

Enabling Environment National Assessment of Civil Society in Tunisia

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Preface

Following the Revolution of 2011, Tunisia has undergone fundamental changes, one of which being the citizens' involvement in managing public affairs. In fact, at a time when people are generally disinclined to join political parties (despite their growing number), many are now joining civil society organizations (CSOs) and are increasingly getting involved in associative work. Recent statistics (2016) indicate that there are over 18000 CSOs active in Tunisia (with varying numbers across governorates). They operate in various areas of action : some of them are active in traditional fields that involve providing services to citizens (education, health services to people with special needs...). Others are active in previously unexplored fields in Tunisia such as government accountability,).

This qualitative and quantitative evolution has been made possible thanks to the citizens' high degree of awareness and enthusiasm, but also thanks to a number of measures and decisions recently adopted in Tunisia. In fact, a new CSO law was enacted in 2011 (Decree-Law No. 2011-88). The power to follow up on CSOs has been transferred from the Ministry of the Interior to the Presidency of the Government. An independent ministry has been set up to be in charge of relations with constitutional bodies, civil society and human rights. Other measures and decisions, however, still need to be taken to enhance the work of CSOs, so that they can better contribute to the process of democratic transition and to the social, economic and cultural transformations taking place in Tunisia.

In this regard, the Enabling Environment National Assessment of Civil Society in Tunisia seeks to assess the legal, regulatory and policy environment for civil society in Tunisia. It draws on national and international expertise, and adopts a participatory approach involving focus group discussions, interactive workshops, and interviews with experts. It is a new initiative by Al-Kawakibi Democracy Transition Center (KADEM), in cooperation with CIVICUS World Alliance for Citizen Participation and theInternational Center for Non – for-Profit Law under the Civic Space Initiative¹. This report was prepared by Ms. Anwar Mansri, expert and judge in the Administrative Court, jointly with "Jamaity" Association and an Expert Advisory Panel that included Ali Bouzouida, Anis Wahabi, Nour Kaabi and Khaled Mejri.

This report was prepared using the EENA methodology, developed by CIVICUS and ICNL, and was implemented, over the past three years, in 22 countries worldwide. It covers a number of dimensions deemed as essential to the legal and regulatory environment in which civil society operates. These include: formation, operation, access to resources, peaceful assembly, freedom of expression, government-CSO relations, CSO cooperation and coalition, and taxation. These dimensions are addressed from a legal and policy perspective so as to draw an overall picture about civil society in Tunisia. An appendix to the EENA summarizes the questions related to these dimensions and provides color-coded answers that make it easy for the reader to gain a better grasp of the environment for civil society.

¹ The Enabling Environment National Assessment (EENA) is part of the Civic Space Initiative, implemented by CIVICUS and the International Center for Not-for-Profit Law in partnership with, ARTICLE 19, and the World Movement for Democracy, with support from the Government of Sweden.

KADEM and its partners hope that the EENA report will serve as a useful tool to better understand the current state of civil society and its legal and procedural needs. They also hope that decision-makers will draw on this report and on other successive works such as a policy recommendation paper) when developing reform policies that aim at enhancing associative action in Tunisia, improving the legal and policy framework, and promoting the state institutions concerned with CSOs.

To conclude, KADEM wishes to thank all of its partners involved in this work, namely CIVICUS and ICNL, for having supported this initiative and for having offered their research expertise. Special thanks are also due to Ms. Anwar Mansri and to the Expert Advisory Panel, as well as to the local partner "Jamaity" Association, for their contribution to the success of this work.

Amine Ghali

Director of Al-Kawakibi Democracy Transition Center

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Assessment matrix

SECTION ONE Context of the report

The study of civil society requires first identifying its constituent elements. In its broad sense, civil society, according to CIVICUS, is "the arena, outside of family, the state, and the market, which is created by individual and collective actions, organizations and institutions to advance shared interests." It includes associations, political parties, religious organizations, and other types of movements.¹ According to Antonio Gramsci, political parties, given their different goals and functions, are not part of civil society. For him, the function of civil society is hegemony through culture and ideology, while the function of the political society is domination and coercion.² It follows that civil society involves only those institutions that offer individuals access to resources and public benefits, without the interference or mediation of the government. Civil society, according to some researchers,³ encompasses social clubs, social movements, popular organizations, professional groups, worker unions, NGOs, free and independent press, religious organizations, whatever their statutes and legal framework, provided they are involved in collective and volunteer activity to serve common, non-profit and non-political goals and interests.

In this context, Tunisian civil society includes not only associations, regulated by the Decree-Law on Associations (No. 2011-88 dated September 24, 2011), but also many other components. In fact, awarding the 2015 Nobel Peace Prize to Tunisian civil society, represented by the Tunisian General Labor Union (workers' union), the Tunisian Union for Industry, Trade and Handicrafts, (employers' union), the Tunisian Human Rights League, (non-governmental human rights organization), and the National Bar Association of Tunisia, (professional association), is a clear reflection of the diversity of the Tunisian civil society landscape.

Focus will be laid, in particular, on the legal framework for associations, as regulated by the Decree-Law on Associations (No. 2011-88 dated September 24, 2011). Some associations are subject, in addition to the provisions of the aforementioned decree-law, to other specific laws. These associations include :

- Sports associations, governed by the provisions of Organic Law 1995-11 dated February 6, 1995, relating to sports structures;
- Micro-financing institutions, governed by the provisions of Decree-Law 2011-117 dated November ⁵, 2011.

The provisions of the 2011 Decree-Law on Associations, pursuant to article 47 thereof, are not applicable to associations that are subject to special legal regimes, such as:

Unions, such as the Tunisian General Labor Union (UGTT) and the Tunisian Union for Industry, Trade and Handicrafts (UTICA). These are subject to the Labor Code5 which provides for the freedom to create unions and occupational associations based on the system of declaration, and according to which the founders are only required to notify the local authorities of the formation of their union through a registered letter along with a number of documents, the most important of which being the statutes of the union or occupational association to be created;

¹ See "Civil Society Index – Rapid Assessment" (CSI-RA), a study prepared by Dr. Wahid Ferchichi, Hana Ben Abda and Khaled Mejri, in cooperation with CIVICUS and the Arab Institute for Human Rights, 2014.

² See : "Key doctrines of civil society : A question on the conditions for the existence of civil society and the role of "NGO-ization" locally ? Dr. Adel Samara (A paper delivered at the conference on : "Palestine, the current political reality and the requirements of change. NGOs and civil society: between the usurpation and distortion of the role and integration : The debate on national liberation and social construction." University of Bethlehem, June 3, 2011.

³ Robert Bothwen, world learning, un-published, 1997.

⁴ See : "The Evolution of Civil Society in Egypt", Alam Al-Fikr, Volume 27, Number 3, January-March 1999, p.100.

⁵ The Tunisian Labor Code was enacted by virtue of Law 1966-27 dated April 30, 1966.

- The Union of Property Owners, subject to the Land Management and Urbanism Code and to the Real Property Code;
- The Board of Engineers, subject to Decree-Law 1982-12, approved by Law 1979-41 dated June 9, 1997;
- The Association of Chartered Accountants, subject to Law 1988-108 dated August 18, 1988;
- The Tunisian Bar Association, subject to Decree-Law 2011-79 dated August 20, 2011;
- The National Medical Association, subject to Law 1991-21 dated March 13, 1991;
- The Association of Olive-tree Owners, subject to Decree-Law 1971-1 dated August 20, 1971;
- The Forestry Groups, subject to the Forest Code and to Decree 1996-2373 dated December 9, 1996;

Cooperative Associations, subject to a decree dated February 18, 1954.

Freedom of association is of crucial importance, in that it allows members of society to demand the full enjoyment of all nationally and internationally guaranteed rights and freedoms. Associations are, in fact, the framework within which these rights are identified and people are made aware of their importance and are mobilized to claim the enforcement thereof. One cannot speak of a democratic society if the individual is denied the right to speak and express his opinions freely so as to push for change toward guaranteeing human rights for all.

Based on a universal awareness of the importance of freedom of association, all international instruments have underlined the need to enshrine it in all fields without any form of distinction, be it political, economic, social or cultural.6 Considered as a cornerstone for all other human rights, freedom of association has been incorporated into myriad international conventions.

Freedom of association gives the individual the right to form an association jointly with other individuals with whom he shares a similar vision with regard to a certain issue. It also gives the association the right to carry out activities to achieve interests for its members or for a certain population group. Freedom of association encompasses the right to form and join trade unions.

The right to free association is exercised within a context of respect for associative and trade-union pluralism, and while ensuring the representation of all views, however different they may be. This is true as long as freedom of expression, being necessary to articulate one's views regarding public policies and other issues of national concern, is guaranteed. To achieve this goal, it is necessary to ensure access to data and information on the one hand, and to enhance the ability to speak out without fear of any repressive practices on the part of the authorities, or any violation of the physical and moral integrity of activists, on the other hand.

Associations aim at achieving a certain goal through cooperation and joint action. They are established on a non-profit-making basis. Through their activities, associations seek to make their target populations aware of their problems, to prompt them to think about these problems, and to participate in

 $^{^{6}}$ Concerning the right to peaceful assembly and to freedom of association, see :

⁻ Article 20 of the Universal Declaration of Human Rights

⁻ Article 22 of the International Covenant on Civil and Political Rights

⁻ Article 8 of the International Covenant on Economic, Social and Cultural Rights

⁻ Article 10 of the African Charter on Human and Peoples' Rights.

finding adequate solutions to them through a plan of action established to that end.7 Associations are not subject to the influence of the authorities; they rather seek to put pressure on them through acting in various fields, relatively free from the interference of the state's institutions.

In light of the foregoing, the right to free association should be exercised within a legal environment that does not impose restrictions8 which might empty it of its content, except for those permitted by international law, particularly the International Human Rights Law. Placing restrictions on freedom of association depends on two prerequisites : the restrictions must be necessary in a democratic society, and the states must be committed to taking measures that are proportionate to the legitimate goals9 of protecting national security, public safety, public order, or public health or morals, or preserving the rights and freedoms of others.10

The legal environment of freedom of association does not mean only the constitutional, legislative and regulatory texts that directly regulate this specific freedom. It rather encompasses all other related rights and freedoms. In fact, freedom of association is meaningless in the absence of the right to free expression or to peaceful assembly. Moreover, interference with rights and freedoms in general can only have a restrictive impact on freedom of association, as rights are an indivisible whole. It follows that the degree of respect for these rights can be measured not only by assessing the legal texts that guarantee and legalize them, but also by monitoring their effective implementation in the real life of individuals. To that end, it is necessary for individuals to be aware of the importance of recognizing and defending rights. Experience has shown, in Tunisia at least, that a lack of interest in these rights and indifference to the repetitive violations thereof have transformed these violations into a systematic policy adopted by the ruling authorities before the 2011 Revolution.

During the post-revolution period, Tunisian associations have achieved significant successes accompanied, however, by some failures. Today, five years after the revolution, we are witnessing a 'battle of existence' between, on the one hand, an authority that is seeking to achieve political, economic and social stability, away from criticism, monitoring and accountability, and, on the other hand, a civil society that has succeeded in imposing itself as a key actor in Tunisia, and that refuses to give up the new status it has acquired thanks to the cumulative achievements of great organizations and new activist associations that are always keen on keeping a close eye on the ruling authority, whatever its political color.

The post-revolution transitional period has laid the ground for the revision, without any reservations, of the restrictions imposed by law, and has given rise to liberal legal texts that are in harmony with international standards, while taking into consideration the specificity of the Tunisian institutions in charge of enforcing them.

To explore and analyze the legal environment for civil society organizations active in Tunisia, the following mandatory options are addressed :

• The formation of associations : The administrative authorities in charge of registering new associations have not kept pace with the liberal provisions of the new legislation pertaining to associations. Moreover, some gaps in the law have led to the establishment of an administrative jurisprudence restrictive of freedom of association. These gaps should be filled by

⁷ See : Ghada Halayga's article : "What is an association ?", September 2013.

⁸ See : Human Rights Committee, General Comment No. 31 : "The Nature of the General Legal Obligation Imposed on States Parties to the Covenant." (CCPR/C/21/Rev.1/Add.13).

 $^{^{\}rm 9}$ $\,$ These requirements were respected in article 49 of the Tunisian Constitution.

 $^{^{\}rm 10}$ See : Article 22 of the International Covenant on Civil and Political Rights :

amending the Decree-Law on Associations toward ensuring more clarity and transparency, providing further support and guidance to human resources working in associations, and offering associations sufficient financial resources so that they can carry out their activities in all parts of the country.

- The operation of associations : Despite the existence of operational obligations that aim to guarantee transparency and the right of access to information, the lack of professionalism in some associations in dealing with these operational rules, together with the laxness of the Directorate of Associations in enforcing the provisions of the law, have weakened associative action. It is necessary, in this regard, to enforce the provisions of the law and strengthen the capacity of the Directorate of Associations so that it can follow up the work of associations and check their compliance with the legal requirements and obligations.
- Access to financial resources : The freedom that the law has given to associations to choose the funder of their projects has, most of the time, remained a mere declaration of principles. In fact, access to public funding goes through complex procedures that newly-created associations are unable to follow and comply with. As for foreign funding, despite its importance in helping associations carry out their projects, it has, in some cases, led to money laundering and terrorism financing, and in other cases, to the donors' imposition of programs on their partners in return for funding. Since the durability of an association depends, to a large extent, on the availability of financial resources, reforms at the level of access to funding and its transparency need to be implemented. Objective, less complicated criteria for access to public funding should be established. Moreover, the technical committee in charge of public funding should be reviewed toward ensuring more neutrality and involving civil society representatives in addition to the representatives of public institutions.
- The right to free expression : This right has been gained thanks to the revolution. The revolutionary context has imposed the exercise of this right even in the absence of regulatory laws. This right has, in the end, been incorporated into the highest law, i.e. the Constitution. However, a number of laws which are of lower status than the Constitution and which run counter to its provisions are currently still in force. In addition, voices hostile to free speech are increasingly being heard as part of the fight against terrorism. To avoid impeding the exercise of this right, the legal texts currently in force should be brought in line with the Constitution and with the relevant international instruments.
- Peaceful assembly : This right is guaranteed by the Constitution without restrictions. It was exercised before 2011 in defiance of unfair laws on peaceful assembly. Though this right has been constitutionalized, exercising it requires regulatory texts. The ruling authorities, however, have not so far enacted a law that regulates this freedom in accordance with international standards, using instead the 1969 law whose provisions are in plain violation of the right to peaceful assembly. One of the reforms to be implemented in the short term is the abrogation of this law and the adoption of a legislative text in line with the Constitution to serve as a basis for all administrative and security regulations.

