and elder persons

LGBT youth face particular pressures. LGBT youth are often rejected by their families and subjected to the same discrimination and violence as their adult counterparts. They can be put in touch with imams for religious conversations and, in some cases, imams have used social media to encourage violence against LGBT people. Other specific challenges faced by LGBT youth, such as discrimination in education, will be discussed in the following sections.

There is no systematic data or information on the realities experienced by older LGBTB Tunisians. The testimonies gathered by the mandate during the visit attest to a population suffering from multiple forms of discrimination, perhaps over-represented in the ranks of the homeless and absent from political and militant circles.

Urban vs. Rural

I learned that asymmetries between urban and rural areas also impact the lived experience of LGBT people. A very large proportion of those interviewed during my mission came from rural areas and had moved to the city in search of environments where they could acquire a certain anonymity.

Socio-economic status

As in many contexts around the world, social exclusion mechanisms mean that the LGBT population is over-represented in the ranks of the poor. For example, all trans persons who responded a recent survey reported having an income of less than 100 TND per month. Poverty is the bedrock of a whirlwind of discrimination and violence that alienates from state services and increases their disadvantage when confronted with hostility from state agents.

Migrants, refugees, asylum seekers

I was able to interact with several organizations serving LGBT people who were forced to leave their country. Among the main challenges identified are the insecurity of a system in which their existence is criminalized, and the lack of access to rapid resettlement processes.

People living with HIV

LGBT people living with HIV are recognized by the state as they are among the key populations of global HIV/AIDS programming, particularly men who have sex with men (MSM) and trans women. The prevalence of HIV infection among MSM, estimated at 9.1%, is particularly revealing and shows a great disparity with the adult population of Tunisia aged between 15 and 49 whose infection rate is <1%.¹ I welcome the implementation of a national policy on routine viral load testing for the monitoring of antiretroviral treatment and HIV testing based on voluntary and informed consent. However, I am concerned about the situation of the "lost of sight", and in this regard I have received reports that people have not continued their treatment because of the stigmatization suffered in contact with health personnel. I am also concerned about the criminalisation of same-sex sexual relations and sex work, which increases the exposure of key populations to violence and reduces their ability to file complaints. This criminalization also increases the fear of homosexual and trans populations, as well as sex workers, to be arrested and forces them to go underground, to refrain from participating in HIV prevention and HIV risk prevention programmes or even to possess condoms or lubricants, as this could constitute, for police officers, physical proof of homosexuality or sex work.

Persons deprived of their liberty

In practice, prison authorities and officers recognize that homosexual men are part of the prison population and also include trans women in that population. I was able to visit the largest prison in the country and observe the differentiated approach taken for homosexual men. As in any other state institution, the criminalization of homosexuality has a very concrete impact on the enjoyment of rights: for example, I have been informed that prison authorities do not distribute and allow the distribution of condoms in prison because this would be considered an act of promoting homosexuality – which is criminalized. This practice worries me greatly in view of the HIV prevalence rate of 9.1% in Tunisia among MSM and the reality of same-sex sex intercourse in detention, confirmed in a report by the United Nations Population Fund which revealed that 72.7% of trans people who said they had been in prison had had sexual intercourse during the period of incarceration.²

I observe that the National Authority for the Prevention of Torture has identified five specific actions aimed at strengthening the capacities of staff in detention centres and shelters.

Social exclusion practices

Being an assertive member of the LGBT community in Tunisia and being visible both to one's relatives and in the public space is perceived, by many, as a transgression of the social order and in particular of the social roles attributed to women and men that reflect an idea of male supremacy, patriarchy and reproductive sexuality in the context of marriage. Perceptions of gender are strictly defined in Tunisia, including how people are supposed to dress and act.³ Consequently, society punishes not only homosexual behaviour under article 230 of the Criminal Code, but all identities and expressions that are perceived by some as violating the "social pact" and an affront to customs

and traditions. Effeminate men, male women, and trans women in particular are at high risk of violence due to their dress, appearance and mannerisms and are subject to increased surveillance due to the intersection of their identities. Many of the interlocutors interviewed referred to these existences as "abnormal", "asocial", and "amoral". As one member of civil society told us: "Assuming one's sexual orientation or gender identity is already in itself an act of resistance." Being visible as a member of the LGBT community is seen as a militant act that is a necessary step towards freeing itself from social norms that condemn minority sexual and gender identities.

