

‘I AM NOT A MONSTER’

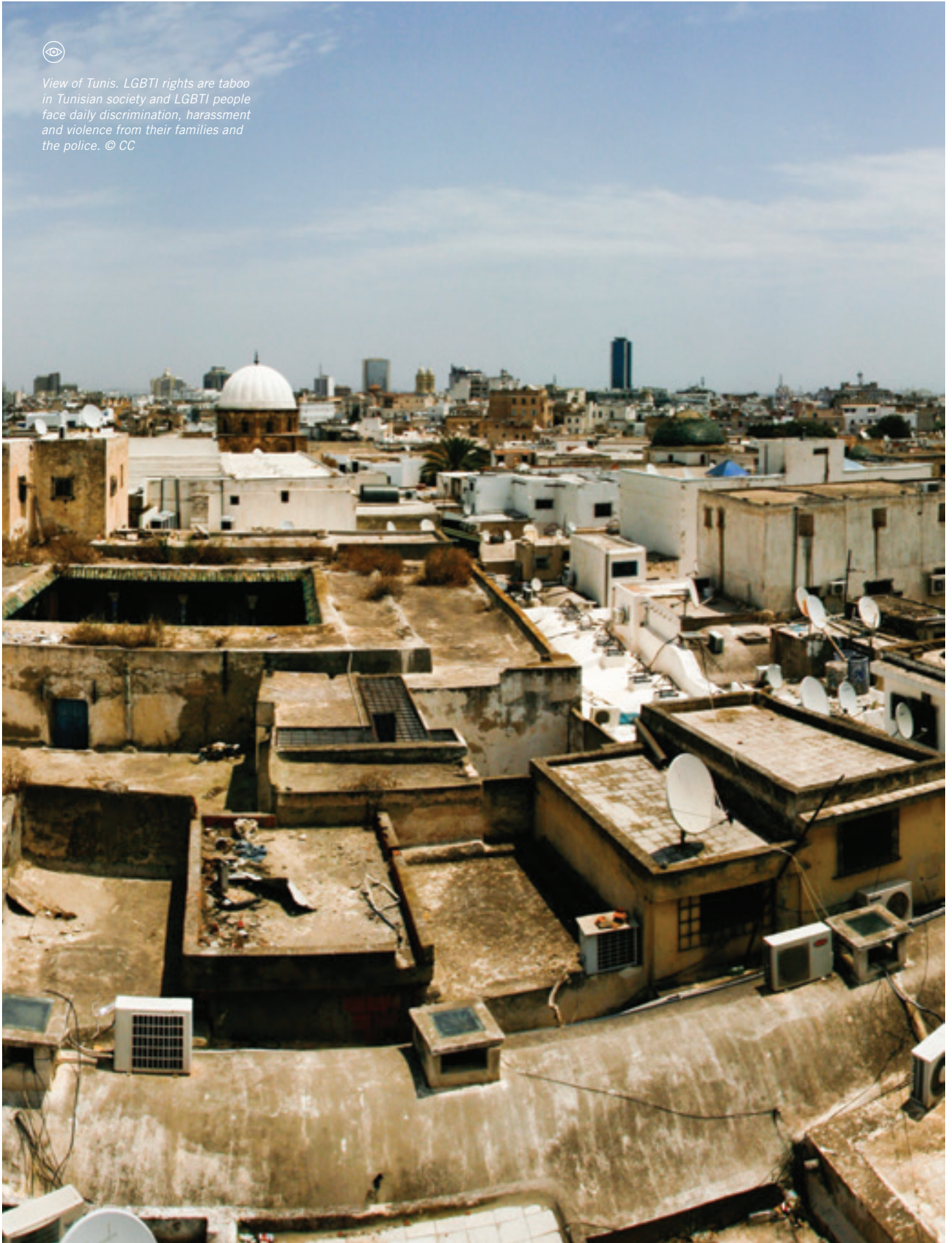
State-entrenched discrimination
and homophobia in Tunisia

AMNESTY
INTERNATIONAL





View of Tunis. LGBTI rights are taboo in Tunisian society and LGBTI people face daily discrimination, harassment and violence from their families and the police. © CC



“Marwan’s case was a turning point – we now talk about pre-Marwan and post-Marwan. It was the first time we got so much public support. It took time, but eventually everyone was talking about it, even the big organizations.”

