

AMNESTY INTERNATIONAL – OPEN LETTER

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A HUMAN RIGHTS AGENDA FOR THE FIRST SIX MONTHS OF TUNISIA'S NEW PARLIAMENT

Dear Incoming Members of the Assembly of the People's Representatives,

Amnesty International would like to take this opportunity to congratulate you on your election to Tunisia's Assembly of the People's Representatives. We are writing to you in hope that you will commit to defending and protecting human rights during your mandate and that you will maintain an open dialogue and cooperation on human rights issues with civil society organizations, as previous assemblies have, and push forward stalled human rights priorities in the first six months of your mandate.

We urge you to prioritize human rights protections set out in the Tunisian Constitution and in international human rights treaties that Tunisia has ratified.

The former Tunisian parliament made some progress in bringing certain items of legislation in line with the 2014 Tunisian Constitution and international human rights standards. The most notable of these was a 2016 revision of the Code of Criminal Procedures. This revision enhanced protection of the rights of individuals in custody and the right to fair trial by stipulating the right to a lawyer from the moment of arrest and shortened the maximum duration of detention without charge.¹ The parliament also passed a landmark law on violence against women in 2017 and a law criminalizing racial discrimination in 2018.²

However, the process of bringing Tunisia's laws in line with the Constitution and Tunisia's obligations under international human rights law is far from complete. We urge you to adopt a human rights agenda for your mandate and ensure that any legislation your assembly adopts complies with international human rights law and standards.

In addition, we urge you to maintain parliament's oversight role to ensure a transparent and accountable executive branch. The former parliament, in particular the Freedom, Rights, and Foreign Relations Committee, occasionally held hearings for government and civil society as part of its mandate to oversee government practices and policies and ensure that they are in line with constitutional protections and international human rights standards. These included sessions focused on accountability for torture and the arbitrary use of S17 border control measures.

Your role in parliament in promoting a human rights agenda is crucial. This is because we are concerned about the delay in undertaking serious human rights reforms to protect the rights of Tunisians and to carry forward the legislative and institutional changes needed to safeguard Tunisia's political transition. Amnesty International continues to document human rights violations in several areas and sectors. For example, the state of emergency has been repeatedly renewed and is used to justify arbitrary restrictions on freedom of movement. Criminal prosecutions for freedom of expression continue to take place, with courts at times issuing prison sentences. Torture and other ill-treatment of detainees continues, but hardly any of the perpetrators are investigated and even fewer ever reach trial. Proposed legal reforms to establish equality between men and women in matters of inheritance and to decriminalize

¹ Law N°5 of 2016 amending and completing some provisions of the Criminal Procedures Code, www.legislation.tn/detailtexte/Loi-num-2016-5-du-11-08-2016-jort-2016-015__2016015000051

² Organic Law N°58 of 2017 on Eliminating Violence against Women, www.legislation.tn/detailtexte/Loi-num-2017-58-du-11-08-2017-jort-2017-065__2017065000581

same-sex relations remain pending on the shelves of the parliament. And lesbian, gay, bisexual, transgender and intersex (LGBTI) people continued to face harassment, arrest and imprisonment. These ongoing violations need immediate and urgent remedies that the legislative branch you represent can play a vital role towards achieving.

As you start your mandate as members of the third democratically elected Tunisian parliament, we ask you to commit to the following urgent priorities in the first six months of your mandate:

1. COMMIT TO ELECTING THE MISSING MEMBERS OF THE CONSTITUTIONAL COURT

The Constitutional Court is the one of most important institutions established by the 2014 Constitution. It will guarantee the supremacy of the Constitution and will play a vital role in protecting rights and freedoms. The previous parliament failed to elect the required members of the Constitutional Court, which is now five years overdue. We urge you to put an end to this delay and ensure that the assembly prioritizes electing the remaining members of the Court during the first six months of its mandate.

2. PROTECT THE SPACE FOR INDEPENDENT CIVIL SOCIETY

Commit to protecting freedom of association as guaranteed by the Tunisian Constitution by ensuring any proposed legislation to regulate the work of associations does not undermine Decree 88 of 2011 or impede the ability of NGOs to operate freely, without any arbitrary or onerous judicial or administrative obstacles, and complies with international human rights law and standards.³

3. DECRIMINALIZE FREEDOM OF EXPRESSION

Repeal or amend all Penal Code provisions used to curtail freedom of expression and criminalize peaceful expression. Articles that allow for imprisonment and fines for peaceful speech that is deemed defamatory toward individuals or state institutions -or liable to disturb the public order or morals- are incompatible with Tunisia's obligations under international human rights law. The provisions which are often used by Tunisian authorities to arbitrarily restrict freedom of expression and must be repealed without delay include:

