

Tunisia: Parliament should reject the draft law on the state of emergency

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Tunisian Parliament should reject the revised [Draft Law No. 91-2018](#) on the state of emergency when it is tabled in the plenary session [starting tomorrow](#), said the ICJ today.

The Draft Law is inconsistent with the rule of law and Tunisia's international human rights obligations and should be considered further to ensure its compliance with international law and standards.

The Draft Law was approved by the Parliament's Committee on Rights, Freedoms and External Relations on 15 May 2019. Articles 2, 3 and 4 of the Draft Law authorize the President to declare a state of emergency for one month, renewable once, "in the event of catastrophic events" or "imminent danger threatening public order and security, the security of people and institutions and the vital interests and property of the state."

Tunisia has remained under a continuous state of emergency since 24 November 2015.

"The Draft Law would entrench the President's power to unilaterally determine what constitutes an emergency on broad grounds," said Said Benarbia, the ICJ's MENA Programme Director. "It should be amended to enhance legislative oversight over the declaration of the state of emergency, provide for effective judicial review over emergency measures, and ensure that such measures do not unlawfully infringe on the enjoyment of recognised rights and freedoms."

Under the law, regional governors could impose restrictions on movement and prohibit gatherings where necessary for "the maintenance of security and public order." They could suspend the activities of associations that they decide act in a manner "contrary to public order and security" that "obstructs the work of the public authorities". The Minister of Interior may also order house arrest and other measures against anyone deemed to "hamper public order and security", including by summoning them to appear at the police station twice a day and intercepting their communications and correspondence.

The ICJ stressed that these measures risk interference with a number of rights, including freedom of expression, association, assembly, movement and the rights to liberty.

"The proposed law would entrench opportunities for Tunisian authorities to continue perpetrating abuses of human rights under arbitrarily imposed states of emergency," said Kate Vigneswaran, ICJ's MENA Senior Legal Adviser. "It's up to Parliament to ensure that appropriate safeguards are put in place which clearly limit the basis for imposing any restrictive measure to objective criteria and a real risk of harm, not the whims and political desires of the executive."

The ICJ said that notwithstanding the inclusion of procedural safeguards – including registration of such decisions with reasons with the Public Prosecutor – the broad basis for the imposition of house arrest is concerning given Tunisian authorities' abusive use of house arrest in the past.

Contact:

Said Benarbia, Director, ICJ Middle East and North Africa Programme, t: +41-22-979-3817;
e: said.benarbia@icj.org

Kate Vigneswaran, Senior Legal Adviser, ICJ Middle East and North Africa Programme, t: +31-62-489-4664; e: [kate.vigneswaran\(a\)icj.org](mailto:kate.vigneswaran@icj.org)

Background information

Tunisia has been under a continuous state of emergency since 24 November 2015, after a suicide bombing in Tunis killed 12 presidential guards. Tunisia's President of the Republic [renewed](#) the state of emergency on 29 May 2020 until 25 November 2020.

Tunisia's law on the state of emergency is currently governed by [Decree No. 78-50](#) of 26 January 1978. Under this law, the President of the Republic may declare a state of emergency of up to 30 days, renewable, in response to serious disturbances to the public order. The decree also gives the Interior Ministry and regional governors the authority to suspend certain rights. Draft Law No. 91-2018 is intended to replace this Decree.

Under the International Covenant on Civil and Political Rights, to which Tunisia is a party, a limited number of human rights may be subjected to derogation pursuant to a declared state of emergency, but only to the extent required to meet a specific threat to the life of the nation.

In its review on compliance with the ICCPR, Tunisia early this year, the UN Human Rights Committee (HRC) [expressed concerns](#) about limitations imposed freedom of expression, association and peaceful assembly in Tunisia, noting that they may apply only "to the extent strictly required by the exigencies of the situation" under [international law](#). It also expressed concern with the abusive use of house arrest by Tunisian authorities, noting that under international law Tunisia must ensure that house arrest and restrictions on the right to privacy should only be applied when strictly necessary and in a proportionate manner.

On 24 April 2020, the HRC [noted](#) with concern that Tunisian regulations on states of emergency are not in conformity with the provisions of article 4 of the International Covenant on Civil and Political Rights (the Covenant) or with Committee's General Comment No. 29 on derogations from the Covenant during states of emergency. The Committee called on the Tunisian authorities to:

- (a) Envisage ending the continuous extension of the state of emergency;
- (b) Accelerate the process of adopting a law that is in conformity with the provisions of article 4 of the Covenant and the Committee's general comment No. 29 on derogations from the Covenant during states of emergency;
- (c) Ensure the rule of law and respect for non-derogable rights enshrined in the Covenant during states of emergency, in particular the right to due process of law;
- (d) Put an end to the misuse of house arrest, restrictions on freedom of movement and violations of the right to privacy.