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and

Muslims for Progressive Values (MPV)

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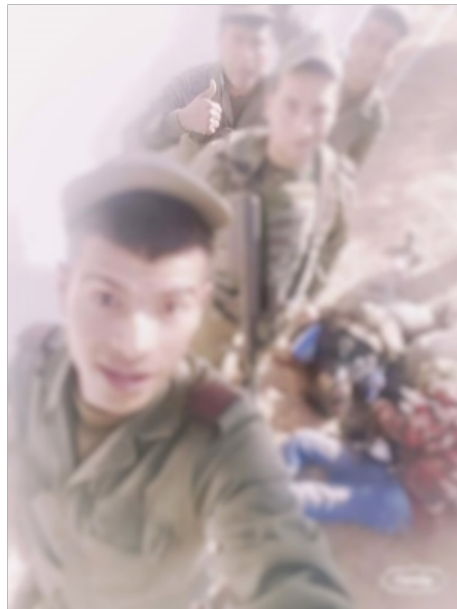


Fig. 1. Tunisian soldiers taking a selfie with terrorist bodies, violating human dignity

Author

Ben Othman Ramy – *President,*
Coexistence Organization

Mohamed Amine Jlassi – *Law*
Teacher, the University of Manouba

Mansouri Marwa – *General Secretary,*
Coexistence Organization

Special thanks to

Wissem Ben Othman

Achref Zalloumi

Headquarters Contact Information

Coexistence Organization
7 Rue El Khalil, Menzeh8, 2037,
Ariana
Tunisia
+216 53 034 564
coexistencetn@gmail.com
www.coexistence.tn

About COEXISTENCE

Founded in 2016 and headquartered in Menzeh 8 Ariana Tunisia, is a Tunisian association for the promotion and protection of human rights, based on an educational and cultural approach.

Headquarters Contact Information

Muslims for Progressive Values
1626 N. Wilcox Ave, Suite 702
Los Angeles, CA 90028
United States of America
+1 323 696 2678
info@mpvusa.org
www.mpvusa.org

About MPV

Founded in 2007 and headquartered in Los Angeles, California, MPV is a faith-based human rights organization that advocates for inclusive and egalitarian narratives of Islam, gender equality and women's empowerment, the human rights of LGBTI demographics, freedom of expression, and freedom of and from religion or belief. MPV operationalizes its advocacy campaigns by creating inclusive spaces for critical analysis of religious discourses and scripture, engaging policy processes at the national and global levels, facilitating expression through the arts, and grassroots social activism. MPV acquired Department of Public Information Consultative Status at the UN in 2013. This submission was authored by affiliate staff in the Kingdom of the Netherlands, however headquarter contact information is listed.

Table of Contents

Constitutional Rights and Liberties Violated in 2016

	4
Equality of Citizens	
	4
The Right to Life	
	5
Dignity of the Human Body	
	5
Freedom of Conscience	
	5
The Law with Respect to Privacy	
	6
Religious Liberty, the Liberty of choice in Marriage, the non-discrimination between men and women	
	6
Liberty of Expression and of Assembly	
	7
Women's Rights	
	7
Rights of LGBTI Individuals	
	7
End Notes	
	8

Constitutional Rights and Liberties Violated in 2016

Equality of Citizens

Although article twenty-one of the Tunisian Constitution states “All citizens have equal rights and responsibilities, and are equal before the law without any discrimination whatsoever,” the citizens of Tunisia are, in practice, *not* equal. This inequality is due in part to the privileges afforded state functionaries, such as police, transportation officers, officers of tax circulation, and judges.¹ For example, functionaries are given badges to display on their windshields—a practice that was instituted under Ben Ali. The display of these badges discourages police from stopping these functionaries’ vehicles, empowering drivers of vehicle with these badges to disregard traffic laws, usually without repercussion. This lack of accountability arises from the fact that functionaries are often connected with individuals with executive power, a practice that is strictly forbidden in the Tunisian penal code.

In order to increase state accountability in these regards, a large number of Tunisians have called for independent monitoring of these functionaries’ public activities through the use of a surveillance apparatus.

In addition, citizens are not treated equally by the legal system. In 2015, the Interior Ministry noted that there were a high number of “crimes against good morals.” Although high in frequency, these “crimes against good morals” and disturbing the public order are not explained by either Tunisian legislature or jurisprudence. The enforcement of these laws, therefore, can be discretionary, as was the case under the regime of Ben Ali.²

Furthermore, discrimination among citizens is encouraged by the fact that an individual’s profession, place of birth, and personal information is listed on his or her identification card.

