

Joint Letter

Index: MDE 30/6858/2017

25 July 2017

Appeal to the People's Representatives to Abandon Consideration of the Draft Law on Prosecution of Abuses Against the Armed Forces

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

Our organizations are writing to urge you to abandon consideration of the "[Draft law No.25/2015 on the Prosecution of Abuses Against the Armed Forces](#)" officially listed in Parliament since April 13, 2015. On Thursday July 13, 2017, much to the surprise of civil society, the Assembly of the People's Representatives (ARP) resumed parliamentary debate of this law.

Such draft law risks silencing all criticism of the armed forces and reinforcing a culture of impunity already entrenched in the Tunisian security and judicial system, where extensive reform has been sorely lacking since the Revolution.

Our organizations consider this draft law unconstitutional and contrary to Tunisia's international human rights commitments, particularly with regard to respect of the right to life, the fight against impunity and respect of the right to freedom of expression.

The provisions of the draft law could criminalize the behavior of journalists, whistle-blowers, human rights defenders, and anyone who criticizes the police. They could also allow the security forces to use lethal force when not strictly necessary to protect human lives.

Civil society believes that the ARP does have a duty to ensure that the Tunisian security forces are able to protect the public and their own lives against potentially deadly attacks, through measures that are compatible with human rights. However, the draft law goes far beyond this objective by making the security forces, as well as their relatives and property, almost untouchable -- all in a context in which human rights violations committed by the security forces in the framework of the state of emergency, the fight

against terrorism and the repression of peaceful demonstrations almost always go unpunished.

We are putting forward the following arguments to demonstrate the extent to which this draft law is incompatible with Tunisia's Constitution and international commitments. In view of the arguments below, our organizations consider that members of parliament, who have sworn to respect the rules of the Constitution, have a responsibility, according to Article 58 of the Constitution, to abandon the draft law or vote against it if it is submitted to a plenary vote in the Assembly.

Incompatibility between the criminalization of the disclosure of national security secrets and freedom of expression

Articles 5 and 6 of the draft law provide for up to 10 years' imprisonment, as well as a 50,000 dinar fine, for individuals who disclose or publish a "secret linked to national security." The draft law defines secrets linked to national security as "all information, data and documents linked to national security [...] whose knowledge should be restricted to individuals entitled to their use, possession, circulation or conservation."

The draft law also provides for a sentence of up to two years' imprisonment for any person who disseminates, without authorization, audio-visual material filmed inside national security buildings, on the sites of security operations or in vehicles belonging to the armed forces. Such an article would lead to the imprisonment of people who might want to denounce abusive behavior by the police by publishing videos or photos documenting abuses in order to alert public opinion.

These provisions are incompatible with Tunisia's obligations to protect and respect the right to freedom of expression which includes the public right of access to information, particularly in accordance with Article 19 of the International Covenant on Civil and Political Rights (ICCPR) to which Tunisia is a party. Such information could be essential for denouncing human rights violations and guaranteeing accountability in a democracy.

While governments have the right to restrict the dissemination of certain kinds of information that could seriously endanger national security, the very vague definition and the absence of any exception or excuse on the grounds of public interest could enable the authorities to prosecute those who denounce reprehensible actions by the government.

According to Article 32 of the Tunisian Constitution, "the State guarantees the right to information and the right of access to information." In addition, Article 31 guarantees

freedom of opinion, thought, information, and publication and prohibits prior control of these freedoms.

The Johannesburg Principles on national security, freedom of expression and access to information, an influential body of principles issued in 1996 by international law experts on the applicability of human rights protection to information on national security, state: "No person may be punished on national security grounds for disclosure of information if (1) the disclosure does not actually harm and is not likely to harm a legitimate national security interest, or (2) the public interest in knowing the information outweighs the harm from disclosure."

The Principles specify that "to establish that a restriction... is necessary to protect a legitimate national security interest, a government must demonstrate that: (a) the expression or information at issue poses a serious threat to a legitimate national security interest; (b) the restriction imposed is the least restrictive means possible for protecting that interest; and (c) the restriction is compatible with democratic principles."

In addition, the Principles define legitimate national security interest as the protection of "a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government."

In its General Comment No.34 interpreting Article 19 of the ICCPR, the United Nations Human Rights Committee notes that governments should take "extreme care" to ensure that laws on national security are not invoked "to suppress or withhold from the public information of legitimate public interest that does not harm national security" or to prosecute journalists, researchers, activists, or other individuals who disseminate such information.

