

Presentation of the association :

Damj the Tunisian association for justice and equality is a non governmental organization based in tunisia. The organization started working informally as a group of LGBTIQ+ activists providing urgent assistance to face the institutional and social discrimination, hate and violence.

In 2002 the founders of Damj took the action to organize and start advocating for the rights of the community following the discovering of the killing of a queer person in a hate crime with the non recognition of this crime from police forces and the Tunisian government. Damj was legally registered after the Tunisian revolution on february 2011 as an organization advocating for justice and equality with the aim of implementing various projects dedicated to the LGBTIQ community , providing access to justice , legal assistance for the members of the community in vulnerable situation , advocating towards a completely inclusive reform in the Tunisian constitution , laws and articles , the decriminisation of homosexuality and Trans identities on the penal code and the penal code of procedures. The organization since its establishment prioritized the importance of respecting and building a basis of economic, social and legal rights for the LGBTIQ+ marginalized community.

General context:

1. Tunisia, was once lauded as a promising bastion of democracy and human rights within the region. Nevertheless, recent years have witnessed a series of setbacks, encompassing a political crisis, economic downturn, and an upswing in societal intolerance.
2. These developments have exerted a substantial impact on the human rights landscape, particularly affecting the rights of LGBTQI+ individuals, migrants, and refugees in Tunisia perpetuated both by the government and its agencies as well as individuals.
3. Of notable concern is the escalating "impunity" surrounding acts of aggression against the LGBTQI+ community. Additionally, there is a glaring lapse in Tunisia's fulfilment of its obligations stemming from the last Universal Periodic Review (UPR) session in 2017 and the non-disclosure of the truth in the Tunisian's state response during the 2022 UPR. During the 2017's session, the Tunisian State received recommendations, to which it committed, emphasizing the need to intensify efforts in implementing laws safeguarding the rights of women, children, and other vulnerable groups (Recommendation 125.131) and consequently in 2022 , Tunisia denied the fact of subjugating LGBTQI++ individuals to an obligated Anal Tests.
4. Despite strides in certain areas for vulnerable populations, apprehensions persist regarding ongoing discrimination faced by various groups, both within institutional frameworks and societal contexts. The LGBTQI+ community, in particular, continues to encounter challenges that warrant attention and redress.

A pre-existing Criminalizing Legal Framework and a Discriminatory Practice:

5. Tunisia has ratified several international human rights conventions, including the two 1966 Covenants, CEDAW (with the lifting of reservations on certain articles in 2014), the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities. On the institutional front, independent national bodies have been established to ensure Tunisia's adherence to human rights commitments. These include the National Committee on Human Rights and Fundamental Freedoms, the National Instance for the Protection of Personal Data, and the Instance for the Prevention of Torture.
6. However, despite the significance of these advancements and achievements, they have faced a challenging legal, institutional, and social context that has significantly hindered the practical implementation of these rights. Successive governments and parliaments since the revolution have failed to enact the necessary reforms to bring the existing legislative framework into compliance with the Constitution and international standards. For instance, the Penal Code, enacted in 1913 and still in force, includes a chapter criminalizing offences against morality, such as outrage to modesty (Article 226), offences against good morals (Article 226 bis), homosexuality (Article 230), prostitution (Article 231), and adultery (Article 236).
7. Furthermore, these achievements are jeopardised by a political crisis that casts a shadow of uncertainty over the country's political, social, and economic future, endangering some political gains. Tunisia is increasingly struggling to meet the needs of its citizens, especially the youth, and to address socio-economic challenges. There is a growing lack of confidence in institutions among several Tunisians.
8. The halt to the democratic transition declared by the President of the Republic on July 25, 2021, which imposed a state of emergency and suspended democratically constituted institutions already fragile in their role to uphold the rule of law and the separation of powers, unequivocally consolidates the power of one individual. The suspension and subsequent dissolution of the Assembly of the Representatives of the People allowed the Presidency to assume all powers, including legislative powers, exercised for over a year through irrevocable presidential decrees.
9. The executive's control over other branches of power was further demonstrated by the dissolution of the Higher Judicial Council, replaced by a provisional council with significantly reduced powers. This was followed by the adoption of a constitution unilaterally drafted by the president, significantly diminishing constitutional guarantees for rights and freedoms, along with the election of a new parliamentary assembly with a participation rate not exceeding 11%.
10. Such a political crisis unfolds amid a chronic economic and social crisis, making it challenging for the state to find resources to meet the social demands of the most impoverished and vulnerable groups, including the LGBTQI+ community.