As for optional dimensions, they are addressed in partnership with the Expert Advisory Panel to whom we refer when making choices and when we seek remarks and comments. The choice of the optional dimensions took into consideration the challenges posed by the developments taking place in Tunisia.

- Some of the good practices adopted after 2011, especially the participatory approach that involves civil society in decision-making, development of laws, and the drafting of the Constitution, which we considered as a true gain, are now threatened, though they are institutionalized through the establishment of a ministry in charge of civil society, and also the creation, in most of the Ministries, in the Presidency of the Republic, and in the Assembly of the Peoples' Representatives, of the position of "officer in charge of communication with civil society". Yet, communication in some cases has just become a formal matter; hence the choice to deal with "Civil society's Relationship with the Government". It has, in fact, become necessary for civil society to occupy its due position as a key actor in matters of public concern, through implementing the constitutional principles based on participatory democracy, while countering, by various means, the government's allegation that holding merely formal meetings with CSOs is an indicator of a strong and active Government-Civil Society relationship.
- One the reasons behind civil society's weak relationship with the Government may be the absence of CSOs coalitions for building a public opinion that can influence decision-making and policy formulation; hence the choice to study "Cooperation and coalition of CSOs". It is, in fact, necessary to establish common and structured programs that guarantee efficiency and avoid divisions and lack of coordination among CSOs embracing the same human rights principles.
- In Tunisia, one of the biggest obstacles to associative action is taxation. A large number of associations are, in fact, unable to handle this problem, not out of a desire to evade taxation, but because of their lack of knowledge in this matter, as the legal sources are manifold. Taxes applicable to associations are provided for in several legal texts with which associations cannot be fully conversant unless they hire a tax specialist. It is thus important to address the issue of the taxation of associations, especially in light of the fact that associations that fail to pay the required taxes cannot access public funding. It is important, in this regard, to adopt a tax legislation that stimulates associations, and to grant associations some of the incentives offered to economic institutions, while at the same time working to raise their awareness of the need to fulfil their tax obligations.

SECTION TWO Methodology

The legal environment for Tunisian civil society was examined and assessed based on the research tool developed by CIVICUS World Alliance for Citizen Participation and the International Center for Non-for-Profit Law (ICNL) under the Civic Space Initiative, which addresses the mandatory dimensions for assessing this environment and identifying the main obstacles and also the legal gains.¹¹

The drafting of the present report rests upon a combination between the legal approach and the practical approach. It aims at examining the utility and effectiveness of the legal framework in guaranteeing and implementing rights, on the one hand, and the individual's degree of awareness of these rights, on the other hand. Focusing on the case of Tunisia alone is, in fact, insufficient, for it is necessary to embrace a more comprehensive approach that takes into consideration regional and international obligations. It would have been useful to explore other relevant comparative studies. However, because of time constraints and the limited resources available, only the following methods have been used :

1/ Survey : It was prepared in a simple format. It includes 13 questions covering the dimensions defined in the research tool designed by CIVICUS World Alliance for Citizen Participation and the International Center for Non-for-Profit Law (ICNL) under the Civic Space Initiative. Questions were focused first on the association's, goals, type and location of activity (4 questions), and then on the association's experience with regard to its formation and operation and the main obstacles encountered, if any, as well as its assessment of the Decree-Law on Associations, its relationship with other institutions, the Government and the competent administrative authorities, the main difficulties and obstacles encountered, and its suggestions to smooth them out. There were also questions related to freedom of expression, peaceful assembly, and taxation, and questions about the reform of the legal framework of associations and the main shortcomings to be remedied.

The survey was sent to the representatives of associations present in the working group to assess associative action from a practical perspective. Associations were offered the possibility to answer the questionnaire online.12 Respondent associations, irrespective of their geographic locations and fields of interest, agreed, in their assessment of the application of the law, on many questions concerning associative action in relation with administrative practices. Their responses are of crucial importance as far as the present report is concerned. Over 100 persons were interviewed, representing associations involved in various fields of activity and in all parts of the country (association from the capital city Tunis, from the north, the center and the south).

- 2/ Expert Advisory Panel (EAP) : It is composed of members from various and complementary disciplines. It is composed of 6 members. The other experts were contacted through emails to receive their comments and remarks about the progress in the preparation of the report. The EAP covers the following areas of specialization :
 - Researchers-academics: experts in various law disciplines, having a rich experience in the field, and authors of several studies on associations since the enactment of the 2011 Decree-Law on Associations.
 - Representatives of public institutions, entrusted, by law, with the task of following up the implementation of the Decree-Law on Associations.

¹¹ Recognition of the limits of the Enabling Environment Index was a major reason behind the adoption of the Enabling Environment National Assessment (http://www.civicus.org/eei), a research tool developed by CIVICUS. Given the limited data available on the legal and regulatory framework for civil society, ICNL and CIVICUS are seeking, through the Enabling Environment National Assessment, to develop a tool for a comprehensive national assessment that complements the Enabling Environment Index.

¹² Link to questionnaire : https://docs.google.com/forms/d/1F8IFhaCT6nR6EGCJCkivuklz4k9UyQNSTzrY2DLz49Q/edit

 Representatives of CSOs coalitions, having a rich database at the level of NGO activities all over the country, and having statistics that reflect a thorough knowledge of associative life and its main requirements.

Consultations were held with the Expert Advisory Panel regarding the mandatory and optional dimensions to be covered by the report, the research methods, and the key actors and stakeholders from whom useful information would be obtained. Two meetings were held, and the draft report was reviewed by the EAP before presenting it during the workshop.

- **3/ Focus group discussions (FGD) :** From the start, it has been insisted on choosing these groups in accordance with the following criteria :
 - Representation of women in this group, by involving women's rights associations or women leaderships in associations;
 - Geographic representation, by making sure the participating associations are not from the capital only. Associations from the interior regions of the country have thus been involved because their working conditions and the way they deal with the competent administrative authorities are different;
 - Respecting the representation of multi-disciplinary associations.

Focus group discussions held meetings in Kairouan in Al Kasbah Hotel, with 16 representatives from associations, and then meetings in Tunis at the headquarters of **"Jamaity"** associations, with 12 representatives from associations.

Participants included 28 representatives from 21 associations involved in social, monitoring, cultural, health and environmental activities.

- 4/ Online desktop research : Important online sources, such as laws and regulations, literature on civil society in Tunisia among others were used and analyzed for this study. Additionally, press articles and TV/radio declarations were also used. Specialized sources and books were relied on, along with a number of studies and reports that have the credibility and professionalism needed to be a reliable source of information. The Tunisian legal environment for civil society was analyzed in comparison with the experiences of other countries having a similar historical-geographic and socio-political environment.
- 5/ Interviews : interviews with key informants of competent administrative authorities and civil society were conducted. During these meetings, questions focused on certain practices that exist in Tunisian associative life, the ways of remedying the legislative deficiencies in the relevant laws, and perceptions of CSOs and civil society activists to the laws and administrative practices. Interviews were conducted anonymous on request of some of the respondents because their responses were on behalf of the administration they represented, and did not reflect their personal positions. Interviews were also conducted with senior officials from the Ministry of Finance, the Ministry in charge of Relations with Constitutional Bodies and Civil Society, the Directorate of Association at the Presidency of the Government, and the Central Bank of Tunisia. A series of meetings were also held with judges working in judicial and administrative courts in Tunis.

Interviews with civil society representatives were conducted either directly, especially with associations and CSOs coalitions active in Tunis, or through phone conversations with associations located in regions which, for lack of time and resources, we were unable to visit. Phone conversations were also made with media associations and unions.

All in all, 24 persons were interviewed.

SECTION THREE Mandatory dimensions

Chapter I : The formation of associations

1. Legal framework

- **1.1 The Constitution**: Article 35 of the Tunisian Constitution, adopted on January 27, 2014 provides that "the freedom to establish political parties, trade unions, and associations is guaranteed. In their internal regulations and activities, political parties, unions and associations must respect the provisions of the Constitution, the law, financial transparency and the rejection of violence." The Constitution also includes general provisions in its articles 1 through 49 that guarantee the practice of associative action within a democratic climate. Article 65 provides that associations shall be regulated through organic laws. This reflects the importance of freedom of association whose regulation requires the approval of the majority of the representatives, unlike ordinary laws whose adoption requires only the vote of one-third of the representatives.
- 1.2 International conventions : On March 18, 1969, Tunisia ratified the International Covenant on Civil and Political Rights, issued by resolution of the UN General Assembly dated December 16, 1966. Tunisia also joined the Optional Protocol to the International Covenant on Civil and Political Rights, by virtue of Decree-Law 2011-3 dated February 19, 2011.
- 1.3 National Laws : The formation of associations in Tunisia is now governed by the provisions of the 2011 Decree-Law on Associations (No. 2011-88 dated September 24, 2011), which includes 49 articles. Prior to 2011, the formation of associations was governed by the provisions of the 1959 Law on Associations (No. 1959-154 dated November 7, 1959). Foreign associations were subject to the provisions of Organic Law 1993-80 dated July 26, 1993 concerning the formation of non-governmental organizations in Tunisia. These provisions were repealed by article 46 of Decree-Law 2011-88.

It is to be recalled that the 2011 Decree-Law on Associations was prepared by the "High Commission for the Achievement of the Objectives of the Revolution, Political Reform and Democratic Transition", set up by virtue of Decree-Law 2011-6 dated February 18, 2011. This High Commission included, within its composition, representatives of institutions, organizations, associations and civil society components.13 The Decree-Law on Associations is one of the pieces of legislation which were issued within the framework of Decree-Law 2011-14 dated March 23, 2011 concerning the provisional organization of public authorities, and which have a legislative character, pursuant to article 4 of Decree-Law 2011-14.14 They, therefore, do not need an additional approval by the Parliament. They can be amended or repealed only by means of a legal text that has the same legislative character (organic law).¹⁵

2. Procedures for the formation of associations

The formation of associations is subject to general and specific provisions included in the 2011 Decree-Law on Associations.¹⁶

2.1 General provisions concerning the obligations of the State and of the association, and the conditions to be observed

2.1.1 Conditions for the formation of associations

The formation of associations is subject to the system of 'declaration' or 'notification' (article 10 of the 2011

¹³ See "The High Commission for the Achievement of the Objectives of the Revolution : Deliberations of the Commission", part 2, June-October 2011, Official Printing House, Tunisia, January 2012.

¹⁴ See Ali Kahloun, "Transitional Laws : The set of Tunisian laws for the first transitional period issued between January 14 and October 23, 20111, with commentary", published by Latrach Group for Specialized Books, Tunis, 2012.

¹⁵ See : The remarks by the State's delegate Ms. Anwar Mansri in the case No. 124593 filed to the Administrative Tribunal; published in the Annual Report of the Administrative Tribunal, 2014.

¹⁶ Dalal Laarousi, "Manual for the formation and management of associations under Tunisian law", published by Jamaity association, September 2014.

Decree-law on Association)17, after it used to be subject, under the 1959 Law on Associations, to a system of 'authorization', meaning that associations needed an authorization from the state in order to form and to acquire legal personality. The system of 'declaration' has led to a steady increase in the number of associations created each year, especially after 2011.¹⁸

Yet, the pace of creation of associations has slowed down during the past couple of years, with 878 associations established in 2015, and 54 in the first two months of 2016.

The provisions of the 2011 Decree-Law on Associations are characterized by their liberal character. They nevertheless require associations to observe a number of legal and financial requirements after filing the notification.

» Conditions related to the founding members

- Who has the right to form an association : Any private individual, Tunisian or foreigner residing in Tunisia, aged 16 and over, has the right to form, join or withdraw from an association.¹⁹ In Tunisia, legal capacity is acquired at the age of 18.
- Who does not have the right to form an association : the founders and leaders of an association may not hold responsibilities within the central managerial bodies of political parties.²⁰ More over, a foreigner who is non-resident in Tunisia is not entitled to form an association.
- The minimum number of persons required for the formation of an association is two. An association is an agreement through which its founders seek permanently to achieve goals other than profit-making.²¹

It is to be pointed out that article 48 in Chapter 9 of the Decree-Law, entitled transitional and final provisions, explicitly states that the provisions relating to the formation of associations are not applicable to the associations and NGOs that were legally established in Tunisia prior to the enactment of the 2011 Decree-Law and that had obtained an authorization pursuant to the 1959 Law on Associations. The same article states that these associations and NGOs, although not formed under the new law, must comply with the provisions of the 2011 Decree-Law, except for those related to the formation of associations, within one year from the date of entry into force of the Decree-Law.

» Conditions having a financial character

The founders are not required to provide a minimum capital for the formation of an association, as associations are established on a non-profit-making basis, and are founded on the principle of volunteer action. In line with this philosophy, the Decree-Law did not encumber the founders of an association with any financial burdens or registration fees.

The only expenses to be borne by the founders are those related to the sending of the registered letter to the competent administrative authorities and the fees of the public notary²² who is in charge of checking the

Badr Al-Shafi, freedom of association in comparative systems : France, Egypt, Tunisia and Morocco, available at http://www.alkanounia.com

¹⁷ This is indeed the most significant development in comparison with the 1959 law on associations. See :

Mounir Snoussi, "The legal environment for Civil Society Institutions in Tunisia : Status and prospects", Tunisia, September 2013, p. 5, available at www.icnl.org.

¹⁸ See : Statement by the Director-General of the Directorate of Associations in Assabah newspaper of February 14, 2014 : "The increase in the number of associations in Tunisia since early 2011 has its reasons, especially after the enactment of Decree-Law 88 in the same year. The number has, in fact, increased by 70% (19787 associations currently), compared to 9876 associations before the Revolution. Some 2097 associations were created in 2011, 3009 in 2012, and 1805 during 2013 and till February 15, 2014.

¹⁹ Article 8 of Decree-Law 2011-88.

²⁰ Article 9 of Decree-Law 2011-88.

²¹ Article 2 of Decree-Law 2011-88

²² The Decree-Law did not set the notary public's fees which usually range between 80 and 102 dinars. The cost of the registered letter does not exceed 10 dinars.

existence, not the validity, of the required documents.

