



# Violence against Women in Tunisia

*Report prepared  
for the Committee  
on the Elimination  
of Discrimination  
against Women*

**The World Organisation Against Torture (OMCT)  
operating the SOS-TORTURE NETWORK**


The World Organisation Against Torture (OMCT), based in Geneva, is today the largest international coalition of non-governmental organisations fighting against torture, summary executions, forced disappearances and all other forms of cruel, inhuman or degrading treatment or punishment.

OMCT coordinates a network – SOS-Torture – of more than 260 national, regional and international organisations in 85 countries. The urgent appeals issued by the network on behalf of victims or potential victims of violence reach more than 90,000 governmental institutions, non-governmental organisations, associations and interest groups.

OMCT has, since its inception, worked towards reinforcing and supporting the actions of organisations in the field, while avoiding substituting itself for them. The structure of the SOS-Torture network has enabled OMCT to reinforce local activity while favouring the access of national NGOs to international institutions.

OMCT provides support to victims or potential victims of torture through urgent campaigns (notably in favour of children, women and human rights defenders), through the provision of urgent legal, social and/or medical assistance to victims and by way of the submission of alternative country reports to the various United Nations treaty monitoring bodies.

*Geneva, November 2002*



**Committee  
on the Elimination  
of Discrimination  
against Women**

*27<sup>th</sup> session  
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**Implementation of the Convention  
on the Elimination of All Forms  
of Discrimination against Women  
by Tunisia**

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The United Nations Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly in 1979. In 1981, the Convention entered into force and the Committee on the Elimination of Discrimination against Women was formally established. The major task of the Committee is to review the reports submitted by the States parties in order to oversee the implementation of the Convention.

The issue of gender-based violence is not specifically addressed in the Convention, but it is however essential to its most fundamental provisions. In the general recommendation No. 19 adopted at its eleventh session in 1992, the Committee on the Elimination of Discrimination against Women formally extended the general prohibition on gender-based discrimination to include gender-based violence. The Committee affirmed that violence against women constitutes a violation of their internationally recognised human rights, regardless of whether the perpetrator is a public official or a private person.

One becomes inevitably aware of the fact that the States present reports that show only a one-sided image of reality, which is frequently incomplete. The case being, the effectiveness of this supervision and control depends on the quality of information available to the members of the various committees. Recent information, verified by reliable sources, is consequently indispensable.

In submitting alternative reports to the Committee on the Elimination of Discrimination against Women (CEDAW), OMCT seeks to provide *de facto* information concerning violence against women, including torture, in a specific country as well as analyse national legislation that fosters violence against women.

OMCT's reports highlight the legal provisions, both penal and civil, of the States concerned, which discriminate against women or which, without being discriminatory as such, become so through their application. Unequal power relations between men and women have led to the domination of and discrimination against women, which in turn leads to violence against women.

Furthermore, the reports draw attention to the lack of ways for the victims of violence to obtain reparation and identify the mechanisms guaranteeing the impunity of torturers.

The reports include recommendations for reform of *de facto* practices and legislation aimed at reducing the incidence of violence against women in the country in question.

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# I

## Preliminary Observations

The promotion and protection of human rights in general and of women's human rights in particular constitute essential elements of the Tunisian Government's political programme as it strives to promote itself amongst the international community as a modern state respectful of fundamental freedoms and rights. Certain measures have been taken by the authorities to build a legal and constitutional framework for the promotion and protection of human rights, including women's human rights. A number of governmental campaigns, institutions, projects and awareness-raising campaigns have furthered the process of advancing the status of women.

Nevertheless, the reality is that the human rights situation in the country is deteriorating and there has been a marked increase in the level of State repression of individual rights in recent years. The Constitutional referendum of 26 May 2002, which effectively granted Tunisian President Ben Ali sole power over the legislative, executive and judicial branches of government and further entrenched the impunity of the President for human rights violations, looks set to continue this trend. State repression and harassment has tended to target members of political opposition groups and human rights activists. In particular, human rights defenders, including women human rights defenders, and their relatives have been targeted by the authorities. Examples of violations of basic human rights are: the use of torture and other cruel, inhuman or degrading treatment or punishment, unfair trials and partial criminal investigations, arbitrary detention, incommunicado detention, detention in inhuman conditions, intimidation by the police, restrictions on freedom of speech and of the press, restrictions on freedom of assembly and association, restrictions on freedom of movement and on the operations of human rights organisations.

Although the government continues to demonstrate strong support for the improvement of the human rights of women as described in the combined third and fourth periodic reports of the government of Tunisia: U.N. Doc CEDAW/C/TUN/3-4 (hereafter referred to as the government report), both legal discrimination and *de facto* discrimination against women continue to exist.

OMCT would like to recall that in its General Recommendation No.19, (Eleventh session, 1992) the Committee on the Elimination of Discrimination against Women (hereafter referred to as CEDAW) recommended that States parties should take all appropriate measures to

overcome all forms of gender-based violence whether by public or private act. Moreover, the Committee stated that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, while promoting respect for their dignity and integrity. The Committee requested States parties to report on the nature and extent of violence and on the measures they have undertaken to overcome violence.<sup>1</sup>

OMCT would also like to recall that following its examination of the report by Tunisia in 1995, the CEDAW suggested that more information on violence against women in the family and in the community be provided in the country's next periodic report.

Despite General Recommendation 19 of 1992, and the Committee's recommendation in 1995, the government has restricted itself in its report to commenting on violence against women in the family. However, women in Tunisia also suffer from violence in the community and certain groups of women in Tunisia are also particularly vulnerable to violence at the hands of State agents. With regard to the last group, OMCT is particularly concerned about women human rights activists and female members of families of detainees and exiled persons who continue to be subjected to violence, including sexual violence, by the police.

In light of the above and in line with the objectives of OMCT's programme on Violence against Women, this alternative report will begin with a brief overview of the status of women in Tunisia before going on to examine violence against women in the domestic and community spheres as well as violence perpetrated by the State from both a *de jure* and from a *de facto* point of view. The report ends with a series of conclusions and recommendations.

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1 – UN Doc. HRI/GEN/1Rev.2.



## I.1 Tunisia's International Obligations

Tunisia ratified the Convention on the Elimination of All Forms of Discrimination against Women on 20 September 1985. When becoming a party to this Convention, Tunisia made the following declarations and reservations:

### *1. General declaration:*

The Tunisian Government declares that it does 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.

### *2. 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.

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

The Tunisian Government considers itself 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.

### *4. Reservation concerning article 29, paragraph 1:*

The Tunisian Government declares, in conformity with the requirements of article 29, paragraph 2 of the Convention, that it shall not be bound by the provisions of paragraph 1 of that article which specify that any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall be referred to the International Court of Justice at the request of any one of those parties.

The Tunisian Government considers that such disputes should be

submitted for arbitration or consideration by the International Court of Justice only with the consent of all parties to the dispute.

*5. 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.

Although the Convention on the Elimination of All Forms of Discrimination Against Women permits the making of reservations, according to article 28 (2) of the Convention, which adopts the impermissibility principle contained in the Vienna Convention on the Law of Treaties, those reservations that are incompatible with the object and purpose of the Convention shall not be permitted.

With regard to the reservations made by Tunisia, OMCT is concerned that the reservations made by Tunisia to the substantive provisions of the Convention pose a threat to Tunisia's obligations under the Convention to eliminate all forms of discrimination against women and are therefore incompatible with the object and purpose of the treaty. These concerns were also raised in the objections to Tunisia's reservations and declarations that have been formally lodged by Germany, the Netherlands and Sweden. In this light, OMCT would recommend that the reservations and declarations made by Tunisia are reviewed and modified or withdrawn.

It should also be recalled that in during its examination of the second periodic report of Tunisia in 1995, the Committee on the Elimination of Discrimination Against women expressed its concern at the general declarations and reservations made by the Government upon ratification and urged it to consider withdrawing its reservations.<sup>2</sup>

OMCT regrets that Tunisia has neither ratified nor signed the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women.

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2 – Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Tunisia. U.N. Doc 31/05/95. A/50/38, paras.218-277.

Tunisia is also party to other international instruments relating to human rights: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights the Convention against Torture, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms Racial Discrimination. Tunisia has not ratified either of the Optional Protocols to the International Covenant on Civil and Political Rights.

At the regional level, Tunisia has been a State party to the African Charter on Human and Peoples' Rights since 1983. Article 18 (3) of the African Charter provides that States parties shall ensure that the elimination of all forms of discrimination against women as well as the protection of the rights of women “as stipulated in international declarations and conventions.”

