

Rule of Law Quick Scan Tunisia



The Rule of Law in Tunisia:
Prospects and Challenges

Rule of Law Quick Scan

Tunisia

Prospects and Challenges

HiiL Rule of Law Quick Scan Series

This document is part of HiiL's Rule of Law Quick Scan Series. Each Quick Scan provides a brief overview of the status of rule of law in a country.

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Foreword

This document is part of Hiil's *Rule of Law Quick Scan Series*. Each Quick Scan provides a brief overview of the status of rule of law in a country.

The Quick Scan Series is primarily meant for busy practitioners and academics who want to have a snapshot of the rule of law in a country, particularly with a view to understanding what the main trends and challenges regarding the rule of law are and where local and international stakeholders can possibly make a positive difference.

Each Quick Scan is written by a reputable rule of law expert from academia and/ or practice, who is either from the concerned country or has spent many years living and working there.

The Quick Scan Series aims to be neutral and balanced. To achieve this aim, the authors have consulted sources from a wide range of stakeholders, including the government, (inter)national NGOs, academia, and international organizations. They present differences of opinion or analysis, but do not pronounce judgment on which view is correct. In the context of their work on the Quick Scan they have visited the country and talked to different stakeholders, presented drafts and revised in view of the comments they received.

All Quick Scans have the same format. Part A describes relevant historical, social, political and economic context. Part B analyses positive trends and challenges. Part C is an overview of relevant indicators on rule of law. To identify relevant trends and challenges in rule of law, the Quick Scans are guided by the conception of the rule of law developed by the World Justice Project Rule of Law Index.

This Quick Scan on the rule of law in Tunisia has been prepared in partnership with the Arab Center for the Development of the Rule of Law and Integrity (ACRLI). In particular, ACRLI organized national level meetings to generate input and feedback from a wide variety of stakeholders. ACRLI's outstanding professionalism in identifying and committing stakeholders, leading the workshops, assisting the authors and organizing outreach activities has been invaluable.

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The Hague,

Ronald Janse
Hague Institute for the Internationalisation of Law

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Part A: Overview of the Rule of Law in Tunisia



1. Concept of the Rule of Law

The term 'rule of law' has many definitions in various legal systems. The term originated in and first spread through the Anglo-Saxon countries. In France, it is called the principle of legality (*principe de légalité*) and in Germany, it is called state of law (*Rechtsstaat*).¹

In a country ruled by law, the exercise the state power is limited by principles protecting subjects from the arbitrary exercises of power. Individuals have civil liberties under the law and may use them in the courts. No country can have freedom or democracy without being first a 'state of law' (a state governed by law). In its simplest form, the rule of law may be defined as the reign of law, which means that the law is above all and no one is above the law.

According to the United Nations Development Program (UNDP), the definition of the rule of law covers the equal protection of the human rights of individuals and groups, and it includes the just punishment in accordance with the provisions of the law. Law should be binding on governments and should protect equally the citizens who are subject to it, instead of citizens being subject to the whim of the strongest group at a particular time. The law should provide protection against exploitation and abuse of all vulnerable groups.

The rule of law or state of law is a legal system in which everyone is subject to the law – individuals and groups as well as governing public authorities. This concept is very closely linked to the respect for a legal norms hierarchy, the effectiveness of separation of powers, and the guarantees of fundamental rights. It is also closely linked to the spread of constitutional regimes. The concept of rule of law is essentially incompatible with dictatorial regimes, which are often based on the violation of fundamental rights of individuals and groups.²

¹ Rainer Grote, 'Rule of Law, Rechtsstaat and Etat de Droit', in Christian Starck (ed.), *Constitutionalism, Universalism and Democracy: A Comparative Analysis*, (Nomos Verlagsgesellschaft, Baden-Baden, 1999).

² HEUSCHLING, 'L' Etat de droit//Rechtsstaat//Rule of Law', 55(4) *Revue Internationale de Droit Comparé*, (), pp. 1002-1005; Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory*, (Cambridge university press, 2004); Paul Craig, *Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework*, pp. 467-487, (1997).

2. Historical Overview of Tunisia

Tunisia is an Arab Maghreb, African, and Mediterranean country, located in the far North of Africa, with a population of 10,629,186 people and an area of 610,163 sq. km.

Tunisia has played a prominent role since ancient times with the famous Phoenician city of Carthage, which was called the Africa Province during Roman times. Long wars have taken place between Carthage and Rome, considered amongst the most important wars during the Roman era. Tunisia was called "Rome's Cultivated Earth" for its provision of agricultural products. Later, Tunisia was occupied by the Byzantines in the sixth century, then was conquered by Muslims in the seventh century and became an Ottoman subdivision in early 1574. It was then placed under the French protectorate from 1881 to 1956. It obtained its independence on 20 March 1956. Thereafter, the monarchy was removed and the Republic was proclaimed on 25 July 1957. The leader Habib Bourguiba became the first President who ruled Tunisia until the end of 1987, when he was displaced by his prime minister, Zine El Abidine Ben Ali, on 7 November 1987 under the so-called medical coup d'Etat. Ben Ali was forced, after 23 years of authoritarian rule, to leave power and flee to the Kingdom of Saudi Arabia on 14 January 2011 following a peaceful mass popular revolution. The former Speaker of the Lower House, Fouad Mebazaa, became interim President between 15 January 2011 and 13 December 2011. On 13 December 2011 the current President, Mohamed Moncef Marzouki, assumed power.

Tunisia is a member of the Arab League and the African Union, and has traditionally had good relations with the European Union, to which it is connected through partnership agreements concluded in 1995 and entering into effect in March 1998.

3. Constitutional and Political Data for the Pre-Revolution Period

Tunisia has a rich and unique legal history. It had one of the first constitutions in the world, the constitution of ancient Carthage. Aristotle wrote about the constitution of ancient Carthage with admiration in his *Politics* book and considered it as to have established a moderate democratic system. During the nineteenth century, Tunisia witnessed a reform and modernizing movement, as it was one of the first countries in the Arab and Islamic world to issue important documents for the organization of governance and establishment of freedoms, the most important being the *Fundamental Pact* issued in 1857, and then the *Constitution* issued in 1861.

After the Declaration of Independence in 1956, Tunisia called for the election of a national constituent assembly to establish a constitutional monarchy. It also established several social reforms, the most important of which was the issue of the *Code of Personal Status* on 13 August 1956, which forbade polygamy and called for equality between men and women before the law.

On 25 July 1957, the National Constituent Assembly declared the abolition of the monarchy and the establishment of the Republic, then developed, approved, and issued a *Constitution* in June 1959.

The *Constitution of 1959* adopted a presidential system and the principle of separation of powers. The *Constitution of 1959* has undergone many amendments, the most important of which were in 1969, 1975, 1976, 1988, 1997 and 2002, before it was suspended in March 2011 then finally cancelled in December 2011.

This *Constitution* adopted three powers and regulated the relationship between them but was of limited effectiveness, with no democratic core and became gradually void of credibility, since it included the life presidency of President Bourguiba and was also affected by numerous amendments, in addition to those made during the time of former President Ben Ali.

a. The Legislative Authority

Title Two of the *Constitution of 1959* allocated legislative authority (Articles 18 to 36), to a single chamber called the National Assembly (known as the Chamber of Deputies, *Majlis al-Nuwaab*, since 1981). Another chamber, known as the Chamber of Councillors (*Majlis al-Mustashārīn*), was added by the June 2002 amendment, Article 18 stipulated: "The people shall exercise the legislative authority through the chamber of deputies and the Chamber of Councillors, or by referendum."

The Chamber of Deputies remained the general legislative competent authority, while the Chamber of Councillors had less important legislative competences.

The Chamber of Deputies included 214 deputies until the date of its dissolution after the 2011 Tunisian revolution (hereafter, the Revolution).

As for the Chamber of Councillors, Article 19 of the former *Constitution* stipulated that, "The Chamber of Councillors is formed of members whose number does not exceed two thirds of the members of the Parliament. The electoral law shall determine the method of verifying this number every six years, according to the existing number of the Parliament's members." After the elections of 2004, they were 126 councillors, 43 of them representing the governorates with one or two member for each governorate according to the population, 42 elected on the national level among peasants and wage-earners nominated by the relevant professional organizations within lists containing not less than double of the number of seats of each class, and finally 41 councillors appointed by the President among "national personalities and competencies".

The former *Constitution* theoretically assigned several functions to the Parliament of Tunisia (*al-Barlamān at-Tūnsī*, hereafter Parliament), the most important of which was the general function of law-making of all types (ordinary, organic, and constitutional), the power to control the government, the power to approve development plans, and the powers relating to the Supreme Court.

The function of government control witnessed a clear development in the constitutional provisions, through the amendment of the *Constitution* on 8 April 1976, when techniques derived from parliamentary systems were introduced, including written and oral questions, as well as the list of blame.

However, the powers of the legislative authority were meaningless in the one-party system then the very dominant party system, and witnessed a continuous decline in practice, especially since the amendment of the *Constitution* on October 27, 1997, which narrowed the field of legislative authority and extended the scope of executive power (the powers of the President).

b. The Executive Authority

Title Three of the former *Constitution* (Articles 37 to 63) addressed executive authority. The National Constituent Assembly in 1959, under the influence of Habib Bourguiba, established a political system based on a strong executive authority. This option made the executive authority the most important authority in the former Tunisian political system. The original text of the *Constitution* stipulated the singularity of the executive authority, assumed by the head of state who is assisted by a group of secretaries of state. There was no prime minister or government in the strict sense of those concepts.

However, the difficulties resulting from the end of the cooperatives policy in 1969 and the emergence of health problems of the head of state, led to the creation of the function of Prime Minister, who led the government in 1969. Thereafter, executive authority became bilateral, consisting of presidential head of state on the one hand, and of a government headed by a prime minister on the other hand. This arrangement was confirmed by an amendment to the *Constitution* on 8 April 1976. The *Constitution* was again amended in 1988 following the assumption of power by Ben Ali, who moved the executive authority towards a greater dominance by the President.

According to the former *Constitution*, the President of the Republic is directly elected in a secret ballot for five years. The President is elected independent of parliamentary elections, and has a many important powers.

The President exercises many powers that can be divided into three categories:

Article 38 of the *Constitution* stipulated that the President shall “exercise the executive authority”, and shall direct the general policy of the State and control its basic options. He is the general commander of the armed forces and he is the one who approves the diplomatic representatives of the State abroad and accepts the accreditation of the foreign countries’ representatives in his country. He shall sign treaties, declare war and conclude peace with the consent of the Parliament. He has the right to pardon. He appoints the Prime Minister and the other members of the Government, under the suggestion of the Prime Minister. He also assigns, under the suggestion of the Government, the civil and military superior functions, appoints the President of the Constitutional Council and a number of its members. He oversees the implementation of the laws and exercises the general ordinal power. He also presides over the Council of Ministers.

The *Constitution* authorizes the President as well to intervene in the legislative field, as he has the right to submit draft laws to the Parliament and these draft laws shall have priority in the consideration. He authenticates the laws and oversees their publication, and may reject their authentication and return them to the Parliament for a second reading by the majority of the latter.

The President may also assume power in case of parliamentary recess, in case of a mandate from the Parliament or in case of dissolution of the Parliament. He may call the Parliament to convene in an extraordinary session.

In case of non-ratification of the draft budget by the Parliament before December 31, the President may enter the provisions of the budget draft laws into effect, with premiums of three months, renewable by virtue of an order.

The President of the Republic may, in accordance with Article 19 of the Constitution, appoint one third of the members of the Chamber of Councillors among national personalities and competencies.

Finally, Article 63 of the Constitution authorized the President of the Republic to dissolve the Parliament.

The powers of the President in this field are very important because they enable the President to control the legislative work.

The President also has important powers in *exceptional cases*, as Article 46 stipulated that the President, in case of an imminent danger threatening the integrity of the Republic and the country's security and independence in a manner such that the ordinary work of the state cannot be processed, may take all extraordinary measures after consulting the Prime Minister, the Head of the Parliament, and the President of the Chamber of Councillors.

In the Tunisian political system, the government did not have the same role as compared to most parliamentary system, as the function of the government was to assist the President in exercising executive authority, as stipulated in Article 37 of the Constitution. Article 58 stipulated that the government oversees the implementation of the state's general policies according to the guidelines and options defined by the President.

The President has absolute authority over the appointment of the Prime Minister and the President appoints the members of the government under the suggestion of the Prime Minister. The President may terminate the functions of the government or a member thereof as the President wishes, or under the suggestion of the Prime Minister. The government is accountable for its actions before the President and it is theoretically responsible before the Parliament for the implementation of the state's policy. Parliament may vote on a list of blame against the Government and oblige the Government to resign. This had never happened due to the affiliation of the members of both authorities, almost entirely, to the same dominant party at the time, the Constitutional Democratic Rally (*At-Tajammu' Ad-Dustūrī Ad-Dīmuqrāṭī, Rassemblement Constitutionnel Démocratique*), under that name or previous names.

c. Judiciary

Title Four of the former *Constitution* addressed judiciary authority (Articles 64 to 67), and stipulated in Article 65 that, "The judges are independent, with no authority over them except that of the law". Article 67 stipulated that, "The necessary guarantees to the judges, in terms of appointment, promotion, transfer and discipline shall be overseen by a Higher Judicial Council."

The Fifth Title of the former *Constitution* addressed the Supreme Court, and the Sixth Title address the State Council. The Sixth Title also covers the administrative judiciary represented by the Administrative Court, and the financial judiciary, which is represented by the Court of Accounts. The Seventh Title of the former *Constitution* (Articles 72 to 75) addressed the Constitutional Council, which remained mainly for consultation, and was by fully subordinate, in terms of membership and functionality, to the President of the Republic.

The political system in Tunisia was characterized from 1956 until 14 January 2011, by the absence of a real separation of authorities, and the dominance of the executive authority, especially that of the President over all the authorities that were continuously overseen by him and were allocated for the service of his absolute power, as the Parliament was a mere chamber for the registration of the President's desires and projects. The President used the judiciary as a tool for unfair trials and to repress individuals and organizations that showed some independence. The judges suffered from all types of abuse and the judicial organizations were obliged to be subject to executive authority.

4. Public Rights and Freedoms

The repealed *1959 Tunisian Constitution* began with the principle that “Tunisia is a free, independent and sovereign State, its religion is Islam, its language is Arabic and its regime is republican” (Article 1). Article 3 confirmed that “sovereignty belongs to Tunisian people”, and Article 6 laid down the principle of equality of citizens before the law. The *1959 Tunisian Constitution* approved, in Articles 7 to 17, a number of fundamental rights and freedoms, such as freedom of thought, speech, press, publication, broadcast, assembly, establishment of associations, and organization (Article 8), right to property (Article 14), inviolability of the home and secrecy of correspondence (Article 9), freedom of movement within the country and abroad, and the choice of residence (Article 10).

However, the Tunisian political system was characterized by its limited democracy under the era of President Habib Bourguiba and evolved gradually towards an authoritarian and personalized presidential system, where the political pluralism was cancelled since the beginning of the sixties and the opposition Tunisian Communist Party (*al-Ḥizb ash-Shuyūṭī at-Tūnisī; Parti communiste tunisien*) was outlawed. Meanwhile, most professional and civil organizations were turned into tools to justify and promote the choices of the ruling authority, with the exception of the General Union of Tunisian Workers. The relationship between the General Union of Tunisian Workers and the rulers alternated between domestication, subordination, relative autonomy, and sometimes even open conflict, such as in the years 1978 and 1985.

Several regulations were issued stifling freedoms, such as the *Code of Press* in 1975. This non-democratic and authoritarian trend was deepened during the reign of Zine El Abidine Ben Ali, who overtook the aging Habib Bourguiba as President in late 1987.

Upon assuming power on 7 November 1987, Ben Ali announced a number of reforms aimed at “establishing the rule of law and institutions”, cancelling the presidency for life, and strengthening the political pluralism. The first three years of Ben Ali’s reign were characterized by a relative openness. However, tyranny, autocratic power, and exclusion quickly developed and President Ben Ali did not keep his promises, such as his promise to limiting the number of presidential mandates to three. President Ben Ali’s expanded powers were solidified through the amendment of the *Constitution* in 2002. Furthermore, the conditions to run for presidential elections were amended on the occasion of each election, in order to exclude the opponents. Several laws were amended in order to close, tighten, and suppress freedoms. The most important of which was the amendment of the *Act of Associations* in 1992, the *Anti-Terrorism Act* in 2003, the amendments to the *Penal Code*. Most recently, Article 61 bis of the *Penal Code* was amended in August 2010,³ which broadly punished, “every Tunisian who, directly or indirectly, intends to make contacts with agents of a foreign State, institution or organization, intended to incite harm to the vital interests of Tunisia. Vital interests of Tunisia shall mean all that is related to its economic security.”

The media and communications sector was subject to severe repression and subordination, and the majority of its means were converted for propaganda, disinformation, and overthrowing the journalists’ union. The Tunisian Association of Newspaper Editors was expelled from the World Association of Newspapers in 1997, because of its indifference towards the attacks on the freedom of the press in Tunisia.

Furthermore, political and financial corruption dominated the country, bringing the system into a one of tyranny and corruption. The vast corruption continued until the people attempted to overthrow the regime first during the revolt at the Gafsa Mining Basin in 2008, then further during the period between 17 December 2010 and 14 January 2011. This revolution ended with the fall of the regime and the beginning of a difficult democratic transition period, aimed at dismantling the rest of its corrupt structures and changing the constitutional, legal, and legislative framework in order to establish the actual rule of law.

