

PRESS RELEASE

Tunisia: Reject Bill Dismantling Civil Society Arbitrary restrictions and excessive government control

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The draft law on associations submitted by 10 parliamentarians to the Tunisian Parliament on 10 October 2023 would violate the right to freedom of association and endanger civic space in Tunisia if adopted as currently formulated, 8 rights groups said today.

The draft law, if passed, would replace Decree-Law 2011-88 on associations, which enabled the emergence of a diverse civil society in the aftermath of Tunisia's 2011 revolution. As presently drafted, it threatens to end more than a decade of work by independent groups. According to [official data](#), over 24,000 civil society organizations are currently registered with the Tunisian authorities, although it remains unclear how many are active today. If adopted in its current form, the draft law would grant the government pervasive control and oversight over the establishment, activities, operations and funding of independent groups, which are one of the last remaining counterweights to President Kais Saied's autocratic rule.

While the text claims to maintain a notification system for establishing new associations, it would actually introduce a thinly disguised registration system, granting a department under the Prime Minister's Office the authority to deny a group the right to operate within a month after of registering (article 9.2). Without being required to provide any reasons, the government would also be able to petition the judiciary at any time requesting the cancellation of an association's registration (article 9.3).

In addition, new organizations would not be allowed to operate until a government-headed "administration of associations" publishes a notice in the Official Gazette, leaving open the possibility of denying a group's registration. At present, under Decree-Law 2011-88 on associations, an association may begin operating once the representative of the association has notified its registration to the Official Gazette.

Under the draft law, international organizations would be required to obtain prior authorization to register from the Foreign Affairs Ministry (articles 8 and 19). Without setting conditions or deadlines for any such a process, the draft law empowers the Ministry to issue temporary authorizations and to revoke and suspend them at its own discretion (article 20). As a result, international organizations may be arbitrarily denied registration for any reason and without due process, the groups said.

In 2012, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association's report on best practices related to the right to freedom of association recommended a "notification procedure", rather than a "prior authorization procedure" requesting the authorities' approval to establish an association as a legal entity. The 2017 Guidelines on Freedom of Association and Assembly in Africa of the African Commission on Human and Peoples' Rights stipulate that "registration shall be governed by a notification rather than an authorization regime, such that legal status is presumed upon receipt of notification" and that the administrative body overseeing registration should carry out its functions "impartially and fairly."

The draft law's preamble states that associations must operate in accordance with the "principles of national orientation," and must not "violate laws related to good morals," "disturb public security," "undermine the unity of the national territory and the republican system," or "violate national sovereignty." Such terms are vague, imprecise, arbitrary and overly broad and, as such, do not comply with the principle of legality. As a result, these concepts are open to broad interpretations and the authorities could use them to justify arbitrarily restricting or closing associations that displease them, the groups said.

The draft law places national organizations under "the supervision and control" of the Ministry relevant to their main area of work and international organizations under Prime Minister Office's supervision (article 6). The current draft law does not specify what such "supervision and control" entail. It also requires associations to inform the pertinent Ministry of any planned activities (article 13).

The draft law also gives rise to concern about surveillance as it empowers the authorities to establish a digital database of associations and volunteers (article 14).

If the draft law is adopted in its current form, then the authorities may interpret its many vague provisions to ban or dissolve associations. The establishment of associations on religious or ethnic grounds is forbidden in the draft law. In addition, the qualification that a group's work must be "voluntary" may be interpreted as a ban on paid labour by non-profit groups (article 2). The draft text further provides that the Prime Minister's Office can "automatically" dissolve any group "suspected of terrorism" or that has a "terrorist background" (article 24), without judicial review.

This text also dangerously conflates associations with unions (article 15), which are currently separately governed by the Tunisian labour law, without providing any specific guarantees or sufficient protections for union rights.

National associations would have to obtain prior approval from the Prime Minister's Office before receiving foreign funding (article 18). Associations that fail to comply with this requirement would risk immediate suspension or dissolution (article 24).

The draft law requires all existing associations to “rectify” their situation in accordance with the new law within a year of the law’s publication.

In 2013, the Special Rapporteur on the right to freedom of peaceful assembly and of association’s report affirmed that a civil society organization’s access to funding from domestic, foreign and international sources was “an integral part of the right to freedom of association.” Requiring groups to get prior government approval to receive foreign funding without specifying the grounds for refusal is inconsistent with the principle of legality and constitutes an arbitrary interference with the right to freedom of association.

Under Article 38 of the Guidelines on Freedom of Association and Assembly in Africa, governments may neither impose blanket bans on foreign funding for civil society groups nor require prior government authorization to receive it.

Decree-Law 2011-88 on associations provides sufficient guarantees and procedures to ensure that civil society groups’ funding be transparent and law compliant, the groups said. The draft law’s foreign funding provisions are open to abuse and may be used to punish and reject funding for organizations critical of the government.

In February 2022, a draft law on associations prepared by the executive that threatened human rights safeguards was [leaked](#) and denounced as restrictive by the Tunisian civil society. Shortly after, on 24 February 2022, President Saied announced his intention to “prevent foreign funding to associations.” In light of this, UN experts expressed concern over the then draft law in a [communication](#) to the Tunisian authorities in April 2022, to which the Tunisian government [responded](#) in June 2022, confirming their intention to amend Decree-law 88.

Since 25 July 2021, President Saied has dismantled Tunisia’s democratic institutions, undermined [judicial independence](#), stifled the exercise of [freedom of expression](#) and repressed [dissent](#).

Tunisia is obliged to respect, protect, promote and fulfill the right to freedom of association, guaranteed by Article 22 of the International Covenant on Civil and Political Rights and Article 10 of the African Charter on Human and Peoples’ Rights. Restrictions on the exercise of this right may be permissible only when they are prescribed by law and necessary in a democratic society; that is, using the least restrictive means possible and reflecting basic values of pluralism and tolerance.

“Necessary” restrictions must also be proportionate; that is, carefully balanced against the specific reason for imposing them in the first place. In addition, they may not be discriminatory, including on the grounds of national origin or political opinion or belief.

The Tunisian authorities should refrain from adopting the proposed draft law and, instead, should commit to safeguarding the right to freedom of association as enshrined in Decree-law 88 and under international human right law binding on Tunisia, the groups said. The authorities should

ensure that associations are able to operate without political interference, intimidation, harassment or undue restrictions.

Signatories

- International Commission of Jurists (ICJ)
- Euromed Rights
- Human Rights Watch (HRW)
- Avocats Sans Frontières (ASF)
- Access Now
- World Organisation Against Torture (OMCT)
- Tahrir Institute for Middle East Policy (TIMEP)
- International Service for Human Rights (ISHR)