Finally, there have been cases in Tunisia where students have been segregated according to the color of their skin.³

The Right to Life

Although Article twenty-two of the Tunisian constitution states that “The right to life is sacred; it cannot be violated except in the most extreme cases enumerated by the law,” the death sentence is still conferred for a number of crimes, including murder. In addition, Tunisia’s new anti-terrorist law prescribes the death sentence for certain infractions.

It is important to note that while courts have condemned 11 individuals to death, no executions have taken place since 1991.

Dignity of the Human Body

Article twenty-three of the Tunisian constitution says “The state protects the dignity of the human being and its physical integrity and forbids all forms of psychological and physical torture” and says that torture can not be prescribed in any circumstance. Nevertheless, Tunisian police routinely torture and inflict physical violence upon detainees during interrogation and imprisonment.⁴ Thus, there is a need for surveillance cameras in interrogation chambers.

Furthermore, private citizens are constantly under threat of police violence due to laws inhibiting “outraged” demonstration against public officials.⁵

These instances of violence have been exacerbated by the fact that the Tunisian President has declared a national state of emergency, thus enabling police use counter-terrorist policy as an excuse to curtail the human rights of individuals.⁶

Freedom of Conscience

Freedom of conscience in Tunisia is a taboo. This taboo exists because because of Tunisia’s cultural heritage, which is further strengthened by the education of young citizens, and religious edicts concerning thought, or “Fatwas tafkir.” Although the Tunisian constitution identifies citizens’ freedom of conscience, this matter is still controversial. For example, a report by Amnesty International details how a man was indicted for publicly caricaturing the Prophet Muhammad.

Certain articles in the Tunisian Constitution seem to contradict each other. These contradictions invite interpretations that may be counterproductive to human rights.⁷ This is seen in the case freedom of conscience: although freedom of conscience is guaranteed in the Tunisian constitution, the report

states there is evidence that the government is biased toward Islam as Article seventy-four of the constitution stipulates that the President of Tunisia must be a Muslim.⁸

It is interesting to note that article one of the Tunisian Constitution, which installs Islam as the state religion, has not been a subject of discussion for decades. Indeed, it is possible that Tunisia, like other Arab countries, struggles to balance democracy and religion because it does not have a discrete space for religion.

The Law with Respect to Privacy

In addition to the taboo against freedom of conscience in Tunisia, there have been cases where Tunisian law has violated the privacy of individuals. Two recent examples of such infraction concern homosexuality. In one case, a group of young men were incarcerated and indicted for their sexual orientation. In the court transcript, the Judge is recorded to have said that “It is given that the accused were about to practice sodomy collectively and that they had [done so]... and clearly had the intention of propagating their vice with the intention of converting other people, turning on the teachings of society, and against their identities.” As such, the Tunisian law does not respect an individual’s right to exercise their own sexual identity, making it very difficult for LGBTI individuals to live normal lives.⁹ This is also apparent in the case of a youth named Marwan who was incarcerated in 2015 for “sodomy.” In addition to being arrested, Marwan was also subjected to a humiliating anal examination to prove in court that he had been engaging in homosexual activities. This test was tantamount to invasion of the Marwan’s physical privacy.

Religious Liberty, the Liberty of choice in Marriage, the non-discrimination between men and women

In Tunisia, judges rely heavily on Shari’a law—a principal source of the Tunisian Code of Personal Statutes—to inform their interpretations of their nation’s laws.¹⁰ Thus, there is a significant taboo against individuals who change religions, or marry outside their faith, as these people are often labelled as apostates. At the same time, there is evidence that the Tunisian people are aware that this perspective needs to change.

Liberty of Expression and of Assembly

In Tunisia, the government reserves the right to disassemble any gathering or meeting, as well as to censor all press, or written or audiovisual media due to the present state of emergency in Tunisia. These restrictions place obvious limitations on the people's ability to discuss certain subjects.

Women's Rights

Women in Tunisia continue to be the object of discrimination in legislation and in practice, and are not sufficiently protected against sexual violence and other threats. For instance, victims of sexual assault in Tunisia generally do not have access to proper health facilities. According to the Tunisian penal code, sexual violence is defined as molestation, rather than a violation of the victim's physical integrity. This same penal code permits individuals who violate young girls aged 15-20 to escape prosecution on the condition that they marry their victims.¹¹ As such, the Tunisian penal code must be updated to define and inhibit sexual assault, and allow proper care to its victims.