Badr Baabou, Founder and Director of Damj Association for Equality and Justice

On 22 September 2015, Marwan*, a 22-year-old student from Sousse, was sentenced to one year in prison for engaging in same-sex sexual relations.

He was forced to undergo an anal examination to establish “proof” of anal sex. This sparked a public campaign to support him and brought lesbian, gay, bisexual, transgender and intersex rights (LGBTI) into the spotlight like never before in Tunisia.

For years, LGBTI activists have fought against discrimination and for the recognition of LGBTI rights by Tunisian society. LGBTI rights have come some way since 2012 when then Minister of Human Rights and Transitional Justice, Samir Dilou, stated that “homosexuality was not a human right” and a “perversion” that needed medical treatment. Activists continued to draw the public’s attention to the plight of LGBTI people. In March 2015 – for the first time in the country – activists held a gay pride festival at El Manar University Campus in Tunis, the capital, as part of the World Social Forum. Small events were held in Tunis to mark the International Day against Homophobia on 17 May 2015.

Despite these achievements, same-sex relations and LGBTI rights remain taboo and mainly unaccepted by society. Many LGBTI people experience rejection, discrimination, harassment and violence by their families and communities at every stage of their life. In mid-April 2016, a Tunisian actor stated in a televised interview that “homosexuality” is a disease. Soon after, LGBTI activists shared photographs on social media of signs in stores and taxis banning LGBTI people from entering.

Consensual same-sex sexual relations are criminalized under Tunisian law. LGBTI people live with the constant fear of being arrested and prosecuted. The impact of the law creates a permissive atmosphere for hate crimes against people suspected of engaging in same-sex relations. There is little accountability and the police will often not investigate homophobic and transphobic crimes and will instead threaten survivors with prosecution for their perceived sexual orientation and gender identity. Many LGBTI people do not dare to report to the authorities the violations and abuses they are subjected to.

The authorities’ unwillingness to change these laws reflects state-entrenched discrimination against LGBTI people.

CRIMINALIZATION IN LAW

"Where is my dignity as a human being? My intellect... is different in their [people's] view. For them, homosexuality is a sin and contrary to nature, I'm a monster on earth whose place is in hell. That's what I hear every day, especially from the police who are the source of the problem... my rights as a gay man are missing in this democratic state... You have two choices, either to live with a fake personality or to live as a gay person with the law punishing you as a criminal at every opportunity. Anything I do or say that alludes to my being gay will get me into trouble with the solution being an anal examination that will determine my destiny..."

Samir*, aged 20, speaking to Amnesty International

Consensual same-sex sexual relations are criminalized under Article 230 of the Penal Code which provides up to three years' imprisonment and a fine for "sodomy and lesbianism". Article 226 of the Penal Code, which criminalizes indecency and acts deemed to be offensive to public morals, is also used against transgender and gender non-conforming people, providing up to six months' imprisonment.

The true scale of the application of Article 230 is not known. LGBTI organizations say scores of mainly gay men are arrested every year. People are arrested because their behaviour, appearance and expression seem to fit certain stereotypes of LGBTI people and rarely because they are "caught in the act". To obtain "proof" of same-sex sexual activity, gay men are routinely subjected to anal examinations by forensic doctors after being arrested and upon judges' orders. Many are unaware of their rights to reject the test and are forced to undergo it.

Marwan was summoned by the judicial police in Hammam-Sousse on 6 September 2015 in relation to a murdered man. Police officers questioned him about his sexual relations with the man. They slapped him and threatened to rape and charge him with murder if he did not confess to having had sex with the victim.