A new legal framework that mirrors the Post Powergrab of the Executive Branch:

11. The enactment of a constitution unilaterally formulated not only bestowed upon the Tunisian State the mandate "to achieve Islam's Objectives" (Article V) but also rendered the Chapter of Rights and Freedoms devoid of "legal guarantees." This

- unilateral constitutional move has significantly altered the legal framework, introducing a concerning imbalance.
12. The prevailing political landscape has been marked by state-sponsored intolerance, permeating various facets of institutions, courts, and broader society. This pervasive atmosphere of intolerance has eroded the foundations of a pluralistic and inclusive democratic society.
 13. The issuance of a series of decree laws by the president immediately preceding the legislative elections has not only raised alarm but has also exacerbated the constriction of civic space and the curtailment of freedom of expression. Decree-Law no. 2022-54, dated 13 September 2022, targeting offences related to information and communication systems, has led to the unwarranted incarceration of lawyers, journalists, and activists. This legislative measure has imposed severe restrictions on the ability of non-governmental organizations (NGOs) to effectively monitor human rights violations, express themselves freely, and openly denounce offensive policies. The cumulative effect is a stifling environment that impedes the work of civil society in safeguarding human rights and fostering democratic principles.
 14. The LGBTQI++ community, as well as LGBTQI++ Human Rights Defenders, have long grappled with the weight of existing stringent laws, and these legal constraints have been further exacerbated by what can be termed as "democulas swords," hanging over them in various aspects of their daily lives.
 15. Specifically, the Decree Law 54 in question significantly expands the reach of prevailing cybercrime legislation, endowing authorities with extensive powers to monitor online activities. This development has elicited concerns regarding the potential infringement on freedom of expression and the prospect of government overreach. Detractors argue that the law's ambiguous language and expansive surveillance provisions create a worrisome environment where dissenters, journalists, and human rights defenders could be targeted.
 16. The law broadens the definition of cybercrime, encompassing offences such as "spreading false information" and "insulting public morals." The vague nature of these terms leaves room for interpretation, raising fears that they could be wielded to silence criticism directed at the government or religious institutions.
 17. Furthermore, the legislation grants authorities augmented surveillance powers, empowering them to intercept communications, gather metadata, and access private data without the necessity of judicial oversight. This amplifies concerns about potential abuses and the erosion of privacy rights.
 18. Adding to the apprehension, the law imposes severe penalties, with individuals found guilty facing up to ten years of imprisonment along with substantial fines. This punitive aspect intensifies the chilling effect on freedom of expression, further stifling dissent and raising serious human rights concerns.
 19. Amidst these developments, efforts have been undertaken to amend Decree 88 concerning the Freedom of Association and Assembly. The executive branch has consistently issued official statements characterizing Civil Society Organizations as "traitors," alleging ties to foreign agencies, and accusing them of being paid to destabilize Tunisia. This narrative has created a challenging environment for civil society entities, encompassing charities, human rights defenders, journalists, and

political figures, and notably impacting marginalized groups such as migrants, refugees, and LGBTQI++ individuals.

20. In the current political landscape, there are two draft laws proposed to amend Decree 88, introducing more restrictive articles. These legislative proposals, if enacted, would further curtail the freedom of association and assembly, exacerbating the challenges faced by civil society organizations and individuals working towards social progress and human rights.
21. The broader political climate is not conducive to the fruitful engagement of civil society. The ongoing negative portrayal and accusations against these organizations hinder their ability to operate effectively and contribute meaningfully to the democratic discourse. This unfavourable reception is particularly detrimental to the efforts of civil society actors working with vulnerable populations, including migrants, refugees, and the LGBTQI++ community, as they strive to address societal issues and promote inclusive and equitable policies.

The LGBTQI++ Community: The Weakest Link in the Scene

22. As assaults against the LGBTQI++ community extend beyond institutional transgressions, individuals also attack them with impunity.
 - a) Documentation of Cases:
 - During May and June 2022, the Tunisian state executed a sweeping police campaign against the LGBTQI+ community in public and private spaces. The intensity peaked in the last two weeks of June, led by the "specialized security units for social protection of the judicial police in Gorgeni - Tunisia," along with police stations traditionally engaging in aggression, intimidation, and torture without state intervention. Damj documented 14 arrests based on Article 230 and over 45 arrests and trials under Articles 125, 226 bis, and 231.
 - This surge in detentions unfolded amidst systematic moral attacks against LGBTQI+ community members, emanating from regional elected officials of the state. Notably, the governor of Sousse made significant declarations, preventing the screening of a film due to alleged homosexual scenes needing societal protection. This discourse, spreading in digital and media spaces, along with political rhetoric, greenlights campaigns of pursuit and hunting through random arrests, unlawful detention, fabrication of charges, and endorsement of extortion policies to coerce detainees into spying on LGBTQI+ rights organizations in exchange for release.
 - Despite Damj and rightful complainants filing criminal and administrative complaints against the police for torture, ill-treatment, and illegal detention, the perpetrators remain unprosecuted and unaccountable, allowing them to retaliate against the victims.
 - b) Declaration of Queer State of Emergency**

