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Tunisia: Human rights agenda for change

Following the month of unrest that shook Tunisia and led to Zine El Abidine Ben Ali fleeing the country and relinquishing the presidency, a caretaker government has now been formed and electoral preparations launched.

Breaking with the legacy of 23 years of human rights abuses under Zine El Abidine Ben Ali will require vision, determination and effective measures by the Tunisian authorities. Over the years, Tunisians have had to endure too many broken promises and have lost trust in the institutions of the country. Tunisians have shown that they will not be satisfied with piecemeal, cosmetic reforms but rather expect bold and far-reaching changes to overhaul the institutions that have failed them. Two institutions that must be reformed immediately are the security apparatus and the justice system, the main tools used by the authorities to crush dissent and silence critics.

Authorities in Tunisia must recognize that delivering on human rights cannot be deferred until law and order is restored in the country. Restoring and guaranteeing human rights must be an immediate priority. Clear and measurable achievements on human rights will act as confidence-building measures, allowing Tunisians to regain trust in their national institutions.

The authorities should begin by acknowledging the true scale and severity of the human rights violations that have taken place in the country over decades. This acknowledgement must be followed by immediate steps to reverse this legacy.

At this critical moment, the new Tunisian government has a historic opportunity to break with the years of repression and human rights abuse by taking urgent, concrete measures to uphold – both in law and in practice – their national and international obligations.

Amnesty International welcomes the government's pledge to release all political prisoners; its announcement of an independent commission to investigate human rights violations committed by the security forces during the recent weeks of unrest, including their use of excessive and lethal force; and that other independent commissions will be formed to look into political reform and corruption.

However, further action is needed as a matter of urgency from the Tunisian authorities.

The Tunisian authorities have yet to announce whether – and to what extent – Tunisian laws that severely restrict freedoms of expression, association and assembly will be reviewed, or to announce the legal framework under which the forthcoming elections will be held. Amnesty International sees this as a test of the authorities' intentions. Over the years, including during Tunisia's last presidential and legislative elections in October 2009, the authorities used these draconian laws to repress political opposition and harass independent civil society. Political parties opposed to the government remained banned or unable to conduct their activities freely.

At that time, government critics – including human rights defenders – were subjected to oppressive surveillance, threats, harassment and physical violence by agents of the state. Journalists who criticized the government or exposed corruption faced harassment, intimidation and imprisonment. It is clear that if the elections in 2011 are to be any different, the Tunisian authorities must take immediate steps to lift arbitrary restrictions on freedoms of expression, association and assembly in law and practice.

Amnesty International, drawing on decades of documenting violations in the country, has identified the following recommendations as key steps for change.

As immediate measures, Amnesty International urges the Tunisian authorities to:

REIN IN THE SECURITY FORCES

- √ Ensure that no member of the security apparatus is allowed to act above the law;
- √ Undertake a fundamental overhaul of all the security and law enforcement bodies, and make public a clear structure of the various security branches with a clear chain of command;
- √ Make public, as a matter of urgency, clear instructions on the use of force – including the use of firearms – that strictly adhere to international law and standards, including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- √ Establish an oversight body which is able to hold the security forces to account for abuses. Such a body should have an independent, effective, and impartial complaints mechanism which can deal with complaints about security forces' misconduct, including human rights violations. The independent security forces complaints mechanism should have independent investigation teams, to deal specifically with complaints against or involving the security forces.

CONDEMN TORTURE AND OTHER ILL-TREATMENT

- √ Publicly condemn torture and other ill-treatment; ensure that these practices cease; and make clear to all officers involved in arrest, detention and interrogation, including those of the State Security Department of the Ministry of Interior, that torture and other ill-treatment will not be tolerated under any circumstances;
- √ Ensure prompt, effective, independent and impartial investigations of all complaints of torture or other ill-treatment and that perpetrators are brought to justice; ensure appropriate reparations to victims;
- √ Abolish incommunicado detention immediately and ensure that detainees have access – guaranteed by law and provided in practice – to the outside world both regularly and without delay, including to their families and to lawyers of their own choosing, and to independent medical care;
- √ Allow regular but unannounced, unrestricted inspections of all places of detention by national and international independent expert bodies.

