



WOMEN'S RIGHTS IN TUNISIA

DECLARATION

**Summary of key concerns submitted by the *Association tunisienne des femmes démocrates* (ATFD) to the United Nations Committee on the Elimination of Discrimination Against Women
47th Session, October 2010**

1. General Concerns

1.1 Reservations

By ratifying CEDAW in 1985, Tunisia undertook to pursue a policy to eliminate all forms of discrimination against women. Yet, Tunisia has not only maintained discriminatory provisions but reinforced them by entering reservations to CEDAW that have still not been withdrawn.

Upon ratification, Tunisia entered specific reservations and a general declaration, based on the reference in the Constitution of Tunisia to Islam as the State religion, to justify the maintenance of customs, practices, laws and regulations that discriminate against women.

Specific reservations to Articles 9§2, 15§4 and Article 16 (except §1(a) and (b)) made it possible to maintain, in particular, the status of the husband and father as the the head of family, unequal inheritance rights and unequal rights for parents to pass on their nationality to their children.

These reservations are a major obstacle preventing women from fully exercising their human rights. The reservations contribute to the persistence of practices and customs that confine women to a traditional role.

The reservations have not been withdrawn despite the fact that, in June 2008, Tunisia lifted certain similar reservations it had entered in relation to the Convention on the Rights of the Child (Declaration 1 and Reservations 1 and 3) The inconsistency of Tunisian policy with regard to these treaties makes it difficult to justify maintaining the reservations to CEDAW.

Far from being technical in nature, as is claimed in the report submitted by the Tunisian State, the reservations reveal the prevalence of an unequal social order. They are contrary to Article 28§2 of the Convention itself which states that reservations that are incompatible with the object and purpose of the Convention shall not be permitted. They are also in violation of Article 19§1 of the 1969 Vienna Convention on the Law of Treaties. They undermine the universality of women's rights, their unity, interdependence and indivisibility.

1.2 Significant but incomplete achievements

In June 2008 the Tunisian authorities ratified the Optional Protocol to CEDAW. Tunisia thus became the second Arab state to ratify the Protocol. This could represent an important step towards the withdrawal of reservations, especially as the ratification of the Protocol normally results in the examination of the application of all the Convention's provisions.

Some laws have been amended in ways that tend towards rendering the reservations void of meaning, but these modifications remain insufficient. Reforms include a law adopted in February 2008, which consolidated the right to housing for mothers with custody of minor children; a law lowering the voting age for women to 18; a law on the harmonisation of the minimum age for marriage (18 for both men and women); a law on tax-free status of donations; and the law on community of property between spouses. However, these laws remain inadequate since they do not provide for complete equality between the sexes.

1.3 Recommendations

ATFD therefore urges the government of Tunisia to:

- Withdraw all reservations to CEDAW;
- Amend the provisions of the Personal Status Code to ensure their compliance with the provisions of CEDAW relating to the family, notably Article 16;
- Establish an independent public institution responsible for overseeing respect for the provisions of CEDAW;
- Ensure that judges refer systematically to CEDAW as an instrument with superior status to domestic law, in accordance with Article 32 of the Constitution;
- Disseminate the Optional Protocol to CEDAW and raise women's awareness of its importance in the defence of women's rights.

2. Women's participation in public and political life and civil society organisations: obstacles and recommendations

2.1 Analysis

It is difficult to provide an objective evaluation of the participation of women in public and political life, given that quantitative indicators are inadequate since they do not measure the effectiveness of women's rights and do not convey the real democratic participation of citizens, particularly female citizens. These traditional indicators should be seen in terms of the benumbed political situation in Tunisia where the authorities, in search of legitimacy and on the pretext of responding to Islamists, is willing to give in on the issue of women's rights and thus parry the inroads of invasive political Islam.

2.2 Recommendations

ATFD makes the following recommendations:

- Enshrine the principle of non-discrimination between men and women in the Tunisian Constitution;
- Adopt positive discrimination towards women, across party lines, thus guaranteeing the real presence of women in representative bodies;
- Curb all forms of regression through awareness-raising and information and not through repression;
- Put an end to the State and dominant party's seizure of information and means of communication in order to guarantee freedom of expression;
- Regulate public subsidy grants to associations and allocate them in an equitable manner so that autonomous associations can benefit from them;
- Allow autonomous associations to take part in strategic choices for the country, within the framework of pluralist, democratic and effective consultation;
- Modify the law of 7 November 1959 on associations such as amended in 1988 and in 1992, in order to establish a regime of declaration, rather than the existing visa regime,

and grant associations the right to bring civil legal actions and to be a party to legal proceedings;

- Liberalise political life, and require authorities to respect the constitutional and legislative provisions that concern civil liberties and human rights;
- Separate politics and religion to guarantee the rules of democracy and equality between men and women, with a view to ending the sacralisation of discrimination.