This visibility nevertheless faces strong resistance within the family and society and is sanctioned by many who rely on the law, mores or religion to try to "put" the members of the community on the "right path". This results in high levels of institutional, psychological and physical violence, as well as discrimination at all levels.

There is no legal protection against discrimination based on sexual orientation and gender identity in Tunisia. However, the analysis report of the data on cases of discrimination collected in 2020 by the Network of Anti-Discrimination Points reveals that the majority of the cases of discrimination recorded are based on sexual orientation or gender identity, i.e., 326 cases out of a total of 651.⁴ Almost 70% of victims were discriminated against on the basis of their sexual orientation and 30% on the basis of their gender identity. Cisgender men make up nearly 58% of those discriminated against followed by trans women (13.5%) and cisgender women (12.27%).

Trans people, through their gender expression and the difference between gender and their legal identity, operate in a hostile environment and are particularly vulnerable to stigma, discrimination and violence. They become obvious targets and face daily difficulties in accessing housing, education, employment, or health where they face humiliation, violence, and discrimination that results in great psychological distress and economic precariousness in particular. To protect themselves, they often avoid displaying themselves in public space and become invisible, left to their own ends, and marginalized.

Health

Surveys carried out by civil society in 2021⁵ and 2018⁶ reveal that over half of LGBT persons and three-quarters of trans people did not go to the doctor or do not undergo medical tests for fear of mockery, negative judgments, abuse by medical staff, or fearing that legal action based on Article 230 of the Penal Code would be taken against them. Degrading treatment, lack of confidentiality, regular violations of medical secrecy, as well as exclusion from the specific needs of the community have been reported by LGBT people who have used health facilities, especially when it comes to sexual and reproductive health.

In this regard, I note with concern the inability of trans people to access hormonal treatments and gender-affirming operations, which are often considered essential treatments for their survival. In Tunisia, doctors are prohibited from prescribing hormonal therapy to trans people who are then forced to self-medicate exposing them to various complications that arise from this practice, including liver diseases and blood stability problems.

During my visit, I heard many testimonies of a state of extreme anxiety, anxiety, and the negative impact of the prevailing stigma on self-esteem. More than half of LGBT people surveyed in a 2018 study had attempted suicide at least once and nearly half had self-harmed at least once in their lives. Several civil society organizations offer psychological assistance and support, but it appears that access to State support services is limited due to a lack of capacity and qualified personnel. I am also concerned about testimonies gathered during the mission of breaches of medical confidentiality by psychologists who revealed sexual orientation and/or gender identity to their patient's family or who had pathologizing care for LGBT people, as if they needed to be "treated" for an illness.

Education

According to a study conducted in 2021,⁷ 10% of respondents aged between 20 and 30 had to leave school because of their sexual orientation and/or gender identity or gender expression and 17.7% of people in this age group had not obtained their secondary education degree. This study also shows that 75% of trans men and women interviewed had left school before obtaining their degree. It seems that the most common reason given by people who leave school early is the harassment they face both by their classmate and by administrative and educational staff. A survey conducted in 2018 by civil society⁸ had also shown that nearly 80% of schoolchildren and students had been harassed and victims of violence because of their sexual orientation or gender identity, with the result of absenteeism, declining school results, anxieties, isolation, and the cessation of studies.

I am very concerned about this situation and note the lack of knowledge of this phenomenon and of specific measures to combat violence and harassment of LGBT people in schools. Furthermore, I regret that school curricula do not provide specific information on diversity and respect for human

rights and sex education programmes in particular with regard to issues related to sexual orientation and violence based on gender identity.

Employment

There is currently no specific legal protection for LGBT people in Tunisia against discrimination in employment. A number of anecdotal studies and reports raise employment-related issues, including difficulties in accessing employment, harassment and violations of privacy in the workplace.