In addition to the expenses related to the registration application, the association shall, after receiving the acknowledgment of receipt, pay the expenses related to the publication of the association's name, mission and goals in the Official Gazette of the Republic of Tunisia (6.3 dinars per line). The publication fee generally ranges between 100 and 150 dinars according to an administrative official from the Official Gazette of the Republic of Tunisia. Printing costs do not exceed 10 dinars.

2.1.2 Identification of the association's goals

The 2011 Decree-Law does not impose on associations any specific classifications. It is up to each association to freely choose the goals it deems appropriate. In return, the association pledges to adhere to the principles of rule of law, democracy, pluralism, transparency, equality and human rights, as provided for in the international conventions ratified by Tunisia. This means that if the goals involve a breach of this commitment (e.g. creating an association against human rights), this would lead to the non-registration of the association.

The association is also required to pledge not to incite violence, hatred, intolerance and discrimination based on religion, gender or region; not to undertake commercial activities with the aim of distributing funds to its members in the service of their personal interests, or using the association for purposes of tax evasion; and not to collect funds to support political parties or independent candidates in national, regional or local elections, or to offer them financial support. This prohibition concerns the activities undertaken by the association. It also concerns, in some cases, the goals stated in the association's Statutes which may involve profit-making, calls for contempt of religions, or other goals.

The Decree-law does not empower the Directorate of Associations to interfere with the goals of an association, even when these goals touch on various disciplines. This accounts for the absence of a standard registration form, as each association has the right to freely choose the goals it will seek to serve.

2.1.3 Documents required for the formation of an association

Under the system of 'declaration', those who wish to form an association shall submit to the Secretary-General of the Government the following documents :

- **1.** A registered letter with acknowledgement of receipt containing a declaration with the following information: the association's name, mission, goals, headquarters, and subsidiaries (if any).
- A copy of the ID cards of the Tunisian founders of the association, or a copy of ID card of the parent/guardian in case of need;
- 3. A copy of the resident permit for foreign individuals.
- 4. Two copies of the association's Statutes signed by the founders or their representatives.

» The Statutes of the association need to include :

- The official name of the association in Arabic and, if need be, in a foreign language;
- The address of the association's headquarters;
- A statement of the association's goals as well as the means to implement them;
- The conditions of the association's membership, the cases of its termination, as well as the rights and obligations of members;

- The association's organizational chart, election method, and the prerogatives of each of its bodies;
- The identification of the body, within the association, which has the power to modify the Rules of Procedure and to take decisions concerning dissolution, merger or scission;
- The decision-making process and the conflict resolution mechanisms within the association;
- The amount of monthly/yearly subscription fees (if any).

The office of the Secretariat-General of the Government²³ indicates that nearly 95% of the applications submitted to form an association do not meet the legal requirements in terms of documents or information. For instance, some application files do not contain all the required documents. Some of the documents submitted do not bear the signatures of the founders. Some application files are not sent by registered mail with acknowledgement of receipt. There are also applications submitted for the formation of associations that are subject to special legal regimes, such as cooperatives, fishermen's associations, agricultural development groupings, sports structures, micro-funding institutions.

» Documents required for the formation of a CSO coalition

Under the 1959 Law on Associations, CSOs coalitions were not granted a legal status independent of the associations that constitute them. The 2011 Decree-Law on Associations has remedied this deficiency, so that coalitions can acquire a legal status independent of their components. Coalitions, however, do not necessarily involve full integration, as associations may choose to retain their independence. Moreover, article 30 of the 2011 Decree-Law explicitly provides for the possibility that subsidiaries of foreign associations without conditions. This provision is premised upon the fact that subsidiaries of foreign associations recognized pursuant to Tunisian law have the same rights and duties as the Tunisian associations. It follows that a CSOs coalition must necessarily be composed of Tunisian associations, and can possibly be joined by foreign associations.

A CSOs coalition acquires a legal personality independent from the associations that constitute it. The associations that join a given CSOs coalition do not lose their legal personality. On the other hand, if an association is dissolved, it necessarily and by the force of law loses its membership in the CSOs coalition.

CSOs coalitions are formed in accordance with article 27 of Decree-Law 2011-88. The representative of the coalition shall send to the Secretary-General of the Government a registered letter with acknowledgement of receipt, along with the founding statement, the statutes of the coalition, and a copy of the announcement of the formation of the associations that constitute the coalition. A public notary checks, when sending the aforementioned letter, the existence of the required information (provided for in Paragraph 1 of Article 27), and drafts a report in two copies which he hands over to the representative of the coalition.

The same Decree-Law provides, in article 28 thereof, that the representative of the CSOs coalition shall, no later than 7 days from the date of receiving the acknowledgement of receipt, deposit, at the Official Printing House of the Republic of Tunisia, an announcement including the name, subject, goals and head-quarters of the coalition, along with a copy of aforementioned report. The Official Printing House shall imperatively publish the announcement in the Official Gazette of the Republic of Tunisia within 15 days from the date of deposit. If the acknowledgement of receipt is not returned within 30 days as of the date of sending the aforementioned letter, the declaration is deemed to have been legally served.

The Decree-Law does not explicitly provide for the possibility of forming a CSOs coalition composed exclusively of foreign associations. However, it can be concluded from article 30 that the initiative for the formation of the coalition should initially be taken by Tunisian associations. At the procedural level, nothing pre-

²³ This correspondence was sent to Al-Kawakibi Democracy Transition Center as a response from the Directorate of Associations to a preliminary presentation of the report on May 25, 2016 at Belvedere Hotel, Tunisia.

vents the subsidiary of a foreign association from taking the initiative that will be later joined by Tunisian associations. With regard to managers of CSOs coalitions, the Decree-Law does not distinguish between Tunisians and foreigners. It only states that the representative of the coalition, without stipulating any Tunisian nationality requirement, sends to the Secretariat-General of the Government a letter of notification of the formation of the CSOs coalition. The procedure to form a CSOs coalition does not differ from the procedure to form an association. Moreover, many conditions and requirements are not stipulated in the case of forming a coalition (copies of ID cards, ...), on the ground that a CSOs coalition is, in the end, a combination of associations that have already been subjected to these requirements.

Article 32 states that associations having similar or closely similar goals are allowed to merge into one association, in accordance with the Statutes of each of them. This means the fusion of a number of legally established associations into one association. The procedures of merging and forming the new association are subject to the provisions pertaining to the formation of associations.

2.1.4 Procedures of 'declaration' and time needed for the formation of an association

It is required that a public notary checks, when sending the aforementioned letter, the existence of the required information, for which the notary drafts a report in two copies for the representative of the association. After receipt of the acknowledgement of receipt, the prospective association needs to deposit, no later than 7 days, an announcement indicating the association's name, mission, goals, and headquarters, along with a copy of the aforementioned report (article 10) at the Official Printing House of the Republic of Tunisia. The latter is then imperatively required to publish the announcement in the Official Gazette of the Republic of Tunisia (JORT) within 15 days from the date of its deposit. If the acknowledgement of receipt is not returned within (30) days as of the date of sending the aforementioned letter, the notification is deemed to have been legally served.

Unlike the 1959 Law on Associations which gave the competent administrative authorities three months to examine the application and then to decide whether to grant or deny authorization, the 2011 Decree-Law provides that an association can be formed 7 days after the transmission of the letter to the General Directorate of Associations. The maximum period to form an association is 30 days.

The association is considered as legally formed since the date of the transmission of the letter to the Secretariat-General, and acquires legal personality from the date of the publication of the announcement in the Official Gazette of the Republic of Tunisia.

Once formed, the association does not need to go through any further periodic procedures to reassert its legal existence, meaning that renewal of the declaration is not required. The association remains in legal existence unless it chooses to dissolve itself, or if a decision for its dissolution has been issued.

In light of the foregoing, no association may be created without complying with the provisions of the Decree-Law on Associations; otherwise, it will be considered as a legally unrecognized entity and may not exercise any associative activity. Moreover, if an association is dissolved, its founders or members are not allowed to implement any activity on behalf of it.

The Decree-Law does not explicitly provide for ways of appealing decisions involving refusal of registration for those seeking registration of Tunisian associations, unlike the subsidiaries of foreign associations. Article 3 of the 1959 law²⁴ provides that "the Minister of the Interior shall undertake the classification of associations legally established at the date of the entry into force of the present law, and shall inform associations which have the right to contest the classification in accordance with the procedures pertaining to abuse of power, provided for in Law 1972-40 dated June 1, 1972, relating to the Administrative Tribunal." This clause concerns

²⁴ Organic Law 1992-25 dated April 2, 1992, completing Law 1959-154 dated November 7, 1959 relating to associations.

only appeals related to the classification of associations, but does not involve appeals concerning refusal of registration. The Administrative Tribunal has then expanded its jurisdiction to cover all cases involving associations, based on its general mandate to rule on all disputes having an administrative character.²⁵

The law thus allows anyone whose registration application has been rejected to appeal the refusal decision before the Administrative Tribunal and to seek the cancellation of this decision. The Administrative Tribunal has actually received appeals against decisions involving refusal of registration, pursuant to Decree-law 2011-88. It is to be noted that litigation before the Administrative Tribunal does not give litigants any procedural advantage to use the court's judgment cancelling the decision on refusal of registration as a supportive document against the Administration and to demand the publication of the registration in the Official Gazette, as is the case with foreign associations.²⁶

3. The Directorate of Associations

Giving the executive branch the authority and discretion to grant or to deny authorization was one of the main means to restrict associative action and to interfere with freedom of association. The 2011 Decree-Law has put an end to the system of 'authorization', and transformed the process of forming an association into a mere notification, with a specified period set by the law to give associations its legal existence. The new system has encouraged many people to form associations, and as discussed previously has led to a surge in the amount of associations. After the revolution, the registration of associations witnessed a shift from a security-oriented approach to a civic approach. In the past, associations used to fall under the supervision of the Ministry of the Interior. Now, pursuant to the 2011 Decree-Law, this authority is transferred to the Presidency of the Government.

The directorate in charge of associations lacks the needed human and material resources to face the huge number of applications. Besides, the staff of the Directorate has not received the necessary training, which has had an adverse impact in the form of associations that were faced with a bureaucracy that impeded their formation. The Directorate of Associations, with only 20 staff members, treats all the applications submitted to it from all over the country. It is concerned not only with associations, but also with the follow-up of the files submitted by political parties. The latest statistics²⁷ indicate that 818 associations were registered in 2014, 612 in 2015 and 493 during the first half of 2016. These statistics concern only the associations whose registration has been approved. As for the total number of applications submitted, it is obviously much higher.

The existence of only one directorate in the capital and the absence of regional directorates represent an obstacle to the formation of associations in the interior regions of the country. The same source indicates that during the second quarter, 173 associations were registered in Greater Tunis, compared to only 2 in Tataouine, 4 in Kebili (South of Tunisia), 7 in Kef and 11 in Kasserine (Center of Tunisia).

Strengthening the capacity of administrative authorities necessitates the establishment of regional directorates while providing the needed human resources and offering them adequate training. This reform is necessary not only to face the rising number of registration applications and meet the legal periods for the formation of associations, but also to enforce the law, stand against abuses and infractions, and, therefore, break with the culture of impunity.

In addition, a recent Governmental Decree (No. 2016-465 dated April 11, 2016) was issued, establishing a

First-instance judgment issued in case No. 10344/1 dated April 26, 2011; Founders of the Union of Free Writers / Minister of the Interior First-instance judgment issued in case No. 28404 dated May 22, 2012; Minister of the Interior / Mohamed Salah Mejri

²⁶ Article 22 of Decree-Law 2011-88

First-instance judgment issued in case No. 16975/1 dated April 29, 2009; Marouan Chaabani / Minister of the Interior

First-instance judgment issued in case No. 13381/1 dated June 22, 2010; Mohamed Touri and others / Minister of the Interior

²⁷ Statistics provided by the Associations and Sustainable Development International Observatory in its "Periodic report on the state of civil society in Tunisia for the second quarter of 2016"; (published in ASDI Observatory Facebook Page).

Ministry in charge of Relations with Constitutional Bodies, Civil Society and Human Rights, and defining its powers and prerogatives. The directorate, which used to fall under the presidency of the government, was turned into an independent ministry, and was regulated, according to an advisor to the concerned Minister, by virtue of an internal letter of assignment issued by the Presidency of the Government which identifies the tasks entrusted to him. This has engendered some overlapping of competences with other ministries. It then became a ministry independent of the Presidency of the Government to a Presidential Order 2016-1 dated January 12, 2016 relating to the appointment of the members of government.

Article 4 of the decree entrusts the Ministry, in what concerns relations with civil society, with the following tasks :

- Preparing and proposing bills and draft regulatory texts related to civil society;
- Ensuring respect for the freedom to create and join associations, to act within associations, to promote them and preserve their independence;
- Fostering the role of associations in terms of development;
- Establishing the adequate mechanisms to promote continuous communication between the government and civil society;
- Seeking to strengthen relations between the government and civil society, while involving civil society in setting government choices and programs;
- Proposing public policies relevant to the public funding of associations;
- Seeking to develop legislations related to political parties.

This Governmental Decree implies that the power to follow up on associations may be transferred to this Ministry, especially seen that the President of the Government may, pursuant to article 92 of the Constitution28, delegate some of his powers. The President of the Government has already delegated powers relating to the organization of political parties to the concerned ministry.

This state of uncertainty at the level of the administrative departments in charge of associations, together with the lack of a clear vision regarding working methods and requirements, can only lead to negative consequences. The state has established only one Central Directorate in the capital, Tunis. No effort has been made to create decentralized directorates in the interior regions of the country. Under the 1959 Law on Association, the administrative authority over associations was in the hands of the governors.

Apparently, those seeking to register a new association only have to send a letter by registered mail. In practice, however, if they receive a correspondence from the Directorate of Associations, they are then obliged to go to the capital to regularize their situation.

With regard to registration, no illegal practices have been pointed out, except for certain delays, for unknown reasons, in the registration of some associations even though they complied with the legal formation procedures. It was pointed out, during the discussion groups with civil society components, that delays in the administrative authorities' response to applications range between 3 months and one year, during which the authorities demand that accurate and additional documents and information be submitted. On the other hand, the administrative staff considers that if ever there are delays, they are far from being systematic but are rather the result of the limited human resources.

²⁸ Article 92 of the Constitution : "...The government ensures the enforcement of laws. The Head of Government may delegate some of his/her authorities to the Ministers."