At its 26th Session in 1999, the African Commission on Human and Peoples' Rights approved a Draft Protocol to the African Charter on Human and Peoples' Rights, which specifically deals with the rights of women. This Protocol, which has yet to be formally adopted by the African Union, contains detailed prohibitions on discrimination against women including trafficking, rape and other forms of violence.<sup>3</sup>

According to article 32 of the 1959 Constitution of Tunisia: “Treaties do not have the force of law until after their ratification. Treaties duly ratified have an authority superior to laws.”

However, OMCT is concerned about reports that ratified international treaties are subjected to lengthy delays prior to their publication in the official journal. For example, the Convention on the Elimination of All Forms of Discrimination Against Women was only published 6 years after its ratification by the Tunisian government. Although the procedure of publishing international instruments seems only to be of a technical nature and the Constitution is silent about this matter, in practice, when not duly published, many citizens may not be aware of their rights under international treaty law and judges may use the absence of publication as a pretext for not applying the provisions of the international treaties.<sup>4</sup>

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3 – Organisation of African Unity, Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, as adopted by the Meeting of Government Experts in Addis Ababa on 16 November 2001, CAB/LEG/66.6/Rev.1.

4 – Hafidha Chekir, *Universalité et spécificité: autour des droits des femmes en Tunisie*, paper presented at the Round Table on “Liberalism, republicanism, - Women's rights, the issue of the Islamic veil”, November 21, 2001, University of Ferrera, Department of Legal Science.

# General Observations on the Status of Women in Tunisia



## II.1 Equality between Women and Men under the Constitution

The Constitution of Tunisia stipulates the equality of all citizens in its article 6 by stating: “All citizens have the same rights and the same duties. They are equal before the law.” The article does however not specifically refer to equality on the basis of sex. The Constitutional Act No. 97-65 of October 1997 amended articles 8 and 21 and has strengthened the principle of equality of citizens on the basis of sex.

New article 8 includes that “a political party may not fundamentally base its principles, objectives, activities or programmes on any religion, language race or sex” [emphasis added].

New article 21 of the Constitution states that: “any voter of a Tunisian father or a Tunisian mother and having attained 23 years of age shall be eligible for the Chamber of Deputies.” (Old article 21 reads: “Any voter, born of a Tunisian father, who is at least 25 years of age on the day of submission of his candidacy, is eligible for election to the National Parliament.”)

The Constitution also lays down several other civil, political, economic, social and cultural rights. However, OMCT notes that the right to be free from torture is not guaranteed in the Tunisian Constitution.

## II.2 Women’s Institutions

As indicated in the combined third and fourth government report, mechanisms at different levels of government have also been set up to facilitate the development and advancement of women. For example, since 1992, there has been a Ministry for Women and Family Affairs, and a National Council on Women and the Family. Moreover, in 1991 the National Women and Development Commission was created, and in 1990, the Centre for Research, studies and documentation on women (CREDIF) was established.

Moreover, there are several civil society mechanisms including non-governmental organisations which aim at the advancement of women. However, these organisations face restrictions with respect to the exercise of their political and civil rights. Women human rights activists continue to be assaulted and harassed by police. As will be discussed below, members of women's rights groups are regularly assaulted, harassed and arrested by the police, although freedom of association, opinion, expression and assembly are guaranteed by article 8 of the Tunisian Constitution.

### **II.3 Status of Women in the Family**

Most of the legislative changes in favour of the rights of women took place on 13 August 1956, when the Personal Status Code was promulgated under former President Habib Bourguiba. The new Personal Status Code outlawed polygamy, instituted legal divorce, prohibited repudiation, and granted divorce rights to both spouses.

The Personal Status Code has been amended several times, in particular, the adoption of Act No. 93-74 of July 1993 instituted additional reforms to the status of women in the family. For example, new article 23 of the Personal Status Code abolishes the duty of the wife to obey her husband and introduces a mutual obligation of respect and consultation between the spouses.

Pursuant to the reform of the Personal Status Code, article 207 of the Penal Code - which provided that a husband, who murdered his wife caught in an act of adultery would be able to plead attenuating circumstances – was repealed. This crime is now characterised as voluntary manslaughter and the perpetrator is subjected to a penalty of life imprisonment.

OMCT welcomes new article 53 of the Personal Status Code, which provides for a fund to be created to guarantee payment of child support and alimony to divorced women and their children. The Council of Ministers adopted further measures in 1996 in order to strengthen the social role of the family, including the award of child allowances to a mother who has the children in her care.<sup>5</sup>

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5 – Le Monde diplomatique: “Les femmes, alibi du pouvoir tunisien”, June 1998.

While OMCT welcomes the above-mentioned reforms, both *de jure* and *de facto* discrimination against women in the family, based on traditions and customs, persist.

Dowries are still required under the Personal Status Code. Article 3 of the Personal Status Code mentions the “fixing of a dowry for the woman” as one of the conditions for the validity of the marriage contract. Article 12 of the Code states that “the dowry may consist of any lawful property having monetary value. It shall belong to the wife.”

Although the government report states in paragraph 1050 that “the dowry no longer represents a material condition of marriage but rather a psychological one, a demonstrated love for his wife,” OMCT is concerned that this practice may expose women to a greater risk of violence or other forms of discrimination at the hands of their husbands and families-in-law as the payment of a dowry may lead to wives being regarded as “property” that they have purchased.

OMCT also notes with concern that according to article 5 of the Personal Status Code, the marriageable age is 17 for women and 20 for men. The government report notes in this regard in paragraphs 1053 and 1054 “Anxious to place spouses on an equal footing in matters of legal capacity, the legislator introduced a new provision in article 153 (...) which stipulates that: ‘Any person who has not attained the majority of 20 years of age shall be deemed incompetent by reason of majority. A minor over the age of 17 shall become adult by marriage in regard to personal status and the management of his or her civil affairs.’”

In order to put spouses on an equal footing, OMCT believes that the legal age for marriage should be the same for women and men. An earlier permissible age of marriage for women gives the impression that the government places less importance on the completion of schooling and the entry into the skilled labour market for girls than it does for boys. Moreover, early marriage may expose women to domestic violence as well as to early pregnancy.

According to article 23 of the Personal Status Code, the father remains the head of the family. It states: “The husband, as head of the family, should provide for the needs of his wife and children to the extent of his means and in accordance with their status in terms of household needs.” Although the position of the head of the household is, according to the government report, paragraph 1068, “no longer a right granted to a husband to the detriment of his wife but an economic function and a

responsibility linked to the duty incumbent on him to provide for the needs of his wife and his children,” OMCT believes that article 23 of the Personal Status Code discriminates against women by confining women to a submissive and dependent role in the family as wife and mother. Moreover, the husband’s authority in the family is translated by his determination of the family’s domicile and the family name.<sup>6</sup>

As mentioned above, in 1956, the Personal Status Code instituted legal divorce under article 30. The equality of spouses with regard to seeking divorce has been established under article 31 of the Personal Status Code. According to the last article, spouses have a choice between three forms of divorce: divorce by mutual consent; divorce on the grounds of injury; and divorce on the grounds of incompatibility. OMCT notes that according to article 32, where one or more minor children are involved, the family magistrate must hold three reconciliation hearings, with an interval of at least 30 days between the hearings, during which time the magistrate shall make every effort to achieve reconciliation. OMCT wishes to express its concern, as will also be discussed below, that article 32 makes women who are subjected to violence reluctant to seek divorce.

According to article 67 of the Personal Status Code, amended by Act 93-74 of 12 July 1993, the responsibilities for the maintenance of children lie in the first place with the father. A divorced mother, who has custody over the child, is only granted the prerogatives of guardianship with regard to travel, education of the child, and the management of his or her financial accounts. A woman has the right of full guardianship only in the case of the fathers’ death or the when the father is unable to exercise guardianship. Moreover, judges have refused to grant women permission to leave the country with minor children, holding that Shari’a appoints the father as head of the family who must grant children permission to travel.<sup>7</sup>

Article 58 of Personal Status Code also discriminates against divorced women. The article requires men wishing to have custody of their children to have a woman “at their disposition” to take care of the children - this woman doesn't have to be a wife. Divorced women wanting to have the custody of their children must, in general, be unmarried unless their husband is either the father of the child or the nominated tutor.

6 – Hafidha Chekir, *Universalité et spécificité: autour des droits des femmes en Tunisie*, paper presented at the Round Table on “Liberalism, republicanism, - Women’s rights, the issue of the Islamic veil”, November 21, 2001, University of Ferrera, Department of Legal Science.

7 – U.S. Department of State, *Country Reports on Human Rights practices 2001*.

Inheritance law, governed by Shari'a and tradition, also discriminates against women. Article 192 of the Personal Status Code provides that the boy receives a share that is twice as that of the girl's.

The situation of a single mother with an illegitimate child is still ignored by law.

