108479-001 - POLICY BRIEF THE LEGAL AND JUDICIAL FRAMEWORK OF PREVENTING YOUTH RADICALIZATION - ENG

Omar Weslatin;
Nizar Ben Salah, Imen Al Nighaoui, Francesca Russo;

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TACKLING YOUTH RADICALIZATION THROUGH INCLUSION IN POST-REVOLUTIONARY TUNISIA

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Policy Brief

The Legal and Judicial Framework of Preventing Youth Radicalization

Author: Omar Wesleti
Translated by: Imen Alnighaoui
Edited by: Nizar Ben Salah & Imen Alnighaoui

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ABOUT THE AUTHOR

Omar Oueslati is a Judge at the Court of First Instance in Manouba. He graduated in 1998 from the University of Law and Political Sciences of Tunis. He later joined the Higher Judicial Institute to graduate in 2002; his graduation project was about the “Implementation of International Arbitration Provisions”. He has an experience of 16 years as a judge; during which he worked in different courts all over the country namely in Sidi Bouzid, Kasserine and Tunisia. Omar Oueslati is a member in the Tunisian Observatory for the Judicial Independence and a member in the Tunisian Judges Association. He is the founder of the Tunisian Association for Development and Training.

Executive Summary

The widespread of violent extremism and terrorist attacks undermined societal stability and world peace. Additionally, it deepened the expansion of intercontinental crimes, money laundering and other illegal acts that have a crucial impact on global politics and economy. Thus, tackling this phenomenon within a legal and judicial framework is important for preserving human rights and societal peace, in addition to guaranteeing the right to a fair trial. The establishment of a comprehensive and fair judicial and legal system will help protect young people from joining radical terrorist organizations and strengthen the efforts to reintegrate these young people into their societies. Thus, this policy brief will discuss the post-revolutionary Tunisian context and its association with the phenomenon of violent extremism and will examine the new Tunisian Constitution and the new anti-terrorism law. Furthermore, this policy brief will also focus on the importance of reforming the Tunisian legal and judicial system in order to protect human rights and guarantee the rights and freedoms to all people, for that they are the foundation of the Tunisian revolution. Finally, there will be a series of recommendations directed at politicians and Tunisian legislators.
The wave of youth joining intercontinental extremist groups became intensely problematic and, therefore, it became a threat to world peace. The borderless nature of these transnational terrorist groups and their ability to generate revenues through illegal trade have hindered the legal and judicial efforts to mitigate the phenomenon. Therefore, these issues have inevitably prompted human rights violations.

Radicalized youth are at the core of countering and preventing violent extremism and organized crime strategies. Through preventive mechanisms, these strategies aim to avert young people from joining violent extremist groups, especially that these radical organizations tend to commit horrendous crimes against humanity.

The national and international laws are inadequate to address cyberterrorism crimes especially that the prosecution of an individual is restricted to the act of committing a tangible crime. Thus, rapid technological development mainly in social media has affected drastically the efforts of mitigating youth involvement in radical organizations. Additionally, there is the dilemma of balancing between countering terrorism and preserving human rights.

**INTRODUCTION**

**Radicalization (In the Arabic Dictionary):**
Radicalization is an extreme opinion or an excessive use of something. It is the extreme or the far-end of something.
After the revolution and throughout the democratic transition, Tunisia witnessed numerous domestic terrorist attacks that resulted in the death of civilians, police officers and soldiers. Although, most of the domestic terrorist attacks happened after the revolution, the Tunisian State adapted, on the 10th September 2003, an anti-terrorism bill. The symbolism of the date represents the tight bond between countering terrorism and preserving human rights. The first article of the bill emphasized the importance of international efforts that tackles countering terrorism and money laundering.

The sixth article of this law treated hate crimes, racism and religious extremism as an act of terrorism, regardless of the methods used to commit these crimes. However, this legal procedure violated the human rights, for instance through, controlling religious practices, the police tend to arrest those who regularly practice their prayers and they charge them with joining unlawful organizations or forming a terrorist group. The suspects tend to be from the opposition or even regular citizen who has no political ties. After they arrest them, these suspects will be detained longer than four days which is the legal period for detaining someone. Moreover, they tend to forge the interrogation reports and they do not allow these suspects to have access to a defense attorney. Even, the attorneys who volunteered to defend them were subjected to violence. There are other procedures that violated human rights such as raiding the suspects houses without a warrant, as well as these suspects tend to be treated badly in prison. For these reasons, several human rights’ organizations opposed its implementation.

