

TUNISIA

Breaking the Cycle of Injustice - Recommendations to the European Union

When the Euro-Mediterranean Association Agreement with Tunisia entered into force on 1 March 1998, it was the first bilateral accord in the framework of the Euro-Mediterranean Partnership to contain a legally binding human rights clause. Article 2, which now appears in similar agreements with Algeria, Egypt, Israel, Jordan, Lebanon and the Palestinian Authority, stipulates that relations between the parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which guide their domestic and international policies and constitute an essential element of the Agreement. The five year period since the entry into force of the Agreement has been marked by a continued policy, condoned by the highest authorities of the Tunisian state, undermining respect for human rights.

People suspected of opposing, or even being critical of the government, continue to be arbitrarily arrested, detained incommunicado - without access to lawyers or family members - tortured and imprisoned after unfair trials. Several hundred political prisoners, most of them prisoners of conscience, have been subjected to discriminatory and arbitrary treatment over the past decade. Even after release they face measures aimed at preventing their reintegration into society. They may have restrictions placed on their movements, be arbitrarily rearrested, or denied access to health care, education and jobs. Arbitrary measures are often extended to the families of both current and former political prisoners.

The judiciary's lack of independence and resulting failures in the administration of justice allow these practices to continue unabated. A general climate of impunity makes it almost impossible for members of the security forces responsible for unlawful arrests, torture and other violations to be brought to justice. Families of prisoners who have died in custody, and prisoners ill-treated or deprived of their basic rights, have little chance of seeing full and impartial investigations into their cases. Former prisoners have scant opportunity to seek redress for past or current injustices, and face obstacles when they attempt, through the courts, to challenge the measures taken against them.

Human rights defenders, including lawyers, medical doctors and journalists, who call on the authorities to protect human rights, face measures of intimidation and harassment. Existing human rights organizations face obstruction in their work while others continue to be denied authorization.

The cycle of injustice keeps turning

The Amnesty International report accompanying this document, Tunisia: The cycle of injustice (AI Index MDE 30/001/2003, June 2003) traces the different phases of this cycle of injustice and identifies human rights patterns and developments over the past decade. It analyses law and practice in light of international human rights standards, in relation to

detentions, political trials and the treatment of political prisoners and former political prisoners. The report finds that the recognition of rights in law has been consistently undermined by failures to put reforms into practice:

- Although Tunisian law has progressively provided more human rights guarantees, other legal changes, such as a vague definition of the offence of “terrorism”, undermine basic human rights, including the rights to freedom of expression and association;
- Mass arrests are no longer the norm, yet arbitrary arrests and detention continue in violation of Tunisian and international human rights law;
- The rights of prisoners have improved in law, but are widely violated by prison officials, who discriminate against political prisoners;
- The authorities are required by law to facilitate the reintegration of former prisoners into society, yet former political prisoners face, instead, further arbitrary measures once they have left prison;
- Despite a few perpetrators of human rights violations being brought to justice, the vast majority of those responsible for torture and other ill-treatment have not been held accountable for their acts.

The Tunisian authorities reject criticism and recommendations by human rights organizations, accusing them of focusing on civil and political rights and ignoring the government’s achievements in defending social and economic rights. This report shows that those whose civil and political rights are violated are also likely to be targeted and deprived of fundamental economic and social rights.

It is encouraging to note that, within the institutions of the Tunisian state, some civil servants continue to work to apply the law and ensure that human rights are respected. Among the newly appointed judges responsible for overseeing the implementation of prison sentences or within the Administrative Tribunal, some give rulings according to the law and annul decisions made by official institutions such as prison or university administrations, despite political pressure. However, in Tunisia, those who work for the respect of the rule of law remain at risk of harassment, intimidation or even losing their jobs, as illustrated by the dismissal of Judge Mokhtar Yahiaoui in December 2001 and the more recent obstructions to the activities of the *Centre de Tunis pour l’Indépendance de la Justice* (CTIJ), Tunis Centre for the Independence of the Judiciary.

In a general climate of impunity, arbitrary measures are tolerated or condoned at the highest levels of the state. To break the cycle of injustice, the Tunisian authorities should send a clear message to all officials that those suspected of unlawful decisions and actions will be brought to justice and held responsible for their acts. The Tunisian authorities must provide redress and remedies for those whose rights have been violated and must ensure that justice and the rule of law become a reality for all in the country. In Tunisia, the choice is not between security and human rights. Only by ensuring the fair administration of justice can the objective of security for all and the obligation to respect human rights for all be met.