The Nationality Code provides for the possibility of a Tunisian mother to transmit her nationality to a child born abroad of a foreign father when the father consents. And, in December 2001, the government introduced a law that would enable a Tunisian mother to register a child as a citizen of Tunisia in the absence of the foreign father.<sup>8</sup> Nevertheless, Tunisian men do not face the same problems. Their children are automatically registered as Tunisian citizens at birth, regardless of their mother's nationality or their place of birth.

## 2.4 Women's Educational Opportunities and Literacy

Education of women is important for improving their living standard as well as enabling them to take part in the decision-making in the family, community, and in politics. Women's empowerment is fundamental for the elimination of discrimination against women, including violence against women. In 1995, the Committee on the Elimination of All Forms of Discrimination against Women "expressed its concern with the high rate of illiteracy among women in Tunisia since access to education was fundamental to the empowerment of women. Equally important was the fact that the number of dropouts among girls was high."<sup>9</sup>

Two provisions of the general principles law concerning the education system, promulgated in July 1991, aim to combat discrimination against girls. The first provides that one of the objectives of the education system is to prepare pupils for a life in which there is no place for any form of discrimination or segregation on the basis of *inter alia* sex. The second provision stipulates compulsory education until the age of 16. Additionally, all school text books have been reviewed and any images portraying women as inferior have been expurgated.

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8 – U.S. Department of State, Country Reports on Human Rights practices 2001.

9 – Concluding Observations of the Committee on the Elimination of Discrimination Against Women : Tunisia. U.N. Doc 31/05/95. A/50/38, paras.218-277.



The school enrolment rate for girls at all levels has risen from 36.7% in 1966 to 70.4 % in 1999.<sup>10</sup> However, while OMCT welcomes the fact that illiteracy is decreasing in Tunisia and the State's efforts in this field, it is concerned by the remaining gap between the literacy rates of men and women. There is a significantly greater proportion of women who are illiterate; according to the World Bank, in the year 2000, 39.4% of females over 15 years of age as opposed to 18.6% for males in the same age group. Moreover, juvenile illiteracy (ages 5-24) in Tunisia in 1999 was 2.9% for males and 11.8% for females.<sup>11</sup>

Finally, OMCT is concerned that the discrepancy between the minimum age for employment, which is 15 years for the manufacturing sector and 13 years for the agricultural sector, and the age for compulsory education, which is 16 years, may encourage adolescents to drop out of secondary school.

## 2.5 Women's Employment Opportunities

The Committee on Economic, Social and Cultural Rights, expressed its concern that, despite the efforts of the State party, inequalities between men and women continue to persist, including with regard to access to positions of responsibility and to equal remuneration.<sup>12</sup>

Women enter the job market in general with less education and vocational training than men. Moreover, women continue to meet cultural barriers that prevent them from improving their status, as a result, women work only to increase the household income.<sup>13</sup>

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10 – UNDP Tunisia, Rapport National sur le développement humain, 1999, p. 71.

11 – World Bank, World Development Indicators, 2002.

12 – U.N. Doc: E7C.12/1/Add.36, 1999.

The right of women to work is guaranteed by the Tunisian Labour Code, by all texts regulating the civil service and by the framework Collective Labour Agreement. The Tunisian Labour Code, following the reform of 1993, establishes the inadmissibility of discrimination between men and women in its preamble and a penalty is stipulated for any breach of this provision. In addition, certain provisions of the Code that were likely to be discriminatory, such as those of article 135 containing references to women's labour in the agricultural sector, were repealed. Also the provisions of the Code of Obligations and Contract, under which a spouse was required to give prior authorization for his wife to work, were repealed. Moreover, Tunisian labour laws offer mothers a number of pre- and post-natal facilities and child care.

13 – National Report 1995, quoted in Canadian International Development Agency, Gender Profile in Tunisia, (April 2001).

According to the Institut national de la statistique (INS), 48.2% of the population over 5 was economically active in 1999, and women represented 23.7% of the total labour force.<sup>14</sup> 78% of working women are employed in the industrial and service sectors.<sup>15</sup> Although the participation of women in agriculture remains also considerable, the proportion of women working in that sector has declined from 24.7% in the 1970s to 20% in 1982-1997.<sup>16</sup> It should also be noted that a large proportion of women work in agriculture without being considered “working women” or employees, since their labour is considered a part of their everyday tasks.<sup>17</sup> Women are also strongly represented in various branches of the public service such as education, medical and paramedical professions,<sup>18</sup> where they hold however, primarily middle and lower level jobs.<sup>19</sup> On the other hand, OMCT notes with satisfaction that there has been an increase in the number of women holding decision-making positions in the public service: the proportion of women managers in staff positions rose from 12% in 1992 to 14% in 1998.<sup>20</sup>

## 2.6 Women in Politics

Since 1959, women have enjoyed the same right to vote as men. The number of women in parliament has increased from 1.82% in 1966 to 11.5% in 2000, following the 1999 elections. Twenty-one women hold a seat in parliament out of a total of 182. The government has currently only two female ministers.

As the Committee on the Elimination of Discrimination Against Women noted in its conclusions on the report of Tunisia in 1995, the political participation of women is still unsatisfactory. The low participation of women at the decision-making level in the political field has serious

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14 – Quoted in Canadian International Development Agency, Gender profile in Tunisia (April 2001).

15 – National Report 1995, quoted in Canadian International Development Agency, Gender profile in Tunisia (April 2001).

16 – National Report 1995 & World Bank Development Indicators 2000.

17 – National Report 1995, quoted in Canadian International Development Agency, Gender profile in Tunisia (April 2001).

18 – Canadian International Development Agency, Gender profile in Tunisia (April 2001).

19 – U.S. Department of State, Country Reports on Human Rights practices 2001.

20 – National Report 1999, quoted in Canadian International Development Agency, Gender profile in Tunisia (April 2001).

consequences for the advancement of women and to the full enjoyment of their fundamental human rights as these will only be accomplished if women are able to express themselves and have the power to ensure that they are taken into account when policies and laws are being developed.

## **2.7. Discrimination against Women on the Basis of the Dress Code**

Another point of concern for OMCT is Decree 108 adopted by the Ministry of Education in 1985, which forbids women to wear the hijab at educational institutions and when working in government service. The measure was introduced by the government based upon its belief that wearing the hijab, or even an ordinary headscarf implied that a woman belonged to or supported Islamic political groups. Since it only applies to women, Decree 108 constitutes discrimination against them in the fields of work, access to education and health care.<sup>21</sup>

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21 – OMCT, Report on the rights of the child in Tunisia, 2002, p. 7.

# Violence Against Women in the Family



In its concluding observations on the report of Tunisia in 1999, the Committee on Economic, Social and Cultural Rights noted that “while the State party believes that domestic violence in Tunisia is rare, the Committee is concerned about the scarcity of official data on this phenomenon.” The Committee went on to recommend that the Government “consider ways of monitoring more closely the incidence of domestic violence, in light of which it may need to re-examine its law and policies.”<sup>22</sup>

Given the lack of available information concerning the prevalence of domestic violence in Tunisia, it is difficult to come to any conclusions or recommendations concerning the steps that need to be taken in order to adequately protect women against this form of violence. It appears, however, that despite the lack of official statistics or research on the issue, and in spite of the government’s assertion that “domestic violence is not a social phenomenon in Tunisia”,<sup>23</sup> domestic violence is a serious problem.

A report published by the Collectif Maghreb Egalité in 1999 cites many cases of domestic violence including sexual violence, battering and other physical violence as well as psychological violence that is often characterised by threats and intimidation. In one of the cases documented by the Collectif, a 49 year old woman who had been married for 30 years and was mother to 6 children had been the victim of physical, psychological and sexual violence throughout her entire married life. The woman lodged a complaint for the first time in 1979 and her husband was arrested and held in custody for a week before she withdrew the complaint. In 1998, she was beaten by her husband who demanded that she leave her job. She left the family home and lodged a complaint based on the medical certificate that attested to the injuries she had suffered as a result of the beatings. Her husband then commenced divorce proceedings against her on the basis that she had “abandoned the family home.”<sup>24</sup>

22 – Concluding observations of the Committee on Economic, Social and Cultural Rights: Tunisia, UN Doc. E/C.12/1/Add.36, 14 May 1999, paras. 13 and 22.

23 – Tunisia, combined third and fourth periodic reports submitted to the Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/TUN/3-4, 2 August 2000, para. 285.

24 – Collectif Maghreb Egalité 95, *Maghrebines entre violences symboliques et violences physiques : Algerie, Maroc, Tunisie*, Rapport annuel 1998-1999.