Some would attribute this to the huge number of applications and the insufficiency of human resources. Some others would consider this laxness as the consequence of the non-upgrading of the capacities of the administration and its staff members. Still others would see in this a return to old practices by civil servants whose aim is to block registration.

According to the correspondence with the representative of the Secretariat-General of the Government, the Directorate is organizing Open Days and direct meetings with associations in all Governorates, so as to facilitate and accelerate the formation of associations, and to provide the necessary advice and clarifications, as part of the promotion of the participatory relationship between the administration and civil society. In light of what has been observed, the administration is currently implementing an electronic system to follow up on the activities of associations. The principal aims of this system are the following :

- Following up the management of files and activities in an electronic way, so as to simplify interaction and communication with associations;
- Electronically archiving all administrative documents relevant to the files of associations, so as to develop the work of the administration and improve the methods of interaction with civil society;
- Allowing associations to update their files and to publicize their activities and sources of funding online, in accordance with the regulations in force, so as to simplify formalities and offer a permanent space of communication with associations;
- Allowing associations and the public to have access to and download online documents, in accordance with the regulations in force; thereby enforcing the right of access to information and sharing expertise and experiences;
- Publishing relevant statistics and data.

4. Special procedures for the formation of foreign associations

The 2011 Decree-Law on Associations devotes a whole chapter that includes provisions relating to foreign associations.²⁹ Article 25 states that "except for the provisions of the present chapter, foreign associations are subject to the same system as national organizations." Article 20 defines foreign association as the subsidiary of an association formed under the law of another state," and stipulates that the subsidiary of the foreign association in Tunisia shall be set up in accordance with the provisions of Decree-Law 2011-88. A foreign association has the right to set up subsidiaries in Tunisia while respecting the national legislation in force. This implies that a group of foreigners resident in Tunisia may not form a foreign association that has no legal existence under the law of another state. The foreign association can only be a subsidiary in Tunisia of the "parent association" already existing in another country.

To set up a subsidiary of a foreign association in Tunisia^{30,} the representative of the foreign association has to send to the Secretary General of the Government a registered letter with acknowledgement of receipt, indicating :

- The name of the association;
- The address of the subsidiary of the association in Tunisia;
- A statement of the activities that the subsidiary of the association will undertake in Tunisia;
- The names and addresses of the managers, Tunisian or foreigners resident in Tunisia, of the subsidiary of the association;

²⁹ Chapter 3, Foreign associations, article 20 through 25.

³⁰ Article 22 of Decree-Law 2011-88.

- A copy of the ID card for Tunisian managers, and a copy of the resident permit/passport for foreign managers;
- Two copies of the Statutes signed by the founders or by their representatives;
- An official document proving that the parent association is formed in conformity with the law of its country of origin.

The Decree-Law also stipulates that the aforementioned information and documents must be translated into Arabic by a sworn translator, if these documents are in another language. As is the case with national associations, a public notary needs to check, when sending the letter, the existence of the aforementioned information, and draws up a report in two copies which is to be handed over to the representative of the association.

Unlike the system of registration applicable to Tunisian associations, the Decree-Law grants the Secretary-General of the Government the power to refuse to register a foreign association by a justified decision within a period of 30 days from the date of receipt of the aforementioned letter³¹, in the event of a plain contradiction between the Statutes of the foreign association and the provisions of articles 3 and 4 of the Decree-Law on Association³².

The Decree-Law is, in this regard, in conformity with international standards, as it requires the administration, within a specific, pre-defined period, to justify its decision, which would enable the foreign association to rectify its procedures. Moreover, in line with the principle of legality, the Decree-Law provides that the founders of the subsidiary of the foreign association in Tunisia may appeal the decision to refuse registration, in accordance with the procedures in force in terms of abuse of power, pursuant to the provisions of Law 1972-40 dated June 1, 1972, relating to the Administrative Tribunal.

According to the representative of the administrative authorities, applications for the registration of subsidiaries of foreign associations are usually rejected because some of the application files do not include a valid resident permit for the foreign founder, or a document proving the legal existence of the parent association in accordance with the law of its country, or because the documents submitted are not translated into Arabic by a sworn translator.

In case the Administrative Tribunal reverses the decision to refuse the registration of a foreign association³³, the Secretary-General of the Government shall be informed by the final judgment of the Administrative Tribunal. The representative of the subsidiary of the foreign association must, no later than 7 days after the decision and without having to submit a new file, deposit an announcement at the Official Printing House of the Republic of Tunisia. The announcement has to include the following: the association's name, subject, goals and headquarters, along with a copy of the aforementioned report. The Official Printing House shall imperatively publish the announcement in the Official Gazette of the Republic of Tunisia within a maximum period of 15 days from the date of its deposit.

The same procedures regarding the announcement in the Official Gazette is to be followed by foreign associations whose registration application was not rejected.³⁴

In all cases, as is the case for Tunisian associations, if the acknowledgement of receipt is not returned within (30) days as of the date of sending the aforementioned letter, the notification is deemed to have been legally served. (article 23 of Decree-Law 2100-88).

- ³¹ Article 22 of Decree-Law 2011-88.
- ³² Same conditions applicable to the formation of national associations (see paragraph 2.1.1 on the conditions for the formation of an association).
- ³³ Article 22 of Decree-Law 2011-88.

³⁴ Article 23 of Decree-Law 2011-88.

Notification of the creation of the association does not result in any financial obligations toward the state, nor does it involve the payment of any additional fees by foreign associations.

5. Challenges and obstacles to the enforcement of Decree-Law 2011-88

Notwithstanding its liberal character, the 2011 Decree-Law on Associations has proved, at the level of its enforcement, the existence of challenges and shortcomings which have stood as an obstacle to the registration of many associations. There are also gaps in the legal text, which have sometimes been used by the executive authorities to hamper the formation of associations. For instance:

- The Decree-Law does not address the case of a declaration file containing incomplete information. The law does not set out the procedure to be followed by the administration to request the completion of the required information listed in article 10 of the Decree-Law.³⁵
- The Decree-Law does not address the case in which the Secretary-General of the Government refuses to hand over the acknowledgement of receipt; nor its legal consequences. This practice is still in use as the acknowledgment of receipt is not automatically handed over.³⁶
- For the formation of an association, the mere sending of a file is no longer sufficient, as the applicant has to wait for the acknowledgement of receipt which is not received automatically.³⁷ Moreover, the Official Printing House refuses to publish the announcement until the acknowledgment of receipt is received, which is in plain violation of article 11 of the Decree-Law which requires the Official Printing House to publish the announcement of the association's formation in the Official Gazette of the Republic of Tunisia if 30 days have elapsed since the date of the letter sent to the Secretary-General of the Government, even in case the acknowledgement of receipt is not returned by the Secretariat-General of the Government.³⁸
- The non-receipt of these documents is now a major obstacle to freedom of association, though the drafters of the Decree-Law considered the receipt of these documents an obvious matter.
- The Decree-Law does not provide for ways of appealing decisions to refuse registration. This implies that such decisions cannot be taken, while in practice, many decisions to refuse registration are issued without any legal foundations.

These legislative deficiencies have given rise to certain practices restrictive of freedom of association, and have granted administrative officers a certain discretion in dealing with applicants. Many said that in practice the system of registration or notification is developing into a system of authorization, with constraints not provided for in the Decree-Law.³⁹ Hereafter are some illustrative examples :

• The "General Directorate of Associations and Political Parties" sometimes interferes with the goals that the associations state in their Statutes and ask to modify them at a time when these goals are in conformity with articles 3 and 4 of the Decree-Law.

³⁵ See : Mounir Snoussi, "The legal environment for Civil Society Institutions in Tunisia : Status and prospects", Tunisia, September 2013, p. 5, available at www.icnl.org.

³⁶ Panel discussion on "the state of associations in Tunisia", organized by Al-Kawakibi Democracy Transition Center in partnership "Jamaity" association, on April 24, 2016, Golden Yasmine La Kasbah Hotel, Kairouan, and also the panel discussion held on May 4, 2016 at the headquarters of "Jamaity" association in Tunis.

The same point was raised during the panel discussion on "the state of associations in Tunisia", organized by Al-Kawakibi Democracy Transition Center in partnership "Jamaity" association on May 4, 2016 at the headquarters of "Jamaity" association in Tunis.

³⁷ Mohamed Fadhel Hamdi, "Association : from declaration to authorization : Back to Square One", Al-Dhamir newspaper, December 21, 2015.
³⁸ Report on Violations against Associations in Tunisia (2015), prepared by the Associations and Sustainable Development International Observatory

⁽ASDI), March 2016, p.5.

³⁹ Panel discussion on "the state of associations in Tunisia", organized by Al-Kawakibi Democracy Transition Center in partnership with "Jamaity" association, on April 24, 2016, Golden Yasmine La Kasbah Hotel, Kairouan

The same point was raised during the panel discussion on "the state of associations in Tunisia", organized by Al-Kawakibi Democracy Transition Center in partnership "Jamaity" association on May 4, 2016 at the headquarters of "Jamaity" association in Tunis.

- The "General Directorate of Associations and Political Parties" sometimes asks the founders of associations to introduce substantial changes into the Statutes of their prospective associations in a way that would affect their system of governance and decision-making within the association. Some associations have abandoned the procedure after the tough intervention by the General Directorate.
- The "General Directorate of Associations and Political Parties" violates the spirit of the Decree-Law through asking associations to follow pre-established formulas, as was done under the 1959 Law on Associations. In fact, the 2011 Decree-Law has offered associations the freedom to choose the way to draw up their Statutes.⁴⁰
- Infractions are observed at the level of the Official Printing House, the facility in charge of printing the
 Official Gazette of the Republic of Tunisia. Though it receives the announcement of the formation of
 an association along with the payment of the prescribed price against an invoice, it does not publish
 the announcement until it receives a facsimile from the "General Directorate of Associations and Political Parties" that includes the list of associations authorized to be publicized in the Official Gazette.
 This is a return to the security-oriented practices of the past, not provided for in the Decree-Law.
- The Official Printing House sometimes interferes with the text of the announcement to be published, by suggesting to add or remove information therein. Sometimes, it sends the text of the announcement deposited by the representative of the association to the "General Directorate of Associations and Political Parties" seeking its opinion to accept or reject the text or to ask for some modifications.41
- The representative of the "Associations and Sustainable Development International Observatory", which in 2015 conducted a study on violations against associations, noted that the formation of associations is largely associated with political affinities. Statistics, she added, show that the average waiting period is 7 months. Sometimes, the legal period set by law is interrupted by administrative correspondences. Some said they had been waiting for over a year (from 2013 to 2014) during which they were asked to submit several documents and to change some of their goals.⁴² According to testimonies by participants in the working sessions, some associations acting in the field of citizenship promotion, fight against corruption, transparency, and monitoring of public authorities encountered difficulties in terms of registration. They were obliged to changes some of their goals as they were asked to do so directly, not by official correspondences. In response, the representatives of administrative officers, and asked the associations to give them the names of the concerned officers so that the necessary disciplinary measures would, in case of proven abuses, be taken against them.
- The representatives of administrative authorities indicated that some applications include tradeunion goals that do not fall within the scope of associative action, in which case the administrative authorities send a correspondence to the concerned applicant asking him to remove or change these goals.
- Some have attributed the restrictive practices to the problem of administrative laxness and to the incompetence of the administrative officers, the lack of coordination between the legal texts and the concerned bodies, and the absence of a unified body in charge of the formation of associations.

To counter these infractions, the founders of the association may resort to the Administrative Tribunal to which Law 1972-40 dated June 1, 1972 has granted a general mandate to rule on disputes having an adminis-

⁴⁰ Report on Violations against Associations in Tunisia (2015), prepared by the Associations and Sustainable Development International Observatory (ASDI), March 2016, p.5.

⁴² Panel discussion on "the state of associations in Tunisia", organized by Al-Kawakibi Democracy Transition Center in partnership with "Jamaity" association, on May 4, 2016 at the headquarters of "Jamaity" association in Tunis.

trative character. Article 2 states that the Administrative Tribunal, with its various jurisdictional bodies, rules on all disputes having an administrative character, except for those placed under the jurisdiction of other courts by a special law.

It is true that the Tunisian law allows the founders of an association to resort to the Administrative Tribunal. Yet, the lengthy process of litigation discourages associations from filing suits. Most of the cases filed at the Administrative Tribunal concern the dissolution of associations.

- Many associations asked for instituting expedited proceedings before the Administrative Tribunal to rule on cases involving appeals against decisions to refuse registration.
- Other activists said they have opted for individual, volunteer and spontaneous activities, away from any form of association, as the former method allows more freedom of action and involves less impediments.⁴³

It is worth stressing that the liberal character of the Decree-Law on Associations has contributed to the rise of "entities" that have benefited from the democratic climate in the country to spread messages involving incitement to exclusion, grudge, hatred and discrimination, especially with regards to women's rights. Radical religious discourse is also propagating, and mosques are being used to diffuse ideas opposing the concept of a civil state, to disseminate Takfiri speech and even to call for taking up arms, while rejecting republican values. The climate of freedom in the formation of associations has thus resulted in the rise of advocacy associations that spread a Takfiri discourse in the public space and organize meeting within mosques. The financial aid they receive as a legal entity is used for purposes of attraction and guidance within mosques. This runs flagrantly counter to the notion of civil state enshrined in the Tunisian Constitution .⁴⁴

The authorities, it should be noted, showed flexibility in dealing with those who do not comply with the principles, rights and civil freedoms stated in the Decree-Law. They merely issued communiqués, such as the official communiqué by the General Secretariat of the Government, dated June 4, 2013, reminding associations of the obligation to abide by the provisions of Decree-Law 2011-88.⁴⁵

Chapter II : Operation of Associations

1. Legal framework

Forming an association and acquiring legal personality have direct legal implications. Article 13 of the Decree-Law on Associations grants legally-constituted associations the right to litigation, as well as the right to purchase, possess and manage their resources and properties. An association can also accept aid, gifts and donations, and be the beneficiary of wills. Under article 14, an association has the right to bring civil action or to file a lawsuit for acts falling within its subject and goals stated in its Statutes. However, if the acts are committed against specific persons, the association can file the lawsuit only if it is mandated, expressly and in writing, by the concerned persons.

