

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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TUNISIA MUST TAKE IMMEDIATE STEPS TO ADDRESS THE RECOMMENDATIONS OF THE SPECIAL RAPPOREUR ON FREEDOM OF ASSEMBLY AND ASSOCIATION

On 24 June, the Special Rapporteur on rights to freedom of association and peaceful assembly presented his findings¹ on the exercise of these rights in Tunisia and shared his concerns regarding potential threats to freedom of association and assembly in the country.

The Special Rapporteur's report acknowledges legal and institutional progress made since 2011, in particular the landmark achievement of the 2014 constitution, which guarantees key human rights and improved access to justice and the independence of the judiciary, as well as the significant increase in the number of independent associations. However, the report also expressed concern that the rights to freedom of association and peaceful assembly continued to be undermined by delays and difficulties in establishing vital institutions envisaged under the constitution, in particular the Constitutional Court, the persistent renewal of the state of emergency as well as recent legislative moves that could restrict Tunisian civil society's ability to operate freely.

This public statement highlights some of the most serious violations and threats to the rights to freedom of assembly and association in Tunisia identified in the report and offers recommendations to the Tunisian authorities to amend relevant laws in line with international law and standards and the country's constitution.

FREEDOM OF PEACEFUL ASSEMBLY

The report notes the occasional progress made by Tunisian security forces in policing demonstrations, in particular their role in facilitating peaceful protests against petroleum companies in Kebili in the south of the country in 2015. However, despite these developments, it also noted that these practices are not systematic and raised concerns about continuous arbitrary arrests of peaceful protesters, activists and bystanders during demonstrations, including the arrest of at least 778 people protesting austerity measures in January 2018, as well as excessive use of force by the police in flagrant breach to the freedom of assembly guaranteed under the 2014 Tunisian constitution.

Amnesty International documented hundreds of arrests and **trials in absentia**² of protesters demanding the right to employment in Gafsa between 2017 and 2018. The organization found that prosecutors in Gafsa routinely abuse "disrupting the freedom to work" charges to criminalize peaceful protest in contravention of Tunisia's own laws and constitution and commitments to protect the right to freedom of peaceful assembly as enshrined in Article 21 of the International Covenant on Civil and Political Rights. Although the offence of "disrupting the freedom of work" is conditional on the use of "violence, assault, threats or fraudulent claims", in the cases that Amnesty International examined, the prosecution did not provide any evidence of the use of violence to punish people for protesting.³

¹ See OHCHR, Rapport du rapporteur spécial sur les droits à la liberté de réunion pacifique et à la liberté d'association, 25 June 2019, www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session41/Documents/A_HRC_41_41_Add.3.docx

² See Amnesty International, *Tunisia: Hundreds of peaceful protesters tried in their absence in Gafsa*, (Index: MDE 30/0380/2019), available at: www.amnesty.org/en/documents/mde30/0380/2019/en/

³ See Amnesty International, *Tunisia: Hundreds of peaceful protesters tried in their absence in Gafsa*, (Index: MDE 30/0380/2019), available at: www.amnesty.org/en/documents/mde30/0380/2019/en/

The Special Rapporteur also outlines concerns relating to a new bill regulating peaceful protest, currently being drafted by the Ministry of Interior, and stresses that it not only fails to improve the legislative framework but also bans and criminalizes assembly and gatherings, offers immunity to security forces, places heavy notification requirements and puts more constraints on protests' timings, locations and modalities. Although as the Special Rapporteur states, the freedom of assembly in Tunisia is regulated by a law dating back to 1969 that does not fully match the provisions of the 2014 constitution, any new legislation must fully preserve the right to free assembly granted to all Tunisians by the constitution and under international law.

The continuous state of emergency imposed since November 2015 by a 1978 presidential decree following a deadly attack against the Presidential Guard in Tunis grants the Tunisian president power to revoke rights of assembly and protest if he deems it a threat to national security. As Amnesty noted in a public statement⁴, "the decree has been repeatedly used to impose emergency measures in an often arbitrary, discriminatory and disproportionate manner leading to a range of human rights violations." A draft state of emergency law, currently considered by parliament to replace the 1978 decree, is however equally repressive. Amnesty International shares the Special Rapporteur's concerns on the dangers that this proposed emergency law could pose to civil society and the right to peaceful protest, by granting the authorities sweeping powers to ban demonstrations and strikes that it deems "threatening to national security". Amnesty International joins the Special Rapporteur in urging the Tunisian authorities to ensure that the emergency law is modified so as to conform with the Tunisian constitution and international standards.