- Article 121(3): which deems "*distributing, selling, or displaying flyers or other materials deemed liable to cause harm to the public order or public morals*" a crime punishable with up to five years imprisonment.
- Article 125 deems offending a public official while performing their duty a crime punishable by up to one-year imprisonment.
- Article 128 punishes speech or writing deemed offensive and defamatory to public officials with up to one year in prison.
- Article 226 punishes public disrespect of morals with up to six months in prison.
- Articles 245 and 247 punish defamation with six months in prison and calumny with one-year imprisonment.⁴

4. ENSURE IMPLEMENTATION OF TRANSITIONAL JUSTICE PROCESS

Establish a specialized parliamentary committee to oversee the implementation of Truth and Dignity commission recommendations by the Tunisian government in compliance with article 70 of the Transitional Justice law. The parliament must ensure that the Truth and Dignity Commission's recommendations on judicial and security sector

³ Amnesty International, *Tunisia must take immediate steps to address the recommendations of the special rapporteur on freedom of assembly and association* (Index: MDE 30/0603/2019)

⁴ Tunisian Penal Code [Error! Hyperlink reference not valid.](#)

reforms, reforms to grant the right to life, liberty and security and prevent torture and ill treatment and all other recommendations pertaining to institutional reform are implemented in order to grant non-repetition and ensure the cycle of impunity is broken.

5. STRENGTHEN ACCOUNTABILITY MECHANISMS TO ALLOW FOR PROMPT, EFFECTIVE, INDEPENDENT AND IMPARTIAL INVESTIGATIONS OF ALL COMPLAINTS OF HUMAN RIGHTS VIOLATIONS

Strengthen parliamentary oversight over the government to ensure perpetrators of serious violations are brought to justice in fair trials, without recourse to the death penalty. Victims, relatives, lawyers and witnesses must be protected from harassment and intimidation. Victims of human rights violations must be promptly provided with full reparation, including restitution, rehabilitation (including medical and psychological treatment), compensation, satisfaction and guarantees of non-repetition.

6. GUARANTEE GENDER EQUALITY

Prioritize the examination of the inheritance bill submitted to parliament in November 2018 to guarantee gender equality, especially in inheritance. Also provide oversight to ensure proper implementation of Law 58 of 2017 on Eliminating Violence against Women, a landmark law passed in the parliament in 2017. The law introduces criminal provisions and penalties for perpetrators of violence against women and mandates the establishment of mechanisms to facilitate its implementation. The parliament must ensure proper appropriations are allocated for the implementation of Organic Law 58 of 2017 on Eliminating Violence against Women.

7. ENSURE RESTRICTIONS UNDER EMERGENCY MEASURES DO NOT VIOLATE HUMAN RIGHTS

Ensure the proposed emergency law bill is not adopted unless fundamental changes are made to bring it in line with international law and the Tunisian Constitution.⁵

Clearly define in law the criteria on the basis of which an individual may be subjected to emergency measures.

Clarify in the emergency law that it is necessary for authorities to obtain prior judicial authorization when issuing or enforcing any decision to subject an individual to exceptional emergency measures such as house searches or assigned residence orders.

Monitor the implementation of the State of Emergency by the executive to ensure that any limitations on the exercise of human rights imposed as part of a state of emergency are prescribed by law, are temporary and are consistent with the principle of necessity and proportionality as required under international human rights law.

8. DECRIMINALIZE CONSENSUAL SAME-SEX RELATIONS

Repeal Article 230 of the Penal Code and decriminalize consensual same-sex relations once and for all to provide adequate protection against violence against lesbian, gay, bisexual, transgender, and intersex (LGBTQI) people and safeguard against discrimination. The parliament must start a process of amending legislation to ensure that no one is arrested and prosecuted on the basis of their gender identity and sexual orientation.

⁵ Amnesty International, *Tunisia repressive state of emergency bill a threat to human rights* (Press release, 15 March 2019), www.amnesty.org/en/latest/news/2019/03/tunisia-repressive-state-of-emergency-bill-a-threat-to-human-rights/

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9. ESTABLISH THE COMMISSION FOR SUSTAINABLE DEVELOPMENT AND THE RIGHTS OF FUTURE GENERATIONS

Establish the Commission for Sustainable Development and the Rights of Future Generations. Article 129 of the Tunisian Constitution states that this commission is to be consulted on draft laws pertaining to socio-economic and environmental rights as well as development plans. The commission will play a crucial role in ensuring Tunisia's socio-economic and environmental priorities are in line with its Constitution and international standards. The former parliament passed the law regulating the work of the commission. This parliament should now move forward with electing the members of the commission to ensure its establishment.

10. ABOLISH THE DEATH PENALTY

Protect the right to life, enshrined in the Constitution, by taking steps to abolish the death penalty. Tunisia should support regional and international initiatives aimed at its abolition.

We hope to continue to work with you throughout the next five years on human rights issues.

Please accept the assurances of our highest consideration.