On 11 September, while in pre-trial detention, the court ordered Marwan to undergo an anal examination. According to his lawyer, Marwan felt intimidated by the presence of the police officers outside the examination room and did not object to the test, which he found humiliating. On 22 September, the Sousse Court of First Instance found him guilty of "sodomy" based on his forced confession and the results of the anal examination. Marwan was sentenced to one year in prison. Following this

sentence, Tunisian LGBTI activists launched a campaign for Marwan's release that garnered support by mainstream organizations which objected to the forced anal examination. Organizations around the world joined the campaign, including Amnesty International. This led to Marwan's release on bail on 5 November, and on 17 December the Sousse Court of Appeal reduced his sentence to time already served and a 300 Dinar fine (USD149). He is now appealing the guilty conviction in the Court of Cassation.

Amnesty International considers forced anal examinations a form of torture and other ill-treatment when carried out involuntarily and involving penetration, as is the case in Tunisia. Amnesty believes such examinations to be unscientific. These tests also contravene the medical ethics enshrined in the Geneva Declaration of the World Medical Association and the UN Principles of Medical Ethics Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

On 2 December 2015, a group of six students was arrested in the city of Kairouan and accused of engaging in same-sex sexual relations. Amnesty spoke to one of the students, Ahmed*:

"I lived in private student halls in Kairouan on my own... One day, the police came looking for a young man who had run away from home... Someone told the police he was staying with our friend so three officers came to search the house... They took all of us and a laptop that was in the house to the police station. They found 'homosexual' pornographic videos on the laptop and began to question us whether we were gay. We denied it, but they started beating and threatening us and made us sign statements. The next day, they took us to have anal examinations. I refused twice, and the doctor said I had to sign a paper saying I refused. Each time the police would tear my statement, beat me and say 'you have to agree to do it, otherwise we'll say you're gay because you refused to do it.'"

Eventually, all six men were forced to undergo the examination. On 10 December, they were sentenced to three years in prison and were given a five-year ban from the city of Kairouan following



LGBTI activists taking part in a World Social Forum march in 2015. © Grassroots Global Justice Alliance

their release – a punishment that is not known to have been used before for such charges. The Tunisian human rights community described the verdict as “medieval” and actively campaigned for the men’s release. They were released on bail on 7 January 2016 and their sentence was reduced on appeal on 3 March to the one month in prison they had already served and a fine of 400 Dinar (USD198). The men have been unable to continue their studies following their release and several were forced to leave their homes after being rejected by their families.

A few weeks later, on 24 March, three of the students were arrested again in Tunis, together with five other men, on accusations of “sodomy” and cannabis usage. Two men of the Kairouan student group had rented a house together in their names. These two men were additionally accused of “setting up a place for prostitution”. All of the men refused to undergo an anal examination. Without any confessions or “proof”, the Court of First Instance in Tunis dropped the charges related to prostitution and “sodomy” on 6 April. The three students remain in detention on the charge of using cannabis.

Tunisia’s 2014 Constitution guarantees the right to a private life and freedom of expression, thought and opinion. It also provides for equality and non-discrimination between men and women. As well as violating Tunisia’s Constitution, the criminalization of consensual same-sex sexual relations between adults is discriminatory and contrary to Tunisia’s international human rights obligations under numerous treaties. Imprisoning anyone for their real or perceived sexual orientation or gender identity and expression, or for any consensual same-sex sexual relations between adults in private, is a grave violation of human rights. The UN Human Rights Committee (the international expert body which interprets and oversees compliance with the International Covenant on Civil and Political Rights) has confirmed that states – including Tunisia – have an obligation to prohibit discrimination based on sexual orientation and gender identity, and to respect freedom of expression, freedom from arbitrary interference with the right to privacy, and freedom of conscience.



A sign banning LGBTI people from shopping in the store, Tunisia 2016.
© Private



A man, aged 19, after being beaten on the neck by his uncle because of being gay, April 2016.
© Mawjoudin, We Exist

DISCRIMINATION — A DAILY STRUGGLE

"They say you're free but that's not true. I can't go anywhere without people looking at me. I want to be free to act as I wish, I don't want to be constantly humiliated and not allowed into coffee shops or stores. The least they do is make fun of you, even the police make you stand for one to two hours making fun of you."

