



**Association tunisienne des femmes  
démocrates**



# Women's Rights in Tunisia

## Alternative Report

Submitted to the United Nations Committee on the Elimination of Discrimination Against  
Women

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by the Association tunisienne des femmes démocrates (ATFD)

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## Introduction

The *Association Tunisienne des Femmes Démocrates (ATFD)* which has existed legally since 1989, is an independent feminist association bringing together women from all walks of life, united in tackling discrimination and promoting women's human rights and democracy.

Notwithstanding the many achievements and gains made to date, we are convinced that much remains to be done in order to progress towards equality between the sexes. That is why we consider it necessary to submit an alternative report to the official Tunisian report on compliance with the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), which will be examined by the CEDAW Committee in October 2010.

In conjunction with the Tunisian League for Human Rights (*Ligue Tunisienne des droits de l'Homme* - LTDH) and the International Federation for Human Rights (FIDH), we previously submitted an alternative report to the Committee when it sat in 2001. This year our report will be based on observations made by the CEDAW Committee, the aim being to highlight the gaps and inadequacies which require political will and action on the part of decision-makers.

The government report that consolidates Tunisia's 5<sup>th</sup> and 6<sup>th</sup> periodic reports on the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (1999-2007), presented to the CEDAW Committee on 27 April 2009, states in point 2 of the introduction that ATFD was consulted during the drafting of the report. However, we were consulted solely on certain specific points and it was only later that we learned of the report's existence through staff working in international NGOs.

## Chapter I. Tunisia's reservations to CEDAW

By ratifying CEDAW, Tunisia undertook to eliminate all forms of discrimination against women. In the first article of the Convention such discrimination is described as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field" (CEDAW, Article 1).

Tunisia has admittedly been a pioneer in tackling discrimination against women in the Arab world, particularly in the civil domain and more specifically within the family. However, many forms of discrimination remain evident, including in the family environment.

The principle of non-discrimination between the sexes, which Tunisia undertook to embody in its Constitution or other appropriate legislation in accordance with the provisions of Article 2 of CEDAW, has only been incorporated in certain laws, including the labour law and public service statutes. Article 5 bis of the Labour Code as added by the law of 5 July 1993 stipulates that "there shall be no discrimination between men and women in the application of the provisions of the present code and implementing legislation"<sup>1</sup>. Article 11 of the public service statute states: "subject to the special provisions arising from the nature of the duties and which may be taken in this connection, no distinction shall be made between the sexes with regard to the application of the present law"<sup>2</sup>.

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<sup>1</sup> Unofficial translation

<sup>2</sup> Unofficial translation

However, other laws and in particular the Personal Status Code do not include such a principle. While the constitution declares equality of citizens before the law (Article 6), it does not specify the principle of non-discrimination between the sexes. It is true that Tunisian courts, like other public authorities in Tunisia, interpret this article to include non-discrimination between men and women. Nevertheless, Tunisia has not fully met its commitment to explicitly incorporate the principle of non-discrimination in its Constitution.

Tunisia, having undertaken to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women” (Article 2(f) of CEDAW), has not only retained such provisions but has strengthened them through the reservations it entered to CEDAW, which have still not been withdrawn.

## **1. Impact of the reservations to CEDAW on women’s rights**

### **General Declaration**

The Tunisian Government declares that it 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 I of the Tunisian Constitution.

### **Reservation concerning article 9, paragraph 2:**

The Tunisian Government expresses its reservation with regard to the provisions in article 9, paragraph 2 of the Convention, which must not conflict with the provisions of chapter VI of the Tunisian Nationality Code.

### **Reservation concerning article 16, paragraphs (c), (d), (f), (g) and (h):**

The Tunisian Government considers itself not bound by article 16, paragraphs (c), (d) and (f) of the Convention and declares that paragraphs (g) and (h) of that article must not conflict with the provisions of the Personal Status Code concerning the granting of family names to children and the acquisition of property through inheritance.

### **Declaration concerning article 15, paragraph 4:**

In accordance with the provisions of the Vienna Convention on the Law of Treaties, dated 23 May 1969, the Tunisian Government emphasizes that the requirements of article 15, paragraph 4, of the Convention on the Elimination of All forms of Discrimination against Women, and particularly that part relating to the right of women to choose their residence and domicile, must not be interpreted in a manner which conflicts with the provisions of the Personal Status Code on this subject, as set forth in chapters 23 and 61 of the Code.

Tunisia has entered three specific reservations and a general declaration. The latter, referring to “Chapter 1 of the Constitution,” has been interpreted by the Government, the Parliament and all public authorities, as well as by civil society, as referring to the State religion, and more particularly to Article 1 of the Constitution which makes Islam the State religion. It is thus on the basis of this reservation, or more especially on the basis of State religion, that customs, practices and legislative and regulatory provisions which discriminate against women are maintained.

With regard to specific reservations to CEDAW, these mainly concern the status of women in the family and are aimed most especially at Articles 15 and 16 of the Convention which relate to granting women the same rights and responsibilities during marriage and at its dissolution, as parents, irrespective of their marital status, in matters relating to their children, and with regard to guardianship and wardship. They also cover family name and residence and equal rights for both

spouses with respect to the acquisition, management and administration of property, whether the property has been freely acquired or purchased.

In entering these reservations, the Tunisian government does not consider itself bound by the provisions which afford the same rights to women and men in the area of marriage and with regard to children, nor by those relating to the family name and the acquisition of property through inheritance, as they conflict with the provisions of the Personal Status Code.

A reservation with a similar effect has been entered with respect to the Convention's provisions relating to nationality (Article 9, paragraph 2). and recalls the provisions of Article 6 of the Tunisian Nationality Code which relates to the granting of nationality through affiliation and gives women the right to give their nationality to their children when the father is unknown, has no nationality or whose nationality is unknown, or in cases where the father was born of a Tunisian mother and a foreign father, and gives his consent. Since Article 12 of the Nationality Code concerning the legal acquisition of nationality was revised in 1993, a child born abroad to a Tunisian mother and a foreign father can acquire Tunisian nationality before the age of 19 with a joint declaration from the mother and father. In short, the consent of the father is necessary to allow the woman to pass on her nationality to her children. However, an exception was introduced in 2002, whereby if the father is deceased, has disappeared or is legally incapable, a unilateral declaration from the mother is sufficient.

Far from being technical in nature, these reservations, on the contrary, reveal the prevalence of an unequal social order. They conflict with Article 28, paragraph 2 of the Convention itself which states that reservations that are incompatible with the object and purpose of the Convention shall not be permitted. They also conflict with Article 19 (1) of the 1969 Vienna Convention on the Law of Treaties. They undermine the universality of women's rights, their unity, interdependence and indivisibility.

The general declaration was initially made with a view to avoiding conflict with the Tunisian Constitution and the state religion. However, when the government undertakes not to take any decision or measure that is at odds with the Muslim religion, it creates a source of confusion for lawmakers and political powers, especially since the translation of the word legislation from French into Arabic is made by reference to Sharia and therefore to Islamic law, and the terms "legal" and "legitimate" are thus confused with "Sharia", with the result that Islam becomes the source of law. For a religion to be considered as a source of law, it needs to bear the characteristics of a rule of law, it must be the same for everyone and it must be positive. In this regard, and in particular with respect to the Muslim religion, it should be stressed that the Tunisian Constitution does not make religion a source of law. Furthermore, there is more than one reading or interpretation of Islam and practices differ throughout the Muslim world according to different interpretations.

The specific reservations and interpretative declarations are also based on national legislation, in particular the Personal Status Code and the Nationality Code, despite the provisions of Article 32 of the Tunisia Constitution which proclaim that duly ratified international conventions take precedence over national legislation. By ratifying CEDAW, Tunisia undertook, in accordance with the provisions of Article 2 of the Convention, to amend any remaining discriminatory national legislation and ensure conformity or compatibility with the provisions of the Convention itself.

Thus, allowing religion and national legislation to override international conventions is to increase the number of applicable laws and create discrimination among rights as a result of the multiple interpretations and practices possible. But above all it is to give precedence to domestic law over international law.

As a result, despite the ratification of the Convention, the status of women has not changed within the family and the husband's authority, as head of the family, prevails. The family name remains

that of the husband. The marital home is that of the husband. The nationality of the children is that of the father, unless he consents to his wife passing on her nationality to the children or unless he dies or disappears. Responsibility for children lies first and foremost with the father and the wife may only exercise prerogatives of guardianship over them. She may only gain full guardianship if the father is unable to exercise his duties or if he is deceased.

Single mothers continue to be ignored by the law, as are their children who, having been born out of wedlock, are termed “natural”. Similarly, women cannot enjoy equal inheritance rights due to a religious rule introduced in the Personal Status Code which grants women only half of the share inherited by men.

Therefore, discrimination remains between men and women and between the rights that are recognised in the Convention. Women do not enjoy equal rights within the family, whilst in other areas they do. Thus a distinction is drawn between the family – which occupies a central place in Islam and patriarchy – and other private and public spaces where religion is often absent.

These reservations have not been withdrawn despite incessant calls from some treaty and non-treaty bodies of the United Nations, including the CEDAW Committee (responsible for monitoring compliance with the Convention), the Human Rights Committee, the Human Rights Council through the Universal Periodic Review (UPR) mechanisms, and national, regional and international NGOs. Yet since June 2008, Tunisia has withdrawn several similar reservations it had issued in respect of the Convention on the Rights of the Child, in particular Declaration No.1 and reservations 1 and 3 which, as a reminder, read as follows:

#### **Declaration**

No. 1: The Government of the Republic of Tunisia declares that it shall not, in implementation of this Convention, adopt any legislative or statutory decision that conflicts with the Tunisian Constitution.

#### **Reservations**

No. 1: The Government of the Republic of Tunisia enters a reservation with regard to the provisions of article 2 of the Convention, which may not impede implementation of the provisions of its national legislation concerning personal status, particularly in relation to marriage and inheritance rights.

No. 3: The Government of the Republic of Tunisia considers that article 7 of the Convention cannot be interpreted as prohibiting implementation of the provisions of national legislation relating to nationality and, in particular, to cases in which it is forfeited.

Withdrawing these reservations could be a first step towards the complete withdrawal of all reservations entered with respect to these two conventions, since some reservations have been maintained while others have been withdrawn, despite being based on the same rules and references. The inconsistency of Tunisian policy with regard to these treaties makes it difficult to justify maintaining the reservations to CEDAW since their very basis is undermined.

## **2. Action taken by ATFD to encourage the withdrawal of reservations**

Since the ratification of CEDAW, the democratic women’s movement has continuously sought withdrawal of Tunisia’s reservations to this Convention. Articles were published to this end in 1985 in the feminist journal “Nissa.” In 1988, jurists organised an initial seminar in association with UNESCO and the Centre for Research and Publications, affiliated with the Tunis Faculty of Law and Political Science. This seminar focused on the Convention and the identity discourse, and emphasised the need to withdraw the reservations.

