

GDPO Situation Analysis

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Cannabis and the Drug Law in Tunisia: A Reform Rooted in Social Justice Claims

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Subject: Drug law reform in Tunisia

Drug control policies in Tunisia are guided by the 1992 Narcotics Act (Act 92-52),² adopted under the dictatorship following the 1987 *Coup d'Etat*. Until April 2017,³ the Act was one of the most punitive drug control laws in the world, sentencing people convicted of drug use or possession of small amounts to a mandatory minimum of one year in prison, and a monetary fine of 1000 Tunisian Dinars (400 USD). The specificity of this law has been the mandatory nature of its sentences, and the incapacity of judges to take into account mitigating circumstances, making it the only law in the Tunisian criminal code depriving judges of their discretion. This specific legal provision, as dictated by article 12 of the Act, was amended by the Tunisian Parliament in April 2017 to address prison overcrowding.

This amendment was part of a larger reform of Act 92-52, launched by the Tunisian government at the end of 2015 and still being debated in Parliament. With a prison population of 25,000 inmates, at least 8,000 are incarcerated for drug-related offences, and it is estimated that 9 out of 10 are there for simple possession or personal use,⁴ mostly young men. Data on drug use prevalence is scarce, with estimates indicating a total of 140,000

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² Official Journal of the Tunisian Republic No. 33 (1992). Law No. 92-52 of 18 May 1992 on Narcotic drugs.

³ More details on ongoing reforms in section “The stakeholders: civil society, the government and Parliament”

⁴ Amraoui, A. (2015) Drogues : une jeunesse victime de l'échec de la politique de prévention. Nawaat.org. Available from: <https://nawaat.org/portail/2015/09/05/tunisie-drogues-jeunesse-victime-echec-politique-prevention/> (accessed 10 July 2017)

people who use drugs (PWUD),⁵ with around 10,000 people injecting drugs.⁶ Other sources report up to 400,000 PWUD in the country.⁷ In 2015, 21.44% of new HIV infections were among people who inject drugs.⁸ Moreover, HIV prevalence among this same population has increased from 3% in 2011 to 4% in 2014, while it is 0.1% in the general population.⁹ This increase has occurred in the absence of a national strategy for harm reduction. There are no opioid substitution programmes, and the distribution of syringes is mainly undertaken by non-governmental organizations. In 2013, the 48,000 syringes distributed in the country were by civil society groups - the Association Tunisienne d'Information et d'Orientation sur le SIDA et la Toxicomanie (ATIOST), the association *Tunisienne* de Prévention de la Toxicomanie (ATUPRET) and the Association Tunisienne de Lutte Contre les MST et le sida (ATL-MST).¹⁰ The prevalence of hepatitis C in the same population is 29%.⁶ Anecdotal data shows that nevertheless the vast majority of people who use drugs consume cannabis. There is no available data on poly-drug use.

The national context: The Narcotics Act and the Jasmine Revolution

Not only does Act 92-52 punish people who use or possess drugs with prison terms of one to five years and a monetary fine between 1,000 and 3,000 Tunisian Dinars (400 and 1,200 USD), it also punishes the attempt to consume or possess drugs with the same sanction. Furthermore, Act 92-52 punishes possession for the purpose of consumption and punishes actual consumption even if there is no possession involved. The court may force the convicted offender to undergo detoxification for a period set by a medical doctor at a public hospital. If the detoxification is refused, a permit can be issued by the president of the court forcing the offender to undergo this treatment in a compulsory manner.¹¹ Under the terms of the law as well, traffickers and growers of narcotics are sentenced to prison terms from 6 to 10 years, while those importing or exporting drugs face a minimum of ten years of incarceration and up to a life sentence.

