ASSAULTED AND ACCUSED

SEXUAL AND GENDER-BASED VIOLENCE IN TUNISIA

AMNESTY INTERNATIONAL

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Cover photo: Protesters chant slogans during a demonstration against charges of indecency that were filed against a woman raped by two police officers; Tunis, 2 October 2012.
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EXECUTIVE SUMMARY

In September 2012, a woman known as Meriem Ben Mohamed was charged with "indecency" after she reported rape by two police officers. By speaking out, Meriem shed light on the deep flaws in Tunisian legislation and sparked a campaign demanding legal change and protection to survivors of sexual and gender-based violence. "Raped and accused" became a phrase that highlighted the entrenched prejudices and discrimination against survivors of sexual and gender-based violence who, like Meriem, are often victimized and held responsible for the crimes they have suffered.

All too often, survivors of sexual and gender-based violence in Tunisia are blamed and punished for the crime they have suffered. A woman who is raped is held responsible for her assault and rejected by her family and community. A wife who is beaten by her husband is told to remain in the abusive relationship rather than bring "shame" on the family. A gay man who is attacked is more likely to be prosecuted than his attacker. A sex worker working illegally is abused and blackmailed by the police.

Tunisian law fails to protect those most in need of protection. It allows rapists of women aged under 20 to escape punishment if they marry their victim. It fails to recognize marital rape; indeed, it implies that a woman's marital duty is to have sexual relations with her husband whenever he pleases. It criminalizes consensual same-sex sexual relations, making it virtually impossible for lesbian, gay, bisexual, transgender and intersex (LGBTI) people to lodge complaints about sexual assaults and paving the way for blackmail and other abuses by police.

Such social attitudes and failings by the state are particularly harmful in a country where sexual and gender-based violence remains prevalent. Nearly one in two women (47%) has experienced violence. Of these, around one in six has suffered sexual violence. These figures emerged from the first national survey of such issues, conducted in 2010 by the Office National de la Famille et de la Population (ONFP – National Board for Family and Population).

The true scale of sexual violence is unknown as it is under-reported. Many survivors do not come forward out of fear of being accused of complicity in the crime and publicly shamed. As a result, many suffer in silence. When the crimes go unreported, the perpetrators are emboldened to repeat abuses and impunity is entrenched. According to women's rights defenders, media reporting of violence against women is often sensationalist and contributes to the stigmatization of survivors.

Over the years, the Tunisian authorities have taken important steps to promote gender equality and combat gender-based and sexual violence, including by amending legislation. Despite this, the law continues to reflect discriminatory social attitudes against women and preserve the general interest of the family over the needs of survivors of violence.

Articles in the Penal Code criminalizing sexual violence are in a section dealing with assault on a person's decency, thus emphasizing "honour" and "morality". Rape and sexual assault

of women and girls are seen as acts that undermine the family's reputation rather than a violation of the victims' bodily integrity.

Other laws and policies fail adequately to protect survivors of sexual and gender-based violence. The Penal Code does not define clearly what constitutes an act of rape, although provides for the death penalty when "non-consensual sexual relations" are committed "with violence". This fails to capture the reality that, in many cases, rape should be defined by lack of consent and is often committed without the use of force.

Family violence is commonly accepted in Tunisia despite being recognized as a crime. Complaints of assault are often withdrawn because of pressure from the perpetrator or family members, or because of the perceived "dishonour" it might bring on the victim. The law does not provide adequate protection against victims being pressured or coerced into dropping complaints. For instance, a complainant cannot apply for a protection order that could stop a perpetrator contacting the victim.

Police officers lack the necessary training to intervene in cases of family violence, which is seen as a private and intimate issue. There are no specialized police units to deal with family and sexual violence, and the number of women police officers is low. Police officers often dismiss reports of marital violence filed by women, or blame them for the violence. In many instances, instead of enforcing the law and protecting women from further violence, police see their role as promoting mediation and reconciliation to preserve the family unit.

Few survivors of family violence pursue judicial remedies, mainly because they are not financially independent or because they are pressed by their own families to forgive their husbands. The lack of sufficient emergency housing and shelters for victims of family violence also prevents survivors from seeking justice as they have nowhere safe to go.

Many of the women who complain about family violence do so in the context of fighting for divorce on the basis of harm suffered, usually after enduring years of violence and humiliation. While family violence is accepted as grounds for divorce, the burden of proof falls on survivors and the judicial police (the investigative arm of the security forces) has no units [or officers] specialized in investigating such cases. In general, the judge ruling on divorce cases only accepts a penal conviction or the accused's confession as evidence of harm. As a result, such divorce procedures are lengthy, costly and complicated.

Existing social and health services for survivors of sexual and gender-based violence remain limited and inadequate, mainly due to a lack of financial resources. Such services are largely supported by the international community and led by civil society organizations.

In cases of sexual violence, medical treatment is often separate from the collection of evidence, and referral pathways are almost non-existent. Medico-legal centres, which are often the first point of contact with a medical professional, do not provide emergency contraception in cases of sexual violence. No testing for sexually transmitted infections is available on the spot, survivors are not systematically referred to gynaecologists, and no psycho-social support is available.

The criminalization of some forms of consensual sexual relations between adults places

additional constraints on survivors of sexual and gender-based violence who want to seek justice. Adultery laws are sometimes misused to blackmail victims and dissuade them from reporting the crime. The adultery laws also impact disproportionately on women, reinforce harmful gender stereotypes and deter some rape victims from reporting the crime because they fear prosecution if they fail to prove rape.

Criminalization of consensual same-sex relations discriminates against LGBTI people and fuels violence against them. Perhaps the most vulnerable group are sex workers, who rarely report crimes against them because their work is illegal.

Sex workers and LGBTI people report high levels of extortion, physical assaults and sexual abuse by state agents, especially the police. Homophobic and transphobic crimes are not investigated. Police often tell LGBTI survivors to drop their complaints if they want to avoid being prosecuted themselves for engaging in same-sex sexual relations.

In August 2014, Tunisia's transitional government announced that it was drafting a comprehensive law to combat violence against women, with the help of a committee of experts that included Tunisian women's rights defenders. Among other things, the draft proposed to repeal provisions criminalizing consensual sexual relations, including same-sex relations, between adults; and introduce laws criminalizing clients, procurers and operational aspects of sex work. Meanwhile, senior government officials promised to repeal legal provisions giving impunity to rapists who marry their victim, increase penalties for sexual harassment against women at work, and improve access to legal aid and health services for survivors of violence.

However, work on the draft law appears to have stalled since the formation of a coalition government in January 2015. The authorities seem to be prioritizing security issues, especially following the deadly attacks at the Bardo Museum in Tunis and at a beach resort in Sousse that killed 61 people. In a meeting with Amnesty International in March 2015, the Minister of Women, Family Affairs and Childhood said that the proposed, bold legislative reforms would require greater social awareness. The draft law has yet to be agreed by the new government and discussed by parliament.

Amnesty International welcomes steps taken by the Tunisian authorities to comply with the recommendation repeated over several years by the Committee on the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) that Tunisia adopts a comprehensive law on violence against women. Amnesty International stresses that adopting legislative reform in line with international human rights standards would go a long way to address the gaps that hinder survivors of sexual and gender-based violence obtaining redress. Importantly, it would encourage survivors to come forward and report crimes, and ultimately would help combat impunity.

Amnesty International is publishing this report with the aim of supporting efforts by Tunisian civil society to combat sexual and gender-based violence. Based on 40 interviews with survivors of sexual and gender-based violence in particular rape (including marital rape), domestic violence and sexual harassment, in addition to meetings with medical professionals, women's rights defenders and social workers, this report is calling on the authorities to address such violence by taking three key measures among other recommendations included

at the end of the report:

- publicly condemn all forms of sexual and gender-based violence, including violence based on gender identity and sexual orientation;

- end discrimination based on gender, sexual orientation and consensual adult sexual activity in law and in practice, and introduce legislation criminalizing sexual and gender-based violence in line with international human rights law and standards;

- ensure effective, independent and impartial investigations into all forms of sexual and gender-based violence, including against women and girls, LGBTI people and other vulnerable people such as sex workers.

ABBREVIATIONS AND GLOSSARY

bisexual: A bisexual person is defined as a person who is attracted to and/or has sex with both men and women. It can also refer to a cultural identity.

CEDAW: UN Convention on the Elimination of All Forms of Discrimination against Women

CMI: certificat médical initial (initial medial certificate)

CRC: UN Convention on the Rights of the Child

gay: The term "gay" refers to men or women who are primarily physically, sexually and emotionally attracted to people of the same sex. It can refer to same-sex sexual attraction, same-sex sexual behaviour, and same-sex cultural identity. "Gay" is not gender-specific, in that it can refer to both men and women who experience same-sex sexual attraction or identify as such. However, many people mean only gay men when they use the term "gay".

gender and sex: The term "sex" refers to biologically determined differences, whereas "gender" refers to differences in social roles and relations. Gender roles are learned through socialization and vary widely within and between cultures. Gender roles are also affected by age, class, race, ethnicity and religion, as well as by geographical, economic and political environments. Moreover, gender roles are specific to a historical context and can evolve over time, in particular through the empowerment of women.

gender identity: This refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, or with the way they are made to express their gender. Gender expression includes the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms. An individual's gender identity may be male, female or a gender which is neither male nor female; it may also be more than one gender, or no gender.

heterosexual/heterosexuality: The term "heterosexual" is used to refer to people who are primarily physically, sexually and emotionally attracted to people of the opposite sex.

intersex: Individuals who possess genital, chromosomal or hormonal characteristics which do not correspond to the given standard for "male" or "female" categories as for sexual or reproductive anatomy. Intersexuality may take different forms and cover a wide range of conditions.

lesbian: The term "lesbian" refers to a woman who is primarily physically, sexually and emotionally attracted to other women. It can refer to same-sex sexual attraction, same-sex sexual behaviour, and same-sex cultural identity for women.

LGBTI: lesbian, gay, bisexual, transgender or intersex people

ONFP: Office National de la Famille et de la Population (National Board for Family and Population)

sex work: The term "sex work" is used in this report to refer to the consensual exchange between adults of sexual services for some form of remuneration.

sex worker: The term "sex worker" is used to refer to someone who sells sex. Sex work involves a contractual arrangement where sexual services are negotiated between consenting adults, with the terms of engagement agreed between the seller and the buyer of sexual services. Sex work may vary in the degree to which it is more or less "formal" or organized. While some people who sell sex refer to themselves as "sex workers", others prefer the term "prostitute" or do not claim any title related to or affiliated with the sale of sex. To that end, the term "sex worker" is solely used as a descriptive device and not intended to impose an identity on any individual interviewed for purposes of this research.

The term sex work is not used in this report for situations in which persons who are engaged in commercial sex are doing so without their consent. Such situations must be subject to criminal sanctions. Consensual sex work should be distinguished from human trafficking, a serious human rights abuse that is defined by the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol, 2000) as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation."

transgender people: Transgender people are individuals whose gender expression and/or gender identity differs from conventional expectations based on the physical sex they were assigned at birth. Commonly, a transgender woman is a person who was assigned "male" at birth but has a female gender identity; a transgender man is a person who was assigned "female" at birth but has a male gender identity. However, not all transgender individuals identify as male or female; transgender is a term that includes individuals who identify as more than one gender or no gender at all. Transgender individuals may or may not choose to undergo some or all possible forms of gender reassignment treatment.

travesti: The term "travesti" refers to a person who sometimes or permanently chooses to dress in the opposite gender to their sex.

1. INTRODUCTION

‘They blame me for everything’

A survivor of marital rape, speaking to Amnesty International in March 2105

Meriem Ben Mohammed,[1] aged 27, filed a complaint of rape against two police officers in September 2012 shortly after she was raped. When police charged her with “indecency” following her complaint, Tunisians were outraged.[2] They expressed their anger on social media and protested until the charges against her were dropped and the two officers were charged. The officers were eventually sentenced to 15 years in prison.[3] In an unprecedented move, the then President Moncef Marzouki asked to meet Meriem to offer her a state apology.

Meriem’s case became emblematic of the numerous obstacles facing survivors of sexual and gender-based violence in Tunisia. “Raped but accused” became a phrase that highlighted the entrenched prejudices and discrimination against survivors of sexual and gender-based violence who, like Meriem, are often victimized and held responsible for the crimes they have suffered. Meriem’s case highlighted deep flaws in Tunisian legislation and the need for comprehensive legal reforms to protect survivors’ rights and enable them to access justice effectively.

SCALE OF ABUSE

Violence against women in Tunisia is widespread and cuts across age, geographic location, education levels and socio-economic groups. The only national survey on violence against women to date was conducted by the Office National de la Famille et de la Population (ONFP – National Board for Family and Population) in 2010 as part of a national strategy to combat such violence. Its findings show just how prevalent the violence is and challenged previously held beliefs that it is restricted to the most marginalized social groups.[4]

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[1] The pseudonym Meriem Ben Mohammed was chosen by the woman herself once the case was reported to the media, to protect her from stigmatization.

[2] See Amnesty International, *Tunisia: Woman allegedly raped by police faces prosecution,* 27 September 2012, available at: https://www.amnesty.org/en/latest/news/2012/09/tunisia-woman-allegedly-raped-police-may-face-jail-time/

[3] A third police officer was sentenced to two years’ imprisonment for taking her fiancé to a cash machine and trying to extort money from him.

[4] For more information on the survey’s findings, see ONFP, *Enquête Nationale sur la Violence à l’Egard*

Some 47.6% of respondents among single, engaged, married, divorced and widowed women living in both rural and urban areas stated that they had experienced some form of violence at least once.[5] Among these, 31.7% had suffered a form of physical violence, 28.9% psychological violence, and 15.7% sexual violence.[6] In 78.2% of the cases of sexual violence, the abuse had been perpetrated by the woman's intimate partner.[7] Sexual violence appeared to be slightly more prevalent in rural areas.[8] Over half (56.4 %) of those who had experienced violence declared that it affected their daily life.[9]

The survey showed that spousal and other family violence is the most pervasive form of violence, and that violence against women in the public sphere appeared relatively low. It did not address other forms of discrimination. Only 6% of the respondents who work or have worked said they experienced harassment in the workplace,[10] and 5% said that they faced sexual harassment in public spaces.[11]

Women with little or no education reported more violence – half of respondents who were illiterate stated that they had experienced a form of violence at least once. However, educated women are not immune to abuse – 41.6% women with university education had experienced some form of violence. Women in paid employment seemed to be less vulnerable to violence than those who stayed at home.

There is no similar information on the scale of violence perpetrated by state agents; the ONFP survey did not address this issue despite reports by human rights organizations, including Amnesty International, that women were tortured and sexually assaulted by security forces under the rule of Zine El Abidine Ben Ali (1987-2011). In 1993, Amnesty International published a report documenting a wave of arbitrary arrests of women relatives of political opponents of President Ben Ali, when scores of women, including some of who were pregnant, were beaten, undressed, sexually abused, placed in contorted positions, or threatened with rape or prosecution for adultery.[12]

By July 2015, the Truth and Dignity Commission – established in 2014 to address political,

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des Femmes en Tunisie 2010, available at: http://www.onfp.nat.tn/violence/e-book/violence.pdf

[5] The information is based on a sample of 3,873 respondents aged between 18 and 64. See ONFP, *Enquête Nationale sur la Violence à l'Egard des Femmes en Tunisie 2010,* p. 45*,* available at : http://www.onfp.nat.tn/violence/e-book/violence.pdf

[6] See ONFP, *Enquête Nationale sur la Violence à l'Egard des Femmes en Tunisie 2010*, p. 46.

[7] See ONFP, *Enquête Nationale sur la Violence à l'Egard des Femmes en Tunisie 2010*, p. 48.

[8] See ONFP, *Enquête Nationale sur la Violence à l'Egard des Femmes en Tunisie 2010*, p. 47.

[9] See ONFP, *Enquête Nationale sur la Violence à l'Egard des Femmes en Tunisie 2010*, p. 66.

[10] See ONFP, *Enquête Nationale sur la Violence à l'Egard des Femmes en Tunisie 2010*, p. 49.

[11] See ONFP, *Enquête Nationale sur la Violence à l'Egard des Femmes en Tunisie 2010*, p. 14.

[12] See Amnesty International, *Women victims of harassment, torture and imprisonment*, June 1993, (Index: MDE 30/02/93), available at: https://www.amnesty.org/en/documents/mde30/002/1993/en/

social and economic crimes and investigate human rights violations since 1 July 1955 – received some 13,278 complaints, including from 1,626 women. Of these women, 400 were former prisoners.[13] According to the head of the Women's Commission within the Truth and Dignity Commission, many of the complaints related to sexual harassment, but only a few mentioned rape explicitly. However, she stated that the numbers did not represent the extent of past violations, and that more efforts were needed to encourage women to report them. Since the 2011 uprising, there have been renewed allegations of sexual harassment by police and some cases of sexual violence by state agents.

Similarly, no official data is available on the scale of violence against sex workers or LGBTI people who are abused on account of their actual or perceived gender identity, sexual orientation or sexual activity.

BACKGROUND

Tunisia is often described as a leader on women's rights in the Middle East and North Africa. The Personal Status Code, adopted in 1956 and amended several times since then, is considered as the most progressive for women's rights in the region. Over the years, it abolished polygamy and repudiation;[14] removed the duty of wives to obey their husbands; granted equal rights to men and women in terms of marriage, divorce and property ownership; and established equality between spouses with regard to family obligations. Following amendments to the Nationality Law in 1993 and 2002, Tunisian women married to foreign nationals can now pass on their nationality to their children.

Tunisians are proud that their country preceded France by two years in legalizing abortion on request. Indeed, in 1973 women gained the right to free abortion on demand during the first three months of pregnancy.[15] That same year Tunisia created the ONFP, and established health care services across the country to deliver free contraception. Gradually women became well represented in professions that had been dominated by men. For example, by 2010, 33% of judges and 42.5% of lawyers in Tunisia were women.[16] By 2013, 30% of engineers were women. By 2014, 42% of medical doctors and 53% of pharmacists were women.[17] Women's political participation also increased: today, 31% of Tunisia's

[13] See Ibtihel Abdelatif, *Présidente de la commission femmes à l'IVD*, July 2015, available at: https://inkyfada.com/2015/07/ibtihel-abdelatif-commission-femme-ivd-tunisie/. Amnesty International spoke to Ibtihel Abdelatif over the phone on 12 August 2015.

[14] Repudiation refers to the husband's right to unilateral termination of marriage without court proceedings.

[15] Tunisian women with five or more children had already gained the right to abortion – performed in the first three months of pregnancy – under Law No. 65-24 of 1 July 1965.

[16] See Le Centre de recherches, d'études, de documentation et d'information sur la femme (CREDIF), *Femmes et hommes en Tunisie: chiffres et indicateurs*, 2010 in Gribaa Boutheina and Depaoli Giorgia, *Profil Genre de la Tunisie,* July 2014.

[17] See Gribaa Boutheina and Depaoli Giorgia, *Profil Genre de la Tunisie,* July 2014.

parliamentarians are women compared to only 4% in 1989.[18]

While the Tunisian state demonstrated its commitment to gender equality and women's rights over the years, these achievements would not have been possible without the mobilization of various women's rights groups and their calls for reform. Today, some 700 organizations work on women's rights and women empowerment in Tunisia.[19]

Women played an instrumental role in organizing protests and demonstrations against former President Zine El Abidine Ben Ali, and continue to shape Tunisian politics since his ousting in 2011. Operating without the severe restrictions of the Ben Ali years, women's rights organizations were key to ensuring that gender equality and women's rights remained high on the political agenda during the post-uprising transition. As a result, an electoral law was adopted in April 2011 requiring gender parity in candidate lists submitted by all political parties ahead of elections to the National Constituent Assembly. It made headlines worldwide, although women won less seats than expected (some 30%).