Since its creation in 1989, ATFD has repeatedly sought to have the reservations withdrawn. It organised numerous internal meetings to coincide with the 10<sup>th</sup> anniversary of CEDAW's adoption, resulting in the publication of an Arabic language document on the Convention and equality between the sexes. More widely in the Arab world, several human rights and women's rights associations, in collaboration with the Arab Institute for Human Rights, met in the context of preparations for the Beijing International Conference in 1995 to discuss the legal position of women and to call for the reservations to be withdrawn. Since 2005, this campaign has spread to a number of human rights and women's rights NGOs in Tunisia such as the Tunisian League for Human Rights (LTDH), the Tunisian section of Amnesty International, the Association of Tunisian Women for Research and Development (*Association des Femmes Tunisiennes pour la Recherche et le Développement* - AFTURD) and the General Union of Tunisian Workers (*Union Générale des Travailleurs Tunisiens* - UGTT). All of these NGOs have adopted the withdrawal of reservations as their watchword and have organised a number of activities around this theme.

Since 2006, following the creation within FIDH of the Women's Rights Action Group, the campaign to have the reservations withdrawn has received international support. Following a conference organised by ADFM (*Association démocratique des femmes marocaines* - Democratic Association of Moroccan Women) and FIDH in June 2006 in Rabat, a regional campaign entitled "Equality without Reservation" was launched and a coalition composed of NGOs from throughout the region was established. ATFD has been a member of this coalition since its creation and has organised a number of activities in the context of this campaign. It has run several campaigns to raise awareness among human rights militants about withdrawing the reservations, seeking to make the Convention better known and to convince militants to support the campaign to have the reservations withdrawn.

In 2006, several ATFD and LTDH militants travelled around Tunisia for this purpose, notably to Kairouan and Mahdia. In the same year, on the occasion of the celebration of the Universal Declaration of Human Rights, pamphlets and posters were distributed, in collaboration with other human rights and women's rights NGOs. Similarly, postcards were signed and sent to the President of the Republic. In 2007, on the occasion of the celebration of International Women's Day, ATFD organised a press conference to call on the authorities to withdraw the reservations, they also prepared a paper on the issue.

In 2008, when Tunisia's report was being prepared for the Human Rights Council's Universal Periodic Review (UPR), ATFD called on the Tunisian Government to withdraw its reservations in order to ensure full and complete application of the Convention. Other international and Arab NGOs submitted the same request. During the UPR session in April 2008 FIDH and the Coalition for Equality without Reservation presented recommendations to the Tunisian Government, notably on the question of reservations. They called on the Government to withdraw all reservations to CEDAW; to ratify the Optional Protocol to CEDAW; to modify articles of the Personal Status Code to ensure their conformity or at least compatibility with the Convention's provisions relating to the family, notably Article 16 giving women the same rights as men within the family – recognising family authority rather than paternal authority and with respect to children in relation to guardianship and wardship; to change the provisions of the Personal Status Code to incorporate equality in matters of succession; to ensure the creation of institutional mechanisms responsible for the respect of CEDAW; and to raise awareness among judges of CEDAW's importance in the promotion of women's rights and its superiority over domestic law, in accordance with Article 32 of the Constitution.

### **3. Tunisian authorities' promises and commitments**

#### **Promises**

In June 2002, during the CEDAW Committee's examination of Tunisia's third and fourth reports, CEDAW experts questioned Tunisia on the withdrawal of reservations, and the country's

representatives assured the Committee of their determination to lift the reservations, in particular the one relating to Article 9 of the Convention on nationality.

In March 2008, during the Human Rights Committee's New York examination of Tunisia's report, the Tunisian authorities declared that a decision had been made to adhere to the CEDAW Optional Protocol, and made a commitment to consider the withdrawal of reservations. In April 2008, during the examination of the Universal Periodic Review, Tunisia's representatives also recalled the authorities' willingness to withdraw the reservations.

#### **Significant but incomplete achievements**

- In June 2008 the Tunisian authorities ratified the Optional Protocol to CEDAW. Tunisia thus became the second Arab state to ratify the Protocol. This is an important step towards the withdrawal of reservations, especially as the ratification of the Protocol normally results in the examination of the application of all the Convention's provisions when a woman presents a petition to the CEDAW Committee for violation of one of the rights set out in the Convention. It should be noted that during debate in Parliament on 3 June 2008 to mark the ratification of the Protocol, the Minister for Justice expressed the Tunisian authorities' willingness to create a commission to examine the possibility of withdrawing the reservations. At the same time, Tunisia withdrew some of the reservations it had made to the Convention on the Rights of the Child (CRC). The withdrawal of these reservations enables us to conclude that the reference to religion no longer constitutes an obstacle to the Convention's application. The same reasoning applies in the case of the first reservation to the CRC, which refers to the rules of the Personal Status Code relating to marriage – which themselves provided the legal pretext for entering reservations to Article 16 of CEDAW.
- Some laws have been altered in ways that tend towards removing the basis for the reservations, but such modifications remain insufficient. They include the law on housing which, in February 2008, consolidated the right to housing by mothers having custody of minor children; the law on lowering the voting age to 18; the law on the harmonisation of the marriage age (18 for both men and women); the law on tax-free status of donations; and the law on community of property between spouses. However, these laws remain insufficient, as we will examine later, because they are not based on complete equality between spouses.
- The Tunisian State should follow the example of certain Arab States which are parties to CEDAW and which have withdrawn some of their reservations, such as Kuwait which, in 2006, withdrew the reservation entered with respect to Article 7, on the political rights of women, after having changed the electoral code and recognised the same political rights for women as for men. Similarly, in 2008, Algeria and Egypt withdrew their reservation to Article 9 after having recognised women's rights to transmit their nationality to their children under the same conditions as for the father. Additionally, in 2009, Jordan withdrew its reservation with respect to Article 15, paragraph 4, on the choice of domicile and freedom of residence.

#### **4. Recommendations**

ATFD therefore urges the government of Tunisia to:

- Withdraw all reservations to CEDAW;
- Amend the provisions of the Personal Status Code to ensure their compliance with the provisions of CEDAW relating to the family, notably Article 16;
- Establish an independent public institution responsible for overseeing respect for the provisions of CEDAW;

- Ensure that judges refer systematically to CEDAW as an instrument with superior status to domestic law, in accordance with Article 32 of the Constitution;
- Disseminate the Optional Protocol to CEDAW and raise women's awareness of its importance in the defence of women's rights.

## **Chapter II. Women's participation in public and political life and civil society organisations: obstacles and recommendations**

### **1. Analysis**

In conformity with Article 7 of CEDAW, Tunisia has committed to taking all appropriate measures to eliminate discrimination against women in political and public life, and more particularly, to ensure women, on a equal basis with men, the following rights:

- a. To vote in all elections and all public referenda and to be eligible for election to all publicly elected bodies;
- b. To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- c. To participate in non-governmental organisations and associations concerned with the public and political life of the country."

Admittedly it is difficult to give an objective evaluation of the condition of women and of their participation in public life, given that the quantitative indicators normally proposed are inadequate since they do not measure the effectiveness of women's rights or the the real democratic participation of citizens, particularly of female citizens. Legal progress alone in all areas, and especially in the area of political rights, does not really show the level of women's participation in the construction of an egalitarian society. Tunisian women have the right to vote, they are eligible for office, they are present in institutions and there has been a relative increase in their representation has increased within parliament. Yet, all these indicators, although seemingly positive, should be assessed in the context of the political situation which is "closed" and the impact of political Islam which are cause for concern with regard to the development of women's rights.

In its report, the Tunisian government reported an increase in the number of women in "high-ranking and decision-making posts" by presenting the following figures: women represent "11.6% of government members, 20% of diplomatic posts, 27.5% of deputies (as opposed to 11.5% in 1997), 15.18 % of members of the House of Councillors, 25% of members of the Constitutional Council, 27% of members of municipal councils and 32% of members of regional councils".

Nevertheless, appointment to decision-making posts and access to the Chamber of Deputies and to the House of Councillors depends on political affiliation for both men and women. The current electoral system, which is opaque and lacking in equal rules for all political beliefs, leaves very little opportunity for those who wish to participate in decisions, who have not pledged allegiance to the dominating power and party.

The authoritarian government in power, which curbs all conflicting opinions, has disastrous effects on freedom of association. Autonomous associations, including women's associations, which, although they are recognised, such as the Tunisian Association of Democratic Women (ATFD) or the Association of Tunisian Women for Research and Development (AFTURD), are often left out of consultations. This was the case, for example, in 2005 during the preparation for the World Summit on the Information Society. These associations are also kept away from the media (radio and television), even when the debate concerns the issue of violence against

women, which ATFD has been working on since 1991. Other female activists are refused the right to publish newspapers. Online newspapers are also subjected to numerous annoyances.

Female activists from these NGOs are often refused access to public areas. They are therefore obliged to carry out their women's rights activities only within their premises, whose small sizes are not conducive to the diffusion of their message. A message which is often, in any case, forbidden due to its non-conformity with the message authorised by the government in power. The government allows the dissemination of messages that are based on safeguarding the conservative idea of the family and the defence of a dogmatic Arab-Muslim identity which is increasingly reducing women's rights.

Freedom of movement for activists is also threatened through the withholding of passports, unjustified body searches, unnecessary verification of official documents, and obstacles in moving from one region to another in the Tunisian territory for no reason other than that of preventing the activists from voicing their ideas and exercising their citizenship. Additionally, emails are intercepted and often blocked.

Violations of women's freedoms in the exercise of their rights as a citizen are numerous. There is very harsh repression of women, whether they are activists themselves or the wives and mothers of trade-union activists, such as those who started a peaceful movement in Redayef and Om Larayes in the Gafsa region in January 2009 to demand work and more attention for their deprived region.

Solidarity is criminalised. Unjust proceedings have been brought against women who expressed their solidarity with women from the mining basin of Gafsa in the Summer of 2008). In addition to criminal sentences, these women also lost their jobs.

Defamatory campaigns against human rights defenders, both men and women, are carried out in total impunity. As associations do not have the right to bring civil actions, the perpetrators of multiple aggressions against activists are never prosecuted.

Furthermore, as the funding of associations is not governed by law, autonomous women's associations do not have regular public funding that allows them to meet their institutional needs. The financial support received in an entirely legal manner from foreign foundations to carry out projects is often subjected to controls and freezes that seriously jeopardise the fulfilment of these projects.

The participation of women in politics thus becomes a real test of strength. It is in this unfavourable context that ATFD continues to act.