These provisions have resulted in unprecedented prison overcrowding, mainly involving young males convicted of cannabis use charges. As stated above, 90% of the 8,000 inmates are incarcerated for drug consumption offences, with Act 92-52 allowing urine tests to be used to prove consumption. In 2015, 7,451 people were arrested and prosecuted for drug

⁵ Amraoui, A (2015) Drogues : une jeunesse victime de l'échec de la politique de prévention. Nawaat.org. Available from: <https://nawaat.org/portail/2015/09/05/tunisie-drogues-jeunesse-victime-echec-politique-prevention/> (accessed 10 July 2017)

⁶ Tunisie Numérique (2012) 10 000 toxicomanes usagers de drogue intraveineuse en Tunisie. Turess. Available from: <http://www.turess.com/fr/numerique/119208> (accessed 10 July 2017)

⁷ Bentamansourt, N (2016) Tunisie-Drogue : 3,9% des consommateurs contaminés par le VIH! African Manager. Available from: <https://africanmanager.com/mots-cles/association-tunisienne-de-la-prevention-contre-la-toxicomanie/> (accessed 10 July 2017)

⁸ Africaine Santé (2015) VIH/SIDA en Tunisie: Où en est-on? Available from: <http://africaine-sante.com.tn/a-la-une/vihsida-en-tunisie-ou-en-est-on/> (accessed 10 July 2017)

⁹ UNAIDS (2014) Key Populations Atlas: Tunisia- People who inject drugs: HIV Prevalence 2014. Available from: <http://www.aidsinfoonline.org/kpatlas/#/home> (accessed 10 July 2017)

¹⁰ National HIV/AIDS Programme of Tunisia (2014) Rapport d'activités sur la riposte au sida 2012-2013. UNAIDS.

¹¹ Official Journal of the Tunisian Republic No. 33 (1992). Law No. 92-52 of 18 May 1992 on Narcotic drugs.

offences, of which about 70% were related to cannabis possession or consumption.¹² A year later, in 2016, 8,984 people were arrested on similar charges, 6,212 of which were aged 18-30 years.¹³

These provisions were highlighted during the Jasmine Revolution, which started in 2011, when authorities used drug control against young revolutionaries.¹⁴ The most famous case of the use of Act 92-52 against proponents of the Jasmine Revolution was the case of blogger and human rights activist Azyz Amami. Considered a symbol of the Jasmine Revolution, he was arrested for possession and the intent to consume cannabis weeks after he supported a group of young people accused of burning police posts.¹⁵ Another famous case was that of the rapper Kafon, also arrested for cannabis use months before his song on social unrest and youth conditions was released and became a hit.¹⁶ Ironically, provisions of Act 92-52 were also used to sentence Zine el Abidine Ben Ali, the ousted president in Tunisia, to a ten-year prison sentence for drug trafficking.¹⁷

The situation of incarceration and the social cost of Act 92-52 have led public opinion to reject the drug law. Its impact, with the large-scale incarceration of young men, was addressed by the Office of the United Nations Commissioner for Human Rights, which called on the Tunisian government to adopt proportional sentences for drug offences.¹⁸ The first act of de-escalation of the 'war on drugs' and the incarceration of people who use drugs started in 2014, when then President Moncef Marzouki pardoned 1,200 persons convicted of charges of drug consumption before the presidential campaign.¹⁹ During the 2014 presidential campaign, the current President Béji Caïd Essebsi promised a reform of the law and denounced the use of prison terms for first-time drug use.

¹² Human Rights Watch (2015) « Tout ça pour un joint » La loi répressive sur la drogue en Tunisie et comment la réformer. Available from: https://www.hrw.org/sites/default/files/report_pdf/tunisia0216fr_sumandrecs_.pdf (accessed 11 July 2017)

¹³ African Manager (2017) Tunisie-stupéfiants : Le bilan de 2016 en chiffres. Available from: <https://africanmanager.com/tunisie-stupefiants-le-bilan-de-2016-en-chiffres/> (accessed 10 July 2017)

¹⁴ Tinasti, K. Are cannabis laws used for political repression in the Arab Spring countries? *Addiction*, 110 (12); 2015: p. 2037