Article 15 of the Decree-Law removes the penal character from associative action. It states that the founders, managers, employees and members of the association are not legally considered as personally responsible for the legal obligations of the association. The creditors of the association may not, therefore, demand the payment of debts from the persons responsible for the association nor its employees. This provision is a break

⁴³ Panel discussion on "the state of associations in Tunisia", organized by Al-Kawakibi Democracy Transition Center in partnership with "Jamaity" association, on May 4, 2016 at the headquarters of "Jamaity" association in Tunis.

⁴⁴ "The role of civil society in the Tunisian Revolution", Abdelbasset Ben Hassen, in an interview with Status Journal (an interview conducted by Fatah Azzam), available at http://www.jadaliyya.com.

⁴⁵ On March 12, 2013, the Court of First Instance of Tunis decided to suspend the activity of the National League for the Protection of the Revolution for one month, following the request submitted by the Secretary-General of the Government, pursuant to article 45 of Decree-Law 2011-88, accusing the league and a number of its related committees of being involved in various acts of violence.

with the 1959 Law on Associations under which the managers of an association held legal responsibility for the legal obligations of the association.

1.1 Administrative obligations related to the operation of associations

» The Decree-Law provides for a number of obligations to be observed by associations :

- Associations are allowed, pursuant to article 17, to set their own conditions for membership, free from any interference on the part of the Directorate of Associations, and without prejudice to the provisions of the Decree-law. A member of an association can be of Tunisian nationality or a foreigner resident in Tunisia; must be aged 13 and over; accept, in writing, the Statutes of the association; and pay the subscription fee.
- The Decree-Law includes provisions that aim at avoiding conflicts of interests: it forbids, for example, the participation of the association's members and employees in formulating or taking decisions that might engender a conflict between their personal or occupational interests, and those of the association.
- Associations are mandated to inform the Secretary-General of the Government of any modification made in their Statutes within one month of the modification decision. This should be done through registered mail with acknowledgement of receipt, as stipulated in article 16 of the Decree-Law. Any modification needs to be made public through the print media and the association's website (if any).
- Pursuant to article 19, the procedures for temporary suspensions and the voluntary dissolution of associations need to be outlined in the associations' Statutes, together with rules for the liquidation of their assets and properties in case of a voluntary dissolution.

These obligations are not related to the association's activities. Member meetings are not subject to the authorization or notification of the Directorate of Associations. When holding an ordinary or special general assembly, the association can convene its members to participate in the assembly without having to send a notification to the Directorate of Associations. The association is also not required to inform the Directorate of the names of candidates in case of electing a new management body. It is only mandated to inform the Directorate of the results of its assemblies and of the new elected members with whom it will deal in the future.

1.2 Obligations related to financial transparency

» Information and publication

To ensure transparency in the work of associations, especially with regard to foreign funding to which the Decree-Law has devoted special procedures, the Decree-Law requires associations to publish data concerning any foreign aid, gifts and donations, while indicating their source, value and purpose in one of the print media and on the association's website (if any), within one month from the date of their solicitation or reception. The association also needs to inform the Secretary-General of the Government of the same, through registered mail with acknowledgement of receipt, within the same period of one month.

Furthermore, the Decree-Law requires each association whose annual resources exceed one hundred thousand (100,000) dinars (approximately 45, 250 USD) to appoint an auditor. The auditor can be chosen from among those listed on the Tunisian Certified Accountants Register or those listed on the Register of the Association of Tunisian Certified Accountants under the heading "Accounting Specialists". Associations with annual resources exceeding one million dinars (approximately 453,000 USD), have to appoint one or more auditors from among those listed on the Tunisian Certified Accountants Register 453,000 USD).

Auditors need to submit their reports to the Secretary-General of the Government and to the president of the association within one month from the date of the finalization of the association's financial statements. In light of the auditor's report, an ordinary general assembly of the association needs to approve or refuse the financial statements of the association.

Additionally, the association needs to publish its financial statement, along with the report of the report in one of the print media or on its website (if any) within one month from the date of approval of the financial statements.⁴⁶

Associations receiving public funding are required, in addition to the above, to submit an annual report to the Court of Audit, providing a detailed description of their sources of funding and their expenditures.⁴⁷

» Monitoring the work of associations

Government oversight over the work of associations is limited as administrative authorities are not allowed to interfere with the system of management adopted by the association in its Statutes. They may not, in principle, require the association to adopt the goals and policies of the Government, or to cooperate with the Government in setting its goals. The administrative authorities, particularly the Inspectorate falling under the Ministry of Social Affairs and Social Security Fund can, pursuant to the laws and regulations in force, especially Decree 2012-2369 dated October 16, 2012 (relating to the programs of the National Employment Fund and the terms and conditions to benefit from them), conduct inspections to check the existence of the staff members that the association said it had hired through work contracts. Such inspections are carried out without prior notice.

Many associations have paid staff and are, therefore, considered as a job-generating sector. Moreover, many associations regret the 'loss' of the qualified staff registered at the "Offices of Employment and Independent Work" and whose wages are paid by the State, as the trainee contract lasts for only two years, following which the employee is laid off after having acquired experience and expertise during the training period.⁴⁸ In addition, most associations have shifted from voluntary work to that of professional administrative and financial management, and from a periodic and occasional presence to regular and steady presence as a fundamental component of society and as a partner in employment.

Observers consider that only associations that submit their reports to the Directorate are subject to control. The associations that do not comply with this requirement are not subject to inspection. Moreover, the Directorate in charge of associations does not have the capacity to conduct efficient controls given the lack of human and material resources, in addition to the fact that competencies are scattered across multiple bodies in charge of monitoring.

- According to a study conducted by the Center for Information, Training, Studies, and Documentation on Associations "IFEDA",
- 37% of non-governmental associations (especially those having a national sports character) comply with the rules of transparency of funding, and publish their financial statements (revenues and expenses);
- 29% of the associations do not have a bank account;
- 11% of the associations, especially national ones, receive financial support through international and regional sources of funding;

⁴⁶ Article 43 of Decree-Law 2011-88.

⁴⁷ Article 44 of Decree-Law 2011-88.

⁴⁸ Panel discussion on "the state of associations in Tunisia", organized by Al-Kawakibi Democracy Transition Center in partnership with "Jamaity" association, on May 4, 2016 at the headquarters of "Jamaity" association in Tunis.

- 13% of the associations, especially charitable and religious ones, are connected, as far as their funding is concerned, with political parties and non-declared foreign funding, especially with the rise of a new form of funding that is not subject to control, called "Zakat (alms) for associations"; and
- 10% receive regular subsidies from the state.

2. Dissolution of associations

2.1 Forms of dissolution

Article 19 of the Decree-Law on Associations states that methods to temporary suspend and dissolve associations need to be regulated in the Statutes of association, including rules for the liquidation of the associations' assets. Associations with similar or closely similar goals are allowed to merge into one association, in accordance with the Statutes of each of them. The procedures of merging and forming the new association are subject to the provisions of the Decree-Law (article 32). The Decree-Law on Associations provides for two types of dissolution :

- Voluntary dissolution, based on the decision of its members pursuant to the association's Statutes; or
- Judicially dissolution, by virtue of a court decision.

In this respect, the Decree-Law falls in line with international standards, as it has granted the power of dissolution to the judiciary, and not to the administrative authorities. This choice has proved its efficiency, as it gives associations the right to defend themselves and to appeal administrative decisions.

In case the association takes the decision to voluntary dissolve itself, it is required, under the Decree-Law on Associations, to inform the Secretary-General of the Government, through registered mail with acknowledgement of receipt, within 30 days following the date of the dissolution decision. The association is also required to appoint a judicial liquidator. If the association is dissolved by a court decision, it is the court that appoints the liquidator.

In case of dissolution, the association needs to submit a statement of its movable and immovable assets for the purpose of its liquidation. This statement will be used as a reference for the settlement of its liabilities. The remaining assets are to be distributed pursuant to the Statutes of the association, except for those originating from assistance, donations, grants and wills, in which case they will be transferred to another association with similar objectives defined by the competent body of the association.

In case of liquidation, associations that have been offered public funding and have not respected, wholly or partially, the provisions of the contract vis-à-vis the concerned public institution are to reimburse all or the remaining part of the amount of public funding received, unless the situation is regularized within three months from the date of the formal notice, pursuant to article 22 of Decree 2013-5183 setting the standards, procedures and conditions for granting public funding to associations.⁴⁹

2.2 Procedures of dissolution

Decree-Law 2011-88 defines, in article 45, the procedures for inflicting sanctions on associations that violate the provisions thereof. The Decree-Law has adopted a gradual approach in terms of dissolution, and provides for the following procedures :

1/ Formal notice : The Secretary General of the Government defines the infraction committed, and warns the association of the necessity of remedying the infraction within a maximum period of 30 days from the date of the notice.

⁴⁹ Statements by the representative of the Ministry of Finance during the direct meetings held as part of the preparation of this study.

2/ Suspension of the association's activities : A suspension, not exceeding 30 days, can be ordered by the Court of First Instance of Tunis based on a petition submitted by the Secretary General of the Government in case the infraction is not remedied. The association can appeal the suspension decision in accordance with the expedited judiciary procedure.

3/ Dissolution : Associations are dissolved through a decision issued by the Court of First Instance of Tunis upon the request of the Secretary General of the Government or any concerned person, in case the association persists in violating the provisions of the Decree-Law despite the warning and the suspension of its activities, after exhausting all methods of appealing the suspension.

Some 84 cases involving requests for dissolution have been submitted by the competent administrative authorities to the court . However, the only decision in this regard was issued, on May 16, 2014, by the Court of First Instance of Tunis, providing for the dissolution of the Tunisian League for the Protection of the Revolution with all its subsidiaries, and the liquidation of all its properties.

2.3 Obstacles and challenges

It can be deduced from the provisions of article 45 of the Decree-Law on Associations that the Secretarygeneral of the Government plays a central role in the control and dissolution of associations.⁵⁰

Faced with the increasing number of charitable associations, considered by the government as being involved in financing terrorism and used as a cover for money laundering and the perpetration of terrorist acts⁵¹, the competence of the Secretariat-General of the Government has been transferred to the Governors who hold an administrative regulatory authority that empowers them to decide the temporary closure of associations. Moreover, the Crisis Unit, set up under the Government of Mehdi Jomaa, issued a decision to dissolve nearly 150 associations accused, based on reports from the Ministry of the Interior, of supporting terrorism. This decision was taken outside the framework of the Decree-Law on Associations which provides for a number of guarantees that must be observed before dissolving an association, and which adopts a gradual approach that starts with a formal notice, then the temporary suspension of the activities of the association for a period of one month, and finally the dissolution through a court decision.

- Governors have issued decisions for the temporary closure of associations. The presidents and representatives of these associations were summoned to the police stations where they were interrogated, and police reports were drafted in this regard. Representatives of some associations appealed these decisions before the Administrative Tribunal, as they violate the Decree-Law. These cases are still under examination and have not yet been decided upon. The Associations and Sustainable Development International Observatory indicated, based on its follow-up of the cases under review, that the justifications for the decisions to dissolve these organizations are all of a security character, and that the accusations concern private individuals in particular, not the association as a legal entity that is financially and administratively independent from the persons who form the association.⁵²
- Additionally, the Secretary-General of the Government instituted, through the Officer in charge of State Litigations, judicial proceedings for the dissolution of tens of associations. The principle of gradual punishment was respected. The decisions to dissolve these associations were taken for the following reasons, among others :
 - Failure to notify the reception of foreign funding outside the legal deadline;

⁵⁰ Mohamed Fadhel Hamdi, "The role of the Secretary General of the Government in monitoring associations", Infos Juridiques Magazine Tunisie, Number 218-219, April 2016, pp.14-15.

⁵¹ According to a press statement by the Minister in charge of Constitutional Bodies, Civil Society and Human Rights, on April 23, 2016, 157 associations are suspected of having ties to terrorist organizations.

⁵² Report on Violations against Associations in Tunisia (2015), prepared by the Associations and Sustainable Development International Observatory (ASDI), March 2016, p14.

- Failure to send a copy of the association's financial and management reports to the Secretary General of the Government;
- Failure to update the Statutes of the association as required by the Decree-Law;

The decisions to dissolve these associations were taken based on formal infractions that had nothing to do with allegations of support of terrorism, as is usually argued. A formal notice could have been sent to the associations that have committed the infraction, as provided for in the Decree-Law.⁵³

- The state did not take the necessary measures to establish a database of the associations active in Tunisia; nor did it draw up a plan of action to follow up their activity, especially with the proved existence of non-registered associations involved in suspicious activities. According to Mr. Anis Wahabi, a public accountant, only 500 associations, out of 17,000, informed the presidency of the government of its financial situation, particularly the foreign funding received, and only 20 associations published their financial statements in newspapers and made them accessible to the public. ⁵⁴
- The data management system related to associations is insufficient. This system is managed by the Center for Information, Training, Studies, and Documentation on Associations (IFEDA), set up under Decree 2000-688 dated April 5, 2000, and pursuant to the provisions of Law 1999-100 dated December 13, 1999, concerning centers for information, training, studies, and documentation. According to recent statistics published by IFEDA Center, 18,143 associations are active in Tunisia, without the state having a complete database of them, and over 8,000 associations have a taxpayer identification number, whereas the other associations have no financial or tax returns.
- In practice, the deficiencies in the Decree-Law regarding the gradual approach to dissolution, a power granted exclusively to the executive authority, are partly responsible for the growing number of charitable associations with huge material resources, especially those having connection with political parties. Some consider that this is due to the interference of donors, through the funding of associations, either with national affairs and governmental policy, or to support terrorism, especially that some political parties are using a number of associations to serve their narrow political agendas.⁵⁵ The increasing international funds that flowed to Tunisia after the Revolution has helped to provide a fertile ground for some entities to engage in arms trafficking, which resulted in the escalation of violence in its various forms.⁵⁶
- In a press statement on April 23, 2016, the Minister in charge of Relations with Constitutional Bodies, Civil Society and Human Rights⁵⁷ indicated that judicial proceedings were, until May 2015, brought against 157 associations with suspicious funding or with suspected links to terrorism, and/or for having changed their field of activity without authorization. Other associations are also being prosecuted, while some of them have seen their activities suspended. Others have been dissolved by court decisions. He revealed that the government is working on improving the relevant legal text in a way that would allow it to take decisions more efficiently in this regard while it would also allow to introduce emergency measures to protect national security.⁵⁸

⁵³ Report on Violations against Associations in Tunisia (2015), prepared by the Associations and Sustainable Development International Observatory (ASDI), March 2016, pp.15-16.

