



# Repression of offenses against the armed forces draft law

**A masked immunity to reinforce impunity**



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A masked immunity to reinforce impunity

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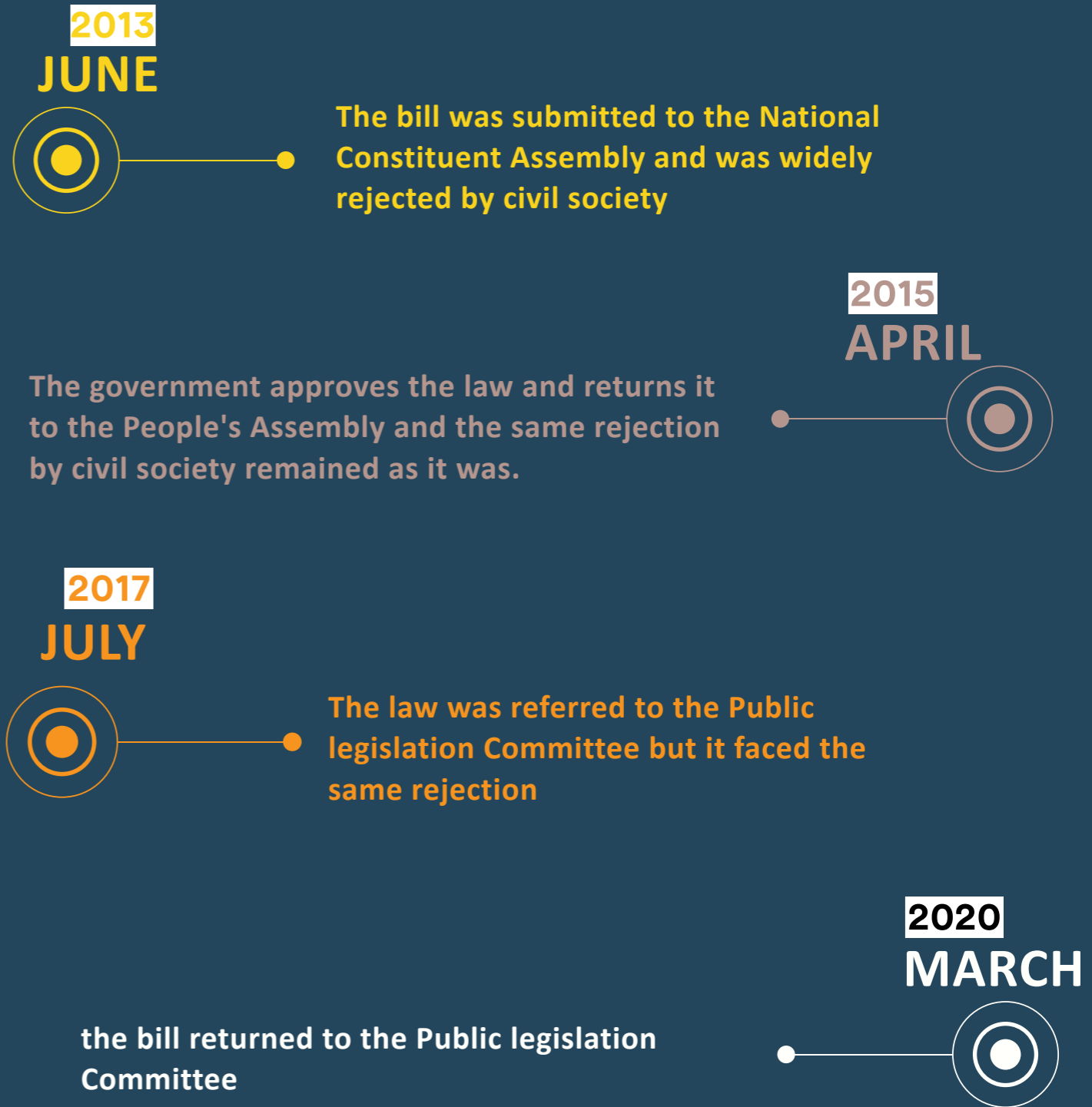
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## Repression of offenses against the armed forces draft law: A masked immunity to reinforce impunity

Despite the current climate of freedom and democracy and the continuous efforts that are made to establish rule of law, the question about the reason for the continued absence of oversight and punishment regarding charges made by security agents in particular still exists unanswered, as followers of public affairs in Tunisia can easily notice that security forces continue to commit several assaults that are known as “ Learn to swim” or “ Ben Arous invasion” where security forces invaded Ben Arous court to free one of their colleagues who was facing torture charges in Ayman Al-Othmani murder incident, All trials that may include similar incidents lack fair justice and promote impunity, but the most dangerous thing is that it occurs in light of strengthening the idea of applying and promoting rule of law. This indicates the importance of maintaining, reviewing, and promulgating laws in a manner that effectively guarantees accurate and applicable texts without intended exploitation in conjunction with a comprehensive path of institutional and structural reform that include all states institutions as the hypothesis of violating law and exploiting its defects occurs and exists too in a democratic climate.



