

# Tunisia

Persecuting



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## QUICK FACTS

**Political System** | Parliamentary Republic **Population** | 11, 721, 177 (July 2020)  
**Head of State** | President Kais Saied (2019-present) **GDP Per capita** | NA

## EXECUTIVE SUMMARY

Tunisia has received a score of F, or “persecuting,” on the F&M GBGR and GBTR every year from 2011-2018. Homosexuality is criminalized and there are no laws under which LGBTI minorities are protected. This leads to continued violence, discrimination, and arbitrary arrest of LGBTI minorities. In the last few years, there has been some vocal support for the LGBTI community from politicians, and activism has flourished through LGBTI-oriented NGOs. Tunisia has been called the epicenter of LGBTI activism in the Arab world.

### Background

Tunisia was a French protectorate from 1881 until it gained independence in 1956. It was a one-party state until 2011, when protests over high unemployment, corruption, widespread poverty, and high food prices turned into the Jasmine Revolution, which ultimately sparked the Arab Spring.<sup>1</sup> Tunisia’s then-president Zine el Abidine Ben Ali fled the country, and Tunisia became a “national unity government.” Kais Saied, the current president, was elected in 2019.<sup>2</sup>

Saied has voiced his support for the continued criminalization of homosexuality and described gay people as “deviants.”<sup>3</sup> The United States Department of State has deemed threats, violence, discrimination, and the criminalization of homosexuality a “significant human

rights issue” in Tunisia. Additionally, problems may go unreported because of social stigma around LGBTI individuals and the fear of being prosecuted under the laws that criminalize sodomy.<sup>4</sup>

## KEY FINDINGS

### Legal Landscape

Homosexuality is criminalized in Tunisia under Penal Code Articles 230 and 226 as sodomy and “promotion of indecency,” respectively. The punishment for the former is three years’ imprisonment and, for the latter, six months’ imprisonment and a 48 dinars fine.<sup>5</sup> Forced anal examinations are common practice in order to “prove” someone’s homosexuality, and they continue to be ordered by the court despite authorities’ commitment in 2017 to discontinue the practice. The Civil Collective for Individual Liberties, a coalition of NGOs, addressed this in 2019 among other requests for the government to “accelerate the establishment of the Constitutional Court as a guarantor of rights, decriminalize consensual same-sex conduct... recognize the rights of transgender people, and end harassment of LGBTI-rights organizations.”<sup>6</sup> The rights of transgender people include legal recognition of gender identity, which is not possible in Tunisia.<sup>7</sup>

### Political Landscape

President Kais Saied has indicated that he supports

the continued criminalization of homosexuality in Tunisia, calling gay people “deviants.” In recent years, however, there have been a few incidents of politicians supporting the decriminalization of homosexuality and increased rights and protections for the LGBTI community. In 2018, members of parliament submitted a draft bill that would not only decriminalize homosexuality and institute recognition of gender identity but penalize homophobia as well. In February 2019, Nahda Party leader Lotfi Zitoun spoke out in a media interview against forced anal exams, saying they are a violation of human rights and individual dignity. And in April 2019, president of the Machrou Tounes party Mohsen Marzouk publicly expressed support for LGBTI rights in a meeting with the Shams Association, an LGBTI-based NGO.<sup>9</sup>

In 2018, the Individual Freedoms and Equality Committee, which was created by President Beji Caid Essebsi in 2017, recommended three legislative reforms to the president, one of which was decriminalizing homosexuality. This agenda garnered some conservative opposition, but the opposition did not gain much public support.

2019 marked a first for not only Tunisia but the Arab world writ large when Mounir Baatour, an openly gay man, ran for president. Baatour is a lawyer and president of the Shams Association. His bid for president drew backlash from the National Bar Council, fellow Tunisian lawyers saying he brought “shame” and “grave harm” to Tunisia and the image of the bar. There was also backlash from other gay rights organizations who claimed that Baatour did not represent the LGBTI movement in Tunisia or the community itself.<sup>10</sup>

### **Socio-Economic Landscape**

Despite the continued violence, discrimination, and lack of acceptance of the LGBTI community, LGBTI activism started to flourish in Tunisia after the revolution in 2011 that started the Arab Spring. It has even been called the

epicenter of LGBTI activism in the Arab world. There are multiple NGOs working to expand LGBTI rights and creating spaces for LGBTI pride like an annual queer film festival, but there is a disconnect between this progress and the fact that laws criminalizing sodomy are still in the books. Hana Jemly, a community manager for the youth-oriented LGBTI organization Mawjoudin, stated that “We have safe spaces, but now we want the laws to feel safe anywhere.”<sup>11</sup>

### **Societal Discrimination**

According to the Williams Institute’s Global Acceptances Index (GAI), Tunisia became less accepting of LGBTI people over the years 2000-2017. The GAI has found that, in the past decade, acceptance of LGBTI people has become continually polarized in that the most accepting countries are becoming more accepting and the least accepting countries are becoming less accepting. Tunisia is a less accepting country, thus declining levels of acceptance are consistent with this finding.<sup>12</sup>

NGOs have reported that authorities often leverage the law that criminalizes homosexuality to question people about their sexuality, sometimes based on appearance alone, and detain them. Furthermore, the LGBTI community is one of the demographics for which mistreatment of detainees is most prevalent as forced anal examinations to determine homosexual activity are a common practice. Many individuals felt coerced into these anal examinations because judges often assumed that individuals who do not voluntarily submit to an exam were guilty.<sup>13</sup>

There are LGBTI-based NGOs in Tunisia as the law does not restrict freedom of association, freedom of assembly, or expression like in other North African countries. However, there was a case in 2016 against the Shams Association, an NGO focused on LGBTI rights. The Tunisian government’s Secretary General complained in 2016 that Shams was violating an article of the asso-

ciation law which requires an association to notify the authorities if there are any changes to its statutes. The complaint cited a media statement where members of Shams stated that the association's aim was to "defend homosexuals." The complaint also alleged that Shams had not completed its legal registration properly. Shams presented evidence that neither of these claims were valid.<sup>14</sup> Furthermore, the government elaborated in 2019 that Shams violated Article 3 of Decree Law 3 "by conducting activities that contradict Tunisia's laws and culture," a culture which "rejects homosexuality culturally and legally." The Tunis Court of Appeals ruled that advocating for LGBT rights did not constitute a violation of the law, and in favor of Shams, in May 2019.<sup>15</sup> This raises questions about Tunisia's freedom of association, because an association should theoretically be able to register despite supposed violations of Tunisian laws and culture.

## ANALYSIS

Tunisia's F&M GBGR and GBTR scores are on par with those of other countries in its region of the Middle East/Northern Africa. It is unlikely that Tunisia's scores will change in the next year as they have been Fs every year from 2011-2018. However, LGBTI activism continues to flourish in the country as NGOs and other organizations attempt to influence legislative reforms to gain legal acceptance and protection. continued bias-motivated hate speech and hate crimes result in Macedonia's status of "persecuting" on the F&M GBGR and GBTR. There seems to be a lack of commitment to legal progress for the protection of LGBTI minorities, so despite incremental societal progress, the lack of legal backup permits hostile and discriminatory attitudes to persist.

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