A recent study highlighted a particularly high rate of unemployment among people with a university degree (74% compared to 15.1% in the population) due, in particular, to negative attitudes towards sexual and gender diversity, which create a hostile work environment. The study also highlights the economic precariousness of trans people whose monthly income is less than 100 TND. As mentioned above, trans people suffer from exacerbated discrimination due to the lack of legal gender recognition and access to gender-affirming treatments. This situation often pushes them to seek work in the informal economy and in particular sex work and they have therefore been hit hard by the pandemic, which has further aggravated their already precarious situation and their vulnerability to arrests for violating the curfew and/or confinement, in addition to other offences.

The 2018 study⁹ by civil society organisations also shows that 45.6% of the 300 LGBT people interviewed had been questioned insistently at least once at work about their gender identity or sexual orientation and that these questions had made them uncomfortable. In addition, 14.6% of those interviewed had been followed insistently by one or more colleagues at least once, which made them uncomfortable. It would also appear that the forced disclosure of LGBT identity to third parties by people from the professional (and academic) environment is commonly reported, with significant consequences for victims and that it is not uncommon for LGBT people to be victims of sexual harassment at work.

Housing

I was struck by the fact that a large number of LGBT people still live with their parents (65% according to the 2021 study¹⁰) due, I presume, to great economic precariousness and social norms according to which one usually leaves one's family home only at marriage.

At the same time, the 2021 study¹¹ showed that 13.2% of LGBT people had been homeless, at least for some period, in the year preceding the survey. Some of them had been released following the disclosure of their sexual orientation or gender identity to their families. The survey also showed the difficulty of having housing, especially for trans people, and of having stability due to harassment and threats from neighbours and landlords that force LGBT people to change their homes frequently.

In talks with ministries and regional bodies, the issue of equal treatment and non-discrimination of all citizens was raised. However, I note a lack of consideration of the issues faced by LGBT people and the dimension relating to sexual orientation and gender identity in public policies. This lack of consideration of the realities of LGBT people, combined with a lack of awareness of sexual diversity and diverse gender identities, leads to de facto discrimination of LGBT people in all sectors. I have found that the lack of a specific approach and education for State agents often translates into prejudice and discrimination. All my interlocutors agreed on the need to know the reality experienced by LGBT people in order to be able to integrate an approach that takes into consideration their problems and allows them to live in dignity.

Institutional violence

LGBT people in Tunisia face endemic violence. I have gathered many testimonies of violence suffered in contact with law enforcement officials, but also of harassment and violence in the public space and within the family and communities of LGBT people.

A large part of Tunisian legislation is not in conformity with the 2014 Constitution and international and regional instruments for the protection of human rights, in particular article 230 of the Penal Code, which criminalizes anal penetration, and the section of the Penal Code entitled "attacks on morals", which contains article 226 bis, which penalizes without really defining it "offences against good morals or public mores by gesture or word" and article 226 which penalizes "public indecency". According to my information, however, these articles allow the judiciary and the security forces to prosecute and convict people on the basis of their mere non-normative appearance or what could be associated with behaviour suggesting homosexuality or by having access to information relating to their personal data. The criminal treatment of these cases seems to reflect a moral judgment of the facts rather than a legal judgment, and when they apply article 230 judges often argue their decision with moral statements and arguments aimed at recalling social order and social roles.¹² The information available to me also indicates an almost systematic use of the practice of anal testing to prove homosexual relations, in violation of international texts relating to the prevention of torture

and in complete inadequacy with the scientific data on the probative value of this test and the negative impact on the persons subjected to it. I note with astonishment the confusion between the tests carried out to prove sexual assault and those carried out in order to prove supposed homosexuality.

Beyond the possibility of conviction, criminalisation creates a de facto situation of self-exclusion of persons on the basis of their sexual orientation and gender identity from public services or access to justice because of the fear of being accused on the basis of Articles 230 or 226 and 226a. Several reports indicate a trend towards a reversal of the situation with regard to LGBT victims who become accused on the basis of these articles.

The process of revising the Tunisian penal code, although discussed in several meetings with government officials, seems to be at an unknown stage of its progress and does not seem to be done by including justice actors as well as civil society. This is even more serious when we see the lack of understanding of the different realities of LGBT people in Tunisia.