However, legislators terminated the law in 2015 through ratifying a new anti-terrorism and money laundering bill that conforms with the international, regional and bilateral agreements that the Tunisian Republic ratified beforehand. This bill respects, as well, the foundation of the new constitution which is based on preserving human rights. Especially, that the Security Council’s resolution N°2250 concerning “Youth, Peace and Security” bids countries to respect human rights and to guarantee that their peoples are protected from genocides, war crimes and ethnic cleansing.

Violent extremist groups are controversially recruiting socially and economically vulnerable young people though offering them an alternative social, political and economic fair system. Therefore, preserving human rights, guaranteeing an independent and fair judicial branch and establishing a transparent legal system are vital to creating a comprehensive countering-terrorism and prevention strategy. Hence, the Tunisian political system is relentlessly working on refuting this type of propaganda through an impartial implementation of laws as well as engaging young people in public life where they could create and join political parties and non-governmental organizations.

First Article
“This law guarantees the right of society to live in peace and security, away from all threats to its stability, and to reject all forms of deviation, violence, extremism, racism and terrorism that threaten the security and stability of societies. It also supports the international effort to combat all manifestations of terrorism and money laundering within the framework of international, regional and bilateral agreements ratified by the Republic of Tunisia, without prejudice to constitutional guarantees.”

1 Human Rights Day
2 Law N°75 of 11th December 2003 regarding Countering Terrorism.
Authoritarian practices tend to drive young people towards radicalization, especially, that youth are consistently searching for a free social and political space in which they would be able to express themselves freely. Oppressive systems tend to disregard the social and psychological conditions of young people, who are in a relentless search for social integrity and economic prosperity thus, these shortcomings would lead them to join violent extremist groups for the sake of achieving their goals. Therefore, radicalization is not an ideology but rather, a consequence of unstable social, political and economic system that violates human rights and promotes oppressive practices such as collective punishment and subduing the opposition. Accordingly, the Tunisian revolution reinforced the importance of preserving freedoms and human rights. It also, guaranteed equality within the society, for that these fundamental practices would shorten the gap between politicians and youth. The post-revolutionary constitution called as well for fighting corruption and highlighted the importance of political pluralism which may help build a comprehensive strategy to mitigate youth engagement in violent extremist groups.
I.1. The New Tunisian Constitution

In 2014, Tunisia ratified a new constitution as part of the democratic transition process that the country is undergoing after the revolution. This constitution is based on respecting human rights as well as on the notion of engaging youth in public sphere.

**The Power of Youth**

The eighth article of the new Tunisian constitution celebrated the importance of youth within the process of the country’s development and prosperity. Additionally, it held the State responsible to provide them with the necessary economic, cultural, social and political tools in order engage them in the public sphere.

“**Youth are an active force in building the nation. The State seeks to provide the necessary conditions for developing the capacities of youth and realizing their potential, supports them to assume responsibility, and strives to extend and generalize their participation in social, economic, cultural and political development.**”

**Guaranteeing equal rights and freedoms for everyone.**

The article number twenty-one stated that the State will uphold the rights of its citizen to participate in the political life, to practice freedom of speech and to have access to education alongside with other different rights. This commitment, which was not part of 1959 constitution, is projected to help develop youth capacities as they are an active force in building the nation.

“All citizens, male and female, have equal rights and duties, and are equal before the law without any discrimination. The State guarantees freedoms and individual and collective rights to all citizens and provides all citizens the conditions for a dignified life.”

**Guaranteeing the Right to A Fair Trial**

Throughout the articles twenty-seven and twenty-nine, the constitution recognizes the importance of the right to a fair trial. Having the right to appoint a lawyer during the primary interrogation phase and the decrease in detention period are legal procedures inspired by the constitution to protect the rights of those who seek justice. Additionally, supervising the practices of police officers during the interrogation phase is a step towards abandoning the old oppressive methods of the overthrown regime.

“A defendant shall be presumed innocent until proven guilty in a fair trial in which he/she is granted all guarantees necessary for his/her defense throughout all the phases of prosecution and trial.”

“No person may be arrested or detained unless apprehended during the commission of a crime or on the basis of a judicial order. The detained person must be immediately informed of their rights and the charges under which they are being held. The detainee has the right to be represented by a lawyer. The periods of arrest and detention are to be defined by law.”

