

Tunisian Gender Law Reform: Optimism in Spite of the Long Road Ahead

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On June 3rd, Euro-Mediterranean Human Rights Network (Euro-Med) hosted a conference entitled “Forms of Violence Against Women and Girls” to discuss the Tunisian Personal Status Code and Penal Code - both of which are long overdue for reform. Critical yet optimistic, the proposed goals for legal reform are found in a study entitled “Violences à L’égard des femmes: Les lois du genre” written by Sana Ben Achour, a law professor and former president of ATFD.

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On June 3rd, Euro-Mediterranean Human Rights Network (Euro-Med) hosted a conference entitled “Forms of Violence Against Women and Girls” [1] to discuss the Tunisian Personal Status Code and Penal Code - both of which are long overdue for reform. Euro-Med invited members of Tunisian civil society such as ATFD, AFTURD, and UNFT along with members of parliament. An atmosphere of camaraderie and solidarity animated the discussion concerning the 5 year-long project. While the conference touched on the draft bill regarding women’s rights, discussions of the timeline or plan of action for passing legislation appeared to be an afterthought. The focus was instead what reforms should be placed at the forefront of the legal fight for women’s justice. Critical yet optimistic, the proposed goals for legal reform are found in a study entitled “Violences à L’égard des femmes: *Les lois du genre* [2]” written by Sana Ben Achour, a law professor and former president of ATFD.

For Ben Achour, the erasure and submission of women before the law is the antithesis of democracy. Despite being praised as one of the most progressive legal codes for women’s rights in the Arab world, the Personal Status Code (PSC) and the Penal Code still have their flaws. Many, including Achour, have pointed out that both legal charters have been instrumentalized as a form of state feminism [3] while simultaneously reifying patriarchal institutions. Achour’s study exposes the ambiguities and obsolete policies within the current Tunisian legal framework that perpetuate gender inequalities and injustice. She calls for reforms that “modernize” or update current legislation, as well as a more intersectional approach to ending discrimination. In order to bring justice to all women, regardless of race, socioeconomic standing, or regional origin, Ben Achour advocates for “a comprehensive law that takes on a multidisciplinary and multi-sectoral approach towards violence” in order to “prevent violence, protect victims, prosecute criminals, and promote rights.” (p. 27)

Patriarchy and Customs Protected by the Personal Status and Penal Codes

The ambiguity of the PSC allows for traditions and customs (al-a'raf) to influence legal rulings and thus reify social stigmas, stereotypes, and expectations of women. Ben Achour pays special attention to how the PSC and Penal Code protect patriarchal institutions and privilege. She writes:

“Gender laws designate judicial measures that perpetuate inequality of rights, freedoms, and abilities between men and women by assigning each a role fixed by norms and patriarchal hierarchies.” (p.23)

In 1956, the PSC brought new rights to women. However, it also served patriarchal and state interests. The institution of marriage and the nuclear family are defined as a model invented to promote new national values and reaffirm order. The PSC perpetuates the inferior status of women by protecting unequal rights to inheritance (Articles 11 & 24) and legal authority of children after divorce (Art. 154). When contested or challenged, traditions or customs are often the given reason to preserve rather than transform these legal codes.

Defining Violence and Un-Silencing Victims

The International Commission of Jurists (ICJ) published a report in June 2016 [4] which also raised concerns and offered reform suggestions relating to the PSC and Tunisian Penal Code. Ben Achour's study offers similar if not identical arguments. Both reports advocate for new definitions of violence against women. Most notable are the calls, by both reports, for more encompassing definitions of rape. In addition, the ICJ and Ben Achour call for structural reforms to better utilize resources and provide women better access to justice in accordance with Tunisia's obligations under the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

As it currently stands, the Arabic word for rape *“ightissab”* is absent from the Tunisian Penal Code. The current articles specifying forms of rape are by no means comprehensive - and only allow women to be victims. For example, marital rape is not addressed before the law due to sexual relations being considered *“marital duties according to custom”* after a dowry has been paid. In addition to the lack of effective and encompassing definitions of rape and sexual violence, rape survivors face many barriers to bring their cases to justice. Women must provide a medical certificate from a medical doctor to attest to the fact that physical violence as a cause of rape occurred. This certificate, however, is not always easily attainable nor are judges required to recognize them.

Ben Achour discusses in detail how the inadequate criminalization of rape and sexual assault helps explain why only 3.4% of women report acts of sexual violence committed against them (p.89). Not only does the current legal system often silence rape survivors, but the trauma of their assault can be discounted before the law in order to protect men's honor. Perpetrators of rape can bring charges of *“defamation”* against their victims thus dismissing all other charges and/or sentencing rape survivors to a two-year prison sentence with a fine.

Turning Suggestions into Genuine Reforms

While Ben Achour's study raises many questions related to violence against women and structural inequality, her suggestions along with the ICJ's, are not indicative of what will be approved by parliament. Politicians stating party lines claim their willingness to work in coalition with one

another to reach reforms, yet fail to publicly state any clear plan of action. Historically however, the Tunisian parliament has been unable to pass reforms on issues such as inheritance [5]. Today, a potential set-back for the legislative process is individual parties' prioritization of reaching a consensus. When asked for details on the plan to update the PSC and Penal Code, Yamina Zoghalmi, a parliamentary representative from Ennahda who attended the conference told Nawaat:

"We are at the moment, in favor of undertaking all legal codes for women. But at the core of Ennahda, we are reflecting about evolving. We're discussing and thinking about progressing. [But] It's necessary to develop this code in line with the constitution." Zoghalmi, as all Ennahdha's representatives was against passing inheritance legislation back in May.

Despite the lack of a definitive answer as to "how", civil society members and politicians will no doubt continue to push for a comprehensive gender law reform. Once legislation is implemented, it will be only the first step towards changing institutions which perpetuate gender violence and discrimination in Tunisia. Legislative reform does not transform a society overnight. It remains to be seen what plans are in store to effectively utilize resources and allow open access to women's justice after the fight for legal reform is won.

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<http://nawaat.org/portail/2016/06/25/tunisian-gender-law-reform-optimism-in-spite-of-the-long-road-ahead/>

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Footnotes

[1] <http://euromedrights.org/publication/tunisia-violence-against-women-gender-law/>

[2] The study is not yet available online in PDF format.

[3] ESSF (article 38733), [From Bourguiba to Nhadha - State feminism in Tunisia: reading between the lines.](#)

[4] <http://icj2.wpengine.com/wp-content/uploads/2016/06/Tunisia-Memo-WA2J-Advocacy-Analysis-brief-2016-ENG.pdf>

[5] http://www.huffpostmaghreb.com/2016/05/05/ennahdha-front-populaire-_n_9849296.html