

Situation report on discriminations against women in Tunisia

March 2023

INTERNATIONAL AND REGIONAL INSTRUMENTS

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Optional Protocol

1985

Ratified

No reservations but a general statement

Council of Europe Convention on preventing and combating violence against women and domestic violence (known as Istanbul Convention)

2011

Tunisia was invited to sign in 2011 but has not done it yet

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)

2018

Ratified

International Covenant on Civil and Political Rights

1969

Ratified

International Covenant on Economic, Social and Cultural Rights

1969

Ratified

MAIN OBSTACLES TO GENDER EQUALITY DE JURE AND DE FACTO



Tunisia has experienced several political crises since the revolution and in particular since 25 July 2021.



The Personal Status Code (PSC) and the Nationality Code are sources of discrimination for women (legal guardianship, parental custody, inheritance and transmission of nationality, among others).



Access to abortion is increasingly difficult for women, especially in disadvantaged areas, and access to healthcare has deteriorated. The Penal Code criminalises same-sex sexual relations.



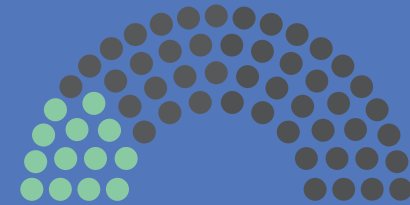
The Law No. 58 on the Elimination of Violence against Women has shortcomings in its implementation, lacking an allocated budget.

Did you know?

RECOMMENDATIONS

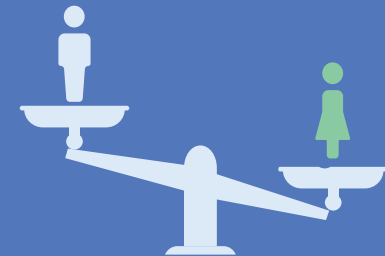
- Reform all laws that discriminate against women, including the Personal Status Code and the Nationality Code.
- Implement Fundamental/Organic Law No. 58 on the elimination of violence against women in all aspects by allocating a specific budget for its implementation as well as all other laws guaranteeing women's rights.
- Ratify the Istanbul Convention (Convention on preventing and combating violence against women and domestic violence).
- Lift the general declaration to CEDAW (Convention on the Elimination of All Forms of Discrimination against Women).

16%
Proportion of seats held by women in national parliaments



Unequal rights

Inheritance rights for widows and daughters



25,49%
Female labour force participation



20,30 %
Prevalence of gender violence in lifetime
(% women)

*Source: Gender global gap report 2022:
<https://www.weforum.org/reports/global-gender-gap-report-2022/>

1. LEGISLATIVE FRAMEWORK

International conventions

Tunisia ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1985 with a number of specific reservations, mainly on family rights (Article 16 (c), (d), (f), (g) and (h) and Article 15 (4)) and on nationality (Article 9 (2)), before lifting them in 2011, and notifying the UN Secretary General in 2014. It also made a general declaration, which has been maintained, stating that: “the Tunisian government declares that it will not adopt any administrative or legislative decision under the Convention that would be likely to run counter to the provisions of Article 1 of the Constitution”, which states that “Tunisia is a free, independent and sovereign State; its religion is Islam, its language is Arabic and its regime is the republic”.

Tunisia also ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 1969. The African Charter on Human and Peoples’ Rights was signed in 1982 and the Protocol on the Rights of Women in Africa (the Maputo Protocol) in 2018.

Several other specific conventions have been ratified, such as: the Convention on the Rights of the Child; the International Convention on the Rights of Persons with Disabilities; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Organised Crime Convention (the so-called Palermo Protocol); and the Council of Europe Convention on

the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote), ratified in January 2018.

Regarding the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the so-called Istanbul Convention), Tunisia was invited to sign in 2011 but has still not ratified. A draft law was tabled in 2020 but has not been acted upon since.

Constitutional equality

The 2014 Constitution guarantees equality between men and women citizens of Tunisia, as well as parity in elected bodies. It commits the state to protect the acquired rights of women, to ensure that they are consolidated and promoted, and to eliminate violence against women. A new Constitution, drafted unilaterally by the current President of the Republic and adopted by a referendum in July 2022, with a participation of only 30% of the electorate, takes up the same rights. However, it modifies the Islamic referent by removing it from Article 1 of the Constitution and strengthening it. The current Article 5 of the Constitution states that: “Tunisia constitutes a part of the Islamic nation. Only the state must work, in a democratic regime, to realise the vocations of authentic Islam, which are to preserve life, honour, property, religion and freedom.”