Through preserving young people’s legal and judicial rights, the State will be able to protect youth from the extremist groups’ propaganda that arguably promises these socially, economically and politically vulnerable young people to live within a “Fair State” that would treat them justly an equally before the law. Thus, guaranteeing a fair trial is one way to mitigate youth radicalization; accordingly, young people would feel protected from any type of lawless misconducts.

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3 Tunisian constitution of 26th January 2014  
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5 Tunisian constitution of 26th January 2014
I.2. **The Laws that Guarantee Fair Trial**

To guarantee fair trial, it is important to have an independent judicial system. Therefore, the Tunisian legislators established an elected supreme court council in accordance with the organic law N°34 of 2016 dated on 28th April 2016. This council consists of 45 members, that are mainly judges however, the position is not restricted to this title. The objective behind establishing this council is to end the subordination of the judicial system to the executive branch.

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**The Right to a Defense Attorney.**

In accordance with the new constitutional provisions, the code of criminal procedures was rectified. Therefore, the detainee has now the right to appoint an attorney during the primary phase of interrogation as stated in Law N°5 of 16th February 2016. Additionally, the new rectified provisions prohibited torture and deemed the crime as an imprescriptible offense. The law N°52 of 1992 regarding drug abuse was rectified to enable judges to issue indeterminate or less harsh sentences, especially that the offenders are mainly young people with social vulnerabilities.

**Anti-terrorism and Money Laundering Law N°26 of 7th August 2015**

The overthrown Tunisian regime adapted a controversial anti-terrorism law that was opposed by several human rights organizations because of its human rights violation. Furthermore, the former regime misused it to oppress the opposition. These violations led many young people to join terrorist groups in Iraq, Afghanistan and different other countries, especially, that these groups enticed youth through promising them to fight the State’s injustice. Additionally, these violent extremist groups have offered economic, political and social alternatives through religious propaganda.

However, after the revolution the legislators ratified a new anti-terrorism and money laundering bill. The new law consists of 143 articles that seek to balance between preserving human rights and mitigating violent extremism. Hence, it is still ambiguous if this law would be able to create the balance between these two crucial aspects, especially in the absence of precise statistics.

In May 2018, the Tunisian counter-terrorism judicial pole’s spokesman stated that 1500 is the number of those who have been arrested for terrorist charges, however this number remains relative since it is not possible to convict people without fair prosecution. Additionally, he claimed that the number of the Tunisian foreign fighters is around 2929 terrorist and, that only 160 of them are back to Tunisia. The spokesman affirmed that 90% of them has been arrested under a court order and that their age is between 25 and 29, 70% of which are single, whereas, 90% of them are undereducated.

Despite the change in the legal system that seeks to preserve human rights and to rehabilitate young people, the regime’s practices does not reflect the post-revolutionary democratic spirit. These practices will be explained in detail in the following section.
To find solutions to social phenomena, any legal system needs to follow a clear vision. Therefore, mitigating youth radicalization and countering terrorism are a legal priority, especially that violent extremist groups are known for their flexibility and adaptability to an ever-changing world. Therefore, Tunisia along with other countries that witnessed terrorist attacks, adopted severe deterrence strategies. These strategies have a vast popular support despite that at times it results on human right violations that mainly affect youth between the age of 18 and 35. The feebleness of the Tunisian legal system leads to human rights violations, especially that some unconstitutional laws give authorities [specifically Ministry of Interior] unconditional and unsupervised powers.
II.1.  

Anti-Terrorism Law

The new anti-terrorism and money laundering law was criticized by human rights organizations for the lack of preventive measures that could mitigate youth radicalization. Additionally, human rights activists noted that the adopted law does not protect children aged less than 18 years old and does not preserve the rights of youth aged between the age of 18 and 35. According to this law and unlike other crimes, people who are arrested for committing terrorist crimes would be detained for 15 days for interrogation. Furthermore, in accordance with Law N°5 of 2016, detainees cannot appoint an attorney during the first 48 hours of their arrest.

The anti-terrorism and money laundering law and in accordance with article N°31, condemns praising and glorifying terrorism and charges those who commit this crime to five years in prison. Generally, most of the detainees are young people. The ambiguous legal definition of “glorify and praise” remains intact which represents a fundamental problem that would negatively affect the rights and freedoms of many young bloggers that tend to use social medias.