## **2. ATFD actions: Commitment to public freedoms and claims**

ATFD's commitment to democracy has taken on several forms such as press releases, declarations, manifestoes, etc. Despite restrictions and intimidations, numerous activities have been carried out, i.e. a showing of solidarity with women who suffer political violence, activities in conjunction with the Tunisian League for Human Rights (LTDH), a partner within civil society that is prevented from holding its congress, and solidarity with suspended journalists, etc.

ATFD continues to fight on three fronts: against authoritarianism, against a political Islam, and against social pressure. ATFD campaigns for the abolition of discriminations, the separation of politics and religion, and for autonomy. The fight for equality would be easier and more effective in a political context that respects civil liberties. This would have saved the feminist movement a lot of wasted energy and would have allowed it to spend more time on causes that directly impact the lives of women.

### **3. Recommendations**

ATFD makes the following recommendations:

- Enshrine the principle of non-discrimination between men and women in the Tunisian Constitution;
- Adopt positive discrimination towards women, across party lines, thus guaranteeing the real presence of women in representative bodies;
- Curb all forms of regression through awareness-raising and information and not through repression;
- Put an end to the State and dominant party's seizure of information and means of communication in order to guarantee freedom of expression;
- Regulate public subsidy grants to associations and allocate them in an equitable manner so that autonomous associations can benefit from them;
- Allow autonomous associations to take part in strategic choices for the country, within the framework of pluralist, democratic and effective consultation;
- Modify the law of 7 November 1959 on associations such as amended in 1988 and in 1992, in order to establish a regime of declaration, rather than the existing visa regime, and grant associations the right to bring civil legal actions and to be a party to legal proceedings;
- Liberalise political life, and require authorities to respect the constitutional and legislative provisions that concern civil liberties and human rights;
- Separate politics and religion to guarantee the rules of democracy and equality between men and women, with a view to ending the sacralisation of discrimination.

## **Chapter III. Violence against women**

### **1. What ATFD has achieved**

ATFD, a pioneer in the movement to combat violence against women, has helped raise awareness of the seriousness and urgency of fighting violence against women. Since 1993, ATFD has set up a counselling and support centre for women victims of violence (CEOFVV) based on "respect for the decision of the individual concerned, respect for confidentiality of information, respect for her physical and mental integrity, her dignity and her freedom, in keeping with the recognition of a woman as a person".

The centre receives on average between 5 and 10 women who are the victims of violence each week. Although numbers are increasing, the centre remains little known to the general public. Mass media campaigns tend to overlook ATFD's activities and very rarely mention the name and hotline number of the centre. Paradoxically, women who phone the helpline number made

available to them by the authorities or who go to the National Office for Family and Population (*Office National de la Famille et de la Population - ONFP*), the Ministry for Women's Affairs, the Ministry for Social Affairs or to the Child Protection Delegates, are often redirected to the CEOFVV.

Created to provide psychological support and legal counselling for women victims of violence, today the centre is also confronted with financial problems encountered by women and is obliged to provide financial support despite the fact that, since it is deprived of funding by the authorities, it is, itself, desperately in need of funds. A solidarity fund has been set up, with whatever means available, which is used to reimburse the women for the cost of travelling to the centre, to pay for initial medical certificates or to provide essential items for infants (milk, nappies, bottles, clothes).

It should be noted that because of the above-mentioned political and economic obstacles it is difficult for the centre to recruit new staff members, such as counsellors, psychologists and lawyers. Nevertheless, women seem to prefer to come to the centre as the reception they get in other institutions does not meet either their expectations or their needs because the staff there are often not sufficiently well trained to deal with women victims of violence. Seeing a need for similar services for children, the centre has also focused on violence against children since 2001. Of the 102 cases of violence against children under the age of 18 that have been recorded, just over half involved girls, 30% of whom have been victims of sexual violence, 62% have been victims of psychological violence and 7% victims of physical violence. Their level of education varies and the children most affected are those at primary school level. There is a clear correlation between violence suffered by the mother and violence suffered by children. In 63.2% of cases, the ill-treatment is the result of the mother having suffered violence and in 85% of cases, it is a member of the family who commits the violence.

The centre is also approached by victims of political and economic violence and by migrant women with dual nationality.

Adoption of the "national strategy for the prevention of violence within the family and society": After a period of hesitation when the authorities deemed that violence was not a significant phenomenon and did not require special attention, the government slowly began to wake up to the problem. In 2006, the ONFP adopted a programme known as "Gender equality and prevention of violence against women". In 2007, the decision was made to launch a national strategy for the prevention of violence within the family and society: gender-based violence throughout the life cycle (2007-2011) /PCV-VFG-VF.

This strategy, to which ATFD made a major contribution, centres around four areas: 1. Production and use of data; 2. Improvement and creation of a range of appropriate services; 3. Social mobilisation and awareness-raising for behavioural and institutional changes; and, 4. Advocacy efforts to ensure application of the law.

The strategy has encountered some difficulties because official statements are rather unclear and it is taking a long time to get it fully operational.

From a legal viewpoint, the strategy does not provide for the adoption of a general law on violence against women, as it considers that the existing laws are adequate. Therefore, gaps in the different measures taken by the government remain, which are based on legal protection, the prevention and eradication of violence against women, and communication, awareness-raising and diagnosis of the problem of violence against women.

## 2. Gaps in legal protection

Although there are no statistics available, it would seem that the majority of cases of violence – and most of the cases that come to the attention of our centre – concern marital and domestic violence. Legislative responses to such violence remain largely inadequate.

Under Article 31 of the Personal Status Code, women victims of violence have the right to ask for an at-fault divorce. However, the problem remains of proving that violence has been suffered. Indeed, judges will only accept the grounds of at-fault if the husband has received a criminal conviction. A medical certificate attesting to violence is not considered sufficient. The time it takes to secure a criminal conviction not only delays divorce proceedings, but leaves women at the continuing mercy of violent husbands. Without proof of violence, women are often obliged either to seek a unilateral divorce, which involves her paying damages and interests, or to try and persuade reluctant husbands to consent to a divorce.

Article 23 of the Personal Status Code, which, since the 1993 reform, establishes mutual relations between spouses states: “each spouse must treat the other with kindness, live in good relations with him or her and avoid doing him or her any harm”<sup>3</sup>. However, there can be no real impact on attitudes and behaviour as long as the Personal Status Code continues to declare that the husband is the head of the family.

Article 218 of the Penal Code was reformed in 1993 to make the bond of matrimony an aggravating circumstance for the punishment of assault and battery against a spouse. But the article adds that “withdrawal of the case by a victim who is an ascendant or spouse shall terminate any proceedings, trial or enforcement of penalty”<sup>4</sup>. In effect, this language relegates marital violence as a “private” offence and protecting the family and patriarchal order takes priority over protecting women, particularly as women are subjected to all kinds of pressure to withdraw charges.

Very often the husband is acquitted for lack of evidence. In our experience, which is backed up by all those involved in such cases (psychologists, social workers, lawyers and doctors) the evidential burden is the main obstacle faced by women who decide to press charges.

Marital violence against women involves not only assault and battery but also marital rape. As there is no law criminalising marital rape, it is not possible for women to get their husbands convicted of rape or, at a minimum, to obtain an at-fault divorce based on such grounds. Marital rape is one of the most brutal and frequent forms of violence which the women who come to our centre complain of. The very fact that it is difficult to talk about this type of violence makes it all the more important for lawmakers to take it into account. It is hard for women to come forward as society considers such rape a legitimate part of marriage and Article 23 of the Personal Status Code stipulates that spouses must fulfil their marital duties in accordance with custom. Marital rape can therefore be passed off as being part of custom: any woman who dares complain is told that it is her duty to satisfy her husband. Not only should marital rape be criminalised, but any reference to custom should be removed from Article 23.

Other types of violence – non-marital violence – are criminalised by the penal code, yet this does not ensure effective protection to women victims. Intrafamilial violence (perpetrated by fathers, brothers, uncles or even mothers), which some studies have shown to be widespread, needs more in-depth investigation given that it is readily accepted by prevailing moral standards and, as a result, often goes unpunished. One could even go so far as to say it is justified by a legal provision in the Penal Code.

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<sup>3</sup> Unofficial translation

<sup>4</sup> Unofficial translation

Article 227 bis, which criminalises non-violent sexual assault of a female child under the age of 15 or of a girl aged between 15 and 20 stipulates that marriage with the victim puts an end to proceedings or overturns any sentence. Nevertheless, if a husband subsequently seeks and is granted a unilateral divorce “within two years of the marriage being consummated”<sup>5</sup>, a rape victim can reinitiate any criminal proceedings. Thus, female minors end up being married to their rapists, a situation that clearly shows the lack of legal protection afforded to women. The offender is absolved as soon as he saves the “tainted honour” of the woman. Moreover, very often the victim has not yet reached the marriageable age which is 18. Thus, 14-year-old adolescents end up being married after they have been raped, regardless of the age limit for marriage, with special dispensation from a judge (in a family or children’s court). Clearly, the family “honour” takes priority and the courts give the perpetrator a means to escape the consequences of his acts. Having been raped, the young girl or woman is then forced to get married. A woman who sought help from ATFD declared: “I died twice: the first time when he raped me and the second time when he married me”. It should be noted that this kind of marriage is never wanted by the woman but by her family, in particular the father, her legal guardian, since as a minor she cannot get married without his agreement. Is this not a resurgence of the crime “of honour” (crime of shame) in a country that prides itself on stamping it out? Family honour is saved by the marriage and the absolution of the rapist-become-husband.

Sexual harassment has now been criminalised by Article 226 ter, which was added to the Penal Code on 2 August 2004 following a campaign launched by ATFD. Although we welcome this Article, its provisions fall below the expectations of women victims of sexual harassment.

Firstly, the provisions relating to sexual harassment are in a section that covers offences against public decency. This means that such an offence is treated in terms of moral decency taking the focus away from the specific nature of the act of sexual harassment, i.e. that it is an act of power and dominance whereby the harasser is abusing his position in the hierarchy for sexual ends. Article 226 ter defines harassment in the following manner: “sexual harassment is considered to be all unwanted persistent behaviour that is disturbing to another by repeated acts or words or gestures that undermine a person’s dignity or modesty, and this with a view to subjecting that person to their own sexual desires or those of another, or putting pressure on that person to weaken resistance to those desires”<sup>6</sup>. As the specific nature of sexual harassment is not taken into account, it is not included in labour regulations or the civil service statutes. Nevertheless, it takes place most often in the workplace, at school and at university. A definition that emphasises the abuse of power or authority is needed, as are specific punishments, such as dismissal, should be listed in labour regulations or in the civil service statutes.

