

*Republic of Tunisia*

*Office of the Prime Minister*

*Units for relations with constitutional bodies, civil society and human rights organizations*

*National Commission for the Coordination, Preparation and Submission of Reports and Follow-up to Recommendations on Human Rights*

*Permanent Secretariat*

*Tunis, on ...*

**Reply of Tunisia to joint communication No. AL TUN 4/2021 from the special procedures of the Human Rights Council**

**To the:**

**Chair of the Working Group on Arbitrary Detention**

**Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**

**Special Rapporteur on the rights to freedom of peaceful assembly and of association**

**Special Rapporteur on the situation of human rights defenders**

**Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity**

**Special Rapporteur on violence against women**

**Working Group on discrimination against women and girls**

Further to the letter of the Office of the United Nations High Commissioner for Human Rights containing a request for Tunisia to comment on the information contained in the joint communication from the special procedures of the Human Rights Council, which concerned the alleged harassment of two defenders of the human rights of gender-identity minorities, both of whom are members of the Tunisian Association for Justice and Equality (Damj), the National Commission for the Coordination, Preparation and Submission of Reports and Follow-up to Recommendations on Human Rights is honoured to submit the following remarks:

Since the revolution of 2011, Tunisia has witnessed radical transformations that have laid the foundations for a democratic transition that respects and fortifies universal human rights principles.

Bans on the exercise of certain freedoms have been removed and restrictions on individuals have been lifted, while individual rights and freedoms have been strengthened, both in law and in practice. The country's involvement in the international and regional framework for protecting human rights has increased, and rights and freedoms are duly enshrined in chapter II and in other provisions of the Constitution of the Second Republic, issued in January 2014. This allows for a

comprehensive reading that respects values of dignity and humanity and upholds the principles of human rights in their universality and interdependence.

A process has begun to bring domestic laws into line with the Constitution and with international standards, and a national committee has been set up – as part of the units for relations with constitutional bodies, civil society and human rights organizations – to harmonize legal texts with constitutional and international norms. In addition to this, a number of committees have been created within the Ministry of Justice to oversee amendments to the Criminal Code and the Code of Criminal Procedure.

This new state of affairs has made it possible to amend many current pieces of legislation, to enact other organic laws that protect and promote rights and freedoms, and to establish structures and institutions to guarantee that such rights and freedoms can be effectively exercised.

At the same time efforts have continued to reform the judicial system, which has a direct and radical impact on the protection of rights and freedoms.

Ongoing training and formation courses have been organized for judges and law enforcement officers in order to ensure that individual rights and freedoms are effectively upheld.

With regard to the communication itself, which concerns a complaint of harassment against Ms. Rania Amdouni and Mr. Badr Baabou, it is important to note that all forms of discrimination, hatred, and incitement on grounds of sexual orientation are contrary to the Tunisian Constitution, under which persons of any sexual orientation can enjoy all their guaranteed rights.

In this regard, attention is drawn to a preliminary ruling issued by the court of first instance in Tunis on 9 July 2018, which established the right of a woman with gender dysphoria to change her gender.

The court invoked article 17 of the Covenant and case-law of the European Court of Human Rights regarding respect for privacy.

In another relevant case, a member of the Shams Association, which advocates on behalf of homosexuals, was violently attacked by two people. An investigation into the incident was opened on the basis of a report published on a news website on 7 December 2018. The two assailants were arrested and sentenced to prison terms even though the victim had chosen not to move forward with legal proceedings.

These examples show that any infringement or violation of such rights constitutes a crime that is punishable under Tunisian law.

As concerns article 230 of the Criminal Code, it should be noted that the Code, which is a fundamental legal reference for the protection of rights and freedoms, is in the process of being reviewed by committee established for that purpose, which has yet to submit its final report.

Medical examinations pursuant to article 230 are conducted only with the consent of the person concerned, and there is no presumption that that individual has perpetrated the offence. The person concerned may refuse such a medical examination. Pursuant to the Code of Medical Ethics, a forensic doctor who fails to respect the wishes of the individual concerned is liable to disciplinary action or a criminal penalty.

