



№ . 077

URGENT

Genève, le 05 mai 2021

**L'Attention de :**

- **Mme Mary Lawlor**, Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme ;
- **M. Clement Nyaletsossi**, Rapporteur spécial sur le droit de réunion pacifique et la liberté d'association ;
- **M. Victor Madrigal-Borloz**, Expert indépendant sur la protection contre la violence et la discrimination en raison de l'orientation sexuelle et de l'identité de genre.

Faisant suite à votre Communication Conjointe (AL TUN 3/2021) du 17 février 2021, j'ai l'honneur de faire parvenir, ci-joint, la réponse du Gouvernement tunisien sur les cas des défenseurs des droits de l'homme et membres de l'Association tunisienne pour la justice et l'égalité (Damj), M. Saif Ayedi et M. Hamza Nasri.

Veillez agréer, Madame et Messieurs les titulaires de mandat des Procédures Spéciales du Conseil des Droits de l'Homme, l'assurance de ma haute considération.



**Sami NAGGA**

Chargé d'affaires a.i.

**Haut-Commissariat des Nations Unies aux Droits de l'Homme**  
**Palais Wilson, 202 Genève**  
**Service des Procédures Spéciales**

*(Translated from Arabic)*

**Permanent Mission of the Republic of Tunisia to the United Nations Office at Geneva**

**Reply from the Tunisian State to the complaint, reference number AL TUN 3/2021, received from the following special procedures mandate holders of the Human Rights Council: the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity**

With regard to the communication received from the Office of the United Nations High Commissioner for Human Rights (OHCHR) concerning a request for comments from the Tunisian State on the content of the joint communication issued by the special procedures of the Human Rights Council regarding the situation of Tunisian citizens ██████████ and ██████████, members of the Damj Association, against the background of the recent social protests, the National Commission for the Coordination, Preparation and Submission of Reports and Follow-up to Recommendations on Human Rights has the honour to submit the following observations.

The Tunisian State has undergone radical changes since the 2011 revolution, which laid the foundations for a democratic transition based on support and respect for universal human rights principles.

The prohibition that had previously been imposed on the exercise of a number of freedoms as well as the restrictions imposed on individuals were abolished. Furthermore, individual rights and freedoms have been bolstered in both legal and practical terms, and involvement in the international and regional framework that upholds and protects rights and freedoms has been expanded. The Constitution of the Second Republic, which was promulgated in January 2014, enshrines these rights and freedoms in Chapter Two and in other sections. The Constitution as a whole is thus based on respect for the values of dignity and humanity and commitment to the universality and interdependence of human rights principles.

In addition, the process of harmonizing national legislation with constitutional requirements and with international norms has been launched. A National Committee has been established to harmonize existing laws with the Constitution and international norms in order to promote relations with constitutional bodies and civil society and support for human rights. Furthermore, a number of committees have been established by the Ministry of Justice to oversee amendments to the Criminal Code and the Code of Criminal Procedure.

These new circumstances have permitted the amendment of many of the laws in force, the drafting of additional basic laws that protect and promote rights and freedoms, and the establishment of structures and institutions to ensure that they are enforced in practice.

In addition, steps have been taken to reform the judicial system owing to its direct and fundamental impact on the protection of rights and freedoms and the judiciary's role in that regard. The rights and freedoms whose scope has been expanded and whose exercise is guaranteed include freedom of peaceful assembly and demonstration, which is guaranteed by article 37 of the Constitution of January 2014. In this context, our country has witnessed many lawfully conducted demonstrations, gatherings, protests and assemblies. They have been monitored by the security forces and no major transgressions or breaches of security have been recorded.

With regard to measures taken to prevent the harassment of human rights defenders, article 6 of Decree 188 concerning the organization of associations stipulates that: "Public authorities are prohibited from directly or indirectly obstructing or disrupting the activities of associations."

Article 7 stipulates that: "The State shall take all necessary steps to ensure that all persons are protected by the competent authorities from any violence, threat, retaliation,



actual or legally harmful discrimination, pressure or any other abusive act resulting from their legitimate exercise of the rights referred to in this Decree.”

Decree No. 88 of 2011 regulating associations introduced radical changes to the level of freedom of association. It abolished the visa system and replaced it with the permit system, and adopted the procedure of subsequent monitoring through legal proceedings, which led to a significant increase in the number of associations.

With regard to the facts and allegations contained in the joint communication from the aforementioned special procedures mandate holders, we wish to state the following:

Mr. ██████████ and Mr. ██████████, members of the Tunisian Association for Justice and Equality (Damj), participated in the demonstration organized on 8 December 2020 by the Association of Democratic Women in front of the Assembly of the Representatives of the People.

They were arrested on the same day by order of the Public Prosecutor’s Office of the Court of First Instance in Tunis municipal district 1 on the charge of committing public law offences, namely intentionally damaging the property of others and undermining good morals by word and gesture, in accordance with the provisions of articles 226 bis and 304 of the Criminal Code. Action was taken in response to a complaint submitted by a Member of Parliament, ██████████, who claimed that they had damaged the windshield of his car. An investigation report (No. 784) was issued by the judicial police squad in Bardo on 8 December 2020.

They were referred, under arrest, to the Public Prosecutor’s Office at the Court of First Instance in Tunis district 1, which decided, on 10 December 2020, that they should be released and referred to the misdemeanour chamber of the same Court for trial on the above-mentioned charges. The court published criminal case No. 31505/2020 concerning the two accused for a sitting to be held on 31 May 2021.

It is clear, in light of the foregoing, that activists ██████████ and ██████████ were not arrested for organizing or participating in the aforementioned demonstration or for their membership of the Damj Association but on the charge, as stated above, of committing public law offences.

The claim that the aforementioned activists were subjected to security-related restrictions following their release is solely an allegation. Moreover, as the claim that the above-mentioned Member of Parliament attempted to drive his car into the demonstrators did not give rise to a complaint, the Public Prosecutor’s Office took no action in that regard.

It should be stressed that activist members of diverse associations who are at risk of exposure during their activities to acts of violence or to incitement to hatred or stigmatization enjoy the protection of the law as Tunisian citizens. The State guarantees their individual and collective rights and freedoms, and provides them with protection in accordance with the legal procedures established for the purpose.

The exposure of any person on Tunisian soil to harassment, intimidation or violence on account of his or her affiliations, activities or orientation is not deemed to be appropriate or permissible. Persons who engage in such practices are liable to prosecution and penalties if the victims file complaints for the purpose.

Although Tunisia, like other countries throughout the world, has not been immune to such conduct and practices, the various State bodies operating in the field of human rights seek to disseminate the values of moderation and tolerance that are enshrined in article 6 of the Tunisian Constitution.

The activists in question thus enjoy the protection of the law, since they are Tunisian citizens on behalf of whom the State guarantees individual and collective rights and freedoms. The case concerning them is still pending before the judiciary, which will consider it on 31 May 2021 in accordance with procedures enabling them to benefit from all guarantees of a fair trial.