According to ATFD (Tunisian Association of Democratic Women), which runs the country's only shelter for women victims of violence, domestic violence is commonplace.<sup>25</sup> In a 2001 report on violence against women, the ATFD noted that the overwhelming majority of women seeking assistance from their centre for women victims of violence (CEOFVV), had suffered from domestic violence perpetrated by their husbands and/or by their extended families.<sup>26</sup> Importantly, the ATFD report states that the reasons that many women decide not to pursue criminal complaints in relation to domestic violence are not related to the absence of this violence but rather to its consequences which include an ingrained sense of dependence and lack of self-esteem as well as the serious social and familial pressures that are brought to bear on women who publicly denounce acts of domestic violence.<sup>27</sup>

OMCT is concerned by the fact that the government report appears to minimise the problem of domestic violence while simultaneously promoting a conciliatory approach that would leave the regulation of domestic violence largely in the hands of the victim's extended family. Rather than examining the factors that may currently prevent women from reporting this serious human rights violation or acknowledging that many women do not report domestic violence as a result of family or community pressure which discourages them from doing so, the report states that: "bearing in mind the primordial interest of children, family members often intercede to reconcile the married couple. In addition, for reasons of modesty or concern to maintain their dignity, some women victims of violence prefer to remain silent."<sup>28</sup>

Domestic violence in Tunisia is currently dealt with under article 218 of the Penal Code as amended in Act No. 93-74 of 12 July 1993. This article provides for heavier penalties in cases where an assault is committed by one spouse against another or where this assault is committed by a parent on a child than those contained in the general assault provisions of the Penal Code. The penalty for domestic violence under article 218 is

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25 – Association Tunisienne des Femmes Démocrates, Centre d'écoute et d'orientation des femmes victimes de violence, Rapport au décideurs "Les violences à l'encontre des femmes", 2001.

26 – *Ibid.*

27 – *Ibid.*

28 – Tunisia, combined third and fourth periodic reports submitted to the Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/TUN/3-4, 2 August 2000, para. 261.

imprisonment for two years and a fine of 2,000 dinars with the sanctions being increased to three years' imprisonment and a fine of 3,000 dinars if it was carried out with premeditation. In situations where the spouse or child victim decides to withdraw the case, the article stipulates that the proceedings, trial or enforcement of the penalty shall be discontinued.

OMCT is concerned by the fact that the definition of domestic violence in article 218 of the Penal Code is relatively limited in that it would not appear to cover situations in which the couple were either unmarried or divorced nor could it be applied in cases of violence committed by members of the extended family including parents-in-law. It is also uncertain the extent to which psychological violence is covered by the provisions of the Penal Code. While threats of violence are prohibited under the Code, it does not make a specific reference to threats or intimidation within the context of the family. In addition, the general provisions of the Code on rape do not explicitly prohibit rape or sexual violence within marriage and OMCT believes that steps should be taken in order to modify article 224 of the Penal Code in order to specifically prohibit rape occurring within marriage.

Article 239 of the old (1998) Penal Code provided that in cases where a girl has been abducted, all legal proceedings and the enforcement of sentences were to be ceased if the abductor and the girl subsequently marry. OMCT has been unable to obtain information concerning the status of this provision in the current Penal Code, however, it remains deeply concerned that this provision, if it is still in force, may lead to effective impunity for men who abduct women or girls as there will be considerable social pressure placed on them to marry their abductor, even in cases where these women or girls are raped by the abductor, thereby avoiding any legal sanction. This issue of forced marriage following abduction was also taken up by one of the members of the Committee on the Rights of the Child during its consideration of the report of Tunisia on 28 May 2002 and the Tunisian delegation responded that rape was punishable under the Penal Code, however, it did not make any comment in relation to the application of the “reparatory marriage” provision in the previous Penal Code.<sup>29</sup>

While OMCT welcomes the fact that the government has taken steps to reform certain provisions of the Personal Status and Penal Codes, it

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29 – United Nations, Press Release “Committee on Rights of Child Reviews Report of Tunisia”, CRC 30th Session, 28 May 2002, [www.unhchr.ch](http://www.unhchr.ch).

remains concerned, however, that there is no legislation that specifically protects women against domestic violence. To this end, OMCT would recommend that effective measures be taken with respect to the enactment of legislation on domestic violence along the lines of the guidelines submitted by the United Nations Special Rapporteur on violence against women to the fifty-second session of the United Nations Commission on Human Rights (U.N. doc. E/CN/4/1996/53, Add.2). The measures that the government could envisage incorporating within domestic violence legislation should include; the establishment of a system for the enforcement of *ex-parte* restraining and protective orders that would have the effect of ensuring that the perpetrator could not approach the victim and other witnesses and that the perpetrator be obliged to vacate the family home; provisions on the rights of victims to receive appropriate legal, medical and other assistance including alternative shelter and reparations.

Without wishing to discount the importance of public awareness campaigns and the provision of support to non-governmental organisations involved in assisting women who are victims of domestic violence, OMCT remains concerned by the lack of institutionalised training for law enforcement officials and members of the judiciary in relation to the investigation, prosecution and punishment of cases of family-based violence. Many different sources have noted that police and other law enforcement officials are often unwilling to intervene in cases of domestic violence and that the prevailing attitude amongst public officials is that such violence is essentially a private matter that falls outside of their mandate.<sup>30</sup>

Moreover, while the involvement of non-governmental organisations in the provision of support and assistance to women victims of domestic violence is very important, there is a real risk that the government may end up abrogating its primary responsibility which is to prevent, investigate, prosecute and punish crimes of violence against women with due diligence. OMCT is concerned that the statement made by the government in paragraph 283 of its report, namely: “The fact that non-governmental organizations are encouraged to assume responsibility for this aspect of family and marital life is ultimately an expression of the State’s will to strengthen the role of civil society in establishing and defending women’s rights in particular and human rights in general”, amounts to a delegation of its responsibilities in this regard.

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30 – Canadian International Development Agency, Gender profile in Tunisia, April 2001, [www.acdi-cida.ca](http://www.acdi-cida.ca).

# Violence Against Women in the Community

## IV

### 4.1 Violence against sex workers

Prostitution is criminalised in Tunisia. According to the schema developed by the Special Rapporteur on violence against women in her 2000 report to the Commission on Human Rights, Tunisia would appear to fall into the legal paradigm of “tolerant criminalisation” in relation to prostitution.<sup>31</sup> In Tunisia, the approach seems to be more nuanced than that which is outlined by the Special Rapporteur in that it would appear that although prostitution, prostitutes and clients of prostitutes are criminalized, under certain conditions, a restricted number of women may be authorised to work in the sex industry.

Article 231 of the Tunisian Penal Code prohibits prostitution and punishes persons who engage in prostitution with prison sentences ranging from 6 months to 2 years and with fines of 20 to 200 dinars. Clients of prostitutes are regarded as accomplices and are to be subjected to the same sentences.

While there is very little information available concerning violence against sex workers or on trafficking in Tunisia, OMCT is concerned that the government’s strict application of the law in relation to “unauthorised” or “clandestine” prostitution<sup>32</sup> may lead to women who do not obtain the necessary authorisation being harassed, intimidated or subjected to violence by law enforcement officials. In addition to the risk of violence, a rigid distinction between “authorised” and “unauthorised” prostitutes may lead to the further marginalisation of “unauthorised” women who will be reluctant to seek assistance from the authorities in the event that they are the victims of violence, including sexual violence, and will also not benefit from many of the public health initiatives described in the government report.

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31 – Report of the Special Rapporteur on violence against women, Ms. Radhika Coomaraswamy, on trafficking in women, women’s migration and violence against women, UN Doc. E/CN.4/2000/68, 29 February 2000, para. 21.

32 – Tunisia, combined third and fourth periodic reports submitted to the Committee on the Elimination of Discrimination against Women, UN Doc. CEDAW/C/TUN/3-4, 2 August 2000, p. 59.