In May 2018, a civil society survey of 300 LGBT people residing in Tunisia¹³ revealed a spiral of violence and verbal, physical and sexual assaults that occur in public spaces, but also within the family, at school, at work, or in contact with law enforcement and health personnel. The organisation Damj (Tunisian Association for Justice and Equality) has documented more than 30 hate crimes against the LGBTQI community since 2011 and this number unfortunately seems to have increased during the visit as a woman was allegedly stabbed to death by her husband after he learned she was a lesbian.

In the last six years preceding the survey, 51.8% of respondents had been insulted more than once in public space because of their real or perceived sexual orientation; 24% had been threatened or attacked with a weapon or had been attempted murdered in a public space; and in their lifetime nearly 30% said they had suffered at least one rape or attempted rape in public space and 19.2% by a relative or family member, and 27% said they had been threatened with beatings, murder, torture or kidnapping on the internet or by telephone. The survey also reveals that a significant proportion of serious physical violence (one fifth), rape or attempted rape (10%), and verbal harassment (15%) were police officers. The Twensa Kifkom project, launched in October 2018 by civil society to combat violence and discrimination based on sexual orientation and gender identity, documented 29 complaints against police officers for violence, ill-treatment and torture. None of them would have been successful to date.

Within the family, the survey reveals that 32% of respondents had been slapped, beaten or brutalized at least once by relatives because of their known or suspected sexual orientation or gender identity. The survey also notes the vulnerability of LGBT people: nearly a quarter of sexual assault cases and more than a quarter of rapes in public spaces were perpetrated after threatening the victim to reveal his or her sexual orientation or gender identity to the police or relatives.

The increased vulnerability and marginalization of trans people translates into increased levels of violence. In a study conducted by the United Nations Population Fund in 2019, 71.6% of trans respondents said they had experienced verbal abuse at least once, 35.8% had experienced physical violence at least once because of their gender identity in the year preceding the survey, and 43.7% had experienced sexual violence at least once in their lifetime. It would also appear that the aggressors take advantage of the victims' fear of filing complaints and their vulnerability to blackmail, intimidate, threaten, humiliate and racketeer them. Of the trans people who were incarcerated, about half reported experiencing physical violence at least once in prison because of their identity. The same survey revealed that 27% of the people surveyed were sex workers, adding a vulnerability factor. The survey also highlights a significant unhappiness and withdrawal of the trans-ethnic people interviewed because of the stigma and discrimination suffered.

LGBT sex workers face multiple and aggravated forms of discrimination and, if they are homosexual or trans, double criminalization for homosexuality, morality or indecent assault. This criminalization, combined with a strong stigma attached to this activity, renders sex workers extremely vulnerable to violence, police abuse and blackmail. I have received several testimonies from gay and trans sex workers who were victims of police harassment, extortion, and violence by law enforcement officers. In some cases, the police even appear to interrogate and arrest women suspected of sex work simply on the basis of their appearance or background rather than observed illegal activity. Most victims do not file complaints for fear of being prosecuted for homosexuality, indecent assault or public indecent assault. Those who do so reported particularly traumatic episodes of humiliation, insults, violence and sometimes even criminalization.

The testimonies gathered during the visit describe both legal and police harassment aimed at muzzling and punishing any attempt to free sexual and gender identities that do not correspond to the dominant social norm. Article 230 of the Penal Code is widely used against the LGBT community: according to a recent UNDP report¹⁴ there are about a hundred annual convictions on the basis of this article and, according to information from the Ministry of Justice following a request made by

the Twensa Kifkom project, there have been 1917 people detained convicted of homosexuality between 2008 and June 2020. The Twensa Kifkom project documented the use of related articles of the Penal Code to criminalize LGBT people. Thus, since October 2018, the same draft has recorded 21 convictions for homosexuality (art. 230) and has dealt with 18 cases for indecent assault (art. 226bis), 13 for insulting a public official (art. 125), 10 for prostitution (art. 231), and 2 for public indecent assault (art. 226).

The testimonies gathered during my visit paint a consistent and disturbing picture:

Sanctioning real or presumed gender identities and non-normative sexual orientations (based on gender expression, mannerism, etc.)

Violation of privacy: searches and confiscations of computers, mobile phones to look for "evidence" of homosexuality or other offences related to morality or modesty; seizure of condoms and lubricant as "proof" of the same offences.

Verbal and physical abuse by law enforcement officials against arrested LGBT people.