3. Violence against women

3.1 Analysis

ATFD's priority actions since 1991 have contributed substantially to making the political authorities attentive to the problem of violence against women. It was only in 2006 that the *Office National des Familles et des Populations* (ONFP) adopted a programme to combat and prevent violence against women. In 2007, the MAFFEPA adopted a national strategy to prevent violent behaviour within the family and society. This strategy has encountered some difficulties because official statements are unclear and it has been slow in getting started. Although the ATFD Centre has shown the alarming nature of violence against women, the official strategy does not provide for a general law on such violence. Although there are no statistics available, it would seem that the majority of cases of violence – and most of the cases that come to the attention of our centre – concern domestic violence. Legislative responses to such violence remain largely inadequate.

3.2 Recommendations

ATFD makes the following recommendations:

- Adopt a specific framework law to define and eradicate gender-based violence, in accordance with the provisions of the first article of the UN Declaration on the Elimination of Violence Against Women, and to include all forms of violence whether perpetrated in public or in private, by the state or by any individual no matter what their relationship to the victim;
- Adopt measures to make it easier to prove violence;
- Abolish the legal provision whereby a rapist can marry his victim in order to escape criminal proceedings;
- Amend the penal code to criminalise marital rape;
- Revise the definition of sexual harassment in keeping with the above-mentioned international instruments and abolish the provision in the penal code, which grants the harasser the right to initiate defamation proceedings (article 226 quater, a provision which serves to deter women who have suffered harassment from going to court), and provide for the protection of witnesses;
- Provide for the offence of sexual harassment in labour regulations and civil service statutes;
- Establish a special procedure and court for child victims of sexual abuse;
- Step up prevention efforts by:
 - promoting education, both in schools and elsewhere, regarding both general violence and gender-based violence in particular;
 - encouraging people to speak out against sexist violence through various information and awareness-raising media;
 - increasing research in the field to improve understanding of the phenomenon of violence against women;
 - establishing a clearer typology of violence and identifying the causes and consequences;
 - promoting the family as a forum for creating a culture of equality, non-discrimination and non-violence; and,
 - promoting awareness of the law among the different actors and the public at large with respect to the legal provisions on this issue;
- Improve the quality of care and support structures for women victims of violence through training the different actors involved as a priority and necessity;

- Ensure adequate training of professionals who work with issues of violence against women and provide training for health-care providers, social workers, police officers, national guard and the judiciary. Such training should focus on all aspects of knowledge about and attitudes towards gender-based violence to promote a better understanding of the mechanisms and manifestations of such violence, and to identify the responses that each actor can provide. The training should be technical in nature and centre on the role played by each individual in help centres, in screening and in providing care, information and guidance, in other words it should focus on supporting women victims of violence;
- Develop facilities for women victims of violence to seek help (in hospitals, police stations, social institutions, etc.);
- Promote free treatment for women victims of violence and the immediate issue of an initial medical certificate;
- Set up help centres and shelters not only in the capital but also in towns and rural areas, and create special services for women victims of violence which would preferably consist of women police officers with specific training in this type of crime;
- Create a fund for the victims of violence and for the associations that provide them with assistance, and establish material support for the NGOs that deal with violence with a view to ensuring autonomy for women victims of violence;
- Ensure that offenders receive therapy so that they might learn to channel their violent impulses and not re-offend, and establish centres to treat violent men;
- Run awareness-raising campaigns for women victims of violence to inform them of their rights and how to protect them.

4. Women's economic and social rights

4.1 Analysis

Far from being a reality for women, economic and social rights guaranteed by the law are marred by discrimination and inequality in practice. There has been significant progress in the education of girls, although girls remain twice as likely as boys to be illiterate. The illiteracy rate amongst the female population aged 10 and over was 1.28 times that of the male population in 1956, but had almost doubled to 2.26 times by 2008. Regional imbalances are glaringly obvious.

In the governorates of the Greater Tunis District, the average illiteracy rate is around 10% for men and 20% for women, and more than double that for women in the governorates of the Centre West, with rates varying from 46% to 48.5%.

In the world of work, the persistence of the traditional gender division of labour is noticeable and the labour market remains discriminatory. Only 25.5% of women worked in 2008 (this was 18.9% in 1975) whilst 70% of men were in paid employment.

Moreover, paid work is often assigned to men and unpaid domestic work to women. This division of labour is one of the primary sources of men's legitimacy in terms of their economic dominance and their dominance in general. The more the family domestic costs increase, the less women are able to join the employment market because of the lack of family support policies. At 16%, the number of married women in employment is lower than the national average for women generally.

The number of job applications made by women tends to exceed that of men, although their applications are less likely to be successful than those made by men. Currently, the labour market has 100 positions for women for every 130 positions for men.

In 2007, the female unemployment rate was 18.6% whilst the male unemployment rate was 12.6%. The unemployment rate of young female graduates has reached unprecedented levels of more than 32 %.

Far from being a solution, part-time working arrangements harm women and their place in economic life. Pay inequality is more marked in the commercial sector and increases the already precarious situation of women. The greatest pay inequality (80%) affects the secondary commercial sector. Female employees in this sector are also the first victims of economic and employment crises. They are the first to be subjected to wrongful dismissal and mass redundancies, which is what happened following the dismantling of the Multifibre Agreement between the EU and Tunisia in 2005 or during the last financial crisis due to the fall in orders of Tunisian textile exports. It is also in this least protected sector, where the establishment of trade unions is the most difficult, that the practice of sexual harassment spreads.