UPHOLD FREEDOM OF EXPRESSION, ASSOCIATION AND ASSEMBLY

- √ Release all prisoners of conscience immediately and unconditionally and ensure that all other political prisoners are either released or re-tried in full conformity with international standards for fair trial and without recourse to the death penalty;
- √ End the harassment and stigmatization of political prisoners following their release and abandon the use of arbitrary or abusive measures such as administrative control; travel bans; denial of medical care; and withholding of personal identity and other official documents necessary for individuals to access their rights. Develop programmes to assist former political prisoners to reintegrate into society;
- √ End the harassment and intimidation of human rights activists and government critics, as well as arbitrary measures against individuals and associations who defend human rights, the rule of law or the independence of their professions;
- √ Lift all arbitrary restrictions on the right of Tunisians to freely associate and register independent organizations, including human rights organizations. Such organizations should include the International Association for the Support of Political Prisoners (Association internationale de soutien aux prisonniers politiques, AISPP); the Association for the Fight against Torture in Tunisia (Association de lutte contre la torture en Tunisie, ALTT); Liberty and Equity (Liberté et équité); the National Council for Liberties in Tunisia (Conseil national pour les libertés en Tunisie, CNLT); the Observatory for Press, Editorial and

Creative Freedom (Observatoire pour la liberté de presse, d'édition et de création, OLPEC); and the Tunis Centre for the Independence of the Judiciary (Centre de Tunis pour l'indépendance de la justice, CTIJ);

√ Review, amend or abolish all provisions in the 1969 Law on Public Meetings; the 1959 Law on Associations; the Penal Code; and the Press Code which criminalize the peaceful exercise of the rights to freedom of expression, association and assembly; in particular articles 48 (defamation of the President) and 51 (which gives a broad definition of defamation) of the Press Code; articles 61bis and 121-122 of the Penal Code (incitement to rebellion by speech in public meetings or places); and articles 6 and 7 of the Law on Public Meetings (allowing the presence of security officials in meetings and prohibiting meetings deemed by the authorities to disturb peace and public order);

√ While the government has a responsibility to combat terrorism and ensure public safety, the fight against terrorism must not be used as a pretext to suppress legitimate dissent and to criminalize the peaceful exercise of human rights, including the rights to freedom of expression, association and assembly. The 2003 Anti-terrorism Law must be amended to bring it into full compliance with relevant international human rights law and standards, as well as the recommendations of UN human rights bodies. The cases of all those convicted and imprisoned under this law should be promptly reviewed and those sentenced on account of their peaceful exercise of their rights must be released.

REFORM THE JUSTICE SYSTEM

√ Ensure that the Judiciary is fully independent from the Executive;

√ Review and amend the procedures for appointing members of the Judiciary to ensure the full independence of judges;

√ Enshrine the security of tenure of judges (*inamovibilité*) in the Constitution, including safeguards against direct or indirect pressure, improper influence or interference;

√ Ensure that everyone charged with an offence is afforded fair proceedings by a competent, independent and impartial tribunal established by law and that the rights of defence are fully respected;

√ End trials of civilians before military courts and transfer any ongoing cases to civilian courts for a new trial, in proceedings that meet international standards for fair trial and without recourse to the death penalty, or release the defendants; order fair re-trials for all civilians already convicted by military courts or release them;

√ Commute all death sentences and abolish the death penalty.