³ According to *Law No. 35 of 2010*, dated 29 June 29, 2010

5. Characteristics of the Democratic Transition Process

Immediately after the departure of Ben Ali to Saudi Arabia on 14 January 2011, the Prime Minister, Mohamed Ghannouchi, announced that he is temporarily assuming the Presidency of the Republic, because the President is not able to perform his functions, according to Article 56 of the Tunisian *Constitution*, which stipulates: "If the President was unable to carry out his duties in a temporary manner, he may delegate his powers to the Prime Minister, except for the right to dissolve the Parliament. During this period of temporary disability of the President, the Government shall remain existing until the end of this period, even if the Government was subject to a list of blame. The President shall inform the House Speaker and the Head of the Chamber of Councillors of his temporary assignment of powers."

However, due to the fact that former-President Ben Ali had not actually delegated powers to Mohamed Ghannouchi, the Constitutional Council announced the following day the permanent vacancy of the President's position, according to Article 57 of the *Constitution*. Therefore, the House Speaker, Fouad Mebazaa, took over the post of the President of the Republic on a temporary basis, pending the early presidential elections within 45 and 60 days, as stipulated by the Constitution. On 17 January, a new Government was formed led by the Prime Minister, Mohamed Ghannouchi, with the participation of some opposition leaders. Mr. Ghannouchi stressed the commitment of his Government to release political prisoners and to form a Committee to investigate the abuses, to fight political corruption, and to investigate the owners of great wealth and those suspected of corruption. However, a large part of the people refused to continue under the old constitutional and legislative framework and the continued presence of ministers from Ben Ali's Government led to the composition of the Government to be changed on 27 January. However, this was still not seen as enough, and the popular desire for a further break from the former regime and its appointees, led to the resignation of Prime Minister Mohamed Ghannouchi on 27 February 2011. Subsequently, the temporary Tunisian President, Fouad Mebazaa, appointed Mr. Beji Caid Essebsi as Prime Minister. Mr. Beji Caid Essebsi is one of the figures of the era of Bourguiba, who left the political scene in the early years of Ben Ali's rule.

The temporary President with his new cabinet announced in early March the acceptance of the demands to break from the old system, to move towards the suspension of the *Constitution of 1959*, and to organize the election of a new Constituent National Assembly. Subsequently, the Constitutional Democratic Rally, the former ruling party, was dissolved under a judicial decision issued on 9 March 2011. Subsequently, the legislative authority, with its two Chambers, the Constitutional Council and the Economic and Social Council were all dissolved under a decree dated 23 March 2011. At the same time, a new temporary organization was established for the public authorities, and in parallel, high authority to achieve the objectives of the revolution: political reform and a democratic transition was established including a committee of experts and formed from the majority of parties, civil society organizations, national figures, and representatives of the revolutionary youth in all the governorates of the country, assigned to prepare the legal framework for the election of the Constituent National Assembly and to prepare the other necessary provisions to ensure a successful transition process.

This body assumed power to draft a number of decrees, the first of which related to the creation of an independent supreme body for the elections, followed by a decree related to the elections of the national constituent assembly, as well as other decrees considered necessary to ensure fair, pluralistic, and transparent elections. These decrees related to the legal framework of the political parties and associations and freedom of the press, printing, and publication, as well as the freedom of audio-visual communication.

The elections of the National Constituent Assembly took place on 23 October 2011, in a manner that most of the observers considered a success. Subsequently, the Assembly developed its rules of procedure and ratified a number of laws, the most important of which is *Law No. 6*, dated December 16, 2011. This law dealt with the temporary organization of public authorities, and the law also appointed several committees for planning and advising on the various questions surrounding the new constitution.

Part B: Positive Trends and Challenges Regarding the Rule of Law



From the standpoint of the rule of law, the analysis of the transition starts at 14 January 2011. Since then, there have been a number of significant gains, some of which require further consolidation and strengthening (Part 1). There are also several major challenges requiring serious and urgent efforts to establish a solid democratic system based on the rule of law and the reign of right (Part 2).

1. Significant Gains

The Tunisian revolution and its success led to the overthrow of the head of the authoritarian regime, and to a new democratic transition phase during which there were positive gains in the level of democracy and the rule of law. These gains should be considered precious and relatively fragile. The gains require further consolidation and strengthening.

It is worth mentioning that a series of these achievements and reforms were accomplished based on international standards and relying on international treaties and charters on human rights, in particular the *Universal Declaration of Human Rights*, as well as the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic and Social Rights*, in addition to numerous other treaties and charters. It is also worth mentioning in this regard that within weeks of the fall of the regime, Tunisia ratified a number of additional international treaties and protocols related to freedoms and rights,⁴ in particular the treaties on the elimination of the death penalty and all forms of torture,⁵ the protection of persons from enforced disappearance,⁶ and the *Rome Statute of International Criminal Court of 18 February 2011*,⁷ and reservations were lifted on several other treaties.

We note in this respect that the international law should prevail over domestic legislation in Tunisia. The Tunisian state was established in 1956 on the basis of Tunisia's continued abidance to its international obligations, the supremacy of the international law over the national law, as well as the prevalence of ratified treaties over the Tunisian laws. Moreover, the Tunisia judiciary has acknowledged on several occasions the prevalence of international law over national laws, and used this method in several occasions as a basis for its judgments. However, in most cases, international treaties on human rights remained inactivate, reflecting the positions taken by jurisprudence which lacked courage and showed reluctance sometimes under the pressure exerted by the political powers of the former regime.⁸

The most important gains achieved since the fall of Ben Ali's regime are represented in the following aspects:

- Opening considerable scope for freedom of association (a).
- Relative evolution of the freedom of information (b).
- Dismantling a significant number of the tyranny institutions and repressive legal frameworks (c).
- Accomplishing fair, pluralistic and transparent elections that are up to the international standards for democratic elections (d).
- Neutralizing the former executive management of public bodies and establishing several public bodies distinguished by independence and diversity (e).

⁴ Decree No. 3 of 2011 dated February 19, 2011 related to the adhesion of the Tunisian Republic to the Optional Protocol to the International Covenant on Civil and Political Rights.

⁵ Decree No. 5 of 2011 dated February 19, 2011 related to the adhesion of the Tunisian Republic to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁶ Decree No. 2 of 2011 dated February 19, 2011 on the approval of the International Convention for the protection of all persons from enforced disappearance.

⁷ Decree No. 4 of 2011 dated February 19, 2011 related to the approval by the Tunisian Republic of Rome Statute of the International Criminal Court and the agreement on the privileges and immunities of the Court.

⁸ In particular, in terms of freedoms, for example the reluctance to the non-application of the former law on association given its contradiction to the relevant international treaties with respect the Tunisian Human Rights League in the mid-nineties, and the insurrections against the Judges Association and the National Journalists Union.

a. Freedom of Association

Freedoms and rights were the fundamental parts of the Tunisian revolution and its demands. The revolution was consistently described as the 'revolution of freedom and dignity.'

The freedom of association witnessed a significant expansion when the number of parties increased to around one hundred and twenty political parties from all types of ideological and intellectual trends. The associations have not only increased in numbers, but also in terms of the topics addressed and the range of concerns. Simultaneously, the legal provisions on freedom of expression have undergone major developments towards consolidation and strengthening.

Since late January 2011, a political reform committee was established and assigned the task of reviewing the legal system in order to remove its authoritarian nature and the legal mechanisms of tyranny. In March 2011, this committee merged into a supreme body to achieve the objectives of the revolution, political reform, and democratic transition. The new supreme body consists of legal experts, representatives of the twelve political parties existing at the time, and the most important civil society organizations, led by the General Union of Tunisian Workers, the Tunisian League for the Defence of Human Rights, the Tunisian Bar Association, the Association of Tunisian Judges, and a number of national figures and representatives of the revolutionary youth. This body started to operate in mid-March 2011 and took on the preparation and discussion of four important decrees relating to the strengthening of freedom of association within the parties and associations, and the freedom of information and communication. These decrees were then ratified and submitted to the Government for discussion, signature, and publication in the *Official Gazette*. In this context, the freedom of association was strengthened by the issuance of two decrees, one of which relates to the organization of political parties (*Decree No. 87 of 2011* concerning the organization of political parties) and the second of which relates to associations (*Decree No. 88 of 2011*, dated 24 September 2011 concerning the organization of associations).

a.1 Decree No. 87 of 2011 Concerning the Organization of Political Parties

This decree aims at laying the foundation for the freedom of political association, supporting the development of political pluralism, and establishing transparency in the financing of political parties. On this basis, Articles 3 and 4 of *Decree No. 87* obliges the political parties to respect, in their statutes and financing rules, the principles of the Republic, the rule of law, democracy, pluralism, peaceful transfer of power, equality, impartiality of the administration, the worship places, public facilities, independence of the judiciary, human rights, and the international conventions ratified by the Republic of Tunisia. *Decree No. 87* prevents political parties from adopting, in their activities, calls to violence, intolerance, or discrimination on a religious, sectarian, sexual, or regional basis.

The decree includes procedural provisions relating to establishing political parties and requiring the founders of a political party to be a Tunisian citizen and to have their full civil and political rights. The founding of a political party is conditioned on the sending of a registered letter to the Prime Minister, with information on the composition, objectives and, structure of the party. Upon receiving an acknowledgment of receipt, the party founders must then file the announcement at the Tunisian Official Printery, which then must publish it in at the Official Gazette of the Republic of Tunisia within fifteen days. The political party is then to be considered legally formed with effect from the date of publication. The Prime Minister may, upon apparent contradiction between the party statutes and the general principles mentioned above and set forth in Articles 3 and 4 of *Decree No. 87*, take a reasoned decision rejecting the establishment of the party, within thirty days of the date of receipt of the registered letter issued by the founders of the party. The legality of a decision rejecting a party's establishment may be appealed before the Administrative Court according to the proceedings of abuse of power.

Decree No. 87 includes provisions aimed at ensuring good conduct and transparency in the management of the financial resources of political parties. The decree also governs the revenue of political parties, such as of the contributions of the members for more than TND 2,200 (€1,100), as well as revenues greater than TND 2,200 (€1,100) generated from the party's properties, activities, and loans.

The draft decree prevents political parties from receiving funds from any foreign entity and it prevents the political parties from receiving aid, donations, and grants from legal persons, whether private or public, except for financing from the state.

The decree obliges political parties to keep accounting records in order to verify the methods of spending their revenues. The financial statements are to be subject to an annual audit according to standards controlled by the Body of Expert Accountants in Tunisia. On this basis, and according to the total value of the financial resources, the political party shall appoint one or two auditors, selected among the experts listed in the schedule of the Tunisian Body of Expert Accountants.

Title 5 of the decree provides a penal code for violation of the decree's provisions. In the case of gross violation, the political party is to be warned by the Prime Minister, its activities suspended, and it shall be dissolved by virtue of a judgment rendered by the Court of First Instance in Tunisia.

a.2 Decree No. 88 of 2011, dated September 24, 2011 concerning the Organization of Associations

Decree No. 88 aims at ensuring the freedom of establishment of associations, the freedom to join associations, and the freedom to carry out activities within its framework, strengthening the role of the civil society organizations and maintaining their independence. On this basis, *Decree No. 88* requires associations to respect, in their statutes, activities and, financing methods, the principles of the rule of law, democracy, pluralism, transparency, equality, and human rights. It also controls the international conventions ratified by the Republic of Tunisia. *Decree No. 88* prevents associations, in their statutes or activities, from calling for violence, hatred, intolerance, or discrimination in all forms.

In order to practice its activities, association is to have the right to obtain information, assess the role of the state institutions, and offer proposals to improve its performance. It shall also have the right to hold meetings, to organize demonstrations, to conduct relevant civil activities, to publish reports, to publish information, and to conduct surveys. To ensure these rights, the public authorities are forbidden from hindering or disabling the activities of the associations in any way whatsoever.

Decree No. 88 includes procedural provisions related to the establishment of associations. Every natural or legal person residing in Tunisia is to have the right to establish an association, adhere to, or withdraw from the same. The establishment of associations is to be subject to a permit system by virtue of a registered letter with acknowledgment of receipt sent to the Secretary General of the Government, including data related to the composition and structures of the association. Upon receiving the acknowledgment of receipt, the representative of the association shall publish the announcement in the Official Gazette of the Republic of Tunisia, and the association shall be considered legally formed with effect from the date of publication. The draft decree also provides for the rules governing the foreign associations that form branches of the same in Tunisia, and the networks of associations formed among two or more associations.

Concerning the financing of an association's activities, *Decree No. 88* requires that the resources of the association come from the subscriptions of members, public aid, donations, grants, bequests, and revenues generated from the association's properties, activities, and projects. The association may spend its financial resources on the activities that achieve its objectives, and it may participate in the tenders announced by the public authorities, provided that the required services are within the scope of competence of the association.

For legal information concerning the means of disposal of financial resources, the association shall hold accounting books according to the accounting system of institutions set forth in the *Law No. 112 of 1996*, dated 30 December 1996 concerning the accounting system of institutions. Accounting standards related to associations shall be applied in this regard, controlled by a decision from the Minister of Finance. The association shall also keep financial records and books that control the spending methods of its revenues, and according to the total value of the association's annual revenues, every association shall appoint one or two auditors among the auditors registered in the body of registered accountants

or experts in Tunisia. Every association benefiting from public money shall submit an annual report including a detailed description of its funding sources and expenditures to the court of Accounts.

Title 8 of the decree includes a penal code to be applied in case of violation of its provisions. Upon gross violation of the decree, the Secretary General of the Government shall warn the association and its activities suspended and the organization dissolved by virtue of a judgment rendered by the Court of First Instance in Tunis.

The preparation of both these decrees was after broad consultations involving many parties, associations, and professional organizations. They were also subject to extensive discussions at the Superior Authority's Council, regarding the issue of limiting foreign funding and private funding. They can be considered significant gains in the Tunisian revolution and the democratic and pluralistic political life that the Tunisian society aspires to establish, and one of the major pillars of freedoms, in addition to the freedom of expression and opinion, of which the media is the mainstay.

b. Freedom of Information and Communication

The revolution was in large part a strong reaction to the systematic strangulation of freedoms and the intensive assault on the citizens' rights and dignity by a regime that most observers, inside and outside the country, confirmed was a repressive regime. This regime was even included by several international human rights organizations on the black lists of the regimes that are the most hostile to the freedoms and human rights, and was placed among the first ranks of the black lists of the enemies of freedom of expression and freedom of the press and internet (Reporters Without Borders, International Federation for Human Rights, and Human Rights Watch).

Under the former regime, especially during the last years preceding the fall of the president, Tunisians were afraid of discussing any matter that in any way related to the internal policy of the regime. This fear reached the point where people would turn their heads left and right automatically, even in private meetings. Indeed, this behaviour spread even among the loyalists of the former regime. Thus, the citizens were deprived, during the last years of the former Tunisian regime, from expressing their views, concerns, and ideas, in an unprecedented manner during the modern history of Tunisia.

After the escape of the authoritarian president, Tunisians were free to talk and they started to speak about all political, social, and economic topics, criticizing every person and every party.

The press, which has long suffered censorship, intimidation, bribes, propaganda, and violation of the opposing persons, after the revolution witnessed unprecedented changes with some mistakes and violations that sometimes were described as media chaos. The establishment of freedom, pluralism, impartiality, objectivity, and the move towards democracy in the information and communication sector represented a major objective of the democratic transition and one of its most sensitive pillars.

The Supreme Body for the achievement of the revolution's objectives assumed the formation of a media sub-committee, which started to develop the legal framework for information and communication. Later, the National Authority for Reform of Information and Communication was established under *Decree No. 10* issued on March 2, 2011.⁹ This authority was assigned, according to Article II of this decree, with submitting proposals concerning the information and communication reform, taking into account the international standards of freedom of expression. Among the functions of this authority as well was suggesting draft laws in order to facilitate the reform process as a whole.

⁹ Official Gazette No. 14 dated March 4, 2011, p. 221

Both bodies, in cooperation with a number of concerned parties, particularly the National Union of Tunisian Journalists, the National Union for Culture and Media, and several non-governmental international organizations, experts from Tunisia and abroad, involved the largest possible number of journalists, specialists, and experts to develop a new legal framework for media of all types, especially written and audio-visual media. This legal framework runs counter to the policy of repression and obfuscation that existed under the previous regime, by emphasizing in particular that the right to expression is free and guaranteed to every human being, and that media organizations are free and independent, with the main mission to spread news, ideas, and opinions and to monitor the government's policy according to the international standards and conventions.

Three legislations were issued in this regard during the first transitional period, as follows:

- *Decree No. 115 of 2011* dated November 2, 2011, concerning the Code of Press, Printing and Publication.
- *Decree No. 116 of 2011* concerning the freedom of audio-visual communication and the creation of an independent supreme body for audio-visual communication.
- *Decree No. 41 of 2011* issued on May 26, 2011, concerning the access to the administrative documents of the public structures.

b.1 Decree No. 115 of 2011 of 2 November 2011 Concerning the Code of Press, Printing and Publication

Under the previous regime, the written press was subject to the Code of Press issued by virtue of the *Law No. 32 of 1975*, dated April 28 1975,¹⁰ which had a number of revisions since the late eighties.

The Code of Press inherited from the previous era was overshadowed by a restraining trend, as it turned into a penal code related to the press and included a large number of financial and physical penalties including deprivation of liberty.