⁵⁴ La Presse Newspaper of October 13, 2013 "The Governance of Associations in Tunisia".

[&]quot;The public funding of associations in Tunisia", a study conducted by Mohamed Salah Ben Aissa, with the contribution of Narjess Jdidi and Ahmed Aloui, and with the support of Al-Kawakibi Democracy Transition Center and the International Center for Not-for-Profit Law, Tunis, December 2014, available at www.kawakibi.org.

⁵⁵ Workshop with civil society on « the treatment of corruption within the process of transitional justice. », Tunis, Golden Tulip, El-Mechtel Hotel, December 2, 2015, http://fr.slideshare.net/jamaity_tn/atelier-osc-corruptionversion-finale .

⁵⁶ " How independent can NGOs be ? The stakes of transparency, independence and funding".

[&]quot;NGOs : Key actors of international solidarity ? », Institut-Bioforce-Developpement, November 20, 2012, available at : http://www.Ritimo.org.

[&]quot;NGOs : Between the requirement of independence and the search for funding », Emille Barrau, Philippe Ryfma (dir.), Sciences Po. Paris, January 2001, Projet «Bawia», Gaëlle Wicart, Aventure n° 93, Fall 2001, La Guilde Européenne du Raid, available at : http://www.pwc.bawiya.com. "NGOs : Tools of economic intelligence ? », published by working group « InfoLabo ».

 ⁵⁷ Kamel Jendoubi to Al-Chourouk newspaper : 20 associations with ties to terrorism have been dissolved, May 10, 2015.
 ⁵⁸ Statement to Shems FM radio.

Chapter III : Access to resources

1. Legitimate sources of funding

The Decree-Law on Associations defines legitimate sources of funding for associations, in line with international standards and with respect of the sovereignty of Tunisia. The sources of funding for associations are, according to article 34, limited to the following :

- Member subscriptions;
- Public funding: subsidies and grants;
- Donations, gifts and wills, both national and foreign;
- Revenues stemming from the associations' properties, activities and projects.

The law recognizes the right of an association to undertake economic activities, to use the revenues generated from the sale or lease of its movable or immovable properties, or to plan activities with the aim of collecting funds in order to serve one of its goals. These activities, though they yield financial resources for the association, are not subject to the corporate tax so long as the profits are not distributed over the association's members. The Decree-Law prohibits commercial activities undertaken by an association with the aim of distributing profits over its members, serving personal interests, or using the association for purposes of tax evasion.

If an association has changed its activities into profit-making and distributes profits over its members, it becomes subject to the corporate tax, just like any profit-making economic institution.

On the other hand, associations are prohibited from accepting aid, gifts or donations from states that have no diplomatic relations with Tunisia, or from organizations defending the interests and policies of those states.

As for the rights of the association, the Decree-Law allows the association to own real estate property to the extent necessary for its own premises and for its subsidiaries, and as a venue for the meetings of its members or for achieving its goals in conformity with the law. The association is also legally allowed to transfer any real estate property that is no longer necessary for the achievement of its goals. The value of the transfer is to be considered as revenue for the association.

Concerning the methods of management of financial resources, and to guarantee the transparency of financial transactions, the Decree-Law stipulates that all the association's financial transactions, both revenues and expenditures, must be made via bank or postal transfers or checks if their value exceeds 500 dinars (approximately 256 USD). Financial transactions cannot be fragmented in order to circumvent the above mentioned threshold.

It is noteworthy that even in case of proven financial irregularities, the associations' bank accounts cannot be frozen through an administrative decision. Article 38 provides that the bank or postal accounts of associations can only be frozen through a judicial decision. This guarantees the right of defense of associations brought before courts, unlike the administration which, if not neutral and objective, may deviate from proper legal procedures, and may target certain associations for political reasons.

Associations are prohibited, pursuant to article 4 of the Decree-Law on Associations, from including "profitmaking" as one of their organizational goals. Additionally, they are prohibited from collecting funds to support political parties or independent candidates in national, regional or local elections, or to offer them financial support. This prohibition does not affect the association's right to express its political views and its positions regarding issues of public concern.

Notwithstanding the above, associations are allowed to provide remuneration to their executives, managers and staff in return for benefiting from their expertise in their fields of specialization.⁵⁹

2. Legal system applicable to the funding of associations

The legal system applicable to the funding of associations involves various legislative texts. In addition to the Decree-Law on Associations (No. 2011-88 dated September 24, 2011), mention can be made of the following :

- Decree-Law 2011-117 dated November 5, 2011, organizing the activity of micro-finance institutions;
- Law 1996-112 dated December 30, 1996 concerning the accounting system of establishments;
- Organic Law 2015-26 dated August 7, 2015, concerning the fight against terrorism and the prevention of money laundering;
- Decree 2013-5183 dated November 18, 2013, setting the standards, procedures and conditions for granting public funding to associations;
- Decree 1982-630 dated March 30, 1982, setting the methods of control over associations having a social character and receiving subsidies from the state and public institutions;
- Organic laws relating to the annual budget;
- Order of the Minister of Finance, dated March 1, 2016, setting the amount provided for in articles 100, 107, 108, 114, and 140 of Organic Law 2015-26 dated August 7, 2015, concerning the fight against terrorism and prevention of money laundering.

The formation of an association brings along rights and obligations regarding financial management. In this context, article 39 of the Decree-Law on Associations states that associations are required to keep accounts pursuant to Law 1996-112 dated December 30, 1996 concerning the Accounting System of Establishments. Additionally, the Law-Decree, in its article 39, provides that specific accounting standards for associations are to be determined by an Order of the Minister of Finances. This Order, however, has not been issued yet, which is an obstacle to the work of associations, as the accounting standards to which they must adhere to are not identified.

In the same context, article 40 of the Decree Law on Associations requires the association and its subsidiaries to hold the following registers :

- A register of the association's members indicating their name, address, nationality, age and occupation;
- A record of the minutes of meetings of the association's management bodies;
- A register of the association's activities and projects, indicating the type of the activity or project;
- A register of the aid, gifts, donations and wills, differentiating between cash and in kind gifts and donations, between resources from a public sources and private sources, and between national sources and foreign sources.

⁵⁹ Statements by the representative of the Ministry of Finance during the direct meetings held as part of the preparation of this study.

3. Public funding

Public funding to associations is a means of stimulating associations to achieve public interest goals as defined by the government in its national and sector-based policies. It is usually granted in an impartial way and with no regard to the ideological background of the association. The most important standard for granting public funding is respect for articles 3 and 4 of the Decree-Law on Associations. In the same context, article 36 requires the State to allocate the necessary funds within the budget to support associations on the basis of competence, projects and activities. Moreover, article 37 requires associations to devote their resources to the activities necessary for the achievement of their goals. The same article allows associations to participate in tenders advertised by public authorities, provided that the services requested in the tender fall within the association.

In the same context, decree 2013-5183, dated November 18, 2013, setting the standards, procedures and conditions for granting public funding to associations⁶⁰, provides for direct requests, open calls for applications, and partnership agreements to grant public funds to associations.⁶¹

This partnership is very important, in that it promotes the proper functioning of public facilities, and guarantees that the activities to be executed by associations based in the concerned regions are in line with the services of the competent administration. The competence and expertise of associations, gained through their field experience and the technical support they received, are, therefore, used in the concerned field of partnership.⁶²

3.1 Forms of public funding

Public funding can be received through direct requests, or as part of partnership or calls for applications. The system of partnership aims at delegating one of the services of a public facility to associations so that they become a partner in its management and in the implementation of the state's goals. This partnership can also involve transferring human resources (civil servants and state employees) to associations. This type of funding involves additional conditions in comparison with those related to direct requests. The concerned public institution determines the type and requirements of the project, the obligations of the applicant who has to fully adhere to the goals and work strategies established by the public institution.

As for direct funding, it is a financial assistance granted by the state to associations pursuing goals that fall in line with the objectives of the state or the concerned public institution. The funding institution does not interfere with the activities, vision or methods of project implementation. The association usually submits a project that matches the mission of the public institution (For instance, an association acting in the cinemato-graphic field having a project to develop the capacities of cinematographers may receive public funding from the Ministry of Culture). The project ends with the achievement of the goals for which public funding has been granted.

The ceiling of the funding is determined by the public institution based on the opinion of the technical committee, unlike funding within the framework of partnership.

Irrespective of the type of funding requested, an association seeking to receive public funding shall, pursuant to article 7 of Decree 2013-5183, submit a request for public funding, along with the following documents :

⁴⁰ The decree was amended by : Decree 2014-3607 dated October 3, 2014; Decree 2015-278 dated June 1, 2015; and Decree 2016-568 dated May 17, 2016.

⁶¹ For more in-depth analysis, see "The public funding of associations in Tunisia", a study conducted by Mohamed Salah Ben Aissa, with the contribution of Narjess Jdidi and Ahmed Aloui, and with the support of Al-Kawakibi Democracy Transition Center and the International Center for Not-for-Profit Law, Tunis, December 2014, available at www.kawakibi.org.

⁴² It is important to highlight the significant experiences of partnership between the state and associations, such as the "Center for Care to Women Victim of Violence" whose management has been entrusted to the Association of Tunisian Women for Research on Development, an association created in 1989 and concerned with research on women and their integration and participation in the development process.

- The Statutes of the association;
- A copy of the declaration of the association's legal formation, a list of the association's managers and documents proving their qualifications,
- A list of the association's subsidiaries and regional bureaus (if any) and the names of their managers,
- The validated report of the auditor(s) for the year preceding the date of submission of the application (for associations whose annual resources exceed 100,000 dinars),
- A copy of the latest report submitted to the Court of Audit for associations having previously obtained public funding
- The latest management and financial reports approved by the general assembly,
- A copy of the register of activities and projects and a copy of the register of aid, gifts, donations and wills,
- A copy of the latest report of the elective assembly for the association's managerial bodies,
- Documents proving that the association is in a regular situation vis-à-vis tax authorities and social security funds,
- Documents proving the association's compliance with the provisions of article 41 of Decree-Law 2011-88 in case it has received foreign aid, gifts or donations, and
- A form, to be provided by the concerned public institution, bearing a certified signature, stating the association's commitment to repay the amount of the public funding received in case the association obtains a similar funding from another public institution for the same project or activity.

The majority of associations are, in reality, unable to provide all these documents, which reduces their chances of having access to this type of funding, and pushes them to resort to other, less complicated sources such as foreign funding or donations.

Article 11 of Decree 2013-5183 defines the standards for granting public funding to associations as follows :

- Within the framework of a call for applications, or a partnership agreement, the following standards are set out to guide decisions on the choice of beneficiary associations of public funding :
 - The quantitative and qualitative results expected from the execution of the project,
 - The proposed approach and period of project implementation;
 - The number of the association's subsidiaries, members and wage-earners;
 - The competence and operational experience of the association's managers and of the team in charge of the implementation of the project;
 - The association's participation in conferences and training sessions. Priority is given to projects presented by a CSO coalition.

In addition to the aforementioned documents, an association seeking to obtain public funding through participation in a call for applications or as part of a partnership agreement for the implementation of specific projects shall, pursuant to article 9 of the same decree, provide the public institution with the following information :

- An economic study of the project, including the necessary material and financial requirements for its execution,
- The implementation schedule and the cost of each phase, the project financing plan, including the amount of aid requested and the association's share of self-funding,
- The proposed approach for the implementation of the project and the expected qualitative and quantitative results, and
- The CVs of the members of the team to be in charge of supervising the implementation of the project.

Moreover, article 12 of the same decree provides that the decision to grant public funding shall be accompanied by a contract concluded between the president of the concerned public institution and the president of the selected association. The contract shall obligatorily state the following :

- The rights and obligations of each party;
- The project implementation phases and the schedule of payment of funds;
- The project's goals and expected results, follow-up and performance indicators;
- Ways of controlling the implementation of the contract, means of assessment and follow-up, and conditions for the cancellation of the contract and the recovery of public funding if need be.

Within the framework of direct requests, the following standards apply :

- The importance of the activities, programs and actions previously implemented by the associations;
- The importance of the activities, programs and actions the association plans to implement in the future.

Associations seeking to obtain public funding through direct requests shall, pursuant to article 8 of the same decree, submit a detailed report on the association's resources and on the aspects of use of the requested public funding.

The public funding granted through direct requests shall not exceed a ceiling determined by the public institution, based on the opinion of the technical committee.

The provisions of Chapter 5 of Decree 2013-5183, entitled "follow-up and monitoring", insist on transparency as a principle in public funding. It requires the public institution in charge of granting the funding to imperatively submit an annual report that states the volume of public funding granted to each association, and the list of beneficiary associations to the relevant Ministry, to the Secretariat-General of the Government, to the Ministry of Finance, and to the Court of Audit.⁶³ Moreover, associations receiving public funding are required to submit, to the concerned public institution and to the Ministry of Finance, an annual report on the uses of the public funds received and the progress of the implementation of the projects for which it was granted public funding.⁶⁴

In the same context, article 21 of Decree 2013-5183 states that "in addition to the obligations provided for in Decree-Law 2011-88, particularly article 44 thereof, associations receiving public funding are subject to onthe-spot inspections by the officers of the inspectorates and technical departments falling under the relevant ministry. They are also subject to monitoring by general control bodies, in conformity with the regulations in force, concerning the aspects of management of the granted public funding.

⁶³ Article 19 of Decree 2013-5183.

⁶⁴ Article 20 of Decree 2013-5183

An association that has received public funding but does not comply wholly or partly, with the terms of the contract toward the concerned public institution, is required to return the totality or the remaining part of the amount of the public funding received, unless the association regularizes its situation within the three months that follow the date of the formal notice (article 22). Moreover, article 23 states that the association that does not comply with the terms of the contract concerning the implementation of the projects for which it has been granted public funding, or that does not submit the periodic reports provided for in article 20 of the decree, can be excluded from future public funding opportunities, until it regularizes its situation in conformity with the provisions of the decree.

3.2 Monitoring public funding by the Court of Audit

As the highest institution of control over the management of public finances, the Court of Audit controls the proper management of public money in line with the principles of legality, efficiency and transparency, assesses the accounts of public accountants and management methods, and has the power to prescribe penalties for mismanagement.⁶⁵ With the large increase of the number of associations and the legal facilities provided by Decree-Law 2011-88 for the formation of associations, it has become imperative to establish appropriate mechanisms so that the Court of Audit can exert efficient and effective control over associations.