Law N°5 “The investigating judge may, for the purpose of investigating terrorist cases, not allow the attorney to visit the suspect, meet with them, attend the hearing and the confrontation or have access to the documents of the case for a period not exceeding forty-eight hours from the date of detention unless the public prosecutor had made a previous decision to lift this prohibition.”

Law N°5 “The public prosecutor may, for the purpose of investigating terrorist cases, not allow the attorney to visit the suspect, meet with them, attend the hearing and the confrontation or have access to the documents of the case, provided that the prohibition does not exceed forty-eight hours from the date of custody.”

Article N°31 “Guilty of committing a terrorist offense and is punished with imprisonment from one to five years and fined with five thousand dinars to ten thousand dinars, whoever intentionally within the Tunisian territories or outside it, explicitly and implicitly praised or glorified by any means a terrorist crime and its perpetrators or for the matter any affiliated group and their activities, views and ideas that are associated with these terrorist crimes.”

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6 Law N°5 of 2016 from code of criminal procedure
7 Organic law N°26 of 7th August 2015 concerning Countering Terrorism and Money Laundering
The decree N°50 of 26th January 1978 concerning the regulations followed in the state of emergency is still in force. The first article of the decree mentions the cases in which the state of emergency can be declared.

"The state of emergency may be declared in the entire Tunisian territory or partially in the case of an imminent threat to the public order or in the occurrence of events of grave calamity."\(^8\)

The decree, also, gives board powers to the Minister of Interior through the article N°5.

"The Minister of Interior may place under house arrest in a certain territory or town any person who resides in one of the areas provided in article number two above, whose activity is considered to be dangerous to public order and security in those areas."

The decree specified as well the powers given to the governor to preserve public order and they are as fellow:

- Prohibiting people and vehicle’s movement.
- Preventing any strikes or attempts to disrupt work even if it is decided before the declaration of the state of emergency.
- Organizing people's housing.
- Putting under house arrest any person who tries in any way to obscure the activities of public authorities.
- Harnessing people and resources if needed for the sake of public interests that were deemed as vital to the nation’s prosperity.

Due to the aforementioned provisions, many young people remain under house arrest. According to the “Observatory of Rights and Freedoms of Tunis” association, 500\(^9\) persons are placed under house arrest without any judicial supervision. However, the Ministry of Interior did not give any specific number of neither those who are placed under house arrest nor of those who are under surveillance.

Among other measures, the Tunisian authorities ban a certain group of young people from traveling to specific destinations [This measure, also, includes any young man or woman under the age of 35. They cannot travel without the permission of their guardian]. There is, also, the decision to not provide this group of young people with any official papers such as card N°3 (a card for criminal records), despite that this decision was revoked once and one of the young men was granted the card. These procedures apply to every person listed in the S17 list that was created by the Ministry of Interior. The list contains details about individuals who have been arrested or suspected of involvement in terrorist activities.

These procedures undermine the efforts to prevent young people from engaging in terrorist organizations. Therefore, it showcases the weaknesses of the Tunisian legal system that adapted extreme measures instead of addressing the problem through less severe procedures; especially, when it comes to offenses related to freedom of expression. Despite these dreadful and horrific ideas and views, the Tunisian legal system still can address this issue within an educational, cultural and psychological framework.

Hence, Tunisian legislators shall review the current legal system for the sake of providing young people with a real second chance that will allow them to reintegrate into the society. Additionally, it would help them reject extremist rhetoric and renounce violent extremism.

\(^{8}\) Decree N°50 of 1978 concerning the regulations of State of Emergency

\(^{9}\) Mentioned on “Al-Sabah” newspaper in 7th September 2018
III.

RECOMMENDATIONS

1. Reviewing the “Anti-Terrorism and Money Laundering” law in a way that would allow young people to renounce radicalization and to reinforce their reintegration into the society.


3. Rectifying law N°5 that implicates the absence of the attorney during the first 48 hours of the terrorist suspect’s custody.

4. Engaging young people in the process of establishing national strategies concerning preventing youth radicalization and their rehabilitation, especially those who accept psychological treatment and cultural reintegration.

5. Avoiding media stigmatization for the sake of persevering the detainee’s right to a fair trial, for that everyone has the right to be presumed innocent until proven guilty.

6. Criminalizing the assault on the presumption of innocence.

7. Ensuring a fair trial.

8. Recognizing “Community Service” as a measure to punish those who committed the offense of praising or glorifying terrorism [their age group would be determined in accordance with legal regulations.]
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