Despite the many revisions that have been introduced to this Code during the reign of the former President in 1988,¹¹ 1993,¹² 2001,¹³ and 2006, the Code remained a freedom-depriving framework and was a penal law for media due to its heavy physical and financial penalties.¹⁴ Additionally, the control given to the Ministry of Interior over this sector and the way the Ministry of Interior dealt with the press effectively made printing stories require prior authorization.

Therefore, it was necessary to break with this heavy legacy and develop a new legal framework. In this context, the new decree related to the Code of Press, Printing and Publication, was developed and included important additions establishing a real freedom of press and a professional journalism.

The most important additions, with regard to the strengthening of the rule of law in particular, are the exclusion of the intervention of the Ministry of Interior in the affairs of press and publication, and giving this competence over to the judiciary at all stages.

The new text defines a journalist narrowly in order to attempt to purify the profession from mercenaries and those who lack professionalism, who were widely used by the previous regime. It stipulated the objective to form a Committee to assign a professional journalist card.

¹⁰ Official Gazette No. 29, dated April 29, 1975, p. 992.

¹¹ According to the organic Law No. 89 of 1988, dated August 2, 1988.

¹² According to *Organic Law No. 85 of 1993*, dated August 2, 1993.

¹³ According to *Organic Law No. 43 of 2001*, dated May 3, 2001.

¹⁴ Larbi Chouikha, *Fondement et Situation de la Liberté de l'information en Tunisie*; see also Group de l'IFEX chargé d'observation de l'état de la liberté d'expression en Tunisie Février, *Tunisie: La Liberté d'Expression Assiégée*, (2005), p. 22 et al.

It also recognized the right of journalists to access the news (Article 9), protects journalists in doing their job (Articles 10, 11, 12 and 13), and protects the confidentiality of sources (Article 13). It considered as attacks on the confidentiality of the sources, all acts of investigation, research, inspection, and interception of correspondence or communication carried out by the public authority towards a journalist. *Decree No. 115* also punishes whoever attacks a journalist during the performance of his functions, with the penalty of attack on a quasi-public official (Article 14).

Articles 33 to 38 address pluralism in media. In order to support this pluralism, Chapter 34 prevents the processes that led to the possession or control, directly or indirectly, of the collective political news groups, and bans owning or controlling circulation representing more than 30% of the total circulation for a particular medium.

On the other hand, this decree narrowed the field of press offenses and confined them to a limited number of cases, introducing a significant commutation to the penalties and cancelling most of the penalties resulting in deprivation of freedom. The decree related to the freedom of audio-visual communication is characterized by the same trend.

b.2 Decree No. 116 of 2011 on Freedom of Audio-visual Communications and the Creation of a High Independent Authority for Audio Visual Communications

According to its official explanation, *Decree No. 116* aims at putting an end to the policies of repression, media blackouts, stifled communication, censorship, media use of the symbols and prerogatives authoritarian regime, and a lack of transparency in organization and management of media that characterized the media and audio-visual sector during the previous regime. *Decree No. 116* also aims at setting the foundations for a strong, independent audio-visual media sector.

Decree No. 116 confirms the freedom and diversity of audio-visual media in accordance with the international and democratic standards and conventions in this respect (Articles 3, 4 and 5) and supports this freedom by providing for various regulatory, functional, financial, and judicial guarantees.

Article 1 of *Decree No. 116* specifies that: "This decree ensures the freedom of audio-visual communication regulates its practices and creates an independent regulatory authority."

Article 3 specifies that the "Freedom of audio-visual communications is guaranteed pursuant to international conventions and treaties ratified by the Republic of Tunisia". Article 4 of *Decree No. 116* tackled the right to access information and to audio-visual communication, and provided the legislative background on which the exercise of rights and freedoms is based. Article 5 stressed the necessity to respect international treaties and conventions on human rights, public freedoms, freedom of expression, equality, diversity in the expression of ideas and opinions, objectiveness and transparency. As for the controls over the practice of these principles, they are included in international treaties, especially in Article 19 of the *International Convention on Civil and Political Rights of 1966*.

Decree No. 116 simultaneously consecrated the respect of the rights and reputation of others, and in particular, respect for human dignity and private life, respect for freedom of belief, protection of childhood and public health, as well as protection of national security and public order as provided for in treaties and international conventions and in particular, in Article 19 of the *International Covenant on Civil and Political Rights*. *Decree No. 116* stressed the necessity to promote culture, media production, and national communications.

In addition to the legal guarantees, *Decree No. 116* established the High Independent Authority for Audio-visual Communication (hereafter, the Authority), which according to Article 6, is an independent public entity enjoying legal personality and financial autonomy and in charge of safeguarding freedom and plurality of audio-visual communication.

Decree No. 116 regulates the Authority's composition (Articles 7 to 14), competencies (Articles 15 to 20) operation (Articles 21 and 22) and financial regulation (Articles 23 to 26). These various provisions tackle the independence of this authority from the various parties, whether a governing authority, political parties, financial forces, or sectarian groups.

In terms of composition, the Authority is subject to the guarantees of independence, diversity and transparency through the appointment method and procedures that ensure the contribution of all stakeholders in the sector to the process of selection and appointment of members (professional entities mostly representing journalists, non-journalistic audio-visual professions as well as the three public powers: legislative, executive, and judicial) on the basis of standards of competence, integrity, independence and neutrality. *Decree No. 116* also determines the length of a term for members of the Authority, and specifies that members may not be re-appointed. It also provides for protection against arbitrary dismissal proceedings and against external political or financial influences (Title II - Section I - Articles 7 to 14). In confirmation of this independence, *Decree No. 116* specifies that persons having fulfilled governmental or public parliamentary duties, partisan positions, or who have worked as employees of any political party within two years preceding their appointment may not be appointed to the Authority. Moreover, *Decree No. 116* specified that those who had any direct or indirect contributions or any financial interests in media and communication institutions may only be appointed to the Authority if they waive those interests or contributions. Moreover *Decree No. 116* specifies that is impermissible to combine memberships in the High Independent Authority for Audio-visual Communication and any other partisan, electoral, or public office or any professional activity that may reduce the independence of members of the Authority (Article 10).

Article 15 of *Decree No. 116* consecrates the principles governing the Authority in terms of its regulation of audio-visual communications, and the Authority's decision-making powers. These principles are include promoting democracy, human rights, the rule of law, promoting and protecting freedom of expression, supporting the national public, as well as supporting public, private and associative audio-visual communication sector and enhancing its quality and diversity, consecrating the values of freedom and justice, avoiding concentration of ownership of the means of audio-visual communication means and safeguarding freedom of expression and diversity of thought and opinion, especially with respect to political media.

Decree No. 116 confers upon the Authority a set of powers necessary to ensure the effectiveness of its work and its contribution to strengthening a democratic and pluralistic audio-visual media scene that abides by internationally-applicable democratic norms and standards. The Authority has decision-making, supervisory, and consultative powers that guarantee the independence of the sector.

The main consultative powers of the Authority are the power to propose various procedures, and in particular legal procedures, to ensure compliance with the principles set forth in the Constitution and relevant legislative and regulatory texts, and the power to submit proposals regarding the legislative and regulatory changes required by the technological, economic, social, and cultural development of the activities of the audio visual communication sector. The Authority may also provide mandatory opinions to the Parliament and the Government on draft legal texts relating to the audio-visual communication sector. It may also give a assent concerning the nomination of the chief managers of public audio-visual communication institutions. This would put an end to the practice of the previous authoritarian regime, which helped transforming the public media into a propaganda tool for worshipping the individual ruler and glorifying his achievements.

Moreover, the Authority is tasked with preparing an annual report including the proposals and recommendations it deems appropriate for the promotion of the freedom, efficiency, quality, and plurality of media and audio-visual communication. This report is to be published and displayed on the website of the Authority and a copy of it is to be sent to the President of the Republic, the speaker of Parliament, and the concerned communication facilities.

Article 16 of *Decree No. 116* specifies the Authority's decision-making and supervisory powers.

These powers are as follows:

- Decide on license applications for creation or utilization of audio-visual communication institutions and grant necessary licenses;
- Draft, endorse and monitor respect of booklets of conditions for public audio-visual communication institutions;
- Ensure freedom of expression and diversity in thought and opinion, especially with regards to political media either by private or public sector in audio-visual communication field;
- Develop behavioural rules related to advertisements and monitor compliance by audio-visual institutions to these rules;
- Work to enact legal and technical standards to measure the audience of audio-visual programs and monitor the respect of these standards;
- Decide in disputes related to operation and utilization of audio-visual communication channels, subject to the power of the National Communications Authority;
- Impose penalties for violations committed by audio-visual communication institutions based on the legislation and relevant booklets of conditions.

Title III (Articles 27 to 41) of the Decree addresses the disputes with respect to the Authority's powers and to the penalties that may be imposed due to the breach of the principles, rights, and obligations specified in the *Decree No. 116* or the booklet of conditions. Such disputes and sanctions are generally subject to international standards and in particular, the guarantees for the respect of the rights of defence and judicial challenges, gradual sanctioning mechanisms and exclusion of sanctions that deprive freedom.

This Authority represents, through its pluralistic composition, the guarantees of membership and operational independence, and the powers it enjoys contain guarantees for the independence of the audio-visual media as the Authority becomes the competent independent authority so as to exclude political interventions in audio-visual media, such as the interventions by the Ministry of Information, the Ministry of Interior, the Head of the State or the Government.

The legal clauses guaranteeing the Authority's independence have caused concern for some parties within and outside government. Therefore, at the date of the drafting of this report, the Authority has not yet been activated.

The media sector still includes many of the people that supported the former authoritarian regime and the sector is only taking its first steps towards professionalism, objectivity, and integrity. At the same time, the media sector is encountering criticism and threats to its freedom from numerous parties that seem be consciously or unconsciously reviving a culture of dominance over the media sector whereby the media is used to promote the government's achievements. Moreover, there is a campaign launched by some radical religious forces raising the slogan of purification of the media and its redirection under the pretext that it must be a mirror reflecting the political and societal majority as they see it.

Breaking this fragile situation requires the observance of freedom of media just like other fundamental freedoms, the consecration of the freedom and independence of media in the constitution, the enforcement of the applicable provisions and the creation of authorities in charge of protecting this freedom and independence and improving the media performance. Further, strong media also requires access to administrative documents.

b.3 Decree No. 41/ 2011 Issued on May 26, 2011 on Access to Administrative Documents of Public Authorities

Decree No. 41 is one of the positive achievements realized after the 2011 Tunisian Revolution. Article 3 specifies that any individual person or legal entity shall have right of access to administrative documents, by means of voluntary and direct circulation or at the request of the person interested.

Article 4 required public authorities to regularly publish all information relating to its organizational flowchart and basic functions. Public authorities are also required to regularly publish “statistical, economic and social data, including national accounts and detailed statistical surveys” (Article 5). *Decree No. 41* facilitates access to administrative documents, stresses the need to update these documents at least once per year, simplifies the related administrative procedures, and calls on the agents responsible for the information within a public authority to assist applicants for services in difficult cases (Article 9).

Decree No. 41 also promotes transparency by specifying that public authorities are required to answer a request for services within time limit of fifteen (15) days, and that any refusal must be justified (Article 10). In addition to this relatively short time limit for answering requests, Article 11 reduces this time limit to two (2) working days in urgent cases and in cases where the request has a direct influence on the private life or freedom of the applicant. Article 19 specified that “in case of a refusal to issue an administrative document, the applicant may launch an appeal with the head of the public authority concerned, and demand a response; and that the applicant may also challenge the decision of the head of the public authority in question before the administrative court which shall sit on an interim basis to examine the request”.

The amendment of this decree was signed shortly following its issuance by virtue of *Decree No. 45/2011* of June 11, 2011 in order to promote its expedient entry into force.¹⁵

Some criticize *Decree No. 45* because of the exceptions that can limit its strength. Article 16 authorizes the public authority to refuse to issue administrative documents protected by applicable legislation. The grounds for rejection include for the protection of personal data to protect intellectual and artistic property rights, and by virtue of a judicial decision if the documents concerned are secrets obtained in this regard by the public authority. It is worth mentioning that this Article 16 is applied in conjunction with the inherited legislation that governed the previous authoritarian, non-transparent legal system, such as the *Law on Archives*.¹⁶

Despite these reproaches, *Decree No. 41* is still one of the achievements realized after the revolution, since it strengthens the rule of law and transparency in public governance, which must promptly be enforced in order to send a strong message in favour of transparency and signalling an end to former practices. This transparency will contribute to the fight against corruption because a lack of information and low levels of transparency make it easier for corruption to continue.

One may argue that the achievements in the field of freedoms were simultaneously realized with the dismantling of a number of institutions of the authoritarian regime and that these two steps have a strong relationship.

c. Dismantling the Institutions of the Tyrannous Regime

The transition from tyranny to democracy typically involves both dismantlement and construction. This means dismantling of the pillars, institutions, and methods of the old regime occurs alongside efforts to establish new democratic institutions, pillars, and methods. The dismantling and construction processes is revealing a conflict between the conservative forces that have benefited from the old regime and the forces aligned with the revolution, who want to establish a democratic regime that will make a clean break with the old regime, its tyranny, institutions, methods of rule, and culture.

¹⁶ See *Law No. 95/88* of August 2, 1988 published in the Tunisian Official Gazette under No. 53 of 2 August 1988. Article 15 of this law specifies that, “the public archive may only be perused thirty years as of the date of its creation”. Article 16 of this law increases this time-limit to sixty years for documents including information that may prejudice private life or relate to national safety, and to 100 years for other documents such as registration books, civil status registers and the registers of public notaries and bailiff notaries” Article 17 specifies that the perusal of the archive for purely scientific research is not subject to these time-limits.

The former regime, as well as the Constitution and the security institutions relied on a group of political institutions to consecrate its dominance and strengthen its tyranny. These institutions were the parliamentary councils, other constitutional bodies represented by the Constitutional Council and the Economic and Social Council, the judicial institutions and in particular the Supreme Judicial Council, the Supreme Council for Communication in the media sector, in addition of course to structures within the ruling party. The despotic regime employed these authorities to confer a fake legitimacy to its practices, and to act as a deceptive and misleading tool while the party forged elections, promulgated unjust laws and corrupt policies, and concealed the reality of the social, economic, and political situation.

Parliamentary councils were transformed to chambers for the realization of the projects of the tyrant President and his associates. The Parliament would ratify all legislation proposed by the President and his government, and in most cases the Parliament stood aside and allowed the President to be the caretaker and change-maker. The Economic and social Council was turned into a perfunctory and fake advisory body, while the Constitutional Council played the pivotal role of conferring misleading constitutional legitimacy because it provided constitutional cover to all of the despotic regime's projects such as the constitutional amendments that allowed the former President to remain in office for life and to eliminate any unwanted competitors in every presidential election round. The Constitutional Council also conferred the appearance of constitutional legitimacy to various anti-freedom laws, such as the amendment to the *Law on Associations* of 1992 and the revisions to Article 61 of the *Penal Code* in August 2010. Moreover, the Supreme Council for Communication and the Tunisian Agency for External Communication were used to subjugate the media sector and journalists, to pay bribes support, to fight all opponents, to embellish the image of the regime, to defend its policies, and to justify its choices.

The departure of the former President led to two Governments presided over by Mr. Mohamed Ghannouchi. These two Governments were staffed mostly by ministers affiliated with Ben Ali. These ministers tried to introduce some reforms, but mostly in order to give the appearance of a transition while maintaining the old constitutional framework and preserving the institutions of the former regime. This is evidence by the fact that these ministers wanted to keep the content of the previous constitution and the procedures that specified that in the case of vacancy of the presidential office, the presidential elections would be conducted under the terms of the inherited constitutional rules.

However, the Tunisian people and the revolution youth rejected this approach. They insisted that the old constitution be cancelled and on the dismantling and dissolution of the institutions of the old regime, considering them corrupted institutions inconsistent with the requirements of the transition and democratic structure and governed by the authoritarian mentality which contradicts the goals of freedom, which were the driving force of the Revolution. After further sit-ins, clashes, and a number of acts of martyrdom, Mr. Ghannouchi resigned. This signalled an end to the option of continuing with the inherited constitutional and institutional framework. A new Government was formed in the beginning of March 2011, which thereafter announced the suspension of the old Constitution. This was followed by the issuance of a decree on 23 March 2011 on the provisional organization of public authorities, which was considered a transitional constitution. The decree ordered the dissolution of the Parliament in its two chambers, the Chamber of Deputies and the Chamber of Councillors. The decree also ordered the dissolution of the Constitutional Council, the Economic and Social Council, the Supreme Judicial Council, and other institutions created under the old constitutional system except for the Administrative Court and the Court of Accounts. The decree also provided for the dissolution of the Supreme Council of Communications and various municipal and regional councils were dissolved and replaced by special delegations. However, the position of the influential and corrupt Tunisian External Communication Agency remained unclear.

Additionally, a judicial decision ordered the dissolution of the Constitutional Democratic Rally (RCD), the ruling party of the former President and all its tools employed for propaganda, censorship, bribery, and corruption.

This dismantling procedure represents a great achievement because it reflects a strong ambition to build a totally different future based on the values of freedom, justice, and credibility of institutions that express the will of the people and are not used as tools of deception and deprivation. These new institutions should be based on a real democracy contrary to the inexistent and false democracy that the various old institutions embraced. This dismantlement was necessary to put an end to the tyranny and open the door to a new democratic structure with new and different frameworks and methods. Therefore, these steps may be considered significant achievements for the Tunisian people seeking to get rid of the authoritarian legacy and hoping to build a democratic alternative consistent with the high level of sacrifices and hope in the Tunisian Revolution. The first of these steps on the short term was the October 2011 elections, which were conducted without exclusion, fraud, and intimidation.