The gains of the women's rights movement were reflected in Tunisia's new Constitution, adopted in 2014. In particular, it affords women greater protection against violence, guarantees equal opportunities between women and men, and obliges the state to work towards gender parity in elected assemblies. Later in 2014, Tunisia became the first country in the region to lift all reservations to CEDAW, ratified in 1985, even though it maintained a general declaration that it would take no organizational or legislative action required by CEDAW if it conflicted with Tunisia's Constitution.[20]

However, the true picture of women's rights in Tunisia is complex. Tunisia remains a relatively conservative country where traditional gender roles prevail. The society and family unit continue to be organized according to patriarchal norms, while women face discrimination under laws relating to family, in particular with regards to child custody and inheritance. Tunisian wives no longer have a legal obligation to obey their husbands following amendments to the Personal Status Code in 1993, but husbands remain the head of the family and must provide for their wife and children to the best of their ability, and both spouses are expected to fulfil their marital duties in accordance with traditions and customs.[21] Further, according to the Personal Status Code, a dowry remains a precondition for a marriage to be legally recognized and the dowry amount is included on the marriage contract.[22] In practice, however, the dowry tends to be a minimal, symbolic amount.[23]

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[18] However, women are underrepresented in decision-making positions.

[19] See CREDIF, *Observatoire genre et égalité des chances: rapport sur les associations œuvrant pour l'égalité des chances entre les femmes et les hommes en Tunisie*, 2013.

[20] See the UN confirmation of receipt of Tunisia's notification: https://treaties.un.org/doc/Publication/CN/2014/CN.220.2014-Eng.pdf

[21] Personal Status Code, Article 23.

[22] Personal Status Code, Articles 3 and 12.

[23] In 1962, Habib Bourguiba, Tunisia's first president after independence, introduced the practice of the

A recent study by the Ministry of Women comparing time management between men and women confirmed just how entrenched traditional gender roles are in Tunisian society. Among other things, it showed that women spend eight times more time than men performing household chores, including caring for children, elderly people and other dependents.[24] While women's literacy rates are higher than men's, and considerably more women graduate from university, their participation in the labour market is much lower than that of men's.[25]

Perhaps what most undermines the gains is the prevalence of violence against women and girls.

In November 2014, Amnesty International delivered a petition signed by 198,128 people calling on the Tunisian authorities to repeal harmful laws, adopt a comprehensive law on violence against women, decriminalize sexual relations between unmarried consenting adults and same-sex sexual relations, provide effective social and medical services, and make available effective legal remedies that are sensitive to the needs of survivors of sexual violence, amongst other things. At the time, the then Secretary of State for Women and Family[26] and the Minister of Health publicly expressed their support for Amnesty International's campaign.

METHODOLOGY

This report is based on Amnesty International's ongoing monitoring of the general human rights situation in Tunisia and three fact-finding visits to the country in October 2013, October 2014 and March 2015. During these visits, Amnesty International interviewed women's rights defenders, LGBTI activists, lawyers, medical professionals (including forensic doctors, psychiatrists, emergency doctors and psychologists), judges, social workers, government child protection delegates and survivors of sexual and gender-based violence. Subsequent interviews were conducted over the phone. In total, 60 interviews were

symbolic dinar on the occasion of his wedding to break from a tradition that imposed payment of a substantial sum. Gradually, families adopted this practice and today men often give their wives a symbolic one dinar coin or a 20 dinar banknote at the signing of the marriage contract. See Labidi Lilia (2008), *From sexual submission to voluntary commitment, The transformation of family ties in contemporary Tunisia*, in Yount Kathryn and Rashad Hoda, *Family in the Middle East, Ideational change in Egypt, Iran and Tunisia,* Routledge, 2008.

[24] See Ministry of Women, Family Affairs and Childhood, *Budget temps des femmes et des hommes en Tunisie*, 2011, available at: http://www.femme.gov.tn/index.php?id=7&tx_ttnews[tt_news]=836&cHash=f05d085b99175fe16be05c0630636dc1

[25] European Parliament, *Directorate General for Internal Policies, Gender Equality Policy in Tunisia*, 2012, available at: http://www.europarl.europa.eu/RegData/etudes/note/join/2012/462502/IPOL-FEMM_NT(2012)462502_EN.pdf

[26] The Ministry of Women and Family Affairs was established in 1993. In 2014, the Ministry was briefly replaced by the office of the Secretary of State for Women and Family, attached to the Prime Minister's office, before becoming a ministry again in the coalition government in 2015.

conducted in five governorates – Tunis, Sfax, Gafsa, Le Kef and Kairouan.

The organization met 40 survivors of sexual assault, rape (including marital rape), domestic violence and sexual harassment. They included single, married and divorced women, some of whom were abused as children, as well as sex workers and LGBTI people who faced abuse on account of their actual or perceived sexual activity, sexual orientation and gender identity. The cases documented by Amnesty International included violence perpetrated by state agents and private individuals. Interviews with survivors were conducted either in private or in small groups at the request of the interviewees. In some cases, NGO representatives or medical doctors who facilitated the meetings were present when the interviewees so wished.

In March 2015, Amnesty International met forensic doctors at the medico-legal centres at Charles Nicolle Hospital in Tunis and Habib Bourguiba Hospital in Sfax. The organization also met a forensic specialist working at the Houcine Bouzaiène Regional Hospital in Gafsa. At Habib Bourguiba Hospital, the organization interviewed women survivors of violence following their medico-legal consultation.

To gain a better understanding of the government's response to sexual and gender-based violence, in October 2014 Amnesty International researchers met the then transitional authorities, including the Minister of Justice and officials at the Ministry of Interior. Following the formation of a new government, Amnesty International representatives met the Minister of Women, Family Affairs and Childhood, Samira Merai Friaa, in March 2015 as well as officials at the Ministry of Health, including ONFP representatives, to discuss health services available to survivors of sexual and gender-based violence. Their views and the information they provided are reflected in this report.

In May 2015, the Tunisian authorities responded to Amnesty International's request for information on statistics concerning sexual violence. The information provided is included in this report.

Most of the survivors of sexual and gender-based violence spoke to Amnesty International on condition of anonymity as they feared social stigmatization and reprisals. As a result, the organization has not been able to request clarification on specific cases from the Tunisian authorities. However, the information obtained from practitioners, human rights defenders and survivors allowed Amnesty International to identify clear patterns, which are reflected in this report.

Unless specified otherwise, the names of survivors who were interviewed have been withheld at their request. A few requested the use of pseudonyms. In some cases, details that would allow for their identification, such as profession or place of residence, have also been withheld at their request.

Amnesty International is extremely grateful to Tunisian women's rights organizations, international organizations, LGBTI activists, lawyers, judges and medical professionals who not only shared their knowledge and experience of combating sexual and gender-based violence, but also facilitated meetings with survivors. The organization is particularly grateful to all survivors of sexual and gender-based violence who agreed to share their experiences.

This report is launched as part of Amnesty International's global "My Body, My Rights" campaign, which aims to defend sexual and reproductive rights worldwide. In the Maghreb region, the campaign calls on the authorities in Tunisia, Algeria and Morocco and Western Sahara to amend legislation that fails adequately to protect survivors of sexual violence and provide them with effective remedies and comprehensive health and social services when such violence occurs.

Supporters of Amnesty International Tunisia take part in a march in Tunis to mark International Women's Day, Tunis, 8 March 2015 (Photo: Amnesty International)

2. FAMILY VIOLENCE AND MARITAL RAPE

‘My husband beat me like he forgot I was human.’

Survivor of domestic violence speaking to Amnesty International, March 2015

Spousal and other family violence, particularly against women and girls, is so prevalent in Tunisia that it has become normalized. Indeed, the national survey conducted by ONFP in 2010 showed that violence suffered by women is most often inflicted by their intimate partner or another family member. Of the respondents, nearly half said that they had been subjected to physical violence by their husband, fiancé or boyfriend at least once, while 43% stated that they had suffered physical violence from other members of the family, in most cases the father. One in five women had experienced psychological violence, while around the same number said they had faced physical violence at home.[27]

The most common forms of physical violence recorded by the ONFP study were being slapped, being pushed and being hit with an object. Other violence included having hair pulled, having one’s arm twisted, being beaten with a belt or a stick, being kicked, having one’s head hit against a wall, being threatened with a knife, being strangled, being tied and being burned. Amnesty International heard accounts of such abuses during its interviews.

In terms of psychological violence, women reported being forced to leave the house; humiliating and demeaning insults; being locked in the house; being threatened with dogs; and being forced to accept their husband bringing his lovers to the family home.[28]

Many women end up living in a cycle of violence in which they are abused for years, then file a complaint with the police or seek help from their family, before forgiving their husband and withdrawing the complaint. According to NGO workers interviewed by Amnesty International, withdrawing a complaint only encourages more violence and fosters impunity.

In March 2015, a 32-year-old woman who lives in a small village near Sfax described her

[27] See ONFP, *Enquête nationale à l’égard des femmes en Tunisie, Rapport principal*, July 2011, available at: http://www.onfp.nat.tn/violence/e-book/violence.pdf

[28] See ONFP, *Enquête Nationale sur la Violence à l’Egard des Femmes en Tunisie 2010,* available at: http://www.onfp.nat.tn/violence/e-book/violence.pdf

experience to Amnesty International:

> *It's a cycle that repeats itself every month – he beats me, I go home to my family, then he apologizes and I go back. He weakened me, I have no confidence in myself.*
>
> *I've filed a complaint against my husband twice already at the police station but then withdrew them. He was very good to me for a few days after that but then became bad again. I still have the medical reports from those two incidents. I withdrew my complaint when it got to the court because I have no confidence in myself, I'm afraid of everything. I have no friends and I'm not allowed any family visits.*

Protection measures for survivors are almost non-existent. There are no laws allowing the authorities to issue orders against offenders, which could protect women from further attacks if supported by appropriate police training and awareness of gender-based violence.[29]

FAMILY AND SOCIAL PRESSURE

Despite the scale of family violence, the study revealed that few women pursue judicial remedies even though domestic violence has been explicitly recognized as a crime since 1993. Under Article 218 of the Penal Code, assault and battery is punishable with up to one year in prison and a 1,000 dinar (approximately US$511) fine. The penalty is increased to a two-year prison term and a 2,000 dinar fine if the perpetrator is the victim's spouse or descendant. Premeditated assault is punishable with a three-year prison term and a 3,000 dinar fine. However, the definition of family violence in the Penal Code is restrictive and appears not to cover cases of unmarried or divorced couples, and violence by the extended family. Also, the Penal Code addresses physical violence only; it does not recognize economic and psychological violence.[30]

Perhaps the greatest obstacle to reporting violence is the common perception that domestic violence is "normal" and should be tolerated. Indeed, most women (73%) who took part in the ONFP study stated that they did not expect anyone to help them, while only a small fraction said that they had sought help from NGOs (5.4%), the police (3.6%) or health institutions (2.3%). Only approximately 18% had filed a complaint.[31]

When asked why they chose not to report the violence and file a complaint, well over half stated that violence was an "ordinary occurrence which does not deserve to be talked about",

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[29] Euro-Mediterranean human rights network, Tunisia, *Report on violence against women*, 2014, available at: http://www.medinstgenderstudies.org/wp-content/uploads/Session-2-EMHRN-Factsheet-VAW-Tunisia-EN.pdf

[30] The UN Handbook for Legislation on Violence against Women recommends that legislation on domestic violence includes a comprehensive definition of domestic violence, including physical, sexual, psychological and economic violence. See UN Department of Economic and Social Affairs, Division for the Advancement of Women, *Handbook for Legislation on Violence against Women,* ST/ESA/329, 2009.

[31] See ONFP, *Enquête Nationale sur la Violence à l'Egard des Femmes en Tunisie 2010,* p. 68, available at: http://www.onfp.nat.tn/violence/e-book/violence.pdf

while some 14% said that they did not wish to bring disgrace to the family.

Indeed, in the vast majority of cases, women abused by their spouses turn to their families for help but instead of support, they face pressure to preserve the interest of the family. Many women interviewed by Amnesty International described being asked by their families to be "patient" and were eventually convinced to forgive their husband.

In March 2015, Rima, a 35-year-old woman from Sfax who has been married for six years, described to Amnesty International how she felt pressured into marrying her husband despite knowing he was violent. Her engagement lasted five years and her husband beat her for the first time in front of her parents in the lead-up to their wedding. At that point, she and her husband were legally married but continued to live apart until their wedding night celebration. To end her relationship, Rima filed for an annulment but said that she was pressured by her husband's family and her own relatives to go through with the marriage. She said that she felt she had no option but to do so.

Such perceptions are commonly held by police officers who lack the necessary training to intervene in cases of family violence, which they see as a private matter. There are no specialized police units to deal with family and sexual violence, and survivors usually file complaints with branches of the National Guard or the judicial police.[32] The number of women police officers is low, and they tend not to work in the evenings or at night.[33] Some women interviewed by Amnesty International said that police officers either dismissed their reports or blamed them for the violence. In general, the police attempted to discourage them from filing a complaint, convincing them not to break up the family and to put the interests of children first. Instead of enforcing the law and protecting women from further violence, police see their role as promoting mediation and reconciliation.

Rima told Amnesty International that her husband again beat her in 2009 when she was pregnant, a year into their marriage. Even though her husband had fractured her arm, the police tried to dissuade her from seeking justice. She told Amnesty International:

> *On Sunday, I went to the emergency unit in the hospital with my brother and then on Monday I went to the police station to file a complaint against my husband. They told me to think about it and asked me why my husband beat me. They said that it would be better for me not to complain. Instead, they said they could bring my husband to the station and get him to sign a commitment not to do it again otherwise he could go to prison. I had to go back on Tuesday because they sent me away and told me to think about it and think about what would happen to me and my children if my husband went to prison. I had to insist to get the complaint filed.*

FIGHTING FOR DIVORCE

For many women, the lack of financial independence means that they feel they cannot ask for a divorce. Although the Personal Status Code provides for spousal maintenance payable to

[32] The judicial police is controlled by the Ministry of Interior but operates within the Ministry of Justice.

[33] Amnesty International meeting with officials at the Ministry of Interior, 24 October 2014.

women, it does so only in cases of divorce for harm, or when instigated by their husbands without any basis. In 1993, the Ministry of Social Affairs established a divorce allowance fund to support divorced women whose husbands fail to provide the monthly spousal maintenance. The absence of shelters and other living alternatives, especially in more remote areas, is another factor that forces women to stay in the cycle of violence.

Many women end up filing a complaint about family violence do so in the context of fighting for divorce for harm. Forensic doctors explained that, in most cases, women seek judicial remedies as a last resort after reconciliation attempts have failed, and reach such a decision only after years of abuse and humiliation, given the stigma associated with divorce.[34]

A lawyer who provides legal support to women survivors of domestic violence explained that divorced women are, in general, badly perceived in society:

> *A woman is always responsible for her victimhood even if the husband beats her, cheats on her or drinks. Divorce is always her fault.*[35]

Under Article 31 of the Personal Status Code, divorce can only be granted in court based on the following three situations: divorce based on mutual consent; divorce based on harm; and divorce without grounds. Reconciliation sessions presided over by a family judge are a mandatory stage in divorce proceedings. Usually, three sessions are held for couples who have children, and one for couples without children. The simplest and fastest option is divorce based on mutual consent, while divorce without grounds is the least favoured because the instigator is required to pay all associated fees. Women who wish to retain their right to spousal maintenance must seek a harm-based divorce, which involves lengthy, complicated and costly court proceedings, including legal fees. Article 31 of the Personal Status Code provides for compensation for moral and material damage suffered by either spouse, and for a monthly spousal maintenance paid by the husband to his former wife until the end of her life. The monthly payments are calculated according to the woman's standard of life prior to divorce.

For divorce based on harm, the burden of proof lies with survivors of the harm as there are no judicial police specialized in investigating such cases. In general, the family judge ruling on divorce cases only accepts a penal conviction or the accused's confession as evidence of harm. Testimony of the survivor is usually considered insufficient on its own. The high burden of proof and evidentiary requirements, and the lack of police investigations often prevent women from obtaining divorce on the grounds of harm.

Conviction rates for spousal violence appear to be low despite the high number of complaints. This is mainly because most complaints are either withdrawn or dismissed before they are

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[34] According to one study conducted in Sfax, of 47 women who lodged a complaint against their husbands, the majority had been subjected to more than 10 assaults at the time of filing the complaint. See Dr Narjes Ben Ammar, *Parcours des femmes victimes de violence conjugale portant plainte, Parcours des combattantes à propos de 47 cas*, Tunis, 2013.

[35] Amnesty International interview, Gafsa, 18 March 2015.

referred to court. Under Article 218 of the Penal Code, all proceedings, trials and enforcement of penalties in cases of domestic violence are terminated as soon as the victim of the assault withdraws her complaint. Once a complaint is dropped, all record of it is removed and it no longer has any legal consequence on the perpetrator.[36]

According to the Ministry of Justice, in the 2012-2013 judicial year, the public prosecution received 5,575 complaints of marital violence, of which some 65.8% (3,672) were either withdrawn or dismissed. Of the accepted complaints, only 28.9% (551) resulted in convictions. By comparison, in 2011-2012, the public prosecution received 5,248 complaints, of which 68.3% (3,583) were either withdrawn or dismissed, and convictions were secured in 38.9% of accepted cases (649). In 2010-2011, some 72.5% of the total number of filed complaints (5,116) were either withdrawn or dismissed, and some 710 individuals were convicted of marital violence, representing approximately 50.5% of cases referred to court.[37]

In some areas of the country, the number of withdrawn complaints is higher. A study done in 2013 by the medico-legal unit of Habib Bourguiba University Hospital in Sfax showed that 80% of the 150 women who came to the unit over a period of eight months to obtain a medical certificate recording evidence of physical violence later withdrew their complaint. The main reason for doing so was because they were financially dependent on their husbands.

In many cases, the police end up mediating between the spouses, forcing the accused to sign a commitment that he will stop hurting his wife. Such commitments have no legal standing and are largely ineffective.

A 26-year-old woman from Gafsa, who was married from 2005 to 2008, described to Amnesty International how her complaints to the police and the commitments her ex-husband signed at the police station have not stopped the violence:

> *My husband used to beat me every day. We got divorced at my request but my problems are worse now – he comes to my house, forces himself in and beats me, he talks badly about me, he follows me to work. When I complained against him in 2009 after he broke my nose and cut my face, the police blamed me and told me I wasn't from the area and I was just trying to create problems. He's on good relations with the police in the area. I filed a complaint against him on 14 September 2014 and he came to the police station and signed a commitment that he would leave me alone but he didn't and no one does*

[36] A similar provision is contained in Article 319 of the Penal Code, which prescribes a 15-day prison term for acts of violence and brawls that do not cause any serious or long-term damage to the victim's health. Under Article 319, all proceedings, trials and enforcement of penalties are terminated as soon as the victim of the assault – spouse or ascendant – withdraws her complaint.

[37] Presentation by Samia Doula, Ministry of Justice, 19 January 2015. Similarly, in 2009-2010, approximately 72.9% of all complaints (6,463) were either withdrawn or dismissed, while the same was true for 66.6% of complaints in 2008-2009.

anything about it.

LACK OF AWARENESS OF RIGHTS

In general, the police fail to inform survivors of their rights or carry out investigations in the family home. In the absence of state-run schemes to provide legal aid and information to survivors, NGOs are often the only institutions able to protect survivors.

A 48-year-old mother of two from Le Kef told Amnesty International that, despite obtaining two convictions after she filed complaints about family violence against her husband, she was unaware that she had the right to file for divorce. During their 15 years of marriage, she had been hospitalized several times following beatings. Although her husband forced her to leave the house, he continues to harass and otherwise abuse her. The police have not implemented any protective orders. The husband was recently sentenced to six months in prison and a 500 dinar (approximately US$255) fine after beating her and burning her hand. He was released after three months when his sentence was reduced on appeal. Since then, he has filed for divorce and refuses to provide for their children.

In another case, a 37-year-old woman who was seeking an end to the violence she was experiencing rather than a divorce explained to Amnesty International that, although she had complained about her husband before, she was unaware of the steps needed to prove that she had been beaten. Following legal advice from an NGO, she convinced her husband to sign a commitment at the National Guard that he would stop the violence, and a similar commitment, as well as a confession to having committed violence, at the municipality. The confession, which has legal standing, can now be used as proof that violence did indeed occur. She told Amnesty International that, since then, her husband's behaviour has changed and the violence has stopped. She said:

My husband beat me like he forgot I was human. He's violent with the children and destroys our belongings, leaves the house and ignores the children for a while and then returns as if nothing happened. He began to beat me two years into our marriage. He even beat me while I was pregnant and I fell and hit my head. I filed a complaint at the police station in 2007. The complaint got as far as the court but then I forgave him and withdrew the complaint. At the time, the police didn't refer me to a forensic doctor to get evidence and I didn't know I needed the forensic doctor's report so the judge decided the case was one of neglect and not of violence. There's no legal record of the case because I dropped it.