Denigrating the Police and Freedom of Expression

The draft law would criminalize "denigration" of the police and other security forces, thereby jeopardizing freedom of expression.

Article 12 of the draft law provides for a criminal sanction of two years' imprisonment and a fine of up to 10,000 dinars for any person found guilty of intentionally denigrating the armed forces with the aim of "harming public order."

The criminalization of denigration of state institutions is incompatible with the strong protection of freedom of expression laid out in international law as well as with rights guaranteed by the 2014 Tunisian Constitution.

Moreover, the vague concept of "denigration of the armed forces" is incompatible with the principle of legality -- the cornerstone of international human rights standards -- which obliges States to ensure that criminal offenses are clearly and precisely defined in law (see General Comment No.34, paragraph 25).

Article 12 risks giving the authorities considerable scope to carry out arrests for unjustified reasons such as arguing with the police or taking a long time to carry out their orders, or in reprisal for filing a complaint against the police. The requirement that the denigration should be aimed at "harming public order" is so broad that it barely limits the authorities' discretionary powers of prosecution.

The denigration clause would add a new offense to existing laws which already contain numerous articles criminalizing freedom of expression, in particular provisions on defamation of state institutions, offenses against the Head of State, and offenses against the dignity, reputation or morale of the army. Our organizations have long denounced these articles and called for their withdrawal.

The UN Human Rights Committee's General Comment No.34 specifies that "state parties should not prohibit criticism of institutions, such as the army or the administration."

In its 2008 review of Tunisia, the United Nations Human Rights Committee expressed concern about the criminalization of "criticism of official bodies, the army or the administration." During Tunisia's Universal Periodic Review by the United Nations Human Rights Council in 2012, Tunisia complied with Recommendation No.114.59 to review the legislation of the Ben Ali era that stifles freedom of expression in order to fully protect these rights, in accordance with international standards. During Tunisia's Universal Periodic Review in 2017, several States asked Tunisia to strengthen freedom of expression, including press freedom and the right of access to information.

Reinforcing Impunity by Exonerating the Security Forces from Responsibility in Cases of Excessive Use of Force

The draft law would exonerate the security forces from criminal responsibility if they use lethal force to repel attacks on security buildings, their homes, their belongings, and their vehicles, when the force they used proved necessary and proportional to the danger. This provision would mean that the security forces would be legally authorized to respond

with lethal force to an attack on property which would not endanger their lives or the lives of others and would not cause serious injury.

According to Article 18 of the draft law, a "member of the armed forces is not criminally responsible for damages resulting from the act of injuring or killing a person who has committed one of the offenses mentioned in articles 13, 14 and 16 of the law, if the action was necessary to reach the legitimate aim of protecting life or property, and if the means used were the only ones capable of repelling the aggression, and the use of force was proportional to the danger."

This article mirrors the directives on the use of force in articles 20-22 of Tunisian law 69-4 of January 24, 1969 regulating public meetings, while broadening it to the use of force not only during demonstrations, but also in cases of individual attacks against property or vehicles belonging to the police or other security forces.

Article 18 therefore gives the armed forces significant leeway to respond with potentially lethal force to an attack that does not threaten lives or risk causing serious injury. This is contrary to the State's obligation to respect and protect the right to life.

International law does not authorize the use of firearms solely to protect property. See, for example, Article 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These standards also require an independent authority to assess whether the use of firearms by the armed forces resulting in death or serious injury was necessary and proportionate.

The Tunisian security forces have long benefited from impunity for the excessive use of force or ill-treatment. Killings of demonstrators during the revolution, excessive and unjustified use of force in policing demonstrations, torture and ill-treatment of detainees during anti-terrorist operations as well as arbitrary practices during the arrests of citizens have all gone largely unpunished. Exonerating the security forces from responsibility, as envisaged in the draft law, risks reinforcing this culture of impunity and sending a message to the security forces that they have a green light to use force illegally.

Signatories

- Tunisian Human Rights League
- National Union of Tunisian Journalists
- Tunisian Forum on Economic and Social Rights
- Tunisian Organization Against Torture
- Human Rights Watch
- World Organization Against Torture

- International Federation for Human Rights
- Amnesty International
- Lawyers Without Borders
- International Commission of Jurists
- Reporters Without Borders
- EuroMed Rights
- Democratic Transition Human Rights Support Centre (DAAM)