The Commission on Equality and Individual Freedoms has proposed that the act set forth in article 230 should no longer be considered an offence or that the penalty prescribed for it should be reduced from a custodial sentence to a fine. That proposal is now being discussed at the national level. Furthermore, a number of parliamentarians have proposed the adoption of a code of individual rights and freedoms, which would prohibit all forms of discrimination, including on the basis of sexual orientation.

As concerns the steps taken to reduce harassment against human rights defenders, article 6 of Decree No. 88 of 2011, regarding the regulation of associations, states: "Public authorities may not, directly or indirectly, hinder or impede the activities of associations."

According to article 7 of the Decree, the State is to ensure that each person is protected by the competent authorities against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action, as a consequence of his or her legitimate exercise of the rights envisaged in the Decree.

Decree No. 88 of 2011 regarding the regulation of associations also introduced significant changes concerning the freedom to form associations. Indeed, it envisaged the abolition of the licensing regime and its replacement with a permit system with any subsequent regulation being conducted via legal action. This has led to a considerable increase in the number of associations.

As concerns the facts and allegations contained in the joint communication in regard of the procedures involving Ms. Rania Amdouni, the following account may be given:

On 27 February 2021, Ms. Rania Amdouni presented herself the Bab Bahr Police Sector in a state of distress and stating that she wished to set herself on fire. She was calmed down but, while still inside the security centre, she then opened a can of beer and attempted to drink it. She was asked to leave at which she directed discourteous phrases at the officers before causing a disturbance in front of the security centre and deliberately removing her clothing. At that point, she was taken into the security centre. Report No. 384, dated 1 March 2021, was then compiled on the basis of report No. 733 of 27 February 2021. The incident was also confirmed by a witness who had been in the security centre at the time and had recorded the proceedings on his mobile phone.

On 4 March 2021, she was referred to the district court of Tunis, all her rights having been duly guaranteed during the course of the initial investigation. Her lawyer [REDACTED]

██████ was present when she was arraigned for insulting a public official who was in the course of carrying out his duties, for being in an evident state of intoxication and for causing a disturbance, as per articles 125, 315 and 316 of the Criminal Code.

She was present at the hearing where she was shown the video recordings, and she observed that her actions had been due to the difficult mental state and the anger and turmoil she was experiencing on the day of the incident.

On the basis of the information contained in the case file – the official report, the testimony of the witness, the video recordings of the incident, the actions of the accused and her statements during the hearing – the court found her guilty on the charge against her and sentenced her to a term of imprisonment of 6 months. It also sentenced her to payment of a fine of 9,600 Tunisian dinars (D) for drunkenness and causing a disturbance. An appeal against the ruling was lodged and the court, without re-examining the case, overturned all the penalties, which were reduced to the payment of a fine of D 200 for insulting a public official.

The above information shows that the case of Ms. Rania Amdouni was like that of any other Tunisian citizen accused of committing criminal offences and was unconnected to her sexual orientation, her ideas or her activities as a defender of human rights. She enjoyed all fair trial safeguards and was able to exercise her right of defence, as set forth in the Constitution, the Code of Criminal Procedure and the Criminal Code.

As concerns the allegations that predate the incident, they are not backed by any evidence and Ms. Rania Amdouni has not lodged any complaint in that regard with the competent authorities. Nonetheless, she retains the right to have recourse to the courts and to take legal action in regard of any actions she claims have been taken against her.

Concerning Mr. Badr Baabou, who is president of the Tunisian Association for Justice and Equality (Damj), enquiries have revealed that he has recorded no complaints of harassment, assault or death threats, either at his place of residence or at the headquarters of the Association where he conducts his activities. The allegation thus remains unsubstantiated.

In this regard, it is important to note that activists in various associations who, during the course of their activities, may face acts of violence, incitement or hatred or accusations of takfir, are protected under the law as Tunisian citizens whose individual and public rights and freedoms are safeguarded by the State, which protects them using the legal mechanisms to that effect.

It is in no way systematic or acceptable for a person on Tunisian territory to be subjected to harassment, intimidation or violence for his or her affiliations, activities or inclinations. Such practices, if they exist, are individual actions and the persons who undertake them are liable to be prosecuted and punished once the victim has filed a complaint.

Although Tunisia, like other countries in the world, is not immune to such behaviours, the various human rights structures of the State seek to disseminate the values of moderation and tolerance, which are enshrined in article 16 of the Tunisian Constitution.