Repression of offenses against the armed forces bill returned to be prominent and trending on media, political and human rights arenas after being referred to the Legislation Committee of the People’s Representatives Assembly to be discussed since three months and just one week before Covid-19 pandemic, Here is a reminder of the most important dates associated with the subject:



It is worth noting too that the context of the bill's return always come associated with terrorist events or a troubled context in which the country is going through or witnessing.

The paradox, however, is that the content usually affects more rights and freedoms rather than being a legislative response to the terrorist threat. And this matter is usually emphasized by civil society organizations.

The Ministry of Interior and the security syndicates, through the last legislative initiative, insisted on the necessity of protecting their members during their work, but this project faced a wide opposition for its repressive content and its punitive nature, The Ministry of Interior and the security syndicates, through the last legislative initiative, insisted on the necessity of protecting their members during their work, but this project faced a wide opposition for its repressive content and its punitive nature, in addition to its violation to international conventions and the constitution regarding freedoms. Most human rights and national organizations have issued statements condemning this law, and warned of its seriousness. And many politicians expressed their resentment toward the bill, the Tunisian Press Syndicate the Tunisian General Labor Union requested it to be withdrawn from the public legislation committee. And DAAM Center participated along with many Tunisian Civil Society organizations issuing a call for the People's Representatives to cancel the consideration of the repression of offences against the armed forces bill.

DAAM Center for supporting Democratic transition and Human Rights is concerned to highlight some observations relate to the bill to clarify the grounds and reasons for our absolute rejection for such a law.

## On the legal level

### General introduction

Penal Code, which allowed the judge to use leniency bring the punishment of a crime to its minimum degree, could not be applied and referred to the contents of Articles 5 and 6.

Also, Article 19 stressed that the sanctions provided for do not prevent the application of more severe penalties!! In clear violation of the principles of the Penal Code, as it favors a special law over a general one and as the Penal Code provides a provision applying the less severe criminal statute on the accused .

The bill therefore integrates with other provisions to aggravate punishments and repression, and many of those articles contradict with principles of law, rights and freedoms and their constitutional provisions.

The Bill concludes with Article 20, which provides that one or some of the supplementary penalties provided for in Article 5 of the Penal Code may be sentenced.


Based on the aforementioned, we can also notice the project includes 13 felonies, ranging from six years in prison to life imprisonment, with financial fines ranging from 10,000 to 50,000 dinars, and only 5 misdemeanors, in which the sentence ranges from two to five years in prison and a fine from 5,000 to 25,000 years Dinar. This confirms the initiative party's tendency to tighten the sanctions that shall be applied

Here is a detailed table of the whole content included in the law whether felonies, misdemeanors or penalties associated with them:

## Charge

**Article 5**  
Embezzlement, destruction, disclosure or alteration of the use, maintenance, circulation or preservation of a secret of national security which was defined by Article 4 of the same law as all information and material relating to national security.

## Punishment

**Felony**  
**10**  
Years' imprisonment   
**50000**  
dinars as a fine 

## Charge

**Article 6**  
Whoever has no authority or capacity to use, seize, circulate or preserve a secret of national security and who, as the case may be, knowingly, destroyed, copied, disclosed or altered it

## Punishment

**Felony**

**10**  
Years' imprisonment   
**50000**  
dinars as a fine 

## Charge

**Article 11**  
Whoever, intended to harm public security by disrupting the normal functioning of the institutions and installations of the armed forces in any way

## Punishment

**Misdemeanor**

**3**  
Years' imprisonment   
**15000**  
dinars as a fine 

## Charge

**Article 7**  
Whoever violated license requirement for a subject that needed a prior authorization from the competent authority to use  
Cameras  
Cinematic cameras  
Telephones

## Punishment

**Misdemeanor**

two months to two  
Years' imprisonment 

## Charge

**Article 12**  
Whoever commits the deliberate vilification of the armed forces with a view to harming public security

## Punishment

**Misdemeanor**

**2**  
Years' imprisonment   
**15000**  
dinars as a fine 

## Charge

**Article 10**  
Whoever, without permission from the competent authority, enter unopened public buildings or get access to equipment, vehicles and machinery, whether land or sea, or to a fenced or unwallled territory marked in writing by armed forces that it is placed under their protection or control.