Secondly, Article 226 quater recalls that if the charges are dismissed or if the accused is acquitted, the “victim” of the “false accusation”, in other words the accused, should be compensated. The law thus hastens to brandish the threat of the “offence of defamation” against women who are victims of an offence that we know is particularly hard to prove. Provisions to protect the victim and witnesses rather than offering a provision that recalls the “offence of defamation” (which is covered by other bills) need to be made.

Child sexual abuse requires particular attention given that so little is known about it and so little information is available. Existing penal procedure is inappropriate as it exposes the child victim to the same legal procedure as adults and there is no adequate care structure.

### **3.2 Recommendations**

- Adopt a specific framework law to define and eradicate gender-based violence, in accordance with the provisions of the first article of the UN Declaration on the Elimination

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<sup>5</sup> Unofficial translation

<sup>6</sup> Unofficial translation

of Violence Against Women, and to include all forms of violence whether perpetrated in public or in private, by the state or by any individual no matter what their relationship to the victim;

- Adopt measures to make it easier to prove violence;
- Abolish the legal provision whereby a rapist can marry his victim in order to escape criminal proceedings;
- Amend the penal code to criminalise marital rape;
- Revise the definition of sexual harassment in keeping with the above-mentioned international instruments and abolish the provision in the penal code, which grants the harasser the right to initiate defamation proceedings (article 226 quater, a provision which serves to deter women who have suffered harassment from going to court), and provide for the protection of witnesses;
- Provide for the offence of sexual harassment in labour regulations and civil service statutes;
- Establish a special procedure and court for child victims of sexual abuse;
- Step up prevention efforts by:
  - promoting education, both in schools and elsewhere, regarding both general violence and gender-based violence in particular;
  - encouraging people to speak out against sexist violence through various information and awareness-raising media;
  - increasing research in the field to improve understanding of the phenomenon of violence against women;
  - establishing a clearer typology of violence and identifying the causes and consequences;
  - promoting the family as a forum for creating a culture of equality, non-discrimination and non-violence; and,
  - promoting awareness of the law among the different actors and the public at large with respect to the legal provisions on this issue;
- Improve the quality of care and support structures for women victims of violence through training the different actors involved as a priority and necessity;
- Ensure adequate training of professionals who work with issues of violence against women and provide training for health-care providers, social workers, police officers, national guard and the judiciary. Such training should focus on all aspects of knowledge about and attitudes towards gender-based violence to promote a better understanding of the mechanisms and manifestations of such violence, and to identify the responses that each actor can provide. The training should be technical in nature and centre on the role

played by each individual in help centres, in screening and in providing care, information and guidance, in other words it should focus on supporting women victims of violence;

- Develop facilities for women victims of violence to seek help (in hospitals, police stations, social institutions, etc.);
- Promote free treatment for women victims of violence and the immediate issue of an initial medical certificate;
- Set up help centres and shelters not only in the capital but also in towns and rural areas, and create special services for women victims of violence which would preferably consist of women police officers with specific training in this type of crime;
- Create a fund for the victims of violence and for the associations that provide them with assistance, and establish material support for the NGOs that deal with violence with a view to ensuring autonomy for women victims of violence;
- Ensure that offenders receive therapy so that they might learn to channel their violent impulses and not re-offend, and establish centres to treat violent men;
- Run awareness-raising campaigns for women victims of violence to inform them of their rights and how to protect them.

## **Chapter IV. Women's economic and social rights**

### **1. Analysis**

Although guaranteed by law, women's economic and social rights are far from secure, due to the prevalence of discrimination and inequality.

ATFD has observed significant progress in the education of girls, although girls remain twice as likely as boys to be illiterate. Tunisia has made considerable efforts in schools by, in 1993, introducing universal education and compulsory attendance up to the age of 16. The current trend is towards an equal number of boys and girls in schools. 60% of university students are women who achieve better grades than men.

Although illiteracy is decreasing in Tunisia, this hides a growing inequality between the sexes and a widening gender gap. In 1956, the level of illiteracy among the female population aged 10 years and older was 1.28 times that of the male population. In 2008, that number had almost doubled to over 2.26 times. These disparities have also widened, or even doubled, in rural areas where the level of illiteracy among the female population, which stands at 20.1% in urban areas, was 42.8% in 2008, compared with 8.3% and 20.1% respectively for the male population.

There are glaring regional inequalities in this respect. In the governorates of the Greater Tunis District, the average illiteracy rate is around 10% for men and 20% for women, and more than double that for women in the governorates of the Centre West, with rates varying from 46% to 48.5%. In certain isolated and deprived regions, the education of girls is limited by two factors: firstly, the security of girls who need to travel very long distances to reach school in isolated areas; secondly, many girls from poor households are encouraged to support their families, either by working on farms or at home.

ATFD has also observed the persistence of the traditional gender labour divide and a discriminatory job market. Once established in the education system, women succeed well, and even better than men, in the hope of maximising their chances in the jobs market. Often disheartened by the problems they face, worn down by the attitude of employers and discrimination in the job market, these women are resigned to doing housework and working as “full time mothers”.

The proportion of women in work in 2008 was only 25.5% (18.9% in 1975), while that of men was around 70%. Despite higher levels of education and qualifications among women, the gender labour divide means that paid work is reserved for men, while women perform unpaid household tasks. This division of labour is one of the primary sources of men's legitimacy in terms of their economic dominance and their dominance in general. Women without financial and material resources are condemned, at a fundamental level, to living in a male-dominated society.

The greater her family responsibilities, the less likely it is that a woman will be able to enter the job market, in the absence of family support policies. The proportion of married women in work is 16%, even lower than the national average for women as a whole.

Despite these many limitations, more women tend to look for work than men, although they are less likely than them to find employment. Currently, there are 100 vacancies for women on the job market compared to 130 for men. Women also wait much longer to be offered a job. The unemployment rate among women is constantly growing compared to their male counterparts. In 2008, the unemployment rate among women was 18.6% compared to 12.6% for men, despite the fact that they may have a higher level of education whatever their professional status and regardless of whether they are employees, managers or freelancers. The unemployment rate among young female graduates has reached the unprecedented level of over 32%.

Encouraging part-time work for women has mixed results. It can be disastrous for their careers and undermine their place in the economy. Forming part of part-time practices developed specifically for women, the “half-time” law - heralded as a “positive discrimination” measure, entitles Tunisian women employed by the state to two thirds of a full-time wage. Some women are ready to sacrifice their careers to earn two thirds of a full-time wage by only working half the normal hours. Yet, in a country in which the female employment rate is among the lowest in the world, laws tending to help integrate women into the working population can be considered a necessary step forward.

The World Economic Forum's Gender Gap Index 2009 ranks Tunisia 109 out of 134 countries. It was 90 out of 115 in 2006. On a scale of 100 countries, Tunisia dropped from 78th to 81st between 2006 and 2009. This ranking, which is based on four indicators - education, health, economic involvement and political involvement - is weighed down by the latter two indicators. In 2009, Tunisia's ranking was 124 out of 134 countries in terms of the gender gap in the working population as a whole, and 126 in terms of the gender income gap.

Wage discrimination is increasing in competitive sectors and heightens the underprivileged status of women. Despite official claims that wage discrimination does not exist at any level, academic research shows the contrary. Wage discrimination is highest in the secondary competitive sector (80%), in which women's jobs are concentrated, whereas it is lowest in the protected sector (48%), dominated by the public sector. In the midstream sector, the discrimination gap is 69.5% of the wage gap.

In secondary sectors such as textiles or clothing, which have the largest female workforces at 77%, job insecurity is most widespread. Female workers in these sectors are therefore the first to fall victim to economic and social crises. They are among the first to suffer illegal or collective redundancy, as that which occurred following the lowering of trade barriers resulting from a multi-

fiber arrangement between the EU and Tunisia in 2005, or during the last financial crisis, which led to a fall in Tunisian textile exports. It is also in these less protected sectors, in which it is more difficult for unions to operate, that sexual harassment at work is greater, because female workers, often very young and poorly informed of the rights, are isolated and easily fall victim to patriarchal values and practices in the workplace.

The invisible hand of women takes over from the invisible hand of the market during periods of inflation, and comes to the rescue of the welfare state during times of austerity. The latest economic theories recognise the economic value of unpaid domestic labour, generally performed by women, and supply the necessary tools to measure its value and the contribution of women's invisible work to the country's GDP, such as household time-use budget surveys and household satellite accounts.

Women therefore support the market during periods of inflation and support the welfare state during periods of budgetary deficit and austerity, not only in terms of the services they supply to households, but also through the role they play in producing non-commercial goods and services for household subsistence purposes. The conscious or unconscious resistance to allowing women to access the labour market is directly linked to this role which is reserved for women who are taking on an increasingly large part of the state's role, a role that is opposed to their new qualifications and aspirations.

The time-use survey of rural households and of the invisible work performed by women in rural Tunisia, conducted in 1995, and a more recent survey covering the whole country in 2007, have not been distributed widely and are little used for national accounting purposes or for crafting gender equality strategies in the workplace.

## **2. Recommendations**

ATFD makes the following recommendations:

- Put a programme in place to combat illiteracy amongst the female population, by bringing school closer through transport systems and by establishing boarding schools as well as policies to encourage girls to stay in school in disadvantaged regions, notably those in rural areas and in the western regions of the country.
- Establish a 'Commission of Professional Non-Segregation and Non-Discrimination against women' to operate at the recruitment stage, throughout working life and in respect of salaries with the aim of achieving the criminalisation of discriminatory practices by institutional mechanisms in the different regions of Tunisia, to encourage jobs for women in expanding and innovative sectors across the country, orientation towards this and to oppose all workforce segregation confining women to unstable sectors.
- Adopt a policy, programme and legal measures of positive discrimination to encourage female access to work, presence in working life and improve female salaries.
- Support an increase in the amount of support to enable women to improve their qualifications, their access to information about job vacancies, their rights and institutional and non-government mechanisms enabling them to access these opportunities,
- In all these actions, target young female graduates to increase their chances of obtaining employment.

- Support, in the spirit of economic solidarity, entrepreneurial activities by women by offering them the same chances as men to access every opportunity, whilst reducing institutional and administrative burdens that hinder them in their business activities.
- Put family policies into place, specifically an increase in child benefit whose nominal value has hardly changed for several decades and whose real worth has become almost negligible, if not purely symbolic. In this context, it would be appropriate to put in place a fund and subsidy programme to set up day care centres for children and other dependents to free women for paid employment.
- Adopt positive strategies through new methods of gender-responsive budgeting by introducing macroeconomic, sector and regional policies and tax policies which take account of the government's engagement in economic and employment laws and gender equality in these laws.
- Organise household time-use surveys at regular intervals and the quantification of economic contribution by women through the development of a satellite account of non-commercial household production with a view to analysing the evolution of the gender division of work, its impact on the economy and the whole of society more generally and to facilitate the implementation of gender-responsive budgeting.

