

# AMNESTY INTERNATIONAL

## PUBLIC STATEMENT

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### **Human rights must be cornerstone of new Tunisian constitution**

Amnesty International urges the National Constituent Assembly (NCA), as it meets today for the first time to draft the new constitution of Tunisia, to ensure that the shortcomings of the old constitution are addressed and that fundamental human rights guarantees are incorporated.

The NCA must, above all, reflect Tunisia's international human rights obligations in the new constitution, in particular with regard to the supremacy of international human rights law over domestic law; the principle of non-discrimination; the protection of the rights to freedom of expression, association and peaceful assembly; the independence of the judiciary; judicial guarantees in the criminal justice system; protection from torture and other forms of ill-treatment; the right to life; and the protection of economic, social and cultural rights.

Provisions in the old Tunisian constitution - suspended on 23 March 2011 - failed to protect Tunisians' basic human rights and essential freedoms. Members of the political opposition, activists, human rights defenders and in effect any dissenting voices were ruthlessly repressed and faced arbitrary arrest and detention. The security forces and the judiciary were part of the repressive machinery of the authorities rather than institutions protecting the rights of people. Prison conditions and the treatment of prisoners were notoriously poor; laws were passed to further repress rather than protect Tunisians. Torture was widespread and impunity pervasive and counter-terrorism rhetoric was used to justify abuses. Tunisia's "economic miracle" was celebrated while trade unionists faced imprisonment and large sectors of Tunisia's population have been denied minimum essential levels of economic, social and cultural rights.

- First and foremost, the new constitution must maintain the supremacy of international law over domestic law and ensure that the human rights enshrined in international treaties to which Tunisia is a party are enforceable in a court of law.
- The independence of the judiciary, particularly from the executive, needs to be guaranteed, as do the safeguards protecting judges from pressures and influence. The principle of security of tenure (*inamovibilitate*) must be included. Furthermore, the constitution should clearly stipulate the appointment of judges based on their abilities and qualifications without resort to any form of adverse discrimination.
- The NCA should uphold the rights to freedom of expression, association and peaceful assembly and ensure that any restrictions to these rights are limited only to those allowed in international law and standards.

- Discrimination needs to be prohibited and the grounds for prohibition clearly identified in line with international law, that is, on the basis of race, colour, sex, language, religion, sexual orientation, gender identity, political or other opinion, national or social origin, property, birth or other status. Amnesty International also recommends that the NCA include a provision in the new constitution which clearly states that women and men have equal rights in law and in practice and equal opportunities in the political, economic, cultural and social sphere.
- To ensure fair trial and to end impunity, existing judicial guarantees must be further developed and defined in the new constitution to ensure that the necessary safeguards are put into place. In light of the legacy of impunity which prevailed in Tunisia, the constitution should state that no member of the security apparatus is allowed to act above the law; Other safeguards should include the presumption of innocence, the right to have a lawyer, the conformity of conditions of detention with international standards, the right to be immediately informed of the reason of arrest, the right to promptly challenge the lawfulness of one's detention, the exclusive use of civilian courts to try civilians, the right to have ample time to prepare a defence, the exclusion of evidence extracted under torture or other forms of ill-treatment, the right to appeal and compensation for unlawful arrest. Furthermore, the new constitution must provide guarantees that end impunity and ensure the accountability of perpetrators of human rights violations.
- An absolute and clear prohibition of torture and other cruel, inhuman or degrading treatment or punishment must be included. The provisions also need to stipulate that the right to be free from torture and other ill-treatment is absolute and non-derogable and that evidence extracted under torture or other forms of ill-treatment can never be admissible.
- The right to life should also be guaranteed in the new Constitution and the death penalty prohibited as a punishment for any crime. Amnesty International believes that the death penalty should be abolished as it violates the right to life and is the ultimate cruel, inhuman and degrading punishment and that it is not possible for a country to fully respect human rights and sentence people to death at the same time.
- Economic, social and cultural rights must be guaranteed, including by ensuring the minimum essential levels of these rights and ensuring non-discrimination in access to essential public services. It is also necessary to uphold the right of workers and trade unions and to ensure that victims of violations of economic, cultural and social rights have the ability to access effective remedies.

Although it will take more than a new constitution to fully prevent human rights violations, a constitution that enshrines human rights and freedoms is a powerful tool for preventing them. The constitution can be the guiding instrument for institutions and officials in Tunisia and an ultimate guarantor of rights for Tunisians.

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## **Background information**

The Tunisian interim president passed a decree on 23 March 2011 suspending the 1959 Constitution until the election of a national constituent assembly that was tasked with creating a new constitution and appointing a new government. The decree stated:

“Considering that the current situation of the State after the final vacancy of the Presidency of the Republic on 14 January 2011...does no longer allow the regular operation of the public authorities and that the full implementation of the constitution provisions has become impossible.

Article one - The public authorities in the Republic of Tunisia shall be provisionally organized in accordance with the provisions of the decree-law herein, until a national constituent assembly elected with universal, free, direct and secret vote according to an electoral system chosen for this purpose, takes its functions.”

Members of the NCA were elected in nationwide elections that were held on 23 October 2011.

Since former president Zine El Abidine Ben Ali was ousted, the caretaker government has ratified a number of international human right including the Optional Protocol to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Rome Statute of the International Criminal Court All were published in the Official Gazette on 22 February 2011.

The caretaker government has also withdrawn its reservations to the Convention on the Elimination of All Forms of Discrimination against Women. Amendments have also been made to national laws including the laws governing the press and audiovisual material, the law on associations and the law on torture. Amnesty International welcomes these as steps in the right direction although more work needs to be done to ensure human rights are the cornerstone of Tunisia's future.