It is important, in this regard, to provide the Court with the necessary mechanisms to supervise the large amounts of funds that associations may receive from foreign sources. It is also recommended to amend the Decree-Law on Association toward ensuring more efficiency in monitoring associations, without interfering with freedom of association and free associative action.

Based on an examination of both the Decree-Law on Associations and the Law on the Court of Audit, it is recommended to adopt unified accounting documents for conducting the control operation at the level of the Presidency of the Government or the Court of Audit.

3.3 Challenges and obstacles to associations' access to public funding

Important though it is in ensuring the durability of some associations, public funding suffers a number of shortcomings that are attributable to the following factors :

- No complete information is available concerning the total volume of public funding and the total number of associations receiving public funds.⁶⁶ The Decree-Law on Associations requires associations receiving public funding to submit to the Court of Audit a detailed report on the management of their resources. However, out of 16,000 associations having legal existence in Tunisia in 2013, only 40 or 50 associations submitted reports about their financial resources, despite the repetitive reminders issued by the Presidency of the Government calling on all associations to publish the required information concerning sources of funding.
- Applying to public funding requires submitting an excessive number of documents. Moreover, calls to tenders are often advertised in an unofficial way. At times, the only advertisement is through the social media of the public institution that issued the funding. Additional conditions are sometimes added in the tenders, such as not having previously received public funding.⁶⁷
- There is a lack of neutrality of the members of the technical committee in charge of public funding, as a result of the absence of civil society representatives in this committee, on the one hand, and the existence of a conflict of interests as most of its members are also managers in non-govern-

⁴⁵ http://www.courdescomptes.nat.tn/Ar/%D9%85%D9%86%D9%86%D8%AD%D9%86_11_82.

⁶⁶ For more in-depth analysis, see "The public funding of associations in Tunisia", a study conducted by Mohamed Salah Ben Aissa, with the contribution of Narjess Jdidi and Ahmed Aloui, and with the support of Al-Kawakibi Democracy Transition Center and the International Center for Not-for-Profit Law, Tunis, December 2014, available at www.kawakibi.org.

⁶⁷ Panel discussion on "the state of associations in Tunisia", organized by Al-Kawakibi Democracy Transition Center in partnership with "Jamaity" association, on May 4, 2016 at the headquarters of "Jamaity" association in Tunis.

mental associations, on the other hand. Article 10 of the decree provides for setting up a technical committee in each public institution to be in charge of examining and deciding on requests for public funding, including direct requests, and determining the amount of public funding to be granted. The technical committee is composed of the president of the concerned public institutions or his deputy, representatives from the directorates falling under the concerned public institution, a representative of the concerned authority, and the controller of public spending, as members.

- This committee is composed essentially of representatives from administrative authorities. It alone has the power to set the selection criteria for access to public funding, and to determine the ceiling of the funding. Besides, it has been noted that public funding is not granted in accordance with objective criteria. A considerable part of public funding goes to associations that include in their membership public administration staff, especially to cover meal vouchers, which is a misuse of public funding.⁶⁸
- Some official circles have called for :
 - » Repealing and replacing Decree-Law 2011-88 and Decree 2013-5183, as article 65 of the Tunisian Constitution stipulates that funding of associations must be the subject of organic laws.⁶⁹
 - » Adopting a participatory vision regarding the manner the Administration deals with public funding, through amending article 10 and involving civil society in the technical committee, thereby guaranteeing neutrality and transparency in granting the funding and in setting the selection criteria.
 - » Implementing the principles spelled out in the new Tunisian Constitution, such as good governance, decentralization, positive discrimination, inter-regional balance, participatory democracy⁷⁰, Open Budget, and the independence of local/regional authorities, through allocating local financial resources to CSOs.
 - » Showing more flexibility with regard to the fiscal duties of associations, and allowing them to regularize their situation vis-à-vis tax authorities and social security funds so that they can apply for public funding,⁷¹ especially that some civil society components assert that for technical reasons, taxation is an almost insurmountable problem that can by no means be addressed in a short period.
 - » Overcoming the shortcomings identified by the state based on its awareness that public funding, a state measure having a social character, is not granted to associations in a sufficiently organized, transparent, clear, objective and neutral way. Besides, the administration does not have a developed and comprehensive database concerned with the relations between the administrative authorities and civil society components.

Both the administration and civil society seem to agree on the existence of shortcomings and deficiencies that need to be remedied through amending the legal texts pertaining to public funding. That is why :⁷²

• The Minister in charge of Relations with Constitutional Bodies, Civil Society and Human Rights stated that his ministry has prepared a report that includes a proposal to amend the legislation pertaining

⁷¹ Statements by the representative of the Ministry of Finance during the direct meetings held as part of the preparation of this study.
 ⁷² See appendix No. 3.

⁶⁸ President of the Government's correspondence to the ministers, dated January 19, 2016.

⁶⁹ Statements by the representative of the Ministry of Finance during the direct meetings held as part of the preparation of this study.

⁷⁰ Article 12 of the Tunisian Constitution reads as follows : "The state shall seek to achieve social justice, sustainable development and balance between regions based on development indicators and the principle of positive discrimination. The state shall seek to use natural resources in the most efficient way."

to the public funding of associations. The Minister⁷³ added that the report, which was submitted to the President of the Government, is the fruit of a six-month work that involved the participation of civil society and the organization of consultations in all regions of the country regarding the issue of public funding of associations. The Government's project, he maintained, aims at amending the current legislation, particularly Decree 2013-5183 setting the standards, procedures and conditions of granting public funding to associations.

- It is necessary to ensure more transparency in the granting of public funding, and to provide the means of access to information related to the volume of funds available, so that equal opportunities would be offered to all associations wishing to submit requests for funding.
- Article 35 of Decree-Law 2011-88, a legislative text higher than the decree, provides that the state shall allocate the needed amounts within the budget to support associations based on competence, projects and activities. These criteria are not detailed, in a clear and transparent way, in the decree; they are rather set by the technical committee. The decree provides, in article 25 thereof, for an exception to the application of these criteria. This exception concerns grants allocated to a number of funds and associations.
- It is the technical committee that decides whether to grant, or not to grant, public funding. Its opinion
 is binding on the president of the concerned institution (concurring opinion) and has wide decisional
 authorities. The committee represents the public institution only. Any other party involved will have
 only an advisory opinion. It is important, in this regard, to involve civil society as a partner involved
 in the decision-making process within those committees. Civil society has criticized the lack of neutrality within the committee, and has provided suggestions in this regard. However, no changes have
 so far been introduced, though the government had the opportunity to do so in the recently issued
 Governmental Decree 2016-568 dated May 17, 2016.
- Access to public funding can be made more complex when the public institution requires the submission of documents not explicitly provided for in the decree (article 14), in plain violation of the principle of competence by adding conditions not stated in the regulatory text. In addition, the decree grants an absolute discretionary power to the concerned public institution which is not bound by any necessity required by the nature of the funding.
- Granting the committee a regulatory power to set the selection criteria with individual decisions runs counter to the principle of legal security and the principle of transparency, and undermines the citizen's confidence in the state's institutions.
- Setting a ceiling for public funding granted through direct requests can reduce the chances of associations to receive such funding. Consequently, some of them disappear; others resort to non-transparent sources of funding.
- It is necessary to remove administrative complexities for access to public funding. In fact, in addition to the provisions of the decree, the public institutions add several documents that finally discourage the applicant from seeking the funding.

⁷³ Statement by the Minister to the Tunis-Afrique News Agency on the sidelines of a conference, held in 2016, on the reform of the system of public funding of association.

4. Foreign Funding

The 1959 Law on Associations defined only the obligations of associations vis-à-vis public funding without making clear its position with regard to foreign funding. Many activists in organizations such as the Arab Institute of Human Rights and the Tunisian Human Rights League testified they suffered many restrictions, including the freezing of their foreign funding. The 2011 Decree-Law on Associations, however, explicitly recognizes the possibility for associations to receive foreign funding.

After 2011, this type of funding was generously offered to associations as part of the promotion of the democratic process. Additionally, Tunisia saw many foreign associations, including donors, establishing subsidiaries in the country.

The only prohibition provided for in the 2011 Decree-Law on Associations concerns the acceptance of aid, gifts or donations from countries with which Tunisia has no diplomatic relations, or from organizations that defend the interests and policies of those countries. The Decree-Law requires associations to publish details of foreign funding in the print media, and to inform the Secretariat-General of the Government thereof.

4.1 Methods of following up foreign funding by the competent authorities

The Ministry of Finance indicated that there are no obstacles or special conditions for receiving foreign funding. The legal conditions to be observed are set out in articles 35 and 39 of the Decree-Law on Association, and there is no requirement of prior notification or authorization, but associations are obligated to declare foreign funding in accordance with the provisions of articles 41 and 44 of the Decree-Law.

Regarding practical obstacles to access to foreign funding, the representative of the Ministry of Finance stated in an interview that the competency and prerogatives of the Financial Analysis Commission might limit, to a certain extent, the volume and the ease of access to foreign funding. She insisted that providing a climate that offers easy access to information and that guarantees transparency and flexible procedures for access to foreign funding would reduce the risks involved in this type of funding. These risks, may, in fact, threaten the state's sovereignty and the people's security, especially that there exists a close link between foreign funding, terrorism funding, money laundering, tax evasion and political party funding,⁷⁴ all of which being in violation of article 4 of the Decree-Law on Associations which prohibits the use of the association's resources to serve goals unrelated to its civil activities.

Regarding the role of the Central Bank in monitoring the foreign funding of associations, the representative of the Central Bank indicated that most of the financing operations are made in cash, which makes it practically impossible to control them. As for operations made through bank transfers, they are subject to automatic control, and are regulated by the Circular of the Governor of the Central Bank 2013-15 dated November 7, 2013, concerning lending institutions, in replacement of Circular 2007-7 concerning money laundering, which was abandoned.⁷⁵

4.2 Obstacles and challenges in terms of foreign funding

Weak control over foreign funding by the Directorate of Associations :

A prelude to money laundering and terrorism financing

• Some associations provide a cover for a number of political parties who are prohibited, by law, to

 $^{^{74}\,}$ " How independent can NGOs be ? The stakes of transparency, independence and funding".

[&]quot;NGOs : Key actors of international solidarity ?», Institut-Bioforce-Developpement, November 20, 2012, available at : http://www.Ritimo.org "NGOs : Between the requirement of independence and the search for funding », Emille Barrau, Philippe Ryfma (dir.), Sciences Po. Paris, January 2001, Projet «Bawia», Gaëlle Wicart, Aventure n° 93, Fall 2001, La Guilde Européenne du Raid, available at : http://www.pwc.bawiya.com. "NGOs : Tools of economic intelligence ? », published by the working group « InfoLabo ».

⁷⁵ Statements by the representative of the Central Bank during the direct meetings held as part of the preparation of this study.

receive foreign funding. They do not publish their financial statements and sources of funding.⁷⁶

• There are also suspicions about the activity of some charitable associations in Tunisia. Some associations are accused of supporting terrorism, of providing terrorists with funds and even with arms and supplies, in addition to being involved in sending youth to hotbeds of tension and conflict. Consequently, some associations have had their activities suspended, but no list of the suspended associations has been published. A judgment was issued dissolving the "League for the Protection of the Revolution" for having violated articles 3 and 4 of the Decree-Law relating to the use of violence and hate speech. Other associations suspected of terrorism funding were not brought to justice for charges related to this suspicion, but for having violated the provisions of the Decree-Law, such as that relating to the declaration of any foreign funding received. Most of the associations against which the Officer in charge of State Litigation has brought cases have a charitable character. Cases have recently been brought against some Koranic associations.⁷⁷

Weaknesses and deficiencies of the 2011 Decree-Law

- » The Decree-Law on Associations does not provide for any mechanisms or means that enable the administrative authorities to ask or even require the association to comply with legal requirements. It only speaks of a formal notice to be sent to associations that violate provisions of the law, especially those that do not publicize their sources of funding.
- » Failure to institute the necessary legal proceedings has led to the spread of the culture of impunity. This is due to the state's inability to enforce the provisions of article 45 of the Decree-Law which empowers the state to dissolve the association if it does not comply with article 41 according to which the association is required to publish information about any foreign aid, donations and gifts it receives, and to indicate their source, value and subject in one of the newspapers and on the website of the association within one month from the date of their solicitation or reception. The association is also required to inform the Secretary-General of the Government of the same, through a registered mail with acknowledgement of receipt, within the same period.
- » In reality, many associations do not publish any information about the foreign aid, donations and gifts they receive, with no reaction on the part of the administrative authorities. This is confirmed by the fact that cases currently brought for the dissolution of associations are based on failure to publish information about foreign aid and donations.
- » The Decree-Law on Associations does not give the Follow-up Unit in charge of Associations' Affairs, falling under the Presidency of the Government, the needed powers and mechanisms allowing it to meticulously control suspicious foreign funding. It only requires associations to publicize any foreign funding they receive, which is not enough to achieve the sought transparency; hence the need for more inspection powers to public bodies. Besides, the Decree-Law does not specify the institution in charge of controlling foreign funding; nor does it explicitly grant the power to control foreign funding to the Central Bank.78

⁷⁶ "In the absence of punishment and control over associations : Billions ... to finance terrorism and destroy the economy." Al-Chourouk newspaper, April 18, 2015.

⁷⁷ Statistics of the Associations and Sustainable Development International Observatory indicate that until June 2016, 51 cases were brought before the court of first instance for the dissolution of associations. (Periodic report on the state of civil society in Tunisia, Second quarter, 2016).

⁷⁸ See in the same context the statement of the Governor of the Central Bank who revealed that there are hundreds of suspicious bank accounts, according to a report prepared by the Financial Analysis Commission. He added that the Commission would conduct a technical-financial investigation about the sources of financing of the suspicious bank accounts. The results of the investigation would then be submitted to the Presidency of the Government if the matter concerns associations, or referred to the courts. He indicated that the Central Bank was informed, by some of the banks, of the existence of suspicious financial transactions. He added that the Financial Analysis Commission raised, under the Government of Mehdi Jomaa, about 250 cases of suspicion involving charitable associations, but it did not announce the results of investigations and the names of the suspicious associations.