## **Chapter V. Sexual and reproductive rights**

Women's reproductive rights include the right to family planning and to be able to make free, responsible and informed decisions on matters related to sexuality.

Women's sexual rights involve:

- The right to have control over their bodies and sexuality, in the absence of coercion;
- Protection in terms of sexual and reproductive health;
- Sexual and reproductive rights do not only cover the protection of women's sexual and reproductive health, but also the protection of their dignity, freedom and role as citizens.

Sexual and reproductive rights are rights that associate sexuality to the principles of respect for privacy, equality as well as the values of integrity, autonomy and dignity of individuals. In their the broadest sense, sexual and reproductive rights cover all aspects of social life and the sexuality of every human being, including equal relations between men and women, full respect for the integrity of the person and mutual respect.

Section 94 of the Beijing Action Plan establishes a link between health and sexuality. It states that health implies the right to lead a satisfying and safe sex life and the freedom to decide whether, when and how often to have children. "Reproductive health care is defined as the constellation of methods, techniques and services that contribute to reproductive health and well-being by preventing and solving reproductive health problems." This definition "also includes sexual health, the purpose of which is the enhancement of life and personal relations, and not merely counselling and care related to reproduction and sexually transmitted diseases."

As far as reproductive rights are concerned, according to section 95 of the Beijing Action Plan, they are based “on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents. In the exercise of this right, they should take into account the needs of their living and future children and their responsibilities towards the community.”

In the Beijing Action Plan, sexual and reproductive rights are put on an equal footing with human rights and must be treated in the same way and under the same conditions. To this end, Section 96 of the Beijing Action Plan says that “the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behaviour and its consequences.”

### **1. The Tunisian government’s attitude towards sexual and reproductive rights.**

In the closing session of the Beijing Conference, the Tunisian delegation, as did most countries of the Arab and Islamic world, presented the following declaration in writing:

“The Tunisian delegation [...] has the honour to confirm that Tunisia will interpret sections 96,232 f) and 274 d) of the Platform for Action on the basis of its laws and core texts.”

The above statement was made during sessions of the Commission of 13-14 September 1995. Tunisia declared that it would “reject any provisions that are against its laws and core texts. The Tunisian delegation would like the text of the present declaration to be reproduced in the Conference report.”

It should be noted that the Tunisian government’s reservations concerning sexual and reproductive rights were only formulated at the Beijing Conference, and not the Cairo Conference (ICPD) in 1994. These reservations were presented in the form of declarations – a first interpretative declaration of specific nature by which Tunisia states that it will interpret sections 96,232 and 274(d) on the basis of its laws and core texts; a second general declaration presented in the form of a non-acceptance, and no longer only an interpretation of the relevant sections. This declaration opens up the possibility of an abusive interpretation on the part of the relevant authorities.

However, it should be noted that the reservations do not cover the right to abortion, as this is a right that has been recognised under Tunisian law since 1965 and is regulated under the Penal Code since 1973.

Several factors seem to explain Tunisia’s attitude with regards to sexual and reproductive rights, above all their assimilation to human rights in a country where human rights are not always recognised and discrimination against women persists, above all in matters related to the family. In addition, sexual relationships are only recognised within the legal relationships of marriage and between individuals of different sexes.

## **2. Unresolved problems in the area of sexual and reproductive rights**

Ever since Tunisia became an independent state it has had a birth control policy. Within this framework, legislation authorises induced abortion up to the third month (excluding in certain particular situations) in an authorised institution under the conditions stipulated by law (Article 214 Penal Code). However, ATFD has noted problems of access to abortion in public institutions both for married women and more especially for single women. The National Office of the Population and Family (ONFP) stopped providing services for abortion in 10 districts in 2007, due to budgetary constraints. The ONFP – which provided such services free of charge - ceded these activities to regional public health hospitals that have other priorities (eg. delivery, priority gynaecological interventions) and which do not provide abortions free of charge.

Consequently, ONFP is planning in 2010 to make drug induced abortion widely available and to integrate this type of abortion in the 10 districts where surgical abortions are no longer offered by clinics. Thus women will no longer have the choice between induced abortion either through surgical methods or drugs, as they currently do in 12 districts of Tunisia. Furthermore, drug induced abortions are only practised during the first two months of pregnancy.

The law on abortion, adopted in 1973, has been an invaluable achievement for Tunisian women; however, regrettably, we are currently seeing a backward trend in public-sector structures, in terms of access to abortion services and the quality of such services.

In addition, ATFD has documented certain practices which pose obstacles to women's rights, affect their dignity and are contrary to the spirit of the Beijing platform:

- The refusal of certain health professionals to perform an abortion without the consent of the spouse;
- The ill-treatment of women, above all single women, by some social workers and medical professionals;
- Semi-forced female surgical sterilisation in some situations (e.g. several children, several abortions);
- Persistent discrimination against single pregnant women with regard to access to healthcare. "Specific" circuits in some health centres in the capital city, register the enquiry as such and record all sorts of data that are not directly connected with the service requested, before any contact with medical services. Some single women have received cutaneous implants without their knowledge in the centres in which they gave birth, before they are discharged and referred to recuperation centres.
- The higher age of marriage (29 years of age for women and 33 for men) implies that young people have sexual intercourse before marriage and surveys conducted by DMSU about active sexual intercourse show that young people become sexually active from age 17. Thus, stigma and discrimination of sexually active young single girls on the part of reproductive health structures, added to social and cultural norms which deny sex outside marriage, lead to an increase in demand for abortion.

## **The virginity test**

Although it is not stipulated by law, the virginity test is a practice which is used by certain authorities during judicial investigations and by some families. The female, generally a minor, is under the obligation to undergo a gynaecological test, the results of which will allow for an evaluation of her moral conduct. ATFD has exposed this type of practice and has alerted the relevant authorities.

## **Free choice of sexual orientation**

This freedom is not recognised, and in accordance with Article 230 of the Penal Code which stipulates that “sodomy, if it does not fall under any of the cases provided for in the previous articles, shall be sanctioned with three years imprisonment.” This text is used for sanctioning both male and female homosexuality, as the text in Arabic uses the term *liouat*, which covers both types of homosexuality.

## **Sex education**

There is a lack of education concerning the right of every individual to experience sexual pleasure and desire as an aspect of their psychological stability and development. This issue is not addressed during any level of education.

## **Reproductive health**

Maternal mortality and morbidity in Tunisia are not only linked to the socio-economic standard of the population, but also to the status of women. There is a decline in maternal mortality in Tunisia, but at too slow a rate which is not in step with the level of development achieved, nor with the living standard and conditions and the widespread availability of sanitary infrastructure. The fall in maternal mortality applies to all regions, except for the Centre-West, where the number of maternal deaths has risen from 31 to 39 per 100,000 live births.

## **Maternal mortality and achievement of the Millennium Development Goals (MDG)**

Even though Objective 5 of the MDG calls for a reduction of the mortality rate by 75% by 2015, this will probably not be achieved.

In order for this goal to be achieved, the mortality rate would have to be reduced by 5% every year, but figures indicate that it is currently declining more slowly, or even stagnating. The reasons for this are a lack of coherence between reference centres and maternities, the lack of gynaecologists allocated to the regions of the interior of the country, the low income of women, and the cost of health-care (previously free of charge).

The national survey on the maternal mortality rate conducted in 1993-1994 indicates a rate of 68.9 deaths per 100,000 live births (87% of which were preventable), with major regional differences:

- 105.7 deaths for the Centre-West
- 94 for the North-West
- 92.8 for the South-West

There is a decline in maternal mortality and morbidity rates for the South-East (62.4), the Centre-East (57.4), the North-East (50.4) and the Metropolitan area of Tunis (39.4).

The monitoring system of maternal deaths allows to measure mortality trends observed in public-sector hospital structures. Within the space of 7 years, maternal mortality has fallen by a mere 24.5 %, or an annual reduction by 3.6%; far from the goal envisaged by the national strategy, which set a goal for a reduction by 75% from 1990 to 2015.

### **Maternal mortality and regional differences**

The regional analysis of this phenomenon is marred due to the absence of a recent and specific survey on maternal mortality and morbidity. The approach is not a statistical, but rather qualitative approach, and it informs us of an essential variable of the maternal death rate.

The figures published by the Directorate of Basic Healthcare within the framework of the monitoring system of maternal deaths (1999-2002 and 2003-2006) show major differences. During the two above-mentioned periods, the death rate fell from 261 to 229 per 100,000 live births. At the regional level, however maternal deaths decreased, except for in the Centre-West.

The most marked differences concern the districts of Nabeul, Jendouba, Kairouan, Sidi Bouzid. Two factors should be underlined: the proportion of deaths which are “deemed to be attributed” to women is seeing a decline, underlining an improvement in women’s behaviour and their entourage; the second fact is that 80% of the causes of maternal deaths are avoidable

This rate is abnormally high for a country like Tunisia, which has overall good sanitary infrastructures, well-trained personnel and wide-spread infrastructure and equipment.

The shortage of Tunisian gynaecologists allocated to the public health sector in these regions and their replacement by foreign (mainly Chinese) doctors and translators is not an acceptable solution, given the number of gynaecologists established in the public sector in the neighbouring coastal regions (e.g. Sousse).

### **Deliveries in an induced environment**

87% of births are carried out in a medically-assisted environment. The Centre-West region requires particular attention, the birth rate in an assisted environment is the lowest for the entire country (56.1%). The district of Kasserine has a rate of only 32.3% of births in an assisted environment, as home deliveries remain common practice. Even so, the region has 17% of the total sanitary infrastructures and has sufficient medical and para-medical staff (but a shortage of Tunisian gynaecologists). However, the region is predominantly rural, with the lowest life expectancy in the entire country, a female illiteracy rate of 45% (the highest rate in Tunisia) and a high infant mortality rate. The proportion of girls pursuing secondary education is the lowest in relative terms. On the other hand, the region presents a high fertility rate and the average household size is quite large. The region has a low rate of contraceptive prevalence, and “traditional labour division” patterns determine the sharing of tasks and confine women to low-paid or unpaid traditional activities in agriculture or craftsmanship, thus reducing their scope of autonomy and freedom within the household group.

## **Prenatal healthcare coverage**

The percentage of women having had a minimum of 4 prenatal consultations is an indicator of the quality of healthcare coverage for pregnant women. In Tunisia, the rate rose from 13% in 1996 to 72% in 2001, although it saw a decline in 2006 to fall back to nearly 65%.

Regional differences in terms of healthcare coverage for pregnant women are noticeable in Kairouan (43,2%) and Kasserine (49,1%), far below the national average. These low rates result from the low level of education of pregnant women, the lack of time to go for consultations (unpaid or low-paid activities in agriculture or craftsmanship), financial reasons, such as the high cost of consultations, and the lack of social welfare.

