

The Erosion of Freedom of Association in Tunisia



I. The context of freedom of association in Tunisia

The development of civil society is one of the main accomplishments of the Tunisian Revolution of 2011. With the adoption of decree-law 2011-88, of September 24, 2011, pertaining to the regulation of Civil Society Organizations (CSOs), around 12,000 new CSOs were born in just a few years¹. Active in all fields, these organizations are now a full-fledged actor in the Tunisian social, economic, cultural and political landscape.

The political rhetoric has always been supportive of partnership with civil society, commending its role in the most critical moments of transition and national dialogue. In practice, however, things are somewhat different, with a preference for CSOs being confined to traditional service-oriented roles, and a feeling of "discomfort" vis-à-vis CSOs concerned with public policies, governance, fight against corruption, among other issues, as part of their monitoring or advocacy actions.

Some political figures have not been slow to accuse civil society of lying behind the economic and political deadlock in the country, of serving dubious agendas, or even of being involved in money laundering and support for terrorism.

There have been numerous attempts, since late 2014, to circumscribe freedom of association. These attempts are both legal (laws and regulations contrary to freedom of association) and procedural² (administrative slowness, bureaucracy, etc.)

Without any meaningful consultation process, these restrictions are intended to reduce the scope of freedoms as a means of compensating for the administration's inability to fulfill its follow-up and monitoring tasks. Issued in a frenzied manner, these new legal texts threaten almost all CSOs, conflating those that effectively work for the promotion of democracy and the rule of law with those suspected of supporting, financing and promoting terrorism or money laundering.

These attempts at restriction, motivated by a will on the part of the State and political actors, are often presented in the official discourse as being clearly imposed from abroad, and as necessary to serve overriding economic

and national security interests. They involve, in particular, a revision of decree-law 88 and the Law on the Fight against Terrorism and Money Laundering, along with a conflation between institutions and associations in the new National Registry of Institutions. These are all assaults on freedom of assembly and association, within an unhealthy political climate, clearly hostile to civil society.

This Policy Brief sheds light on the process and context of this “erosion” of freedom of association in Tunisia, which certainly leads to the curtailment of civic space, and the restriction of freedom of association and assembly. It offers a set of the recommendations necessary to safeguard freedoms in this civic space, the sole guarantor of democracy and respect for human rights.

II. A context that grows more and more restrictive

1. A biased reading of international assessments

Since 2017, the Tunisian Government has taken various legislative steps which it presents as useful in the fight against terrorism and money laundering. These actions are dictated by two external factors: the **FATF**³ report on the one hand, and an **EU** decision on the other hand.

FATF is an intergovernmental body that conducts a periodic assessment of its member states' financial system, highlights the observed shortcomings, and proposes concrete remedial solutions.

With regard to Tunisia, a 2016 MENA-FATF Evaluation Report⁴ concluded that the decree-law on associations is in conformity with international standards, and rated Tunisia as “largely compliant” with Recommendation 8 on Non-Profit Organizations.

Moreover, on February 7, 2018, the European Parliament decided to add Tunisia to the blacklist of countries thought to be at “high risk” of money laundering and terrorist financing. Faced with this negative rating, Tunisia had to adopt measures to strengthen its financial monitoring system in order to prevent criminal activities and exert more control over the accounts and transactions of financial institutions and over economic activities in general.

“The effectiveness of this monitoring [conducted by the General Directorate of Associations] is limited by the lack of resources. The supervisory departments have insufficient staff to verify compliance with the regulations, analyze the information collected, and check the accuracy of the legal and accounting information reported by the associations.”⁵

The recommendations of international bodies, in particular the FATF, should have prompted the Government to strengthen the Directorate of Associations' capacities in terms of human, financial and technical resources. However, this capacity-development action has never taken place. Instead, a clear choice has been made to

disregard these recommendations, opting for imposing more restrictions on the freedom of association and assembly.

In the 2017 follow-up report⁶, Tunisia identified an inherent risk in the "non-profit" sector, and proposed to amend the legal framework regulating CSOs. In the end, the FATF reviewed Tunisia's rating with regard to Recommendation 8 from "Largely Compliant" to "Partially Compliant".

2. The useless reform of decree-law 88:

Procedures at the expense of freedoms

Decree-law 88 marked a major turning point in Government-CSO relationships. In law as in practice, the formation of a CSO no longer requires prior authorization. The decree-Law came to give a fresh impetus to Tunisian civil society⁷. It is considered by international bodies as one of the best CSO laws in the world.

This decree-law was supplemented by a series of texts relating to public funding granted to CSOs⁸ as well as to the rules of transparency, accounting and financial governance by which they should abide.

It was in 2017 that the government first expressed its intention to amend decree-law 88. The first justifications advanced, without prior in-depth study, had to do with inefficient bureaucracy, a purely legal necessity⁹, and a deficiency in financial and judicial monitoring. It was only during the numerous meetings with Tunisian CSO representatives that the argument of international assessments was evoked (mainly the FATF report).