D. Reinforcing the Principle of Free, Transparent, and Fair Elections

Among the achievement of Tunisian Revolution's during the recent period is a roadmap laying out the milestones of the transition phase and leading to elections in October 2011 that the majority of internal political parties and international experts and observers considered fair, pluralistic, and in line with international standards of democratic elections, despite few secondary shortcomings.

The flight of the former President created a constitutional void that caused uncertainty. The large question was whether to keep the *Constitution of 1959* and organize a presidential election with political reform or to draft a new constitution marking a more radical shift from the old system.

After negotiations and oscillations between the two positions, the question was settled by the pressure from the masses protesting in Kasbah Square, who called for a Constituent Assembly election and a new constitution for the country. Thus, it was decided to dissolve the Parliament, the Constitutional Council, and a number of other institutions. The date of 24 July 2011 was set as the date for the elections of the National Constituent Assembly. Then, following the emergence of technical and practical difficulties, elections were postponed until 23 October 2011.

The Higher Authority for the Realization of the Objectives of the Revolution, Political Reform, and Democratic Transition (hereafter, the Higher Authority) took charge of drafting the various legal texts, in particular the institutional and legal framework for elections. The Higher Authority was created at the beginning of March as a consensual framework comprising the Revolution Protection Council formed of 33 political parties, civil society organizations, and representatives of other parties, including political parties participating in the two Governments of Ghannouchi, as well as the Political Reform Commission which is a committee of law experts created after the flight of the former President.

The Higher Authority played a key role in the dismantling of the legal structures of the tyranny regime, establishing a legal framework for elections. The experts committee drafted two decrees creating the legal framework for elections and submitted them to the council of the Authority. The first draft decree focused on the creation of the Independent Supreme Authority for Elections, while the second draft decree governs the election of the national Constituent Assembly.

After in-depth discussions, all members present unanimously approved the first text. One member objected to the second text and four members reserved their votes.

The process led to a significant success -- the first fair election ever in Tunisia.

The two decrees relating to the elections are addressed in the following two sections.

d.1 Creation of the Independent Supreme Authority for Elections

The Independent Supreme Authority for Elections was created in order to put an end to the previous situation in which the Ministry of Interior and the organs of the ruling party completely controlled the organization of elections, which led to widespread fraud and intimidation.

The Independent Supreme Authority for Elections is composed of a central commission of 16 members elected by the Higher Authority in such a way as to prevent unilateral control. The central commission opened the door for candidacies and thereafter chose 33 sub-commissions.

d.2 Maintain a Transparent Method to Determine the Lists of Voters that Ensures the Right to Vote for All Citizens in Accordance with International Standards for Democratic Elections

In order to consecrate this objective, the voting card was replaced by the national identity card. In the previous regime, the voting card was used as a means to prevent opposition and independent voters from participating in elections because voting cards were frequently simply not delivered to opposition and independent voters. Additionally, the voting lists were manipulated in that they included a large number of deceased persons and repeat names.

d.3 Ensuring the Right to Candidacy and Determining Democratic Conditions of Candidacies Guaranteeing Diversity

This objective included supporting the candidacy of women by the adoption of a parity and alternation rule in electoral lists. This objective also led to support for the candidacies of young persons and for allowing Tunisians living abroad to register as candidates for the first time. Moreover, the candidacy procedures were also simplified.

In order to ensure broad and balanced representation, elections were held on the basis of the closed list proportional representation system, taking into account the largest remainders of voters.

On the other hand, in order to protect the process of democratic transition from the tactics of the former regime officials, persons supporting the authoritarian regime were banned from voting. Such banned persons include the following three categories:

1. Persons whose assets were confiscated after 14 January 2011;
2. Anyone who has held a senior office in government, except for government members not affiliated to Constitutional Democratic Rally, or anyone who has had a placement in the party structures of the Constitutional Democratic Rally. To this effect, the Higher Authority for the Realization of the Objectives of the Revolution, Political Reform, and Democratic Transition was put in charge of drafting this list.
3. Any of those who have urged the toppled president to be a candidate for the 2014 presidential elections. The Higher Authority for the Realization of the Objectives of the Revolution, Political Reform, and Democratic Transition was also put in charge of drafting this list.

d.4 Organizing the Electoral Monitoring and Observation and Deterring Electoral Fraud

In order to ensure the transparency of the elections, the electoral law specified conditions and procedures for retaining international and Tunisian observers and representatives of the candidates and supervisors. The decree set forth electoral offences such as taking bribes and using threats and other unlawful means aiming of influencing voters.

On the other hand, the law allowed for election media, advertising, and electoral campaigns for a period of three weeks. With respect to the financing of the campaign, this was limited to public funding, and an order was issued regulating the limits and conditions for financing campaigns.

d.5 Developing Rules for Settling Electoral Disputes

In order to break free from the previous electoral system where citizens and candidates had no real means for redress for fraudulent elections and breach of electoral laws, the new decree allows the Administrative Court to intervene in the main types of electoral disputes: disputes related to candidate's nomination, disputes during the electoral campaign, and disputes over preliminary results. The various electoral processes are subject to judicial supervision, governed by the principles of adversarial litigation.

Whereas the election of the Constituent Assembly of Tunisia is the first democratic elections of its kind in the country, it is important that these elections represent a positive precedent with respect to integrity, transparency, and diversity. Elections were held on 23 October 2011, and Tunisian voters were able to choose their representatives in the Constituent Assembly under appropriate conditions. The Authority showed neutrality and independence from all the political parties, as well as from the Government. This is confirmed by the approval by all parties of the election results.

During the Constituent Assembly elections, several shortcomings appeared, including in particular, the loss of a large number of votes, the low representation of women, the complexity of the registration of candidates and appeal procedures and short deadlines. Therefore, upcoming legislation must extend the candidacy deadlines and expand the right of appeal. However, it is worth mentioning that this experience developed the first pillars for promoting the culture of electoral democracy, diversity, and peaceful transfer of power and reinforced a number of transparent principles and procedures. These are achievements that must be praised and consolidated.

At this stage, the role of the existing *Independent Supreme Authority for Elections* should be clarified, either by replacing it with another authority, or using it as a regular mechanism for the preparation of the future elections.

e. The Independent Public Authorities

The Tunisian transitional phase is characterized by the emergence of a number of independent authorities concerned with various aspects of the transition process.

One may say that the emergence and multiplicity of independent public authorities and their diverse roles are the result of the illegality of the former political, administrative and constitutional institutions, their enslavement and use by the former regime for the service of the tyranny regime and the interests of a small group of rulers, in particular the former head of state. The old institutions were turned into tools used for the suppression and forgery of the will of the people rather than being used in the public interests. Thus, these institutions lost legitimacy and credibility, and therefore entirely lost the trust of the people in their integrity and impartiality up to the point that one of the most important demands of the masses and the Revolution was the cancellation, dissolution, and terminations of these institutions.

Based on the foregoing, it appears that the emergence of these independent authorities reflected a deep crisis of confidence in these inherited institutions and in the administration. This emergence was used as a substitute for the institutional inheritance and as a means to secure a real transition stage where institutions are characterized by independence from political and administrative authorities and by efficiency, diversity, and impartiality. This conferred on these authorities, in the absence of an electoral legitimacy, an operational legitimacy that they drew from their independence, efficiency, and close connection to the demands of the Revolution, within the scope of a pluralistic democratic transition that does not exclude anyone except the symbols of the authoritarian regime, its advocates, and the persons calling for its continuance.

It is worth mentioning that the most important demands of the Revolution are ensuring the democratic transition and organizing constituent elections and holding accountable the former regime criminals who were involved in killings and lootings, as well as those involved in acts of corruption. Therefore, three authorities concerned with these major goals were created, which are:

- The Higher Authority for the Realization of the Objectives of the Revolution, Political Reform and Democratic Transition by virtue of *Decree No. 6 of 2011* dated February 18, 2011.
- The National Commission for the Investigation of Bribery and Corruption by virtue of *Decree No. 7 of 2011* dated February 18, 2011.
- The National Commission for the Investigation of Truth and Abuses committed since 17 December 2010 and until the need for it ceases by virtue of *Decree No. 8 of 2011* dated February 18, 2011.

Thereafter, the democratic transition was tackled in the media sector, which was suffering from repression and extensive subjugation that turned it into a deception machine and a propaganda tool for the old regime. Therefore, the Supreme Council for Communication was dissolved and the National Commission for the Reform of the Media and Communication was created.

Although the composition and powers of these authorities varied, one may say that they were all characterized by independence and diversity, and have include a variety of parties. One may also say that this enabled them to be generally successful in their missions.

The Higher Authority for the Realization of the Objectives of the Revolution succeeded in bringing together the various components of civil and political society and a number of experts in a single framework for dialogue and consensus. It succeeded in providing the integrated legal framework for the election of the National Constituent Assembly.

For its part, the National Commission for the Investigation of Bribery and Corruption compiled thousands of files and examined many of them and referred hundreds of them to the judiciary.

The National Commission for the Reform of Media and Communication carried out numerous awareness-raising activities. The Commission addressed the requests for the creation of new radio and television channels according to fair and objective standards and recommended the granting of licenses to twelve radio and television channels. The Commission contributed significantly to the drafting and issuance of a new legal framework for media and communication (in cooperation with the Higher Authority for the Realization of the Objectives of the Revolution and in consultation with numerous stakeholders). The Commission tried to elevate this framework to the level of international and democratic standards. This was reflected in the two decrees, one on the Press, Printing and Publishing, and the other on the Freedom of Audio-visual Communication.

The legal texts drafted by a number of these authorities created other independent authorities, the most important of which is the Independent Supreme Authority for Elections created by virtue of a decree drafted by the Higher Authority for the Realization of the Objectives of the Revolution, which succeeded in organizing the elections of the National Constituent Assembly according to the opinion of stakeholders and observers. The Higher Authority for the Realization of the Objectives of the Revolution in cooperation with the National Commission for the reform of the media, through the issuance of *Decree No. 116 of 2011* created the High Independent Authority for Audio-visual Communication with a proposed composition characterized by diversity, variety, independence, and neutrality, and whose functions is to reform the media sector and to strengthen the freedom of this sector. It is worth mentioning that this authority has not yet been activated. This is also the case for the National Anti-Corruption Authority created by virtue of *Decree Number 120 of 2011*. This Decree was drafted by the abovementioned National Commission for the Investigation of Bribery and Corruption.

One can say that, despite the difficulties faced by some of these authorities, whether in their activities or activation, they are deemed one of the significant achievements that contributed to the success of the first transition phase. Thus, these authorities gained legitimacy and credibility that must be strengthened and developed. Without a doubt, the existence of these authorities strengthens the rule of law and the democratic structure, and can effectively pave the way for the establishment of a State of law. These authorities represent a real achievement in terms of the rule of law and integrity and constitute a mechanism that helps address the major challenges that are still on the table in Tunisia.

2. Major Challenges

Following the Tunisian elections on 23 October 2011 for the 217 members of the Constituent Assembly, Tunisia faced a series of major challenges. All attention became focused on the process of drafting a new constitution, a process entrusted to the new elected Constituent Assembly.

The following challenges are the five most important challenges facing the Tunisian people, Tunisian authorities, and civil society:

- Drafting a constitution for a civilian state with a balanced democratic regime (a).
- Establishing an independent and fair judiciary (b).
- Developing a fair electoral system (c).
- Building a security authority in the service of the citizen (d).
- Examining the economic and social file (e).

a. Drafting a Constitution for a Civilian State and a Balanced Democratic Regime

Following the Constituent Assembly elections on 23 October 2011, attention has been focused on drafting a new constitution. This is one of the most important challenges because the elected Constituent Assembly was initially elected for this task. Thus far, the National Constituent Assembly has not completed a new constitutional text, but has developed a new provisional regulation governing the public authorities and endorsed it on 10 December 2011.

Following the nomination of the presidencies of the Constituent Assembly, the Government, and the President of the Republic, and the formation of a coalition government consisting of three parties (Nahdha, Congress for the Republic, and The Democratic Forum for Labour and Liberties), the Constituent Assembly took on the task of ratifying its governing statute and approving the *Financial Law*. The Constituent Assembly created six committees in charge of drafting the various chapters of the future constitution.

In addition to its constituent function, Constituent Assembly is to have broad legislative functions that may turn it into a parliament and overwhelm it, to the detriment of its progress in the constitutional drafting process. Article 4 of Constitutive Law No. 6 of 2011 dated December 16, 2011 related to the provisional organization of public authorities specifies that, "the National Constituent Assembly shall exercise the legislative power by virtue of this law. The government or at least ten members of the National Constituent Assembly may propose draft laws."

The concentration of the legislative function appears in Article 6 of the same law, which specifies legislation on the following topics shall take the form of 'organic laws':

- The ratification of treaties;
- Organization of the Judiciary;
- Organization of media, press and publishing;
- Organization and financing of political parties, associations and non-governmental organizations and professional bodies;
- Organization of the national armed forces except for statutes which are issued by presidential decree;
- Organization of the internal security forces, except for statutes which are issued by virtue of an order;
- The electoral system;
- Freedoms and human rights and the right to work and the right to association;
- Personal status.

Legislation on the following topics is to take the form of 'ordinary laws':

- The general methods for the application of the Constitutive Law regulating public authorities except the ones related to fundamental laws;
- Nationality and obligations;
- Proceedings before courts of different types;
- Regulating crimes and offenses and penalties applicable to them as well as criminal offenses if punishable by a penalty depriving from freedom;
- Legislative pardon;
- Regulating the basis and rate of taxes for the benefit of the State, except the delegation accorded to the President by the laws of finances and fiscal laws
- The regime of the issuance of money;
- Loans and financial obligations of the State;
- The fundamental guarantees accorded to civil servants.

The law determines the fundamental principles of:

- The regime of property and real rights;
- Education, scientific research and culture;
- Public health;
- Labour law and social security;
- Control of energy;
- Environment and urban development.

Some observers and experts consider that the vast scope of legislative jurisdiction for the Constituent Assembly is not in line, with the function of the Constituent Authority. The Constituent Authority should logically concentrate on the drafting of a constitution, and only focus on legislation on an exceptional basis and in relation to urgent legislation such as the *Finance Act* or the ratification of treaties.

Observers fear that the Constituent Assembly turns into a kind of ordinary parliament, in charge of reviewing current laws, enacting new laws, as well as questioning current and former members of the Government. This legislative role of the Constituent Assembly may turn it into a legislative power enjoying full proscriptive jurisdiction and thus slow down the drafting of the new constitution. This may prevent the Constituent Assembly from finishing the drafting of a constitution within one year according to the time limit agreed upon before the elections within the framework of the Declaration of the Transitional Path. Indeed, the opposition parties supported by the public opinion, and forming the largest coalition within the Constituent Assembly are responsible for abiding by this obligation, which was agreed upon before the election.

As for the content of the constitution, the major challenges are related to using a community-based model which will be materialized in the constitution, especially in the light of the divergence of opinions on a number of important issues such as the civilian nature of the State, the relationship between the State and religion, the sources of legislation, and the matter of whether to promulgate laws in accordance with Sharia, as well as the nature of the new political regime.

These issues are in dispute, and approaches will be opposing and may lead to heated and lengthy arguments polarization. The most important challenge in this area, in order to ensure the sustainability and effectiveness of the new constitution, is to have the ability to reach a consensus and to get the parties to make compromises, since it is unacceptable that the majority and minority logic settles these sensitive and fateful issues for the future of democracy and freedoms. It is required from each party in the Constituent Assembly, and in the political arena in general, to seek a practical agreement approved by everyone. Therefore, it is worth mentioning that the Constituent Assembly is drafting a constitution for all Tunisians, and not a legislative or political party's program for a parliamentary session that does not exceed four or five years.

Finally, other societal actors, such as civil society, media, and political parties not represented in the Constituent Assembly may play a role in this process. Now, consolidating the participation and consensus model that characterized the first nine months of the transition is required. Also, a wider segment of the society should participate throughout the constitution drafting process in order to make citizens feel that they actually have an important document that will guide the political life of Tunisians for decades to come.

It is a great and urgent challenge to draft a democratic constitution that can establish a balanced political system that enshrines freedoms, promotes rights, and closes the door to the risks of deviation and the return of authoritarian regime. Within the scope of this desired constitution and even before its drafting, the question of reform and development of the judiciary is one of the most important challenges.

b. The Establishment of an Independent and Fair Judiciary

The situation of the Tunisian judiciary has been deteriorating for more than fifty years due to the absence of fundamental guarantees of the independence of the judiciary in the *Constitution of 1959* and the organic laws governing judicial, administrative, and financial judges.

The past era was characterized by the dominance of the executive power over the judiciary through the guardianship exercised by the Ministry of Justice on all courts and various judicial institutions and judges themselves. This prejudiced their independence and impartiality throughout the years of tyranny of the regime and led to violations of ordinances, the confiscation of freedoms, and breaches of human rights. These breaches of freedoms emptied the political scene from the vital forces, such as political parties, civil society organizations, and trade unions.