## **HIV/AIDS in Tunisia**

Yearly, the number of women infected with the HIV virus increases in relation to the number of men who are infected. During 2007, 38 out of 63 new cases of infection with HIV (of which 60 adults) were men and 22 were women. 46% of these individuals were diagnosed at the stage of full-blown AIDS, i.e. at least ten years after infection with HIV. UNAIDS estimates the number of infected persons to be 5,000.

The triple therapy for HIV/AIDS is free of charge and available at 4 hospitals in Tunisia, but is adversely affected by countless stock disruptions, which may cause resistance to the infection. Four out of seven persons interviewed in a non-compliance survey were reported to have stopped the therapy because of a lack of availability of treatment.

The Ministry of Social Affairs distributes disability passes to people living with HIV in order to make it easier for them to access healthcare services. However, the lack of legislation to protect people living with HIV and classifying them as disabled persons only fosters discrimination at a community level.

## **3. Recommendations:**

ATFD makes the following recommendations:

- Recognise sexual and reproductive rights as human rights;
- Ensure access to sexual and reproductive healthcare to allow women from across the country to benefit from services which are essential for their health;
- Adopt national non-discriminatory sex education strategies and to distribute sex education based on every individual's right to sexual desire and pleasure;
- Prohibit the virginity test;
- Revise legislation relating to sexuality so that it respects individual freedom of choice;
- Decriminalise homosexuality.

## **Chapter VI. Womens' rights in the family: continued discrimination against women in marital and family relations**

In the area of family relations there continues to be discrimination against women upon the contracting of the marriage, concerning rights during the marriage and when the marriage is dissolved. There is also discrimination with regard to inheritance rights.

### **1. Continued discrimination when the marriage is contracted**

The marriage must be conducted, according to the Personal Status Code, in a purely civil ceremony by the registrar or before two notaries. However, in the presence of those authorities, there is currently a resurgence of religious practices that are contrary to the law. In addition to the Koranic verses recited by the registrar after the conclusion of the marriage, there is a reference by certain notaries, not only to the Code, but also to the Sharia. The re-emergence of such practices – which are a threat to the civil nature of marriage and reinforce discrimination – marks a step backwards.

The dowry, a symbol of patriarchy, is maintained. The dowry, pursuant to Article 3 of the Code, is a condition for the validity of the marriage, although the absence of a dowry is not sanctioned by the nullification of the marriage. The Code stipulates that the marriage is formed by the consent of the spouses, the presence of two witnesses and the setting of a dowry. New Article 12 (1993) deletes the requirement for a dowry of a substantial amount, but stipulates that there is no upper limit: "the dowry may consist of any lawful property having monetary value. It shall belong to the wife".

Notwithstanding the efforts of the Government, which conducted a campaign to reduce the value of the dowry to one dinar in order to make marriage affordable for the less well-off, it must be noted that this devaluation of the dowry has not undermined its role as the symbol of patriarchy. Even if it represents only a token amount, it is nonetheless based on the idea of women's inferior status, since Article 13 of the Code stipulates that the husband cannot, if he has not paid the dowry, force the wife to consummate the marriage.

There are limits to a woman's right to freely choose her husband, since marriage between a Tunisian Muslim woman and a non-Muslim man is prohibited.

Freedom of conscience and of religion is guaranteed by Article 5 of the Tunisian Constitution which stipulates in its final paragraph that "The Tunisian Republic guarantees the inviolability of the human being and freedom of conscience, and protects the free exercise of beliefs, provided that they do not disturb public law and order"<sup>7</sup>. Unlike freedom of religion, which can be limited for reasons of public law and order, freedom of conscience is absolute. It is linked with the inviolability of the human being, which means that religious belief is part of the most private sphere, that the choice of religion is strictly personal and that the individual cannot in any way be constrained by the state or other individuals to adopt (or reject) a given choice (or to be a non-believer). Freedom of conscience also signifies that religion cannot constitute grounds for discrimination among citizens, conferring advantages on some and penalising others. Even it is not explicitly formulated, the rule exists: it arises out of the application of the general principle of the equality of all citizens before the law as set out in Article 6 of the Constitution. It is implicit in Tunisian law, which makes no mention of citizens' religion in birth certificates and in the Personal Status Code, which does not refer to differences of religion between the two spouses as an impediment to marriage. To that extent the Code complies with the 1962 United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, which Tunisia ratified with no

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<sup>7</sup> Unofficial translation

reservations in 1967 and published in 1968 (law no.67-41, JORT 21/11/1967, p.1444 and Decree no.68-114, JORT 1968, p.476). In its preamble, the Convention refers to Article 16 of the Universal Declaration of Human Rights (UDHR) which condemns all discrimination on grounds of race, nationality or religion with respect to marriage, and calls on all states to “take all appropriate measures with a view to abolishing such customs, ancient laws and practices”.

Yet a circular letter sent out on 5 November, 1973<sup>8</sup> by the Ministry of Justice to magistrates and registrars prohibits the celebration in Tunisia of a marriage between a Tunisian Muslim woman and a non-Muslim. This circular, which bases itself on the need to preserve the Muslim identity of the family, interprets Article 5 of the Personal Status Code which stipulates that “the two spouses must not find themselves in one of the situations of impediment foreseen by the law”<sup>9</sup>, where the law in question seems to be divine law or the Sharia. It stresses that the only authentic text is the Arabic one, which uses the term “Sharia”, translated in the official French version of Article 5 as *loi* (law).

In actual fact, on the pretext of interpreting the law, the circular actually creates an impediment not foreseen by the law. Article 14 of the Personal Status Code defines the limits to such impediments by stipulating that “impediments to marriage are of two types: permanent and temporary. Permanent impediments are posed by relationships of consanguinity and relationships by marriage, breast-feeding or triple divorce. Temporary impediments are posed by the presence of an existing marriage or non-completion of the period of waiting following widowhood”<sup>10</sup>.

This circular letter is therefore illegal. Impediments to marriage constitute a limit set by the law to a fundamental freedom, which is the right to marriage. They must therefore remain exceptional and the sole prerogative of the legislator.

The circular of 5 November, 1973, by creating an impediment to marriage not foreseen by the law, contravenes all the texts that are hierarchically superior to it. Not only does it infringe upon the letter and spirit of the Personal Status Code – which makes no provision for such an impediment and does not, either implicitly or explicitly, make Sharia a reference source to assist interpretation when there are gaps or points that are unclear – but also the international conventions that are ratified by the Tunisian Government. The 1962 New York Convention, similarly to CEDAW Article 16§1.b, grants men and women the same right – on the grounds of the equality of the sexes – to freely choose their spouses. Tunisia expressed no reservations and there is no impediment of a religious nature that applies to men in this regard. Finally that circular infringes upon the principle of freedom of conscience and that of equality as guaranteed in Articles 5 and 6 of the Constitution, especially since no such restriction applies to men.

Yet it is still applied by registrars and notaries<sup>11</sup>, who refuse to celebrate such marriages as long as the bridegroom has not converted to Islam. A circular letter dated 2004 setting out the documents needed in order to get married reiterates the requirement for a non-Muslim bridegroom to convert to Islam. Tunisian women who wish to exercise their right to freely choose a husband and marry a non-Muslim are obliged to travel abroad to another country which authorises mixed-religion marriages, in order to marry. For some years now, judges have tended to validate such marriages, either on the basis of the 1962 New York Convention<sup>12</sup>, or on that of

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<sup>8</sup>A previous circular dated 17/3/1962 (published in the registry of circulars on civil status, 1976) already prohibited the celebration of a marriage between a Muslim woman and a non-Muslim man by Tunisian registrars. The Ministry of Justice limited the ban to Tunisian Muslim women by a circular letter dated 15 November 1973.

<sup>9</sup> Unofficial translation

<sup>10</sup> Unofficial translation

<sup>11</sup>Two or three mixed religion marriages are reported to have been celebrated by MEZIOU (K), *J. Cl droit compare*, 1997, Tunisie, Mariage – filiation, n°36.

<sup>12</sup> TPI Tunis, 29/6/1999, *RTD* 2000, note Souhayma Ben Achour

CEDAW and Articles 5 and 6 of the Constitution<sup>13</sup>.

Although these marriages celebrated abroad are valid, they are not automatically entered into the register of births, marriages and deaths as they should be pursuant to Article 37 of the 1957 law on civil status. Most consulates refuse to record marriages between Muslim Tunisian women and non-Muslims. The only option for the women concerned is to have a judge order the registration of their marriages, and increasingly they are winning their cases<sup>14</sup>. But not all women have the means to take the matter to court.

## **2. Discrimination during marriage and on its dissolution**

Women continue to suffer discrimination in their personal relations with their husbands – who remain the heads of the household – as well as in cases of divorce and in their household relations.

### ***Continued lack of equality between the spouses: the husband as the head of the family***

Under the 1956 Personal Status Code a woman owed her husband obedience as the family head. In exchange, the latter was to be considerate of, maintain good relations with, and avoid causing injury to his wife. The wife had to fulfil her conjugal duties in compliance with traditions and customs. When Article 23 of the Code was revised in 1993, the duty of obedience was removed and replaced with the principle of the reciprocal rights and duties of the two spouses: “each of the spouses shall be considerate of, maintain good relations with and avoid causing injury to the other”. It also states that “the two spouses must fulfil their conjugal duties in accordance with the customs and traditional practices”.

The 1993 reform was a step forward, but only to a certain extent, since the rights and obligations of the two spouses are not strictly reciprocal. Under Article 38 and the following articles of the Code, essentially it is the husband who is responsible for his wife’s upkeep. Although Article 23 appears to make that duty less one-sided there is no real reciprocity since the woman’s obligation to contribute to the costs of the household is made contingent upon her having her own property.

In other areas the married woman has the same rights and obligations as her husband.

- Following the 1993 reform the duty of fidelity applies in equal fashion to both spouses. Previously, under Article 207 of the Penal Code, a man charged with murder was granted extenuating circumstances if he had caught his wife *in flagrante delicto* of adultery in the couple’s home, whereas there was no such provision for a woman. That article was abrogated by the law of 12 July 1993.
- A married woman does not lose her independent legal status: she is allowed to practise a profession without her husband’s permission. Previous Article 831 of the Code on Obligations and Contracts stipulating that “a married woman may not engage her services as a nanny or other without her husband’s permission. The husband is therefore entitled to cancel an engagement entered into without his authorisation” was abrogated by Law no. 2000-17 of 7 February 2000.
- The choice of the couple’s domicile, together with the obligation of upkeep, remains one of the last bastions of inequality between the spouses. Indeed, the 1993 reform, although it removed the woman’s duty to obey her husband, nonetheless maintained the husband’s

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<sup>13</sup> C.A. Tunis, 6 January 2004, *Cour de Cassation* 20 December 2004, note Souhayma Ben Achour, *clunet* 2005-4, p. 1193, Civ. n° 31115.2008, 5 February 2009, unpublished.

