For Immediate Release

Tunisia: Amend or Drop Security Bill

Provisions on State Secrecy and "Denigrating" Security Forces Undermine Free Speech

(Tunis, May 13, 2015) — Tunisian legislators should drop problematic provisions from a new security bill, 13 nongovernmental organizations said in a joint statement today. Provisions of the bill that are inconsistent with international human rights standards and rights guaranteed in the Tunisian Constitution could criminalize the conduct of journalists, whistleblowers, human rights defenders, and others who criticize the police and would allow security forces to use deadly force when it is not strictly necessary to protect lives.

The government sent the bill to parliament on April 10, 2015, following the March 18 attack by gunmen that killed 23 people at the Bardo Museum in Tunis and a series of lethal attacks on the security forces by armed groups. Since the uprising that ousted President Zine el-Abidine Ben Ali in January 2011, these attacks have also killed more than 75 members and wounded at least 190 of Tunisia's army and other security and armed forces. The parliament has not yet set a date for debating the bill.

"The Tunisian parliament needs to ensure not only that Tunisian security forces are able to protect people from attacks, but without trampling rights in the process," said Eric Goldstein,

deputy Middle East and North Africa director at Human Rights Watch. “The bill’s provisions on state secrecy, denigration and the use of lethal force fail that test.”

The stated purpose of the “Repression of Attacks against Armed Forces” bill is to enhance protection of the armed forces – including military, internal security, and customs forces-- and to quell attacks against institutions, facilities, and equipment that fall under their authority.

If adopted, the bill would allow courts to impose lengthy prison sentences on people who divulge broadly defined “national security secrets.” The bill allows no defense from prosecution for those who claim to have acted in the public interest, such as whistleblowers and journalists.

The bill would criminalize the “denigration” of police and other security forces, thereby undermining freedom of expression. It would also permit, albeit more narrowly than under current law, the use of lethal force by the police to protect property rather than restricting it to a last resort to protect human life, as per international norms.

Articles 5 and 6 of the bill provide for up to 10 years in prison and a 50.000 dinar fine (US$25,522) for those who divulge or publish a “national security secret.” It defines national security secrets as “any information, data and documents related to the national security […] and which should only be known to whomever has the authority to use, possess, conserve or circulate such secrets.”

This provision is incompatible with Tunisia’s obligations to protect the right to freedom of expression and to uphold the public’s right of access to information. Such information can be essential to exposing human rights violations and to ensuring democratic accountability. While governments are entitled to restrict the dissemination of certain information that could seriously imperil national security, the overly broad definition and lack of any public interest exception or defense could allow authorities to charge those who expose government wrongdoing.

Article 12 of the bill provides for a criminal penalty of two years in prison and a fine of up to 10.000 dinars ($US 5,109) for anyone found guilty of intentionally “denigrating” the armed forces with the objective of “harming public order.”

Criminalizing “denigration” of state institutions is incompatible with the robust protections for freedom of expression under international law and conflicts with rights guaranteed in Tunisia’s 2014 Constitution. Furthermore, the vague concept of denigration of armed forces is inconsistent with the principle of legality, a cornerstone of international human rights law, which requires states to ensure that criminal offences are clearly and precisely defined within the law. Because Article 12 does not specify what acts and/or omissions would constitute “denigration,” it further risks giving authorities wide discretion to make arrests for unjustified grounds such as arguing with the police or being slow to heed their orders, or in reprisal for filing a complaint against the police, the groups said. The provision’s requirement that the denigration be motivated by the objective of “harming public order” is so broad that it hardly limits the discretion authorities have to bring charges.

“Instead of repealing the existing offenses that criminalize speech against state bodies and are inconsistent with the robust protections for free speech in the new constitution, the Tunisian authorities are proposing to add another one,” said Karim Lahidji, president of the International Human Rights Federation (FIDH).

The bill would exonerate the security forces from criminal liability for their use of lethal force to repel attacks against their homes, objects and vehicles, when the force used was necessary and proportionate to the danger. This provision would mean that security forces would be permitted under the law to respond with lethal force to an attack on property that does not threaten their own or anyone else’s life or risk serious injury.

“The bill needs to be amended to ensure that the intentional use of lethal force may only be permitted when necessary, proportionate and strictly unavoidable in order to protect life as required under international law and standards,” said Said Benarbia, director of the Middle East and North Africa Program at the International Commission of Jurists.