The former regime largely dominated the judicial system by imposing its guardianship over the courts by various means and by adapting the law governing the profession of judges to the interests of the rulers. There were various forms of domination and interference in the affairs of the judiciary. The Minister of Justice controlled the Supreme Judicial Council, which had the power to transfer, promote, and appoint judges. Thus, this council controlled judges through sanctions and other methods.

Since its independence, Tunisia has not had an unofficial or parallel judiciary and did not witness any development of alternative means of dispute resolution, such as arbitration. The role of arbitration has been marginal, despite the issuance of a special magazine in this field and the establishment of an Arbitration Center by the State.

Although the reform of the judiciary was one of the most important demands of the Revolution and one of the most prominent slogans of the important sit-ins at Kasabah 1 and Kasabah 2, the judicial sector is suffering from corruption and a lack of independence, which are heavy burdens that have not been eliminated from the judicial corps. Litigants and judges still have in mind the same image of the judicial system, despite some changes in the recent period and despite the reformist intentions of the current government and the positions supporting reform taken by the persons involved in the judicial profession. The parties involved in the public sector and public opinion agree that corruption is widespread in the judiciary, in both the criminal and the civil judiciary, as well as in the lawyers' sector. They also agree that combating corruption in the judiciary and the administration is one of the most important challenges that must be addressed in order to ensure the success of the democratic transition and the establishment of a law-abiding State establishing the rule of law and integrity. The various political and civil actors agree that the democratic transition stage experienced by the country and the formation of a government enjoying electoral legitimacy require the urgent reform of the judiciary, the promotion of its independence, and the consolidation of the principle of equality of all before the law.

The *Draft Law on the Provisional Organization of Public Authorities* classified the Supreme Judicial Council as a non-constitutional institution and dissolved it, but kept the Court of Accounts and the Administrative Court. This draft law also specified that a provisional authority is to be established to serve as a transitional supreme judicial council. However, this authority is still awaiting activation.

It is confirmed that the reconstruction of the Tunisian judiciary may only be carried out by drafting an integrated legal system based on a constitution that clearly and firmly consecrates the principle of independence of the judiciary.

Judges associations and stakeholders in general assert that while a new constitution is being written and approved, it is imperative in the transition stage to take a number of urgent procedures, such as increasing awareness of transitional justice, involving all affected parties, such as greater involvement of civil society and the judiciary.¹⁷

With respect to the remaining authorities of the traditional judicial system, the most important challenges for the reform of the system are:

- Providing fair trial guarantees;
- Lifting the control exercised by the executive power over the judiciary;
- Holding corrupt judges accountable, including:
 - dismissing them from positions of high responsibility when it is proven that they are involved in the weakening of the judiciary whether by consecrating its subordination to the executive power and its exploitation for the latter's interest or by working on mainstreaming the phenomena of bribery and corruption;
 - imposing disciplinary sanctions, including the disqualification of judges who are found to have committed criminal offenses by virtue of the law and violations prejudicing the profession and its ethics;
 - imposing criminal sanctions for criminal offenses related to the judicial function such as acceptance of bribes, abuse of power, and appropriation of public money. The sanctions in each case shall be accompanied by accountability and disclosure of facts, parties and personalities participating and involved in the abuse of the judicial institution.
- Establishing a new supreme judicial council and electing its members by judges;
- Making the new supreme judicial council's powers exclusive and broader so as to cover all fields related to the professional conduct of judges;
- Consecrating the independence of the Public Prosecutor's Office from the Minister of Justice and abandoning the rule of pyramidal hierarchy governing the work of the representatives of the public right. This is realized by the immediate revision of Articles 22 to 25 of the *Code of Penal Procedure*, the current law governing the profession of judges and relevant provisions. In the meantime, the members of the Public Prosecutor's Office must be authorized to conduct prosecutions and referrals to the courts without any constraint.
- Consecrating the independence of the State Council by abolishing all forms of organic and financial subordination to the head of government;
- Lifting secrecy with respect to the reports of the Court of Accounts, the Administrative Court and the Court of Budgetary and Financial Discipline and enable them to publish them on a regular basis and establish effective mechanisms to follow up on the implementation of their recommendations;
- Strengthening the formation in the complex and recent fields such as financial, exchange, customs, commercial, banking, IT, and electoral fields as well as with respect to the issues of bribery, corruption and torture;
- Changing the perception of the role of Supreme Judicial Institute by consecrating the principles of independence, impartiality, neutrality, and human rights principles and revitalizing the Center for Legal and Judicial Studies and activating its role in the drafting of scenarios to advance the situation of the judiciary;
- Creating branches of the Administrative Court with the various authorities to allow people to have recourse to administrative justice, simplifying and shortening the duration of administrative litigation, finding solutions for the difficulties in implementing administrative decisions by instituting the post of enforcement judge in order for the administration to follow up on the implementation of the decisions rendered by the Administrative Court.

¹⁷ See the various statements by the Association of Tunisian Judges and the Tunisian Judges Union.

The Ministry of Justice considers “that an effective judicial system represents a ramification of the successful effective democratic transition and a pressing need of the revolution that must be consecrated by retaining international standards for the independence of the judiciary, by taking the necessary measures and procedures for turning the judiciary into a real and independent authority, and by drafting an integrated legal system based on a Constitution that guarantees the independence of the judiciary”. Therefore, the priorities in this respect are “to put an end to the custody imposed on the judiciary, to lift the marginalization imposed on the authority managing the judiciary as a constitutional institution and to prevent its exploitation for the purposes of the existing political regime.”

For its part, the Constituent Assembly through committees consulted with judges to hear ideas on drafting laws on the judicial authority.

The Tunisian Association of Judges considers that prior to any process of election of members of this authority, all connections with the previous authoritarian regime must be severed. The Tunisian Association of Judges requires the appropriate preparation for this process in terms of independent and neutral supervision, and stresses the facts that the current administration is not qualified to oversee the elections, that the various responsibilities and plans must be reconsidered, and that “honest” judges must be appointed in order to avoid manipulation during the coming period. The Tunisian Association of Judges adds that “an electoral system must be developed, which enshrines the conditions of neutrality and impartiality and that standards must be set to exclude the judges who played inappropriate roles in the past era from running as candidates to these elections, drawing on the Constituent Assembly’s elections.”

The Constituent Assembly in the constitutive *Law No. 6 Relating to the Provisional Organization of the Public Authorities* decided to create an authority in consultation with the judges, as a compromise between election and appointment during the transitional phase. It appears that the priorities of the reform are: expediting the enactment of the law on the provisional authority, replacing the Supreme Judicial Council, and ending the involvement of political parties in the judiciary’s affairs.

c. Developing a Fair Electoral System

In the coming phase after the drafting of the Constitution, Tunisia will face several major tests. The first two tests will be the legislative elections and the municipal elections. Thereafter, presidential elections may be held if a presidential political system or a modified presidential system is retained. On the other hand, an almost unanimous consensus occurred between the various political forces and the majority of experts on the need to create elected regional authorities. This requires the organization of regional elections as well. Therefore, the development of a new comprehensive legal framework to regulate the various upcoming elections is a priority that the Constituent Assembly must deal with immediately.

The drafting of a new electoral code raises a number of challenges in order to meet the requirements of establishing a true and solid democracy. The new structure must be based on the lessons drawn from the elections of the Constituent Assembly in order to retain the positive aspects and to avoid the difficulties and errors encountered.

The most important positive lesson is that the administration must remain neutral. An independent and neutral authority must be assigned to organize and oversee electoral processes. Flexible and transparent procedures must be implemented, and that a voting method ensuring broad participation of voters and fair representation of the various forces and political parties must be retained. These lessons also include enabling all parties to contribute to the monitoring and observation of elections.

On the other hand, real difficulties emerged during the last elections of the Constituent Assembly, mainly during the registration process prior to the elections. These difficulties included the lack of a prior coordination between the civil status database and the national identity card database. This lack of coordination prevented the automatic exclusion of the names of dead persons, in addition to the lack of a mechanism for data transmission between the Ministry of Justice, the Ministry of Interior, and the Ministry of Finance as well as a lack of reliable data on Tunisians residing abroad.

Therefore, the Independent Supreme Authority for Elections in charge of conducting the elections of the Constituent Assembly recommended adopting voluntary registration on the electoral lists to ensure the credibility of the voter information and to allow crossing out the name of dead persons and to improve data on persons who lost the right to vote by virtue of a judicial judgment. The Authority also recommended the adoption of the continuous registration method, the creation of a special national application for voter registration, and the re-examination of the coordination methods with other relevant national applications such as civil status and identity card applications. The Authority suggested considering the possibility of including provisions related to the minimum representation of candidates.

Naturally, there are important differences between conducting a nation-wide election of the Constituent Assembly, and the demands of local and regional elections. At this point, it is necessary to clarify the status of the current authority, which oversaw the election of the Constituent Assembly, either by reinforcing it, recomposing it, or replacing it with a new authority. This is achieved by the consecration of the principle of structural, functional, and financial independence of this authority by specifying this independence in the constitution and the new law on its creation.

However, it is not necessary to await the entry into force of the new constitution. Rather, it is necessary to promptly decide to reinforce the existing authority or the creation of the new electoral authorities so as to provide the sufficient appropriate time for the preparation stage for the organization of the numerous upcoming elections in such a way as to avoid mistakes and improvisation.

This requires the clarification of the mission of the authority supervising the upcoming elections with respect to the regulatory and supervisory functions and separating the executive functions, from the formation of an administrative, financial, and technical authority enjoying competencies for managing the electoral process.

The lessons drawn from the experience of the Constituent Assembly's elections reveal the need to review the legal framework for the financing of the electoral process. Therefore, it seems necessary to re-organize the financing of political parties and organizations and the financing of the elections themselves, which contributes to the transparency and fairness of elections and wards off the risk of suspicious financing which would prejudice the fairness of elections and threatens the real representation of the people's will.

It is preferable to retain a system for recording and recovering election campaign expenses and to establish an efficient electronic system to exchange data between the independent authority in charge of elections and the various departments of the Ministry of Finance.

On the other hand, care must be taken to combat the practices of pressure, bribery, purchasing votes, electoral fraud, and other practices contrary to the standards of democracy. The rights of voters and candidates must be reinforced and they must have sufficient means to challenge decisions and a chance to defend their rights to a fair and transparent election.

In this context it is worth mentioning that the report of the Independent Supreme Authority for Elections, which oversaw the elections of the Constituent Assembly, recommends that major efforts be exerted to identify the different types of electoral disputes during all of the phases of the electoral process. The report also recommends that the principle of adversarial litigation be retained with respect to disputes related to initial results of the elections.

The report also notes that various stakeholders in the electoral process must be trained in how to document violations and that judges must undergo a special training on elections, which was also previously suggested by the professional organizations representing judges.

Finally, it is worth mentioning that it is necessary to draw upon comparative experiences, to conduct broad discussions, to involve experts, and to be open to assistance from international organizations, in particular non-governmental organizations that could help to ensure consensual electoral laws, structures, and procedures. It is also necessary to develop an electoral framework that rises up to the level of international standards for democratic elections. This is, in our opinion, the best way to consolidate a genuine and sustainable democratic electoral culture.

d. Building a Security System in the Service of the Citizen

In addition to the Constitutional Democratic Rally, the Ministry of the Interior was the most powerful tool of the regime of ousted President Zine El Abidine Ben Ali. Ben Ali used this Ministry as a mechanism to protect the privileges of the President and his closest allies and to cover-up the violations they committed against the security of the people and their property.

Many of the various agents of the Ministry of Interior provided services for the head of the regime, his family, and followers. Although most of them were aware of the laws governing public employees, and although their main function was theoretically to ensure the proper implementation of the law and sanctioning any contravening party, the security forces systematically violated the law. There is no room in this report for reviewing all of the illegal practices that the persons affiliated with the security authorities committed against citizens without being held accountable, except in rare cases.

Thus, the Ministry of Interior took a position that does not belong to it and became part of the political scene, fiercely defending a corrupted and oppressive regime. The security authority was working under instructions that violated the constitutional principles and legal frameworks, and turned the entire State into a security-controlled state governed by an authority issuing instructions under a pyramidal hierarchy, showing loyalty to one person, his relatives, and assistants, and protecting rampant corruption. This security-controlled state found care and protection under an autocratic regime that used the security forces, the media, and the judiciary to attack and repress opponents and monitor all persons whose loyalty is questioned.

Today, relationships between the citizen and the Tunisian security authority are still tense even five months after the flight of Ben Ali and more than a year after the issuance of the decision ordering the dissolution of the political police.

The lack of trust between the citizen and the security members is a threat to the success of the democratic process. Moreover, this instability has negative effects on economic growth and social development. Therefore, one of the next major challenges is to reform the security system in a way that achieves security without infringing on the freedoms and that reconciles security and democracy.

Reformist intentions emerged after the appointment of judge Farhat Rajhi as Minister of Interior. Rajhi introduced a number of changes in responsibilities and retired a number of senior security officials during February and March 2011. Thereafter, the former transitional government elaborated a plan for appointing a Minister in charge of reforming the Ministry of Interior. This new Ministry drafted a plan for reforming the security sector, in order to transform the security forces from a repressive tool in the service of tyranny into a tool for serving and protecting citizens.

However, according to the report on human rights issued by Amnesty International about the security system in Tunisia after the revolution, some corrupt members still exist in various departments of the security forces and the situation has not changed since the revolution. This is also confirmed by another report issued by the International Federation of Human Rights in cooperation with Tunisian League for Human Rights and the National Council for Liberties several months ago.

According to a referendum conducted recently on the different segments of the Tunisian society, the manner in which the security members treated people did not change after the revolution. The way in which they welcome the citizen in security stations has not changed and the way in which security agents talk is the same, which confirms that the pre-revolution mentality still prevails.

On 22 November 2011, the Ministry of the Interior issued a White Paper entitled *Security and Development: Towards a Security Authority in the Service of Democracy*. This report includes a vision and a plan to reform the security system.

According to the speech delivered by the former delegate Minister to the Interior Minister in Charge of Reforms in Tunisia, this plan is consistent with the fact that the revolution "expressed a primary demand of the Tunisian people that is the search for the rule of law that protects persons and property, which necessitated a new organization of public security" in a way that meets the demand of the citizen and provides the necessary methods and requirements for those working in the security facility for accomplishing their tasks in line with the democratic regime in order to transform this task from "the security of the public order to the security of the public service".

The white book includes many proposals and consists of six chapters discussing proposals on the assignment and training of the security forces in the three corps (police, national guards, and civil protection). In this regard, emphasis was placed on the need to retain clear and objective standards for promotion according to seniority, professional experience, personal competency, personal qualifications, and leadership charisma.

The report proposes drafting a charter of professional ethics for the internal security forces, which is considered a social contract between security members and civil society, and which specifies the duties of the members affiliated to this corps as well as the legal and ethical constraints.

The White paper emphasized the importance of internal supervision as an effective way to spare security members judicial prosecution and to make them feel more secure in the performance of their duty. Other proposals address the division and structure of the central departments with the Ministry of Interior such as the General Department of Human Resources, Logistics and Financial Resources and the General Department for Civil Protection and Public Order.

As for the organization of security agencies in the regions, the report proposed creating municipal police operating within the concept of proximity and referring to the head of the municipality and whose mission is to address the daily problems in the region.

The report stressed the importance of establishing and organizing a national intelligence agency with the mission of collecting and analysing information on threats to the security of the country. This agency would include deal with mainly economic threats, espionage, and terrorism. This agency would be subject to the executive and supervised by the Minister, the First Minister, or the Head of State in addition to parliament.

The report concluded that "a democratic state is a state that has a strong security authority that does not resort to violence nor show leniency and weakness, and this type of security supposes above all, unity, independence and neutrality". Moreover, this requires all political parties to give this principle a paramount importance in their internal policy and culture. This may be achieved by prohibiting all acts of political, partisan, and ideological interference in the internal security forces.

In another context, the Ministry specified the articles of *Law No. 4 of 1969* dated 24 January 1969 regulating public meetings, processions, parades, demonstrations, and gatherings that must be amended, such as Articles 2, 5, and 8, along with other articles. It also specified the articles that should be preserved and called for the complete removal of other articles. The current Government that was formed after the Constituent Assembly elections has confirmed the reformist orientation.

Forums and meetings were held to address the issue of reforming the Tunisian security system, during which participants called for the reform of the legal arsenal outlining this vital area in order to strengthen and respect fundamental freedoms for citizens.¹⁸ These meetings were held in the presence of representatives of security unions that multiplied after the revolution due to the multiplicity of security departments and authorities affiliated with the Ministry of Interior and even then President of the Republic. All of the participants (representatives of security unions, the representatives of some of the political parties, civil society activists, jurists, and experts) agreed that it is necessary to change the function of security forces from the protection of the ruler and his allies to the protection of the persons on Tunisian territory, of public freedoms, and of the security of the country.

Today, the priority is to determine the security requirements in light of citizens' needs (such as freedom, social justice, development, and stability) and then to develop the appropriate mechanisms for ensuring their protection. Moreover, a security policy with clear parameters is an urgent popular demand and the right to security is a fundamental human right. In order for the security institution to shift from an institution for the protection of a regime to an institution in the service of the citizen, it must wisely and responsibly solve the crisis of legitimacy it faces today. It must do this in association with the judiciary, media, and civil society.

Presently, there is widespread agreement that the current stage requires the immediate restructuring of the security institution and the formation of its members and units. The reform of the security institution is an integral part of the constitutional and political reform so as to confer a new legitimacy on the security institution, which must turn into a democratic institution subject to the same type of supervision. This is a difficult challenge in itself because it pre-supposes that security must become part of the democratic equation. This may take some time in order for the security institution to learn the democratic practices, just as citizens, political parties, and civil society organizations are also learning democratic practices.