Tests ordered by the judiciary to prove homosexuality.

Difficulty or even impossibility of access to justice: when they are victims of violations of their rights, LGBT people often refrain from filing a complaint for fear of becoming perpetrators. Several people have been incriminated for homosexuality, indecent assault, insulting a public official, prostitution or public indecent assault following the filing of a complaint.

Once they are "registered" as a member of the community, LGBT people find themselves caught in a spiral that makes their access to justice even more difficult as agents in the criminal justice chain transpose dominant social and moral prejudices to punish their identity.

LGBT activists and human rights defenders of LGBT people are particularly targeted and regularly subjected to harassment, death threats and attacks because of their work to promote the rights of LGBT people. I have sent several communications to the Tunisian State in the past expressing my concerns in this regard.¹⁵

I am concerned about an intensification of repression against LGBT human rights organisations, including Damj, and an increase in cases of violations against members of the LGBT community following their participation in demonstrations calling for a better social policy and denouncing repression and police brutality. Their exposure in the media, social networks and on the street has resulted in increased surveillance and police harassment. Several members of the Damj association have been subjected to arbitrary arrest and detention, harassment, intimidation, online defamation and incitement to violence, including death threats and rape, and physical and verbal attacks while exercising their rights to peaceful assembly and freedom of expression in support of the LGBT community and the feminist movement.

I also received many testimonies during my visit of violation of the right to privacy and confidentiality of personal data from the police unions. As part of the events at the beginning of this year, they also made hate speech and calls for violence against several LGBT people on social media by exposing their identities, addresses and posting photos. These facts have exposed LGBT people to a flood of hate on social media. I regret the lack of judicial sanctions against these serious violations of the right to privacy and the impunity that the police unions appear to enjoy.

Hate speech

Several interlocutors noted that the liberation of speech following the revolution and the rise of conservative and populist movements has led to an increase in hate speech and incitement to violence against women, LGBT people and people with beliefs that do not conform to the majority belief. This discourse feeds on the very deteriorated economic and social situation as well as the health crisis caused by COVID-19.¹⁶ Politicians, parliamentarians, clerics, and the media tend to project a stereotypical, stigmatizing, and negative image of LGBT people that fuels hatred and intolerance within society, as illustrated by homophobic messages and death threats exchanged in discussion groups in connection with the above-mentioned speeches and representations.

Hate speech against LGBT people and incitement to homophobic-transphobic violence also appear frequently in the Tunisian media. After receiving several complaints, Tunisia's Independent High Authority for Audio-visual Communication (HAICA) – in what can be considered the first official reaction of a public institution to violence against the LGBT community – issued a warning against a television channel for homophobic statements in October 2015. Since then, the High Authority has intervened a dozen times in complaints relating to discrimination based on sexual orientation and

gender identity in the audio-visual sector. However, this number seems derisory compared to what civil society organizations call a "wave of hate" that finds a particularly fertile ground on social media that is not subject to any regulation.

According to information received during the visit, the 2020 lockdown period was particularly difficult when it comes to hatred against LGBT people. False reports that the coronavirus pandemic is a punishment from God because of homosexuality has indeed been fuelled by audiovisual, social media and mosques. This rumour has sparked a huge wave of hate speech against LGBT people, adding to the anxiety of the pandemic and the anxiety of living confined to an often-hostile family environment.

Influencers have also contributed to the "hunt" for LGBT people on social media. Three of them in particular harassed and disclosed the sexual orientation or gender identity of LGBT people, they asked the people who follow them to take action to stop their activities on social networks. As a result of this call, LGBT people have been harassed by thousands of people on social media, they have had their accounts hacked, their photos and personal data shared in groups, and some have even been physically assaulted.

The absence of legal sanctions, coupled with the fact that many officials and politicians, including members of the Tunisian parliament, contribute to hostile rhetoric against the LGBT community, has led to the large-scale normalization of homophobic hate speech across the country. Tunisian law leaves limited options for victims of hate crimes, including crimes against the LGBT community. While attacks can be punished as "assault" or "homicide", Tunisia's penal code does not contain any provisions specifically defining or criminalizing hate crimes against LGBT people.