The EU’s role and its responsibility to encourage change in Tunisia

These human rights developments in Tunisia have not escaped the attention of the European Union (EU) institutions. The European Commission's Country Strategy Paper on Tunisia for the period 2002 – 2006 takes note of the regular and outspoken criticism of violations of civil and political rights in the country, including limitations of freedom of expression and association, the imprisonment of human rights defenders, and concerns in relation to justice.¹ European Parliament resolutions in December 2000 and March 2002 expressed concern about the deterioration of the human rights situation in Tunisia.

As a binding treaty on the EU and Tunisia, the human rights clause constitutes an international legal commitment by the contracting parties to respect human rights. A pattern of widespread and systematic violation of international human rights standards by any party clearly constitutes a material breach of the Agreement.

Despite the lack of improvement in Tunisia's poor human rights record and the continued gap between law and practice, the EU has so far failed to take visible action to engage Tunisia in taking tangible steps to improve the human rights situation.

The European Parliament (EP) has repeatedly called on the Council of Ministers and the European Commission to establish an assessment mechanism for the human rights performance of partners to the Euro-Mediterranean Association Agreement. Upon giving its assent to the Association Agreement with Egypt in November 2001, the EP called for practical arrangements for regular assessments of compliance with Article 2 to be devised "by all contracting parties to the Euro-Mediterranean Association Agreement, with a view to bringing about verifiable progress with regard, in particular, to regular and impartial monitoring of developments in the field of human rights and the extent to which human rights activists are free to act and speak out in defence of the rights of others."² When giving its agreement to the Agreement with Algeria in November 2002, the EP asked for "procedures for regular assessment with Article 2 to involve the European Parliament, the National People's Assembly of Algeria and Algerian civil society".³ In adopting the Agreement with Lebanon in February 2002, the EP undertook to cooperate with the Lebanese Parliament in order to establish procedures for a regular political dialogue also within the framework of Article 2 of the Association Agreement. It reiterated its call on the Council and Commission to establish combined procedures for the regular assessment and the implementation of the principles laid down in Article 2, and that these common procedures should take into account the views of Lebanese civil society.⁴

In its key communication on the EU's role in promoting human rights and democratization in third countries of 8 May 2001, the European Commission stated that "[E]ssential elements clauses [such as Article 2] ... are meant to promote dialogue and positive measures, such as

¹ Partenariat EURO-MED. Tunisie, Document de strategie 2002-2006, http://www.europa.eu.int/comm/external_relations/tunisia/csp/02_06_fr.pdf

² EP Resolution 29 November 2001, Association Agreement with Egypt, B5-0740/2001, EP resolution on the conclusion of an Association Agreement with Egypt, paragraph 8

³ EP Resolution 10 October 2002, P5_TA-PROV(2002)0462, Conclusion of an association agreement with Algeria, PE 323.003, paragraph 23

⁴ EP 16 January 2003, P5_TA-PROV(2003)0018, EC-Lebanon Agreement, EP resolution on the conclusion of an Association Agreement with the Republic of Lebanon, paragraph 6

*joint support for democracy and human rights, the accession, ratification and implementation of international human rights instruments where this is lacking... Discussions between the Commission and the partner country should... consider how ratification of the fundamental human rights instruments and of other rights-based international agreements... and their effective implementation could be pursued, together with consideration of how UN recommendations should be followed up.*⁵ The Council of the European Union endorsed the communication in June 2001.

In preparation of the meeting of Euro-Mediterranean Foreign Ministers in Valencia on 22-23 April 2002, the Commission again recommended that “questions related to human rights and democracy be raised systematically in all contacts between the EU and the partners with a view to promoting a structured approach to progress; MEDA allocations should be linked more closely to progress in these fields; joint working groups of officials should be set up between the EU and each of the partners on the subject; and partners should encourage the signature, ratification and implementation of the relevant international instruments and should recognise the role of civil society in strengthening democracy and human rights”.⁶

In view of the human rights situation in Tunisia and these repeated requests by EU institutions, the EU, and in particular the Council of Ministers, is warranted to act in order to give substance to the human rights commitments contained in Article 2, and unlock its potential for improving respect for all human rights, civil, economic, political and social.

Amnesty International calls on the EU, as matter of urgency, to engage Tunisia in a programme of action to bring its practices into line with the country’s obligations under national and international law, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).⁷

The European Union should urge Tunisia to fulfil its obligations under international human rights law and the Association Agreement by taking the following steps:

Prisoners of conscience and political prisoners:

- Release all prisoners of conscience immediately and unconditionally;
- Retry, promptly and in accordance with international standards for fair trial, all political prisoners convicted and sentenced after unfair trials in the past, or release them;
- Repeal or amend all laws, including Article 52 *bis* of the Penal Code and Article 123 of the Military Justice Code, which facilitate the imprisonment of prisoners of conscience;

Civilians tried before military courts:

⁵ COM (2001) 252, 8 May 2001, p. 9.