Moreover, the role of the security institution needs a radical re-examination, not at the level of concepts and perceptions only, but mainly at the level of the tasks that it is supposed to accomplish in a democratic society where rule of law prevails. In democracies, loyalty is only shown to institutions and values and not merely to individuals, as is the case in countries tending towards authoritarianism. Republican security forces are only subject to the principles of freedom, justice, and order, and not the whim of individuals.

However, introducing reforms and overcoming past mistakes will only be achieved if there are precautions and legal/structural safeguards for deterring attempts to use the Ministry of Interior for a specific person or party. These reforms include the following:

- The new constitution must include a chapter confirming that security is a public function that ensures the protection of the interests of the country and individuals without any discrimination. This would consecrate the idea that the security system is a neutral public authority; a republican security forces authority that serves democracy.
- Transparency and clarity must be ensured in formalities by clarifying and publicizing the various authorities that control public security and their composition and by exposing a detailed budget allocated to each department, so that Tunisians are aware of the positive works of the Ministry and the difficulties that it may encounter.
- Civil society must be involved in the drafting of plans for the reform of the security and administration system and the opportunities for convergence between the authorities of the Ministry of Interior and the population must be strengthened in order to identify the population's needs and demands.

¹⁸ In particular, the seminar held on 23 September 2011 and the seminar held on 8 March 2012.

- The principle of election must be retained in local and regional security authorities running the affairs of the population in their areas. Then, the director of the regional or local security authority is elected from among candidates. The population can then choose the most efficient, honest, and loyal candidate and the voters acknowledge the eligibility of the most competent among them to manage the security of the town. This director may be dismissed upon violation of the charter of honour concluded between him and the voters or if he uses his position to violate the law.
- A charter of honour must be concluded to govern the activity of the security authority.
- Everything related to decentralization and local/regional communities must be separated and governed by the Ministry of Regional and Local Development. The Ministry of Interior must be turned into a ministry concerned only with internal security.
- The reform of the security authority raises the challenge of changing the security ideology. In order to address this challenge, a formation program must be developed for the various security structures and units. These units and structures should be trained on the principles of respect for the law, commitment to transparency in their work, on being subject to regulatory and judicial accountability, and on participation with the other components of society in establishing a security regime in the service of the citizen. The role that the security institution will remain dependent on its ability to abide by the rules and principles of democracy and subject its actions to supervisory regulations and legal accountability. Here lies an additional challenge and it therefore seems necessary to formulate new training programs developed specifically for this purpose, in order to gradually consecrate sound mentalities and practices and to renew the security institution. The reform of the security system and its restructuring according to the requirements of a democratic state will take a rather long time according to security specialists.

Addressing security challenges along with the judicial challenges are prerequisites for addressing the remaining economic and social challenges.

e. The Economic and Social Challenges

Achieving economic development and meeting the social demands is, without a doubt, the biggest and most difficult challenge. The revolution was launched mostly for social and economic reasons, and hundreds of thousands of Tunisians protested against high unemployment, a lack of social justice, and the worsening of corruption within the ruling regime. Moreover, the right to employment was the first slogan of the revolution because it is the primary need for a dignified life. Furthermore, in the first protest, the youth of Sidi Bouzid used the slogan, "Employment is a right, you band of thieves".

The slogans on the right to dignity, the fight against corruption and nepotism, as well as the fight against tyranny were raised in the revolution. However, the revolution and the democratic transition have not thus far succeeded in solving the problem of unemployment and economic downturn. Rather, unemployment increased. The number of unemployed persons increased from approximately 700 thousand to one million, including a significant number of university graduates and holders of higher degrees. Moreover, investment saw a significant decline, export sectors witnessed a regression, the tourism sector worsened, and the rate of corruption did not decrease according to some international reports despite the efforts by successive transitional governments.

Today, it seems clear that everyone is completely convinced (government, opposition, civil society, and trade unions) that unemployment, poverty, and the economic recession are the most major and complex challenges in Tunisia. The economic and social situation raises several challenges. In addition to the development of plans and effective development policies, in terms of the rule of law the next constitution should include a number of economic and social rights for residents. Additionally, a series of legislative reforms should be introduced at the level of the administration of both the public and private sectors.

Legal reforms require enforcing certain standards and principles of neutrality, equality, and integrity, with a specific focus on:

- The impartiality of the administration (an administration capable of creating a real balance between its role of implementing the policies of the ruling political regime and its duty of being at an equal distance from everyone);
- Transparency and anti-corruption, also in relation to attracting Tunisian, Arab, and foreign investments in Tunisia;
- Efficiency and effectiveness as a fundamental standard for improving profitability.

The most important law-related challenges on the agenda include re-examining the following economic, social, and territorial legislations:

- the regulation related to investment banks, trade, and companies;
- the regulation related to taxes for stimulating investment, fighting fraud and tax evasion;
- the basic regulations governing civil servants and agents of public facilities and institutions, with particular regard to the policies, methods, and standards of appointment in relation to anti-favouritism and anti-bribery rules;
- the provisions on public contracts such as public procurement and concessions and developing an appropriate legal framework for new types of major contracts such as joint-ventures and public-private partnerships in order to confer more transparency and competition and to limit corruption and appearances of corruption.

The elimination of favouritism and bribery in the civil service, especially upon assignment as well as in terms of public contracts, concessions, and public-private partnerships, by setting regulations governing transparent civil service, public demand, and fair competition is a necessary factor for the development of a sound economic policy and an efficient and fair employment policy.

This requires the development of authorities and mechanisms for supervising the administration. Measures should also be taken to strengthen the financial judiciary and to speed up the activation of a number of relevant authorities, at the forefront of which is the National Anti-Corruption Authority established by virtue of *Decree No. 120 of 2011* dated 14 November 2011 on combating corruption.

Another important issue is choosing the appropriate structures for regional and local development. This will likely require a re-examination of the territorial organization by consecrating a real decentralization in the new constitution, strengthening local democracy, re-examining the basic laws related to municipalities and regional/local councils. There is an opportunity to re-examine and expand the jurisdiction of local and regional councils and to change the supervision mechanisms so as to strengthen local independence and consecrate the principle of local governance, as well as to re-examine their financing, local taxation, the *Code of Land Use Development and Urbanism*. This could lead to separating local councils from the Ministry of the Interior and creating a ministry specialized in territorial development and local communities.

The Ministry of Regional Development in the previous government prepared a study that developed a detailed vision of regional development that should be taken into consideration and developed.

These reforms should be integrated into other reforms related to security and the judiciary, because investments are unlikely without guarantees of a secure and fair environment. Similarly, an effective and permanent solution to corruption and bribery will only be possible through a reform administrative supervision and of the judicial system. A fair and independent judiciary will contribute to effectively addressing corruption.

Conclusion

Tunisia has achieved a number of significant advancements supporting the rule of law and honest governance. However, these achievements are still recent and vulnerable. This is normal because Tunisia is still in a transitional stage. Moreover, these achievements must be strengthened and consolidated. It is worth mentioning that the public authorities have started to address several of the major challenges¹⁹ in particular the drafting of a democratic constitution setting the foundations for a civil state in a consensual manner and setting the foundations for a culture of a transparent and participatory governance at all political, administrative, and social levels that rejects the mentality of bribery, favouritism and corruption. At the same time, continuing to raise these numerous major challenges will help to ensure the consolidation of the achievements and reinforce the state of law and the rule of law. Laws alone are insufficient in the absence of a sustainable change in mentalities and the prevailing political and social culture. Such changes require arduous and long-term efforts.

It is required now to develop a clear roadmap for the short term in order to lift the sense of uncertainty that many parts of Tunisian society have. It is important to establish confidence and move forward in dealing with the pressing needs and challenges with respect to the constitutional and political aspects and major social and economic goals. These are controversial and interrelated issues. The activation and development of a number of mechanisms and institutions that proved to be successful in the previous transitional period may contribute to success in the current and future stages, and can help to put a final end to tyranny and establish a democratic regime where freedom and the rule of law prevail.

¹⁹ The Constituent Assembly began considering of the axes of the future constitution, while government began to make changes in the security forces, organized seminars on the reform of the security forces, and started considering the review of laws mainly the law of 1969 regarding manifestations and assembly; the government made also some changes in the justice administration and declared on march 20, 2012 the preparation of an economic and social program that will be submitted to the Constituent Assembly, and which aims at "developing a balanced republic and enhancing operations by boosting growth". However, the features of this program were still unclear when this report was drafted.

Part C: Relevant Indicators in Rule of Law



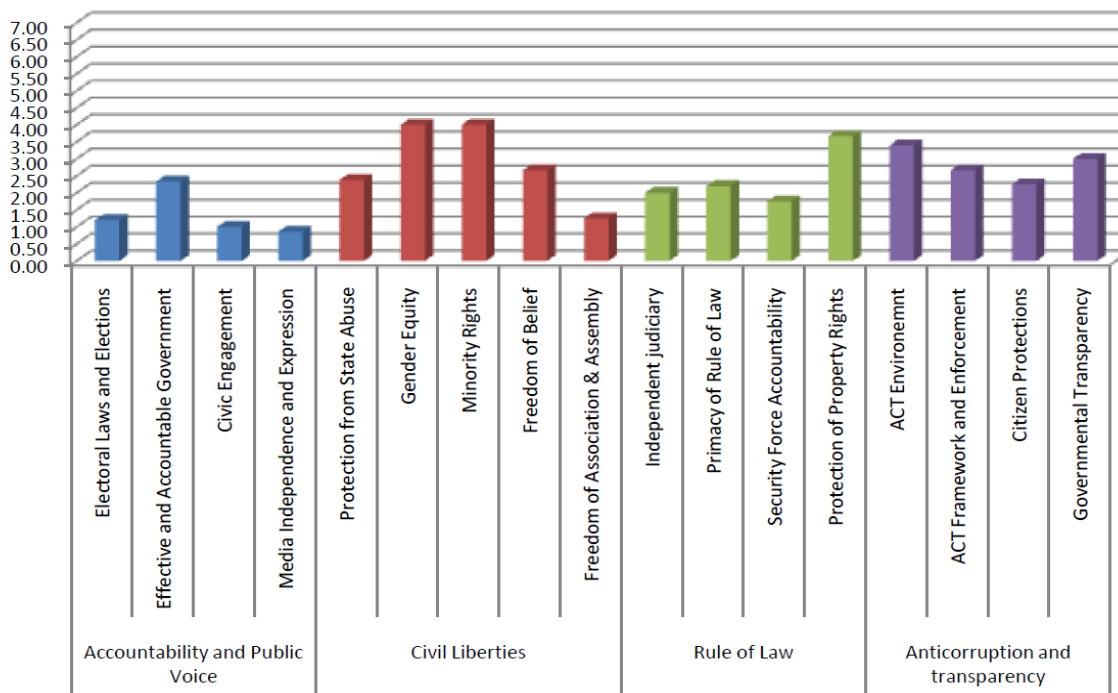
1. Freedom House

The influential Freedom House index, used widely in the works of international and academic organizations, is composed by regional experts who review an extensive collection of data, primarily newspaper reports as well as analysis by think-tanks and NGO's. The index measures the quality of democratic governance reflected by 4 core categories – Accountability and Public Voice, Civil Liberties, Rule of Law, and Anticorruption and Transparency. The rule of law is measured with respect to four sub-areas of government performance: independent judiciary; primacy of rule of law in civil and criminal matters; accountability of security forces and military to civilian authorities; and protection of property rights. On the basis of this information, separate reports are written for individual countries, which subsequently lead to a score on the Freedom House indicators.

The Freedom House report is based on numerical rating on a scale from 1 to 7, assigned to each country, where 1 stands for a free society and 7 for the lowest regard for civil and political freedoms. Tunisia has been assessed since 2002.

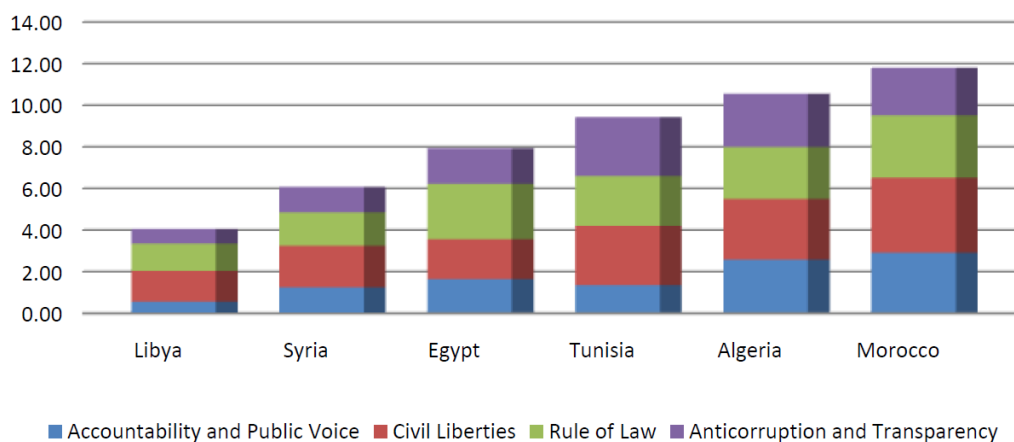
In 'Freedom in the World 2012 – The Arab Uprisings and Their Global Repercussions', Tunisia scored first among the countries with the largest net gains or losses in total aggregate score (0–100) between *Freedom in the World 2008* and *Freedom in the World 2012* with improvement of 35points. Tunisia's political rights rating improved from 7 to 3, its civil liberties rating improved from 5 to 4, and its status improved from Not Free to Partly Free due to the free and fair elections for the transitional Constituent Assembly held in October, 2011. The report further talks about increased freedoms of speech, press, assembly, and religious expression; and greater freedom for academics and nongovernmental organizations, all of which followed the ouster of longtime president Zine el-Abidine Ben Ali in January. For the first time since 2002 Tunisia improved its status to Partly Free.

Tunisia has also been assessed in the *Countries at the Crossroads* 2011 report, scoring 2.40 on the rule of law category. This ranking is lower compared to the 2007 and 2005 *Countries at the Crossroads* reports where the country scored 2.92 and 2.79 respectively. Although the difference is not drastic, it reflects the decline in the performance in the area of rule of law.



*COUNTRIES AT THE CROSSROADS 2011: TUNISIA

*Scores in each category are from 0-7, 0 is the weakest performance, 7 is the strongest performance



* COUNTRIES AT THE CROSSROADS 2011, SELECTED FINDINGS ON THE MIDDLE EAST AND NORTH AFRICA

*Scores in each category are from 0-7, 0 is the weakest performance, 7 is the strongest performance

Sources:

- www.freedomhouse.org/report/countries-crossroads-2007/tunisia
- www.freedomhouse.org/report/countries-crossroads-2005/tunisia
- www.freedomhouse.org/report/countries-crossroads/countries-crossroads-2011
- www.freedomhouse.org/sites/default/files/booklet.pdf

2. Bertelsmann Transformation Index

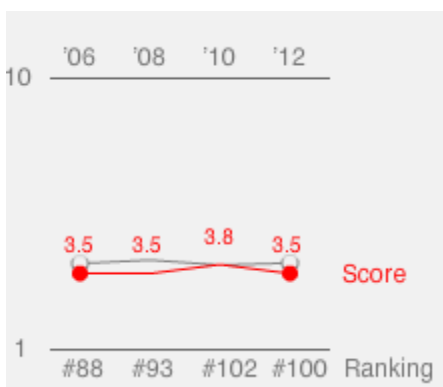
The Bertelsmann Transformation Index measures the progress of 128 countries towards full democracy based on the rule of law and a market economy protected by sociopolitical safeguards. It has been calculated for years 2003, 2006, 2008, 2010 and 2012. In contrast to minimalist definitions of electoral democracy, the BTI's understanding of democracy includes the rule of law and representativeness. It focuses on 3 dimensions: democracy, market economy and political management. The composite index relates to both a description of their democratic and market economic state and the country's leadership management performance to steer it on a course of solid transformation.

For 128 states, individual reports are written by a country expert, which is then subject to peer review by another expert. This narrative report deals with the whole chain of issues mentioned above. Subsequently, scores (1-10, with 1 being the lowest and 10 being the highest score) are given by country experts on 49 questions. For the present purpose, the political transformation dimension of the index is particularly useful, with a focus on the rule of law sub-category.

Since 2006 Tunisia's Democracy status has increased by 0.02 points which shows rather insignificant change and improvement (see Graph 1). For the same time frame the Rule of Law indicator has remained unchanged - 3.5 score (see Graph 2). In the 2012 *Tunisia Country Report* the scores of the different subfactors comprising the Rule of law factor were relatively low, reflecting the gravity of the influence of Ben Ali's regime (see Graph 3). The Separation of Powers (score 3) was reported to be very undeveloped in the constitution. Furthermore, it was reported that there is no clear balance between the different branches. The Independence of the Judiciary scored 4 points which is a reflection of that fact that the judiciary is still very much dependent on the executive branch. On the subfactor Prosecution of office abuse Tunisia scored 3 points which in fact reveals the moderate level of corruption in the country. Lastly, on the Civil rights subfactor Tunisia scored 4 points which by itself talks about difficulties with managing the issue of human rights, especially in terms of religious tolerance and gender equality.