Obstacles to the work of human rights defenders

Decree-Law No. 2011-88 of 24 September 2011, on the organization of associations¹⁷ in Tunisia has allowed the emergence of a good number of organizations working on the defence of human rights in general and the rights of LGBT people in particular but the information received from Tunisian civil society indicates the existence of several obstacles to their work.

At the level of legal registration, there are indications that the procedure has become uncertain and that LGBT associations may not obtain registration if they openly indicate that they are working on the rights of LGBT people. Unable to register, associations cannot work in accordance with the legislation making their activity illegal. In the past, I have communicated my concerns to the Tunisian State regarding attempts to obstruct Sham's exercise of its freedom of association.¹⁸ These limitations constitute violations against Tunisia's commitments in the area of freedom of association, in particular through its ratification of the ICCPR.

The information available to us also indicates that there is a particular obstacle to the work of LGBT human rights defenders through random searches of their premises and the confiscation of duly registered work equipment of organisations. Information available to the mandate indicates that even associations working on the STD and HIV prevention component are likely to face criminal prosecution when working with key populations.

I am particularly concerned about the number of LGBT activists who were arrested during the protests that took place in early 2021 in Tunisia. There is also concern about smear and hate speech and *outing* campaigns, particularly on social networks, particularly the pages of police unions.

Recommendations

I will endeavour to make comprehensive and context-specific recommendations in my final report. I am convinced that the added value of my mandate will depend on our common will to engage in a process of continuous dialogue and joint work.

Many speakers have asked me to understand and take into account the sensitive and taboo nature of these issues and have drawn my attention to the fact that it will take time to fully resolve the problems. I recognise that this is the case in many parts of the world, but I would like to stress that full respect for the human rights of Tunisians who are lesbian, gay, bisexual, trans and gender diverse is not an option: no human being should be invited to wait to be safe from the threat of torture, beatings, blackmail or discrimination, and this includes all of those whose sexual orientation and gender identity lies as root cause of these heinous violations.

I therefore believe that a first series of actions must focus on the reform of the legal norms that explicitly or implicitly criminalise sexual orientation or gender identity, which has already been the subject of numerous recommendations by eminent Tunisian lawyers, political and social actors. Sexual and gender diversity is recognized as one of the human characteristics protected under international human rights law, and the continuity of criminalizing provisions is absolutely contrary to these principles. The alleged harm to the moral and social order cannot in any way justify

limitations on the right not to be subjected to violence and discrimination based on sexual orientation and gender identity, and the mandate does not consider that any of the arguments presented justify the maintenance of a system that condemns a person to be born a criminal because of his or her very nature. Throughout this country visit, I have developed the firm conviction that criminalization is at the root of most of the mechanisms of violence and social exclusion that condemn LGTB people in Tunisia to have their human rights violated on a daily basis, and I believe that its maintenance engages the international responsibility of the state.

In particular, anal tests are an abhorrent practice, internationally recognized as torture. I am not in a position to accept that the current practice of requiring the consent of the victim validates this heinous act, for many reasons. One of them is the fact that, in practice, the refusal to accept this test is considered a presumption of guilt – which in itself creates coercion. But, more importantly, we must accept the logic that the test has no probative value: there is a scientific consensus that it is unable to provide valid evidence. In practice, its use is seen as a threat to obtain confessions, blackmail and suffering. Like any other form of torture, the continuity of testing in cases of suspected homosexuality is the responsibility of the State and should be the subject of criminal proceedings against the perpetrator of the torture and the requesting authority.

Another set of recommendations relate to the legal and political recognition of the existence of LGTB persons in Tunisia, and their right to the enjoyment of all human rights. In this perspective, the Tunisian state should allow the legal recognition of the gender identity of trans people. In addition to political recognition, this recognition should also be reflected, in all institutions, in the adoption of actions aimed at documenting the problems faced by these populations. Some good practices already exist in Tunisia - the inclusion of sexual orientation and gender identity in a category of analysis by the National Authority for the Prevention of Torture is an example - and they should be further developed by other institutions within the framework of their competences. This should also extend to the National Institute of Statistics. My mandate has carried out work related to data collection and management standards, which reflect good practices in this area.