In January this year [2015] my husband took a cloth and covered my face and said, "You complained against me before so this time I'm not going to leave a trace"... He beat me on my back and arms with his hands. I went to the emergency unit and got a medical report.

I want to stay with my husband. I got him to sign a commitment at the National Guard station and a confession and commitment at the municipality... He's changed completely and he takes my opinion and spends time with the children.

A woman interviewed by Amnesty International in Sfax on 16 March 2015 said she did not want a divorce but was filing a complaint in the hope that it would push her husband to

provide for her and her children. When Amnesty International met her, she had bruises on her face and injuries to her upper and lower back, buttocks, right hand and both legs that she said were caused by a belt, a wooden plank, shoes and her husband's hands. She was groaning in pain as she described to Amnesty International her experience:

> *My husband has been beating me for three years ever since he started cheating on me… He swears at me and calls me things like "crazy" or "sick". He always hits me on the head and pulls my hair. At night if I want to go to my father's house after he's beaten me he forces me into the bathroom and wets me with cold water before I go out into the cold.*

Although she obtained a medical certificate, she did not wish to file a complaint or seek divorce. She was unaware of her rights or any organizations that could provide her with psycho-social care, legal aid or financial assistance.

MARITAL RAPE

Marital rape is intertwined with family violence. In the cases documented by Amnesty International, it was part and parcel of the violence. Medical professionals explained that where there is a history of family violence, women are often unable to genuinely consent to sexual intercourse because they feel powerless and afraid.

According to the 2010 ONFP study, one in six married women has faced sexual violence at least once in her life, mostly by her intimate partner. Forms of sexual violence identified included being "coerced into sexual intercourse", "forced to perform a sexual act that they disapprove of", and "forced into sexual relations after having been beaten".[38]

A survivor of family violence described to Amnesty International her sexual relations with her husband:

> *"No" is not an option. He doesn't like that, so whatever situation I'm in, whether I'm tired or sick, I have no choice. If I say "no" he forces me and beats me.*

Another woman described an incident where her husband beat her during sexual intercourse:

> *He was beating me because he said that "I can't do it with you". He punched me on my thighs and then slammed his fist down on my lower back. I didn't tell anyone when it happened.*

Despite the prevalence of sexual violence, marital rape is not explicitly recognized as a crime under Tunisian legislation. Under Article 23 of the Personal Status Code, both spouses "must fulfil their marital duties according to custom". This provision is generally understood to

[38] See ONFP, *Enquête nationale à l'égard des femmes en Tunisie*, Rapport principal, July 2010, available at: http://www.onfp.nat.tn/violence/e-book/violence.pdf. Amnesty International considers that "being coerced into sex" and "being forced into sexual relations after having been beaten" constitute rape.

mean that sexual relations constitute a marital obligation. Article 13, which prohibits the husband from compelling his wife to have sexual intercourse until he has paid his dowry, implies that, once he has paid, he can have sex with his wife as he pleases. The Article can be interpreted as condoning marital rape.

In its response to a list of questions raised by CEDAW in 2010, the Tunisian authorities stated that "marital rape is, like all other forms of rape, a crime under Tunisian law" and added that it falls under Articles 227 and 227bis of the Penal Code. The authorities stressed that "neither of these articles under any circumstances treats the status of spouse as a status conferring immunity from prosecution or as a mitigating circumstance for the assailant".[39]

A family law judge interviewed by Amnesty International on 16 March 2015 at the First Instance Court in Sfax agreed that, although Articles 227 and 227bis allow for the prosecution of individuals accused of marital rape, in practice this rarely, if ever, happens according to custom which considers sexual intercourse a marital duty enshrined in the marriage contract. As a result, the lack of recognition of marital rape in law means that acknowledging the crime in court is a matter of discretion. In some cases, individuals accused of marital rape have been prosecuted for physical assault under laws on domestic violence.

There is also a general lack of awareness of what constitutes marital rape. Many women are unaware that what they endure is in fact rape. Those interviewed by Amnesty International explained that they had never refused sexual intercourse with their husbands because they did not realize that they have the right to do so. A sex counsellor who sees patients with sexual problems in Tunis told Amnesty International that often women realize during therapy that they subconsciously view sex with their husbands as rape.

Due to the stigma and shame associated with sexual violence, activists and doctors told Amnesty International that a woman is more likely to speak up about sexual violence by her husband if it involves anal sex, which is criminalized in Tunisia and is generally morally and religiously unacceptable. Anal rape can be prosecuted as "indecent assault without consent" under Article 228 of the Penal Code.

Samira,[40] aged 27, who was raped on 16 May 2013 by her husband in a town in the south-west of Tunisia in the first 12 days of their marriage, told Amnesty International that her father at first tried to force her to go back to her husband. She said her family only saw her as a victim when she told them that her husband had forcibly subjected her to anal sex. She told Amnesty International:

> *The first time we had sex, it felt like rape. He was forceful and left cuts which got infected. It was painful to urinate. I asked to see a gynaecologist but he refused saying,*

[39] See CEDAW Committee, *Written replies from the Government of Tunisia to the list of issues and questions (CEDAW/C/TUN/Q/6) with regard to the consideration of the combined fifth and sixth periodic reports (CEDAW/C/TUN/5-6),* CEDAW/C/TUN/Q/6/Add.1, 4-22 October 2010.

[40] Pseudonym chosen by Amnesty International.

"I'm a doctor and you're being paranoid". He started drinking every evening... For a few days after the first night we didn't sleep together. Then he told me: "You're my wife and I have a right to do what I want. If you can't from the front then I'll do it from the back." I told him it was against religion.

After 10 days he finally took me to a doctor. I told her everything and she said that I shouldn't have sexual intercourse before the infection went. One night I went up to bed... At about 3am I felt him touch me and I cried because it hurt... he suddenly grabbed my arms and pushed them behind my back. I protested saying that it hurts. He told me not to be scared, and then he raped me.

FLAWED TRIAL PROCEEDINGS

Some women interviewed by Amnesty International said the reason they do not file a complaint against their husband is because the process is too long and complicated, and they have little faith in the judicial system. In many cases, women reported that the police did not initiate investigations, and alleged corruption and bias towards their husbands.

A woman from a marginalized neighbourhood in Tunis who suffered years of family violence after she married a 27-year-old man when she was only 13 recounted her experience:

He slashed my stomach and my cheek. I still have a scar on my stomach. I went to report him at the police station and went to the hospital to get stitches. I brought the medical certificate and photos of my injuries with me and had to go to two police stations before I was able to give my statement. He was never detained. I heard that he bribed the police into changing the statements and, instead of slashing with a knife, they wrote that he beat me and slapped me. He was given a seven-month suspended sentence. He is now serving a four-year prison sentence after he was convicted for assault with a knife on a man. Is my life worth that much less?

Those who eventually file cases do so because they have support from their families or women's rights NGOs that help identify sympathetic and competent lawyers, and help them navigate through the justice system. In some cases documented by Amnesty International, husbands have threatened to file complaints of adultery or harm once the proceedings are over. As a result, the women risk becoming the accused instead of being treated as a victim.

Samira, the 27-year-old woman raped by her husband on 16 May 2013 (see above), described to Amnesty International her ordeal with lawyers and in the courts after she filed a complaint of "indecent assault" as a basis for obtaining a divorce for harm. She had no problem in filing the complaint at the police station, and was referred for forensic examination to establish proof of the assault. A medical report issued by a gynaecologist on 21 May 2013 confirmed lacerations in the anal area, and stated that the woman's hymen had been recently broken. A forensic report issued on 30 May 2013 and reviewed by Amnesty International noted that she had lacerations in the anal canal consistent with marks of "indecent assault through penetration in the anal area" and recommended 15 days of rest. On 23 October 2013, the Accusation Chamber referred the case to trial citing among other things the survivor's testimony and the forensic report. Importantly, the Accusation Chamber decided that Article 228 of the Penal Code, which penalizes "indecent assault without consent" (see above), was applicable in the case regardless of the marital context.

When the case reached the Court of First Instance, the judge dismissed it on the basis that the testimonies of her husband's witnesses outweighed her claims. The judge did not take into account the forensic report. The decision was upheld on appeal, which took place nearly two years later. She told Amnesty International:

> *In the court, my husband denied everything and said that I stole his gold and other things and that I had left. He accused me of not being a virgin when we got married and that I had never let him touch me. He then accused me of having a boyfriend before marrying him and brought false witnesses to court.*

At the time of writing, her case was still at the Court of Cassation and she was still unable to obtain a divorce. Her husband has repeatedly accused her of indecency and adultery, claiming that he sent her away because she was not a virgin at the time of their marriage. Samira is determined to seek judicial remedy not only because of the abuse she faced but also because she perceives that her husband has tainted her reputation. She returned to live with her parents, where she suffers violence from her brother and father:

> *My husband has threatened me many times in the street and swears at me so that I drop the case. He's also filed a complaint against me for adultery. He's waiting for the divorce to be finalized so he can make me pay for everything. I'm living with my father and brother again. They blame me for everything and they still beat me.*

3. SEXUAL VIOLENCE AGAINST YOUNG WOMEN AND CHILDREN

‘It’s a horror, it’s a calamity, but for the family, it suits them. A girl who has lost her virginity, it’s difficult to find her a husband.’

Forensic specialist, speaking to Amnesty International about Article 227bis

Under Tunisian law, rapists and abductors of teenage women and girls can escape prosecution by marrying their victim provided that she gives her consent.[41] In both cases, marriage between the perpetrator and the victim leads to the termination of proceedings. In the case of rape, prosecution resumes if divorce is pronounced at the request of the husband within two years of marriage.

Article 227bis of the Penal Code criminalizes the act of subjecting teenage women and girls to “non-consensual sexual intercourse” without the use of force, but fails to expressly prohibit such acts against boys and men.[42] Amnesty International believes that such acts constitute rape. Article 227bis imposes a six-year prison term for the rape of girls under 15 and five years’ imprisonment if the girl is older than 15 but younger than 20. Under Article 238, the kidnapping of children, regardless of their gender, is punishable by up to three years’ imprisonment if they are aged between 13 and 18, and up to five years if they are younger than 13. However, in the event a girl is kidnapped, under Article 239 all proceedings against the perpetrator are dropped as soon as he marries the victim.

These provisions, which exempt a rapist or kidnapper from punishment if he subsequently marries the victim, are based on social attitudes that focus on protecting the family’s

[41] In the case of rape, this provision applies only to women and girls under the age of 20, and when rapists do not use violence. In the case of abduction, this provision applies to girls under the age of 18 only.

[42] In 2010, the Committee on the Rights of the Child recommended that Tunisia amend Article 227bis to “ensure that sexual intercourse without violence with both girls and boys under the age of 15 is expressly prohibited”. See Committee on the Rights of the Child, Fifty-fourth session, *Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Tunisia* (CRC/C/TUN/CO/3), 16 June 2010.

"honour" rather than the harm done to the victim.

In its response to a list of issues and questions submitted to CEDAW during Tunisia's review of its obligations under the Convention, the Tunisian government acknowledged that, in cases of family violence and rape of victims below the age of 20, the legislation is intended "to strike a balance between women's rights and those of the family". The government further explained that the provision terminating the prosecution of rapists or nullifying convictions through marriage is motivated by social considerations whereby it "gives precedence to the general interest of the family and to the wishes of the victim herself, who for strictly personal and social reasons, may prefer such a solution, however advantageous it may be to the assailant, to those generally applied under Tunisian law".[43]

There is very little information publicly available on the application of Articles 227bis and 239. According to the Ministry of Foreign Affairs, 94 cases of abduction of girls under the age of 18 were reported in 2014 compared to none in 2013, 59 in 2012, 43 in 2011 and 57 in 2010. Under the category "eloping with a minor", the authorities registered 40 cases in 2014 compared to 37 in 2013, 41 in 2012, 34 in 2011 and 44 in 2010. Further, some 28 abduction cases of girls were reported in 2014 compared to 42 in 2013, 29 in 2012, 34 in 2011 and 50 in 2010, although the authorities did not specify their age. Some 28 cases of rape and attempted rape were reported by girls under the age of 18 in 2014, compared to 42 in 2013, 29 in 2012, 34 in 2011 and 50 in 2010.[44]

Women's rights defenders, medical professionals, judges and lawyers interviewed by Amnesty International said that provisions allowing the rapist to escape prosecution are still applied (although rarely), particularly in the south and in rural areas, which are socially more conservative. Many stressed that, given that Article 227bis criminalizes the act of subjecting a girl or a woman aged 20 or under to a sexual act without the recourse to violence, it is also applied in cases of consensual sex between young couples that elope.[45] Some thought that provisions included in Article 227bis allowed a more practical solution to the situation than a prison sentence for the man. Others told Amnesty International that the Article is sometimes used by young girls to force a man into marrying them and did not see a need to amend the law. Instead, they praised it for providing social protection for girls in a society where

[43] See CEDAW Committee, *Written replies from the Government of Tunisia to the list of issues and questions (CEDAW/C/TUN/Q/6) with regard to the consideration of the combined fifth and sixth periodic reports (CEDAW/C/TUN/5-6),* CEDAW/C/TUN/Q/6/Add.1, 4-22 October 2010.

[44] Fax sent to Amnesty International by the Tunisian Ministry of Foreign Affairs' General Directorate for International Organizations and Conferences, Human Rights Directorate, on 16 May 2015 responding to the organization's request for statistics on rape and other forms of sexual violence, including sexual harassment, addressed to the Ministry of Interior on 12 March 2015.

[45] In such cases, teenage women and girls are routinely referred to forensic examinations to establish whether they have lost their virginity even though there is no scientific basis for such tests and they constitute a form of degrading treatment. See also ATFD, *Les droits des femmes en Tunisie, Résumé des questions prioritaires soumis par l'Association tunisienne des femmes démocrates (ATFD) au Comité des Nations Unies pour l'élimination de la discrimination à l'égard des femmes 47ème session*, October 2010, available at: http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/ATFD_Declaration_fr.pdf

extramarital sex is considered taboo.

Such arguments do not take into account what constitutes violence. This is especially problematic given the difficulty of obtaining proof of rape. There is also no acknowledgement of other forms of violence, such as emotional and psychological pressure, that may be used against a young woman or girl to coerce them into sex. As a result, Article 227bis fails to provide adequate protection to women and girls against rape.

Following recommendations made by the Committee on the Rights of the Child, in 2007 the minimum age for marriage in Tunisia was set at 18 for both men and women.[46] Child marriage rates in general are relatively low.[47] In theory, a girl must consent to marriage under the conditions provided for in Article 227bis, and always has the option of refusing if she was raped. However, this measure does not take into account a girl's psychological state following the abuse or the pressures she may face from her family or social workers to accept marriage. It also fails to take into account the lack of support structures, including shelters, for girls who may face rejection from their families if they refuse the marriage, especially if the rape results in pregnancy.

A woman interviewed by Amnesty International in Gafsa who is now 26 years old and divorced described how she felt pressured into marrying her husband after she gave birth to their child when she was a minor. Aged 17, she ran away from home to escape family violence. She stayed with relatives in another city and three months later met the man who became her husband. She said the first time they had sex he forced himself on her. She continued to see him and a few months later became pregnant. As a minor, she could not marry without parental consent so continued to live with him as she did not have anywhere else to go. Seven months into her pregnancy, her partner began to beat her. When she was in hospital to give birth, the hospital reported her case to the government child protection delegate for the region, who came to visit her. Because she was a minor, under the law she was considered to have been raped. The delegate gave her two options: either marry the father of the child as allowed under Article 227bis or reconcile with her family. She felt she had no option but to choose marriage, especially as it meant he acknowledged their child as his. Today, despite being divorced, her ex-husband continues to be violent towards her.

A sex counsellor in Tunis explained to Amnesty International the detrimental psychological impact of the application of Article 227bis on girls and women regardless of whether they have been raped or have tricked a man into marriage:

> *Everyone is aware of Article 227bis in Tunisia. It's the only article that people know so much about. Sometimes girls use the law to their own advantage to trap the man that they really want to marry. Whether it is the girl who is abused or the man who is trapped,*

[46] Until amendments made to the Personal Status Code in 2007 (Act No. 2007-32 of 14 May 2007), the legal age for marriage was 17 for girls and 20 for men.

[47] According to one study, only 0.4% of Tunisian women married when they were younger than 15, and 5.1% married when they were younger than 18. The reasons for the marriage are not provided. See Gribaa Boutheina and Depaoli Giorgia, *Profil Genre de la Tunisie,* July 2014.

it always ends badly. In cases where girls get married to the man who abused them, every sexual intercourse will be lived as rape. At times, it is girls who fall in love with boys whom they seduce. If the men get married to them against their will, they will make their lives very difficult, and keep abusing them.

CHILD PROTECTION

Tunisia has specific laws to protect children from harm and to instil procedures to ensure the best interest of children. Under the 2014 Constitution, the Tunisian state has an obligation to "provide all forms of protection to all children without discrimination according to the best interests of the child".[48]

Following ratification of the Convention on the Rights of the Child (CRC) in 1991, Tunisia adopted the Child Protection Code in 1995. This incorporates the principle of the best interest of the child in line with the CRC and establishes specific mechanisms for the administration of juvenile justice. The Child Protection Code defines anyone aged below 18 as a child, and provides for the creation of specialized children's courts and child protection delegates who can intervene when a child may be in danger.[49] The activities of child protection delegates are overseen by the General Delegate for Child Protection, who reports to the Minister of Women, Family Affairs and Childhood. Article 31 of the Child Protection Code makes it everyone's responsibility, including those bound by professional discretion, to inform the child protection delegate if they are aware of a situation in which a child's health or bodily or mental integrity may be at risk. Such threatening situations are set out under Article 20 of the Code, and include mistreatment and sexual exploitation.[50]

Some 6,096 cases of children at risk were reported to child protection delegates in 2014 compared to 5,783 in 2013 and 5,992 in 2012.[51] Sexual violence against children constituted approximately 6.3% of all cases registered in 2014 (298 cases). However, the statistics compiled by the Office of the General Delegate for Child Protection failed to provide information on the measures taken to address the abuses and whether investigations were launched.

While judges and lawyers interviewed by Amnesty International acknowledged that Tunisian

[48] Article 47 of the new Constitution also guarantees children's rights to dignity, health, care, education and teaching by their parents and the state.

[49] There are 24 offices of s across the country (one in every governorate). Child protection delegates have a mandate to receive reports on "children in danger". They assess the danger, determine the real needs of the child in danger and set priorities for the development of an individualized intervention plan to end the danger.

[50] Other threatening situations include: the loss of parents for children without family support, exposure to neglect and vagrancy, exploitation for organized crime, exposure to begging and economic exploitation, and the inability of parents and other carers to ensure the child's protection and education.

[51] See Ministry of Women, Family and Childhood, Office of the General Delegate for Child Protection, *Bulletin statistique sur l'activité des délégués à la protection de l'enfance, 2014,* available at: http://www.delegue-enfance.nat.tn/images/depliant_DPE_2014.pdf

law was strong on child protection, they explained that the implementation of the law remained a problem. In 2010, the Committee on the Rights of the Child expressed concern at Tunisia's failure to monitor the quality and efficiency of the juvenile justice system and to guarantee full implementation of all provisions at all stages of the criminal justice process. It further expressed concern at the lack of adequate co-ordination between various stakeholders involved in child protection.[52] Indeed, child protection delegates appear to be under-resourced, so they cannot follow up adequately on the large number of cases. The workload of child protection delegates also means that there is a lack of co-ordination between their work and the courts, particularly in investigating crimes against children and in implementing necessary follow-up care and services.

There is also a lack of adequate services for children who are victims of sexual violence. Referral to psychological care is not automatic. It depends on the judge's discretion or a request by the child's family. However, due to stigma attached to psychological treatment, families rarely make such requests. A child protection delegate explained to Amnesty International that, upon marriage, a child legally becomes an adult although he or she may still be under 18 years old. In cases where a girl who is a victim of rape and marries her rapist, the child protection delegate is no longer able to intervene or push for continuing support or medical care.

LENGTHY TRIAL PROCEDURES

Children who are victims of sexual violence also have to deal with lengthy trial procedures and social pressures. There are no procedural rules regarding the provision of evidence in cases of sexual abuse of minors, which are crucial to avoid re-victimization of survivors. A child protection delegate explained to Amnesty International that children are often put through an arduous process when they are brave enough to speak out. They are made to relate their ordeal several times to different people, to the detriment of their emotional wellbeing.