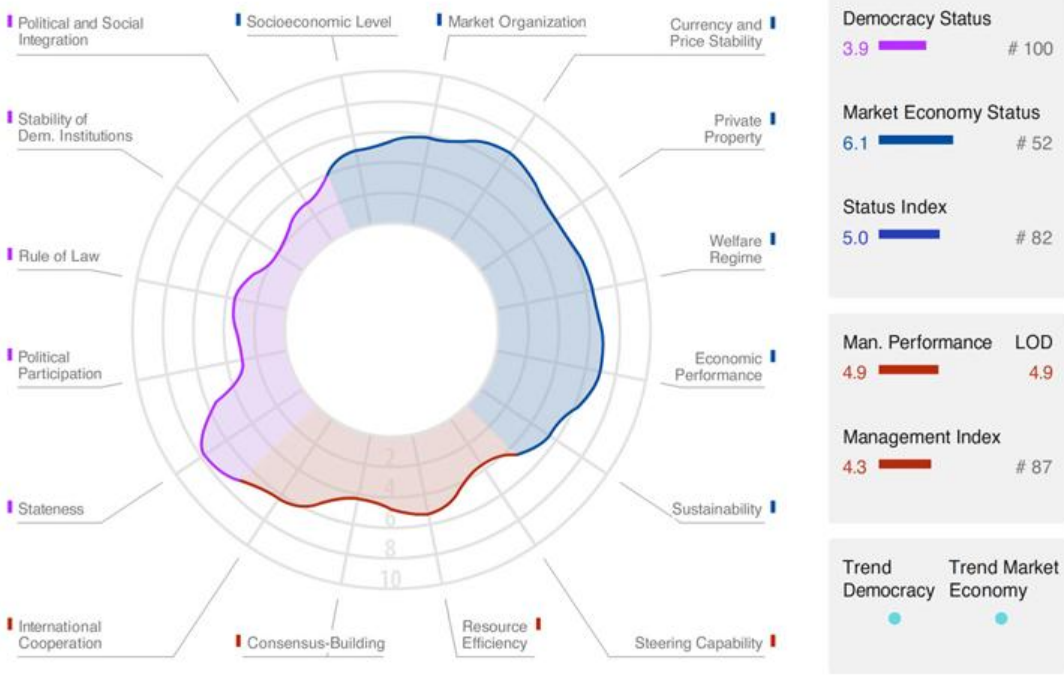


*Graph 1, Tunisia's Democracy status 2006-2012



*Graph 2, Tunisia's Rule of Law score 2006-2012

BTI 2012 | Tunisia Country Report



*Graph 3, BTI 2012 | Tunisia Country Report

Sources:

- www.bti-project.org/countryreports/mena/tun

3. Transparency International: Corruption Perceptions Index

The Corruption Perceptions Index (CPI) indicates the perceived level of public-sector corruption in a country or territory. The CPI table indicates a country's ranking compared to other countries in the index. The index is based on data from 13 independent surveys and 10 independent institutions.²⁰ These sources measure the prevalence of corruption in the public and political domains. This assessment is carried out for virtually all of the world's countries.

The index includes a country's ranking and score, the number of surveys used to determine the score, and the confidence range of the scoring. Scores range between 1 to 10, with 1 indicating the highest perceived level of corruption and 10 the lowest. The rank shows how one country compares to others included in the index. The reliability of the CPI scores is determined by the confidence range.

Tunisia has been assessed in the CPI reports since 1998. During the time period between 1998 and 2005 the country received medium scores with slight fluctuations (with highest score of 5.3 in 2001 and lowest 4.8 in 2002). The second half of the assessment period (2006-2011) was marked by progressing decline in the scores indicating that the perceived level of corruption has augmented. In 2011 Tunisia scored 3.8 points which is the lowest result for the 12 years of assessment and ranked 9th amongst the other countries in the MENA region.

Tunisia CPI score over the years

Year	Score
1998	5
1999	5
2000	5.2
2001	5.3
2002	4.8
2003	4.9
2004	5
2005	4.9
2006	4.6
2007	4.2
2008	4.4
2009	4.2
2010	4.3
2011	3.8

Source:

- www.transparency.org/policy_research/surveys_indices/cpi

²⁰ Not all surveys include all countries.

4. Failed States Index

Published since 2005 by the Fund for Peace and the magazine Foreign Policy, the Failed States Index is composed of twelve indicators of vulnerability over 3 distinct dimensions (social, political and economic). A total of 177 countries have been assessed by the Failed States Index. The indicators include: Demographic Pressures, Refugees/IDPs, Group Grievance, Human Flight, Uneven Development, Economic Decline, Delegitimisation of the State, Public Services, Human Rights, Security Apparatus, Factionalised Elites, and External Intervention. For each indicator, the ratings are determined on the basis of computer-based quantitative analysis of publications and newspaper articles on a scale of 0 to 10 (where 0 indicates the highest degree of stability and 10 the lowest). The total country score is the sum of the 12 indicators and ranges from 0 to 120.

Tunisia has been covered by the index since 2005 (see Table 1). Its score on the Human Rights and Rule of Law indicator has remained high over the years (average of 7.5) and the country has remained in the risk zone ("warning"). In the 2011 ranking Tunisia's judiciary has been described as "weak". Tunisia's Legitimacy of the State score changed drastically as protestors raised in 2011 against poor economic opportunity for the young people and high levels of corruption. The Human Rights and Security Apparatus scores declined because of the widespread government corruption and the repression of the former regime. The government exercised political and physical repression towards the protestors, which aggravated the factionalized elite score by 0.8.

In her commentary for the latest ranking, Foreign Policy journalist Alessandra Wasserstrom explained: "The discontent came to the fore when protests erupted in December 2010, ultimately leading to the ouster of long-standing president, Zine Ben Ali. The resignation of Ben Ali has left a power vacuum as the Tunisian people struggle to find an appropriate form of governance to fill the gaping leadership hole while searching for a solution of their economic woes. Regional instability — not least the ongoing conflict across the border in Libya — will also continue to undermine Tunisia's transition." Although the position of Tunisia in the global rank for 2012 has decreased from 108th in 2011 to 94th in 2012, the country still remains in the "risk" zone. The index further shows that since last year the respect for the rule of law and human rights has deteriorated.

	Rank (Total states analyzed in parentheses)	Social Indicators				Economic		Political/Military Indicators						Total Score (out of 120)
2011	108 (177)	5.5	3.4	5.6	5.2	6.6	5.0	7.2	5.3	7.7	7.0	6.8	4.8	70.1
2010	118 (177)	5.7	3.4	5.4	5.2	7.0	5.0	6.4	5.7	7.5	6.5	6.0	3.7	67.5
2009	121 (177)	5.9	3.2	5.4	5.3	7.2	4.9	6.6	6.1	7.4	6.2	6.0	3.4	67.6
2008	122 (177)	5.6	3.4	5.1	5.1	7.2	4.3	6.6	5.9	7.3	5.9	6.2	3.0	65.6
2007	122 (177)	5.6	3.4	5.1	5.1	7.4	4.3	6.4	5.9	7.3	5.9	6.2	3.0	65.6

Assessment: Warning

Table 1

Year	Position	Violation of Human Rights and Rule of Law	Score
2012	94	8.3	74.2
2011	108	7.7	70.1
2010	118	7.5	67.5
2009	121	7.4	67.6
2008	122	7.3	65.6
2007	122	7.3	65.6
2006	100	7.5	65.4
2005	71	7.3	76.3

Sources:

- www.fundforpeace.org/global/?q=states-tunisia
- www.fundforpeace.org/global/states/sp-tn-11-profile-tunisia-1105m.pdf

5. World Bank Governance Indicators

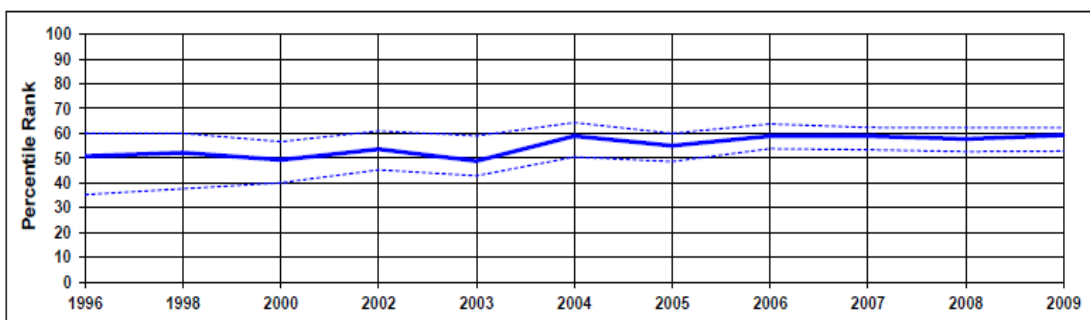
An authoritative scientific indicator in the field of law and governance is the World Bank Governance Indicators. Instead of working with its own data, the World Bank Governance Indicators Project compiles statistics from various other indices (among which are some of the indicators used in this study). Data are statistically rescaled to a score from 0 to 1, with a score of 0 indicating a bad result on a particular variable. Six different dimensions are measured; (1) voice & accountability, (2) political stability and lack of violence/terrorism, (3) government effectiveness, (4) regulatory quality, (5) rule of law, (6) control of corruption.

The World Bank Governance indicators result in a percentile rank on each of the six dimensions. Thus, a percentile rank of 20 on any certain dimension means that only 20% of the world's countries have a worse score. Likewise, when a state scores 90, only 10% of the world's countries do better. Therefore, a high percentile rank indicates better government performance.

Indicators for Tunisia are available from 1996-2010. For the first 5 years the rule of law indicator reveals no improvement. The aggregate indicator shows significant development in 2004 (Tunisia scored 58.9 in comparison with the score of 48.8 in 2003). In the following years the indicator remained relatively steady with minor fluctuations. In relative terms, in 2010, Tunisia with its 59.2 percentile rank performed well above the regional average (48.1st percentile rank).

Country	Sources	Year	Percentile Rank (0-100)	Governance Score (-2.5 to +2.5)	Standard Error
TUNISIA	14	2010	59.2	0.11	0.14
	14	2009	59.2	0.15	0.14
	14	2008	57.7	0.16	0.15
	13	2007	58.9	0.2	0.15
	12	2006	58.9	0.24	0.15
	12	2005	55	0.1	0.16
	11	2004	58.9	0.18	0.17
	9	2003	48.8	-0.05	0.18
	9	2002	53.6	0	0.17
	7	2000	49.3	-0.11	0.17
	7	1998	52.2	-0.08	0.2
5	1996	50.7	-0.14	0.22	

TUNISIA, 1996-2010
Aggregate Indicator: Rule of Law



*Tunisia, Aggregate Indicator: Rule of Law, 1996-2010

Sources: <http://info.worldbank.org/governance/wgi/pdf/c220.pdf>

6. Ibrahim Index of African Governance

The Ibrahim Index assesses national governance against 57 criteria. The criteria capture the quality of services provided to citizens by governments. The focus is on the results that the people of a country experience, rather than stated policies and intentions. Each criterion is weighted and scaled to provide standardization and proportional influence on the overall results of the Index.

The criteria are divided into four over-arching categories which the Index defines as the cornerstone of a government's obligations to its citizens: Safety and Rule of Law; Participation and Human Rights; Sustainable Economic Opportunity; and Human Development. Data is collected from all over the continent, and a particular year's index reflects data from 2 years previously, to ensure the greatest possible accuracy. This time-lag is more up to date than many other indices.

Tunisia has been assessed since 2006. In 2012 Tunisia's overall score on the Safety and Rule of Law Dimension has been slightly above the average score for the MENA region (62.7). Tunisia noted its highest score (84.9) on the national security, which characterizes autocratic regimes with strong security apparatus. The lowest scores were given to rule of law (46.3), accountability (55.4), and personal safety (30.0) due to the abuses and repressions by the authorities. Tunisia ranks in the top ten for overall governance quality in the region. This is driven by strong performances in *Human Development*, and to a lesser extent *Sustainable Economic Opportunity*. Conversely its assessment states that it performs particularly poorly in *Participation and Human Rights*. The imbalance between performances in *Human Development* and *Participation and Human Rights* might well have been a trigger for instability. Graphic description of Tunisia's ranking over the years is available only for the period between 2006 – 2011.

Tunisia's recent performance in the Ibrahim Index in Africa Governance

Rank (../52)	Category / Sub-Category	Score (../100)						Change
		2006	2007	2008	2009	2010	2011	
8th	Overall	64.7	64.7	61.6	61.1	59.8	62.7	-2.0
27th	Safety & Rule of Law	64.4	63.1	60.5	62.1	56.7	54.1	-10.3
28th	Rule of Law	53.6	48.2	47.9	48.3	48.3	46.3	-7.3
11th	Accountability	53.0	51.8	55.2	55.2	45.0	55.4	2.3
43rd	Personal Safety	56.3	57.5	53.8	55.0	48.8	30.0	-26.3
21st	National Security	94.9	94.9	84.9	89.9	84.9	84.9	-9.9
27th	Participation & Human Rights	41.0	39.7	37.0	33.3	34.0	46.4	5.4
30th	Participation	26.0	26.7	18.5	18.1	17.4	39.6	13.7
35th	Rights	33.0	28.3	29.4	18.7	20.1	35.1	2.1
14th	Gender	64.1	64.1	63.1	63.1	64.4	64.4	0.3
2nd	Sustainable Economic Opportunity	65.9	66.9	67.7	67.4	67.3	68.6	2.7
3rd	Public Management	70.1	70.8	72.2	74.0	72.4	70.2	0.1
11th	Business Environment	64.4	65.9	67.6	61.9	61.4	62.2	-2.2
3rd	Infrastructure	60.1	61.6	62.8	65.5	67.0	64.3	4.2
3rd	Rural Sector	69.1	69.1	68.3	68.3	68.3	77.6	8.5
4th	Human Development	87.6	89.1	81.4	81.7	81.4	81.7	-5.9
2nd	Welfare	78.1	81.4	79.9	79.4	79.0	79.8	1.7
4th	Education	86.4	87.7	85.6	83.9	83.9	83.9	-2.5
7th	Health	98.2	98.2	78.7	81.7	81.4	81.4	-16.8

Rank (of 53)	Category/sub-category	Country Score (out of 100) higher is better	African Average Score (out of 100) higher is better
24th	Safety and Rule of Law	58	53
27th	Rule of Law	48	48
14th	Accountability	49	43
21st	Personal Safety	50	44
23rd	National Security	85	78

*Tunisia ranking for 2011

Sources:

- www.moibrahimfoundation.org/en/media/get/20111009_2011-North-Africa.pdf
- www.moibrahimfoundation.org/en/media/get/20111003_ENG2011-IIAG-SummaryReport-sml.pdf

7. World Bank (Doing Business)

The World Bank's "Ease of Doing Business" index ranks 183 economies on 10 categories: starting a business; dealing with construction permits; registering property; getting credit; protecting investors; paying taxes; trading across borders; enforcing contracts; resolving insolvency; and getting electricity. Each country's ranking is calculated as the simple average of the percentile ranking on each of the categories. The higher the country's ranking, the simpler its regulations and the stronger its protection of property rights, which results in a more favorable business climate. Although the index has no immediate bearing on the rule of law, transparent and efficient regulation, as well as effective implementation enables businesses to operate within the rule of law and benefit from protections and opportunities provided by the law.²¹

Tunisia has been assessed in the years 2011, 2012, and 2013 scoring relatively high in most of the categories. Its 2012 overall "Ease of Doing Business" rank is 46, which in fact is a decline from 2011 when Tunisia was ranked 40. The country's performance across the different categories reflects stability rather than improvement and development. Tunisia's strongest performance is on trading across borders (ranking 32nd in 2012), resolving insolvency (ranking 38th in 2012), ease of getting electricity (ranking 45 in 2012), and protecting investors (ranking 46th in 2012). Remaining challenges seem to be the ease of getting credit (ranking 98th in 2012) as well as the ease of dealing with construction permits (ranking 86th in 2012). Overall, Tunisia's ranking on the ease of doing business index means the regulatory environment is more conducive to the rule of law. The estimated data for 2013 shows that the ease of doing business in Tunisia has deteriorated. This is particularly true for the ease of starting a business, registering property and getting credit (see below).

TOPIC RANKINGS	DB 2013 Rank	DB 2012 Rank	Change in Rank
Starting a Business	66	54	↓ -12
Dealing with Construction Permits	93	87	↓ -6
Getting Electricity	51	48	↓ -3
Registering Property	70	64	↓ -6
Getting Credit	104	97	↓ -7
Protecting Investors	49	46	↓ -3
Paying Taxes	62	60	↓ -2
Trading Across Borders	30	31	↑ 1
Enforcing Contracts	78	77	↓ -1
Resolving Insolvency	39	38	↓ -1

Source:

- www.doingbusiness.org/data/exploreeconomies/tunisia

²¹ World Bank Group, "Doing Business 2011 – Making a Difference for entrepreneurs", World Bank Publications, 2010, [www.doingbusiness.org], last visited on November 14, 2011.