This recognition will lead to the need to include lived realities, challenges and solutions to fully combat violence and discrimination based on sexual orientation and gender identity in public policies and, in particular, the eradication of institutional violence and the adoption of social inclusion measures. This often takes the form of awareness-raising campaigns, dialogue with civil society and human rights defenders, and the inclusion of LGTB identities in diagnoses and studies.

During my visit, I was positively impressed by the spirit of openness of all the State and non-State actors with whom I had the privilege of exchanging views on this issue. Invariably, after the initial recognition of the sensitivity of the issue and the importance of ensuring nuanced and well-informed solutions, there has been a genuine commitment to joint action for the defence of the human rights of all persons, the recognition of the importance of non-discrimination and the responsibility of State institutions to direct the work of social inclusion. I conclude my mission with the firm conviction that this civic understanding, these democratic ideals and the competence, capacity and humanity that I have witnessed are great opportunities to build a society that will tackle and ultimately eradicate violence and discrimination on the basis of sexual orientation and gender identity. Tunisian lesbian, gay, bisexual, trans and gender-varying Tunisians, who rightly demand their rights and the opportunity to contribute to Tunisian democracy, deserve nothing less.

Notes:

1. <https://www.unaids.org/fr/regionscountries/countries/tunisia>; WHO, Tunisia HIV Country Profile 2019, <https://cfs.hivci.org/country-factsheet.html>
2. Voir <https://tunisia.unfpa.org/fr/publications/cartographie-des-sites-de-la-population-transgenre-en-tunisie>
3. PNUD, État des lieux des inégalités de genre et celles basées sur les orientations sexuelles en droit tunisien, 2021.
4. Rapport d'analyse de données sur les cas de discriminations collectés par les points anti-discrimination et l'observatoire pour la défense du droit à la différence, Insaf Bouhafs, mars 2021.
5. L'Initiative Mawjoudin pour l'égalité, LGBTIQ+ people in Tunisia, 2021.
6. Chouf, Damj, Mawjoudin, Enquête sur les violences contre les personnes LGBTQ, 2018.
7. L'Initiative Mawjoudin pour l'égalité, LGBTIQ+ people in Tunisia, 2021.
8. Chouf, Damj, Mawjoudin, Enquête sur les violences contre les personnes LGBTQ, 2018.
9. Chouf, Damj, Mawjoudin, Enquête sur les violences contre les personnes LGBTQ, 2018.

10. L'Initiative Mawjoudin pour l'égalité, LGBTIQ+ people in Tunisia, 2021.
 11. L'Initiative Mawjoudin pour l'égalité, LGBTIQ+ people in Tunisia, 2021.
 12. PNUD, État des lieux des inégalités de genre et celles basées sur les orientations sexuelles en droit tunisien, 2021.
 13. Chouf, Damj, Mawjoudin, Enquête sur les violences contre les personnes LGBTQ, 2018.
 14. PNUD, État des lieux des inégalités de genre et celles basées sur les orientations sexuelles en droit tunisien, 2021.
 15. Les communications et les réponses de la Tunisie sont accessibles au travers d'une base de données publiques : <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.
 16. PNUD, État des lieux des inégalités de genre et celles basées sur les orientations sexuelles en droit tunisien, 2021.
 17. <http://www.acm.gov.tn/upload/1410083987.pdf>
 18. [TUN 2/2019](#)[TUN 4/2018](#)[TUN 1/2016](#)
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ecoi.net summary:



Remarks by the UN Independent Expert on the Protection against Violence and Discrimination based on sexual orientation and gender identity, Víctor Madrigal-Borloz, following his visit from 8 to 18 June 2021 (sexual orientation and gender identity; LGBTIQ individuals in Tunisia; social exclusion practices; health; education; employment; housing; institutional violence; hate speech; human rights defenders)

Country:

Tunisia

Source:

[OHCHR – UN Office of the High Commissioner for Human Rights](#)

Original link:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27174&LangID=E>

Document type:

Appeal or News Release

Language:

English

Published:

18 June 2021

Document ID:

2054305

ecoi.net is run by the Austrian Red Cross (department ACCORD) in cooperation with Informationsverbund Asyl & Migration. ecoi.net is funded by the Asylum, Migration and Integration Fund, the Austrian Ministry of the Interior and Caritas Austria. ecoi.net is supported by ECRE & UNHCR.