Rights of LGBTI Individuals

As stated above, LGBTI individuals have been discriminated against in Tunisian legislation and are not sufficiently protected against violence linked to their sexual orientation or gender identity. Article 230 of the Tunisian Penal code proscribes sexual relations between consulting adults of the same sex and imposes a risk of up to three years' incarceration for individuals convicted of "sodomy and lesbianism." Furthermore, transgender individuals are at risk of arrest in Tunisia for violating public morality. In this regard, one calls to mind the above-referenced cases of students who were arrested and treated poorly (despite the constitutional interdiction against torture and maltreatment) for the so-called crime of homosexuality.¹²

End Notes

¹ <http://kapitalis.com/tunisie/2016/04/04/tunis-enquete-sur-un-juge-ivre-qui-a-agresse-un-policier/>

² <http://opendata.interieur.gov.tn/ar/catalog/statistiques-des-faits-criminels-sur-tout-le-territoire-de-la-republique-durant-l-annee-2015-en-comparaison-avec-l-annee-2014>

³ <http://www.huffpostmaghreb.com/news/racisme-tunisie/> ; http://www.huffpostmaghreb.com/2016/04/26/tunisie-football-racisme-_n_9778984.html ; http://www.huffpostmaghreb.com/2015/02/16/saadia-mosbah-racisme-tunisie_n_6670334.html ; http://www.huffpostmaghreb.com/mariam-guellouz/nommer-les-noirs-dans-la-_b_6646268.html ; http://www.huffpostmaghreb.com/2016/03/25/maghrebins-racistes-saadia-mosbah_n_9547084.html

⁴ <http://kapitalis.com/tunisie/2016/01/29/agresse-par-des-policiers-a-sfax-un-homme-frole-la-mort/> ; <http://kapitalis.com/tunisie/2016/02/01/tunis-un-sit-inneurs-de-la-kasbah-agresse-par-la-police/> ; <http://kapitalis.com/tunisie/2016/04/07/tunis-encore-une-agression-policriere-contre-un-citoyen/>

⁵ <http://kapitalis.com/tunisie/2016/05/24/tentative-de-viol-a-mhamdia-un-individu-arrete/> ; Chapitre IV. - Attentats contre l'Autorité publique commis par les particuliers. Section II. - Outrages et violences à fonctionnaire public ou assimilé du code pénal Tunisien. http://www.huffpostmaghreb.com/2016/07/22/police-harcelement-tunisie_n_11142282.html ; <https://www.femmesdetunisie.com/la-jeune-afraa-ben-azza-liberee-mais/> ; <http://www.realites.com.tn/2016/09/proces-de-lina-ben-mhenni-une-bavure-policiere/> ; <http://directinfo.webmanagercenter.com/2016/09/19/lina-ben-mhenni-vs-agents-de-police-de-houmt-souk-louverture-du-proces/> ; <http://www.shemsfm.net/fr/actualite/liberation-du-journaliste-moez-jemai-150229> ; http://www.huffpostmaghreb.com/2016/09/19/lina-ben-mhenni-liberatio_n_12082422.html?utm_hp_ref=tunisie

⁶ http://www.huffpostmaghreb.com/2016/04/28/droits-de-lhomme-tunisie_n_9792812.html ; <file:///C:/Users/DELL%205558/Downloads/POL1025522016FRENCH.PDF>

⁷ <http://www.kapitalis.com/tribune/16149-tunisie-constitution-la-liberte-absente-dans-l-etat-religieux.html> ; <http://www.kapitalis.com/tribune/16149-tunisie-constitution-la-liberte-absente-dans-l-etat-religieux.html> ; <http://www.kapitalis.com/tribune/16149-tunisie-constitution-la-liberte-absente-dans-l-etat-religieux.html>

⁸ <https://www.amnesty.org.uk/jabeur-mejri-imprisoned-facebook-posts-tunisia>

⁹ Rapport de Human Rights Watch Tunisie du 29 mars 2016. Tunisie : Des hommes poursuivis en justice pour homosexualité :

<https://www.hrw.org/fr/news/2016/03/29/tunisie-des-hommes-poursuivis-en-justice-pour-homosexualite>
dernier accès le 06/05/16

¹⁰ <http://www.leaders.com.tn/article/16864-monia-ben-jemia>

¹¹ <http://tunisie-telegraph.com/2016/09/15/%D9%82%D9%86%D8%A7%D8%A9-%D8%A7%D9%84%D8%AA%D8%A7%D8%B3%D8%B9%D8%A9-%D9%86%D8%B9%D9%85-%D8%AA%D8%B9%D8%B1%D8%B6%D9%86%D8%A7-%D9%84%D8%B6%D8%BA%D9%88%D8%B7%D8%A7%D8%AA-%D9%85%D9%86-%D9%82%D8%A8%D9%84-32418>

¹² <https://www.stophomophobie.com/agression-de-militants-lgbt-lors-des-celebrations-du-5eme-anniversaire-de-la-revolution-en-tunisie/>