



Tunisia:
New draft “anti-terrorism” law will further undermine human rights

Amnesty International briefing note to the European Union
EU-Tunisia Association Council 30 September 2003
AI Index: MDE 30/021/2003

Amnesty International
EU Office
Rue d'Arlon 39-41
B-1000 Brussels

Tel. +32 2 502 14 99
Fax +32 2 502 56 86
e-mail amnesty@aieu.be

Tunisia: new draft “anti-terrorism” law will further undermine human rights

1. Introduction
2. Background on the use of "anti-terrorist" legislation in Tunisia
3. Summary of concerns regarding the draft "anti-terrorism" law
4. Recommendations to the Tunisian authorities
5. Recommendations to the European Union

1. Introduction

Since the attacks in the United States on 11 September 2001, the European Union has underlined on many occasions, including at the Third Committee of the UN General Assembly and at the UN Commission on Human Rights, that “terrorism” must not be fought at the expense of human rights. As the European Commissioner for External Relations, Chris Patten recently stated, “the fight against terrorism must be conditioned on respect for human rights, not the other way around”¹. At the same time, Tunisia and the European Union have undertaken to base their bilateral relations on respect for human rights, democratic principles and the rule of law, as stipulated in Article 2 of the Euro-Mediterranean Association Agreement. Amnesty International understands that a draft bill to “*support the international effort to combat terrorism and money laundering*” is now before the Tunisian Chamber of Deputies (*Chambre des Députés*) for consideration and vote². Amnesty International considers this draft seriously flawed and fears that it will further undermine human rights in Tunisia.

In their report in December 2001 to the UN Counter-Terrorism Committee, the Tunisian authorities had announced their intention to produce “*a comprehensive national law on counter-terrorism*” (Report S/2001/1316, 26 December 2001). In a letter sent to the Tunisian Human Rights Minister in August 2002, Amnesty International asked for the announced “anti-terrorism” legislation to be made public and enquired about the safeguards which would be given to protect human rights, however this letter yielded no response. Now that the draft bill has been tabled, Amnesty International is releasing a summary of its concerns about the new law, and recommendations to the European Union and the Tunisian authorities.

Amnesty International recognizes the responsibility of governments to protect their citizens from acts of violence on their territory and to bring to justice those responsible. However, investigations, legal proceedings and trials must always be in full compliance with international human rights standards. Amnesty International is concerned that the Tunisian authorities have violated the rights of detainees in scores of cases linked to such acts, including in the case of Belgacem Naouar, who was arrested after the explosion of a truck outside a synagogue in Djerba on 11 April 2002 which killed 21 people, including 14 German tourists.³. The existing provisions of the Tunisian legislation on “terrorism” were already a matter of concern as they have been used to facilitate the imprisonment of prisoners of conscience. There are fears that new

¹ Speech delivered in Brussels on 14 July 2003, Speech/03/364, http://www.europa.eu.int/comm/external_relations/news/patten/sp03_364.htm
Special Seminar with NGOs - Brussels, 14th July 2003 - SPEECH/03/364 -

² The draft law was approved by the Constitutional Council (*Conseil Constitutionne*) on 4 June 2003.

³ See: *Tunisia: the cycle of injustice*, AI Index MDE 30/001/2003.

legislation based on a broad definition of “terrorism” may further undermine human rights, including by further serious restrictions on freedom of expression and belief.

Amnesty International urges the Tunisian authorities to revise the draft legislation and ensure its compliance with international human rights standards ratified by the country, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The organization also calls on the European Union to demand, in the framework of its bilateral political dialogue with Tunisia, that Tunisia honour its human rights obligations under the Euro-Mediterranean Association Agreement. At the forthcoming Association Council in Brussels on 30 September, the EU should urge the Tunisian authorities that measures to combat “terrorism” are embedded in a solid human rights framework that guarantees full respect of human rights at all times.

2. Background on the use of “anti-terrorist” legislation in Tunisia

Well before the 11 September 2001 attacks in the USA, the authorities have used the fear of violent Islamist activities to justify “security” and “anti-terrorist” measures. Since the late 80s, the authorities have for instance tried without success to provide evidence that the unauthorized Islamist movement *Ennahda* (Renaissance) was an organization involved in attempts to overthrow the government by violence. The leadership of *Ennahda* repeatedly condemned the use of violence. Following the attacks in the USA on 11 September 2001, the Tunisian authorities reiterated that they had long warned of the “terrorist threat”. The Tunisian authorities have in fact used “security” concerns as a pretext for repression of political dissent and critical discourse across the political spectrum.

Under the current legislation, the definition of “terrorism” in Tunisian law, especially *Article 52 bis* of the Penal Code, is already broad.⁴ The Tunisian authorities have been casting the net of “terrorism” charges so wide as to include prisoners of conscience⁵. *Article 52 bis* has been used to criminalize peaceful opposition activities, as illustrated in a June 2003 Amnesty International report with recent cases of Tunisian nationals imprisoned after unfair trial⁶.