<sup>14</sup> TPI Tunis, 6 May 2006 (n°59121, unpublished)

privileged position as the head of the household, in which capacity it is his right to choose the place of domicile.

Considering itself not bound by Article 16 (1) (c) giving the same rights to men and women during marriage and on its dissolution, Tunisia refused to follow the example of its Algerian and Moroccan neighbours in abolishing the man's position as head of the family. This unequal status is reinforced by the reference in Article 23 to customs and traditional practices with respect to the couple's conjugal duties. Although since 1993, the Article stipulates that the two spouses shall cooperate in managing the family's affairs, the proper education of their children and the conduct of their children's affairs, including education, travel and financial transactions, the status that is granted to the husband and father and the notion of customs and traditional practices give rise to certain abuses, in particular as regards the choice of domicile.

Indeed, Tunisian case law continues to consider a woman who leaves the marital home or refuses to join her husband in the domicile of his choice as being at fault and guilty of causing prejudice to her husband. This is the case even when the husband switches the domicile without consulting his wife or when the wife refuses to move in order to protect the interests of the children, with regard, for example, to their schooling or healthcare.

### ***Discrimination with regard to divorce***

Although the Personal Status Code does not discriminate between men and women with regard to the grounds and procedure for divorce, divorce continues to be one of the main reasons for women's impoverishment. Notwithstanding the adoption of specific measures, the texts remain insufficient and do not give a divorced woman any guarantee of a dignified existence after the divorce. The problems are essentially material: a place to live, financial security and a guarantee that the woman will maintain the same standard of living as during the marriage.

Indeed, the situation has changed little despite several legislative reforms, with the introduction of the life annuity regime in 1981 (Article 31 of the Personal Status Code) and the joint property regime in 1998, as well as the double tax exemption for transfers between spouses and between ascendants and descendants in 2006.

Finally, it should be pointed out that the law of 4 March 2008 consolidated the right of minors to housing by consecrating their right to stay with their mother who has custody. This law introduced several important measures such as: enshrining the right to maintain occupancy in the land register and the rule making it possible to take legal action in the case of failure to pay a housing allowance. Similarly new procedures for applying for a summary judgement have now been introduced in order to solve housing issues.

Although this is an important reform it falls short in at least two areas:

- The woman is entitled to the house as long as she has custody of the children, but that custody comes to an end when the children reach the age of majority. Very often and indeed in most cases, the woman contributed to the purchase of the family home. Under the 1998 reform on joint property it is not compulsory to list the family home as part of the joint property. We are calling for the joint property regime to become part of ordinary law so that women may benefit from their basic human right to have a home to live in.
- According to the Personal Status Code, a female child is entitled to child support as long as she has no resources or is not in the care of the father. Yet the new law only gives her the right to accommodation as long as she remains a minor. The 2008 law needs to be brought into line with the Code by maintaining that right to accommodation until such time as the right to child support ceases, which for a girl means until she becomes independent and for a boy until up to the age limit of 25. These last measures are particularly necessary in view of the fact that the average age at which girls get married in

Tunisia is 29, that only 30% of women work and that the alimony judges grant to girls is not enough to allow them to pay rent or contribute to the rent for the family home since in most cases they continue living with their mothers. Hence, the right to accommodation enshrined in the 2008 law should be extended for girls until such time as they are financially fully independent.

### ***Discrimination in the family: the father as the children's only legal guardian***

During the marriage, the father, as the head of the household, is the sole authority with regard to the children. Since the 1993 reform of the Personal Status Code the mother collaborates with the father in exercising certain attributes of the father's authority. She must give her consent for her under-age children to be married, and contribute to the moral and practical management of the family. That collaboration involves co-decisions with the father regarding certain aspects of the children's education such as the choice of schools or leisure activities (travel) or the management of their property. The latter is an innovation, as up until now this was the sole responsibility of the father as the children's legal guardian.

In the case of divorce, the mother also has a right to decide on an equal footing with the father. Pursuant to new Article 60, if the mother is not granted custody, she nonetheless has a right of say on an equal footing with the father in the children's affairs and the right to contribute to their education and send them to school. Conversely, if the mother has custody of the children, she has the sole right to exercise certain guardianship rights that are precisely defined by new Article 67 (4): these pertain to the children's travel and studies and the management of their financial accounts. The last paragraph of new Article 67 sets out those situations in which a divorced woman who has custody of the children enjoys full guardianship rights: if the legal guardian proves unable to exercise or transgresses such prerogatives or if he abandons the home and has no known address, or for any reason prejudicing the interests of the child.

### **3. Discrimination with regard to inheritance rights**

Although there has been some progress, inheritance law remains fundamentally discriminatory, characterised by:

- The pre-eminence of male relatives (agnatic line = asabah = relatives of male descent)
- Male privilege (the rule giving a double share to men, whereby, excluding in exceptional circumstances, males with the same degree of relationship get twice as much as their female counterparts)
- The ambiguity of the law regarding inheritance rights in the case of religious differences
- The pre-eminence of the agnatic line of descent

This generates three forms of discrimination in men's favour and against women that refer back to the patriarchal and patrilineal family.

- Group of potential heirs: The group of potential male heirs is infinitely larger than that of female heirs. The circle of female heirs among the deceased's relatives is strictly delimited by the law. The only potential heirs are: the mother, grandmother, daughter, grand-daughter, sister and wife. By contrast, the group of potential male heirs is unlimited. Thus under certain circumstances the uncle, nephew and cousins may inherit from the deceased, while under the same circumstances the aunt, niece or female cousin may not.
- In terms of the entitlement of certain "asabah" (male relatives) to compete for the inheritance with the deceased's female relatives: In certain circumstances, when the deceased leaves neither ascendants nor descendants, his only brother will be the sole heir. But under the same circumstances the deceased's only sister will be entitled to only half the inheritance. If there are several sisters, they must share two thirds. The

remainder in both cases will go to more distant male relatives: uncles, cousins, nephews, etc.

- Male privilege: The rule of a double share for men related to the same degree to the deceased, leading to unequal shares for men and women.

In the current system, even when women are related to the same degree as their male counterparts to the deceased, they are not entitled to equal shares. This inequality is explicitly part of the Personal Status Code, several articles of which recall the principle that the male heir receives a share that is double that of a female heir (Articles 103-, 104-5, 105-3, 106-4).

This inequality is manifest in the following cases :

- Between spouses: Spouses can inherit from each other, but women are never entitled to the same share as men. While the husband is entitled to a quarter or half of the inheritance, depending on whether or not there are children, the wife is entitled under the same circumstances to only an eighth or a quarter.
- Between the parents of the deceased: in cases where the deceased leaves parents but no children, the mother is entitled to only one sixth, while the father is entitled to the whole inheritance.
- Between the brothers and sisters of the deceased: a brother is entitled to twice as much as a sister when their sibling dies without leaving any descendants.
- Between sons and daughters: a son gets twice as much as a daughter; similarly, a grandson gets twice the share of a grand-daughter.

#### ***Ambiguity regarding differences of religion***

Unlike traditional Muslim law which is based on the principle of community, the Personal Status Code does not overtly define religious differences as an impediment to inheritance. The only explicit exclusion is in cases of first degree murder, whereby the author of the crime, his accomplice or a false witness are excluded from the inheritance (Art. 88).

While the text appears on the surface to be clear, certain points remain ambiguous. The Arabic version of the text – the only authentic version – has several different meanings. First-degree murder appears as “one instance of an impediment to inheritance”. This vagueness of the text – confirmed by Tunisia’s reservations with regard to Article 16 of CEDAW – has opened the door to all sorts of retrograde interpretations referring to other types of impediment, including religious differences.

The rule on religious difference penalises non-Muslims or those who are claimed to be non-Muslim, men and women alike, in that it can block their share of an inheritance from a mother, wife, husband or sister. Apostasy may even be claimed as grounds for denying a person’s inheritance rights, in total disregard of the principles of freedom of religion and equality of citizens set out in the Tunisian Constitution (Articles 5 and 6).

There have been some case-law developments since the 9 February 2009 ruling by Tunisia’s highest Court of Appeal. This jurisprudence is not yet stabilised and is not immune to sudden changes. It is the task of the legislature to reinstate, by law, the principle of legal equality.

#### 4. Recommendations

ATFD makes the following recommendations:

- Abolish the institution of the dowry, a symbol of the commoditisation of the female body;
- Free the civil marriage ceremony from religious references when it is conducted by civil officials;
- Repeal the administrative regulation of 1973 forbidding marriage between a Muslim Tunisian female and a non-Muslim to enshrine a woman's right to the freedom to choose her partner;
- Replace the institution of the male head of the family with the concept of parental authority (held by either parent), enshrine full equality of both partners in their rights and responsibilities and remove all legal reference to outdated traditions and customs;
- Guarantee to both partners the freedom to choose their surname and domicile;
- Establish joint ownership of property within marriage as the default legal regime;
- Harmonise the provisions of the Personal Status **Code** and those of the Law of 2008 regarding housing support for children until both boys and girls reach economic independence;
- In all cases and without exception, allow women to exercise all attributes of parental responsibility in equality with their husband, recognising that even the 1983 reform granting some custody rights to the mother after divorce is not always applied due to the relevant authorities' lack of knowledge and awareness about these new rights for women.
- Establish equality in inheritance law to bring to an end the pre-eminence of the male bloodline, male privilege and to remove ambiguities in the law on inheritance rights in cases of religious or denominational differences.

# Annexes

## Annex 1: Advocacy for equality in inheritance

This argument is the result of a collective effort. It was compiled by developing and capitalising on the careful consideration given to the issue and the actions taken in this respect by feminist organisations over the years. The aim was to devise a fifteen-point argument, presented under three headings: socio-economic arguments, legal arguments and cultural arguments.

### 1. The socio-economic arguments in favour of ending discrimination in inheritance

Socioeconomic studies clearly show the discrepancy between the customary rule of discrimination in inheritance and the current structures of Tunisian families and also the new economic roles played by women. The broad access of women to paid work, their genuine contribution to development, their increased economic role within the family, their genuine participation in efforts to improve the material base of the family, and their involvement in the upkeep and the management of domestic matters should invalidate the rule of inequality in inheritance, a vestige of the patriarchal system.

