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Individuelles

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TUNISIAN ACTIVE NGOS IN THE FIELD OF LGBTQI++ RIGHTS

THE NEW GENERATION OF ACTIVISTS
IN THE HUMAN RIGHTS MOVEMENT

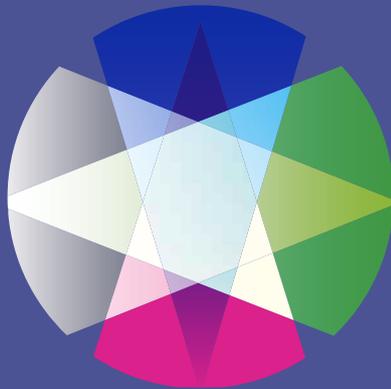
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STUDY SUMMARY

Support of

 **HEINRICH BÖLL STIFTUNG**
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This study is focused on the Tunisian NGOs working in the field of LGBTQI++ rights in Tunisia during the period from 2011 to 2017 within a broader framework that addresses the issue of individual freedoms and the right to be different which entails the right to freedom of assembly and expression. The 2011 Revolution marked a crucial turning point in this regard. The environment of democratic transition allowed for an increasingly active role of a civil society that acts as a power of proposal and a lobbying force in the drafting of legal texts, policy-making as well as its contribution in social debates and the shaping of public opinion particularly with respect to defending and promoting rights and freedoms.

Although the body of international human rights law has undergone, throughout its history, a long and difficult haul to be envisaged as universal, comprehensive and interdependent, individual freedoms and in particular those relating to the body and thought are still subject to reservation and objection on grounds of the civilizational specificities which echo a deeply rooted intellectual and ideological legacy that recognizes neither people as individuals nor their rights. For instance, homosexuality is condemned under Islamic jurisprudence, whereas according to Islamic research conducted in this regard, the Quranic text is not explicit on this point for it does not lay down any specific punishments for homosexuality notwithstanding such condemnation. In fact, Islamic legal provisions regarding punishments were drafted in the middle ages. There is no doubt that homosexuality is inherent in the Arab and Islamic cultural heritage for it does not originate from the West or is imposed on our societies but rather, it represents a long-standing taboo in this cultural heritage where any historical, literary, poetic and artistic evidence addressing homosexuality has been obliterated over the centuries.

Beginning in 2011, LGBTQI++ organizations began to emerge in an increasingly overt way benefiting from the climate of freedom. Many associations, subject of the present study, have been founded such as “Damj” (2011), “The Initiative Mawjoudin for Equality” (2014), “Shams” (2015), “Chouf” (2016) along with “Kelmti” (2011) which is not an association but a coalition of LGBTQI++ activists.

Notwithstanding the importance of these developments, the transitional context poses a threat to individual freedoms given that homosexual relations between consenting adults is punishable

by a term of imprisonment for up to three years pursuant to Article 230 of the Criminal Code. In addition to criminal prosecution and subsequent mandatory rectal examinations to prove sexual activities, homosexuality is still the reason for stigmatization, social marginalization, discrimination and violence given the predominant conservative nature of the Tunisian society and the persistence of homophobia. In the past few years, Concerns grew stronger over Islamist, conservative and homophobic parties becoming more influential in society and public life. Moreover, media coverage of homosexuality-related issues is generally characterized by the lack of professionalism and objectivity and tends to favor the buzz, stigmatization and incitement. Given this reality, defending and protecting the rights of LGBTQI++ people remains precarious and is fraught with threats while it demonstrates at the same time the activists' level of maturity and courage.

This study represents an opportunity to assess the situation of community work in this field relying on a qualitative analysis approach which requires an examination and assessment of the characteristics of these associations and hurdles which may be encountered by them at the level of their sustainability and impact. This study aims at assisting in shedding light on this new generation of human rights activists and assessing their ability to open up a prospect for changing the legal frameworks and developing mindsets in order to promote acceptance of difference and respect of privacy.

Defending LGBTQI++ rights and the legal deadlock

The Tunisian legal framework for the protection of LGBTQI++ rights and the safeguarding of the right to defend the rights of this social group is characterized by its contradiction and inconsistent provisions whereby one can find many legal provisions restricting rights and freedoms - that are still in force - which coexist with legal provisions guaranteeing rights and freedoms.

The new Tunisian Constitution of January 27th, 2014 expressly provides for "individual freedoms" as a constitutional concept along with the principles of human rights in their universality and comprehensiveness and the civil nature of the state (Article 21) in addition to guaranteeing

the freedom of establishing association (Article 34), protecting the right to privacy and the inviolability of the home (Article 24) and prohibiting mental and physical torture that cannot be time-barred from prosecution (Article 24). The 2014 Constitution contains a general clause (Article 49) on the different limitations and restrictions of the exercise of freedoms. These restrictions which are imposed on rights and freedoms and on how they are exercised must be determined by the law and in conformity with the principles of necessity and proportionality as well as the mention of the prohibition of retrogression in rights guaranteed under the Constitution.