END IMPUNITY

√ Ensure that the investigation announced by Prime Minister Mohamed Ghannouchi into the recent unrest is independent, transparent, thorough and impartial. The Tunisian authorities must guarantee that no evidence of human rights abuses, including evidence of unlawful killings, is tampered with or destroyed and that investigations into all killings follow the methods set out in the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. The Tunisian authorities must ensure that the report of the investigation is made public, and that those identified as responsible for human rights abuses are brought to justice in fair trials and without recourse to the death penalty;

√ The investigation commission should make available to the judicial authorities evidence of human rights abuses;

√ Establish an independent, thorough and impartial inquiry into human rights abuses committed under the rule of Zine El Abidine Ben Ali. The investigation should be provided with sufficient resources to accomplish all its tasks effectively and promptly, and have powers to gain access to all relevant documents, other evidence and persons. The investigation's findings should include recommendations aimed at ending and preventing further human rights abuses and at ensuring justice, truth and full reparation for the victims, including restitution; rehabilitation; compensation; satisfaction; and

guarantees of non-repetition. Amnesty International is prepared to make its archive of human rights reports available to the Tunisian authorities to assist in any such investigation;

- √ Ensure that all persons who provide information to investigations into human right abuses are adequately protected from reprisals, or any other form of intimidation;
- √ Establish a vetting system to ensure that, pending investigation, those reasonably suspected of serious human rights violations do not remain, or are not placed in, positions where they could repeat such violations;
- √ Ratify the Rome Statute of the International Criminal Court, making a declaration pursuant to Article 12(3) that its jurisdiction encompasses crimes committed since the Statute entered into force (July 2002).

PRIORITIZE THE FULL REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

- √ Ensure minimum essential levels of economic, social and cultural rights such as food; water; sanitation; health care; and housing for the whole population and if necessary, seek international cooperation and assistance to do so;
- √ Ensure non-discrimination in access to essential public services, including water; sanitation; and healthcare;
- √ End arbitrary interference in the right to work and the right to health of political opponents and their families;
- √ Uphold workers' rights and trade unions' freedoms, in line with Tunisia's obligations under international law;
- √ Review national laws and institutions to ensure that effective remedies are available to all victims of violations of economic, social and cultural rights.

FIGHT DISCRIMINATION

- √ Review, amend or abolish all laws that discriminate on the basis of race; colour; religion; ethnicity; birth; sex; sexual orientation; gender identity; political or other opinion; national or social origin; property; or other status.

UPHOLD THE RIGHTS OF WOMEN AND GIRLS

- √ Reform or abolish all existing laws, customs and practices that discriminate against women and girls. In particular, the Personal Status Code, including provisions pertaining to marriage, child custody and guardianship, as well as inheritance, and the Penal Code must be brought in line with Tunisia's obligations under articles 2, 3, 23 and 26 of the International Covenant on Civil and Political Rights and other international obligations of Tunisia;
- √ Adopt a comprehensive law on violence against women, including on domestic violence and marital rape. Strengthen the protection of women and girls against violence by repealing the provisions in articles 218, 227bis and 239 of the Penal Code which respectively allow for the immediate termination of any proceedings, trial or enforcement of a penalty, where the spouse – who is the victim of the assault – withdraws their complaint; and where the assailant in case of rape or kidnapping marries the victim;
- √ Repeal decrees imposing requirements that individuals dress or do not dress in a certain way, unless the restrictions imposed are only such as are demonstrably necessary and proportionate for a legitimate purpose, as stipulated under international human rights law, and are not discriminatory.

AMNESTY INTERNATIONAL IS ALSO CALLING ON THE TUNISIAN AUTHORITIES TO:

√ Issue a standing invitation to all UN Special Procedures and immediately facilitate visits to Tunisia of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions; the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Working Group on Arbitrary Detention;

√ Ratify the Optional Protocol to the UN Convention against Torture; the International Convention for the Protection of All Persons from Enforced Disappearance; and the optional protocols of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Amnesty International is further calling on the Tunisian authorities to withdraw their reservations to the Convention on the Elimination of All Forms of Discrimination against Women;

√ Seek the assistance of the Office of the High Commissioner for Human Rights (OHCHR) and other programmes and agencies of the United Nations; arrange with the OHCHR the establishment of a human rights field presence in Tunisia.