From the experiences of girls interviewed by Amnesty International, it also appears that no effort is made to follow special procedures given their age or the trauma they have suffered. Equally, no effort is made to inform them of their rights or discuss what will be done in their best interest or to protect them from community and family harassment and social stigma.

Two girls who had been sexually abused told Amnesty International that they were banned from returning to their schools because the school directors saw them as a bad influence on other girls. One, a 16-year-old girl who was kidnapped on 1 August 2014 by a distant relative, described her ordeal to Amnesty International:

> *I had a fight with my parents that day. I was angry and walked out of the house. A distant relative of mine saw me in the street and convinced me to go with him. He*

[52] See Committee on the Rights of the Child Fifty-fourth session, *Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Tunisia* (CRC/C/TUN/CO/3), 16 June 2010.

promised to marry me. I believed him because he'd asked for my hand in marriage before but I refused because I'm still in school. I agreed to go with him and he took me to a house in a nearby town. After he slept with me I understood that he was lying and he didn't want to get married. He didn't let me leave the house and kept me locked in. Finally, a few weeks later, I managed to tell a neighbour from the rooftop that I was being held against my will. The neighbour told the police and they came and released me. During that time, my family were looking for me and my relative would call them every night and act innocent and pretend to be concerned.

When I was released, the police took my statement. But no one contacted my family after. I never went to court. First, the man's family tried to convince me to marry him [under Article 227bis] but I refused. My relative told me not to say that I was taken by force and that if I protected him he would marry me. But then the verdict came out and he only got six months and his family didn't want him to marry me any more because he didn't need to.

The girl's lawyer explained to Amnesty International that the sentence was so low because the judge believed sex happened with the girl's consent and without the use of force. Such a restrictive definition of rape and sexual assault fails to capture the reality that often rape and sexual assault is coerced through fear of violence, detention, psychological oppression or abuse of power.

Further, the girl's right to appeal was not respected. The girl's family found out indirectly about the court's verdict and after the opportunity to appeal had passed. The girl's mother filed a complaint and told Amnesty International that she will persevere to see justice done. Her father, on the other hand, does not want his daughter in the house and does not speak to her. The girl said: "Everyone blames me and says it's my fault and that I should have known better".

She is not the only one who faces social stigma and challenges with the criminal justice system. A girl now aged 18 described to Amnesty International her difficulties in getting justice. Four years since her family filed a complaint, the trial is continuing.

When I was 13 I met a boy and I liked him. He promised to marry me. He was 23 years old. I did things with him without knowing what I was doing. He also brought four of his friends and he made me see them more than once and threatened me so that I would sleep with them. I was afraid and they threatened me and told me not to tell anyone: not to tell the police and not to tell my father who would beat me. I didn't tell my mother either because I was afraid.

Eventually the family found out and filed a complaint in 2011. Since then, she has been interrogated several times. Her lawyer explained that the police did not carry out any investigations but expected her to bring all the evidence to court. The men who raped her denied knowing her so the burden of proof fell on her. She eventually brought copies of Facebook conversations which proved that she was known to the men who raped her. In court, she felt the judge was prejudiced, shouting at her while being friendly to the accused. Four years on, the case is now at the appeal stage and she is tired:

I don't want to complain any more. What happened to me – I complained in 2011 and now it's 2015 and it's still going on. If every time it takes five years to get justice I'm not interested.

I want them all to go to prison because I'm suffering and always hearing people talk and say bad things about me. I was denied many things and he's happy and going around like nothing happened. It should be the other way around.

4. VIOLENCE AGAINST LGBTI PEOPLE

'In Tunisia if you're gay, you live under police control.'

20-year-old gay student speaking to Amnesty International, Sfax

A widely held perception is that same-sex relations in Tunisia are tolerated as long as they are not displayed in public. In reality, however, lesbian, gay, bisexual, transgender and intersex (LGBTI) people face pervasive discrimination, live in the constant fear of arrest, and are particularly vulnerable to violence on account of their real or perceived sexual orientation or gender identity.

Same-sex consensual sexual relations are criminalized under Article 230 of the Penal Code, which provides for a three-year prison sentence for "sodomy and lesbianism". The true scale of the application of the Article is unknown. Activists told Amnesty International that the legislation is never applied to prosecute lesbian women, and its application against gay men is not systematic. Damj,[53] an NGO working on minority rights, including LGBTI rights, documents approximately 60 arrests of gay men every year, although it is not entirely clear whether all those arrested are prosecuted solely for engaging in same-sex activity. In most cases, the length of sentence ranges from six to 18 months in prison, and is sometimes reduced on appeal. According to Damj, since 2008 there has only been one known case where a man accused of consensual same-sex activity was sentenced to two years in prison, and one unconfirmed report of a three-year maximum sentence against two individuals. Others may have gone unreported.[54]

On 28 September 2015, then Minister of Justice Mohamed Salah Ben Aissa made a groundbreaking public call for the decriminalization of same-sex relations. He stated that Article 230 undermines the right to private life and personal freedoms and choices, including sexual ones, guaranteed under the Constitution.[55] His statement was prompted by a public

[53] Damj pour l'égalité et la justice (Damj for Equality and Justice).

[54] According to press reports citing a representative of the Swedish Ministry of Foreign Affairs, a Swedish man was arrested on 18 January 2015 in Sousse and prosecuted on charges of engaging in consensual homosexual activities. He was sentenced to two years in prison on 4 February 2015, but has since been released. There have been unconfirmed reports that two Tunisian men arrested together with the Swedish national were sentenced to three years in prison in the same case.

[55] Mohamed Salah Ben Aissa was dismissed from his position on 20 October 2015. According to the government's spokesperson quoted in the media, his dismissal was related to several statements "which

campaign – led by LGBTI groups and supported by Tunisia's main human rights organizations – calling for the release of a 22-year-old man known as "Marwan" who was sentenced to one year in prison for engaging in same-sex activity after being forced to undergo an anal examination to establish "proof" of anal sex.[56] The Minister of Justice also called on civil society to work towards repealing the Article, raising the hopes of Tunisia's LGBTI people. These hopes were quickly undermined when, days later, President Béji Caïd Essebsi stated that the Minister's statements did not reflect the state's position and that Article 230 would not be repealed. The statement showed how same-sex activity continues to be a social taboo in Tunisia.[57]

Graffiti art in Tunisia by Tunisian LGBTI group 'Without Restrictions' for their Stop Homophobia campaign on the International Day against Homophobia, 17 May 2015 (Photo: Without Restrictions)

HATE CRIMES

The impact of these laws reaches far beyond the constant risk of arrest and prosecution. Not

lacked seriousness" and his position concerning a draft law on the Supreme Judicial Council. See, for example, *L'Express*, "Tunisie: le ministre de la Justice limogé après des propos peu 'sérieux'", 22 October 2015, available at: http://www.lexpress.fr/actualites/1/monde/tunisie-le-ministre-de-la-justice-limoge-apres-des-propos-peu-serieux_1728660.html

[56] Marwan was released on bail at an appeal hearing on 5 November 2015. See Amnesty International, Urgent Action, *Student jailed for homosexual acts* (Index: MDE 30/2586/2015), 5 October 2015, available at: https://www.amnesty.org/en/documents/mde30/2586/2015/en/

[57] See Kapitalis, *Homosexualité: Caïd Essebsi contre l'abrogation de l'article 230 (vidéo),* 6 October 2015, available at: http://kapitalis.com/tunisie/2015/10/06/homosexualite-caid-essebsi-contre-labrogation-de-larticle-230-video/

only does it violate LGBTI people's right to privacy and non-discrimination, it also fosters violence against them, and creates a permissive environment for homophobic and transphobic hate crimes as well as harassment and intimidation by family members and others in the community. In turn, the violence can be more easily ignored because LGBTI people are less likely to seek justice and speak out about abuses for fear of being detained.

According to Damj, since 2011, 15 men, including four foreign nationals, are believed to have been murdered in hate crimes. The organization has documented approximately 80 cases a year of hate-motivated violence against LGBTI people on account of their real or perceived sexual orientation and gender identity, but states that the true number is likely to be much higher. The homophobic nature of these crimes is rarely publicly recognized, which only emboldens perpetrators to commit further violent acts.

Activists told Amnesty International that, in many instances, violence against LGBTI people is carried out by groups of youths, who are in some cases believed to be affiliated with Salafist groups. Such homophobic violence seems to have been on the rise since 2011. According to activists, this has prompted many LGBTI people to leave Tunisia and seek asylum abroad.

Survivors interviewed by Amnesty International reported being assaulted in the street, in their homes and workplace, in some cases on multiple occasions by the same groups. They said that they were repeatedly beaten and verbally abused. In some cases, they were subjected to suffocation attempts and burned with cigarettes. Openly gay and lesbian individuals and LGBTI activists reported facing constant insults and harassment, and said that they received death threats and threats of harm either in person or through social media. When asked by Amnesty International if they complained about the abuses to the police, most explained that they were unwilling to report the homophobic nature of the crime for fear of being arrested and prosecuted. Those who found the courage to do so were often further victimized by the police and told that they were responsible for bringing violence upon themselves.

Seeking justice for many LGBTI survivors of sexual and gender-based violence is especially difficult as they cannot rely upon their families for support. Indeed, their families often reject them, subject them to violence or simply dismiss their suffering by telling them to "deal with it" and "assume responsibility for their actions".

ARRESTS WITHOUT EVIDENCE

Gay men in Tunisia are often arrested without any evidence that they engaged in same-sex relations, and hardly ever when caught in the act. Instead, most arrests are carried out based on gender stereotypes, such as appearance and behaviour, with gay men who are considered effeminate and transgender women targeted most. Those interviewed by Amnesty International said that it is often enough for two men to be sitting in a car or walking in the street in an area known to be frequented by gay men to be questioned, harassed and detained by the police. In many cases, gay men who conform to established norms of masculinity are released, while those considered effeminate are detained.

A 25-year-old gay man described his arrest to Amnesty International:

> *At some point during Ramadan in 2014, I was in Tunis with a friend. We were near*

Place Pasteur, which is known to be a meeting point for gay men. The police came and started talking to us. They asked us whether we were working and then started searching us. They took my friend's phone and started looking through his pictures. They saw a photo of him naked with make-up on. They took away his phone and took us both to a police station nearby. At the police station, they slapped me twice, and beat my friend. They kept insulting us both. My friend ended up being detained for a month. He had to pay the police off so that they would not be bothering him.

Men accused of engaging in consensual same-sex activity are routinely subjected to an anal examination by medical doctors. The test is usually ordered by a judge in an attempt to find "proof" of anal sex. There is no scientific basis for such examinations and they constitute a form of torture and other ill-treatment when carried out involuntarily. Amnesty International believes that forced anal examinations contravene 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.[58]

In September 2015, the National Council of Tunisian Physicians, which monitors the respect of medical ethics in Tunisia, launched an investigation into Marwan's case (see above) and condemned any baseless forensic examination or examination carried out without the examined person's consent.[59] The judicial police in Hammam-Sousse had summoned Marwan for questioning on 6 September after officers found his number on the phone of a man who had been murdered. According to Marwan's lawyer, he confessed that he had homosexual relations with the man after police officers slapped him and threatened to rape him and charge him with murder if he did not confess. On 11 September, Marwan was subjected to forced anal examination by the forensic department in Farhat Hached Hospital in Sousse at the request of the court.

In theory the suspect may refuse the anal examination, but activists say that most men are unaware of their rights and feel pressured to agree to the test. They are often intimidated by the police, and told that a refusal could be used as evidence against them.

Transgender people face the additional risk of arrest and prosecution under laws that criminalize indecency and acts deemed to be offensive to public morals.[60]

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[58] See the World Medical Association Declaration of Geneva, available at: http://www.wma.net/en/30publications/10policies/g1/. See also 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, available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/MedicalEthics.aspx

[59] See Direct Info, "Affaire du test anal sur un homosexuel: L'ordre des médecins de Tunisie condamne", available at: http://directinfo.webmanagercenter.com/2015/09/28/affaire-du-test-anal-sur-un-homosexuel-communique-du-conseil-national-de-lordre-des-medecins-de-tunisie/

[60] Article 226 of the Penal Code imposes a six-month prison sentence on anyone found guilty of

A transgender woman told Amnesty International that she was arrested on suspicion of engaging in same-sex activity, but sentenced to six months in prison for offending public morals when the anal examination did not "prove" anal sex. She told Amnesty International that on 20 October 2012 she was walking on the street dressed in a skirt in the La Marsa neighbourhood in Tunis when a police officer drove by and started sexually harassing her. She dismissed his advances, which prompted the police officer to ask for her identity card. Upon discovering that she was born a man, he immediately arrested her. Her appeal against the sentence was rejected even though her gender identity is known and accepted by her family and community, and she served the entirety of the prison term in a male prison.

In 2012, Slim[61], who describes himself as travesti, was sentenced to six months in prison for offending public morals (later reduced to two months on appeal). He told Amnesty International that he was arrested because he was dressed as a woman while sitting with another man in a car. He explained:

> *We were just sitting in the car, doing nothing, but because my hair was much longer at the time and I was dressed as a woman, that was considered to be against morals. If the police raid your house and they catch you while you are dressed as a woman, they will arrest you. That would be considered against morals. The police kept insulting me and in prison I faced a lot of beatings.*

STATE'S FAILURE TO PROTECT

The failure of the authorities to duly investigate and punish homophobic and transphobic hate crimes without discrimination undermines the confidence of LGBTI people in the ability and willingness of the state to protect them. As a result, it makes them less likely to report crimes, which in turn entrenches impunity.

Sharky, a 25-year-old lesbian woman from Tunis who suffered at least eight homophobic assaults over a period of nine years, decided to leave Tunisia and apply for asylum after she lost all hope of the criminal justice system protecting her from abuse and bringing those responsible to account. The first incident happened when she was only 16. When she went to report it to the police, she was faced with discrimination and blamed for her appearance. She said:

> *I was wearing shorts and a T-shirt and my head was shaved at the time. A guy came up to me; he did not like my looks. He said, "What's up with you? Are you a guy? Do you like girls?" He was sitting in his car and drinking a bottle of beer. He got out and beat me with it. I went to the police station to complain, but they asked me why I go out on the streets dressed like this. They told me to go back home. I went back and treated my injuries by myself.*

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intentionally undermining public morals, while Article 226bis imposes the same punishment for intentionally disturbing others in a way that offends the sense of public decency and attracting public attention on an opportunity to commit debauchery.

[61] Pseudonym.

Six months later Sharky was stabbed in her left side by her girlfriend's ex-boyfriend. She went to see a nurse, asked for antibiotics and treated herself at home again. At the age of 19, her girlfriend's brother slashed her stomach, accusing her of "turning his sister into a lesbian". Although she knew the perpetrators' identity in both cases, she did not report the assaults out of fear of being arrested. Her distrust in the police was such that she decided not to report a subsequent assault by a group of three men in the centre of Tunis in 2014. It was only when she suffered another serious attack that she decided to seek justice, only to be failed by the system again. She continued:

> *This fifth assault happened on 10 March 2015... As I was walking near the metro station I felt someone hitting me in the back. I dropped my bag and fell on my stomach. There were three men but I could not see their faces. They dragged me to a very dark alleyway. As they were beating me, one of them said he was sorry and then left. The others stayed and continued beating me. I could feel something metallic hitting my back... They were drinking and breaking glass bottles on my head. They pressed their boots on my body, they beat me on my head, on my nose... They beat me so hard that blood got into my eyes. They knew who I was. They told me my name, where I live, where I work, what my phone number is, where I go out. One of them wanted to stab me in the stomach and told me, "If you want to marry a girl, tell me how you are going to do it." They would pour beer on my head and ask me, "Do you want to burn?"...*
>
> *After they left, a man came to help me... and got me to a police station, but the police refused to escort me to the hospital. They said that I needed to take a taxi. We waited for about 20 minutes... and then we went to the emergency department of the Military Hospital, which was nearby. I was in a lot of pain. The man who helped me left the hospital. He was scared to be a witness. I only heard the attackers' voices and don't know them. When I went to the police to file a complaint with my father, I complained against unknown people.*

Following the assault, Sharky was examined by a forensic doctor at Charles Nicolle Hospital who established her incapacity to work for 30 days. She also started seeing a psychotherapist to deal with the trauma. She was subsequently attacked three times in April and May 2015. She recognized one of the men and believes that the same group was responsible for all the attacks. She reported the assaults, but the perpetrators were never found and arrested. Instead, Sharky was summoned to present herself to the police in Sidi Bou Said and advised to drop the case if she did not want any problems. She told Amnesty International that she filed complaints, but she was unable to raise the homophobic nature of the crime for fear of being arrested and prosecuted. Her fears were confirmed when police officers told her that in the process of the investigation, they had been monitoring her Facebook account and phone calls, and found out that she was lesbian. They warned her that she could be sentenced to three years in prison while her attackers only risked a six-month prison term at most. The police advised her to stay home and "keep a low profile". She decided to seek asylum abroad.

In another case, an LGBTI activist told Amnesty International that police threatened to arrest him after he reported that he had been assaulted by four men in a street in Tunis in late 2012. The men beat him, burned his arm with cigarettes and attempted to strangle him. At the police station, he was allowed to give a statement but advised to drop the case. The head

of the police station allegedly said, "It's a faggot story. We're not going to waste our time with that." The police officer reminded the activist of Article 230 of the Penal Code, which criminalizes same-sex consensual sexual relations, and told him to "go home" if he "wanted to live in peace".

Following the first assault, the activist received death threats when two groups believed to be associated with Salafists twice came to his house to tell him to seek repentance or face punishment. He moved to Sousse.

Because same-sex activity is criminalized, LGBTI survivors of sexual violence are less likely to report crimes and seek justice. They say that the risk of becoming the accused is far too great.

In late 2009, Hedi,[62] a 37-year-old gay man, was arrested and prosecuted for engaging in same-sex activity after he reported an assault. On 29 December 2009, he was pushed into his car by three men. He told Amnesty International that one of the men raped him in his car and stole his phone and money. In shock, he drove to a nearby police station to report the theft, and was referred to another station. While waiting, his boyfriend called him and he recounted the incident. When his boyfriend told him to avoid a medical examination, he started shouting, asking what he meant. He continued:

> *At that point, I noticed that a couple of police officers were listening in on my conversation and reported it to the others. Their attitude changed completely… After about 30 minutes, they brought the three men that had assaulted me. They had my phone. I heard shouting in the office and was then asked to come in and sign a statement. At that very moment, my parents were walking into the station. The police officer told my father to wait and said that I just had to sign and would be able to go home. I… signed the statement without reading it…*
>
> *I was arrested and placed in a cell at the police station. The three men that assaulted me were placed there as well. For two and a half days, I did not have the right to anything. I was not given any food, cigarettes, drinks, while those that attacked me were getting everything... On the fourth day I was taken to court and then transferred to Mornaguia prison [in Tunis]. There, a police officer asked me if I was ill. When I told him that I didn't understand, he said that if I was homosexual, I should be detained in another room.*

Hedi told Amnesty International that his statement had been changed to state that he had been engaging in consensual sex with the three men. He was sentenced to six months' imprisonment but was released four months later after his sentence was reduced on appeal. Hedi said that the detention experience ruined his life. Rumours about him spread in his workplace, prompting him to resign.

In another case, a 21-year-old gay student who was raped on 3 October 2015 by two men in a small town near Bizerte decided not to file a complaint. Activists who reported his case to

[62] Pseudonym.