The use of deadly force solely to protect property is inconsistent with the duty of the state to respect and protect the right to life and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

“Tunisian lawmakers should use the draft law as an opportunity to harmonize laws on the use of force by police with international norms, and provide adequate training in policing techniques, including on avoiding force when unnecessary and on the proper use of both lethal and less lethal weapons;” said Michel Tubiana, President of the Euro---Mediterranean Human Rights Network.

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For details of problematic provisions and a list of the organizations issuing the statement, please see below.

“National Security Secrets”
The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, an influential set of principles issued in 1996 by experts in international law on the applicability of human rights protections to national security information, provide: “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 clarify 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.”

The Principles further define legitimate national security interest as "the protection of the 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."

The widely endorsed 2013 Global Principles on National Security and the Right to Information (Tshwane Principles) developed further those requirements, noting for example that there is an overriding public interest in disclosure of information regarding gross violations of human rights and making clear that whistleblowers who expose wrongdoing should generally not be subject to criminal or civil sanctions.

The United Nations Human Rights Committee, in General Comment No. 34 interpreting article 19 on freedom of expression of the International Covenant on Civil and Political Rights (ICCPR), to which Tunisia is party, has noted that governments must take "extreme care" to ensure that laws relating to 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 others who disseminate such information.

"Denigrating" the Armed Forces

The denigration clause would add a new speech offense to existing laws, which already include many articles that criminalize free speech, including provisions on defamation of state bodies, offenses against the head of state and offenses against the dignity, reputation or morale of the army. UN Human Rights Committee General Comment 34 states that "States parties should not prohibit criticism of institutions, such as the army or the administration." In its 2008 review of Tunisia, the UN Human Rights Committee expressed specific concern about criminalization of "criticism of official bodies, the army or the administration." In its 2012 Universal Periodic Review of Tunisia, the UN Human Rights Council asked the authorities to revise remnants of Ben Ali-era legal code that stifle freedom of expression so as to fully protect those rights in accordance with international human rights law.

In addition to running afoul of Tunisia's obligations under the ICCPR, the provisions on national security secrets and denigration of the police conflicts with rights guaranteed in Tunisia's new Constitution, adopted on January 27, 2014, which protects freedom of opinion, thought, expression, information and publication. The Constitution also enshrines in article 32 "the right to information and the right of access to information" and communication networks. In addition, article 49 of the Constitution limits permissible restrictions to rights and freedoms, saying they must not compromise the essence of such rights and can only be imposed to protect the rights of others, public order, national defense, public health, or public morals. When imposed, such restrictions must be proportionate to the intended objective.

Use of Lethal Force

Under article 18 of the current draft of the bill, a "member of armed forces does not incur criminal liability resulting from injuring or killing a person who commits one of the crimes mentioned in articles 14-16 of the law, if the act was necessary to achieve the legitimate aim of

protecting lives or property, and when the means used were the only ones able to repel the aggression, and the use of force was proportionate to the danger."

The article closely follows the guidelines on the use of force in articles 20-22 of Tunisia's Law 69-4 of January 24, 1969, regulating public gatherings. These articles provide that law enforcement officers may use firearms only when they have no other means to defend "the places they occupy, the buildings they are protecting, or the positions or persons they are assigned to guard, or if the resistance cannot be mitigated by any means other than the use of arms." While the provision of the new bill introduces one improvement in the law – the principle of proportionality- it would not bring the law into line with international standards on the use of force.

Indeed, article 18 of the bill has even a broader scope than the 69-4 Law as it applies to the use of force not only in demonstrations but also in case of individual attacks against the "homes of Armed Forces agents or their objects and vehicles." It is therefore inconsistent with international standards, notably the obligation of the state to respect and protect the right to life and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which state,

> "Law enforcement officials shall not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

Co-signers

Amnesty International
ARTICLE 19
Avocats Sans Frontières- Belgique
Action of Christians Against Torture (ACAT)
Euro Mediterranean Human Rights Network
Fédération Internationale des Droits de l'Homme (International Federation of Human Rights)
Human Rights Watch
International Commission of Jurists
International Media Support
Organisation Mondiale Contre la Torture (World Organisation Against Torture)
Oxfam
Reporters Sans Frontières
The Carter Center