

STATEMENT – THE OBSERVATORY

TUNISIA: The draft amendment of the decree-law on associations seriously threatens freedom of association and should be withdrawn

Geneva-Paris, 11 February 2022 – As a draft amendment of the decree-law on associations seems about to be adopted by the Tunisian government, the Observatory for the Protection of Human Rights Defenders (OMCT-FIDH) expresses its deep concern over the threat posed by this amendment to freedom of association and calls on the authorities of Tunisia to withdraw it.

The draft amendment of [Decree-Law No. 2011-88 of 24 September 2011, on the organisation of associations](#), which has recently been leaked, appears to demonstrate a desire by the Tunisian authorities to provide themselves with legal tools to control and foreseeably muzzle civil society, especially since it arises in a climate of [increased attacks against human rights defenders](#) in the country and of complete lack of dialogue between the authorities in place and civil society actors.

In the first place, the draft undermines freedom of association by making the creation of an association subject to the intervention of the authorities. Whereas, in current legislation, an association is legally incorporated as from the submission of the declaration of incorporation to the general secretariat of the government, in the draft decree-law (article 12) this legal existence will be subject to publication of the announcement of creation in the Official Gazette of the Tunisian Republic (JORT). In practice, several associations have already experienced a serious delay in this publication well beyond the legal time limits which, henceforth, will have the effect of preventing the very existence of the association. Moreover, to publish the announcement of creation of their association in the JORT, the founders will be required to provide a copy of the bylaws signed by the authorities whereas, at present, it is sufficient for them to submit proof of receipt of the application for creation.

Furthermore, article 10 of the decree-law gives the authorities power to refuse the incorporation of an association. Until now, it has been easy to incorporate any association and it is up to the authorities to take legal action should they deem, for example, that the mandate of the association is incompatible with the prohibition of incitement to hatred or discrimination and other principles listed in articles 3 and 4 of the current legislation. This power to refuse incorporation, which was already provided for international associations wishing to set up in Tunisia, would be extended to national associations. Although the refusal could be challenged before the administrative court, the excessive delays in the issuing of rulings even for urgent proceedings (at least three months for a judgment suspending execution) may hinder the right of associations that are victims of abuse to gain access to justice.

Other provisions of the draft that give serious cause for concern include the introduction, in article 4, of the prohibition for associations to “threaten the unity of the State or its republican and democratic regime”. The notions of threat or attack against the security of the State tend to be subject to extensive interpretation in Tunisia. The introduction of this provision raises fears of abusive use in a political climate marked by the [rhetoric of the traitor and the internal enemy](#) used to discredit discordant voices. Article 4 adds that it is forbidden for the leaders of an association to stand for election during the three years preceding the date set for the election, an excessive and disproportionate prohibition that denies leaders of an association the constitutional right to stand for election.

Article 10 of the draft also provides that the aims and activities of an association must not “fall within the competence of public bodies” or be “subject to a special legal system outside the scope of application of the decree-law”. This extremely vague provision is likely to lend itself

to a broad and arbitrary interpretation and thus considerably restrain the right to freedom of association.

Another provision that gives serious cause for concern introduces a procedure to control foreign funding of associations. Thus, article 35 of the draft forbids associations from accepting foreign aid, gifts or donations not authorised by the Tunisian Financial Analysis Commission. This commission, created in 2015 by the law on the fight against terrorism and the suppression of money laundering, is therefore entitled to issue an approval prior to any foreign funding that originates from a government, a foundation or an association. Moreover, the issue of the authorisation will not be subject to any time limit. This new procedure should be strictly regulated to guarantee that it cannot be used to hinder the funding and therefore the functioning of associations with activities or opinions that upset the public authorities.

As well as voluntary dissolution and legal dissolution, the draft contemplates a new form of dissolution of an association: automatic dissolution based on a reasoned decision of the department responsible for the affairs of associations within the presidency of the government (article 33). This would be the case if an association, legally incorporated and registered in the National Register of Associations, were considered by the authorities as no longer having real and effective existence owing to the non-holding of its regular meetings or of the non-performance of its activities during three successive sessions. This is a new prerogative granted to the authorities to increase their control over the activities of associations. The automatic dissolution can be challenged before the administrative court, but the procedure is excessively slow as has been stated above.

The Observatory considers that the draft amendment, were it to be adopted, would considerably restrict the legitimate activities of civil society and of human rights defenders, in violation of the right to freedom of association, a right protected by international human rights instruments to which Tunisia is a party, and especially by article 22 of the International Covenant on Civil and Political Rights, as well as by article 35 of the Tunisian Constitution.

The Observatory therefore calls on the authorities of Tunisia to withdraw this draft, to guarantee the right to freedom of association in the country and to ensure that human rights defenders can perform their legitimate activities of defence of human rights without hindrance or fear of reprisal.

The Observatory for the Protection of Human Rights Defenders (the Observatory) was created in 1997 by FIDH and the World Organisation Against Torture (OMCT). The objective of this programme is to intervene to prevent or remedy situations of repression against human rights defenders. FIDH and OMCT are both members of ProtectDefenders.eu, the European Union Human Rights Defenders Mechanism implemented by international civil society.