The charge of “terrorism” is brought against individuals not known to have used or advocated violence. Members of unauthorized movements such as *Ennahda*, who were previously charged with belonging to an unauthorized association, now frequently face a charge of supporting a “terrorist” organization which incurs a heavier sentence⁷.

Tunisian nationals living abroad may also be charged with “terrorist” activities under *Article 52 bis* and under provisions of the Military Justice Code. The Military Justice Code allows legal action against Tunisians who serve, during a period of peace, in a foreign army or in a “terrorist” organization operating from abroad (*Article 123*).

Since 1999⁸, the practice of trying civilians before military courts has resumed. Scores of civilians have been tried before courts located within military compounds and sentenced on

⁴ A 1993 amendment to the Penal Code qualified as acts of terrorism “*all actions relating to individual or collective initiative, aiming at undermining individuals or properties, through intimidation or terror*” and “*acts of incitement to hatred or to religious or other fanaticism, regardless of the means used*” (*Article 52 bis*, amended by Law 93-112 of 22 November 1993).

⁵ Prisoners of Conscience, according to Amnesty International’s mandate, are people who are detained for their beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status, and who have not used or advocated violence.

⁶ Tunisia: the cycle of injustice, AI Index MDE 30/001/2003, June 2003, 40p.

⁷ The charge of “terrorism” is usually combined with other charges such as membership of a criminal organization (*association de malfaiteurs*) under Articles 131 to 135 of the Penal Code, which carries up to 12 years’ imprisonment.

⁸ From 1992 to 1999 political cases were rarely referred to military courts. In July and August 1992, 265 defendants were convicted after unfair mass trials by military courts in Tunis on charges of plotting to overthrow the government and belonging to an unauthorized association. Amnesty International’s recommendations for a retrial and for independent

charges of “terrorism” to heavy prison sentences after unfair trials. Similarly to what happens in political cases brought before ordinary criminal courts, confessions allegedly extracted under torture are used as evidence in court; the rights of the defence are routinely violated. Amnesty International has also expressed specific concerns regarding trials before military court: the independence of the court is undermined by the method of appointment of its members; there are restrictions on the right to a public hearing and on the right to appeal⁹.

3. Summary of concerns regarding the draft “anti-terrorism” law

Amnesty International is concerned that the new “anti-terrorism” law, if adopted, may further jeopardize the guarantee of fundamental human rights. The draft law with its 103 articles is divided into three sections dealing with “terrorism” and “money laundering”. Amnesty International’s analysis will focus on the first section (Articles 4 to 61) on “anti-terrorism”. Following is an initial analysis of the draft legislation which underlines some of Amnesty International’s concerns.

A broad definition of “terrorism”: The draft law defines in its Article 4 a crime of “terrorism” as every crime, regardless of its motives, connected to an individual or collective project aiming at terrorising people and spreading fear, for the purpose of, among other things, influencing state policies and forcing it to carry out a certain act or refraining from doing it, or disturbing public order or international peace and security, or damaging public facilities and transport and infrastructure.

It should be noted that the law does not limit the definition of the act to the means used, more specifically, the use of violent means. The law does not define terms like terrorising people, influencing state policies, harming public facilities, and does not define the level of damage resulting that would render the act a crime of “terrorism”. Without clear definitions in the law of terms used, Amnesty International is concerned that acts of freedom of expression advocating change of public policies, which are totally consistent with international law, would be considered acts of “terrorism” under this law. Further, without clear definition of terms used, acts that should be punishable under regular criminal law would under this law be punishable as acts of “terrorism”, therefore attracting much higher sentences through trials in military courts that are grossly unfair.

Possible use to restrict freedoms of expression and belief: Article 6 of the draft law states that “crimes of incitement to hatred, religious or ethnic fanaticism”, are treated as a crime of “terrorism”. Article 20 (2) of the ICCPR states that “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” These are the only limitations permitted in Article 20.

Amnesty International is concerned that without a clear definition of terms used in this provision, or in the definition of “terrorism” in the law, this could be used to place serious restrictions on freedom of expression and belief that are protected and consistent with Articles 18 and 19 of the ICCPR on freedom of expression and belief. Further, this would mean that persons accused of “terrorist” acts under such provisions would be subjected to trials in the military courts and therefore receive very high sentences prescribed under this law after trials that are grossly unfair.

inquiries into allegations of torture and of pre-trial irregularities – notably prolonged incommunicado detention, falsified arrest dates and lack of access to lawyers – were ignored. See Amnesty International, *Tunisia: Heavy sentences after unfair trials*, October 1992 (AI Index: MDE 30/023/1992).

⁹ See: *Tunisia: the cycle of injustice*, AI Index MDE 30/001/2003.