In response to intensified police operations against the transgender community, Damj declared a Queer State of Emergency in Tunisia. This reaction follows repression campaigns by the police, including daily raids, street chases, and online pursuits. These operations are led

by the "specialized security units for social protection of the judicial police in Gorgeni - Tunisia." Notably, a judgment against Maya, a transgender woman, resulted in a three-year prison sentence under Article 230, which criminalizes homosexuality—the maximum penalty under this article.

Systematic arrests and torture did not cease with Maya's conviction but escalated after the broadcast of a report by "Four Facts," the most-watched channel to date, highlighting transgender sex workers. The same police raided the homes of 16 transgender women within a week, subjecting them to assault, dragging, beating, and insults when they refused to sign police inquiry reports without legal representation. They were imprisoned in the Mornaguia male civil prison on moral charges criminalizing gender identities and sex work.

Damj called for an immediate cessation of persecution campaigns by the Ministry of Interior, urging an end to unconstitutional and repressive legal proceedings against transgender individuals. The association also called for an investigation into the torture and ill-treatment inflicted on transgender women.

Damj initiated legal and administrative proceedings against the specialized social prevention unit and Bouchoucha detention centre agents. The legal actions also targeted Ministry of Interior officials involved in these arrests and serious human rights violations.

c) Restrictions on Damj and Its Activities

Damj faced restrictions on its association, activities, offices, and beneficiaries. These restrictions, detailed chronologically, include:

- On October 19, 2023, Saif Ayedi, a Damj activist, was arrested on suspicion of participating in protests in the Ettadhamon district. During investigations, a search warrant was requested to allow police access to Damj's office, claiming suspicion of association funding the protests. Although the request was immediately denied, these periodic attempts, changing in form each time, compromised the association's security, its activists, and especially its beneficiaries.
- In November 2022 in Sfax, police patrols consistently guarded the vicinity of Damj's Sfax office. These patrols occasionally parked in the same street for convenient surveillance, and at times, directly in front of the building's entrance. Frequent checks of identity papers were conducted on anyone showing signs of association affiliation, such as a familiar face, non-normative gender expressions, or wearing symbols related to the association. This surveillance forced Damj to cancel activities and temporarily close the office to avoid confrontation with the police, safeguarding both the office and its beneficiaries.
- In December 2022 in Kairouan An act of solidarity with activist Daniel regarding a 2015 case took place in front of the Kairouan Court of Appeal. Despite legally announcing the action, police were absent to provide security for the protesters, as mandated by law. Lawyers had to speak with the public prosecutor to address the absence of security measures. During this time, a group of civilian police (posing as citizens)

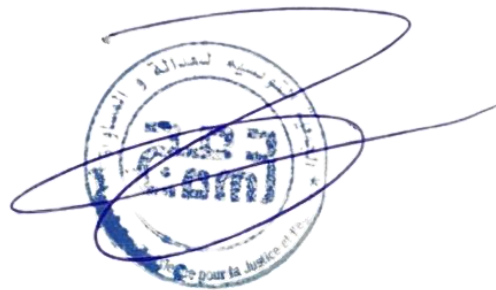
attacked the protesters with threats, and queerphobic and offensive remarks, damaged a roll-up with the action's slogan, and confiscated a banner with the same slogan. The police arrived later, standing nearby without intervening to stop the attacks, thus indirectly encouraging aggression against the protesters.

- Since July 17, 2023, in Sfax Damj has been receiving continuous calls on their emergency lines at their central office in Tunis and operational regional offices from various police teams. These calls aimed to obtain the names of members, all persons visiting the offices, including beneficiaries, and the exact geographic locations of the offices.
- This campaign escalated on July 26 at the Sfax office after receiving a call from the "special unit of the City of Sfax" from the phone number 74255244. This unit had harassed and threatened Damj's staff and activists, publicly accusing the association of being illegal, engaging in unlawful activities, and vowing to prosecute any activist activity. They added that a police report would be issued to dissolve the association and close its regional office.

Conclusion :

Damj adheres to the rights and duties related to freedom of association and management outlined in Decree No. 88 of 2011. The association believes that the oversight exercised by the Ministry of Interior over civil society organizations ended with the fall of the pre-revolutionary dictatorship regime, and there is no room for former practices of intimidation, harassment, and persecution of activists and civic struggles. All legal and financial files, including the headquarters address, are published in the National Register of Establishments.

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