

HUMAN RIGHTS PROJECT WRITTEN-INTERVIEW QUESTIONS

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1. Who is "human" in the concept of modern human rights?

The first article of the Universal Declaration of Human Rights of 1948 refers to humans as “*endowed with reason and conscience*”.

Whereas the elements of human identification are established, the social, cultural and scientific actualities and progress have surpassed this definition.

Indeed, other features today are in order when it comes to define the human.

It's not anymore about just a being that understand reason, who has a gender, a sum of beliefs... It's about that and more.

As were the words written in the Universal Declaration of Human Rights introduction, humans “*are not country-specific, or particular to a certain era or social group. They are the inalienable entitlements of all people, at all times, and in all places, people of every color, from every race and ethnic group; whether or not they are disabled; citizens or migrants; no matter their sex, their class, their caste, their creed, their age or sexual orientation*”.

We are talking about sexual fluidity in all its orientations, humans with biohacks and body augmentations, all different religious or non religious beliefs no matter of how unusual they might seem to one.

The importance of identifying this elements and eventually establishing who is a human is of nothing but genuine effort to include EVERYONE, without blinding discrimination, and guaranteeing their protection under the wings of universal human rights.

2. How is carried out of the protection of a right which is not regulated in the Constitution in your legal system? What kind of balancing is done when a right uncouncted in the Constitution is interfering with a constitutional right?

Even though a right is not regulated in the Tunisian constitution, there are international treaties that had been signed and ratified by the Tunisian Republic guaranteeing its protection such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and culture rights, the African Charter on Human and People's Rights, etc.

that ensure the first, the second and most of the third human rights generations.

Our new constitution of 2014, after the Tunisian revolution triggering the Arab spring, though it might not be perfect, but it is proudly dedicated to protecting liberties and freedom of every individual, thus providing an acceptable harmony with global human rights.

Alongside the question of the coherence of the various elements defining the identity of the

Tunisian State, the constitutional debates raised the issue of rights and freedoms and how they could be reconciled with the religious framework. The joint reference made in several provisions to Islam, human rights and the civil State created a lack of clarity as to the general positioning of the constitutional text with regard to guaranteeing rights and freedoms.

The reference to human rights in the preamble (Paragraph 3 of the preamble) of the Constitution of 27 January 2014, emphasizing its openness to the universal principles of human rights, provides as follows: "*Expressing our people's commitment to the teachings of Islam, to their spirit of openness and tolerance, to human values and the highest principles of universal human rights*".

It's important to observe that these rights and liberties are not without any limitation. Therefore, these freedoms may be limited as this limitation is necessary for the protection of security or public order, as well as public health or morality.

These liberties, including the religious freedom, are limited by national defense, public health or public morals, as provided by article 49 of the Tunisian Constitution according to which: "*The limitations that can be imposed on the exercise of the rights and freedoms guaranteed in this Constitution will be established by law, without compromising their essence. Any such limitations can only be put in place for reasons necessary to a civil and democratic state and with the aim of protecting the rights of others, or based on the requirements of public order, national defense, public health or public morals, and provided there is proportionality between these restrictions and the objective sought.*

Judicial authorities ensure that rights and freedoms are protected from all violations.

No amendment may undermine the human rights and freedoms guaranteed in this Constitution".

Moreover, even in a case a right uncounted in the Constitution is interfering with a constitutional right, no breach of the human's right is in play.

According to the Article 20 of the Constitution, "*International agreements approved and ratified by the Assembly of the Representatives of the People have a status superior to that of laws and inferior to that of the Constitution.*".

Moreover, our jurisprudence has had recently their share of prevailing international and regional treaties over the constitution.

Besides, as part of the African Union, Tunisians can have the option of presenting their cases in front of the African Court of Human and People's Rights.

In addition, we are proud to have Prof. Rafaa Ben Achour (Tunisian Professor at the University of Carthage) as one of the respective judges of the Court elected in 2014 for a mandate of 6 years. Tunisia protect human rights by offering the chance to any individual to access the African Court.

3. Do International Human Rights Documents applied in your country represent minimum standards that are already provided or the must-reach aims? Are there any regulations in your legal system above international human rights standards ?

