

# AMNESTY INTERNATIONAL JOINT PUBLIC STATEMENT

Index AI: MDE 30/001/2014

3 January 2014

## **Tunisia: Strengthen New Constitution's Human Rights Protection *Guarantee Equality for All; Affirm International Law Obligations***

### **Joint Statement by AI Bawsala, Amnesty International Tunisia, Human Rights Watch and Carter Center**

Tunisia should bring its nearly completed draft constitution in line with international human rights standards and the country's obligations under international law, four human rights organizations said today. The National Constituent Assembly (NCA) will begin voting on the constitution article by article on January 3, 2014.

Among the most urgently needed amendments are a clear affirmation that human rights conventions already ratified by Tunisia are binding and have supremacy over domestic law and inclusion of an anti-discrimination provision that articulates the principle of equality between men and women in all its facets.

The article-by-article vote and first complete reading of the draft constitution are the final stage of the constitution-making process, leading to the adoption of a constitution that will shape the future of Tunisia for the next generations. The rules the assembly set for passage require a separate vote on each article, with a simple majority required for passage. The assembly must then approve the entire draft in a separate vote. If the draft fails to pass by a two-thirds majority, it will be submitted again for voting with the same two-thirds majority required. If the second attempt fails, it goes next to a national referendum.

AI Bawsala, Amnesty International, Human Rights Watch, and The Carter Center have followed the process since it began with the creation of the NCA to draft the constitution on November 23, 2011. The groups issued a joint statement on July 24, 2013, with key recommendations for strengthening human rights and freedoms in the constitution.

Following the release of the final draft of the constitution on June 1, the assembly created a "Consensus Commission" tasked with reaching broad agreement on the most contentious issues in the draft. The commission worked intermittently, and at times intensively, to resolve differences, against a backdrop of political crisis triggered by the assassination of Mohamed Brahmi, a member of the assembly, on July 25.

The commission produced a new draft incorporating elements of compromise and also adopted some of the recommendations by rights groups. On January 2, 2014, the plenary session of the NCA amended the internal rules of procedure, making the recommendations of the consensus commission binding on the various blocs within the NCA.

AI Bawsala, Amnesty International, Human Rights Watch, and The Carter Center commended efforts by the Consensus Commission to reach agreements before the start of the voting process in order to avoid blockages during the plenary discussions, and to ensure that the process is as inclusive as possible. Several of the commission's recommendations could help to strengthen constitutional protections for rights and freedoms, the groups said. Yet some do not go far enough, and several key issues remain unaddressed.

The organizations urged the assembly to address remaining gaps in the new draft and to consider the following recommendations for language not proposed for revision by the Consensus Commission:

- Reconsider the death penalty in the new constitution. Article 21 of the draft constitution provides that "the right to life is sacred, and it cannot be infringed upon except in grave cases provided for by the law". The wording of this article is vague in that it does not specify which cases can legitimize infringements of the right to life and under what conditions. The four organizations believe that the death penalty constitutes a violation of the right to life and the right to be free from cruel, inhuman or degrading treatment or punishment.
- Amend the phrase "the supreme/noble and universal human rights principles" in the preamble by deleting "noble/supreme," as it may be interpreted to imply that there is a hierarchy of universal human rights. The terminology "supreme/noble" was included in the fourth draft to replace a controversial reference to the "cultural specificities of the Tunisian people." While the new formulation in the preamble which references universal human rights is an improvement, the apposition of "noble/supreme" might reintroduce relativity and erode the very meaning of universal human rights, which are by nature indivisible, interdependent and inter-related
- Amend article 19 to ensure that all treaties duly ratified by Tunisia have a status superior to national law; the current article grants supremacy only to treaties ratified by the Assembly of the People's Representatives, which is the name of the future legislative body. This could mean that treaties approved by former legislative bodies would not have the same superior legal status. Article 19 should refer to any treaties "duly approved and ratified" instead of specifying only those approved by the Assembly of the People's Representatives, to avoid such differentiation.
- Further strengthen article 48 by providing that judges should interpret the law, including the constitution, to give priority to enforcement of a right or fundamental freedom, and to take into account the interpretation of human rights treaties from any official treaty body, including courts and commissions, as a minimum standard.
- Strengthen guarantees for economic, social and cultural rights by specifying that Tunisia has an obligation to achieve progressively the full realization of these rights to the maximum of the country's available resources, including by providing for specific mechanisms to achieve these rights.
- Enshrine the principles of equality and non-discrimination before the law and extend it to anyone subject to the jurisdiction of Tunisian authorities, including both citizens and foreigners. Article 20 should specify that discrimination, direct and indirect, is prohibited on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and that discriminatory laws or state policies are unconstitutional. The current draft limits the protection of rights to citizens and does not specify the prohibited grounds of discrimination.
- Articulate the principle of equality between men and women in all its facets. The constitution should specify that men and women are equal and entitled to full equality in law and practice, as well as to equal opportunities in all areas of life – whether civil, cultural, economic, political, or social, as defined in international human rights standards. Article 45 should specify equality in opportunity *and rights* between men and women. It should amend the phrase: "the state takes all necessary measures to eliminate violence against women" to include "all forms of discrimination and violence." Also add a provision to direct the state to adopt positive measures in all areas to achieve the effective and equal empowerment of women.