Today, decree-law 88 is the bulwark that protects CSOs against all attempts to curtail the space for civil society, and more generally against threats to democratic transition and the consolidation of the rule of law in Tunisia.

The justifications advanced by the Government seem flimsy and rather groundless. In fact, the problem of inefficient bureaucracy can actually be tackled by digitizing the system of CSO registration, and also by establishing decentralized offices, without the need to introduce any amendment into the existing decree-law.

It should be pointed out that all over the country, cases were reported in which the competent administrative authorities required people wishing to register CSOs to remove some of the goals stated in their statutes, mainly those related to fighting corruption and monitoring the performance of public facilities.

Concerning financial monitoring and penalties, the Government considered article 4 of decree-

During his visit to Tunisia on September 17-28, 2018, Mr. Clement Nyaletsossi Voule, United Nations Special Rapporteur on the Right to Peaceful Assembly and Association, reported that during his meeting with the Tunisian Central Bank officials, he was informed of the substantive work and progress achieved by the Tunisian Financial Analysis Commission as part of the national risk assessment of the CSO sector, and he found that the system and the tools already in place can provide solutions

law 88 as insufficient. It seems to have lost sight of Chapter VII on "Audits of Registers and Accounts", which establishes binding legal and accounting measures to be respected by CSOs, and Chapter VIII on "Penalties" to be incurred by CSOs in case of non-compliance, namely: warning, suspension of activity, and dissolution. These penalties have more than once been applied in an effective manner, with no protest on the part of civil society.

These provisions, already in effect, prove that decree-law 88 includes the necessary tools for monitoring CSOs. If the purpose is to improve the decree-law, then focus should be laid, in the first place, on reinforcing the resources,

particularly human resources, of monitoring bodies (Directorate of Associations, Court of Accounts, Ministry of Finance ...). In addition, the decree-law was supplemented by other legislative texts, mainly the Law on the Fight against Terrorism and Money Laundering (No. 2015-26 of August 7, 2015) which imposes disciplinary, financial and criminal sanctions on all legal persons, including CSOs.

for reducing those risks. This confirms that a new registry that includes CSOs is not necessary to counter risks. What is important is the consistent enforcement of decree-law 88, the close collaboration with the administration, and a strong financial information system to prevent any illicit financing. He, therefore, called on the authorities to amend Law No. 30 toward exempting CSOs from the requirement of registration in the National Registry of Institutions.

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3. Threats of criminal proceedings under the guise of administrative procedures:

The example of the Law on the "National Registry of Institutions"

The fears and concerns of many CSOs are not limited to the reforms under way. More than that, laws have actually been passed and bills are currently being examined in Parliament involving restrictive measures that would undermine freedom of association and assembly.

One of these legislative texts is the Law No. 30-2018 establishing the National Registry of Institutions, adopted on July 27, 2018. The law requires associations to register with the National Registry of Institutions, and provides for severe and disproportionate penalties, including fines and imprisonment, in case of non-compliance with this requirement.

On August 2, 2018, the law was challenged on grounds of unconstitutionality before the "Interim Commission on the Constitutionality of Draft Laws". On September 6, 2018, the Commission ruled that the bill does not violate the right to freedom of association, and that the registration of CSOs in the National Registry of Institutions does not affect freedom of CSOs' formation and management.

Still, civil society remains opposed to this law, especially in view of its chilling effect as it would, in practice, lead to an aversion to civic work and would affect the role played by associations. In addition, the proposed

amendment will change the system of notification currently in force under decree-law 88 by a masked system of prior authorization, as CSOs will be required to produce a “registration receipt” in order to be able to register with the National Registry of Institutions. This receipt is not always issued by the authorities.

It should be noted, in this regard, that the passing of this law was motivated by an insistent FTAF recommendation calling for establishing a national registry of economic actors in Tunisia, but without mentioning the need to include CSOs in this Registry.

Clearly, the inclusion of CSOs within the actors covered by this law stems from the government’s desire to control civil society.

Faced with the need to remove Tunisia from negative ratings (black lists), the Tunisian government passed this law in a “*hasty*” manner (the bill was submitted to Parliament by the Ministry of Justice mid-2018 and was voted and adopted in July 2018), with little or no time for consultations. Civil society has sought to deepen discussions with all official stakeholders (Ministries, elected MPs, parliamentary committees...), but the decision-makers’ determination to have the law passed outweighed the will to safeguard the space for civil society.

4. Amendment of the Law on the Fight Against Terrorism and Money

Laundering CSOs on the frontline :

On April 2, 2018, a draft organic law (No.28-2018) was submitted to Parliament, amending the Law on the Fight against Terrorism and Money Laundering. The bill, ostensibly designed to fill a legal vacuum in terms of money laundering, is clearly directed, almost exclusively, at CSOs, and provides for penalties that may go as far as the dissolution of the CSO in case one of its members (even a member who has no position of responsibility in the CSO, and with no regard to his/her seniority) is suspected of being involved in a terrorism-related case. Another amendment provides that the imposition of rules for the prudential management of funding applies only to legal entities established in the form of non-profit associations or organizations.