## 4.2 Sexual harassment

There is evidence to suggest that women in Tunisia are often subjected to sexual harassment in the workplace or in public institutions and that this harassment generally goes unreported and unpunished. The 1998-1999 report by the Collectif Maghreb Egalité notes that women in Tunisia generally do not report sexual harassment due to fear of losing their jobs. The report also emphasises the fact that many women fear the social stigma of reporting sexual harassment as there is a perception that a woman who is a victim of this form of violence has somehow provoked the harassment as a result of her behaviour (for example by “wearing too much makeup” or by sending “ambiguous or provocative signals” etc.).<sup>33</sup>

The report by the Collectif Maghreb Egalité notes that women are gradually becoming less reluctant to report violence in the workplace or in educational institutions and that there have been a few recent cases in which women have lodged formal complaints or have sought assistance and support from women’s centres. These cases include:

- The complaints lodged by the female workers at the Italian company MIASIS. According to the report, the manager of the company harassed the female staff. Those women who refused his advances were fired. Eight of the women working in the company were fired under these circumstances and they have all lodged official complaints.
- The case of N, a secretary working in a government department. She had apparently held her position for 10 years and had expected to obtain a promotion that she had been entitled to for the last four years, however, she found that her name did not figure on the list of those persons who had been promoted. Her supervisor confirmed that he had proposed her as a candidate for a promotion and asked her to go and ask the head of the department the reason for the refusal. The departmental head saw her and listened to what she had to say before suggesting that they meet to talk about the matter further in his office after the close of business. N stated that she felt uneasy about this suggestion as the man had a reputation for being a “ladies man”. She met with him and he harassed her both verbally and physically to such an extent that she ran out of the office. She refused to lodge a complaint for fear of the

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33 – Collectif Maghreb Egalité 95, *Maghrebines entre violences symboliques et violences physiques : Algérie, Maroc, Tunisie*, Rapport annuel 1998-1999.

consequences that that would have upon her career particularly as the man in question had “powerful friends.”<sup>34</sup>

- The case of F, a university student who managed to fend off a professor who attempted to rape her in an empty classroom. She decided to lodge a complaint with the head of the faculty who passed the complaint on to the university administration and then to the Ministry of Higher Education which proposed a friendly settlement on the proviso that she withdraw her complaint. The professor in question would be transferred to another faculty. Having decided to pursue her case as far as possible, F found that those responsible for deciding matters of administrative law unwilling to sanction the professor as they believed that a public case against a professor for the sexual harassment of a student would create an unacceptable precedent. According to the information gathered by Maghreb Egalité, there have been several other cases of professors and secondary school teachers harassing their female students and there have been no dismissals or other sanctions pronounced against any of these people.

OMCT is of the belief that the government needs to take strong legislative, policy, educational and other measures in order to ensure that women and girls are adequately protected against sexual harassment in the workplace and in educational and other public institutions. At present there is widespread impunity for this form of violence, which is generally exercised by men in positions of power over women and girls, and far greater efforts need to be made in order to raise awareness of the problem and to combat it.

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34 – *Ibid.*



# Violence Against Women Perpetrated by State Agents

The Tunisian authorities allocate significant resources and efforts to project an image of Tunisia as a modern country where the promotion and protection of human rights is a main priority. While the official human rights system of government flourishes, in reality the government has been responsible for the systematic repression of members of the independent human rights organisations in order to silence and punish those who stand up for human rights as well as to deprive victims of human rights violations of any defence. Human rights defenders are routinely arrested, detained and subjected to torture and other cruel, inhuman or degrading treatment or punishment. Also, family members of human rights defenders, political detainees and exiled persons are the objects of the use of torture and other cruel, inhuman or degrading treatment or punishment. In its March 2000 report on torture, the Conseil national pour les Libertés en Tunisie (CNLT) stated that “torture continues to be practiced on a large scale” and affects not only political prisoners but common prisoners as well.<sup>35</sup> Forms of torture in Tunisia include: electric shocks, beatings with hands, sticks and police batons, food and sleep deprivation, cigarette burns, as well as sexual violence.

The authorities systematically harass Tunisian women who have ties through marriage or blood with suspected Islamists in exile or in prison. These women are subjected to having their houses illegally searched, usually followed by repeated summonses to appear at the local police station for interrogation or arrest in order to extract information or to force them to cut off all relations with family members suspected of forming part of the political opposition. While in the hands of agents of the State either in police custody, in detention or in prison, many women have been tortured, beaten, humiliated, sexually abused and threatened with rape. Those who are not imprisoned have their identity cards or passports removed – confiscated by the authorities – and are therefore unable to leave Tunisia to join a fiancé or a spouse who has taken refuge in another country. Most of these women are prevented from working and from moving

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35 – Conseil national pour les Libertés en Tunisie (CNLT), Rapport sur L’Etat des Libertés en Tunisie, March 2000.

freely within the country. Women have also been subjected to pressure to divorce their husbands. Although most of the women have eventually been able to leave the country to rejoin their husbands, no investigations have been undertaken of their mistreatment and no compensation has been paid to the victims.

The UN Special Rapporteur on violence against women raised these abuses in her 1998 report.<sup>36</sup> The government of Tunisia responded to the communications of the Special Rapporteur on violence against women and indicated in respect to the cases concerning allegations according to which the wives and other relatives of political opponents, both in detention and exile, had been subjected to inhuman and degrading treatment that “contrary to what had been alleged, the women had not been harassed, tortured or sexually abused.” The government continued, “Further, their failure to file an official complaint with the appropriate judicial and administrative authorities proves the false nature of the allegations.”<sup>37</sup>

OMCT would like to note in this respect that there is a great lack of trust in the government authorities, which deters the women from reporting the human rights abuses they have suffered to a government official. The perpetrators were government officials themselves and, as will be described below, most human rights violations committed by government officials go unpunished.

It should also be noted that according to article 12 of the Convention against Torture, States parties are obliged to carry out an immediate investigation into the facts any time there are reasonable grounds to suspect that an act of torture has taken place within its jurisdiction. Thus, investigation should not depend on legal action undertaken by the victim.

## V.1 Impunity

After having considered the report of Tunisia, the Committee against Torture reiterated the view that it had advanced in 1998, namely, that the definition of torture provided in the Tunisian law was not in conformity with article 1 of the Convention, as the Tunisian Criminal Code *inter alia* uses

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36 – U.N. Doc. E/CN.4/1999/68/Add.1.

37 – U.N. Doc. E/CN.4/1999/68/Add.1.

the term “violence” instead of torture and article 101 of the Criminal Code states that the use of violence – the term “torture” is not employed - is only punishable when it is used without just cause.<sup>38</sup>

OMCT notes that in August 1999, the government enacted amendments to the Penal Code in order to address the concerns of the Committee against Torture. The Penal Code now includes a definition of torture, instructs the police to inform detainees of their rights and confirms the right of a defendant to request medical examination while in detention. Moreover, the maximum penalty for those convicted of committing acts of torture has been increased from five to eight years.

Although some government officials have been found guilty of torture and sentenced to imprisonment, a culture of impunity for torture and ill-treatment continues to prevail. The judicial system generally fails to investigate allegations of torture and ill-treatment and routinely accepts confessions extracted under torture in evidence. Human rights advocates maintain that charges of torture and ill-treatment are difficult to substantiate because government authorities often deny medical examinations until the evidence has disappeared. In spite of the Government’s denial of its lack of investigation of alleged cases of torture, the CNLT (Conseil national pour les Libertés en Tunisie) stated in its March 2000 report that there had been a number of complaints lodged by alleged victims of torture with little or no investigation.<sup>39</sup>

After having considered the report of Tunisia, the Committee against Torture stated in its concluding observations and recommendations that it “is particularly disturbed by the abuses directed against female family members of detainees and exiled persons.” The Committee further stated: “it has been reported that dozens of women were subjected to violence and sexual abuses or sexual threats in order to put pressure on or to punish their imprisoned or exiled relatives.”<sup>40</sup>

The Committee against Torture further concluded that “by constantly denying these allegations, the authorities are in fact granting those responsible for torture immunity from punishment, thus encouraging the

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38 – Concluding observations of the Committee against Torture: Tunisia U.N. Doc: A/54/44, paras. 88-105, 19 November 1998.

39 – Conseil national pour les Libertés en Tunisie (CNLT), Rapport sur L’Etat des Libertés en Tunisie, March 2000.

40 – Concluding observations of the Committee against Torture: Tunisia U.N. Doc: A/54/44, paras 88-105, 19 November 1998.

continuation of these abhorrent practices.” It is interesting to read that in the comments by the Tunisian Government on the conclusions and recommendations of the Committee against Torture following its consideration of Tunisia’s second report, the government again denies the allegations. The Tunisian government states: “The Committee’s conclusion on allegations of sexual or other abuse against women members of detainees and exiled persons are so obviously biased as to be absurd.” It continues: “the Tunisian delegation has already refuted these allegations in an exhaustive legal and practical analysis drawing attention to the lies and manipulation perpetrated by extremist elements, which are intended to tarnish Tunisia’s image and arouse the sympathy of the countries where they live, in the hope of obtaining permission for the families to join them. The Tunisian authorities challenge anyone to produce the slightest evidence in support of these allegations.”

The Tunisian government concludes its comments on the subject by stating that “Tunisia would like to point out its significant achievements in protecting and promoting women’s rights, and to express its indignation at the Committee’s conclusions on the subject, which it judges to be entirely unsubstantiated. Needless to say, the false allegations which prompted these conclusions have not been the subject of petitions to the courts of human rights units.”<sup>41</sup>

However, there is a disparity between the discourse of the Tunisian government, which continues to emphasise its commitment to respecting and promoting the human rights of women and the reality. Although the rights situation of women in some areas has improved, in many areas it has not and when it comes to the exercise of civil and political rights such as freedom of association, freedom of expression and the physical integrity of the individual, women face gender specific problems as well as similar problems to men, a fact which is borne out in the cases described below.