¹⁵ Al Huffington Post Maghreb-Tunisie (2014) Procès d'Azyz Amami et Sabri Ben Mlouka: Des manifestants dénoncent un procès "politique". Available from : http://www.huffpostmaghreb.com/2014/05/23/tunisie-proces-azyz-amami_n_5377786.html (accessed 26 December 2014)

¹⁶ Al Huffington Post Maghreb-Tunisie (2014) Liberté conditionnelle pour le rappeur Kafon. Available from: http://www.huffpostmaghreb.com/2014/03/20/kafon-libre_n_4998041.html (accessed 26 December 2014)

¹⁷ Naudé, P-F (2011) Tunisie : Ben Ali condamné à 15 ans de prison pour l'affaire du « palais de Carthage ». *Jeune Afrique*. Available from: <http://www.jeuneafrique.com/180467/politique/tunisie-ben-ali-condamn-15-ans-de-prison-pour-l-affaire-du-palais-de-carthage/> (accessed 29 March 2018)

¹⁸ Office of the United Nations High Commissioner for Human Rights (2014). Prisons in Tunisia: International Standards versus Reality.

¹⁹ Al Huffington Post Maghreb-Tunisie (2014) Tunisie: 1630 prisonniers graciés à l'occasion de la fête de la République. Available from: http://www.huffpostmaghreb.com/2014/07/25/tunisie-grace-prisonniers_n_5620035.html (accessed 30 March 2015)

The stakeholders: Civil society, the government and Parliament

Debates around the need to reform Act 92-52 took place in 2014, at a time when several elements allowing for this reform occurred: the country adopted its democratic Constitution allowing for more citizens' rights; the main presidential candidate (currently in power) promised to reform Act 92-52 as part of his presidential campaign platform; and most importantly, young people stood up for their rights in the post-Revolution era, with movements such as the Sajin52 (prisoner 52) emerging and largely denouncing the law in the media.

This nexus resulted in the government tabling a new narcotics bill to amend Act 92-52 in December 2015, to introduce the following provisions:

1. the establishment of a national drug observatory to collect data;
2. the establishment of treatment centres, including the introduction of substitution therapy;
3. the diversion of first and second-time offenders arrested for use, to social services (third-time offenders will serve the same terms as the current law provides, between one and five years); and
4. the possibility for judges to decide on the most appropriate sentences.²⁰

The last provision was amended in April 2017 when Parliament gave judges the right to apply Article 53 of the criminal code to reduce penalties, not only for consumption, detention and consumer intent (Article 4 of Act 92-52), but also for attending consumption spaces (Article 8 of Act 92-52).²¹

The process leading to this partial amendment started with the submission to Parliament of bill 79 amending Act 92-52. As the bill did not find a supporting majority for more than 12 months, President Béji Caïd Essebsi decided in January 2017 to use his executive powers to freeze all arrests related to Narcotics Act 92-52, and urged Parliament to find a consensus and vote for the reform. A month later, the President convened a meeting of the National Security Council, which decided to revise the criteria for granting special pardon to people charged with drug use or possession, and to have the Pardon Committee meet once a month to overturn the judges' decisions on arrests when necessary, to prevent those arrested from being incarcerated. The National Security Council also partially repealed Act 92-52, and specifically its article 12 leading to the reform of April 2017 by Parliament, giving judges the capacity to take into account mitigating factors.

In the current economic, social and security framework in Tunisia, where tensions among society are numerous - from the declining standards of living of the population, the decline of the industrial, tourism and services sectors, as well as the security and fight against terrorism - the calendar of the adoption of bill 79 in Parliament remains unclear. The bill is

²⁰ Tunisian government (2015) Projet de loi N°79 de l'année 2015 relatif aux stupéfiants.