Amnesty International said that he was too scared of prosecution and of further rejection by his family. The man told a journalist why he would not file a complaint: "Instead of the victim who should be protected, I would become the criminal who must go to prison."[63]

Gay men who report sexual assault usually conceal their sexual orientation to avoid police harassment. Chokri,[64] a 26-year-old gay man and salesman from Sfax, told Amnesty International:

> *Last year [2014], I was going out of a bar with a guy I did not know very well. He had pepper spray on him and forced me to get in a taxi with him. I was very scared. In the taxi, he kept touching me, and then asked the driver to stop to buy cigarettes. He got out of the car with my phone, and I begged the driver to leave. I went to the police and accused him of theft and attempted indecent assault. The police took my statement and eventually caught him. They did their job but harassed me at every stage of the investigation asking me why I dress the way I do. The guy tried to accuse me in court of being gay but I denied it, saying that I had no problems being subjected to a forensic examination [anal test]. He was eventually sentenced to eight months in prison.*

ABUSES BY POLICE

The criminalization of same-sex relations also makes LGBTI people vulnerable to abuses by the police, who often exploit their fears and subject them to blackmail, extortion and, at times, sexual abuse. Gay men are forced to pay bribes to escape arrest, even though the police have no "proof" of same-sex relations. Chokri explained:

> *Once the police know you're gay, they follow you. They harass you and make you feel that you are less of a human... Once I was with a 45-year-old man in a car. We were just chatting when the police came and started to interrogate us. We each had to pay 25 dinars [approximately US$13] so that they would let us go.*

Some gay men told Amnesty International that police officers exploit their vulnerability in order to harass and sexually abuse them. A 20-year-old student from Sfax described his experience:

> *Once, I was walking with a friend on the street in Sousse. I was wearing very attractive clothes, a low-cut shirt and tight trousers. I was wearing make-up and had blow-dried my hair. Two police officers stopped me and asked me for my ID card…They asked me what I was doing with a man aged 30. I said that he was just a friend. They then asked me what was up with my eyes and called me* "miboun" *["faggot"]. One of the police officer took me to his car and asked me the same questions… He started searching me, and while he was doing it, he was touching me up. When his assistant left, the police officer asked me for my number. Here in Tunisia, if you're gay, you live under police control.*

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[63] See Nawaat, *Moi, A.A. 21 ans, Violé et culpabilisé*, 17 October 2015, available at: http://nawaat.org/portail/2015/10/17/moi-a-a-21-ans-viole-et-culpabilise/

[64] Pseudonym.

Given that homosexuality in Tunisia is generally considered shameful, many LGBTI people do not reveal their sexual orientation or gender identity to their families and communities, and live in fear of being exposed. This makes them more prone to threats and blackmail. A gay man from Djerba told Amnesty International:

> *Once a police officer took my number and then kept calling me, harassing me and threatening me. He would say, "Be careful, I will tell your family." He would call me every time he drank, and ask me to come over to his place wanting to sleep with me. In Sousse, I still face threats but not as much as in Djerba. The police always come and ask me for money or for my phone. If I don't give it to them, they threaten me.*

Activists demonstrating at the first gay pride march in Tunis, March 2015 (Photo: Mawjoudin, We Exist)

CONSTRAINTS ON ACTIVISTS

The criminalization of same-sex activity constrains the work of LGBTI activists, undermining their efforts to prevent and address violence against LGBTI people on account of their gender identity or sexual orientation. It also prevents the establishment of adequate support structures and undermines LGBTI people's right to health, particularly in terms of HIV prevention.

Despite the positive reforms after the end of Zine El Abidine Ben Ali's rule in 2011, advocating for the rights of LGBTI people has remained difficult. In February 2012, the then Minister of Human Rights and Transitional Justice stated that "homosexuality was not a human right" and was a "perversion" that needed to be treated medically. Later that year, Tunisia rejected recommendations made at the Universal Periodic Review, a mechanism of the UN Human Rights Council, to amend or repeal Article 230 of the Penal Code and

decriminalize same-sex activity.[65]

There are only four registered NGOs working specifically on LGBTI rights in addition to one lesbian, bisexual and transgender organization.[66] At various times since 2011, their members have been threatened, harassed and forced to go into hiding or leave Tunisia in light of the authorities' failure to investigate threats and protect them.

The end of the transitional period and the formation of a new, more liberal coalition government in January 2015 was seen by many as an opportunity for ending discrimination against LGBTI people, and small steps have been taken since then to bring the debate on LGBTI rights to the public domain. In March 2015, a first gay pride march was organized at El Manar University Campus in Tunis as part of the World Social Forum. On 17 May 2015, small events were held in Tunis to mark the International Day Against Homophobia.

However, when Shams, an organization calling for the decriminalization of same-sex relations, announced the start of its activities the following day, it faced a media backlash and its members received threats. The Grand Mufti called on the government to review its decision concerning the registration of Shams, stating that the association was against Islamic values and the principles of Tunisian society. The government stated on 25 May that it granted Shams registration after confirming that the organization does not defend or promote homosexuality. It stated that Shams provides psychological, material and moral support to sexual minorities, including by preventing suicide amongst youths; works towards creating greater awareness of "sexually transmitted diseases"; and peacefully works towards repealing laws discriminating against sexual minorities.[67]

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[65] See Report of the Working Group on the Universal Periodic Review, Tunisia, A/HRC/21/5, 9 July 2012, available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-5_en.pdf

[66]Another organization was in the process of obtaining its registration at the time of writing. ATL MST SIDA, which has several branches across the country, provides legal and psychological support to LGBTI people in the context of its work on prevention of HIV and other sexually transmitted infections. The organization also works with sex workers and injectable drug users.

[67] See government's statement published on the website of Assabah News available at: http://goo.gl/ZgdSZr

5. PLIGHT OF SEX WORKERS

‘Once a police officer knows that you are working as a sex worker, he will exploit you, use you for sex and money. That’s because your work is criminalized.’

Sex worker speaking to Amnesty International, Sfax, March 2015

Some forms of sex work in Tunisia are legalized and regulated by the Ministry of Interior under a decree issued in 1942.[68] The decree defines a sex worker as: “A woman who offers herself in return for payment; a woman who keeps company with other prostitutes, a male or female procurer; a woman who acts provocatively with obscene gestures while curb crawling; a woman who spends time in the hotels, nightclubs, bars and theatres; a woman under the age of 50 who works as part of the cleaning staff in a brothel.”

Women who want to work as sex workers must register with the Ministry of Interior. They must work in licensed brothels in specific areas which they cannot leave without police authorization. They are given six to 10 days of leave a month corresponding to their menstruation cycles. They have mandatory, bi-weekly medical checks for sexually transmitted infections. They pay taxes and are considered to be employees of the Ministry of Interior. Under the same regulations, those who wish to leave their jobs must demonstrate their ability to earn a living through “honest” means, and obtain authorization from the police, creating barriers to those who want to leave sex work.

Sex work outside these regulations is criminalized under Article 231 of the Penal Code. Women “who, by gestures or words, solicit themselves to passers-by or engage in prostitution, even on an occasional basis” face six months to two years in prison in addition to a fine of up to 200 dinars (approximately US$102). The same punishment is prescribed for their clients. The sentence is harsher for facilitating the “debauchery or corruption of minors” (Article 234). Individuals involved in the operational aspects of sex work, such as those who facilitate or organize sex work, face up to three years’ imprisonment (Article 232); the penalty is increased to a maximum five-year prison term when it involves coercion (Article 233).

[68] Ministry of Interior Decree issued on 30 April 1942, Réglementation de la prostitution dans la Régence, Journal Officiel Tunisien No. 54, 5 May 1942.

Prior to the 2011 uprising, there were 11 brothels in Tunisia. Many were then forced to shut down after they were attacked by groups of perceived Salafists. Today, only two licensed brothels remain: one in Sfax, the other in Tunis. According to NGOs working with sex workers in the context of HIV prevention, many women have since turned to illegal sex work where they face greater risk of abuse and exploitation both from their clients and the police. Others have held protests and petitioned the authorities asking for the brothels to be reopened.[69]

Ransacked and vandalized red light district in Sousse's old city (Photo: Hassan Morajea)

VULNERABILITY TO ABUSE

The stigma and discrimination around sex work make sex workers particularly vulnerable to sexual and gender-based violence. The criminalization of their activities also makes them vulnerable to abuses by police and prevents them from speaking out and seeking judicial remedies. Sex workers working illegally are often raped or extorted by the police. Some sex workers are afraid to report this abuse for fear that they might be prosecuted or exposed to family members as a sex worker.

A group of eight sex workers who work illegally in Sfax told Amnesty International that they were routinely harassed, exploited, blackmailed and subjected to extortion by the police.

[69] See for example Jeune Afrique, "Prostitution: islamistes et maisons closes, le blues des filles de joie tunisiennes", http://www.jeuneafrique.com/133742/societe/prostitution-islamistes-et-maisons-closes-le-blues-des-filles-de-joie-tunisiennes/

They also said they faced insults and humiliation, beatings and sexual assault by the police.

A woman interviewed in Sfax by Amnesty International in March 2015 said:

> *The police always stop and question you. They take your number and then call you all the time. You are forced to go with them and their friends. They take your money and pay much less. Once a police officer knows that you are working as a sex worker, he will exploit you, use you for sex and money. That's because your work is criminalized.*

In many instances, police question and arrest women on suspicion of sex work merely on the basis of their appearance or their past history rather than observed illegal activity. Some women explained that, at times, being seen in a car or in a coffee shop with a man, in particular foreigners who are perceived to come to Tunisia for sex tourism, is enough for the police to question you. The police also arrest or threaten to arrest suspected sex workers on the basis that they have condoms.

A 24-year-old student from Sidi Bouzid who works as a sex worker to support her studies described to Amnesty International how she was once arrested after the police searched her bag and found condoms:

> *I was in a car with a man and we were driving out of Sfax. The police stopped us, asked us for our identity cards and then searched my bag. They saw that I was carrying lots of condoms. They asked me about my relationship with the man and I said that he was my boyfriend, but he denied and told them that he did not know me. They took us both to the police station… I managed to get out by bribing the police. The police who arrested me called me a "whore" and said that I had no right to defend myself. When they were searching me they were groping my breasts. They think that everything is allowed and that you are nobody because you work as a sex worker.*

LAWS CRIMINALIZING ADULTERY

Under Article 236 of the Penal Code, adultery committed by either spouse is punishable by a five-year prison term and a 500 Tunisian dinar (approximately US$255) fine.

Charges can only be brought by one of the spouses, who can terminate proceedings at any time. The same sentence is applied to the accomplice of either the husband or the wife. If adultery is committed in the marital home, the sentence cannot be reduced under mitigating circumstances as provided by Article 53.

While the Penal Code does not discriminate against women with regards to the punishment, Amnesty International believes that adultery laws disproportionately impact women in practice, reinforce harmful gender stereotypes, and, in some cases, deter rape victims from reporting the crime due to fear of being prosecuted if they fail to prove rape.

A 25-year-old married woman from Sfax told Amnesty International in March 2015 that she has been subjected to sexual abuse, blackmail and exploitation by the same police officer since 2012 when he found out that she worked as a sex worker. The police officer threatened to report her activities to her family, accuse her of prostitution and tell her husband that she had committed adultery (punishable by five years in prison and a fine). She explained that

she started working as a sex worker to support her family when her husband was imprisoned but that she kept her activities secret. She described her experience:

> *I had just left a client and was in a taxi on my way home... The police stopped the taxi and asked for the driver's ID and car registration papers. I was wearing a low-cut shirt and the police officer noticed that I was drunk. He asked to check my bag, and noticed the condoms and the money. He immediately knew that I was a sex worker. He told the taxi driver to follow him to the police station. He sat in the car next to me and told me, "Either you come with me or you end up at the police station." I agreed and went to his house, which was next to the police station. He wanted anal sex, but I refused saying that it was forbidden by religion. He did not care and did it twice.*
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> *This happened three years ago, but since then he continues to exploit me. He has my number and my address. If I don't answer he calls me at home... Whenever he wants to see me, he calls me and I have to go otherwise he threatens to tell my family that I work as a sex worker. He takes my money as well. He forces me to sleep with his friends as well. I need to do whatever he wants me to do. I can't complain because he is a police officer. He keeps threatening me that he will go to prison to tell my husband so that he accuses me of adultery. I could face five years in prison, and my husband would get the custody of our child. This is a police state, and they can do anything they want. They're not scared of anything.*

For some sex workers interviewed by Amnesty International, police practices have not changed since the 2011 uprising and they believe they will continue as long as there is no real accountability. One sex worker told Amnesty International that she lost all faith in the criminal justice system after she was raped by four police officers at the Bardo police station in Tunis in 2003. She recalled her experience:

> *I was with my son, aged seven at the time, in a café known to be frequented by sex workers. Police officers came in and asked me for my ID, which I gave them. They asked me to follow them to the police station. I thought that everything would be fine... They then locked my son in a different office, and then showed me a video of a woman having sex with a group of men and asked me if I would do the same. The head of the police station kicked me in my mouth and broke my tooth, and then raped me. Then, two other officers, including the deputy head of the police station and an investigator, did the same. Another officer was drinking and filming as the others were raping me. They were all drunk. I was screaming the whole time and could hear my son scream from the other room.*

LGBTI SEX WORKERS

LGBTI people in Tunisia are often rejected by their families and communities as soon as their gender identity and sexual orientation become known. They are then forced to leave their home or decide to live by themselves after suffering violence and discrimination from their family members. Regardless of the reasons, they rarely, if ever, find support from state institutions, and are forced to rely on friends and activists. In the absence of shelters and an established support system, those most marginalized often end up working as sex workers or drag queens in order to make a living. They often do so because they experience discrimination when trying to find a job or in the workplace. The stigma and discrimination

around gender identity and sexuality, as well as sex work, increase the risk of violence, including rape and sexual assault, by their clients and the police.

Gay and transgender sex workers are doubly criminalized because of their status as sex workers and their sexual orientation or gender identity. A 24-year-old man from Sfax who identifies himself as travesti was sexually abused at the age of nine. He told Amnesty International that, although the perpetrator was arrested and sentenced, he was harassed in his community, forcing him eventually to leave home. He then started working as a sex worker:

> *At first my family was supporting me. My father complained about the person who abused me, but then people started talking saying that I am not a man, that I am a "faggot". You see, homosexuality in Tunisia is considered shameful. So my family kicked me out of the house when I was 16. I did not have a place to go to so I went to a hotel that costs three dinars a night. It is so cheap because many men sleep in the same room. There, either you accept to sleep with someone or they assault you. It was very difficult for me to find work. My hair was long at the time and I appeared quite effeminate. Every three or four days, people would fire me, as soon as they found out that I am gay. The police would assault me all the time; they would beat me. The only place where I could find work was a brothel where gay men usually work as cleaners, but I did not want to do that. I started working as a drag queen. I was raped numerous times… Once, in Sousse, I was raped by a group of six to seven men. One of them kept putting out cigarettes on my right side.*
>
> *I've never once complained to the police because they monitor all my activities and I'm scared that they would not protect me from further attacks… I've also been abused by police officers who know what I do. Once, I was detained in a police station for two nights… I was walking on the street when a Libyan man driving in a car stopped and started to talk to me. The police came and started questioning us, how we know each other. When I said that I did not know the man's name, they arrested me, accusing me of prostitution. I escaped from being prosecuted after I accepted a police officer's proposition, who told me, "Either you sleep with me, or you stay." That police officer had approached me a number of times before but I had always refused.*

CRIMINALIZATION OF CONSENSUAL SEX WORK

Criminalizing the buying or selling of adult consensual sex work, or elements of these transactions that do not involve acts of exploitation, violence or coercion (such as abuse of authority), threatens the rights to liberty, security of person and health. In particular, these rights are undermined when sex workers face extortion and violence at the hands of state agents, including police officers, as is the case in Tunisia, and when they are forced to work in a precarious, clandestine manner due to the criminalization of their activities. These rights are also implicated when criminalization prevents sex workers from seeking police protection and redress from violence and crimes, and where sex workers are detained through the enforcement of laws that are overly broad and vague, in violation of the human rights principle of legality.

Additionally, detention of sex workers can amount to arbitrary detention, even when authorized by law, if it is conducted in a manner that includes "elements of

inappropriateness, injustice, lack of predictability and due process of law". Along these lines, the UN Human Rights Committee has determined that legally authorized detention must be reasonable, necessary and proportionate taking into account the specific circumstances of a case.[70]

Criminalization of adult consensual sex work has increasingly been recognized as a human rights concern, particularly with regard to the rights to health, equality and non-discrimination. The UN Special Rapporteur on the right to health has explicitly called for decriminalization of sex work.[71] The Global Commission on HIV and the Law, an independent body convened by the UN Development Programme on behalf of the Joint United Nations Programme on HIV/AIDS (UNAIDS), has made the same call.[72]

Notably, the UNAIDS Advisory Group on HIV and Sex Work has recommended that:

> *States should move away from criminalising sex work or activities associated with it. Decriminalisation of sex work should include removing criminal penalties for purchase and sale of sex, management of sex workers and brothels, and other activities related to sex work. To the degree that states retain non-criminal administrative law or regulations concerning sex work, these should be applied in ways that do not violate sex workers' rights or dignity and that ensure their enjoyment of due process of law.*[73]

Similarly, the World Health Organization (WHO) calls for all countries to "work toward decriminalization of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers."[74] Finally, the CEDAW Committee has stressed that

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[70] See Human Rights Committee, Comm. No. 305/1988, *Van Alphen v. The Netherlands*, UN GAOR, 39th Sess., para. 5.8, UN Doc. CCPR/C/39/D/305/1988 (1990); Human Rights Committee, Comm. No. 560/1993, *A v. Australia*, UN GAOR, 59th Sess., para. 9.2, UN Doc. CCPR/C/59/D/560/1993 (1997).

[71] Human Rights Council, Report of Anand Grover, UN Doc. A/HRC/14/20, pp. 46-50.

[72] "Rather than punishing consenting adults involved in sex work, countries must ensure safe working conditions and offer sex workers and their clients' access to effective HIV and health services and commodities. Countries must: Repeal laws that prohibit consenting adults to buy or sell sex, as well as laws that otherwise prohibit commercial sex, such as laws against "immoral" earnings, "living off the earnings" of prostitution and brothel-keeping. Complementary legal measures must be taken to ensure safe working conditions to sex workers." Global Commission on HIV and the Law, *Risks, Rights and Health* (hereinafter *Risks, Rights and Health*), p. 43. Notably, the Global Commission on HIV and the Law deliberated over a two-year period, undertaking extensive analysis and research, including seven regional dialogues, on the links between legal frameworks, human rights and HIV.

[73] *The Report of the UNAIDS Advisory Group on HIV and Sex Work,* p. 8. The report makes clear that its recommendation relates to buying as well as selling sex.

[74] HIV/AIDS Programme, *Prevention and Treatment of HIV and Other Sexually Transmitted Infections for Sex Workers in Low- and Middle-Income Countries: Recommendations for a Public Health Approach* (Geneva: World Health Organization, 2012), p. 8. The International Labour Organisation (ILO) has also called on governments to recognize sex work as an economic sector and "a legal occupation with protection under labour law" and social security and health regulations. See Lin Lean Lim (edited by),

women belonging to vulnerable and disadvantaged groups, including sex workers, should be given special attention in terms of addressing their health needs.[75]

The Sex Sector: The economic and social bases of prostitution in Southeast Asia, International Labour Office (ILO), Geneva, 1998.

[75] See CEDAW Committee, General Recommendation 24, available at: http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm

6. OBSTACLES TO JUSTICE

‘I did not complain because my family would have kicked me out of the house’

A woman who was raped by four men when aged 17

Over the years, the Tunisian authorities have taken positive steps to combat violence against women, including by acknowledging the importance of tackling the issue, adopting a national strategy and carrying out some legislative reforms. Despite this, Amnesty International has identified a wide range of obstacles faced by survivors of sexual and gender-based violence. These include: discriminatory police attitudes; fear of prosecution under laws criminalizing indecent behaviour, adultery and same-sex consensual relations; evidentiary challenges; lack of access to support services, including counselling, women’s shelters and legal advice; economic barriers; social stigmatization and shame; and police impunity and distrust in the criminal justice system.

Two of the key obstacles to justice are under-reporting of sexual violence, and low convictions rates for rape. According to the Ministry of Foreign Affairs, there were 222 reports of rape and attempted rape in 2014. Of these, 87.4% were filed by women and girls. This compared to 216 rapes registered in 2013, 177 in 2012, 191 in 2011 and 215 in 2010.[76] The real numbers, however, are likely to be much higher.[77] According to the Ministry of Justice, 100 individuals were convicted of rape in the 2012-2013 judicial year, 89 in 2011-2012, 138 in 2010-2011, 248 in 2009-2010 and 329 in 2008-2009; it is not clear when the crimes were perpetrated.[78]

UNDER-REPORTING OF VIOLENCE

Social stigma attached to sexual violence and the fear of family rejection are among the main reasons why survivors tend not to report the crimes. Instead of seeking help and justice,

[76] Fax sent to Amnesty International by the Tunisian Ministry of Foreign Affairs’ General Directorate for International Organizations and Conferences, Human Rights Directorate, on 16 May 2015, responding to the organization’s request for statistics on rape and other forms of sexual violence, including sexual harassment, addressed to the Ministry of Interior on 12 March 2015.

