Still a right?

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Although abortion in Tunisia has been legal for 50 years and offered for free in government facilities, the revolution of 2011 and the following democratization process have paradoxically put into question the access to this service. The Islamists' victory and the conservative turn of local society in the 2000s have led to a step backwards in the domain of women's rights including sexual and reproductive rights.

Together with Turkey, Tunisia is the only Islamic-majority country that authorizes abortion for social reasons. Article 214 of the Penal Code that decriminalises abortion is located in the section on 'Wilful killing,' of which it is a derogation insofar as, under certain circumstances, it permits the termination of pregnancy (i.e., in the logic of the law, the killing of a person). The derogation is inscribed in a code that was inherited from the French colonial state and that considers the foetus as a person and the abortionist as a criminal. To be legal, abortion must take place in a recognised medical facility under medical supervision until the end of the first trimester (fourteen weeks amenorrhea). It can exceptionally take place after that period 'if continuation of the pregnancy threatens the women's physical or psychological health or if the foetus suffers from a serious illness and deformity' (Foster 2001: 74).

Legalising abortion to create a modern society

In 1965, only married women who had five living children were allowed to get an abortion with their husband's consent; in 1973, the article was amended to allow all women, married and unmarried, with or without children, to access abortion services, including minors under the responsibility of an adult. The law was also changed thanks to the intervention of the Tunisian Women's Union. Its representatives were able to persuade the parliament to change the law showing that, because of legal restrictions on abortion, 'hundreds of women arrive at the hospital every year suffering from haemorrhage after trying to abort in insanitary conditions' and that 55 women committed suicide in 1972 because of 'non legitimate pregnancy' (Asman 2004: 85). Since 1965 abortion care has been free of charge in government facilities. Although other administrative structures had pre-existed it, in 1973 a specific state agency, the *Office national du planning familial et de la population* (ONFPF) – later to become the *Office national de la famille et de la population* (ONFP) – was created in order to coordinate family planning policies. The ONFP played a crucial role in ensuring the implementation of state's family planning policies, in documenting the sexual and reproductive practices of Tunisian citizens, in shaping their way of considering the family, the couple and sexuality, and in training health care providers (Maffi 2020).

The legalisation of abortion was part of a larger project to control the demographic trends in Tunisia. Already in 1959, shortly after independence (1956), 'public authorities started to talk about the necessity of mastering procreation, first and above all to affirm the intention of reducing birth rates, ignorance, poverty and illness' (Gueddana 2001: 204). Demographic policies became a priority of the independent Tunisian government. Imbued with a neo-Malthusian and modernist view, the first Tunisian president, Habib Bourguiba, attributed crucial importance to containing 'the human tide relentlessly rising at a speed largely outreaching the increase of the means of subsistence' (Bourguiba in Gastineau and Sandron 2000: 11). Demographic policies were a main concern for postcolonial Tunisia and were already inscribed as such in the development plans of the country since the mid-1960s, insofar as they were deemed necessary to ensure the human progress (Foster 2001). The High Population Council (founded in 1974) oriented the action of the ONFPF and coordinated the policies of different ministries under the supervision of the prime minister. Regional population councils were active in supervising and applying the national demographic policies designed to control reproductive practices. Abortion was an integral part of the family planning policies, and for certain categories of women, it represented 'the only accessible and efficient method of birth control' (Gastineau 2012: 8).

Although, with a few exceptions, religious leaders cautioned the use of contraceptive methods and the promotion of family planning by the state (Brown 1981), abortion was more controversial. It was religiously forbidden by Maliki legal tradition – the dominant legal tradition in the Maghreb – but was allowed by the more permissive Hanafi and Shafi schools, according to which the ensoulment[1)] of the foetus does not happen before 120 days (3 months). In this domain, as in many others, Bourguiba did not abandon the Islamic reference to legitimise his reforms, emphasising on the contrary that 'we have made an effort (*ijtihad*) … we have used the reason inspired by the very principles of Islam' (Bourguiba in Bessis and Belhassen 1992: 128). Bourguiba insisted that Tunisian reformers had 'found inspiration in the *Shari'a* (…) and chose to open the doors of interpretation in order to rejuvenate the Islamic tradition' (Charrad 2001: 222).

State's policies for women's emancipation in postcolonial Tunisia

As already mentioned, the introduction of family planning and abortion was part of a larger plan for the reform of Tunisian society in which women in particular were to be emancipated from previously existing traditions and constraints often designated as 'backwards,' 'archaic' or 'retrograde' (Grami 2008:353). However, 'the family planning program was a function of the state, which aimed at furthering state goals. It was not about individual women or their needs' (Foster 2001: 82). Precise demographic targets, the centralised and hierarchical structure of the family planning programme and aggressive public campaigns provoked abuses and coercive practices that caused resistance and distrust among the population. Economic incentives for health professionals performing specific acts and for women accepting to undergo tubal ligation (Foster 2001), as well as the creation of the

Bourguiba prize in 1974 for the governorates that obtained better results in reducing birth rates, significantly show the nature of the programme. Although they also had beneficial consequences, the Tunisian family planning policies often took the form of ‘an unjustifiable intrusion of government power into the lives of its citizenry amounting in many cases to physical violence against women’s bodies’ (Hartmann 1987: XIII). Birth control became the priority rather than women’s health and the freedom to choose how many children they wanted.