The 2022 Constitution also erases the reference to the civil state, adopted in the 2014 Constitution, with the aim of blocking any attempt to establish Sharia as a source of law. For civil society and in particular feminist associations, Article 5, and the removal of the notion of civil state establishes a religious state which represents

a danger for women's rights. That is, it is always in the name of religion that these rights are either not recognised or limited, in particular in civil and family rights.

Civil and familial rights

Several discriminations exist in the Personal Status Code and the Nationality Code.

Concerning the **Personal Status Code (PSC)**¹, the main reforms date back more than 25 years (July 1993). They abolished the obligation of obedience for women and introduced some modifications on the attributions of guardianship, in addition to some reforms on inheritance concerning the inheritance of daughters when there are no male heirs (1956).

Despite these reforms, the PSC continues to discriminate against women in the following areas:

- **Marriage:** the circular that prohibited the marriage of a Tunisian woman to a non-Muslim man was abolished in 2017, but several mayors still refuse to celebrate inter-religious marriages, without any sanction or reminder being issued by the authorities.
- The **dowry:** The dowry, which is the counterpart to the consummation of the marriage, is accompanied by an article 13 which constitutes a real incitement to rape, as it stipulates that the husband who has not paid the dowry cannot force his wife to consummate.
- **Time limit for remarriage:** The waiting period imposed on divorced women, widows, or women whose husbands are absent, constitutes discrimination and an attack on women's freedom to marry (articles 34, 35 and 36 of the CSP). This period is three months in the case of divorce and four months in the case of the death of the husband or his absence declared by judgment.
- **Husband as head of the family:** According to Article 23 of the CSP, the husband is the head of the family. The reference to uses and customs in this article regulating the rights and duties of spouses, risks maintaining stereotypes of female and male roles. Thus, the husband must provide for the needs of the wife and children and the wife must contribute to the family's expenses if she has property.
- The **"Guardianship"**: Guardianship (parental authority) is attributed to the father and is only exceptionally exercised by the mother (Articles 67, 154, 155 of the CSP). The reform brought in 2015 (law of 23 November 2015, amending the law on passports) establishes equality between the parents during the marriage but only for deciding on the children's travel and passport.
- **Childcare:** Child custody remains a female function dependent on the guardianship of the father (Articles 58, 59 and 61 of the CSP). As for maintenance owed by children to their ascendants, the paternal line is privileged over the maternal line (Article 44 of the CSP).

- **Inheritance:** Inequality in inheritance is maintained. Men inherit double the share of women. The bill tabled in 2018 in Parliament was discussed in parliamentary committee on two occasions and met with very strong resistance. The argument was that the reform is contrary to a clear text of the Qur'an and thus, contrary to Article 1 of the 2014 Constitution which makes Islam the religion of the state. In his speech on 13 August 2020, the current President of the Republic used the same argument of a clear text of the Koran to oppose equality in inheritance.

The **nationality code** is also a source of discrimination. The reform of Article 6 of the Nationality Code in 2010, which grants nationality to children born of a Tunisian father or mother, has not put an end to all the discrimination relating to the transmission of nationality to children. The maternal lineage is not taken into consideration in the attribution of nationality by birth in Tunisia (Art. 7).

Political rights

Women's right to vote and their eligibility for election has been in place since 1957. The right for women to be eligible for election was strengthened in the 2014 and 2022 Constitutions by the possibility for them to accede to the highest office, the Presidency of the Republic.

The parity adopted in the Constitution was also adopted in the electoral laws. Vertical parity with alternation for the parliamentary electoral lists and vertical and horizontal parity for municipal elections. In 2022, the voting system was changed, and parity was eliminated from the 2022-2023 legislative elections. Parity was

adopted for candidate sponsorship (candidates must be sponsored by 400 people: 200 men and 200 women).

Sexual and reproductive rights

Since 1973, **abortion has been authorised** in Tunisia up to three months of pregnancy or after the first three months of pregnancy in the event of a risk to the mother's health or a malformation or disability of the unborn child (Law 73-3 of 26 September 1973). Consensual sexual relations between persons of different sexes outside of marriage are not criminalised, but they are often punished by judges who consider it either as a marriage that does not conform to the law, or as prostitution (for the woman) and complicity in prostitution (for the man). Consensual sexual relations between persons of the same sex are criminalised by Article 230 of the Penal Code.