Sexual acts between consenting adults that are liable to criminal prosecution is an infringement of privacy rights and a violation of the rights to non-discrimination guaranteed by human rights instruments ratified by Tunisia such as the International Covenant on Civil and Political Rights, CEDAW Convention and the African Charter on Human Rights. The UN Commission Human Rights Committee (UNHCR) which monitors the implementation of the International Covenant on Civil and Political Rights by its State parties has stressed on multiple occasions that sexual orientation is a status protected against discrimination under the Covenant. LGBTQI++ rights defenders enjoy special protection under international declarations.

As to the right of association, the Decree No. 2011-88 of 24 September 2011 on the organization of associations in Tunisia is a progressive legal text which, despite its shortcomings, adopted international standards regarding the founding, managing and financing of civil society organizations, which has had a positive impact on the issuance of multiple permits for the establishment of new associations including among them the association of Mowjoudin, Shams and Chouf. The new Decree released and facilitated procedures for creating new associations, substituting the prior-licensing system with the permit system or announcement and removing the discretionary power of the Minister of Interior in this regard.

Article 3 thereof sets out that associations shall, in their bylaws, activities and funding, observe the principles of the rule of law, democracy, plurality, transparency, equality and human rights as stipulated in international conventions ratified by the Republic of Tunisia. Under Article 4, associations are prohibited from adopting in their bylaws data, programs or activities any

incitement for violence, hatred, fanaticism or discrimination on religious, racial or regional grounds. Legally constituted associations are subject to a posteriori oversight over their actual activities. The principle of gradualism is adopted and ranges from minimal administrative supervision by means of a warning issued by the Government Secretary General to judicial oversight through imposing a penalty by a competent court ordering the suspension of the association activities and its dissolution upon the request of the Government Secretary General or any concerned person. The association constituents and members of the Board of Directors are not subject to any punishment except what is prescribed in the civil and criminal law upon committing offences. The association members enjoy legal protection against coercive measures of public authorities as a consequence of their exercise of the rights guaranteed for the association members and activists.

Sexual relations between persons of the same sex are criminalized under Tunisian Law on the basis of Article 230 of the Criminal Code which prescribes the punishment of imprisonment for a term of three years for committing an act of “sodomy” in addition to bringing legal proceedings against LGBTQI++ on the basis of Articles 226 and 226bis thereof. People under arrest are subjected to anal examinations by forensic experts to “prove” homosexual activities. Many young people were brought to justice on the basis of Article 230 of the Criminal Code and among the cases which particularly mobilized LGBTQI++ activists to condemn legal proceedings and call for the repeal of this Article as well as the provision of a defense counsel is the case of “Marwan” which took place in September 2015 and where he was sentenced to one year imprisonment for homosexuality by the Sousse Court of First Instance after undergoing rectal examination. The other example is the case of Students in Kairouan who were brought to justice for committing homosexuality after undergoing rectal examinations. A sentence of three years imprisonment coupled with additional three years of banishment from Kairouan is handed down by the Court of First Instance in Kairouan on 10 December 2015. The Court of Appeal in Sousse lessened the sentences handed down in both cases to two months imprisonment in the first case and one month in the second case. In 2017, two young men were sentenced to 8 years imprisonment for the same crime although the anal examination did not provide evidence for homosexual practices.

Forced anal examinations which are conducted under state supervision is a violation of the medical code of ethics. Moreover, it has no medical or scientific value providing evidence for whether he is involved in a consensual sexual activity or not. In addition, these examinations are a form of torture and a cruel, degrading and inhuman treatment and are prohibited under the “Convention against Torture,” the “International Covenant on Civil and Political Rights” and the “African Charter on Human and Peoples’ Rights.”

Defending LGBTQI++ from shadow to light

While associations defending LGBTQI++ people’s rights were established in the context of democratic transition that Tunisia has experienced since January 14th 2011, it is not a novelty to find activists working in this field. Over the past decades, many groups were active in defending LGBTQI++ rights but operated under the umbrella of associations with interest in the prevention of sexually transmitted diseases which adopted an approach based on assisting vulnerable groups including LGBTQI++ people. Working under the cover of public health has enabled the gaining of experience in fieldwork and gradually enhancing awareness of the need to join a group and defend the cause of LGBTQI++ rights. The Tunisian Association of Democratic Women has been a pioneer in championing the right to free choice with respect to sexual life and the need to repeal Article 230 of the Criminal Code in addition to providing a framework for action by activists interested in these issues.

For years now, the Web has become a space for encounter, support sharing, assistance and chatting among members of the homosexual community where identity concealment was needed for protectionist purposes.