²¹ Huffpost Tunisie (2017) Tunisie-La loi 52 a été amendée: "Une étape considérable franchie" se félicite l'avocat Ghazi Mrabet. Huffpostmaghreb.com; April 2017. Available from: http://www.huffpostmaghreb.com/2017/04/25/tunisie-loi-52-stupefiant_n_16231606.html (accessed 12 July 2017)

currently still under review in the Committee of Legislation of Parliament, where no consensus seems to be found as there is strong opposition to the partial decriminalisation of drug use and possession.

The contentious articles: Decriminalisation or no decriminalisation of use and possession?

According to media and civil society actors, the most contentious article in the bill 79 remains the review of article 4 of Act 92-52, which establishes the criminalisation of drug use and possession, and reads as follows:

will be punished with incarceration of one to five years and a fine between one and three thousand dinars, any consumer or holder with the intent to consume of narcotic plants or substances (article 4, Narcotics Act 92-52)

In bill 79, this article has been divided into two new articles (23 and 24), aiming at removing the prison sentences for first and second-time offenders arrested for drug use or possession. The suggested articles read as follows:

will be punished with a fine of one to five thousand dinars, any consumer or holder of narcotics who has not agreed to medical, psychological or social treatment, or to be placed under medical supervision in a health establishment as provided for in Article 13 of this Act, or who has abstained from or interrupted treatment. Will also be punished with a fine of two to five thousand dinars any consumer or holder of narcotics arrested for the second time in cases prohibited by law (article 23, Narcotics bill 15-79)

in case of recidivism, will be punished with incarceration of one to five years and a fine between one and three thousand dinars, any consumer or holder with the intent to consume of narcotic plants or substances. In case the court pronounces a prison sentence, it can replace it by a sentence of community service according to article 15bis of the Criminal Code (article 24, Narcotics bill 15-79)

It is unclear, nevertheless, if these suggested articles, which are part of the bill 79 as tabled by the government in December 2015, are still included in the text or if they have been removed.²² Indeed, civil society movements have been publicly requesting to have access to the latest draft of the bill 79, other than the one made public, which Members of Parliaments and those members of the Legislation Committee are debating. According to those civil society groups (Sajin 52 and the International Federation for Human Rights), articles 23 and 24 of bill 79 are no longer part of the amended text, putting an end to the hopes for the decriminalisation of drug use and possession; while the bill discussed increases

²² Huffpost Tunisie (2017) La prison et une amende plus lourde pour les consommateurs de cannabis. Un tollé de la société civile. Huffpostmaghreb.com; January 2017. Available from: https://www.huffpostmaghreb.com/2017/01/13/tunisie-cannabis-consomma_n_14144118.html?utm_hp_ref=mg-loi-52 (accessed 29 March 2018)

the charges against traffickers and growers of narcotics to prison terms from 10 to 20 years (currently 6 to 10 years).

Within such an opaque parliamentary process, the head of the Legislative Committee of the People's Representatives Assembly (Parliament) declined to engage with civil society actors for 'lack of time'²³ It therefore remains challenging to predict how bill 79 might evolve, or what could be the extent of the reform of the current Narcotics Act 92-52. Nevertheless, the non-contentious elements of the bill 79 (the establishment of a national observatory, the introduction of methadone treatments, and the opening of several voluntary treatment centres throughout the country) will allow Tunisia to have a modern drug law allowing for better data collection, better monitoring of the policies and their outcomes, and better public health outcomes. It nevertheless remains unclear what this lengthy and painful reform process will bring in terms of reducing over-incarceration and the impact of prison on the Tunisian youth, its *raison-d'être*, without addressing the criminalisation of drug use and possession.

²³ Huffpost Tunisie (2017) La prison et une amende plus lourde pour les consommateurs de cannabis. Un tollé de la société civile. Huffpostmaghreb.com; January 2017. Available from: https://www.huffpostmaghreb.com/2017/01/13/tunisie-cannabis-consommation-14144118.html?utm_hp_ref=mg-loi-52 (accessed 29 March 2018)

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