Laws on gender-based violence/violence against women

In July 2017, **the Tunisian Parliament adopted the Fundamental/Organic law n° 58 on the elimination of violence against women.** All physical, moral, sexual, political, and economic violence is prohibited and repressed. This law was adopted using a participatory approach based on respect for human rights, equality and non-discrimination between the sexes. Largely inspired by international standards, notably those recommended by the Istanbul Convention, this comprehensive law includes the four pillars of the fight against violence: prevention, protection, penalisation, and reparation.

Economic and social rights

The International Labour Organisation (ILO) Convention No. 100 on Equal Remuneration has been ratified by Tunisia since October 1968 and **the principle of non-discrimination** is enshrined in Article 23 of the Constitution.

Regarding **access to health**, for those working in the formal sector, they enjoy the right to social security. People who are not working or do not have social security have a health card issued by the Ministry of Social Affairs (National Programme of Assistance to Needy Families "Programme National d'Aide aux Familles Nécessiteuses" (PNAF)). Health cards are issued in limited numbers per region, which means that there is discrimination in favour of the first applicants. In addition, the cards are issued in the name of the head of the family, the father, and the husband.

Vulnerable and/or marginalised populations

Female agricultural workers suffer from the non-respect of general labour rules and unsafe transport. Law No. 2019-51 of 11 June 2019, creating a category of "transport of agricultural workers" is supposed to regulate the transport of **female agricultural workers, but it is not applied, and fatal accidents are common.**

Domestic workers that are women generally work without respect for general labour rules, without a contract of employment, without a minimum wage, without social security and without respect for legal working hours. Law No. 2021-37 of 30 July 2021 aims to

"regulate domestic work in such a way as to guarantee the right to decent work without discrimination and with respect for the human dignity of domestic workers, in accordance with the Constitution and ratified international conventions" (Article 1). In the absence of such monitoring, the law is largely unenforced.

Women with disabilities are generally protected by Law No. 2016-41 of 16 May 2016, amending the Orientation Law No. 2005-83 of 15 August 2005, on the promotion and protection of persons with disabilities. But this law is not implemented either, for instance due to an inadequate infrastructure. Hence, these women's rights are not effective.

Concerning **migrant women**, Law n°68-7 of 8 March 1968, relating to the condition of foreigners in Tunisia and the Labour Code are restrictive to them. Tunisia has not ratified the Convention on the Rights of All Migrant Workers and Members of their Families. A draft law on asylum has been prepared, but it has not yet been adopted.

In relation to **LBTQI+ women**, as mentioned above, Article 230 of the Penal Code is still in force and incriminates homosexuality with penalties of up to 3 years in prison. As for the law n°58-2017 on violence, it does not consider sexual orientation as a situation of vulnerability.

Women in prostitution, most of whom are victims of trafficking, are protected by the 2016 Law on the Prevention and Suppression of Trafficking in Women and Children. Clandestine prostitution, carried out outside the legal framework, is criminalised.

2. DE FACTO DISCRIMINATION

Civil and familial rights

The interpretation of these rights, often based on gender stereotypes, becomes a source of discrimination. For example, concerning marriage, even though the law allows the marriage of a Tunisian woman to a non-Muslim man, several mayors still refuse to celebrate inter-religious marriages, without any sanction or reminder from the authorities.

Political rights

Parity has allowed the presence of female deputies to be around 30%, but with its abolition in the last legislative elections (December and January 2023), they represent only 16%. The number of women councillors is around 48%², but few women have become presidents of town halls.

The presence of women is greater in the current government headed by a woman, but she has no power, as the executive power is in the hands of the president. There are no women heads of governorates or delegations. The political parties remain 'men's clubs', only one of which is headed by a woman. In the trade unions, particularly the General Union of Tunisian Workers (UGTT), women are present in the rank and file, but only one is part of the executive bureau.

Sexual and reproductive rights

Even if abortion is not criminalised in Tunisia, access to abortion is becoming increasingly difficult, particularly in disadvantaged regions. The reason for this, in addition to the collapse of the public health sector, is the closure of several specialised public services and the refusal of some hospital doctors to do so for religious reasons.

Although access to health is guaranteed for all, the maternal mortality rate remains high. As for maternity leave, it does not comply with international standards. In the private sector, maternity leave is limited to 30 days, which can be extended once for a period of 15 days on the basis of medical certificates. In the civil service, this period is fixed at 2 months with the possibility of obtaining postnatal leave of a maximum of 4 months, at half pay. The "head of the family", i.e., the father, is entitled to 2 working days' leave in the event of a birth.