## 5.2 Individual Cases

### *5.2.1 Targeting of Human rights Defenders and their Families*

**Ms Souhayr Belhassen**, vice-president of the Tunisian Human Rights League, was assaulted by the police in Tunis police on 14 April 2001,

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41 – Concluding observations of the Committee against Torture: Tunisia, UN Doc. A/54/44, 19 November 1998, [www.unhchr.ch](http://www.unhchr.ch).

while returning from Geneva where she had attended the United Nations' Human Rights Commission and met representatives of the European Union.

On her arrival at the airport, Souhayr Belhassen had all her documents confiscated. As she was leaving the airport, two plainclothes policemen brutally assaulted and insulted her. When Souhayr Belhassen went to the police station to file a complaint, the police refused to register her deposition. The documents that had been confiscated have not been returned to her.

On 20 April 2001, she was again stopped and attacked by members of the security forces deployed to prevent the access to the headquarters of the National Council for Liberties in Tunisia (CNLT), where several human rights defenders were to meet. In addition, in September and October 2001, a slander campaign was launched against her. She has been accused of "betraying the Arab cause", after having participated in an international investigation mission on the Human Rights situation in Iraq.<sup>42</sup>

**Ms Khedija Cherif**, a founding member of the CNLT and the Tunisian Association of Democratic Women Association (ATFD), was twice assaulted by the police in March 2001. On 1 March, as Ms Cherif was on her way to a meeting of CNLT at the home of Ms Ben Sederine, she was stopped by plainclothes police who told her she was prohibited from attending the meeting. When she protested against the illegal prohibition, Ms Cherif was insulted and attacked by several police who struck and slapped her on the face and chest.

Ms Cherif was attacked again on March 10 as she was leaving the *Palais de Justice* where she had gone to support Mr Trifi, who had been summoned by the investigating magistrate. She was thrown down the steps and dragged along the ground and the file she was carrying was confiscated.<sup>43</sup>

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42 – The Observatory for the Protection of Human Rights Defenders, a joint programme of the FIDH and OMCT Human Rights Defenders in the Front Line, Annual Report 2001, and see urgent appeal TUN 003/0401/OBS 034 and letter to the Tunisian Authorities dated October 2001, the Observatory for the Protection and Promotion of Human Rights Defenders.

43 – The Observatory for the Protection of Human Rights Defenders, a joint programme of the FIDH and OMCT Human Rights Defenders in the Front Line, Annual Report 2001, and see urgent appeal TUN 003/0401/OBS 034 and letter to the Tunisian Authorities dated October 2001, the Observatory for the Protection and Promotion of Human Rights Defenders.

A judicial procedure has been opened against **Ms Sihem Ben Sedrine**, spokesperson for the CNLT, after her intervention on the Arab TV channel *Al Mustaqilla*, based in London, in which she tackled the question of judicial corruption and torture in Tunisia. On her return on 26 June 2001 Sihem Ben Sedrine was arrested and charged with “disseminating false news liable to disturb the peace” and “offending the judicial institution”. She was placed in detention in the Manouba women’s prison.

The charges against Ms Ben Sedrine were confirmed on 5 July by the investigating magistrate. She was provisionally released on 11 August 2001 after 47 days in detention mainly as a result of national and international pressure. However, she may at any time be arrested again because her case is still not closed.

As she was to return to London to appear on *Al Mustaqilla* on 2 September in a programme on the Mediterranean Games, she was forbidden to leave the country. On 4 December her car was ransacked.<sup>44</sup>

The members of the **Tunisian Association of Democratic Women (AFTD)** are being put under pressure. When the AFTD tries to highlight areas where the protection of the human rights of women can improve, there efforts are blocked. The AFTD was particularly targeted in the days following its 5th Congress on 7 and 8 December 2001, in a new libel and destabilisation campaign in the press.<sup>45</sup>

**Ms Radhia Nasraoui**, a human rights lawyer and member of Council of the Tunis Order and the wife of Mr Hamma Hammami, spokesman of the Communist Workers’ Party of Tunisia who was forced underground and continues to be harassed. Her family have also reportedly been subjected to a pattern of harassment by the security forces on account of her human rights work. On 6 June 1998 an attempt was made by two security police to abduct her daughter.

On 12 February 1998, Radhia Nasraoui’s office was ransacked and the majority of her files were removed. On 11 March 1998 she was charged *in absentia* with 11 charges, including belonging to a terrorist group; spreading false information; contempt of court, of public order and of the President of the Republic; and distribution of leaflets.

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44 – The Observatory for the Protection of Human Rights Defenders, a joint programme of the FIDH and OMCT Human Rights Defenders in the Front Line, Annual Report 2001.

45 – The Observatory for the Protection of Human Rights Defenders, a joint programme of the FIDH and OMCT Human Rights Defenders in the Front Line, Annual Report 2001, and see urgent appeal TUN001/020/OBS 002.



Her house is under constant surveillance, her telephone line is regularly disconnected or tapped. In addition, her daughters are regularly intimidated. On 8 May 2001, on her return from Paris, she was intercepted at the airport in Tunis and all her documents (articles on repression in Tunisia) were confiscated. In August, her car was sabotaged. Acts of harassment against her and her daughters have intensified since the beginning of January 2002.<sup>46</sup>

In the past, Radhia Nasraoui helped women whose husbands were in exile to obtain passports so that they could join their husbands abroad.

### 5.2.2. Targeting of Family members of Political opponents

Rachida Ben Salem was arrested near the Libyan border while she was trying to join her husband, a political refugee in the Netherlands. Rachida Ben Salem had no passport and she had not been able to leave the country. Since her husband left the country in 1992, she has been the victim of constant harassment.

On 9 September 1997, Rachida Ben Salem was sentenced to two years and three months imprisonment; two years for belonging to the unauthorised association „al-Nahda“, and three months relating to an infringement of a law on border crossing. Rachida Ben Salem denied membership of the „al-Nahda“. Reliable sources suggested that she did not have links with this association, nor was the prosecution able to produce any convincing evidence to support this charge. On 19 November 1997, the Appeal Court of Tunis increased the initial sentence of Rachida Ben Salem from 2 years and 3 months to 2 years and 6 months imprisonment. On 3 June 1999, she was released.<sup>47</sup>

Radhia Aouididi was arrested on 9 November 1997 while attempting to rejoin her fiancé - a political refugee - in France, armed with a false passport. During her detention, she was allegedly beaten and threatened with rape. She was kept in custody for more than ten days, which is over the limit laid down by the law. Her family was only informed of her imprisonment the day she appeared before a magistrate. Radhia Aouididi

46 – The Observatory for the Protection of Human Rights Defenders, a joint programme of the FIDH and OMCT Human Rights Defenders in the Front Line, Annual Reports 2000 and 2001, and see urgent appeal TUN 001/0201/OBS 001.

47 – OMCT, urgent appeal case TUN 260597 VAW, and three follow ups.

was sentenced, on 26 May 1998, to 3 and a half years of prison without probation. She has been charged with criminal conspiracy, forgery and possession of false documents. Radhia Aouididi was released on 3 June 1999.<sup>48</sup>

Ms Zohra Alila-Hadiji was the victim of harassment by the police since her husband left the country in 1992. Following her request for a passport, Ms Zohra Alila-Hadiji was the victim of repeated interrogations by the police. Her house was searched on several occasions in the night. As a consequence, her three children are suffering from psychological problems. She has been able to leave the country.<sup>49</sup>

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48 – OMCT's urgent appeals, Case TUN 200397. VAW and 7 follow ups.

49 – OMCT's urgent appeals, Case TUN 290797 VAW.

## VI

# Conclusions and Recommendations

The government of Tunisia puts a lot of effort into projecting an image of a modern and democratic country characterised by the strong support it gives to the human rights of women. However, Tunisia has made several important reservations and declarations of understanding that condition its ratification of the Convention on the Elimination of All Forms of Discrimination Against Women and it has neither ratified nor signed the Optional Protocol to the Convention.

If Tunisia is serious about protecting and promoting the human rights of women, OMCT would insist upon the need to implement all provisions of the Women's Convention and to repeal the reservations made to this Convention. OMCT would also insist that Tunisia ratifies the Optional Protocol to the Convention, enabling the Committee to receive individual communications relating to Tunisia and to conduct inquiries into grave or systematic abuse of women's human rights.

While OMCT welcomes the fact that the government of Tunisia has made some serious efforts to advance the human rights of women, both on the *de jure* and *de facto* level, women do not fully enjoy human rights on an equal footing with men. In fact, OMCT is of the view that in all areas of life, women suffer from discriminatory laws and practices, due to many factors, including the persistence of a traditional male-dominated society.