Rights of the child could be undermined: Although the law imposes the highest punishment if the crime of “terrorism” was committed using children (article 30) the law does not expressly say that it does not apply to children who might be involved in such criminal activities themselves. In fact, the law states that the Child Protection Code applies to them (Article 3). This is a concern to Amnesty International in the light of the very low age of criminal responsibility in Tunisia, currently set at 13.

Statute of limitations: The law allows for dropping criminal charges or sentences in cases of crimes of “terrorism” after a defined number of years (Articles 37 and 61). AI is concerned about the imposition of a general statute of limitations of this kind. International law places the responsibility on the international community to act on certain cases of grave human rights violations that are of concern to the international community.¹⁰ There should be no statute of limitations in prosecution of these crimes.

No safeguards for extraditions: The law requires extradition in cases of “terrorist” crimes when the crime was committed outside Tunisia and the person accused of it is found in Tunisia (Article 60). The law, however, does not include any safeguards in relation to surrender of individuals or extradition. Amnesty International believes that surrender and extradition must not be carried out to a jurisdiction where they would become prisoners of conscience, be subjected to the imposition of the death penalty, or torture, cruel, inhuman or degrading treatment or punishment. There should also be guarantees that alleged perpetrators should have a fair trial.

Pre-trial detention without judicial review: the law allows for the renewal of the pre-trial detention period by the prosecutor's office without having to bring the accused before a judge, or without charges. The law does not specify clearly whether this refers to the renewal of pre-trial detention period up to 6 days as specified in Article 13 (bis) of the Criminal Procedures Code, or whether this is an unlimited period of pre-trial detention. Even if this is referring to the 6 days in the Criminal Procedures Code, Amnesty International is concerned that this is a very long pre-trial detention period without judicial review. The Special Rapporteur on Torture stated that “the time required by law to obtain a judicial warrant of pre-trial detention ..., in any case, should not exceed a period of 48 hours.... The Special Rapporteur would like to recall that the exigencies of dealing with terrorist criminal activities cannot justify interpreting the notion of the “reasonableness” of the suspicion on which an arrest and then a detention may be based, to the point of impairing its very meaning.”¹¹

Prohibition of release pending appeal: Article 47 of the terrorism law states that pending appeal, a detention sentence against someone charged of terrorism will be implemented. There is no possibility of release pending appeal. Amnesty International is concerned that this is contrary to international standards, particularly Article 9 (3) of the International Covenant on Civil and Political Rights which states: “It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.” Amnesty International’s concerns are compounded in the light of the general nature of definitions and other provisions in the law. Since people might be detained under this law for practicing their right to hold or express opinion and belief in accordance with international standards, it is particularly important that release pending appeal should be the rule and not the

¹⁰ These include the following crimes under international law that are of concern to Amnesty International: war crimes, crimes against humanity, and genocide, as well as torture, extrajudicial executions, and “disappearances”.

¹¹ Report of the Special Rapporteur on torture to the General Assembly, A/57/173, (2 July 2002), paras 19 and 20.

other way around. The implementation of detention orders pending appeal should be considered on the merits of each individual case, and there should not be a general rule prohibiting release, as is the case in the draft law.

4. Recommendations to the Tunisian authorities

Amnesty International calls on the Tunisian authorities to revise the draft legislation to ensure its compliance with international human rights standards. The organization reiterates its call on the Tunisian authorities to:

- Stop the practice of trying civilians before military courts where procedures fall short of international standards for fair trials;
- Repeal or amend all laws, including Article 52 *bis* of the Penal Code and Article 123 of the Military Justice Code, which facilitate the imprisonment of prisoners of conscience.

5. Recommendations to the European Union

Amnesty International calls on the European Union to urge Tunisia to fulfil its obligations under international human rights law and under the Association Agreement by:

- Revising the draft legislation on “anti-terrorism” in line with international human rights standards. In particular, the European Union should call on Tunisia to ensure that measures to combat “terrorism” and to enhance security are embedded in a solid human rights framework. Such safeguards should guarantee:
 - full respect for human rights at all times, in particular rights that are non-derogable: the right to life, freedom from torture, freedom of thought, conscience and religion and the right not to be subjected to retroactive punishment;
 - full respect for the rights of people who are suspected of and convicted for involvement in “terrorism”, including the right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment, the right to a trial in accordance with international fair trial standards and without the imposition of the death penalty.

Amnesty International also calls on the European Union to engage Tunisia in a programme of action to bring its practices into line with the country’s obligations under national and international law, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Amnesty International reiterates its call on the European Union to assume its responsibility to encourage respect for human rights in Tunisia. The EU institutions should take urgent steps to help break the cycle of injustice in Tunisia, and give serious consideration to implement Amnesty International’s recommendations from June 2003¹².

¹² As outlined in the document “Tunisia: Breaking the cycle of injustice – Recommendations to the European Union”, AI Index MDE 30/014/2003, available on www.amnesty-eu.org