## Punishment

**Misdemeanor**

**1**  
Year imprisonment   
**15000**  
dinars as a fine 

## Charge

**Article 13**  
Whoever, intentionally committed the offense of burning, destroying of a vehicle belonging to the armed forces with the intention of harming public security

## Punishment

**Felony**

Life imprisonment   


## Charge

Article  
**13**

Seizure of weapons, ammunition, equipment, documents or other objects belongs to the armed forces for the purpose of harming public security.

## Punishment

Felony

**10**  
Years' imprisonment



**50000**  
dinars as a fine



## Charge

Article  
**16**

Whoever Attacks the residence of the armed forces or on their contents or their means of movement

## Punishment

Felony

**6**  
Years' imprisonment



**30000**  
dinars as a fine



## Charge

Article  
**14**

Whoever participates in an unarmed gathering in attacking military headquarters, detention, prison to facilitate a prisoner's or a detainee's escape

## Punishment

Felony

**10**  
Years' imprisonment



**50000**  
dinars as a fine



## Charge

Article  
**15**

Whoever, threat to commit a crime or a misdemeanor against an official, his wife, a member of his or her origin, his family or anyone in his or her legal custody

## Punishment

Felony

**15**  
Years' imprisonment



**25000**  
dinars as a fine



It can be said that the text of the law is broad, concise and poorly worded, and does not respect the general rules of drafting legal texts, which include ensuring that it is well formulated and edited so that it is understood by all, as well as the accuracy necessary for its application in terms of definition and scope, without forgetting its consistency with the entire legal system and its principles. This will be reflected in the next section.

### In terms of content

By returning to the text's content, two key points can be observed: First: The absence of clear and precise concepts and the use of broad terms. Second: The repressive nature and the tightening of sanctions. If we are to say that the legal norm must be general, abstract and binding, the concepts, definitions, terminology and language used must be accurate and clear in terms of their scope and application. The draft notes that the terms used were broad and broad, without the initiative party itself having to interpret them and define the terms precisely in some articles. It also used terms

and concepts that did not bother to define, even if they were not accurately defined in some other articles, thus making their scope of application broad and feasible To pose a practical danger to rights and freedoms.

Among these terms are:

Secrets of national security

Article 4 of the bill inaccurately defines the secrets of national security as «all information, material and documents relating to national security». In a similar situation, the security authority has a discretion to make every information, which is of public or political concern in an internally important sector as it relates to political and civil life, a hidden classified secret.

### Security Operations:

Article 7 of the bill law provides that all use of cameras, Cinematic cameras, Telephones, recording machines, radio or television receivers within security or military installations, security or military operations sites, vehicles or on board of naval or air units shall be subject to prior authorization from the competent authority of the armed forces. Any publication or transmission of films, photographs or sound recordings made within security or military installations, security or military operations sites, vehicles or on board of military or air units of the armed forces shall also be subject to prior authorization by the competent authority.

The absence of any definition of the concept of security operations can easily be noted in this Article .

### Vilification:

Article 12 of the bill provides that anyone who deliberately misrepresents the armed forces with the aim of harming public security shall be punished with two years' imprisonment and a fine of 10,000 dinars. It is also noted that this Article does not define the concept of vilification.

### Public Security:

it was stated in Articles 11, 12 and 13, and in relation to other crimes. The concept of public security is a classic legal concept, which is stated in national

and international legal texts. It always raises important problems in determining its significance.

This is the case here, especially when the concepts and terminology are not accurate in terms of significance and scope of application, the door is open to the discretion of the authority, even with the judges' authority and oversight, and where there is complete confidence in their role, their role remains restricted and that does not prevent the executive authority from abuse of power.

This promoted the expansion of the armed forces assistance protection in the bill. According to Article 15 committing any threat of a crime or misdemeanor against security members or associates, his wife, parents or one of his family members or those who are under his legal custody shall be punishable by five years' imprisonment and 25,000 dinars. This Protection circle includes the place of residence, its contents and the means of transport, while the State makes reparation for the damage done to it, replacing it with a claim for compensation from his opponent.