8. World Justice Project – Rule of Law Index

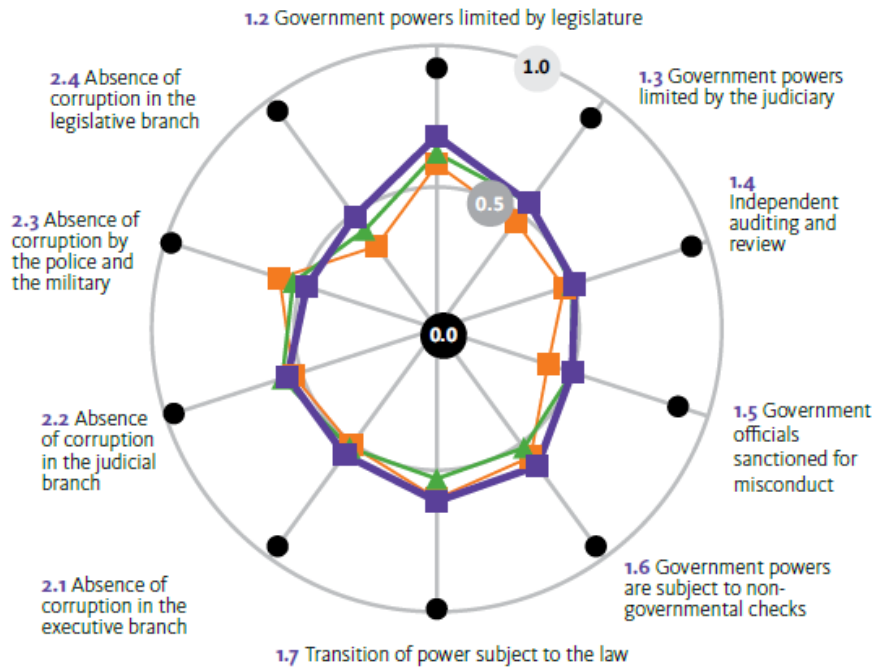
The World Justice Project Rule of Law Index is the most comprehensive source of data on countries’ adherence to the rule of law in practice. It measures the extent to which states adhere to the rule of law, focused on practical consequences of the rule of law status on the daily lives of people. All variables are expressed in a scale from 0 (low adherence to the rule of law) to 1 (high adherence to the rule of law) and aggregated into factors and sub-factors. Each factor represents one of the following nine dimensions of the rule of law: limited government powers; absence of corruption; order and security; fundamental rights; open government; effective regulatory enforcement; access to civil justice; effective criminal justice; and informal justice. Those are further divided into 52 sub-factors, corresponding to outcomes that rule of law that societies seek to achieve. The conceptual definition of each factor is linked to the individual questions in the survey administered to samples representative of the general public and of local experts in each of the 66 studied countries.

Tunisia has been assessed by the index as of 2012. In the 2012 report, the country occupies the second place within the MENA region, with its main strengths being the high level of order and security (0.79 ranking 2/7 regionally and 3rd out of the 30 countries in the upper middle income economic group). Tunisia is ranked relatively high with respect to the factor of limited government powers with a score of 0.58 which places it second in the MENA region. From a regional perspective, fundamental rights are protected efficiently in Tunisia – the country is awarded a score of 0.56 in that respect and occupies, again, a second position in the regional ranking. However, as regards the economic group that Tunisia belongs to, the state is ranked 20/30 on the same factor of fundamental rights protection. The performance in the sphere of civil and criminal justice is mediocre (with scores of 0.56 and 0.52 respectively). The problems are rooted in the fact that enforcement of civil justice in particular is relatively low and the system in general is overburdened. Corruption remains a problem, especially in the legislative branch and the law-enforcement sector. The weakest factor is the open government where Tunisia scores 0.46 where the country ranks 4th in the MENA region and 18th in its respective economic group.

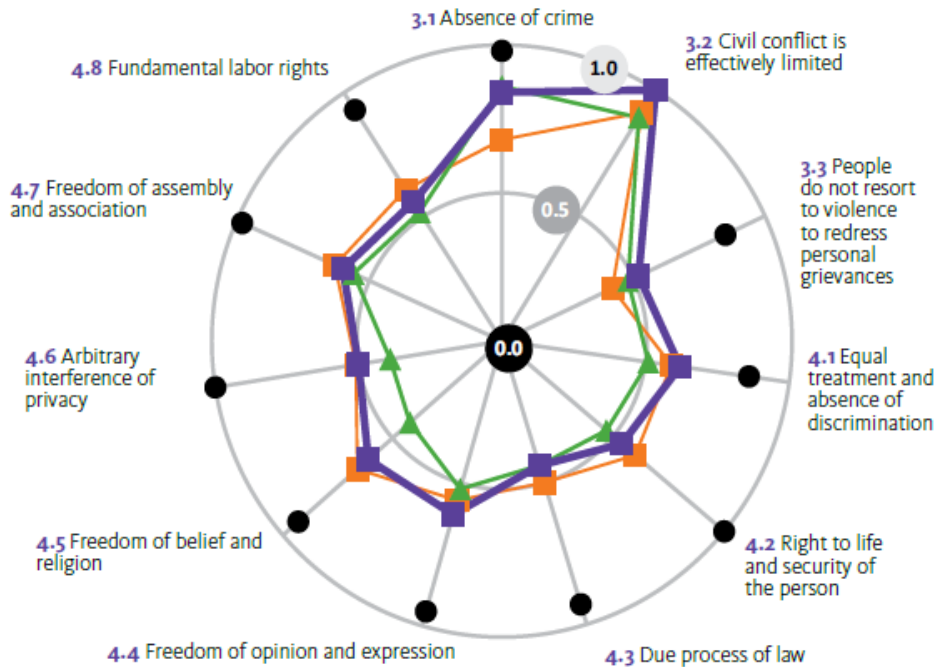
Factors	Scores	Global Rankings	Regional Rankings	Income Group Rankings
Limited Government Powers	0.58	41/97	2/7	9/30
Absence of Corruption	0.52	39/97	3/7	9/30
Order and Security	0.79	31/97	2/7	3/30
Fundamental Rights	0.56	63/97	2/7	20/30
Open Government	0.46	55/97	4/7	18/30
Regulatory Enforcement	0.55	38/97	3/7	8/30
Civil Justice	0.56	42/97	4/7	10/30
Criminal Justice	0.52	43/97	2/7	10/30

WJP Rule of Law Index for Tunisia, 2012

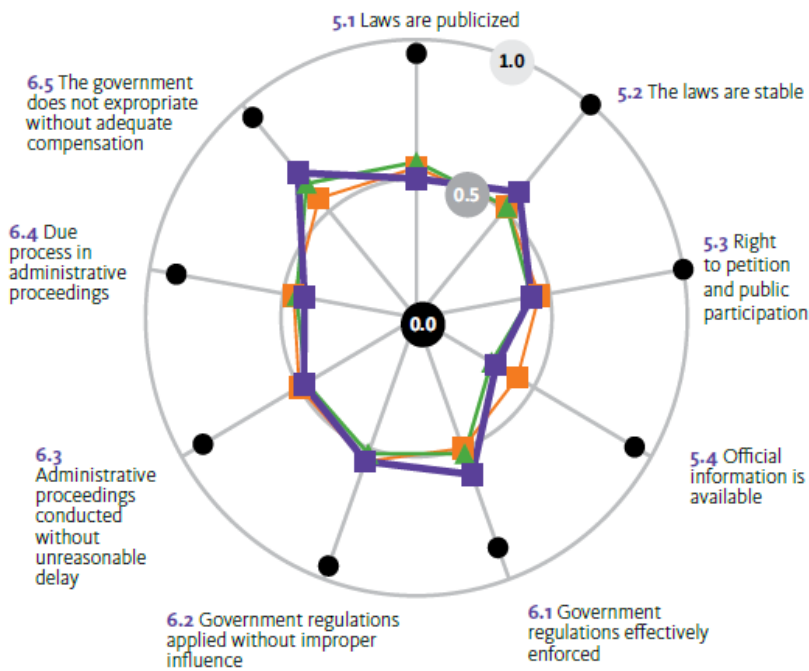
Accountable Government



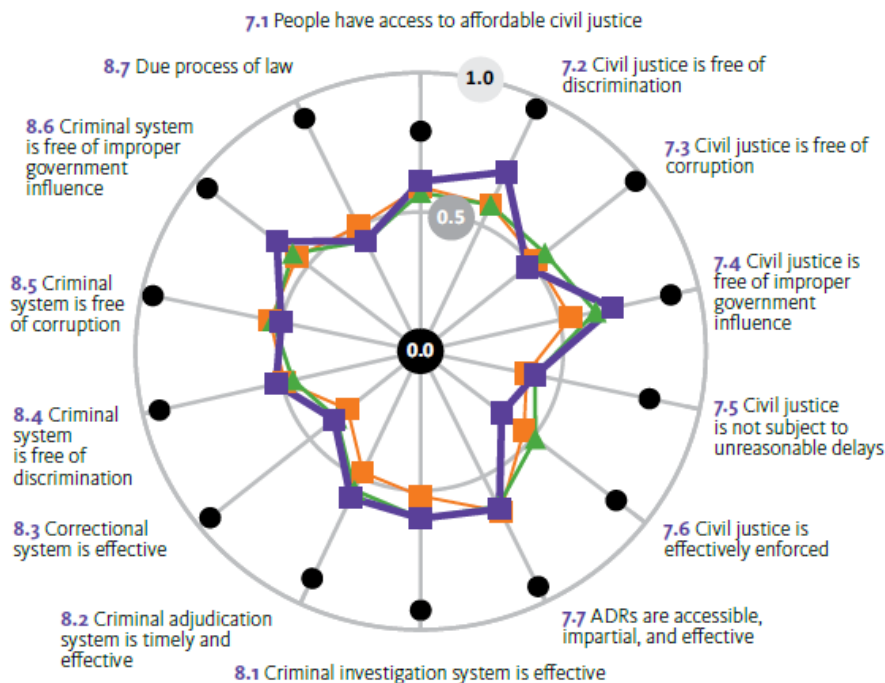
Security and Fundamental Rights



Open Government and Regulatory Enforcement



Delivery of Justice



Source:

- <http://worldjusticeproject.org/country/tunisia>

9. Cingranelli-Richards (CIRI) Human Rights Dataset

One of the largest human rights data sets in the world, the CIRI consists of standards-based quantitative data for years 1981-2009 on government respect for 15 internationally recognized human rights in 195 countries. The covered human rights are categorized into 3 sets.

The first set, physical integrity rights, included the rights not to be tortured, summarily executed, disappeared, or imprisoned for political beliefs. Country performance is measured for each of these on a scale 0-2 (where 0 signifies the least observance and 2 virtually no violation of a right in a given year), and for the overall respect for the set of rights on scale 0-8 (where 0 represents no government respect for the four rights and 8 stands for high level of government respect for the four rights).

The second set, empowerment rights, include that to free speech, freedom of association and assembly, freedom of movement, freedom of religion, and the right to participate in the selection of government leaders. Alike the previous category, countries score on each separate right on a scale 0-2, as well as on the entire set of rights – here a scale ranges from 0 (no government respect for these seven rights) to 14 (full government respect for these seven rights).

Another set includes women's rights to equal political, economic, and social treatment, evaluated on a scale from 0 to 3. A score of 0 indicates that a given women's right was not enshrined in the law or that the law was characterized by discrimination based on sex. A score of 1 means that while recognized in the law, a given right lacked effective enforcement. A score of 2 indicates that although the government effectively enforced a given women's right recognized under law, women would continue to experience a low level of discrimination. Lastly, a score of 3 stands for a full realization of a given right, protected by law and enforced by the government in practice, by nearly all women. Finally, like the rights included in the first two sets, the remaining workers' rights and independence of the judiciary are measured with scores 0-2.

Data on assessment of Tunisia is available since 1981. On the first set of indicators, physical integrity rights, the assessment of Tunisia reveals fluctuations with an average score of 4 and decline of the overall score from 2000 onwards (see Table 1). Particular problem over the years has been the violation of the right not to be tortured and political imprisonment (average score 0) where Tunisia scored no higher than 0 for a period of 10 years (2000-2010). This presumably reflects the grave disrespect of human rights and mass repressions that the previous regime exercised.

Table 1 - Physical integrity rights

CTRY	YEAR	PHYSINT	DISAP	KILL	POLPRIS	TORT
Tunisia	1981	5	2	2	1	0
Tunisia	1982	6	2	2	1	1
Tunisia	1983	4	1	2	0	1
Tunisia	1984	6	2	2	1	1
Tunisia	1985	5	2	2	0	1
Tunisia	1986	3	2	1	0	0
Tunisia	1987	6	2	2	1	1
Tunisia	1988	5	2	2	0	1
Tunisia	1989	5	2	2	0	1
Tunisia	1990	4	2	2	0	0
Tunisia	1991	4	2	2	0	0
Tunisia	1992	4	2	2	0	0
Tunisia	1993	3	1	2	0	0
Tunisia	1994	4	2	2	0	0
Tunisia	1995	4	2	2	0	0
Tunisia	1996	6	2	2	1	1
Tunisia	1997	3	2	1	0	0
Tunisia	1998	4	2	2	0	0
Tunisia	1999	6	2	2	1	1
Tunisia	2000	3	2	1	0	0
Tunisia	2001	4	2	2	0	0
Tunisia	2002	4	2	2	0	0
Tunisia	2003	4	2	2	0	0
Tunisia	2004	4	2	2	0	0
Tunisia	2005	3	2	1	0	0
Tunisia	2006	3	2	1	0	0
Tunisia	2007	4	2	2	0	0
Tunisia	2008	3	2	1	0	0
Tunisia	2009	4	2	2	0	0
Tunisia	2010	3	2	1	0	0

The Empowerment rights index for Tunisia (see Table 2) also indicates vibrating results with the highest scores noted during the first few years of the assessment period (1982-1984 with an average score of 8.6). The situation worsened in particular during the last four years of assessment, and in 2009 and 2010 Tunisia scored 1 on the overall Empowerment rights index. Particularly problematic areas have been freedom of religion, freedom of speech as well as freedom of association and assembly which aggravated in the last 4 years of assessment.

Table 2 – Empowerment rights index

CTRY	YEAR	NEW_ EMPINX	ASSN	FORMOV	DOMMOV	OLD_ MOVE	SPEECH	ELECSD	NEW_ RELFRE
Tunisia	1981		-999	2	1	1	1	1	2
Tunisia	1982	8	1	2	1	1	1	1	1
Tunisia	1983	9	2	2	2	1	0	1	2
Tunisia	1984	9	1	2	2	1	1	1	1
Tunisia	1985	7	1	2	2	1	0	0	0
Tunisia	1986	6	1	2	1	1	0	0	1
Tunisia	1987	8	1	2	1	1	1	1	1
Tunisia	1988	6	1	1	1	1	1	0	0
Tunisia	1989	7	1	1	1	0	1	0	1
Tunisia	1990	6	1	1	1	0	0	1	1
Tunisia	1991	4	1	1	1	0	0	1	0
Tunisia	1992	8	1	2	1	1	1	1	1
Tunisia	1993	7	1	2	1	1	1	1	0
Tunisia	1994	6	0	2	1	1	0	1	1
Tunisia	1995	6	1	2	1	1	0	1	1
Tunisia	1996	7	1	2	1	0	1	0	1
Tunisia	1997	7	1	2	1	0	0	0	1
Tunisia	1998	5	1	1	1	0	0	0	1
Tunisia	1999	7	1	1	1	0	1	1	1
Tunisia	2000	5	0	1	1	0	0	0	1
Tunisia	2001	6	1	1	1	0	1	1	0
Tunisia	2002	7	1	1	1	0	1	1	1
Tunisia	2003	4	0	2	0	0	0	1	0
Tunisia	2004	5	1	2	0	0	0	1	0
Tunisia	2005	5	1	2	0	0	0	1	0
Tunisia	2006	5	1	2	0	1	0	1	0
Tunisia	2007	3	0	0	1		0	1	0
Tunisia	2008	2	0	0	1		0	0	0
Tunisia	2009	1	0	0	1		0	0	0
Tunisia	2010	1	0	0	1		0	0	0

For the period between 1981 and 2010, the assessment for Tunisia on Women’s political rights is relatively high and stable, unlike the fluctuating scores on women’s economic and social rights (see Table 3). An area of concern remains the Independence of the judiciary. Since 1993 Tunisia received only poor scores on this factor which reflects the subordinate relationship between the judiciary and the other branches, as well as the corrupt and repressive character of the previous regime.

Table 3 – Women’s rights and Independence of the judiciary

CTRY	YEAR	WECON	WOPOL	WOSOC	INJUD
Tunisia	1981	1	2	1	1
Tunisia	1982	1	2	1	2
Tunisia	1983	1	2	2	1
Tunisia	1984	1	2	1	1
Tunisia	1985	2	2	1	2
Tunisia	1986	2	2	1	1
Tunisia	1987	1	2	1	1
Tunisia	1988	1	2	1	2
Tunisia	1989	1	1	1	1
Tunisia	1990	1	1	1	0
Tunisia	1991	1	1	1	1
Tunisia	1992	2	1	1	1
Tunisia	1993	2	1	2	0
Tunisia	1994	2	2	2	0
Tunisia	1995	2	2	2	0
Tunisia	1996	1	2	1	0
Tunisia	1997	2	2	2	0
Tunisia	1998	2	2	2	0
Tunisia	1999	2	2	1	0
Tunisia	2000	2	2	1	0
Tunisia	2001	1	2	1	0
Tunisia	2002	1	2	1	0
Tunisia	2003	3	2	1	0
Tunisia	2004	2	2	0	0
Tunisia	2005	2	2		0
Tunisia	2006	1	2		0
Tunisia	2007	1	2	0	0
Tunisia	2008	1	2		0
Tunisia	2009	1	2		0
Tunisia	2010	1	2		0

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