[77] For example, a doctorate thesis conducted at the forensic department in Sfax registered 519 cases of sexual violence between 2009 and 2012 in the Sfax region alone. Jamel Wazzani, *Etude medico-legale d’aggressions sexuelles dans la region de Sfax sur 519 cas* (2009-2012).

[78] Presentation by Samia Doula, Ministry of Justice, 19 January 2015.

many survivors prefer to suffer in silence than bring shame on the family.

A 24-year-old student who was raped by four men in 2009 when she was 17 told Amnesty International:

> *I did not complain because my family would have kicked me out of the house. Their first question would have been – how come I went out with someone who is not related to me? I already lost myself when they raped me. I couldn't afford to lose my family as well.*[79]

Women's rights defenders and organizations working with survivors of sexual violence told Amnesty International that family support is essential for those seeking to access justice through a system that discriminates against survivors. In many cases, however, women who confide in their female relatives are told to keep the assault a secret because they fear that male relatives may react with violence against them.

The situation is perhaps most difficult for women who become pregnant as a result of rape. Single mothers are stigmatized in Tunisia and perceived as bringing shame on the family. The head of a shelter for abandoned new-borns in Gafsa explained to Amnesty International that, in most cases, women who decide to abandon their child had become pregnant while studying or working away from home. They tend to keep their pregnancy quiet until the final weeks, or inform their mother, who keeps it a secret from the male members of the family out of fear for her daughter's life. In other cases, women face complete rejection and are forced to leave the home. Little consideration is given to the circumstances in which women become pregnant.

A 25-year-old woman, who became pregnant after she was raped by her boyfriend, told Amnesty International that her mother forced her to abandon her baby. Although she had been raped, her mother blamed her for getting pregnant and was primarily concerned with concealing her pregnancy. The woman told Amnesty International:

> *Due to financial problems, my family sent me to work as a seamstress in Sousse. I had been working there for about eight to nine months when I met a man who promised to marry me… He made me lose my virginity. For two days after I did not move from my bed. He then told me that he filmed us having sex and that he would show it to people if I did not sleep with him again. He forced me to sleep with him again… I stopped seeing him after this…*
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> *When I went home, my mother started suspecting something … When my mother heard [I was pregnant], she beat me and took away my phone. She destroyed the SIM card so I lost all contact with the baby's father. My mother is the only one who knows about the pregnancy. She found me a place to stay with a woman until I deliver the baby, but then I had to leave because people found out that she was hosting a single pregnant woman, so I was placed in this shelter. Everyone still thinks that I am working in Sousse. My*

[79] Amnesty International interview, 17 March 2015.

older brother would kill me if he found out that I am pregnant.

Indeed, society's reaction to survivors of sexual violence can be particularly harsh. An 18-year-old woman who was raped by five men when she was only 13 told Amnesty International that, after she filed a complaint, she became isolated in her village and faced constant harassment. She recounted her daily ordeal:

> *I don't have any friends, even in class I am always alone. I don't talk to anyone. Boys call me on my phone or shout at me on the street. They tell me, "Come with me and I will give you what you want." They also send me messages via Facebook. One man even sent me pornographic photos. I keep hearing people talking all the time about me... I have started to hate my village.*

INADEQUATE LAWS

Despite some positive amendments to the Penal Code, sexual violence continues to be addressed in the framework of crimes against "decency" rather than a violation of an individual's bodily integrity and sexual autonomy. Further, Tunisian legislation criminalizing rape and sexual assault is restrictive, gender specific and fails to define the act of rape in a manner consistent with international human rights law and standards.

Under Article 227 of the Penal Code, anyone who engages in sexual relations with a female without her consent through the use or threat of use of violence or arms is punished by death. The Article imposes the same penalty on anyone who engages in forcible sexual relations with a girl under the age of 10 without the use or threat of use of violence. In all other cases, sexual relations without the consent of a female – set at the age of 13 – which do not involve the use or threat of use of violence and arms are punished by life imprisonment.

The definition of rape in Article 227 is generally understood as the non-consensual penetration of the vagina by the penis. Such a definition is inconsistent with human rights principles according to which rape also includes the penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ or of the anal or genital opening of the victim with any object or any other part of the body.[80] By defining rape as "forcible sexual relations with a female", the definition also excludes the possibility of rape of men and boys.

Tunisian legislation also requires rape to be perpetrated with the use or threat of force, while international standards recognize that rape may be committed through coercion caused by fear of violence, duress, detention, psychological oppression or abuse of power, or by taking advantage of a coercive environment, or when a person is incapable of giving genuine consent.[81] Article 227 only considers that genuine consent is impossible for children under

[80] See the definition of rape as included in International Criminal Court, *Elements of Crime*, 2011, available at: http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf

[81] See the definition of rape as included in International Criminal Court, *Elements of Crime*, 2011,

the age of 13, but fails to recognize other circumstances that might affect decision-making, such as evolving capacities, significant difference in age, mental illness or intoxication. Importantly, it fails to explicitly recognize marital rape as a crime.

Amnesty International believes that rigidly enforcing a specific age at which people are considered legally capable of consenting to sex in all cases fails to acknowledge that people develop at different rates and the evolving capacities (particularly with regard to sexual decision-making) of the individuals involved. This can lead to unjust punishment of adolescents who are close in age to their sexual partners and engaged in mutually agreed sexual activity. Such a strict application of punitive laws can violate the human rights of adolescents. In line with the CRC, the best interests of the child should be the primary consideration and laws should provide a range of safeguards against child abuse.

Whilst rape and other sexual crimes must be taken seriously by the authorities, there is no convincing evidence that the death penalty (the punishment prescribed by the Penal Code for "non-consensual sex committed with violence") deters such crimes. Amnesty International opposes the death penalty under all circumstances and for all crimes, as the ultimate, cruel and degrading punishment and a violation of the right to life. It should not be used to address inadequate laws and policies, and effective policing, of crimes.

The Penal Code also fails to define other forms of sexual violence such as sexual assault, aggravated sexual assault or inappropriate touching. However, such acts may be prosecuted as "indecent assaults" under Articles 228, 228bis and 229. The term "indecent assault" is not clearly defined, but it is generally applied to criminalize non-consensual sexual conduct which does not meet the Tunisian definition of rape. It therefore allows for the prosecution of the rape of men and boys, and is often applied to prosecute non-consensual anal sex in the context of marital rape (see Chapter 2).

According to the Ministry of Foreign Affairs, some 180 cases of "indecent assault" with the use of violence were registered in 2014. Of these, 56.1% were reported by men and boys. A further 55 cases of "indecent assault" without the use of violence were registered in 2014. Of these, 33 were filed by men.[82]

"Indecent assault" without consent against a man or a women is punishable by up to six years' imprisonment under Article 228. The sentence is doubled if the victim is aged under 18. The punishment for "indecent assault" is increased to a life sentence if committed with the use of weapons, threats or detention or in cases where the victim was mutilated, disfigured or if the victim's life had been endangered. A five-year prison term is provided under Article 228bis for "indecent assault" attempted or committed without violence against

available at: http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf; See also Amnesty International, *Rape and sexual violence: Human rights law and standards in the International Criminal Court* (Index: IOR 53/001/2011), March 2011, http://www.amnesty.org/en/library/info/IOR53/001/2011/en

[82] Fax sent to Amnesty International by the Tunisian Ministry of Foreign Affairs' General Directorate for International Organizations and Conferences, Human Rights Directorate, 16 May 2015.

a child. Under Article 229, prison terms provided for in Article 228 and 228bis are doubled if the perpetrator is related to the victim, or holds a position of authority over a victim being his or her teacher, servant, doctor or dentist, or whenever there are multiple assailants.

The Penal Code importantly provides for aggravating circumstances relating to the relationship between the survivor and the assailant, the social position of the perpetrator, the presence of multiple perpetrators, the use or threat of force, and the physical consequences of the attack on the victim, in accordance with international standards. However, use of force or violence should not be required in law or in practice as an essential element for rape or aggravated rape.

LAWS CRIMINALIZING INDECENCY AND SEXUAL HARASSMENT

Articles 226 and 226bis of the Penal Code provide a six-month prison term for indecency and undermining public morals. Both provisions are overly broad, and fail to define what constitutes such acts. As a result, they give the authorities leeway to not only restrict freedom of expression but also prosecute individuals who are perceived not to conform to established gender stereotypes or social norms.

In the highly publicized case, Meriem Ben Mohammed, who was aged 27 at the time of the incident, was charged with indecency under Article 226 after she filed a complaint against two police officers whom she accused of rape on 4 September 2012. When she reported the crime the following morning, she was discouraged for hours by police officers from filing a complaint, including by her rapists who harassed her and her fiancé at every stage of the procedure, threatening her that the reputation of her family would be ruined if she went ahead. Meriem was eventually coerced into signing a false statement in which she admitted that the police officers caught her and her fiancé having sexual intercourse in her car in the middle of the night. Although she subsequently retracted her statement, both her and her fiancé were charged with indecency. The investigating judge eventually dismissed the case on 29 November 2012 for a lack of evidence, and the police officers were prosecuted and convicted for rape. However, Meriem recounted the experience as traumatic and said that it only increased her feeling of shame and responsibility.[83]

In 2004, a campaign led by Tunisian women's rights defenders resulted in amendments to the Penal Code to criminalize sexual harassment. Under Article 226(3), sexual harassment is punishable with one year in prison and a 3,000 dinar (approximately US$1,537) fine. The sentence is doubled if the crime is committed against a child or an individual in a vulnerable position due to "mental or physical deficiency". While a welcome step, the definition of sexual harassment fails adequately to protect victims as it is limited to the perpetrator's intent of making the victim submit to his or her sexual desires instead of recognizing the harmful nature of the behaviour in itself.[84]

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[83] See Amnesty International Report 2015/2015, available at: https://www.amnesty.org/en/countries/middle-east-and-north-africa/tunisia/report-tunisia/

[84] Article 226(3) defines sexual harassment as any persistent behaviour which embarrasses another person through "the repetition of acts, words or gestures likely to harm that person's dignity or affect his or her decency with the aim of compelling the person to submit to the sexual desires" of the offender or

International standards require states to adopt comprehensive legislation on sexual harassment which covers all spheres of public life. They for instance define sexual harassment as unwanted sexually determined behaviour, including physical contact, sexual advances and demands, which is perceived by the subject as intimidating, hostile, humiliating and degrading.[85] In the context of employment, such behaviour is considered discriminatory if the victim of sexual harassment has reasonable grounds to believe "that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment."[86] In addition to being inconsistent with international standards, the requirement to prove intent by the alleged perpetrators as included in Article 226(3), renders the survivor's experiences of humiliation and intimidation irrelevant. Further, the legislation fails to recognize sexual harassment as a form of discrimination persistent in both horizontal and vertical relationships, including in the workplace and in public places.

Also, in case of dismissal or an acquittal, under Article 226(4) anyone accused of sexual harassment may request reparation for damage incurred whilst maintaining the right to initiate a defamation lawsuit. Under Tunisian legislation, defamation is a criminal offence punishable with up to two years' imprisonment and a fine.[87] Despite the apparent prevalence of sexual harassment in the public sphere, especially at universities and on public transport, reporting and conviction rates appear to be low. According to the Justice Ministry, during the 2012-2013 judicial year, there were only 14 convictions for sexual harassment.[88] The Tunisian authorities said the low reporting rate was the result of fear or shame.[89] However,

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the sexual desires of others, "or by exerting pressure as to weaken the person's will to resist such desires".

[85] See CEDAW Committee, General Recommendation No. 19 (11th session, 1992), para. 18 on sexual harassment. See also Council of Europe, *Convention on preventing and combating violence against women and domestic violence* (Istanbul Convention), Article 40 on sexual harassment.

[86] See CEDAW Committee, General Recommendation No. 19 (11th session, 1992), para. 18 on sexual harassment.

[87] Article 125 of the Penal Code stipulates imprisonment of up to one year and a fine for anyone found guilty of insulting a public official while conducting his or her job. Article 128 provides for a two-year prison sentence and a fine for anyone who accuses a public official through any means of committing an illegal act without evidence. Articles 245 and 247 allow for a six-month prison sentence for charges of defaming individuals or public officials and institutions.

[88] Presentation by Samia Doula, Ministry of Justice, 19 January 2015. According to information provided by Tunisia to the CEDAW Committee in 2010, there was only one conviction for sexual harassment during the 2008-2009 judicial year, for which the penalty consisted of a fine of 1,000 dinars (approximately US$511). See CEDAW Committee, *Written replies from the Government of Tunisia to the list of issues and questions (CEDAW/C/TUN/Q/6) with regard to the consideration of the combined fifth and sixth periodic reports (CEDAW/C/TUN/5-6),* CEDAW/C/TUN/Q/6/Add.1, 4-22 October 2010.

[89] See CEDAW Committee, *Written replies from the Government of Tunisia to the list of issues and questions (CEDAW/C/TUN/Q/6) with regard to the consideration of the combined fifth and sixth periodic reports (CEDAW/C/TUN/5-6),* CEDAW/C/TUN/Q/6/Add.1, 4-22 October 2010.

women's rights defenders told Amnesty International that the fear of prosecution for defamation (which is prosecuted as a criminal rather than civil matter) deters women from filing complaints. In 2010 the CEDAW Committee called on Tunisia to amend the definition of sexual harassment to bring it into line with the CEDAW Committee's General Recommendation No. 19.[90]

EVIDENTIARY CHALLENGES

Judges, lawyers and forensic doctors interviewed by Amnesty International acknowledged that the difficulty in obtaining evidence is a major challenge facing survivors in accessing justice.

Overall, the state places the responsibility on the plaintiff to prove that they were a victim of a crime and the survivor and their lawyers are forced to gather evidence by themselves. The judicial police appear not to make sufficient efforts to launch investigations to identify perpetrators and uncover evidence in cases where complaints are filed against unknown persons.[91] In cases where the identity of perpetrators is known, regardless of whether they involve sexual assault or domestic violence, similar concerns persist about the thoroughness of investigations. Police officers rarely, if ever, investigate the crime scene to collect material evidence or witness statements. Further, in cases of family violence, witnesses are often unwilling to testify out of fear or in order not to get involved in what is perceived as family and therefore a "private affair".

An additional complication for cases involving sexual violence is the restrictive definition of rape, which has given rise to a perception that if there are no signs of violence, the rape did not occur.[92]

In order to establish proof of sexual or gender-based violence, survivors are required to obtain a medical certificate known as the CMI (certificat médical initial). The CMI, which is a forensic medical report, can only be obtained from a public institution, and must be requested by a police officer, judge or local authority representative such as a mayor or governor. In addition to recording the physical harm suffered by the survivor and including his or her account of the violence, for cases of physical assault, the examining doctor must establish whether the violence has resulted in any long-lasting medical consequences or any incapacity for work.[93] The estimated duration of recommended rest or the "total incapacity

[90] See CEDAW Committee, Concluding Observations of the Committee on the Elimination of Discrimination against Women, 22 October 2010, CEDAW/C/TUN/CO/6, available at: http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-TUN-CO-6.pdf

[91] Criminal investigations fall within the remit of the judicial police, which operates under the Ministry of Interior but sits within the Ministry of Justice. In general, the ability of the judicial police to collect evidence is limited and in many cases, investigations rely on confessions. See United States Institute of Peace, *Security Sector Reform in Tunisia, A year after the Jasmine Revolution*, March 2012, available at: http://www.usip.org/sites/default/files/SR304.pdf

[92] Amnesty International met forensic specialists in March 2015 at Habib Bourguiba Hospital in Sfax, Charles Nicolle Hospital in Tunis and Houcine Bouzaiene Hospital in Gafsa.

[93] The purpose of the CMI is set out under Directive 72/2000 issued by the Ministry of Public Health.

for work" provides a basis for determining the nature of the offence (crime or misdemeanour) and establishing the length of the sentence under the Penal Code.[94]

As a result, survivors of sexual and gender-based violence are required to first report the crime to the police or a prosecutor, after which they are referred for medical examination, which can be carried out by a forensic doctor, a gynaecologist or an accident and emergency doctor. Forensic doctors are unable to examine a victim without a referral. Such a requirement is especially problematic in cases of sexual violence as it leads to delays, which can result in the loss of evidence. Further, forensic doctors are unable to provide medical treatment, which means that survivors often undergo multiple medical examinations.

The separation of treatment from evidence collection not only violates the right to health but can lead to further physical and mental trauma for victims. Forensic specialists interviewed by Amnesty International explained that, while there is no obligation for the initial medical examination to be carried out by a forensic doctor, judges often request a forensic examination during the proceedings as they are considered to be more authoritative.[95] Such a request, however, can be ordered days or weeks after the crime at which point the evidence would have disappeared.[96]

During the examination, forensic doctors are often required to assess whether the survivor is a virgin, if she is used to sexual intercourse, and the types of physical wounds suffered. The World Health Organization (WHO) has clearly stated that virginity testing has no scientific validity and should not be used under any circumstance during the medical examination of victims of sexual assault.[97] Amnesty International believes that such tests can lead to further stigmatization of survivors.

One of the main challenges to preserving evidence is the lack of sufficient training of medical professionals on collecting forensic evidence in cases of sexual violence. Forensic specialists are usually trained on WHO guidelines on the collection of evidence in cases of sexual violence,[98] but there are only four medico-legal centres in hospitals – one each in Tunis, Sousse, Monastir and Sfax. Only five other forensic specialists work in hospitals in the rest of

[94] Article 219 of the Penal Code imposes a five-year prison term for assault and battery resulting in maiming, loss of use of a limb, disfigurement, infirmity or permanent incapacity which does not exceed 20%. In cases where the permanent incapacity exceeds 20%, the punishment is increased to six years. The penalty is increased to 12 years if the perpetrator is the victim's descendant.

[95] Amnesty International interviews with forensic specialists at Habib Bourguiba Hospital in Sfax, Charles Nicolle Hospital in Tunis and Houcine Bouzaiene, March 2015.

[96] For instance, according to a thesis defended at the Faculty of Medicine in Sfax, only 51% of 519 victims of sexual violence examined at the medico-legal centre at Habib Bourguiba Hospital in Sfax between 2009 and 2012 were examined within three days of the assault.

[97] See WHO, *Healthcare for women subjected to intimate partner violence or sexual violence, A clinical handbook*, 2014, p. 46.

[98] At the medico-legal centre in Charles Nicolle Hospital in Tunis, only senior doctors are allowed to examine victims of sexual violence. All cases raising doubts are co-signed by two forensic specialists.

the country – in Nabeul, Gabes, Kessrine, Gafsa and Kairouan – and some cover more than one governorate. As a result, survivors are sometimes forced to travel long distances to undergo a forensic examination, and the associated costs can deter survivors from filing complaints.

Further, at present, medico-legal services are only available for consultation during the day, which means that survivors abused during the afternoon or at night must wait until the following day for examination, or are referred to accident and emergency departments where, according to forensic specialists, the collection of evidence is inadequate.

At the time of writing, the medico-legal unit at Habib Bourguiba Hospital in Sfax was the only centre that runs a specialized, daily consultation for survivors of sexual and gender-based violence. In 2014, the unit examined 171 survivors of sexual violence, including 91 children.[99] Indeed, all women who file a complaint of sexual or physical assault are referred to the centre. According to forensic doctors, this allows for a better preservation of evidence and follow-up in terms of survivors' access to justice. Still, just like in other medico-legal centres, examinations are only carried out until 2pm.

In the case of Meriem Ben Mohammed (see above), she was refused medical examinations on two occasions – once at a private clinic, which was located near the scene of the assault, and once at the gynaecological department of Charles Nicolle Hospital – before she was told that she needed to first file a complaint with the police, and come back the following morning to the medico-legal unit.

DISTRUST OF THE CRIMINAL JUSTICE SYSTEM

Impunity for security forces remains a serious concern in Tunisia. Attempts to reform the security sector following the 2011 uprising have been inadequate, and there has been little accountability so far for abuses perpetrated under Zine El Abidine Ben Ali's rule. According to a survey by Transparency International in 2013, 56% of respondents in Tunisia felt that the judiciary was either corrupt or very corrupt, and 69% believed that the same was true about the police.[100] Survivors of sexual and gender-based violence feel even more distrustful of state institutions because of their discriminatory attitudes.