FREEDOM OF ASSOCIATION

The Special Rapporteur emphasizes the role of decree 88 of 2011 pertaining to the status of associations in Tunisia as a legislative pillar that contributed to the flourishing of civil society that continues to play a crucial role in counterbalancing threats to rights and freedoms in post-2011 Tunisia. The decree guarantees the freedom of forming and joining associations and offers a notification rather than an authorization system for the creation of new organizations. It regulates rather than restricts the status of both Tunisian and international non-governmental associations and organizations and is considered to be one of the most progressive non-governmental organizations [NGO] laws in the Middle East and North Africa region.

However, the authorities' recurrent threats and moves to **reform the legal framework** regulating civil society have been a source of concern to civil society activists. For instance, a 2018 law on the national registry of enterprises (52/2018), purportedly aimed at ensuring transparency and accountability in accordance with the constitution, requires nonprofit organizations to obtain a fiscal identification similar to companies and enterprises working for profit. It also introduces heavy penal and financial sanctions for non-compliance and threatens the independence and freedom of NGOs. While the authorities claim this law is needed to ensure the financial transparency and prevent money laundering by civil society organizations, decree-law 88 of 2011 already provides an effective framework for adequate regulation of NGOs' funding and financial transactions.

Amnesty International shares the Special Rapporteur's recommendation that any amendments to the current legal framework regulating the work of civil society must not undermine the right to freedom of association afforded by decree-law 88 of 2011 or impede the ability of NGOs to operate freely, without any arbitrary or onerous judicial or administrative obstacles.

The concerns expressed by the Special Rapporteur also echo those of Tunisian civil society organizations as emphasized in a recent statement⁵ warning against any proposed measures to restrict the right to form associations. In response, the Ministry of Relations with Constitutional Bodies, Civil Society and Human Rights has proposed suspending the application to NGOs of the provisions of law 52 of 2018 on the national registry for enterprises until new laws are passed to further regulate the work of civil society. While this move is a step in the right direction,

⁴ 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/

⁵ Nawaat, بيان: تهديدات متواترة لحرية التنظيم في تونس, 12 June 2019, available at: <http://www.nawaat.org/portail/2019/06/12/-بيان-تهديدات-متواترة-لحرية-التنظيم-وا/>

Amnesty International shares the fears of local and international organizations that by introducing new laws, the authorities intend to undermine the right to freedom of association through legal and bureaucratic obstacles, instead of complementing the protections of decree-law 88 of 2011.

Finally, Amnesty International welcomes the report's recommendations urging the Tunisian authorities to take steps to prevent discrimination in the registration of organizations working to defend the rights of those facing discrimination because of their sexual orientation or gender identity and those protecting the rights of religious minorities, and reiterates the Special Rapporteur's call to end **judicial harassment**⁶ of these organization in Tunisia.

Amnesty International urges the Tunisian authorities to take immediate steps to address the recommendations of the Special Rapporteur and to:

- End application to NGOs of law 52 of 2018 on the national registry of enterprises and ensure that the status of civil society organizations continues to be regulated under decree 88 of 2011
- Ensure that any new legislations reinforce the provisions of decree law 88 of 2011, facilitate its implementation and fully comply with the right to freedom of association.
- Establish the overdue Constitutional Court as envisaged under Tunisia's constitution.
- Ensure that any new legislation, in particular the proposed emergency law, protects the ability of civil society to operate freely and incorporates strong human rights safeguards, including respect of the rights to freedom of expression, assembly, association and movement.

⁶ Amnesty International, Tunisia: authorities must end shameful attempts to shut down prominent LGBTI organization (Press release, 28 February 2019), www.amnesty.org/en/latest/news/2019/02/tunisia-authorities-must-end-shameful-attempts-to-shut-down-prominent-lgbti-organization/