



ARTICLE 19

# Tunisia: Comments on the Draft Law on the Repression of Offences against Armed Forces

May 2015

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Legal analysis

## The draft Law on the Repression of Offences against Armed Forces creates serious threats against freedom of expression and information

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**Tunisia May 13, 2015: ARTICLE 19 is concerned that the Draft Law on the Repression of Offences against Armed Forces would give rise to unjustifiable, disproportionate restrictions on freedom of expression and freedom of information. If adopted, the Law would allow indiscriminate restriction of any expression that would appear to be in some way critical of armed forces and would considerably hinder the free flow of information and the public debate on issues related to the operation of the armed forces. We recommend that the Tunisian Government withdraws the Draft Law from the submission to the Parliament. If the Draft Law were to be submitted to the Assembly of Peoples' Representatives, we recommend that Articles 5, 6, 10, 12, 13 and 15 be removed.**

Following the March 18 attacks that killed 23 people at the Bardo Museum, the Tunisian government adopted on April 8, 2015 a draft law on the Repression of Offences against Armed Forces.

ARTICLE 19 joined 13 nongovernmental international organizations in Tunisia to undertake a joint position regarding the draft law.

ARTICLE 19 analysed the draft Law No. 25/2015 on the Repression of Offences against Armed Forces<sup>1</sup> (the draft Law) and has serious concerns regarding its compatibility with international standards on freedom of expression and information.

As a party to international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), Tunisia must ensure that any restrictions on the right to freedom of expression are strictly and narrowly construed, comply with three part test of restrictions<sup>2</sup> and do not put the right itself in jeopardy. ARTICLE 19 finds that the draft Law fails to meet the international standards for the following reasons:

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1 ARTICLE 19's analysis is based on [unofficial French translation of the draft Law](#) bill provided by the **Bureau de Tunis pour le Contrôle démocratiques des Forces armées - Genève (DCAF)**. **ARTICLE 19 does** not take responsibility for the accuracy of the translation or for comments made on the basis of any inaccuracies in the translation

2 The test stipulates that restrictions must be a) prescribed by law, b) in pursuit of a legitimate aim, and c) necessary and proportionate to the aim pursued.

**Article 12 of the draft Law** punishes with a 2-year prison sentence and a 10.000 dinar fine anyone who is “guilty of insulting the armed forces in the goal of harming public safety.” Armed forces are defined as weapon-carrying personnel from the military, security forces and customs forces (Article 2).

ARTICLE 19 makes the following observations about the provisions of **Article 12**:

- The notion of insulting the armed forces, even if it is limited to offences committed 'in the objective or harming public safety', is so vague that it offers no safeguard against a purely subjective application of the law. As such, it is not compatible with the requirement that all restrictions on freedom of expression should be prescribed by law, which, under international standards, means a clear and precise legal basis.
- The term “public safety” is not defined in the draft Law and this lack of clarity makes it difficult to determine the parameters of the framework the Law seeks to establish, and what principles limit the conduct of the authorities. We recall that protection of “public safety” is not a legitimate basis for restricting the right to freedom of expression under Article 19 (3) of the ICCPR.
- The Tunisian Government might argue that the provision pursues the goal of protecting national security. However, we recall that under international standards,<sup>3</sup> the protection of “national security” is understood as the protection of the state’s existence or its territorial integrity against the use or threat of force or the state’s capacity to respond to the use or threat of force. The draft Law fails to take to account the limited scope of national security, and it is totally unclear how it could serve that objective. As such, Article 12 amounts to an unnecessary restriction on freedom of expression and is not compatible with international law on freedom of expression.

The mere existence of the draft Law would thus create a threat on freedom of expression and would cause a chilling effect which would be detrimental to the free flow of information and ideas. Recent events in Tunisia, such as the fact that blogger Yassine Ayari was arrested and jailed for posting remarks criticizing the army on his Facebook page, have shown that the risk of seeing such pernicious provision misused is actually high.

**Article 4** defines 'national security secret' as all “information, data and documents, related to national security (...) that should only be known by authorized persons”. The

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<sup>3</sup> See e.g. the [Johannesburg Principles on Freedom of Expression and National Security](#), a set of principles on freedom of expression and national security developed by a group of experts from around the world, adopted in 1995 and endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression

definition is somewhat tautological and potentially very broad. To the contrary, under international law, the legal basis of all restrictions on free speech must be clear and precise.

**Article 5** of the draft Law punishes the violation of confidentiality of a national security secret by authorized personnel, either intentionally or by negligence, with a penalty of 10 years imprisonment and a 50.000 dinar fine. Article 6 provides that a similar sanction applies to unauthorized persons who intentionally access national security secret information. Sanctions are doubled if the breach of confidentiality is committed with a financial motivation.

While it could be argued that the provisions of Articles 5 and 6 pursue the goal of protecting national security, which is a legitimate aim under international law, ARTICLE 19 considers that they rely on definitions too broad to meet the criteria of legal basis under international standards and that they amount to disproportionate restrictions on freedom of speech.

As illustrated by two recent decisions of the European Court of Human Rights related to whistle-blowing, under international law that “the interest which the public may have in particular information can sometimes be so strong as to override even a legally imposed duty of confidence.”<sup>4</sup> By contrast, **Articles 5 and 6** penalize any breach of confidentiality without taking into account the necessary analysis of the context where it happens. The provisions of the draft Law are disproportionate because they do not confront the need to protect secrecy with the interest of the free flow of information as protected by international law on freedom of expression.

**ARTICLE 19** considers that Articles 5 and 6 of the draft Law would prevent the legitimate public discussion of issues related to the operation of armed forces. These provisions would prevent legitimate dissemination of confidential information by deterring potential whistleblowers either from leaking information to journalists or bringing it into the public light themselves. The same provisions would also hinder investigative journalistic activities related to the operation of armed forces, including for instance the discussion of whether they operate in compliance with international human rights law. Under international standards on freedom of expression, expression that 'is directed at communicating information about alleged violations of international human rights standards or international humanitarian law'<sup>5</sup> should not be criminalized as a threat to national security or, as in the case of the draft law, an offence to the armed forces.

In addition, ARTICLE 19 is concerned that offences defined at Article 10 (trespassing on armed forces premises) and **Article 11** (creating an obstacle to the daily operation

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4 *Guja v. Moldova*, Grand Chamber, Application No. 14277/04, judgement of 10 February 2008; *Bucur and Toma v. Romania*, Application No. 40238/02, judgement of 8 January 2013

5 See Principle 7 of the [Johannesburg Principles on Freedom of Expression and National Security](#).

of armed forces) may be used as repressive tools against legitimate acts of expression such as protests.

**Article 15** criminalizes the threat of committing a crime against personnel of the armed forces or their family. ARTICLE 19 assumes that the Tunisian Government wishes to penalise the acts of encouraging or inciting others to commit criminal offences against others. If so, we believe that this issue should be dealt with in criminal laws without consideration of the profession of the person targeted by the threats.

In conclusion, ARTICLE 19 urges the Tunisian Government to withdraw the Draft Law in its entirety. If the Draft Law is to be presented to the Tunisian Parliament, we urge the Parliament to review it the light of the Constitution and international standards and ultimately reject it as inconsistent with those norms. Alternatively, and at minimum, we recommend that Articles 5, 6, 10, 12, 13 and 15 be removed from the Draft Law.