Police attitudes appears to differ according to the profile of the victim, the geographic location and the position of the accused in society. While some survivors told Amnesty International that they did not experience any delays in obtaining referrals for medical examination, others reported that they were discouraged from filing a complaint, especially in cases involving family violence. Pressure appears to be the greatest in smaller cities and towns where perpetrators can influence the police through personal or social connections.

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[99] Presentation by Dr Samir Maatoug, "Violences sexuelles chez le mineur, Professeur en médecine légale à la faculté de médecine de Sfax, Chef du service de médecine légale du CHU H. Bourguiba de Sfax", March 2015.

[100] See Transparency International, Tunisia national survey results, available at: http://www.transparency.org/gcb2013/country/?country=tunisia

Anecdotal evidence suggests that when violence occurs amongst the most marginalized social groups, the police fail to intervene and investigate the crimes.

A woman who lives in Mellassine, a poor neighbourhood in Tunis, described to Amnesty International the police's attitude after she filed a complaint against her neighbour whom she accused of sexually assaulting her in 2014:

> *Once I complained when my next-door neighbour tried to rape me, but the police did nothing. I was living in a shared house at the time. My son and I were sharing a room, and a married couple were living in the room next door. My neighbour was in his room drinking while his wife was out. He was drunk and came into my room and tried to assault me in front of my son. It happened in 2014. He insulted me, and then jumped on me in front of my son. His wife came back and turned against me as well. I went to the police station and complained of sexual assault. I made seven statements in front of police officers. My son recorded the man's voice as he was insulting me. We gave the recording to the police but they did not do anything. It turned out that the neighbour had some friends who were police officers.*

Other survivors also reported police corruption. They said that police officers had either changed their statements or failed to transfer their complaint to the court.

A 40-year-old woman from Sfax who lodged a complaint against her husband after he beat her in December 2011 told Amnesty International in March 2015 that, although she gave the police a medical certificate, proceedings were not initiated. She alleged that her husband used his personal connections to avoid prosecution:

> *We were walking in the street and he slapped me on the face… When we entered the house, he started punching me on the head and the face and beating me with his shoe. My eye was completely blue… I complained at the police station, and got a medical certificate after which the police summoned my husband. But the police officer was a friend of his and nothing happened.*

In other cases, women reported complicated legal procedures and lack of information on the progress of investigations, and said that it undermined their willingness to seek judicial remedies.

In September 2015, a 34-year-old woman described to Amnesty International the obstacles she faced when she sought judicial redress after a man groped her on a street in Tunis in late 2013:

> *The man was eventually arrested and I was able to give my statement. I called a lawyer and he advised me to come back two or three days later to get the new case number after it had been referred to the court. At the police station, they told me that they could not find my statement… I learned that the man who assaulted me was released. The case was eventually referred to court but no one would give me any information on the date of the hearing. At the court, they would tell me to come back every two to three weeks to get an update, and so I did, but they set the date of the hearing in between my visits, and I missed it. The man was sentenced to two months in prison in his absence.*

He was not even convicted of sexual harassment but of "intentionally disturbing others in a manner which undermines decency". I never got to be there.

7. INADEQUATE SERVICES FOR SURVIVORS

‘We think about how we should punish the perpetrator but forget about what happens to the victim’

Forensic specialist speaking to Amnesty International, Sfax, March 2015

Existing social and health services for survivors of sexual and gender-based violence are limited and inadequate, mainly due to a lack of financial resources. Among other things, survivors of rape face difficulties accessing pregnancy prevention and psychological care. In addition, lack of protection mechanisms, including shelters for abused women, leaves survivors vulnerable to further violence.

HEALTH AND SUPPORT SERVICES

The Tunisian authorities have yet to establish comprehensive and integrated support services to provide survivors of sexual and gender-based violence with timely access to health care. Referral pathways are almost non-existent. Medico-legal centres, usually the first point of contact for survivors with a medical professional, do not provide emergency contraception in cases of sexual violence. Testing for sexually transmitted infections is not available, women are not systematically referred to gynaecologists and no psycho-social support is available.

The ONFP centre in Ben Arous is the only state body that specializes in providing psychological support to women survivors of violence. As a result, much of such support falls on civil society organizations that run counselling and support centres.[101]

As of 2014, the medical certificate is free in cases of family violence, as per a Ministry of Health decree adopted following a long campaign by women’s rights defenders. However, the decree does not apply to survivors who have been raped or sexually assaulted, who therefore have to pay for the document. Similarly, all complementary medical examinations have fees

[101] The Association Tunisienne des Femmes Démocrates (ATFD) was the first women’s rights organization to open a listening and referral centre in 1993. Since then, other organizations such as the Association des Femmes Tunisiennes pour la Recherche sur le Développement (AFTURD), Amal and the Union Nationale de la Femme Tunisienne (UNFT) and Association Femme et Citoyenneté (AFC) have opened similar centres for women survivors of violence.

attached, which many people cannot afford. Amnesty International believes that such tests as well as the documentation of harm should be free for all victims of sexual and gender-based violence.

Health institutions, including departments that perform the initial examination for the purpose of the medical certificate, rarely refer survivors to mental health practitioners, social services or legal aid organizations. Providing information about survivors' rights remains at the discretion of the examining doctor. Those interviewed by Amnesty International said that there are no referral procedures between institutions. As a result, health practitioners have developed their own practices, which differ between cities.

An emergency physician working at the Accident and Emergency Department of Charles Nicolle Hospital in Tunis told Amnesty International in March 2015 that she started referring survivors of domestic violence to the ONFP psychological centre in Ben Arous as she increasingly became aware of the psychological needs of her patients. She said that she only found out about the centre having done her own research. The medico-legal department of Charles Nicolle Hospital has developed good relations with some NGOs and now provides a letter of support referring survivors to a psychiatrist whenever the need arises. However, doctors stressed that it is "a circle of friends" rather than formal partnerships between organizations. In Sfax and Gafsa, on the other hand, forensic doctors told Amnesty International that they had not developed any contacts with NGOs and therefore did not make referrals.

The police do not provide survivors of violence with any information on support services. Both the Ministry of Women, Family Affairs and Childhood and the Ministry of Social Affairs have local representatives in every governorate who can provide such information, but their offices are under-resourced and usually do not intervene in individual cases. As a result, many survivors of violence only receive adequate support once they are referred to specialized counselling centres run by civil society organizations. However, in many cases, it takes months before they are referred to such centres. Additionally, these centres are only available in major cities.

All medical professionals interviewed by Amnesty International acknowledged that health institutions were not adequately equipped to receive survivors of sexual and gender-based violence. In addition to examining such survivors, medico-legal departments are also performing autopsies and examining victims of traffic accidents. At present, only the medico-legal department at Habib Bourguiba Hospital in Sfax runs a specialized, daily consultation for survivors of violence. Most departments lack a specialist unit and do not offer the anonymity or privacy that is essential for survivors of sexual and gender-based violence.

A student aged 26, who was raped by a stranger at the university campus in Tunis at around 7.30pm on 26 February 2015, described to Amnesty International the difficulties she faced in obtaining a medical certificate. Immediately after the assault, she called the police who came to pick her up from the crime scene in an attempt to find the rapist. They did not find him, so took the woman to the station to take her statement. She told Amnesty International that, apart from being asked whether she was a virgin at the time of the assault, she did not face any discrimination. At around 11pm, she went to Charles Nicolle Hospital to undergo a medical examination and was referred from one department to the other. She said:

I went straight to emergencies… but the staff there told me that they did not have the necessary equipment and that they could not do anything for me apart from documenting marks of physical assault. They said I had to wait until the morning to be examined at the forensic department… My friends suggested that we try the gynaecology services. When we arrived they made me wait around one and a half to two hours… I had to face the pitiful looks of the medical staff - all that mattered to them was to know how it happened. They kept pointing at me and saying, "Look, here's the girl who was raped."

The gynaecologist finally came and took samples; he was very cold and did not show any compassion. They made me come back in the morning for a much more thorough forensic examination... After the forensic examination, I needed to go back to emergencies for an examination of my wounds as I had some bruises on my face. It was too late though for them to issue a medical certificate and so I had to go back again the following morning.

Following the assault, the woman went for a consultation with a psychologist at a centre run by a women's rights NGO, but said that the staff were overwhelmed with cases and never called her back. She received no other psychological care.

Currently, examinations at the medico-legal department at Charles Nicolle Hospital take place in doctors' private offices. The department has lobbied the authorities to establish an emergency medico-legal centre for victims of sexual and gender-based violence, and the Ministry of Health has announced the opening of such a unit at the hospital before the end of 2015. The unit will receive survivors, document their experience, emphasize prevention of sexually transmitted infections, collect evidence through DNA and blood samples, and assess needs for effective and adequate referrals. The long-term aim is for the unit to be open 24 hours a day, seven days a week, and to integrate the collection of evidence with the provision of medical care, and referrals to social and legal aid services. Following a pilot phase, the project is expected to be rolled out to other medico-legal centres across the country.

In the meantime, the medico-legal department of Habib Bourguiba Hospital in Sfax offers an interim solution. The centralization of all medical examinations of victims of sexual and domestic violence in the department provides a daily consultation period, so survivors are automatically directed to the department. Autopsies are performed at different times. The centralization of evidence collection has also allowed for documentation of cases, and profiling of survivors and their needs.

ACCESS TO ABORTION

Since 1973 Tunisian women have had the right to terminate unwanted pregnancies before completion of the first trimester of pregnancy,[102] and abortions are available at ONFP clinics

[102] In 1965, Tunisia became the first Muslim country to legalize abortion on demand during the first three months of pregnancy for women with five or more children. See Human Rights Council, Twenty-third session, *Report of the Working Group on the issue of discrimination against women in law and in practice, Mission to Tunisia,* 30 May 2013, A/HRC/23/50/Add.2, available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.50.Add.2_A

across the country. Although all women have equal rights to abortion whether they are single, married or divorced, evidence suggests that ONFP staff often refuse to provide abortion services to unmarried women, arguing that the father's consent is required. In other cases, staff try to dissuade even married women from terminating pregnancies, adopting a "moralizing discourse" or deliberately deferring the abortion until it becomes too late to perform it. Difficulties in obtaining abortion services were noted by the CEDAW Committee in 2010 and, according to women's rights defenders and health professionals, they seem to have increased since 2011.[103]

Such attitudes can have adverse consequences on survivors of rape who wish to terminate unwanted pregnancies but may have chosen not to report the crime.

A married woman aged 25 who worked as a sex worker while her husband was imprisoned told Amnesty International that she was refused an abortion at the ONFP in Sfax around August 2014. She said:

> *I was told that since I am married, my husband must come with me and sign an authorization… When I told them that he is in prison, they immediately made an assumption that I'm a sex worker. They asked me if that's the case and I confirmed. They told me to come back in a week. I came back a week later, but they sent me back again telling me to come back the week after. I was entering the third month of pregnancy and I was worried that it would be too late, so I went to a private clinic instead. I had to pay 500 dinars [approximately US$256].*

In March 2015, Ministry of Public Health officials confirmed to Amnesty International that the consent of the father or husband is not needed, and that all women have an equal right to obtain free abortion procedures at ONFP centres. They did recognize that staff have become more socially and religiously conservative, adopting an anti-abortion position. While ONFP tries to combat such attitudes, more training and awareness-raising programmes are needed.

Budgetary constraints have also reduced access to abortion services. In theory, services should be available in 24 ONFP clinics across the country, but in reality ONFP stopped providing abortion procedures in 10 districts in 2007due to lack of money.[104]

SHELTERS AND EMERGENCY ACCOMMODATION

The Tunisian authorities have yet to establish adequate protection mechanisms for survivors

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[103] CEDAW Committee, *Concluding observations of the Committee on the Elimination of Discrimination against Women*, 22 October 2010, CEDAW/C/TUN/CO/6, available at: http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-TUN-CO-6.pdf

[104] See Human Rights Council, Twenty-third session, *Report of the Working Group on the issue of discrimination against women in law and in practice, Mission to Tunisia,* 30 May 2013, A/HRC/23/50/Add.2, available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.50.Add.2_AEV_English.pdf

of family violence. The national helpline for women victims of violence is non-operational and there is insufficient emergency accommodation for survivors. At present, the Ministry of Social Affairs runs three shelters – in Tunis, Sousse and Sfax – which host any vulnerable person in need of accommodation, including homeless and elderly people. Children aged 10 years and younger are accepted with their parents.[105] These shelters can host women victims of violence, but are not designed to respond to their specific needs and have limited spaces. According to a Ministry of Social Affairs official, the assistance is usually short-term and aimed at achieving social reintegration.[106] Social workers therefore often initiate and encourage a mediation process with the family, including in cases of spousal disputes that may involve violence. Amnesty International is concerned that, in cases of family violence, reconciliation may lead to further abuse.

The Ministry of Social Affairs also runs two protection centres for girls and boys under the age of 18 who meet the definition of children in danger, including victims of sexual violence. The one in Tunis can host up to 72 children; the one in Sidi Bouzid up to 60.

The Ministry of Women, Family Affairs and Childhood attempted to address the lack of emergency housing for women victims of violence by establishing a centre in Sidi Thabet, on the outskirts of Tunis. The centre has not yet opened. Independent organizations such as Beity, established following the 2011 uprising, have stepped in to provide shelter for homeless and vulnerable women. At present, it provides shelter for eight adults and four children at any given time, but is in the process of restoring a house in the old city of Tunis to host more women. Once accepted in the shelter, women are given accommodation for up to six months. During this time, Beity supports them to become financially independent.[107] Most women who end up in the shelter have experienced a form of family violence, including sexual abuse, or have been rejected by their families. The shelter is also open to single mothers and undocumented female migrants.

Tunis-based Amal is the only NGO specialized in providing shelter for single mothers. According to the organization, each year approximately 1,200 children are born out of wedlock and many women are forced to abandon their children out of fear of family rejection. Amal provides 12 beds at any one time for women who wish to keep their babies. Although there is no data on the number of women who have become pregnant as a result of rape, Amal said that many of the women have agreed to have sex with their partners on the promise of marriage.

In other areas of the country, including those where domestic violence is particularly prevalent such as in the south-west, no shelters are available. Social workers said that this

[105] The centre in Tunis can host up to 45 people, compared to 48 in Sfax and 36 in Sousse.

[106] Amnesty International phone interview, October 2015.

[107] Women are usually referred to Beity by other NGOs, ministries, child protection delegates and the general public. As a last resort, and in emergency situations, Beity has also the ability to put women survivors of violence up in hotels for a limited period.

means women drop complaints against their husband.[108] Indeed, according to the 2010 ONFP survey, as many as 75% of women seek help from their families after being subjected to abuse, but only 40% actually leave their homes. In many cases, women interviewed by Amnesty International said that they did not have anywhere to go and were forced to remain in abusive environments.

[108] Amnesty International interviews in Gafsa and Le Kef in March 2015.

8. EFFORTS TO ADDRESS SEXUAL AND GENDER-BASED VIOLENCE

‘There is no longer any room for tolerating violence, which is humiliating for women regardless of its reason or form.’

President Beji Caid Essebsi, 14 August 2015[109]

Over the years, the Tunisian authorities have taken important steps to address violence against women. These include reforms of the Penal Code and Personal Status Code, adopting a national strategy to combat violence against women and enshrining women’s rights in the 2014 Constitution.

THE CONSTITUTION

The new Constitution was a major breakthrough in the struggle for gender equality and for safeguarding gains made by the women’s rights movement over the years. Women’s rights groups were instrumental in resisting a provision in a first draft of the Constitution stating that women had a role “complementary” to men in the family and in pushing for strong protection of women’s rights in the final text. As a result, the 2014 Constitution guarantees the principle of equality and non-discrimination.

Under Article 21, “all citizens, male and female, have equal rights and duties, and are equal before the law without any discrimination”. Article 46 obliges the state to “protect women’s established rights” and work “to strengthen and develop those rights”. It also guarantees “equality of opportunities between women and men to have access to all levels of responsibility and in all domains”, and obliges the state to take “the necessary measures to eradicate violence against women”.

In an unprecedented move for the Middle East and North Africa, the Constitution commits the state to work to “attain parity between women and men in elected Assemblies”. Article 34 also safeguards women’s political participation in general by guaranteeing “women’s representation in elected bodies”. Further, Article 40 guarantees the right of male and female citizens to work, as well as their right to “decent working conditions and to fair

[109] See *Al-Quds al-Arabi*, “Essebsi calls for legislation to combat violation against women” (in Arabic), available at: http://www.alquds.co.uk/?p=387646

wages".

The Constitution includes other important safeguards that protect the rights of LGBTI people. It guarantees the right to a private life (Article 24) and freedom of expression, thought and opinion (Article 31).

Activists demonstrate during the International Women's Day march in Tunis, 8 March 2015 (Photo: Amnesty International)

LAWS ON VIOLENCE AGAINST WOMEN

Successive Tunisian governments have carried out important legislative reforms to combat violence against women, including by amending Article 218 of the Penal Code in 1993 to increase penalties for assault where the victim is the spouse of the assailant, and by explicitly criminalizing sexual harassment in 2004 under Article 226. In 1993, a discriminatory provision in the Penal Code, which allowed the reduction of a sentence to a misdemeanour where a man was convicted of murdering or injuring his wife and/or her partner when they were caught in the act of adultery, was also removed. However, discriminatory provisions remained in both the Penal Code and the Personal Status Code.

To address these shortcomings, and improve both protection and services for survivors of gender-based violence, in December 2013 the Ministry of Women, Family Affairs and Childhood, supported by the international community, launched an initiative to draft a comprehensive law on violence against women.

The drafting process was led by a committee of experts in criminal and family law, sexual and reproductive rights, child rights and women's rights, and involved consultations with the Ministries of Justice, Public Health, Interior and Women, as well as medical professionals, women's rights NGOs and other civil society organizations. These efforts were supported by

UN WOMEN, the UN Population Fund and the Council of Europe. On 13 August 2014, the main components of the draft law, which included the definition of forms of violence against women, protection of women and the prosecution of those responsible for violence, were presented at a conference held at the National Constituent Assembly.

This process resulted in a first draft that proposed bold reforms of the Penal Code and the Personal Status Code. Amongst other things, the draft law provides for a wide range of prevention and protection mechanisms for victims of violence, as well as accountability measures, and aims to bring existing legislation in line with international standards. For instance, it defines aggravating circumstances in cases of sexual violence, includes provisions on the prevention of "honour crimes" and imposes a prohibition on forced marriages. It further requires the state to design media awareness campaigns on violence against women, provide improved health services for survivors, and establish safe reception centres for survivors and mechanisms, and provide shelters for those in need.

Among other things, it proposes to: define sexual violence as a violation of an individual's bodily integrity, removing the existing framework of crimes against "decency"; repeal the provisions in Article 227bis that allow for a rapist to avoid prosecution by marrying the victim; abolish the death penalty prescribed under Article 227; and define marital rape. The draft law proposes to repeal Article 236 of the Penal Code, which criminalizes adultery by either spouse. It proposes to repeal Article 230, which criminalizes same-sex relations, and Article 231 in order to decriminalize the act of selling sex while replacing it by a provision criminalizing clients who purchase sex. The draft law also proposes to introduce harsher punishment for procurers and to introduce new provisions to criminalize human trafficking into sexual exploitation, begging, slavery or forced work, to force an individual to commit crimes, or for organ removal.

While states have an international legal obligation to criminalize human trafficking, caution must be exercised to avoid treating sex work and sexual exploitation resulting from human trafficking as one and the same. Simply replacing the Penal Code provision on sex work with a penal prohibition of human trafficking could risk conflating the two.

The CEDAW Committee has recommended for years that the Tunisian authorities adopt a comprehensive law on violence against women. Given the scope of proposed reforms, the adoption of the draft law could be an important milestone in the struggle for combating sexual and gender-based violence.

Since the completion of the first draft, however, the process has stalled. The bill was redrafted by the Prime Minister's legal department towards the end of 2014 and submitted to the Council of Ministers for their consideration.[110] Recommendations were also made for devising an awareness-raising and communication strategy to prepare the public for the extent of the proposed reforms. The timeline of the draft's completion and adoption is currently unknown, as the Tunisian authorities have increasingly prioritized security concerns.

[110] Amnesty International meeting with the Minister of Women, Family Affairs and Childhood, Samira Maraï Feriâa, 19 March 2015.

Other factors also appear to be delaying the process. In late 2014, the first draft was leaked to the press creating public uproar at the extent of the proposed reforms, many of which challenge established social norms and traditions. According to NGOs working on the draft law, provisions relating to the decriminalization of same-sex sexual relations were perceived as particularly controversial. The public's reaction only highlighted the need for further consultation and awareness-raising among decision-makers and the general public.