Through the services that they provide to households, but also by the role they play in producing non-commercial goods and services to be used within the household, women support the market in periods of growth, yet they also underpin the welfare state in times of budget deficits and austerity.

The time-use surveys of rural households and the unseen work of women in rural Tunisia produced in 1995 and more recently across the whole country in 2007 are not used as key references for national decision-makers and for fairer strategies.

4.2 Recommendations

ATFD makes the following recommendations:

- Put a programme in place to combat illiteracy amongst the female population, by bringing school closer through transport systems and by boarding schools as well as policies to encourage girls to stay in school in disadvantaged regions, notably those in rural areas and in the western regions of the country.
- Establish a 'Commission of Professional Non-Segregation and Non-Discrimination against women' to operate at the recruitment stage, throughout working life and in respect of salaries with the aim of achieving the criminalisation of discriminatory practices by institutional mechanisms in the different regions of Tunisia, to encourage jobs for women in expanding and innovative sectors across the country, orientation towards this and to oppose all workforce segregation confining women to unstable sectors.
- Adopt a policy, programme and legal measures of positive discrimination to encourage female access to work, presence in working life and improve female salaries.
- Support an increase in the amount of support to enable women to improve their qualifications, their access to information about job vacancies, their rights and institutional and non-government mechanisms enabling them to access these opportunities,
- In all these actions, target young female graduates to increase their chances of obtaining employment.
- Support, in the spirit of economic solidarity, entrepreneurial activities by women by offering them the same chances as men to access every opportunity, whilst reducing institutional and administrative burdens that hinder them in their business activities.
- Put family policies into place, specifically an increase in child benefit whose nominal value has hardly changed for several decades and whose real worth has become almost negligible, if not purely symbolic. In this context, it would be appropriate to put in place a fund and subsidy programme to set up day care centres for children and other dependents to free women for paid employment.
- Adopt positive strategies through new methods of gender-responsive budgeting by introducing macroeconomic, sector and regional policies and tax policies which take account of the government's engagement in economic and employment laws and gender equality in these laws.
- Organise household time-use surveys at regular intervals and the quantification of economic contribution by women through the development of a satellite account of non-commercial household production with a view to analysing the evolution of the gender division of work, its impact on the economy and the whole of society more generally and

to facilitate the implementation of gender-responsive budgeting.

5. Reproductive and sexual rights

5.1 Analysis

Except for the right to an abortion, sexual and reproductive rights are met by a legislative vacuum. Despite Tunisia's adoption of a birth-control policy through legislation authorising non-medically-required abortions within conditions specified by the law (Article 214 of the Criminal Code), women's access to non-medically required abortion and to contraception remains dependent on the country's demographic policies. Furthermore, backward mentalities deter women, especially unmarried women, from using public institutions for non-medically required abortion.

The virginity test, although not authorised by the law, is a practice used by some families and some authorities as part of judicial enquiries. The female victim, often a minor, is required to take a test to prove her "moral conduct". The ATFD has denounced this type of practice and has questioned the relevant authorities.

Freedom of sexual orientation is not recognised and homosexual relationships fall under the force of criminal law. Sexual freedom is only allowed in practice within the legal framework of marriage. Sex education is almost absent and the right of all individuals to sexual desire and pleasure, as a factor of psychological stability and development of the human being, is not recognised. No educational programme provides for this at any level.

5.2 Recommendations

ATFD makes the following recommendations:

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

6. Women's rights within the family

6.1 Context

The family remains the stronghold of the patriarchy marked by religiosity. Despite significant expressions of equality in the Personal Status Code, discrimination still subsists within family life.

6.2 Recommendations

ATFD makes the following recommendations:

- Abolish the institution of the dowry, a symbol of the commoditisation of the female body;
- Free the civil marriage ceremony from religious references when it is conducted by civil officials;
- Repeal the administrative regulation of 1973 forbidding marriage between a Muslim Tunisian female and a non-Muslim to enshrine a woman's right to the freedom to choose her partner;
- Replace the institution of the male head of the family with the concept of parental authority (held by either parent), enshrine full equality of both partners in their rights and responsibilities and remove all legal reference to outdated traditions and customs;

- Guarantee to both partners the freedom to choose their surname and domicile;
- Establish joint ownership of property within marriage as the default legal regime;
- Harmonise the provisions of the Personal Status **Code** and those of the Law of 2008 regarding housing support for children until both boys and girls reach economic independence;
- In all cases and without exception, allow women to exercise all attributes of parental responsibility in equality with their husband, recognising that even the 1983 reform granting some custody rights to the mother after divorce is not always applied due to the relevant authorities' lack of knowledge and awareness about these new rights for women.
- Establish equality in inheritance law to bring to an end the pre-eminence of the male bloodline, male privilege and to remove ambiguities in the law on inheritance rights in cases of religious or denominational differences.