Firas*, aged 20, Tunis, speaking to Amnesty International

The harassment that LGBTI people in Tunisia face is so frequent that many say it is impossible to lead a normal life. Mehdi*, aged 30, explains:

"I face a lot of insults on a daily basis. I can't go to the public hammam [bath house] because other men make fun of me. I can't walk past a school because teenage boys start harassing me. My niece and nephew are always being asked by other kids, 'why is your uncle like this?' In offices, schools, everywhere, people look at you with disgust."

The stigmatization often starts at home. Firas* said he had to move out of the family home. He describes himself as an effeminate man with long hair and says because of his appearance, he gets no respect. Three years ago, still living with his family, his brother cut his hair while he was asleep and burned his leg.

While in school, Firas felt he had no choice but to leave. *"The other students were always making fun of me, swearing at me and sometimes throwing eggs at me too. I couldn't take it anymore, so I dropped out. My mother really wanted me to go back to school but I couldn't – people just didn't let me study."*

Samir*, aged 20, says his high-pitched voice has always caused him problems. His family told him he was mentally ill, which has made him feel inadequate and worthless. At school, he was brought before a disciplinary committee because teachers thought he was disguising his voice. Samir was also sexually harassed by one of his teachers, who tried to coerce him into sex. Eventually, he left school, abandoned his dream of studying fine arts, and instead took up vocational training and decorating.

With no support from his family or community, at the age of 15, he felt he had no choice but to sell sex to men.

Chokri*, aged 26, described how discrimination prevents him from finding a job:

"I worked in a clothing boutique for three years. My boss found out that I was gay and fired me. He saw me once with my French boyfriend. He asked me if I was gay, and I told him I was. He kicked me out. No one had complained about me at work... He made it impossible for me to find a new job. He started telling others [shop owners] that I was gay. I don't understand why this should matter, it's my private life. It was never obvious to anyone at work that I am gay, I dress normally. I tried to find a job through other friends. I went to three or four different stores, but they would refuse to hire me. At one point, I thought of committing suicide. A lot of my friends tried to commit suicide because of discrimination against gay men."

LGBTI people report high levels of physical attacks and, in some cases, sexual violence. Survivors interviewed by Amnesty reported being assaulted in the street, in their homes and workplaces, in some cases on multiple occasions by the same individuals. They said that they were repeatedly beaten with objects, kicked and punched. In some cases, they were subjected to suffocation attempts and burned with cigarettes. Openly gay and lesbian individuals reported facing constant insults and harassment, and said that they received death threats and threats of harm either in person or through social media.

Samira*, aged 17, says she regularly faces sexual harassment in the street. When she is with her short-haired girlfriend, men insult them and invite them to have sex. In December 2015, a man tried to rape Samira.

"I was in a park with my girlfriend, kissing. A strange man took a photo of us. He threatened to expose us if we didn't do as he said. He told my girlfriend to leave... and tried to force me to have sex with him. My girlfriend refused to leave and we managed to run away."

STATE-ENTRENCHED DISCRIMINATION

“They [police officers] realized I was gay because of my mannerisms and started making fun of me. They called me a ‘horse’. We live in a sexist society. If you are not like them, it means that you are weak. You have to look strong all the time.”

Mehdi*, aged 30, Tunis, talking to Amnesty International

Harassment by the police is a daily reality for many LGBTI people in Tunisia. Those interviewed by Amnesty said that police officers often stop them in the street because of their looks or mannerisms and question, insult and intimidate them.

LGBTI people have little trust in the police to help them or protect their rights. Often, the police will exploit LGBTI people's fear of being exposed and stigmatized by blackmailing, extorting a bribe or even sexually abusing them. This means LGBTI people are often afraid to report the abuses and violations they experience at the hands of the police or others because they are afraid they will be prosecuted on “sodomy” and “lesbianism” charges once their sexual orientation or gender identity is revealed.