OMCT notes with concern that under the Personal Status Code, dowries are still required, that the father is still the head of the family, that inheritance is still governed by Islamic law, which allocates two thirds to the man and one third to the woman, that responsibilities for the maintenance of children lie in the first place with the father, and that there remains a discrepancy in the legal age of marriage for women and men.

OMCT would call upon the government of Tunisia to change all of these laws which discriminate against women either directly or indirectly, thereby contributing to the subordinate role played by women in the family and in Tunisian society and rendering them vulnerable to violence.

OMCT welcomes the efforts of the Tunisian government in respect of the increasing presence of women in higher education and in the work force. It notices with concern, however, that the illiteracy rate for women is still

very high. It is also concerned by the fact that women are still severely underrepresented in politics. OMCT would encourage the state to take strong and immediate measures to address these problems as these areas are of utmost importance for women's empowerment.

OMCT is concerned that despite the lack of official statistics or research on the issue, and in spite of the government's assertion that "domestic violence is not a social phenomenon in Tunisia", domestic violence appears to be a serious problem in Tunisia. It has been reported that the reasons that many women decide not to pursue criminal complaints in relation to domestic violence are not related to the absence of this violence but rather to its consequences which include an ingrained sense of dependence and lack of self-esteem as well as the serious social and familial pressures that are brought to bear on women who publicly denounce acts of domestic violence. Moreover, police and other law enforcement officials are often unwilling to intervene in cases of domestic violence and the prevailing attitude amongst public officials is that such violence is essentially a private matter that falls outside of their mandate.

OMCT is concerned that the Personal Status Code and the Penal Code provide only very limited protection for women against domestic violence. In fact, there is no legislation that specifically protects women against domestic violence, taking into account the special relationship and the inter-dependence that exist between the victim and the perpetrator of domestic violence.

To this end, OMCT would recommend that effective measures be taken with respect to the enactment of legislation on domestic violence along the lines of the guidelines submitted by the United Nations Special Rapporteur on violence against women to the fifty-second session of the United Nations Commission on Human Rights (U.N. doc. E/CN.4/1996/53, Add.2). The measures that the government could envisage incorporating within domestic violence legislation should include; the establishment of a system for the enforcement of *ex-parte* restraining and protective orders that would have the effect of ensuring that the perpetrator could not approach the victim and other witnesses and that the perpetrator be obliged to vacate the family home; provisions on the rights of victims to receive appropriate legal, medical and other assistance including alternative shelter and reparations. The Penal Code should explicitly prohibit rape occurring within marriage. Moreover, OMCT would insist on the necessity of training for law enforcement officials and members of the judiciary in relation to the investigation, prosecution and punishment of cases of family-based violence.

OMCT is also concerned about article 239 of the old (1998) Penal Code which provided that in cases where a girl has been abducted, all legal proceedings and the enforcement of sentences were to be ceased if the abductor and the girl subsequently marry. As OMCT has been unable to obtain information concerning the status of this provision in the current Penal Code, it would request the Tunisian government to explain whether this “reparatory marriage” provision is still applicable.

OMCT is concerned that the government’s strict application of the law in relation to “unauthorised” or “clandestine” prostitution may lead to women who do not obtain the necessary authorisation being harassed, intimidated or subjected to violence by law enforcement officials. OMCT would recommend an amendment of the law which currently criminalizes prostitution.

OMCT is concerned by reports that sexual harassment of women in the workplace often goes unpunished. OMCT would recommend that the government take strong legislative, policy, educational and other measures, such as the development of awareness-raising campaigns, in order to ensure that women and girls are adequately protected against sexual harassment in the workplace and in educational and other public institutions.

OMCT is also very concerned about information concerning the torture of women perpetrated by State. Women are targeted in their public as well as their private roles. Women human rights defenders are the victims of severe harassment by State authorities. In addition, the authorities systematically harass the wives of suspected Islamists who are in jail or exile, through detention, surveillance, searches without warrants, sexual violence, and confiscation of passports.

OMCT is also deeply concerned about the fact that the government of Tunisia is systematically denying these widespread practices of torture and ill-treatment. No investigations have been undertaken into alleged cases of torture and no compensation has been paid to the victims of these abuses.

OMCT would urge the government of Tunisia to recognise and address this grave problem with effective measures. It should take steps to ensure that all allegations of torture and ill-treatment are promptly, thoroughly and impartially investigated. Those responsible should be identified, brought before a competent and impartial tribunal and the sanctions provided for by law should be applied.





*27<sup>th</sup> session  
3-21 June 2002*

**Concluding Observations of the  
Committee on the Elimination of  
Discrimination Against Women:  
Tunisia**





## Introduction by the State party

**1.** The Committee considered the combined third and fourth periodic report of Tunisia (CEDAW/C/TUN/3-4) at its 567th and 568th meetings, on 14 June 2002.

**2.** In introducing the report, the representative of Tunisia informed the Committee that, in the early days of the twentieth century, a reform movement advocating freedom for women had existed in Tunisia. Since the Personal Status Code of 1956 had eliminated polygamy, regulated divorce and defined a minimum legal age for marriage; and since the Tunisian Constitution of 1959 had enshrined the principle of equal rights between men and women in all fields, there had been a number of accomplishments in the country, including the Change of November 1987, which had consolidated women's status within the family and society and had enhanced women's role in the development process. Such gains were further reinforced following the major decisions announced on 13 August 1992 introducing new concepts, such as cooperation, complementarity, partnership and mutual respect.

**3.** The Government's policy was grounded on the principle of effective equality between men and women within the family and society and women's rights were an integral part of the overall system of human rights, which had become one of the priorities of political action in Tunisia since the Change. She also noted that, in response to the Committee's recommendations following the discussion of Tunisia's two reports in 1995, and in response to the recommendations contained in the 1995 Beijing Platform for Action, Tunisia had made various decisions in terms of institutional mechanisms and activity design and planning. Among the institutional mechanisms which had been established were: a committee on equal opportunity to monitor compliance with legislation; a committee on the image of women in the media within the National Council for Women and the Family; and a national committee for the promotion of rural women. Since 1995, Tunisia had also developed its legislative system, including the Personal Status Code, the Nationality Code, the Electoral Code and the Labour Code, in line with development needs.

**4.** The representative reviewed a number of indicators which indicated an accelerating pace of progress in Tunisia in giving concrete substance to equal opportunity between men and women and in integrating the principle of equal opportunity in all fields — education, vocational

training, effective involvement in development activities and access to decision-making positions.

**5.** No section of society was excluded from Tunisia's comprehensive development project, with appropriate attention being given to ensuring the integration of rural women within the economic and social cycle through a national strategy for the promotion of rural women, which was formulated in full partnership with development civil society organizations. The representative underscored the fact that such organizations were now playing a major role in formulating programmes and strategies and had thus become partners in the dynamics of development.

**6.** The representative stated that Tunisia's determination to translate the values of equality between men and women into reality was dependent upon the dissemination of a whole body of culture aimed at changing mindsets and behaviours by promoting the values of solidarity and tolerance, civic behaviour, respect for others and dialogue within the family, thus contributing to the eradication of stereotypes. Great importance was attached by the Government to all factors that could impede the incorporation of such values, and priority was given to the issue of violence, both verbal and physical, with legislative and institutional steps being introduced in this context.

**7.** In order for progress in the promotion of women's rights to continue in Tunisia, there was a need to develop a comprehensive network of mechanisms to monitor the evolution of the status of women in the country. They would include a national programme aimed at enhancing the national statistical system, the adoption of gender classification in all sectors, and the establishment of an observatory within the Centre for Research, Documentation and Information on Women to collect comparative data on the status of men and women in all fields.

**8.** In concluding, the representative affirmed that the promotion of women's rights in the country had been included in the President's Programme for the Future. She stated that, thanks to its political determination and the mobilization of modern technologies, Tunisia was resolved to make considerable headway in striking an equitable and comprehensive balance among the various components of society.

# Concluding comments of the Committee

## Introduction

**9.** The Committee expresses its appreciation to the Government of Tunisia for submitting its combined third and fourth periodic report, which is in accordance with the Committee's guidelines for the preparation of periodic reports. It commends the Government for the extensive written replies to the issues raised by the pre-session working group and the Government's oral presentation, which provided additional information on the implementation of the Convention in Tunisia.

10. The Committee commends the Government for its high-level delegation, headed by the Minister for Women and Family Affairs. The Committee appreciates the frank and constructive dialogue that took place between the delegation and the members of the Committee.

**11.** The Committee notes that governmental action, in particular the Ninth National Development Plan, is placed within the context of the implementation of the Beijing Platform for Action.

