Arab Reform Initiative

Statement, 14 March 2022

Tunisia: Looming curbs on civil society must be stopped



Tunisian President Kais Saied chairs the weekly cabinet meeting in Carthage Palace in Tunis, Tunisia on December 02, 2021. © Tunisian Presidency / Handout / AA

Tunisian authorities should immediately scrap plans for new restrictions on civil society organizations, 13 Tunisian and international rights groups said today. Those plans, if carried out, would reverse a major gain for freedom of association following the country's 2011 revolution. They would constitute another blow to human rights safeguards by President Kais Saied since his July 2021 power grab.

"Tunisians know from experience the dangers that restrictive laws can pose to civil society and public debate," said Amna Guellali, Deputy Regional Director for the Middle East and North Africa at Amnesty International. "During the deeply repressive Ben Ali era, the authorities used restrictive regulations on associations and cumbersome administrative procedures as key tools to smother dissent."

A draft law to regulate civil society organizations was recently leaked. It would give government authorities overly broad powers and discretion to interfere with the way civil society organizations are formed, their functions and operations, their funding, and their ability to speak publicly about their work and to express their views.

In a videotaped speech on February 24, President Saied accused civil society organizations of serving foreign interests and trying to meddle in Tunisian politics, and said he intended to ban all funding for such groups from abroad.

"In the 10 years since Ben Ali's ouster, nongovernmental organizations in Tunisia have played a crucial role in providing essential services to the public and holding the government accountable," said Eric Goldstein, deputy Middle East and North Africa director at Human Rights Watch. "Their work should be promoted and protected rather than threatened."

Under Decree-Law 2011-88, both Tunisians and resident foreigners may freely establish civil society organizations, carry out a broad range of activities, lobby the authorities regarding laws and policies, speak publicly about their work and opinions, and receive foreign funding without government authorization.

The authorities have not formally confirmed that they are amending the existing law, nor have they released a draft law, and it remains unclear whether it has been modified since being leaked. Draft laws in Tunisia have not been made public or subject to formal debate by parliament since President Saied suspended the body

on July 25, 2021. Under a presidential decree issued on September 22, 2021, all laws are currently enacted as decree-laws issued by the president.

Since 2011, Tunisian civil society has flourished. Over 24,000 civil society organizations are currently registered with government authorities, according to official data, although it remains unclear how many of those are active today.

Many civil society organizations work in areas such as education and cultural life. Others seek to help poor, marginalized, or otherwise vulnerable people. In addition, civil society has played a vital role in post-revolution Tunisia's efforts to transition to a freer, more just society by bringing values such as human rights and the rule of law into public debate, and pushing policy makers to embed them in public policy.

"The authorities should immediately drop any further consideration of the leaked draft law and ensure that any future laws regulating civil society organizations adhere strictly to international human rights law," said Amine Ghali, Director of the Kawakibi Democracy Transition Center.

Under existing law, people may form a civil society organization with automatic legal status simply by notifying the relevant authorities. Articles 10 through 12 of the leaked draft law would restore a Ben Ali era requirement for government authorization before an organization can legally operate.

The draft law states that associations may not "threaten the unity of the state or its republican and democratic system," and says that their published material must align with "integrity," "professionalism," and "legal and scientific regulations," broad wording that would allow for abusive enforcement by the authorities, the groups said.

Under existing law, civil society organizations must publish details of all foreign funding. Article 35 of the leaked draft law would impose a new requirement that all foreign funding be approved by the Tunisian Financial Analysis Committee (CTAF), a unit within the Tunisian Central Bank tasked with fighting money-laundering and terrorism financing.

While combatting money-laundering and terrorism are legitimate objectives, they

should not be used as pretexts to control or prohibit foreign funding for civil society organizations by requiring prior approval. According to a survey of 100 civil society organizations in Tunisia published in 2018, nearly two-fifths said that they relied either partly or mainly on funding from abroad.

Under the existing law, civil society organizations may only be dissolved at will by their own members, or by the courts in response to a petition filed by the government. The leaked draft law would empower authorities within the office of the Head of Government to summarily dissolve civil society organizations that remained inactive beyond a certain length of time. It might also permit the authorities to dissolve such groups at will and outside of judicial procedure, although the relevant provisions are ambiguous.

"Freedom of association – including the right to form and operate civil society organizations free from undue interference by the government – is a basic human right and guaranteed under international law and the Tunisian constitution," said Alaa Talbi, Executive Director of the Tunisian Forum for Economic and Social Rights.

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 organizations nor subject foreign funding to government authorization. The guidelines reflect the provisions of the African Charter on Human and Peoples' Rights, to which Tunisia is a state party.

> Freedom of association – including the right to form and operate civil society organizations free from undue interference by the government – is a basic human right and guaranteed under international law and the Tunisian constitution.
>
> Alaa Talbi, The Tunisian Forum for Economic and Social Rights

Tunisia is obliged to respect, protect, promote, and fulfil the right to freedom of association, set out in Article 22 of the International Covenant on Civil and Political Rights and Article 10 of the African Charter on Human and Peoples' Rights. Limitations on this right are only permissible 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 the restriction and not discriminatory, including on the grounds of national origin or political opinion or belief.

On July 25, Saied dismissed then-head of government, Hichem Mechichi, and suspended parliament. On September 22, he issued Presidential Decree 2021-117, which suspends most of Tunisia’s constitution, grants the president the exclusive right to enact laws by decree, dissolves a temporary body to vet the constitutionality of laws, and bars anyone from overturning decree-laws via Tunisia’s Administrative Tribunal.

On February 12, 2022, Saied weakened judicial independence by issuing a decree dissolving Tunisia’s top independent judicial body, the High Judicial Council – set up in 2011 to shield judges from government influence – and granted himself broad powers to intervene in the functioning of the judiciary.

Signatories:

1. Access Now
2. Al Bawsala
3. Amnesty International
4. Arab Reform Initiative
5. Euromed Rights
6. Human Rights Watch
7. Jamaity
8. Lawyers Without Borders
9. Legal Agenda
10. Mourakiboun
11. Observatoire International des Associations et Développement Durable
12. Tunisian Association for the Defence of Individual Liberties
13. Tunisian Forum for Economic and Social Rights

Arab Reform Initiative

About Arab Reform Initiative

The Arab Reform Initiative is the leading independent Arab think tank working with expert partners in the Middle East and North Africa and beyond to articulate a home-grown agenda for democratic change. It conducts research and policy analysis and provides a platform for inspirational voices based on the principles of diversity, impartiality and social justice.

- We produce original research informed by local experiences and partner with institutions to achieve impact across the Arab world and globally
- We empower individuals and institutions to develop their own concept of policy solutions
- We mobilize stakeholders to build coalitions for positive change

Our aim is to see vibrant democratic societies emerge and grow in the region.

Founded in 2005, the Arab Reform Initiative is governed by a Plenary of its members and an Executive Committee.

arab-reform.net

contact@arab-reform.net

© 2022 by the Arab Reform Initiative.
To view a copy of this licence, click here