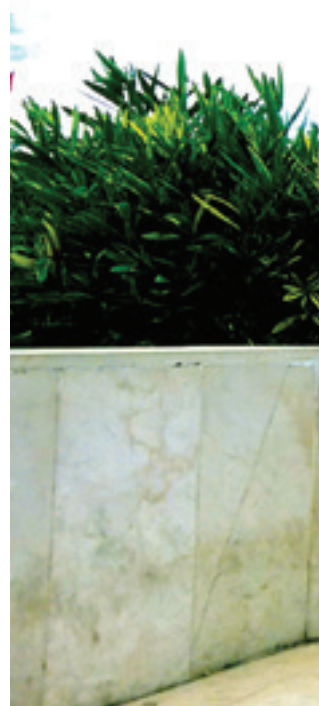
LGBTI organization Shams shared with Amnesty the testimony of 20-year-old Firas, who said he was beaten and raped by a police officer on 18 January 2016. Firas had been trying to get a taxi in the street, when a police officer driving by stopped and asked for his ID. The officer questioned him for half an hour and then forced him into the car. He drove to an isolated area where he continued to beat Firas, raped him, and dropped him where he had initially picked him up. Firas called Shams and activists found him lying in the street badly beaten, his clothes torn and covered in blood. Firas was too afraid to file a complaint about the abuse.

Samir* (see above) also described being raped by a police officer in the city of Manouba when he was 16 years old. When walking home, a police officer on a motorbike stopped Samir, asked for his ID and then took him to his house where he raped him. *“He did what he wanted to me. I was only 16. I couldn't complain about it. Who do you complain to about such a thing? I was worried that I would become the accused if they did an anal examination.”*

Testimonies collected by Amnesty also show that homes of LGBTI people are subjected to house searches by police, usually after tip-offs from neighbours or landlords.

In July 2014, police officers physically assaulted and sexually harassed Samir in the flat of his Libyan boyfriend. When the officers heard his high-pitched voice they called him *miboun* (a derogatory term for “gay”), repeatedly mocked him, and attempted to coerce him into sex.

“The whole time I was on my knees, my hands cuffed behind my back and facing the wall. They kept banging my head against the wall and telling me ‘you’ve done shameful things’. My face was blue from the beating. The police officers tried to force me to confess that I was gay, but I refused. One of them slapped me and asked me for sex... They threatened to undress me and force me to have sex with my boyfriend. In the end, they forced





my boyfriend to pay them a bribe and drove me home. The whole time they were insulting and threatening me. They took my phone number and one of the officers kept calling me and I had to change my number."

LGBTI people also report sexual harassment and abuse in detention centres and prisons.

At the age of 19, Samir was detained for two days in Bouchoucha detention centre in Tunis over a family dispute. He describes the guards harassing him at night. "They kept making fun of my voice. *They would bring their matraque [stick] and make suggestive gestures or ask me to give them sexual favours... They would ask me if I would go with them.*"

The six students arrested in Kairouan (see above) also spoke of abuse and harassment by prison guards and other prisoners. Ahmed describes:

"The guards would take us out of our cell and make us dance for them and beat and threaten us if we refused. Every day from 12-2pm we were handcuffed and made to stand facing a wall outside and every time a guard passed by he would hit us on our bottoms. Inside our cell, the other prisoners would make us dance for them and they didn't give us the same amount of food. Things only got better when our case became public."



Graffiti in Tunis highlighting Article 230 of the Tunisian Penal Code which decrees imprisonment of up to three years for sexual relations between consenting same sex adults. © Mawjoudin



*LGBTI protest to raise
awareness, Tunis 2015.
© Mawjoudin, We Exist*

HARASSMENT OF ACTIVISTS

Despite the flurry of new organizations that were set up following the 2011 uprising that ended the repressive government of Zine el Abidine Ben Ali, there are only four registered LGBTI organizations and one lesbian, bisexual and transgender organization in Tunisia.

Members of these organizations have faced harassment, threats and intimidation by unknown persons at various times since they began their work. With no protection from the authorities, over the years many have gone into hiding or left the country.

Damj Association was the first LGBTI organization to be registered after the uprising. It had unsuccessfully applied for registration under Ben Ali at the end of 2009 and at the beginning of 2010. At the time, the authorities refused to even accept their application form and the founding members were threatened with imprisonment. The Damj Association finally registered following the uprising in 2011, presenting its mandate as working on minority rights.