The main concern with regard to this bill is that the organic Law No. 26- 2015 of 7 August 2015 relative to the Fight against Terrorism and Money Laundering, already includes all the needed monitoring tools and penalties. Instead of enforcing these legal provisions, the government seems to opt for restricting freedom of association as a whole, thereby contravening article 49 of the Constitution which states that:

“The limitations that can be imposed on the exercise of the rights and freedoms guaranteed in this Constitution will be established by law, without compromising their essence. Any such limitations can only be put in place for reasons necessary to a civil and democratic state and with the aim of protecting the rights of others, or based on the requirements of public order, national defense, public health or public morals, and provided there is proportionality between these restrictions and the objective sought.”

III. Recommendations :

There is no denying the fact that it is important for civil society to comply with the laws and regulations in force, and to ensure the good governance of its action. The joint efforts of CSO actors will continue to guarantee the respect of decree-law 88 and the values it carries.

To safeguard freedom of association and preserve the civic space, being the guarantor of democratic transition, the partner organizations and associations advance the following recommendations:

- We call on **the Presidency of the Government** to preserve decree-law 88 and postpone any amendment of its provisions, while speeding up the establishment of the constitutional institutions, particularly the Constitutional Court, which will be in charge of guaranteeing respect for fundamental rights and freedoms;
- We call on **the Ministry of Justice and the Ministry of Finance** to open up an effective dialogue with civil society as regards each and every law that might affect it. Failing to reach agreements, we call on all Ministries to withdraw and review all bills submitted to Parliament that might be restrictive of freedom of association and assembly;
- We call on **the Committee on Rights and Freedoms** to engage in broad and inclusive discussions on this issue with all civil society components, and to pledge not to approve any bill that might violate freedoms of association and assembly;
- We call on **the Assembly of People's Representatives** to ascertain that the draft law No. 28-2018, amending the Law on the Fight against Terrorism and Money Laundering, is in full conformity with article 49 of the Constitution, by stipulating only proportionate measures that apply to clearly identifiable and defined offenses.

Moreover, in order to promote the effective monitoring of associations and the suppression of terrorist activities and money laundering, the following actions are necessary:

- The Government should provide the needed human, financial and technical resources. This involves reinforcing the staff of the General Directorate of Associations and conducting regular assessments of its results;
- The General Directorate of Associations should more regularly apply administrative and financial penalties in the proven cases of non-compliance with the laws or regulations in force. Legal proceedings should be instituted more frequently;
- There should be a better coordination between the institutions in charge of monitoring CSOs in order to improve the enforcement of the existing legal provisions without the need to adopt new legislation restrictive of freedom of association;

- A better interaction is needed on the part of oversight institutions (General Directorate of Associations, Tunisian Financial Analysis Commission, etc.) with civil society in order to promote mutual understanding of the interests of each side: control and monitoring for oversight institutions, and preservation of freedom of association for civil society;
- Priority regulatory texts that need to be amended should be identified, such as Decree No. 2013-5183 of November 18, 2013 setting the "Criteria, Procedures and Conditions for Public Funding to Associations", so as to ensure more equality, transparency and monitoring.

*This **Policy Brief** was written by Mr. Zied Boussen. It is the fruit of numerous meetings held by a working group including members of Tunisian CSOs and international organizations based in Tunisia. These meetings seek to keep a constant watch on recent attempts to curtail freedom of association, including through amending decree-law 2011-88 pertaining to the regulation of CSOs in Tunisia.*

With the support of ICNL



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- 1 In 2010, nearly 10,000 associations were registered, rising to nearly 22,000 in 2018.
 - 2 See the report on the public funding of CSOs, prepared by Pr. M.S. Ben Aissa, with the contribution of Mrs. Narjess Jedidi and Mr. Ahmed Aloui, for the Kawakibi Democracy Transition Center (KADEM) and the International Center for Not-for-Profit Law (ICNL), December 2014.
<http://www.kawakibi.org/library/publications/2014/2014116.pdf>
 - 3 The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. <http://www.fatf-gafi.org/fr/aproposdugafi/>
 - 4 http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/Tunisia_MER_2016_EN.pdf
 - 5 Mutual Evaluation, Financial Measures to Combat Terrorism and Money Laundering, MENAFATF/GAFI, May 2016, prg.222, p.60 : <http://www.fatf-gafi.org/fr/aproposdugafi/>
 - 6 p. 17, <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/FUR2-Tunisia-Dec-2017.pdf>
 - 7 According to the Center for Information, Training, Studies and Documentation on Associations (IFEDA), a public body under the tutelage of the Presidency of the Government, the number of CSOs amounts, in 2018, to nearly 22,000 associations, compared to less than 5,000 in 2010.
 - 8 Decree 2013-5183 of November 18, 2013, setting the "criteria, procedures and conditions of public funding to associations".
 - 9 The government has argued the need to transform decree-law 88 into a law in order to give it full legal force. Many jurists and law professors have responded to this argument by insisting on the fact that over 120 decree-laws were passed in 2011 and many of them are now still in force, without the government having expressed any intention to change them.

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