**12.** The Committee notes that reservations have been made by the State party to articles 9, paragraph 2; 15, paragraph 4; and 16, paragraph 1 (c), (d), (f), (g) and (h).

## Positive aspects

**13.** The Committee commends the Government of Tunisia on its political will and commitment to implementing the Convention and to achieving equality between women and men, as reflected in a range of laws, institutions, policies, plans and programmes to address discrimination against women in Tunisia.

**14.** The Committee commends the State party on the early reform of its Personal Status Code, which abolished polygamy and granted the right to divorce to both spouses, and its reform of the inheritance law. The Committee welcomes the continuing legislative reforms by the State party. It welcomes the amendments to the Personal Status Code, which provide women with the capacity to institute legal proceedings in their own name, affirm the principle of equality and partnership between spouses, provide that both parties should cooperate in managing family affairs, prevent

manipulation of divorce proceedings by the husband, allow spouses to agree to a joint property regime and grant women the right to give their family name to a child born of an unknown father and the opportunity for gene-testing to prove parenthood. The Committee also welcomes the reform of the Penal Code, which imposes heavy penalties for the killing of a woman for adultery.

**15.** The Committee commends the reforms to the nationality law introduced by the State party in working towards harmonizing the law with article 9 of the Convention.

**16.** The Committee commends the Government for its progressive development of the national machinery and the reconstitution of the Ministry for Women and Family Affairs as a full Ministry in 1999. The Committee notes with appreciation that the Ministry's budget has doubled since 1994. The Committee further commends the efforts of the State party to consolidate the status of Tunisian women through the establishment of the commission for monitoring the image of women in the media and a national commission for the promotion of rural women.

**17.** The Committee notes with appreciation the progress made in increasing the enrolment and retention of girls in schools at all levels, including in higher education, the diversification in their areas of study, and reduction of female illiteracy. The Committee also commends the measures taken to improve women's health, including through the provision of reproductive health services and reduction of maternal and child mortality rates. The Committee also notes that rural women are enjoying an overall improvement in the quality of rural life due to a combination of regional development and overall sectoral policies, and that these women are benefiting from technical and financial support through the efforts of the economic and financial authorities in Tunisia.

### **Principal areas of concern and recommendations**

**18.** While appreciating the progress made towards creating an environment for withdrawal of the reservations to articles 9, paragraph 2; 15, paragraph 4; and 16, paragraph 1 (c), (d), (f), (g) and (h), through legal reforms, the Committee expresses its concern that these reservations continue to be retained.

**19.** The Committee urges the State party to expedite the steps necessary for the withdrawal of its reservations.

**20.** While welcoming the legislative reforms introduced by the State party aimed at eliminating discrimination against women, the Committee is concerned about the remaining discriminatory provisions, especially in the nationality law and the Personal Status Code.

**21.** The Committee urges the State party to continue the process of legislative reform and review relevant existing laws in consultation with women's groups.

**22.** The Committee expresses concern that, although the Constitution provides for the equality of all citizens and the 1997 amendment to the Constitution introduced the concept of nondiscrimination with regard to political parties, the Constitution does not contain a specific provision prohibiting discrimination against women and there is no definition of such discrimination in accordance with article 1 of the Convention, which prohibits both direct and indirect discrimination. The Committee is concerned at the lack of legal remedies to ensure the Constitutional provision on equality is enforced or court decisions in which women have obtained redress for acts of discrimination.

**23.** The Committee urges the State party to include the definition of discrimination against women in accordance with article 1 of the Convention in its national law and to ensure access for women to seek and obtain redress from the courts for violation of the rights protected by the Convention and the Constitution, with appropriate remedies. The Committee recommends the intensification of education and training programmes on the Convention to enhance the knowledge of judges, lawyers and law enforcement personnel. The Committee invites the State party to provide, in its next report, information about complaints filed in courts based on the Convention, as well as any court decisions that refer to the Convention.

**24.** The Committee is concerned that there is a lack of systematic data collection on violence against women, including domestic violence, violence against women in detention centres and prisons, and sexual harassment in the workplace and in other institutions. The Committee is concerned that no specific legislation has been enacted to combat domestic violence and sexual harassment. The Committee is concerned that article 218 of the Penal Code provides that the withdrawal of a case by a victim terminates any proceeding.

**25.** The Committee recommends that the State party devise a structure for systematic data collection on all such forms of violence against women. The Committee calls upon the State party to ensure that all violence against women is prosecuted and punished and that women victims of violence have immediate means of protection and redress. In the light of its general recommendation 19, the Committee requests the State party to enact specific legislation on domestic violence, including marital rape, and sexual harassment. It recommends that the number of shelters for women victims of violence be increased and that full sensitization of public officials, especially law enforcement officials, the judiciary, health-care providers and social workers, to all forms of violence against women is ensured. The Committee calls upon the Government to create public awareness on violence against women as an infringement of human rights that has grave social costs for the whole community.

**26.** The Committee is concerned at the limited information on trafficking in women and girls and exploitation of prostitution. The Committee notes with concern that, although legally prohibited, there are authorized places for prostitution.

**27.** The Committee requests the State party to include in its next report information and data on, and the measures taken to prevent and combat, trafficking in women and girls and exploitation of prostitution, as well as the measures taken to protect, rehabilitate and reintegrate women and girls who have been victims.

**28.** While noting the measures taken to increase women's political participation, the Committee is concerned about the low representation of women in high-level decision-making positions, including as members of the Chamber of Deputies, in government positions, in the central council and executive committee of the Tunisian Union for Agriculture and Fisheries, as high-ranking diplomats, and as full professors in the universities.

**29.** The Committee urges the State party to take measures to increase the representation of women in high-level decision-making positions through, inter alia, the implementation of temporary special measures, in accordance with article 4, paragraph 1, of the Convention in order to realize women's right to participate in all areas of public life and, particularly, at high levels of decision-making.

**30.** The Committee is concerned at the low level of women's labour force participation and at the lack of information regarding its causes. The

Committee welcomes Act No. 83-112, which prohibits discrimination on the basis of sex with regard to public entities, but is concerned that such legislation does not extend to the private sector. The Committee notes the absence of statistical data on wages disaggregated by sex and on pensions and social rights.

**31.** The Committee urges the State party to adopt appropriate measures to ensure women's equal access to paid employment. The Committee also urges the State party to adopt and enforce appropriate legislation to ensure equal opportunities for women and men in the public and private sectors of the labour market, and to prevent direct and indirect discrimination in employment. The Committee requests the State party to include in its next report sex disaggregated data on wages, pensions and social rights.

**32.** While noting the reduction in the general illiteracy rate of women, the Committee is concerned that the rate is still high among certain groups of women, particularly rural women and older women.

**33.** The Committee encourages the State party to further implement programmes specifically designed to reduce female illiteracy, particularly among rural and older women.

**34.** The Committee is concerned about the situation of single women with children born out of wedlock and the limited information thereon.

**35.** The Committee requests the State party to include in its next report information on the situation of single women with children born out of wedlock, including the measures taken to ensure that their rights are protected.

**36.** The Committee invites the State party to accept the amendment to article 20, paragraph 1, of the Convention, concerning the meeting time of the Committee.

**37.** The Committee also urges the State party to sign and ratify the Optional Protocol to the Convention.

**38.** Taking into account the gender dimensions of declarations, programmes and platform of actions adopted by relevant United Nations conferences, summits and special sessions of review (such as the twenty-first special session of the General Assembly, on the implementation of the Programme of Action of the International Conference on Population and Development; the World Conference against Racism, Racial

Discrimination, Xenophobia and Related Intolerance; the Second World Assembly on Ageing; and the twenty-seventh special session of the General Assembly, on the implementation of the outcome of the Children's Summit), the State party should include information on the implementation of those aspects of these documents relating to relevant articles of the Convention in light of the subjects dealt with in these meetings.

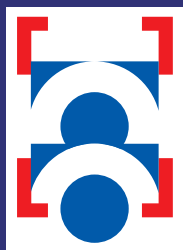
**39.** The Committee requests the State party to respond to the concerns expressed in the present concluding comments in its next periodic report submitted under article 18 of the Convention. It also requests that the report address the general recommendations of the Committee and provide information on the impact of legislation, policies and programmes to implement the Convention.

**40.** The Committee requests the wide dissemination in Tunisia of the present concluding comments in order to make the people of Tunisia, and particularly government administrators and politicians, aware of the steps that have been taken to ensure de jure and de facto equality for women and the future steps required in that regard. It also requests the Government to continue to disseminate widely, in particular to women's and human rights organizations, the Convention and its Optional Protocol, the Committee's general recommendations, the Beijing Declaration and Platform for Action, and the results of the twenty-third special session of the General Assembly, entitled "Women 2000: gender equality, development and peace in the twenty-first century".





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