

Tunisia: Counterterror Law Endangers Rights

Legislate Safeguards Against Abuse

Tunis, July 31, 2015 – Tunisia’s new counterterrorism law imperils human rights and lacks the necessary safeguards against abuse, eight nongovernmental organizations said today. The law grants security forces broad and vague monitoring and surveillance powers, extends incommunicado detention from 6 to up to 15 days for terrorism suspects, and permits courts to close hearings to the public and allow witnesses to remain anonymous to the defendants. Tunisia’s parliament should reduce the risk of abuse that the new law has created, including by amending the Code of Criminal Procedures to ensure that all detainees have the right to see a lawyer, as soon as they are detained and also prior to and during interrogation, the organizations said.

“Terrorism endangers everyone in Tunisia, but so does a law that allows the police to interrogate suspects without a lawyer for 15 days,” said Eric Goldstein, deputy Middle East and North Africa director at Human Rights Watch.

The Assembly of the People’s Representatives, Tunisia’s 217-member parliament, adopted the law on July 25, 2015, with 174 in favor and 10 abstentions. The government sent the bill to parliament on March 26, following the March 18 attack on the Bardo Museum in Tunis, in which 23 people were killed.

This law replaces the one adopted in 2003 under then-President Zine El Abidine Ben Ali. By the time he was ousted in January 2011, the courts had tried about 3,000 people under that law. Many suspected opponents were charged under the law in the absence of any credible evidence linking them to terrorism, with convictions based on confessions extracted under torture, as pointed out by a United Nations report. After Ben Ali’s ouster, Tunisia’s interim authorities almost stopped applying the 2003 law, then resumed in May 2013, after a series of armed attacks on security forces in the Chaambi Mountains, near the Algerian border.

The parliament amended the legislation during parliamentary debate to promote increased protection of human rights, including a measure to strengthen the right of journalists to shield their sources and another that criminalizes unauthorized government surveillance, however many gaps remain in the adopted text.

The organizations are concerned that the definition of terrorism contained in the law is too broad and ambiguous. For a crime to be considered a terrorist act, it has to be part of an individual or collective enterprise aiming at intentionally spreading terror among the population or forcing the government or an international organization to accomplish an act or abstain from so doing. The law includes as terrorist offenses the act of “prejudicing private and public property, vital resources, infrastructures, means of transport and communication, IT systems or public services.” Such a definition could allow the repression of certain acts that are not of a terrorist nature as defined by international law. Simple peaceful demonstrations accompanied by a certain amount of disorder could be qualified as acts of terrorism.

Furthermore, the law extends the limit on pre-charge detention in terrorism cases from 6 days under the 2003 law to 15 days, during which time the suspect remains incommunicado and has no access to a lawyer or family members. Prolonged incommunicado police custody heightens the vulnerability of detainees to torture and other ill-treatment, the groups said. Such abuses were rampant under the ousted regime and remain a reality, with several reported cases of torture and suspicious deaths in police custody since 2011. Although the 2014 Constitution gives detainees the right to be

represented by a lawyer upon arrest, under the Code of Criminal Procedures, the right to access to a lawyer is allowed only after the person appears before an investigative judge.

Parliament should therefore revise the Code of Criminal Procedures to grant any detainee in police custody the right to see a lawyer immediately after arrest, as required by the International Covenant on Civil and Political Rights and the African Charter on Human and People's Rights, both ratified by Tunisia. Under the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, "all arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate with a lawyer, without delay, interception or censorship and in full confidentiality."

Parliament has yet to debate a draft law to reform the Code of Criminal Procedures. The draft, which the previous government submitted to parliament on April 12, 2013, affirms the right to a lawyer promptly after arrest and requires the presence of a lawyer during all interrogations, court appearances and cross-examinations between an accused and witnesses or victims of an alleged offense.

It is also of the organizations concern that the new counterterrorism law imposes the death penalty on a defendant convicted of a terrorist act resulting in death or for rape. The death penalty was not abolished by the 2014 constitution and is still enshrined in the penal code for several crimes. Tunisia has observed a de facto moratorium on executions since 1991. The signatory organizations oppose capital punishment under all circumstances, as a practice unique in its cruelty and finality.

The law allows trial judges to close hearings to the public. Article 14 of the International Covenant on Civil and Political Rights (ICCPR) states that everyone shall be entitled to a fair and public hearing. However, the presence of the media and the general public may be restricted only under exceptional circumstances such as "for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice." The new law fails to define the narrow criteria that must be met before any portion of a trial is closed, thereby granting judges excessive discretion, the organizations said.

The law states that, if circumstances require, all data likely to identify victims, witnesses, and any other relevant person may be kept confidential, including from the accused and their legal counsel. The use of anonymous witnesses as specified in articles 68 and 70 could further jeopardize the rights of the accused to mount an effective defense by curtailing the person's ability to contest incriminating testimony provided by those witnesses.

Article 14 of the ICCPR provides that an accused party has the right to examine, or to have examined, the witnesses testifying against him or her. The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted by the African Commission on Human and Peoples' Rights, state: "The accused has a right to examine, or have examined, witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her." They further state that: "The testimony of anonymous witnesses during a trial will be allowed only in exceptional circumstances, taking into consideration the nature and the circumstances of the offence and the protection of the security of the witness and if it is determined to be in the interests of justice."

Tunisia's counterterrorism law falls short of this requirement by giving broad leeway to judges to admit testimony by anonymous witnesses into evidence, specifying no criteria that must be met other than "if circumstances so require."

The law prohibits “praising terrorism” in broad terms that fail to meet the requirements set by international law for restricting the right to freedom of expression. According to the law, any person who is found to have “publicly and clearly praised” a terrorist crime, the perpetrator of a terrorist crime, an organization or an alliance connected with terrorist crimes, their members or their activities, could be sentenced to up to five years in prison. This article could be used to unjustifiably restrict the freedom of expression of individuals and groups that legitimately exercise their right to freedom of expression.

Legislators added a last-minute provision protecting both journalists and doctors, who, along with lawyers, will now be entitled to protect the confidentiality of information to which they had access during the course of their professional work. This provision enhances the protection of freedom of the press by reassuring both journalists and their potential sources that the state cannot, in the name of investigating a terrorism offence, overturn an understanding of confidentiality reached between them.

The law grants security and intelligence services exceptional powers to use “special investigative techniques,” including surveillance, interception of communication, recording of phone conversations, and infiltration of suspected terrorist groups by policemen, provided they obtain advance judicial approval, and then for a period not to exceed four months. During the last voting session, Parliament added a safeguard against abuse by making state agents liable to a one-year prison sentence if they conduct surveillance or infiltrate groups without judicial authorization.

“By approving this law, parliament has put at risk the rights that Tunisians fought hard to acquire,” said Gabriel Reiter, Director of the Tunisia office for the World Organization Against Torture. “It should now legislate effective safeguards of those rights so that they are not collateral damage in the legitimate struggle to protect Tunisia from terrorism.”

List of signatory organizations:

Amnesty International

Article 19

Avocats Sans Frontières – Belgique

Euro Med Rights

Fédération Internationale des Droits de l’Homme (International Federation of Human Rights)

Human Rights Watch

Organisation Mondiale Contre la Torture (World Organization Against Torture)

The Carter Center

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