Finally, it should be noted that no sex education courses are provided in educational establishments.

Laws on gender-based violence/violence against women

Although Law No. 58-2017 entered into force in February 2018, violence is increasing. In all its aspects (prevention, care and protection, prosecution, and punishment of aggressors), serious

dysfunctions are noted. The budget allocated is low or non-existent. Few women are aware of the law and their rights, and the various stakeholders are poorly trained. There are few women's shelters and the care of women victims of violence is still mainly provided by associations which lack the necessary funding.

Protection orders issued by family judges under an emergency procedure are slow. And the judgments handed down since the law came into force show that judges are lenient towards domestic violence. The law no longer allows the prosecution or the execution of the sentence to be halted if the complaint is withdrawn, but judges use this withdrawal as a basis for granting mitigating circumstances. And judges are hostile to the repression of marital rape, which is not expressly incriminated by the law.

A national observatory on violence has been set up, but it is not yet operational. Even if victim surveys are not carried out regularly, the findings of NGOs that provide care for women victims of violence show a significant increase in violence, particularly within the couple, which is estimated to be around 70%³.

Finally, although the law provides for a programme for perpetrators of violence, this has not been implemented.

Economic and social rights

Although economic and social rights are guaranteed by the Constitution and various laws, de facto inequalities persist. The unemployment rate for women, especially those with higher education, is almost double that of men⁴. Wage inequalities

between men and women are the rule in the private sector and in the informal sector where many women work. Women work without social security, without paid holidays and without pensions. Women's access to bank credit remains low.

Education is compulsory to age 16, but school dropout and illiteracy among women remain high.

Access to health services is difficult due to a lack of local hospitals, among other things.

Vulnerable and/or marginalised populations.

Female agricultural workers and women living in rural areas: 44% of female agricultural workers are seasonal workers. Their transport to the workplace is not safe and there are regular fatal accidents. Law No. 2019-51 of 11 June 2019, creating a category of "transport of agricultural workers" is not applied. A minority of them are affiliated to the National Social Security Fund and most of them are unaware of the special scheme set up for their benefit in 2019.

Female Domestic workers: They are hired without contracts, they do not benefit from the SMIG (guaranteed minimum wage), work without respecting legal working hours and are not affiliated to social security. Although the 2021 law puts an end to these practices, due to the lack of control, they remain subject to the goodwill of their employers.

Migrant women: In the absence of a revision of the 1968 law on the status of foreigners and the labour code in their restrictive provisions on residence and working conditions, as well as Tunisia's refusal to ratify the Convention on the Rights of All Migrant Workers and Members of Their Families, most, if not all, of them are in an irregular situation, forced into informal work and exploitation.

Women with disabilities: Due to the lack of specific infrastructures, they are practically excluded from all services. Also, despite legislation that sets their employability quota at 2%, the majority of them struggle to find a job.

LBTQI+ women: Article 230 of the Penal Code is still in force and criminalises homosexuality. With the exception of a decision that recognised the right to change the identity of an intersex person, the justice system remains hostile to the recognition of the rights of sexual minorities.

Women in prostitution: the brutal closure of most brothels has propelled them into clandestine prostitution, which is criminalised by law.

3. RECOMMENDATIONS

To the state of Tunisia

- Reform all laws that discriminate against women, including the Personal Status Code and the Nationality Code.

- Implement the Fundamental Law No. 58 on the elimination of violence against women in all aspects by allocating a specific budget for its implementation as well as all other laws guaranteeing women's rights (laws on domestic work, law on the transport of female agricultural workers, labour laws guaranteeing equal pay).

- Ratify the Istanbul Convention (Convention on preventing and combating violence against women and domestic violence).

- Lift the general declaration to CEDAW (Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)).

To international institutions

- Focus on women's economic and social rights, the eradication of the feminisation of poverty in line with the Sustainable Development Goals (SDGs).

- When reviewing the monitoring of the implementation of the international multilateral human rights conventions ratified by Tunisia, pay particular attention to de facto and de jure discrimination affecting women.



ENDNOTES

1. Also known as the Family Code.
2. Source : National Institute of Statistics (Institut National de Statistique) 2022, INS : <http://www.ins.tn/>
3. Source : Report 2022 of the Ministry for Family, Women, Children and Senior Citizens. This is the percentage of calls reported to the freephone number, confirmed by the number of women who contact the community centres.
4. National de Statistique 2022, INS : <http://www.ins.tn/>