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Open letter: Strong concern regarding the adoption of an amendment criminalizing contacts between Tunisian human rights defenders and EU institutions

To: Ms. Catherine ASHTON, EU High Representative for Foreign Affairs and Security and Vice President of the European Commission,

To: Mr. Stefan Füle, EU Commissioner for Enlargement and European Neighbourhood Policy,

To: the Foreign Affairs Ministers of the EU Member States,

Dear High Representative,

Dear Commissioner,

Dear Foreign Ministers,

The organizations that are signatories of this letter [1] wish to express their deep concern regarding a newly adopted amendment to the Criminal Code of Tunisia that risks to further hinder the work carried out by Tunisian human rights defenders and undermine the protection and promotion of human rights in the country.

This law complements the provisions of Article 61bis of the Criminal Code by adding the criminalization “of any persons who shall, directly or indirectly, have contacts with agents of a foreign country, foreign institution or organization in order to encourage them to affect the vital interests of Tunisia and its economic security”. This amendment may allow the prosecution and imprisonment of human rights defenders who cooperate with foreign and multi-lateral organizations, including the European Union (EU) and the United Nations (UN). Furthermore, this new criminal charge could target witnesses or victims of grave human rights violations if they communicate with “foreign entities”. Our organizations wish to reiterate that unfettered dialogue with civil society and full respect for freedom of expression and association constitute one of the pillars of these multilateral organizations.

These provisions constitute an additional obstacle to human rights activities in the country and may allow an increase in harassment against those who expose human rights violations, in flagrant violation of the international obligations undertaken by Tunisia, at a time when smear campaigns against human rights defenders have been on the increase. In articles published in the newspapers *Al-Hadath*, *Koll Ennass*, *As Sarih*, *As Sabah*, *La Presse* and *Ach-Chourouk*, several Tunisian human rights defenders who had been in contact with the EU were depicted as “traitors”, “agents” and “mercenaries” who “should be under trial”[2]. The complaints filed by the defenders defamed are yet to receive a response.

These fears have been confirmed in a recent statement of Justice and Human Rights Minister Lazhar Bououni made during a parliamentary debate, where he said that “affecting the vital interests of Tunisia” also includes “inciting foreign parties not to extend credit to Tunisia, not to invest in the country, to boycott tourism or to sabotage the efforts of Tunisia to obtain

advanced partner status with the European Union”[3]. The approval of this provision comes just one month after a meeting on May 11, 2010 of the Council of Association between the EU and Tunisia, and at a time when Tunisia has begun negotiations to obtain advanced partner status, although no noticeable progress concerning human rights has so far been achieved in the country.

Five years after the adoption of the EU-Tunisia Action Plan, none of the engagements concerning democratic reforms and human rights have been undertaken. In particular, the European Commission underlined in its 2009 European Neighbourhood Policy (ENP) progress report that “the objectives about freedom of association and expression have not been reached” and the persistence of “restrictions to the work of human rights defenders”.

Besides, several human rights NGOs and UN experts noted that the situation of Tunisian human rights defenders had been deteriorating since the launching of the campaign for the presidential and legislative elections held in October 2009. Trials that violate international standards on the right to a fair trial, arbitrary arrests, physical assaults, threats, seizure of material and smearing campaigns are increasing. Independent NGOs continue to be hindered in their human rights work, as the example of the Tunisian League for Human Rights (Ligue tunisienne de défense des droits de l’Homme – LTDH) demonstrates. These violations against human rights defenders are all the more concerning given the serious deterioration of the general human rights situation in Tunisia.

For these reasons, our organizations take note of the recent developments regarding the possible advanced partner status and strongly believes that the deterioration of the situation of human rights and fundamental freedoms cannot permit a strengthening of the EU-Tunisian relations, having regard to the ENP principles.

Therefore, our organizations call upon the EU to:

- Make a public declaration regarding Article 61bis condemning the adoption of this amendment which aims at criminalising contacts between human rights defender and international institutions such as the EU,
- Measure progress in negotiations on an enhanced status against improvements in the human rights situation (notably the repeal of Article 61 bis of the Criminal Code),
- Develop and share with human rights defenders an action-oriented strategy on the protection of human rights defenders in Tunisia in application of the EU Guidelines on Human Rights Defenders, including the organization of official meetings on a regular basis with representatives of independent human rights organizations both registered and unregistered.

The EU should observe Tunisia’s effective implementation of recommendations by relevant United Nations bodies and refer to these recommendations as the standard when evaluating Tunisia’s compliance with Article 2 of the Association Agreement and the ENP principles in general.

We express our sincere hope that you will be able to act expeditiously with regards to this situation.

Yours sincerely,

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General Delegate, ACAT-France

Nicolas Beger
Director
Amnesty International EU Office

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President, FIDH

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Kamel Jendoubi
President, EMHRN

Mary Lawlor
Director, Front Line

Sarah Leah Whitson
Executive Director for Middle East and North Africa, Human Rights Watch

Footnotes

[1] The International Federation for Human Rights (FIDH) and the World Organization Against Torture (OMCT) in the framework of their joint programme - the Observatory for the Protection of Human Rights Defenders, Action des chrétiens pour l'abolition de la torture (ACAT), the Euro-Mediterranean Human Rights Network (EMHRN), Front Line, Amnesty International and Human Rights Watch.

[2] See articles in *Al-Hadath*, 19 and 26 May 2010.

[3] See articles of Agence Tunis Afrique Presse, June 15, 2010 and La Presse de Tunisie, June 16, 2010.