Article 18 is also considered the most dangerous Article made to protect the armed forces after using lethal force and let them loose without any penal oversight. This makes the law based on the logic of aggravation with the ag-

gressor on the security forces and leniency with the forces themselves is they committed the same crime, as the right criteria to control the forces' role and guarantees of safety were absent, and the same goes for the required criteria for respecting the necessities of the security work and the necessity of rule of law and principles of rights and freedoms.

## On human rights level:

We can initially say that the Articles of this bill are almost incompatible with Article 49 of the Constitution, which sets out conditions for any restriction of rights and freedoms and the principles of necessity and proportionality. The above-mentioned Article emphasizes that any restriction shall be placed solely on the basis of the necessity required by a civil and democratic State, while respecting the proportionality of these criteria and their duties.

This Article specifies that legislative logic falls under a general human rights approach that makes other approaches as part of it and even less important than it. This confirms that the security approach that justified the reasons in the bill, by confirming its link to the safety and existence of society, is not separate from the human rights approach enshrined in the 2014 constitution. Here, some of the rights that this bill violate and can be noted.

## Violating the right to life:

Article 18 of the bill exempts the forces carrying weapons from criminal liability in the event of injury or death of the aggressor. Moreover, this Article contradicts with the principle of the progressive use of force, which is defined by Law No. 69 of the 24th of January 1969, which regulates public meetings, processions, reviews, demonstrations and assembly. It affects the right to life guaranteed by the Constitution and all international conventions.

## Violating the freedom of press, publishing and expression:

Through subjecting photography and publication to prior authorization and the use of broad terms without a precise definition, as in the form of the term «villification», which is used as the core of Article 12 of the draft law and the term

«secrets of national security», which is used as the core of Article 4, as well as the term «public security».

The reasons for the bill were stated the United Nations Basic Principles on the use of Force and Firearms by Law enforcement officials. The excerpts from the commentary were limited to supporting the notion of protection contained in the bill, which was repressive and punitive in nature, without linking it to the spirit and logic of international norms. These principles set forth a network of interrelated concepts about the idea of law enforcement within the «...consideration of the role of law enforcement officials in the administration of justice, the protection of the right to life, liberty and security of person, and the responsibility to maintain public safety and social peace and the importance of their qualifications, training and behavior.» In the same context, the Principles refer to «... the attention of law enforcement officials and other judges, prosecutors, lawyers, members of the executive, the legislature and the public should be drawn».

The above-mentioned basic principles establish any regulation and legislation relating to the law enforcement process, whatever was the reason of their intervention, conditioned by respect for law, justice, freedom and human rights, in partnership with the rest of its interventionists. This makes this bill, mainly a security bill, without taking into account the legal and rights approach, especially as part of it conflicts, for example, with the principle of lighter punishment provided for in international texts.

DAAM center for supporting Democratic transition and Human Rights, after reflecting on the Articles of the bill comprehensively on the basis of a legal analysis of a human rights perspective confirms that this bill is dangerous and contradicts with international conventions, the Constitution and many other laws. The center also confirms that such repressive laws can no longer be justified under the country's current political and social changes. The current situation in Tunisia and the whole region, is of such gravity, that makes the security issue the subject of constant and continuous debate, especially after the terroristic operations in which many armed forces have martyred in, as well as in the light of the growing social movement throughout the country (9091 movements and actions during 2019 according to the annual report of the social protest movements in Tunisia issued by the Tunisian Forum for Economic and Social Rights)





This cannot in any way justify such harsh laws that come under certain effects and circumstances, and such laws have proved to be a failure to achieve the societal balance that the initiative party has invoked in the accompanying document to support his bill.

The real difficulties and risks faced by armed forces during performing their national duty are not enough to justify this law, which the more severe the more the gap increases and the more community imbalance increases as it shakes the necessary confidence that should exist in the relationship between the security forces and citizens. The aforementioned relationship does not need repression and punishment to strengthen it as much as it needs to be guaranteed under the law and needs respect for rights and freedoms. The law must not be an instrument for the structure of violence in the relationship between the citizen and security, but rather a peace that is based on self-respect for mutual rights and duties.

The bill does not address the basic issues and the real and urgent problems of armed forces. We support every bill whose true purpose is to reform the security system and to promote the morale of armed forces, as was the case with Law No. 50 of 2013, which deals with the consolidation of a special system of compensation for damage caused for members of the security forces during Internal work accidents and occupational diseases, which were aimed at reassuring members of internal security forces who expose themselves to the dangers of fighting terrorism and crime.

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