**Argument 1:** These changes have been brought about by ordinary citizens who, on a daily basis, within their families, in their places of work, and the city, assume the role of stakeholders, rejecting constraints, forging new relationships and inventing new ways of behaving. Despite the institutional constraints which make the Tunisian family appear inflexible, a process of change is underway, modifying the old order and expressing new experiences of marriage, motherhood, conjugal relationships, parental relationships, family obligations and inheritance practices. Thus, the conjugal family is gradually replacing the traditional family structure in Tunisia, with its hierarchy based on gender and age. The conjugal model represents 69% of all families, and these families also have fewer children (an average of two children per woman of childbearing age). The Tunisian family is becoming increasingly urban (64.9% in 2004). Therefore, there is a blatant disconnect between the legal system for transferring property through inheritance, founded on the traditional model of the patriarchal and patrilineal family, and the current structures of the modern Tunisian family, the conjugal family.

**Argument 2:** In 2002, 92.1% of children aged 6 - 14 were receiving an education, with a virtually equal rate of participation for females and males (92.3% and 92.9%, respectively). The increasingly high level of attainment of education among girls stands out. At secondary school, the proportion of females is 54.7% against 45.3% for males. Girls are also the majority in higher education: 53.9%. The female working population increased from 6.2% in 1966 to 23.6% in 1994, and reached 26.6% in 2004. Educated and employed, women are making a significant contribution to the upkeep of their families. They are using their salaries and incomes to help improve their family's standard of living, and they are trying, through the proper management of resources, to consolidate these assets. For example, they participate in the purchase and upkeep of accommodations. In this respect, it is appropriate to increase the economic potential of women by abolishing discrimination in inheritance by giving women an equal share in the inheritance of property, on the basis of equal responsibility.

**Argument 3:** Studies show that inequality in inheritance exacerbates the economic insecurity and social vulnerability faced by women. Of the three billion people living in poverty worldwide, 70% are women. This economic vulnerability, fuelled by and also reinforcing gender inequality, is aggravated by often discriminatory legislation which does not give women the same rights as men (land property and inheritance rights) or the same opportunities to access bank loans. To this must be added the multiplication effect of economic insecurity in the event of violence:

economic insecurity compounds the impact of violence against women. All the studies show that it is women who are the most severely affected by economic insecurity, and that the most vulnerable of them are put at risk of absolute poverty, violence, and social exclusion. Efforts to end discriminatory inheritance legislation are part of the fight against poverty because these laws are a form of violence against women, albeit more concealed than others.

**Argument 4:** Equally, studies show that as long as national legislation allows them to do so, women are capable, just like men, of developing an enterprising outlook and showing initiative (for example, the creation of the Agency to Promote Investment in Agriculture (APIA) in 1982 and the promulgation in 1993 of a unique code to encourage investment). Breaking with the stereotypes of the agricultural worker, these female company heads are investing, setting up integrated projects and contributing to these projects fully-owned property acquired using agricultural loans or through inheritance. Therefore, despite the disadvantages with respect to land property, Tunisians have managed to develop an enterprising agricultural sector. This potential is yet to be consolidated by legislation establishing completely equal opportunities.

**Argument 5:** Inevitably, social reality is sometimes ahead of legislation and official norms. Faced with the strictures of inheritance law, people are implementing their own circumvention strategies and egalitarian practices are emerging. While they are still alive, parents make donations and sales and practice other forms of largesse to help their children, without making a distinction between boys and girls. As in the past, the will has been revived for non Muslim spouses. The egalitarian division of property between brothers and sisters and between spouses is becoming increasingly common in urban environments. As a result of this phenomenon, the modern, concerned lawmaker cannot be indifferent to the balance between reality and norms.

## **2: Legal arguments against discrimination in inheritance**

The legal arguments stem from the fact that Tunisian laws constitute a positive legal system whereby the rules are interrelated and ordered in a unified, pyramid-shaped hierarchy. The arguments are based on the idea that inequality in inheritance is contrary to the supreme principles of the positive legal system of Tunisia in which lower level laws must conform to the supreme laws from which they are derived. This is the logic behind the Tunisian constitution, the supreme law of the Tunisian positive legal system which leads us to support this advocacy.

**Argument 6:** Inequality in inheritance is contrary to the constitutional principles of the equality of citizens and religious freedom (articles 5 and 6 of the Constitution). These principles, which are enshrined in the Constitution or have been recognised by a judge as “fundamental principles of the legal system”, are considered supreme principles. They apply to everything and invalidate discrimination in inheritance.

**Argument 7:** Inequality in inheritance is contrary to the universal standards of human rights and the norms of the treaties that have been duly ratified by Tunisia and which, consequently, take precedence over laws (article 32 in its current version). The states which have ratified these international conventions, including the International Covenant on Civil and Political Rights, to name but one, are obliged to integrate the standards contained in these international instruments into their national laws. These standards invalidate discrimination in inheritance.

**Argument 8:** Inequality in inheritance is contrary to the liberal spirit of the Tunisian legislature which has introduced numerous innovations and regularly brings in reforms. In a system of written law, such as the Tunisian system, any interpretation of the texts must take into account the spirit in which they were produced by the legislators. Tunisia must, through its Personal Status Code and the laws accompanying and improving this legislation, abolish inequality in inheritance laws and practices.

**Argument 9:** Inequality in inheritance is contrary to recent developments in jurisprudence. These were confirmed with the decision of the court of cassation dated 22 December, 2004 (Court of Cassation No. 3843/2004) approving the judgement of 18 May 2000 of the county court of Tunis (County Court, No. 7602/ 2000) and the judgement of 14 June 2002 of the court of appeal of Tunis (Tunis Court of Appeal, No. 82861). Although still fragile and suffering from reversals, these breakthroughs are remarkable. In effect, thanks to the judiciary, the principles of equality and religious freedom have been elevated to fundamental principles of the Tunisian legal system, giving grounds to establish equality in inheritance.

**Argument 10:** Inequality in inheritance upsets social relations. This stems from the fact that the law, as a positive norm in society, plays a role in symbolic production and determines the place of the members of society. Insofar as it determines which places in society are interchangeable and equivalent and which are differentiated and hierarchical, the law produces or reproduces both new and old identities. Forcing individuals to adopt their own circumvention strategies and resort to subterfuge is prejudicial, not only to the coherence of the Tunisian legal system as a whole, but also to its efficacy as a means of regulating social relations.

### 3. Cultural arguments

It is said that in Muslim societies the question of inheritance is a matter of dogma. The rule “*born to the same parents, men are worth twice as much as women*” appears immutable. And yet we see that, in practice, Muslim societies have devised strategies to circumvent Sharia law and expected behaviour which are inconsistent with the rules of Islam. The division of property cannot be explained by the religious factor alone, but rather by a combination of elements belonging to the social edifice, including the economic system, the division of roles and functions, and the structure of family relationships. These results can serve to broaden the debate and free it from the constraints and ideological visions which have long prevailed and which are used to justify, by reference to theology and the Koran, the discrimination suffered by women, and, in contrast, the privileges enjoyed by men in terms of the inheritance system.

**Argument 11:** Anthropologists have dated the inheritance system back to the pre-Islamic period. In pre-Islamic society, the circulation of property was determined by the male-dominated order of the Arab tribe and the extent of participation in combat. This system prevailed in almost all societies with an economy based on the spoils of war and in which property was shared among men. These riches were a major source of revenue and a means of defending the tribe. For this reason, women were not the only people excluded by the system: children were also deprived of property and “everyone who did not possess a stead, carry a sword, or defeat an enemy”. The second factor stems from the accepted practice whereby it was the men who were to provide for their family. Nothing else justifies the retention of such a discriminatory system in today’s world.

**Argument 12:** History shows that Sharia rules have not escaped the law of social contingency, as is evident from certain derogatory practices used to evade and circumvent the religious prohibition on the disinheritance of women. In North Africa, we have seen the development of pragmatic, normative jurisprudence based on the ways and customs called *âmal* (“legal practices”). A practical legal system, *âmal* is pervasive in North African everyday life, influencing domestic, commercial, agricultural and pastoral matters, sometimes, if not frequently, in contravention of the scriptures. Why in these circumstances are the scriptures only invoked when improving the lot of women is concerned?

**Argument 13:** These *hiyal*, or legal subterfuges, have long been used to determine the actual structure of land ownership. Studies show that the system of *habous* (mortmain) has been, with the very rare exception, the main means of ousting women from land ownership. This system of devolution of property in favour of the female descendents of agnates (men by men) was even permitted and practiced by the Malekites of North Africa, who were known to be rigorists. Have

these circumvention strategies not shocked the Muslim conscience? In what way is equality shocking?

**Argument 14:** Inequality in inheritance, like all the other ways of restraining women, has been criticised since the second half of the 19th century thanks to a modern reinterpretation of the sacred texts. The call for reinterpretation and for the rules to be adapted to the spirit of the time has been a constant in reformist thinking. How can we still be asking these same questions in respect of equality in dignity and rights? Surely we should end this anomaly?

**Argument 15:** Inegalitarian practices, including the disinheritance of women, continue in our country. Social studies reveal that they persist in different forms (*hawz*: taking possession of property). This shows that the law on inheritance is not untouchable.

## **Annex 2**

### **Law No. 2008-35 of 9 June 2008, approving the accession of the Republic of Tunisia to the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women<sup>15</sup>.**

In the name of the people,  
Having been adopted by parliament,  
The President of the Republic promulgates the following law:

Article 1 - The accession of the Republic of Tunisia to the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women, appended to this law and adopted on 16 October, 1999 by the General Assembly of the United Nations in New York, is approved.

This law shall be published in the Official Journal of the Republic of Tunisia and executed as state law.

Tunisia, 9 June 2008  
Zine El Abidine Ben Ali

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<sup>15</sup> Travaux préparatoires: discussion and adoption by parliament during the session of 3 June 2008. Unofficial translation.

### **Annex 3**

**Law No. 2008-36 of 9 June, 2008, approving the withdrawal of declaration No. 1 and reservations No. 1 and No. 3 appended to law No. 91-92 of 29 November, 1991, ratifying the United Nations Convention on the Rights of the Child<sup>16</sup>.**

In the name of the people,  
Having been adopted by parliament,  
The President of the Republic promulgates the following law:

Article 1 – The withdrawal of declaration No. 1 and reservations No. 1 and No. 3 entered by the government of the Republic of Tunisia to the United Nations Convention on the Rights of the Child is approved.

Art. 2 – The government of the Republic of Tunisia shall submit to the United Nations Secretary General the document repealing declaration No. 1 and reservations No. 1 and No. 3, which are appended to this law.

This law shall be published in the Official Journal of the Republic of Tunisia and executed as state law.

Tunisia, 9 June 2008  
Zine El Abidine Ben Ali

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<sup>16</sup> Travaux préparatoires: discussion and adoption by parliament during the session of 3 June 2008. Unofficial translation.