NATIONAL STRATEGY TO COMBAT VIOLENCE AGAINST WOMEN

The Tunisian authorities have recognized the need for adopting a national strategy to combat violence against women since 2007. At the time, a national commission was established to assess services available to survivors provided by state institutions and non-governmental bodies, and analyse the legal framework addressing violence against women. After months of consultation, the Ministry of Women and Family Affairs adopted a national strategy in November 2008.

The 2011 uprising disrupted its implementation, and the strategy was relaunched in 2012 and revised a year later. The consultation process, which was again participative, and involved several ministries, legislators, independent experts, five NGOs and survivors of violence, resulted in the Ministry of Women and Family Affairs adopting a strategy in 2013, supported by the UN Population Fund, which aims to prevent and combat all forms of discrimination and violence against women.

The strategy, which is being implemented by the Ministry of Women, Family Affairs and Childhood in co-operation with other ministries and civil society organizations, includes four main areas of intervention: the collection of data and information on violence against women; improving the quality and availability of psycho-social and health services for survivors; social mobilization and awareness-raising at the community level to end the stigmatization of survivors and change societal attitudes towards violence against women; and advocacy for the review of legislation aimed at preventing and combating all forms of violence against women.

Under the strategy, the Ministry of Women, Family Affairs and Childhood has identified several priority activities, which include, among other things, the adoption of a comprehensive law on violence against women; improving law enforcement mechanisms; establishing reception and referral centres within justice institutions; raising public awareness on existing legislation; combating the legitimization of violence through the misinterpretation of religious texts, traditions, social and family values; involving men and young people in combating violence against women; changing violent behaviour through awareness-raising campaigns and the media; integrating gender issues and human rights in school curricula and some university programmes; improving the quality of medical, psychosocial and judicial support to survivors; establishing and integrating listening centres in public institutions, including those under the ministries of interior and public health; making information on violence against women available in public, non-governmental and private institutions; and creating a network between all public and non-governmental providers to improve the quality of support.

The strategy, however, is very much focused on violence against women and excludes other individuals who face violence because of their sexual activity, gender identity and sexual orientation such as LGBTI people or sex workers. Further, awareness-raising campaigns are

usually limited in terms of outreach, geographic area and duration. The Ministry of Women, Family Affairs and Childhood has also limited financial resources. As an example, in January 2014, the former ministry under the provisional government was allocated only 0.37%[111] of the national budget (approximately US$52 million).[112] In the absence of sufficient state resources, the majority of services available to survivors of sexual and gender-based violence are provided by civil society organizations supported by the international community, thus making the availability of services vulnerable to the ups and downs of donor funding.

[111] See Gribaa B. and Depaoli G. (2014), *Profil Genre de la Tunisie*, June 2014, available at: http://eeas.europa.eu/delegations/tunisia/documents/page_content/profil_genre_tunisie2014_longue_fr.pdf

[112] The total national budged in 2014 was estimated at 28.3 billion Tunisian dinars (approximately US$14 billion). See Tunisian government website, *Le budget de l'Etat pour l'exercice 2014 s'élèvera à 28,3 milliards de dinars*, available at: http://www.tunisie.gov.tn/index.php?option=com_content&task=view&id=2085&Itemid=518&lang=french

9. TUNISIA'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Tunisia has obligations under a number of UN human rights treaties and general international law to take measures to eliminate all forms of violence against women and girls, and to provide survivors of sexual and gender-based violence with full reparation.

Tunisia is a party to key international human rights treaties, which guarantee the rights of women and girls. These include the International Covenant on Civil and Political Rights (ICCPR) ratified in 1969, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), the CRC and CEDAW. In 2008, Tunisia acceded to the Optional Protocol to CEDAW.

Tunisia has also ratified the African Charter on Human and Peoples' Rights (African Charter). However, it is one of a few members of the African Union that has not signed the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (the Maputo Protocol) which sets out additional rights to CEDAW. It became a party to the Rome Statute of the International Criminal Court in 2011.

GENDER EQUALITY AND NON-DISCRIMINATION

The general principle of non-discrimination as well as the clear relationship between equality and non-discrimination are enshrined in key human rights treaties to which Tunisia is a state party, including the ICCPR, ICESCR, CEDAW, the African Charter and the Rome Statute. The principle of non-discrimination is further detailed in specific provisions of these treaties, such as the provision guaranteeing equality before courts, the equality of spouses in relation to marriage and its dissolution, and equality before the law.

Both the ICCPR and ICESCR explicitly protect the equal enjoyment of rights between men and women, as well as a broader provision prohibiting any discrimination in the enjoyment of the human rights recognized in the treaties on any grounds. Article 18 of the African Charter states: "The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions."

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

CEDAW is specifically focused on eliminating all forms of discrimination against women. As a state party, Tunisia has an obligation "to pursue by all appropriate means and without delay a policy of eliminating discrimination against women".

In response to sustained advocacy efforts led by Tunisian women's rights defenders, in April 2014, Tunisia lifted all specific reservations to CEDAW relating to transfer of nationality to

children, marriage, divorce, custody of children and equality in marriage and family life, among other things. However, it maintained a general declaration that the state "shall not take any organizational or legislative decision in conformity with the requirements of this Convention where such a decision would conflict with the provisions of Chapter 1 of the Tunisian Constitution".[113] Amongst other things, Chapter 1 states that Islam is Tunisia's religion.

Tunisia is obliged to repeal or amend all provisions in the Personal Status Code, the Nationality Code and the Penal Code that discriminate against women, and remove the general declaration to ensure conformity between domestic laws and CEDAW requirements.

The CEDAW Committee defines gender-based violence as "violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty."[114] It confirmed that it is a form of discrimination, which violates a number of fundamental rights and freedoms, including the right to life; the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; the right to equal protection according to humanitarian norms in time of international or internal armed conflict; the right to liberty and security of person; the right to equal protection under the law, the right to equality in the family; the right to the highest standard attainable of physical and mental health; and the right to just and favourable conditions of work.

Acts of violence perpetrated by state agents, such as police violence disproportionately directed at women suspected of engaging in sex work, put Tunisia in breach of its obligations under CEDAW and general international human rights law. Tunisia is also responsible for violence perpetrated by non-state actors in the case of domestic violence or attacks in the streets, if it fails to "act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation".[115]

Under Article 6 of CEDAW, Tunisia is required to take measures to suppress all forms of trafficking in women and exploitation in the context of "prostitution". Notably, the CEDAW Committee does not define "exploitation" or "prostitution", and does not treat human trafficking and exploitation in the context of sex work as one and the same. The Committee has recognized that: "Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence."[116]

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[113] See: https://treaties.un.org/doc/Publication/CN/2014/CN.220.2014-Eng.pdf

[114] CEDAW Committee, General Recommendation No. 19, available at: http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom12

[115] CEDAW Committee, General Recommendation No. 19, available at: http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom12

[116] CEDAW Committee, General Recommendation No. 19, available at:

SEXUAL ORIENTATION AND GENDER IDENTITY

Laws criminalizing sexual orientation and gender identity violate the right to non-discrimination, the right to equality before the law, the right to private life and freedom of expression. While sexual orientation and gender identity are not specifically mentioned in the ICCPR or ICESCR as prohibited grounds for discrimination, in 1994 the Human Rights Committee held that the discrimination provisions of the ICCPR include sexual orientation, and ruled that laws criminalizing consensual same-sex sexual relations violate the right to privacy guaranteed under the ICCPR.[117] Subsequent decisions of the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, the Committee against Torture and the CEDAW Committee confirmed this position.

In its General Comment no. 20, the Committee on Economic, Social and Cultural Rights went further and stated: "States parties should ensure that a person's sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor's pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination."

The UN Working Group on Arbitrary Detention affirmed that the detention of individuals on the basis of their gender identity or sexual orientation constitutes arbitrary detention in violation of Article 9 of the ICCPR.

SEXUAL VIOLENCE AND THE PROHIBITION OF TORTURE

Rape and other forms of grave sexual violence have been recognized as a form of torture when perpetrated by state agents. According to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, such abuses include: threats of rape, "virginity tests", touching, invasive body searches, being stripped naked, insults and humiliations of a sexual nature.

The Special Rapporteur on torture has recognized that: "rape and other serious acts of sexual violence by officials in contexts of detention or control not only amount to torture or ill-treatment, but also constitute a particular egregious form of it, due to the stigmatization they carry."[118]

In recent years, comparisons have been increasingly drawn between certain types of violence against women, including domestic violence and marital rape, and torture. While rape by non-state actors has not yet been charged as the crime of torture, it is acknowledged that the state has an obligation to protect persons within its jurisdiction from torture and other ill-treatment committed by private individuals.[119]

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http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom12

[117] See *Toonen v. Australia*, communication No. 488/1992 (CCPR/C/50/D/488/1992).

[118] See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/7/3, 15 January 2008, available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/101/61/PDF/G0810161.pdf?OpenElement

[119] See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or

DUE DILIGENCE

Due diligence refers to the level of care or activity states should exercise in fulfilling their international human rights obligations. Accordingly, the state bears a responsibility for failing to prevent or investigate and address abuses appropriately, and should make reparation to the victim or his or her family.

The obligation to exercise due diligence is enshrined in international law and standards. Article 2 of the ICCPR guarantees that states must provide an effective remedy to anyone whose rights under the treaty have been violated, without discrimination. In the context of gender-based violence, this means that states have an obligation to prevent, investigate and punish acts of violence, regardless of whether they are perpetrated by state agents or by private persons.

A state's failure to respond with due diligence to violence against women violates women's right to equality before the law. According to the CEDAW Committee: "States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation".[120]

Further, the Special Rapporteur on violence against women, its causes and consequences, has stressed that, by using the due diligence principle, "the State, by failing to respond to intimate/domestic violence, can be held responsible for not fulfilling its obligation to protect and punish in a non-discriminatory way and can be charged as an accomplice to private violations".[121]

The Special Rapporteur has also noted that the same could be said for "other acts of [violence against women/gender-based violence], such as rape, which are typically *perpetrated by non-State actors*."[122]

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punishment, Manfred Nowak, A/HRC/7/3, 15 January 2008, available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/101/61/PDF/G0810161.pdf?OpenElement

[120] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1981, Article 9.

[121] The Special Rapporteur on violence against women, its causes and consequences, *Integration of the human rights of women and the gender perspective: violence against women the due diligence standard as a tool for the elimination of violence against women*, para. 61, available at: http://www.refworld.org/pdfid/45377afb0.pdf

[122] The Special Rapporteur on violence against women, its causes and consequences, "Broadening the vision of due diligence", in *Summary Paper on the State responsibility for eliminating violence against women*, 2013

10. CONCLUSION AND RECOMMENDATIONS

While the Tunisian authorities have taken important steps to promote equality in a range of public areas, criminal laws on sexual violence remain regressive and fail to respect the rights of victims.

By adopting the Personal Status Code in 1956 and introducing further amendments in 1993, Tunisia broke taboos on divorce, polygamy and women's role in family and society. These achievements eventually gained Tunisia a reputation as the most progressive Arab state in terms of respect for women's rights. To address sexual and gender-based violence effectively, and maintain its leading position in championing women's rights and gender equality in the region, Tunisia must carry out once again a series of bold reforms.

These require the Tunisian authorities to challenge existing social and gender norms and to start a public conversation on sexual rights, gender equality, gender identity and sexual orientation. Only by doing so will they be able to address taboos surrounding sexual and gender-based violence.

Amnesty International calls on the Tunisian authorities to:

Publicly condemn all forms of sexual and gender-based violence.

- Publicly condemn all forms of sexual and gender-based violence against women, girls and LGBTI people, including sex workers, 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.

End discrimination based on gender, sexual orientation and consensual sexual activity in law and in practice, and bring legislation in line with international human rights law and standards.

- Withdraw the general declaration to CEDAW that the Tunisian state shall not take any organizational or legislative action required by CEDAW if it conflicts with Tunisia's Constitution.
- Sign, ratify and implement the Maputo Protocol.
- Ensure that Tunisian law is consistent with its international legal obligations, is non-discriminatory and prohibits all forms of violence based on gender and sexual orientation, including against woman and girls, sex workers and LGBTI people.
- Adopt a comprehensive law on violence against women and girls that includes the provision of a wide range of remedies, including protection orders, appropriate penalties, and make orders for compensation of victims of violence.
- Define rape and sexual assault as a violation of an individual's bodily integrity and sexual autonomy rather than an assault on "decency". Make laws on rape or sexual assault gender-neutral and premised on the absence of consent rather than use of

force or violence. The laws should explicitly recognize marital rape as a crime and be consistent with international human rights law and standards.
- Abolish the death penalty, for all crimes, including for the crime of rape under Article 227.
- Repeal provisions under Articles 227bis and 239 of the Penal Code whereby a rapist or kidnapper respectively can escape prosecution by marrying the victim.
- Repeal Article 230 of the Penal Code criminalizing consensual same-sex activity and Article 236 criminalizing adultery.
- Ensure that sex work and human trafficking into sexual exploitation are not treated as one and the same and that criminal law enforcement focuses on violence and exploitation in the context of sex work.
- Amend the definition of sexual harassment in Articles 226(3) of the Penal Code to bring it in line with international standards, and remove the stipulation that perpetrators must have had the intention of "compelling the person to submit to their sexual desires".
- Adopt policies and procedures to ensure appropriate medical, psychosocial, economic and legal support to survivors.
- Ensure that laws and regulations related to sex work are developed in consultation with sex workers, respect the agency of sex workers, and guarantee that individuals who undertake sex work do so voluntarily and in safe conditions, free from exploitation, and are able to stop engaging in sex work when and if they choose. In particular, regulations requiring registered sex workers to demonstrate capacity to make an "honest" living should be repealed on the basis that they are discriminatory and place unreasonable requirements on those wishing to leave sex work.
- End "virginity tests" during medical examinations of survivors of sexual assault and in cases of elopement.

Ensure that survivors of sexual and gender-based violence have access to safe and timely avenues to report the crime.
- Ensure that law enforcement officers are trained (as part of their basic training and as ongoing professional training) in best practice methods of interviewing and supporting victims who have been subjected to family and sexual violence.
- Ensure that law enforcement officers are trained to distinguish between human trafficking for the purposes of sexual exploitation and consensual sex work between adults.
- Designate or strengthen specialized police units on family and sexual violence, and ensure that they have adequate funding for their work and specialized training for their staff.
- Ensure that the police and other law enforcement officers do not intimidate, threaten or humiliate victims of family and sexual violence, either when people file their complaint or during the subsequent investigation. The police should immediately ascertain if the complainant is at risk of further violence and, if so, ensure that the victim receives appropriate protection.
- Establish an enforceable code of conduct prohibiting dismissive, discriminatory, aggressive or unprofessional attitudes by police officers. Ensure that the code of conduct includes provisions for holding officers accountable in cases where survivors have not been treated appropriately.

- Ensure that police officers receiving complaints of family and sexual violence do not mediate reconciliation agreements between perpetrators and victims.
- Introduce emergency protection orders designed specifically for the needs of survivors of family violence.
- Adopt special procedures for collecting evidence from children survivors of family and sexual violence.

Ensure effective, independent and impartial investigations into all forms of sexual and gender-based violence.

- Ensure that the burden of collecting and presenting evidence does not lie with survivors of sexual and gender-based violence and their lawyers, and that police officers and public prosecutors investigating violence against women, girls and LGBTI people exercise due diligence in gathering and reviewing all available material evidence and proactively seek eyewitness testimony.
- Where there is sufficient admissible evidence, prosecute those suspected of responsibility, including state and non-state agents, in proceedings meeting international standards of fair trial.
- Ensure that prosecutors who decide to discontinue a case record the reasons for this, and promptly inform the complainant. Prosecutorial discretion should not be used to dismiss cases in which there is sufficient evidence to proceed and if the complainant wishes to go forward.
- Ensure that investigations into sexual and gender-based violence are based on the respect for the rights of the survivors, and include women and other investigators trained in addressing gender-based violence and in preventing the re-victimization of survivors.
- Ensure that any allegations of gender-based and sexual violence perpetrated by security forces and officials are promptly, independently and impartially investigated and that perpetrators are brought to justice in fair trials without recourse to the death penalty.
- Ensure that summons and arrest warrants for members of the security forces suspected of involvement in acts of gender-based and sexual violence are carried out.
- Ensure that all complaints of sexual and gender-based violence are taken seriously by the authorities, and are promptly and independently investigated without discrimination, including complaints of violence against LGBTI people and sex workers.

Ensure that collection of forensic evidence and provision of medical care to survivors of sexual and gender-based violence are adequate.

- Ensure that survivors of rape and other sexual violence have immediate access to a forensic examination carried out in accordance with the Istanbul Protocol Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the World Health Organization (WHO) protocol on the collection of forensic evidence.
- Ensure that victims reporting rape or sexual violence are not required to receive a separate forensic medical examination. The initial examination at any health services should ensure that forensic evidence that could be used for the investigation and trial is collected at that time.

- Ensure that the forensic medical examination is accessible to survivors across the country.
- Ensure that the initial medical certificate (CMI) is free in cases of sexual violence, and that all complementary medical examinations for victims of sexual and gender-based violence are free for those who cannot afford them.
- Ensure that female survivors of sexual violence have access to comprehensive and appropriate medical care, and that they are immediately provided with emergency contraception, HIV PEP (post-exposure prophylaxis), gynaecological care for injuries sustained in the assault, general medical care for other injuries, and initial psychological support. Also ensure that comprehensive medical treatment is available for male survivors of sexual violence.

Improve protection measures and existing services, and provide reparations for survivors of sexual and gender-based violence.

- Allocate adequate state funding for the provision of social services and medical care to survivors of sexual and gender-based violence.
- Ensure that survivors of sexual and gender-based violence are systematically given information about psycho-social support, legal aid and judicial remedies at health facilities and police stations, and that they are referred to such services when needed.
- Ensure that survivors pursuing redress through the justice system are provided with information on the status of their case; legal aid and advice services; access to civil remedies and protective measures; information on available support; and how to obtain compensation and other reparation.
- In consultation with civil society, create additional mechanisms to provide safe accommodation for survivors and ensure that funds are allocated by the state to ensure the continuity of their operations.
- Make available a nationwide telephone helpline that is accessible 24 hours a day to women and girls seeking assistance, and ensure that staff are adequately trained to provide information and assistance to survivors of sexual and gender-based violence.
- Ensure that free abortion services are available to all women without discrimination as legally stipulated, and combat discrimination among staff in ONFP centres by carrying out training and awareness-raising sessions.
- Devise and implement programmes aimed at ensuring the economic independence of women to empower survivors of violence to seek remedies and break from the cycle of abuse.

Combat prejudices and discriminatory stereotypes against survivors of sexual and gender-based violence.

- Regularly inform and educate the general public, including media professionals and social service providers, about issues related to gender, sexuality, and sexual and gender-based violence.
- Implement comprehensive sexuality education that is scientifically accurate, rights-based and combats gender stereotypes, both inside and outside of formal school settings, as a means to empower all people, particularly women and girls, to protect themselves from violence, sexual abuse and unwanted pregnancies and sexually transmitted infections.

I WANT TO HELP

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ASSAULTED AND ACCUSED

SEXUAL AND GENDER-BASED VIOLENCE IN TUNISIA

A woman is raped and blamed for her assault. A wife is relentlessly beaten at home and told to bear it. A gay man is attacked and is more likely to be prosecuted than his attacker. A sex worker working illegally is abused and blackmailed by the police. All too often survivors of sexual and gender-based violence in Tunisia are blamed and punished for the crimes they have suffered.

Despite many positive steps by Tunisia to promote gender equality and combat sexual and gender-based violence, the law fails to protect survivors. It allows rapists to dodge punishment if they marry their teenage victim. It fails to clearly define rape or recognize marital rape. It criminalizes consensual same-sex sexual relations and adultery, deterring survivors from speaking out for fear of prosecution.

This report, which includes interviews with dozens of survivors, highlights how the blame culture and legal failings are particularly harmful in a country where sexual and gender-based violence remains prevalent. It also shows that survivors face inadequate support and numerous obstacles if they dare to seek justice.

Amnesty International calls on the Tunisian authorities to take urgent action to protect survivors by amending the law, ensuring effective remedies and providing comprehensive health and social services.

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