Over the 1990s, the situation changed radically. Birth control policies gradually lost their importance because of the low natality rates (replacement level). The concept of reproductive health was introduced in ONFP clinics expanding the previous family planning and maternity health concepts in order to include cancer, STI, infertility, and menopause. In the 2000s, the ONFP created in many of its clinics a special ward for unmarried women and men called ‘young people-friendly space’ meant to provide reproductive and sexual health services (RSH) to this category of citizens. This project was implemented in accordance with the internationally recognized rights in this field that were in the process of being introduced in the Middle East and North Africa (Amado, 2004).

Putting into question women’s sexual and reproductive rights

By mid-2000, religious conservatism (Kerrou, 2010) emerged in Tunisia affecting also the domain of RSH. Already in the years 2007–2010, several midwives and physicians working in the public sector adopted a religious discourse and began to discriminate against women coming to get an abortion in their clinics. In several reproductive health clinics, the abortion service did not work during the month of Ramadan and physicians started to use conscientious objection1 to refuse women abortion. At that time, the term ‘recidivist’ entered the health professionals’ vocabulary to designate those women coming for repeated abortions (Association tunisienne des femmes démocrates, 2013). Physicians supporting the new religious and conservative movement used medical reasons to justify the decrease in abortion services. For example, in 2010, two articles against medical abortion were published in local newspapers in which the authors argue that the risk of haemorrhage is too high to let women practice it at home and that the latter should be hospitalised until expulsion of the pregnancy. A ministerial circular was adopted that prescribes hospitalisation for all women using medical abortion. This became a pretext for refusing women medical abortion as there are not enough beds in the regional hospitals, while ONFP clinics offer only outpatient hospitalisation (Association tunisienne des femmes démocrates, 2013).

The strong economic crisis – one of the main factors of the revolution (El Khawas, 2012) – contributed also to the decrease of abortion services. According to the ONFP’s statistics, between 2011 and 2012, there was a decrease of more than 55% of abortions in public hospitals and 2% in ONFP clinics. Already in 2005, the ONFP had closed down the operation theatre in 10 of its clinics because of financial restrictions at a time when surgical abortion was still the main common technique.

Medication abortion has been introduced in Tunisia in 2002 (Hajri, 2004) and in the 2015 was the method used by 75% of women in the public sector (*Avortement médicamenteux: 15 ans d'innovations au service de la femme en Tunisie*, 2016).

After the revolution of 2011 and the electoral victory of the Islamist party Ennahda, the abortion law was put into question. In 2013, the feminist NGO Association tunisienne des femmes démocrates (Tunisian Association of Democratic Women, ATFD) published the booklet Le droit à l'avortement en Tunisie -1973 à 2013 (Abortion right in Tunisia -1973 until 2013), in which the authors outline the situation of abortion in the country considering its legal, medical, social and religious aspects. Worried about the political and juridical questioning of the right to abortion and the dismantling of abortion services after the revolution of 2011, ATFD decided to take an active stance and reaffirm Tunisian women's right to abortion care. The booklet denounces the fact that 'Since 2011, we have witnessed a radical change: at the public sector level, the omerta (law of silence) allows the state to hide the impact of financial cuts and of religious conservatives' actions who deny women abortion care without fearing legal sanctions' (2013: 14). On 18 January 2013, during the debate on 'rights and freedom' of the constituent assembly – that was elected in October 2011 to write the new constitution – Deputy Najiba Berioul requested the criminalisation of abortion (*ijhadh*). Berioul, a member of Ennahdha, the Islamist party in power from October 2011 to February 2014, expressed the idea that a section of the public opinion wishes to deny women the right to abortion for non-medical reasons.

While Tunisian civil society and feminist associations fought to defend les acquis (acquired rights) in many social and political domains, reproductive rights did not become a main issue of their mobilisations. Some exceptions are the *Association tunisienne des femmes démocrates*, a well-known Tunisian feminist association, the *Groupe Tawhida Ben Cheikh*, an NGO created in 2012 whose main aim is the defence of women's sexual and reproductive rights, and the *Association tunisienne de santé reproductive*, an association supported by IPPF. Besides, international agencies such as UNFPA and IPPF have supported initiatives to protect Tunisians' reproductive and sexual rights including abortion. Eventually, abortion was not criminalised and article 214 of the Penal Code that allows abortion was not amended.

In conclusion, in the post-revolutionary period, economic restrictions and pressure on government hospitals and clinics worsened the situation of the previous years: most regional hospitals stopped offering abortion care as the structures were already overcrowded and the personnel unable to face the situation. Abortion services in the government sector were among the first services to be suppressed because apprehended as unnecessary. The pandemic crisis has also contributed to worsen the situation of Tunisian women, especially rural and poor women, who can not afford to pay for abortion care in a private clinic.

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- This term indicates the moment in which the soul is insufflated into the foetus.