When Shams Association openly called for the decriminalization of same-sex sexual relations after it obtained official registration in May 2015, it faced a media backlash and its members were threatened. The Grand Mufti called on the government to withdraw Shams' registration, stating that the association was opposed to Islamic values and the principles of Tunisian society. In November 2015, the State Secretary General called for Shams to be disbanded. In January 2016, Shams received notification from the Court of First Instance in Tunis that it was being suspended for one month following a complaint filed by the state's Head of Litigation. The complaint stated that the

organization had deviated from its proclaimed mandate when its members publicly announced that Shams aimed to defend 'homosexuals'. Following the 30-day suspension, the Court could have ruled for the dissolution of the organization. Shams appealed successfully on 23 February 2016.

In December 2015, a blood-stained cloth was delivered to the house of a member of Shams, Hedi Sahly. He also received information from the Ministry of Interior that he might be targeted by armed militants. Knowing that the government would not be able to provide necessary protection for him, Hedi Sahly fled the country and claimed asylum abroad.

Amnesty International has also documented harassment of activists working to increase awareness around the prevention of HIV and other sexually transmitted infections.

Ali*, aged 52, volunteers with an HIV prevention organization. As part of his work, Ali distributes condoms and lubricants to young men doing sex work which is illegal under Tunisian law. He says he is routinely stopped by police and questioned about the condoms that he carries and his presence in areas frequented by sex workers.

The harassment of activists is emblematic of the authorities' attitudes towards LGBTI rights. On 28 September 2015, following Marwan's case, then Minister of Justice, Mohamed Salah Ben Aissa, announced that Article 230 of the Penal Code violated personal freedoms and choices, including in the realm of sexuality, and the right to private life, which are guaranteed under the new Constitution adopted in January 2014. He also said that Article 230 should be repealed and encouraged civil society to work towards that end. However, a few days later, President Beji Caid Essebsi denounced what the Minister had said and stated that there were no plans to change the law.

ACT NOW

"What is the crime that I have committed by being with a man whom I love and who loves me back? I don't understand... I want to be able to lead the life that I want in Tunisia. I want to live my freedom. I don't want to be forced to leave my country to be myself."

Fadi*, aged 22, city of Sfax

Urge the Tunisian authorities to uphold their promises of equality and non-discrimination.

Call on the Parliament to repeal Article 230, which discriminates against LGBTI people and violates their human rights. Article 230 stands in violation of the Tunisian Constitution.

TWEET THE TUNISIAN PARLIAMENT AT @ARPtn:

Assaulted & then accused of "sodomy" #Tunisia: Repeal #Art230

Same-sex sexual relations are not a crime, #Tunisia repeal #Article230

#Tunisia your Constitution promises no discrimination, prove it and repeal #Article230

In #Tunisia LGBTI people are raped and told they're responsible for the crime. Repeal #Art230

WRITE TO THE TUNISIAN AUTHORITIES URGING THEM TO:

- Publicly condemn all forms of sexual and gender-based violence against LGBTI people, whether committed by state or non-state actors in the home, the community or public sphere.
- Immediately and unconditionally release anyone detained because of their actual or perceived sexual orientation or gender identity.
- Repeal Article 230 of the Penal Code criminalizing consensual same-sex sexual activity.
- Immediately stop the use of forced anal examinations against people accused of same-sex sexual relations as a means to obtain "proof" of anal sex.
- Ensure that all complaints of homophobic and transphobic hate crimes are taken seriously by the authorities, and are promptly and independently investigated without discrimination.

WRITE TO THE TUNISIAN EMBASSY IN YOUR COUNTRY OR TO:

Prime Minister Habib Essid
Place du Gouvernement
La Kasbah 1008
Tunis, Tunisia

Email: prm@ministeres.tn

***the names of all individuals have been changed to protect their identities**

Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.



Cover image: Activists flying the rainbow flag in Tunis, Tunisia. Many live in fear of being exposed as LGBTI people and stigmatized or prosecuted.
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