⁶ Communication from the Commission to the Council and the European Parliament to prepare the meeting of Euro-Mediterranean Foreign Ministers, Valencia 22-23 April 2002, (SEC 2002) 159 final, 13 February 2002, Recommendation 3

⁷ Tunisia ratified the ICCPR in 1969 and the CAT in 1988.

- Stop the practice of trying civilians before military courts where procedures fall short of international standards for fair trials;
- Launch new trials in criminal courts for all civilian prisoners who have been convicted by military courts, and ensure that the new trials in civilian courts provide all internationally recognized guarantees of fairness;

Incommunicado detention, deaths in custody and torture:

- Amend the law to end the practice of incommunicado detention, and ensure that the security forces, especially the State Security Department, do not detain individuals in incommunicado detention;
- Ensure that all deaths in custody and all allegations of torture and ill-treatment are promptly, thoroughly and impartially investigated and that the full findings of such investigations are made public;
- Ensure that no confessions or other evidence obtained under torture are admissible in court;
- Ensure that those responsible for torture and other human rights violations are brought to justice;

Prison conditions and discrimination against political prisoners:

- Ensure that all prisoners, without discrimination, are granted their rights as defined by law and international standards and that they are given every opportunity to seek redress if their rights have been violated;
- Stop the use of solitary confinement and ensure that any prisoners who have been subjected to this treatment are provided with the means to seek redress and appropriate medical care;
- Ensure that independent bodies are allowed to inspect detention centres and prisons;

Former political prisoners:

- Ensure that no arbitrary measures are imposed on former prisoners under the cover of administrative control and put an end to the imposition of administrative control on prisoners of conscience upon their release;
- Ensure that those who are found by an independent and impartial body to have been victims of torture, ill-treatment, arbitrary detention or imprisonment after a trial which failed to meet international standards for fairness receive reparation, including rehabilitation and compensation;

Legal profession:

- Ensure that lawyers are free from improper interference in the exercise of their professional duties, and that they are free from harassment and intimidation;
- Ensure that the independence of the judiciary from executive intervention or influence is made absolute, not only in law but also in practice; members of the executive who intervene unlawfully in the functioning of the judiciary should be punished;
- Encourage judges to ensure the full application of international human rights treaties ratified by Tunisia which, in accordance with the Tunisian Constitution, supersede Tunisian law;

Cooperation with United Nations treaty bodies:

- Submit overdue reports to the United Nations Committee Against Torture and the Human Rights Committee.

Amnesty International notes with great interest the European Commission's recent strategic guidelines for the EU's human rights actions in the Mediterranean region⁸ which present the Council and the EP with specific recommendations on how the EU could ensure the systematic inclusion of human rights and democracy issues in bilateral political dialogues with the Mediterranean countries. The Commission suggests, *inter alia*, the establishment of technical sub-groups to address human rights issues and regular reporting by Member States' embassies and Commission delegations on human rights development. Amnesty International hopes that these suggestions will bring about the establishment of a mechanism by the EU and Tunisia for the regular assessment of compliance with Article 2 by all contracting parties. This assessment should feature prominently on the agenda of meetings of the Association Council and other bodies which are set up to monitor the workings of the Agreement.

With particular regard to the human rights situation in Tunisia, such a mechanism should:

- regularly and impartially monitor developments in the field of human rights in Tunisia, and their conformity or otherwise with international human rights standards; giving particular

⁸ Communication from the Commission to the Council and the European Parliament. *Reinvigorating EU actions on Human Rights and democratisation with Mediterranean partners*. COM (2003) 294 final, 21 May 2003

scrutiny to the set of arbitrary measures imposed on political opponents and people being critical of the government.

- make appropriate approaches to the Tunisian authorities, such as urging them to stop the widespread violations, including arbitrary arrests, torture, unfair trials, discrimination and ill-treatment in prisons;
- monitor measures taken in the name of “security”, including the “anti-terrorist” cooperation between EU countries and Tunisia, to ensure that they do not undermine the respect of human rights, and that they are not abused for the repression of peaceful political dissent ;
- issue specific recommendations, compliance with which can be regularly assessed according to concrete benchmarks and measurable goals, that are aimed at improving the human rights situation in Tunisia and at preventing human rights violations from recurring.

In relation to the justice system, which is instrumental to ensure the respect of fundamental human rights, these action plans should take into account the recommendations made by UN human rights bodies, including the recommendation made by the UN Human Rights Committee already in 1994 “*that steps are taken to strengthen the independence of the judiciary, particularly from the executive branch*”.⁹

The EU and Tunisia should make public an annual report accounting for the joint steps taken to ensure compliance with their commitments made under Article 2.

⁹ Concluding Observations of the Human Rights Committee: Tunisia, 10/11/94, CCPR/C/79/Add. 43. Para. 14.