The Tunisian Republic has signed, since its independence and especially since the 2011 revolution, a series of International treaties and optional protocols, including the abolition of the death penalty, the fight against torture and the protection of all persons against enforced disappearances.

Other treaties relative to children's rights and women's rights were signed and ratified too.

These treaties place Tunisia on the path of joining the list of advanced democratic countries, guaranteeing and protecting human rights in all their illustrations.

We have come far along since 2011 into the path of dedication and fight for human rights in Tunisia.

Having said that, the democratic transition witnessed by our country is great but can be improved so far.

Generally speaking, there are no regulations in our legal system above international human rights standards, even if the religion of the majority of Tunisians is Islam.

Some provisions in our Penal code are still to be excluded to align our legal system with global human rights. These provisions, such as the article 230, is above human rights that protect the right to choose freely your gender and sexual orientations, since it prohibits homosexuality and puts individual with homosexual orientations up to penalties and imprisonment. Since Tunisia is a country where the main religion is Islam, that doesn't allow homosexuality, the fight is not easy to removing the penalties of homosexuality and it still persists.

Another provision of the same code, prohibits sexual relations between consenting adults outside the matrimonial scope if were discovered by the law enforcers, and might even be qualified as secret prostitution.

A commission of legal experts and eminent Professors is working on the reform of the Penal Code to align it to International standards of Human rights and liberties.

4. In your legal system, is the jurisdiction an actor itself to move forward human rights standards?

Yes it is. The jurisdictions in Tunisia keep working on protecting human rights if threatened. They have the authority to enforce them.

Besides, jurisprudence is a material source of law, which can benefit the improvement of our laws whenever discovered contrary to human rights and present a tangible opportunity to right them.

However, this depends on the background of the judge, if he is modern or conservative one. His interpretation of the law can be open or conservative, it depends on the situation and the Context. It is important to recall the article 102 of the Tunisian Constitution which stipulates: *"The judiciary is independent. It ensures the administration of justice, the supremacy of the Constitution, the sovereignty of the law, and the protection of rights and freedoms."*

Judges are independent with the law being the sole authority over them in discharging their functions". It is to say how important principles as independence, neutrality and objectivity are in the process of justice.

Finally, the role of the Constitutional Court (not created yet) will be crucial in order to enhance the application of the Laws in the field of Human rights and Liberties. This Court will be the guardian of Democracy, of the state of Law and of the best application of the International standards of International Human law in Tunisia. For instance, the Interim Commission for the Review of the Constitutionality of Laws is the one responsible for that, till the creation of the Constitutional court.

5. Are there values and issues in your country that are not covered by human rights documents but need to be protected under the concept of human rights?

No legal system is perfect.

As explained in the answer of the question number 3, we are still struggling with some issues.

We are rather more fighting a mentality, an established culture here in Tunisia.

For example, the LGBT (lesbian, gay, bisexual and transgender) rights are not protected by our legal system. The LGBT individuals are still persecuted in Tunisia.

Sexual reassignment is not protected by the law in cases other than birth defects and while still infants. The cohabitation between different sex genders is not protected too.

But recently, a Tunisian ruling was in favor to alter gender officially on the civil status, which validates the role of our jurisdictions the enforce values and human rights standards.

Again, it is a question of changing mentality before changing the rules that seem to be prior.

Tunisians have to accept each other's differences.

6. Are there such human right regulations in the legal system that is protected by the constitution but contradicts social reality and justice?

Constitutional rights in Tunisia are firmly protected especially after the 2011 revolution.

Our constitution was freshly remade to fit our social reality and the rise of awareness between Tunisians.

For instance, equality between gender has a constitutional value, although we are fighting to eradicate from our society the idea of the supremacy of males over females, which has been a success, and we're always working on this matter to eventually establishing an utterly complete equality between men and women, even in succession rights.

We can take some examples to demonstrate how far the Tunisian laws can contradict soacial reality and even rules of the Charia.

As a matter of fact, before 2017, a non-Muslim man who wished to marry a Tunisian Muslim woman had to convert to Islam and submit a certificate of his conversion as proof.