Since 2011, Tunisia experienced the emergence of a number of associations working in the field of LGBTQI++ rights seizing the opportunity provided to them in an atmosphere of democratic transition. These associations include the following :



Damj, the Tunisian Association for justice and equality (2011): an organization whose goal is to defend and promote the human rights of LGBTQI++ people in Tunisia ;



The initiative **Mawjoudin for equality** (2014) : an association that fights for equality and support LGBTQI++ rights ;



Shams (2015) is an association that works for the decriminalization of homosexuality in Tunisia, struggles to fight against homophobia and attempts at initiating discussions on homosexuality in society ;



Chouf (2016) is a feminist organization that defends women's bodily and sexual LGBTQI++ rights. The organization aims at strengthening the abilities of women belonging to minority groups and spreading the acceptance of difference regarding women's sexual choices based on culture and art ;



Kelmti (2011) is a coalition of LGBTQI++ Tunisian activists whose aim is to promote the values of tolerance and to defend LGBTQI++ rights. This coalition merged with associations active in the field of LGBTQI++ rights and chiefly with Mawjoudin.

With the exception of Shams association, which openly stated it would defend sexual minorities, the associations of Damj, Mawjoudin and Chouf adopted in their by-laws general objectives related to the defense of human rights, freedoms and the rejection of all forms of discrimination, to avoid seeing their registration refused by the authorities.

Notwithstanding the different positions of associations regarding the communication policy to be endorsed to advance advocacy and receive support, all associations are founded on the premise of assisting individuals who suffer from stigma, discrimination and violence because of their sexual choices, condemning the trials to which they were subjected, working on changing the laws which criminalize homosexuality, prohibiting the practice of anal examinations and embracing a new social culture based on the right to be different and inviolability of privacy.

All associations defending LGBTQI++ rights are based in Tunis where their headquarters offices are located. Refraining from establishing their branch offices in the regions is likely due to



security concerns in the first place where risks are higher at the local level. This centralization, as well as the issue of being underrepresented in the traditional media combined with the homophobic attitude towards this subject, has been counterbalanced by their reliance on the cyberspace for part of their activities.

These newly created associations direct their efforts to strengthening their internal structures, training their activists, enhancing their capacities and skills at the level of communication, advocacy and hearing techniques, human rights, planning, safety rules and self-defense. They also provide psychological support and legal assistance to LGBTQI++ people in addition to participating in advocacy campaigns and awareness raising activities for the protection and reinforcement of this group.

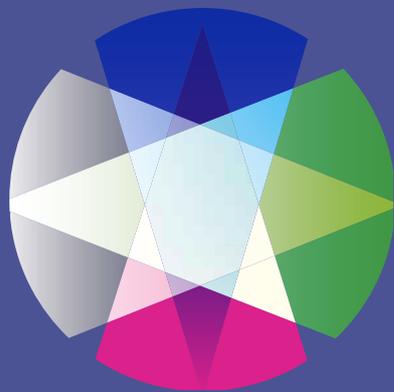
It is to be noted that these associations have formed the Tunisian Coalition for rights of LGBTQI++ persons in 2016. The coalition has drafted the first report on the situation of this group in Tunisia and referred it to the United Nations Human rights Council on the occasion of the universal periodic review regarding Tunisia to highlight the violations suffered by LGBTQI++ people in Tunisia, call for legal reforms to prevent discrimination against them, protect their economic and social rights and enjoy their right to full citizenship. The coalition also called for the repeal of Article 230 of the Criminal Code which criminalizes homosexuality for being in contravention with the new 2014 Constitution and Tunisia's international commitments. The associations also called for the prohibition of anal examinations to prove homosexual activities, which is a practice carried out by security services against persons placed under arrest. They also celebrate the international Day against homophobia and transphobia on May 17 in partnership with human rights organizations.

Associations active in LGBTQI++ rights maintain partnerships and cooperation with human rights organizations and other NGOs within and outside Tunisia. Therefore, we decided to extend the scope of our study to include the analysis of these relations which incorporate among their objectives the promotion of LGBTQI++ rights. This networking has been reinforced through the formation of a civil coalition for individual freedoms in January 2016. The question of LGBTQI++ rights is laid down in the action strategy of this civil coalition since its creation. This

forum joins together 34 associations as participants including the four associations active in LGBTQI++ rights along with the Tunisian League for the Defense of Human Rights, the Tunisian Association for the Defense of Individual Liberties, The Tunisian Association of Democratic Women and Beity Association ...

Defending LGBTQI++ rights is a test for the prevailing understanding of religion and ethics with respect to individual rights and freedoms and a real test for the Tunisian legal framework which is still characterized by contradictions in the area of individual freedoms. It is expected that the civil society will play a crucial role in establishing the rule of law but this requires reinforcing coordination among associations working in this field. Future legislative and judicial developments will determine whether Tunisia will respect its Constitution and adhere to its international commitments in human rights or violate it and invalidate its provisions whenever individual rights and freedoms as guaranteed under the 2014 Constitution and international commitments in human rights which are ratified by Tunisia prove to be inconsistent with the prevailing understanding of religion and ethics. Human rights associations face another challenge – how to introduce structural changes in the social culture. This can be achieved by raising awareness among members of the society of their diversity and consolidate openness to accepting social pluralism and people who are different whether on grounds of sex orientation, gender identity, ethnicity, color, beliefs or thoughts.





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