- Clearly specify in article 79 that any restrictions to rights and freedoms during a state of emergency must be specified by law, demonstrably necessary for the purpose of protecting a legitimate aim, in a manner that is proportionate to protect that aim, for a specific period of time to meet the exigencies of the situation, and subject to judicial review. Furthermore, specify that rights considered non-derogable, or absolute, in international law, such as the prohibition of torture, slavery and the right to freedom of thought and conscience remain protected, and cannot be restricted under emergency powers.
- State clearly a prohibition on cruel, inhuman and degrading treatment or punishment and uphold the principle of *nonrefoulement*, which forbids the forced return to a serious risk of persecution.
- Incorporate in article 104 international standards on independence of the judiciary, including the unambiguous guarantee of security of tenure and independence from the executive with respect to appointment, assignment, promotion and discipline. In particular, removal of judges should be possible only for serious misconduct by a reasoned decision of an independent supervising institution, the High Judicial Council which guarantees the right to due process. In addition, the chapter on the judiciary should include strong guarantees of the independence of the prosecution from the executive branch.

The groups also urged the NCA to adopt the language proposed by the Consensus Commission in the following areas:

- Adopt the draft language recommended by the Consensus Commission to remove excessive restrictions on rights and freedoms in the majority of provisions, including the freedom of movement, expression and information, and assembly.
- Adopt the Consensus Commission's draft language strengthening the wording of article 48 (general limitation clause for rights and freedoms). The commission's proposed language better reflects Tunisia's international legal obligations by stipulating that any restrictions on rights and freedoms should be limited to those "necessary and proportional to secure a legitimate aim."
- Adopt the commission's draft language regarding the transitional provisions, granting the Constitutional Court - which shall be created within a year of the results of the legislative elections - immediately upon its creation the full power to consider the constitutionality of existing laws and proposed laws, and to strike down laws and articles of laws that violate the rights provisions of the constitution (chapter 10) and granting the right to refer new laws to the Constitutional Court not only to the President of the Republic, as previously envisaged, but also to the prime minister as well as to 30 members of the Assembly of People's Representatives (article 117).

**For more details on the above recommendations, please see:**

- Al Bawsala, Amnesty International, Human Rights Watch, and The Carter Center publication, July 24, 2013, "Tunisia: Strengthen New Constitution's Rights Protections"

[http://www.cartercenter.org/news/pr/tunisia\\_072413.html](http://www.cartercenter.org/news/pr/tunisia_072413.html)

<http://www.hrw.org/news/2013/07/24/tunisia-strengthen-new-constitution-s-rights-protection-0>

- The Carter Center publication, June 12, 2013, "The Carter Center Congratulates Tunisia's National Constituent Assembly on Final Draft of Constitution and Urges Safeguards for Human Rights"

<http://cartercenter.org/news/pr/tunisia-061213.html>

- Amnesty International publication, June 5, 2013, "Last opportunity for Tunisian lawmakers to enshrine human rights for all in Tunisia's new Constitution"

<http://www.amnesty.org/en/library/asset/MDE30/005/2013/en/10fae36f-a04f-4237-9767->

[b0ca42225178/mde300052013en.pdf](http://b0ca42225178/mde300052013en.pdf)

- Human Rights Watch publication, May 13, 2013, "Tunisia: Revise the Draft Constitution"  
<http://www.hrw.org/news/2013/05/13/tunisia-revise-draft-constitution>

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