Tunisia is the first country in the Middle East and North Africa (out of the states that had had this law to begin with) to remove this law No. 73 (which bans Tunisian women from marrying non-Muslim men). Finally, after many campaigns put together by numerous human rights groups, the law has been abolished, and from now on, Tunisian women may marry whoever they want. Tunisian women have as equal rights as men, defying the conventional social standards.

Moreover, after the Tunisian Cabinet approved, in 23 November 2018, the Draft law that would allow men and women to inherit equal amounts, contrary to what is stipulated in Islam, it will be discussed and ratified in Parliament before it goes into effect.

When it will be voted by the Parliament in the next few months, Tunisia will become the first Arab country to achieve gender equality in inheritance.

We are hopeful today for a Constitutional court in Tunisia that can protect and control all these achievements.

7. In your legal system, are there legal mechanisms to protect human rights if fundamental rights are violated by private persons? Are these mechanisms effective?

In our legal system if a fundamental human right was violated by a private person, they would be faced with charges probably including imprisonment through a penal case. The law gives also the opportunity to the victims whose right has been violated to present their case to a civil court as well for compensation or to present it along the penal case in front of the same judge.

When it comes to breach of fundamental rights in Tunisia, once a case is presented to the prosecutor, even if the victim backs up and makes the choice to drop the charges, the state prosecutor has the right to keep the case going and punish the perpetrator.

This is a guarantee to protect these fundamental human rights no matter what and presents an incentive to prevent such violations from happening. Our code of criminal procedures is firm on this way.

8. Are there any social realities contradicting international human rights concept based on individualism?

There are some social realities in Tunisia, like in every country, whether we acknowledge it or not, contradicting human rights concept based on individualism. According to us, it's the rights of the LGBT again that come within the framework of human rights and they are based on what is called individualist democracy.

These rights can be both rejected in some countries (especially the conservative ones) because of the socio-anthropological realities even identities, on the basic foundation of the hard core of any society that derives its well being from religion. This is the case of Tunisia.

9. What do you think is the most current human rights problem in your country?

It is obviously the issue of protecting the rights of the LGBT community, in a country where homosexuality and other sexual orientations are prohibited and people are being persecuted, humiliated and sometimes physically violated.

They are in constant hide especially from the authorities, they are permanently being forced into the closet.

They are always seeking refuge in foreign occidental countries to escape the unjust fate if to stay in Tunisia.

Consequently, we think that the creation of new communication forums can enable the civil society to transgress taboos and force politicians to resolve more urgent and current problems.

We observe more problems about human rights in Tunisia with individual rights and liberties. Several laws are repressive and conservative, coming from an old, non-revised legislation like criminal code that dates from 1914 and even more civil code with a very restricted point of view about civic status, marriage and adoption. For instance: article 230 from criminal code is penalizing homosexuality and condemning LGBTQ + to prison.

Extreme Practices are practiced on them to prove their guiltiness like anal tests, humiliation and harassment which can be defined as human rights violation and practices of torture. It's undoubtedly a direct violation of human dignity: mother of all human rights. Non-marital unions (concubinage) are deprived of the legal consequences which result for spouses from contracting a marriage and are also prohibited in Tunisia. We do accept only one form of family status: marriage. Adoption can be allowed only for a married couple. Single mothers have no rights except those for her child (right to have a last name, a nationality, etc). There is a clear violation of the intimacy and personal choices of individuals in Tunisia. Marital rape is not recognized by the legislation and we have only some shy jurisprudential recognition.

Religious practices are limited or imposed by the state and the legislation like the obligation of closing cafes and restaurants in Ramadan. It's forbidden to eat in public spaces during this month otherwise we will be arrested. It is a clear form of a non-respect of others' religion. Officials are still refusing to change laws concerning this point despite protest calls from civil society. Minorities' rights (ethnics, religious, racial) are not totally respected. More minorities still have difficulties to take part in the public life in Tunisia. Fundamental rights are not totally respected like article 22 of the Constitution where the death penalty is not abolished but used in extreme cases that are not still defined by a special law (as indicated in the article itself). We have an institutional problem as the constitutional court is not yet established so there is no a constitutional control of newly adopted laws. Human rights confirmed in the new constitution are not correctly respected as there is a lack of judicial control in Tunisia with an absence of a supreme court that has as an ultimate function the respect of the protection of human rights and fundamental liberties.

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