Source : "Successive governments failed to remedy the deficiencies of Decree-Law 2011-88 : A legal way for the dissolution of suspicious associations. Law on Associations : Will terrorism mar what the Revolution has accomplished ?", Assabah newspaper, December 14, 2015.

- » Some CSOs consider that the real cause behind the weak control over associations is not only the large number of associations, but also the non-enforcement of the provisions of the Decree-Law on Associations. For it is clear that the State has not taken any punitive action against associations that have not complied with the legal requirements, such as the annual publication of financial statements or the opening of a current account. As regards foreign funding, and despite the existing irregularities, there are many associations that regularly publicize the reception of foreign funding and the list of projects they plan to implement with these resources in the media. Moreover, foreign donors usually reveal, in their annual reports published in the press and on their websites, the financial assistance they provide to associations in Tunisia.⁷⁹
- » It is difficult to control associations that receive suspicious foreign funding because the funds are often granted to the recipient directly and in cash without necessarily going through the traditional and official channels that are under the control of the Central Bank. Civil society has warned against the risks involved in foreign funding, especially in view of the weak and sometimes inexistent control of the Ministry of Finance, the Central Bank and the Court of Audit.
- » In this context, the Minister in charge of Relations with Constitutional Bodies, Civil Society and Human Rights stated, in April 2016, that the government will submit a proposal for the amendment of the law pertaining to associations, given its deficiencies in terms of transparency and control of funding of associations.⁸⁰

Overlapping of legal texts and lack of transparency in dealing with foreign funding

» The legislator is reproached for adopting measures from outside the Decree-Law. This has weakened, if not undermined, the Decree-Law, and contravened the principle of confidence in the law. A case in point is Organic Law 2015-26 dated August 7, 2015, relating to the fight against terrorism and prevention of money laundering, which provides, in articles 100 and 101 thereof, for parallel and binding accounting and funding rules, and in which the legislator uses "the technique of unspecified notions", ⁸¹ that is, terms and expressions that are open to varying interpretations and may accordingly lead to different legal consequences depending on the case. One of these elastic expressions is "prudent management rules" stated in articles 99, 102 and 106 of the anti-terrorism law. In case they are violated, these rules empower the Minister in charge of Finance to subject the institutions suspected of having links with persons, organizations or activities in connection with the crimes covered by the present law, or the institutions that have contravened the rules of funding or accounting, to a prior authorization requirement for any financial transfers from abroad. He can also ask the president of the territorially competent court of first instance to issue an order to subject the suspected institution to an external audit by one or several specialized experts. In this regard, many have warned that these wide prerogatives have the potential to be turned into restrictions on associative action.⁸²

4.3 Civil society experiences with foreign funding

Foreign funding is among the most important sources of funding for associations. Given the administrative complexities involved in access to public funding, and due to member subscriptions being insufficient, most

⁷⁹ See for example : "Post-revolution interactions of national and international organizations : Current state and future prospects", Civil Society Forum, Hammamet, December 11-13, 2015, under the aegis of the Euro-Mediterranean Human Rights Network, prepared by judges Anwar Mansri, Fayçal Bouguerra, Khitam Jemai, Samah Ferjani, and Olfa Ben Achour, Tunis, 2016, p.50.

⁸⁰ Kamel Jendoubi : We have already submitted a proposal to amend the law on associations", Radio Kelma, Women's Talk program, April 11, 2016. ⁸¹ See Fayçal Bouguerra, "The role of the constitutional judge in monitoring quality in the formulation of the legal rule", Infos Juridiques Magazine Tunisie, Number 204-205, July-September 2015, pp.24-27.

⁸² "Post-revolution interactions of national and international organizations : current state and future prospects", Civil Society Forum, Hammamet, December 11-13, 2015, under the aegis of the Euro-Mediterranean Human Rights Network, prepared by judges Anwar Mansri, Fayçal Bouguerra, Khitam Jemai, Samah Ferjani, and Olfa Ben Achour, Tunis, 2016, pp. 50-51.

associations resort to foreign donors. Some have warned against the risks⁸³ that foreign funding may carry, and have insisted on the need to rationalize and control it even in the name of national sovereignty.⁸⁴ Foreign funding also has consequences in terms of setting the agenda of associations through their funding, which affects the independency of associations.

Participants raised, during the focus group discussions, the issue that some foreign donors request associations to change their activity as a condition for funding, without interfering with their goals⁸⁵. Other foreign NGOs have, for example, included a clause in the funding agreement that gives the donor the power to define the goals of the activity for which the funding will be granted.

In this context, there has been smear campaigns against associative action in the media and also at the administrative level through the correspondences of the Financial Analysis Commission. There have been calls for the Government to publish the list of associations having suspicious activities, so as to avoid that the public image of all associations is negatively affected.⁸⁶

5. Charitable associations

The Decree-Law 2011-88 removes any categorization of associations, and subjects them to the same legal provisions without distinction. On the other hand, charitable activities undertaken by associations, regardless of their goals, enjoy tax (such as VAT) exemptions. Moreover, shows organized for charitable organizations receiving state aid are not subject to the tax on shows. Associations may be offered tax advantages with regard to customs duties if they fall under the supervision of the state in case of import of cultural or sports materials, or materials designed for social and educational promotion.

The Tunisian legal framework has encouraged companies to be involved in charitable activities. Article 12 of Law 1989-114 dated December 30, 1989 enacting the Income and Corporate Tax Code, explicitly states that donations granted to activities or organizations serving the general interest or having a charitable, training, scientific, social or cultural character and whose spending is proved are deducted from the tax base within the limit of 2‰ of the gross turnover. No ceiling has been set to the deduction from the tax base. Donations were granted to associations identified through Decree 2000-599 dated March 13, 2000, establishing the list of associations and institutions receiving donations and subsidies wholly deductible from the income and corporate tax base. No freedom is practically left to companies to choose associations having a charitable and social character, as most of them are now confined to the list established by the aforementioned decree.

After 2011, Decree 2013-5183 dated November 2013, setting the standards, procedures and conditions for granting public funding to associations, repealed Decree 2000-599 dated March 13, 2000, and granted this advantage to all associations, regardless of whether they are listed or not. The ceiling of donations and subsidies has not, however, been increased.

• It is necessary, in this regard, to bring the provisions of the Income and Corporate tax Code in line with Decree-law 2011-88 which canceled the categorization of associations and opened the way for companies to contribute to the funding of associations having charitable activities without setting a

⁸³Panel discussion on "the state of associations in Tunisia", organized by Al-Kawakibi Democracy Transition Center in partnership with "Jamaity" association, on April 24, 2016, Golden Yasmine La Kasbah Hotel, Kairouan.

Panel discussion on "the state of associations in Tunisia", organized by Al-Kawakibi Democracy Transition Center in partnership with "Jamaity" association, on May 4, 2016 at the headquarters of "Jamaity" association in Tunis.

⁸⁴ "The impact of foreign funding of civil society organizations in Egypt and Tunisia," published by the Democratic Arab Center, Programmes and Democratic Systems Division, prepared by researchers Tamer Abdel Hamid and Mohamed Mortada, under the supervision of Pr. Islam Hegazi. "The dangers of foreign and official funding of civil society organization", Racheed Ben Beya, Al-Hiwar al-Mutamadin (Civilized Dialogue), Issue No.

^{3091,} August 11, 2010. ⁸⁵ This point was raised by one of the participants, a founding member of an association, during the panel discussion on "the state of associations in Tunisia", organized by Al-Kawakibi Democracy Transition Center in partnership with "Jamaity" association, on April 24, 2016, Golden Yasmine La Kasbah Hotel, Kairouan.

⁸⁶ Panel discussion on "the state of associations in Tunisia", organized by Al-Kawakibi Democracy Transition Center in partnership with "Jamaity" association, on May 4, 2016 at the headquarters of "Jamaity" association in Tunis.

ceiling for deduction from the tax base, but while insisting on the need to prove that the funds were actually spent for charitable purposes.

Donations depend on the nature of the charitable activity being undertaken. They are usually offered at the beginning of the school year to help students, or during wintertime to face cold waves, especially for needy families. Generally speaking, periodic donation is not a common practice in Tunisian civil society.

Chapter IV: Freedom of expression

Placing restrictions on freedom of expression and opinion and silencing citizens led the ruling authorities in Tunisia to ignore people's concerns and preoccupations. During the revolution of December 17, 2010 – January 14, 2011, the protestors broke these restrictions and demanded back their right to free expression. This is indeed one of the most important rights gained through the revolution, a right that the successive governments after the revolution have not been able, despite numerous attempts, to curtail or undermine even in the absence of a legal foundation for this freedom in 2011.

The Tunisian experience has given rise to significant initiatives toward promoting the principles of freedom of association, expression and peaceful assembly,⁸⁷ through establishing a legal platform for these freedoms and assessing their practical impact on the life of people. This was enough to prove the necessity for this freedom to continuously accompany the transitional process so that there will be no deviation from the principles of democracy.

1. Legal framework

1.1 The Constitution

Constitutions in the Arab World seem to guarantee rights, but the way constitutional texts and regulatory laws are formulated generally empties these rights of their content. The first Constitution of Tunisia (1959) explicitly provided, in its article 8⁸⁸, for freedom of expression. However, subsequent legal texts, especially the 1959 Law on Associations and the Press Code, curtailed this right to the extent that the free expression of an opinion by an association, a journalist or an individual could lead, and had actually led, to prison sentences. As a reaction to these restrictions suffered by Tunisians citizens and by civil society in particular, provisions in the new Constitution of Tunisia (2014) reflect the revolutionary spirit and the aspiration for freedom. Chapter Two on "Rights and Freedoms", guarantees, in article 31, the freedom of expression in a broad sense to encompass freedom of opinion, thought, expression, information, publication and access to information and communication networks. These freedoms cannot be subjected to prior censorship.⁸⁹

Freedom of expression is tightly linked to other freedoms. Freedom of expression can only be practiced effectively by guaranteeing other fundamental rights, such as the right to unrestricted access to information through the available means, especially the media and communication networks. This right was constitutio-nalized in article 32⁹⁰ which is of crucial importance, in that it anchors one of the core rights that are necessary for any proper practice of democracy, and insists on the principle of transparency and universal access to information, for the only exception being made for information relating to national security or to circumstantial judicial exigencies.

The right to free expression is not absolute, which is also recognized internationally. Accordingly, the

⁸⁷ Cyrille Ferraton, « L'idée d'association chez Alexis de Tocqueville. », Papers in Political Economy, 1/2004 (No. 46), pp. 45-65, available at www.cairn. info.

⁸⁸ Article 8 of the 1959 Constitution reads as follows : Freedom of thought, expression, the press, publication, assembly and association shall be guaranteed and exercised within the conditions defined by law."

⁸⁹ Article 8 of the 1959 Constitution reads as follows : Freedom of thought, expression, the press, publication, assembly and association shall be guaranteed and exercised within the conditions defined by law."

⁹⁰ Article 32 of the 2014 Constitution reads as follows : "The State guarantees the right to information and the right to access to information. The State strives to guarantee the right of access to communication networks."

Constitution has set limitations to this right and to all other rights and freedoms. Article 49 stipulates that limitations cannot impair the essence of rights and freedoms, and can only be imposed while respecting the principles of necessity and proportionality. Restrictions, pursuant to article 49, can only be imposed where it is deemed necessary in a civil democratic state and with the aim of protecting the rights of others or to meet the requirements of public order, national defense, public health or public morals, while respecting proportionality between these restrictions and their objectives, so that they will not be used to further expand limitations. Article 49 also provides that the legislature may not propose constitutional amendments with the aim of undermining the human rights or freedoms guaranteed in the Constitution.

1.2 International and regional conventions

Under article 20 of the Tunisian Constitution, international agreements are superior to laws and inferior to the Constitution. They are, therefore, one of the binding sources of law in the Tunisian system of legislation. In this regard, Tunisia has ratified most of the international/regional instruments and protocols related to human rights, especially civil and political rights.

One of these instruments is the "International Covenant on Civil and Political Rights". In fact, Tunisia is bound by the international agreements that established the right to free opinion and expression as a fundamental right, as provided for in article 19 of the Covenant according to which everyone shall have the right to hold opinions without interference" "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary for respect of the rights or reputations of others and for the protection of national security or of public order, or of public health or morals".

Within the post-revolution liberal context, Tunisia accepted, under Decree-Law 2011-3 dated February 19, 2011, to join the Optional Protocol to the International Covenant on Civil and Political Rights. Decree-2011-551 dated May 14, 2011, ratifying Tunisia's adherence to the Optional Protocol to the International Covenant on the Civil and Political Rights, was subsequently issued.

Tunisia has ratified the African Charter on Human and Peoples' Rights, article 9 of which provides that "every individual shall have the right to receive information," and that "every individual shall have the right to express and disseminate his opinions within the law." ⁹¹

Tunisia has also ratified the 2004 Arab Charter on Human Rights which provides, in its article 38, that "the present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries. Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order and public health or morals."

This article implicitly allows the restriction of freedom of opinion and expression, especially that it contains imprecise concepts that empower states to interfere with and curtail this freedom in the name of the "fundamental values of society". An Arab Human Rights Committee was established in 2008 to follow up on the implementation of the Arab Charter on Human Rights. However, unlike the African Commission on Human and Peoples' Rights, it does not have the power to receive and investigate individual complaints, as the Charter does not provide for remedies or mechanisms for individual or collective complaints.

91 See : Mervat Rishmawi, "The right to freedom of opinion and expression from the perspective of international law", e-journal, No. 16.

1.3 National legislation

Decree-Law 2011-115 dated November 2, 2011, relating to freedom of the press, printing and publication came to repeal the Press Code promulgated in 1975. Article 1 of the Decree-Law is in harmony with international standards. It ties the right to free expression directly to the international instruments that guarantee this right. It states that the right to free expression is guaranteed and shall be exercised pursuant to the provisions of the International Covenant on Civil and Political Rights and of the other relevant international instruments ratified by Tunisia, and to the provisions of the present Decree-Law. The right to free expression encompasses the free flow, publication, reception and exchange of ideas, opinions and information of any kind. Freedom of expression can be restricted only by virtue of a legislative text. The purpose of restrictions is to serve a legitimate interest in respecting the rights and dignity of others, preserving public order, or protecting national defense and security, and that the restriction is necessary and proportionate to the measures that are taken in a democratic society, and does not involve any risk of compromising the essence of free speech and free press rights. Decree-Law 2011-115 also guarantees the right of journalists to freedom of information and the right not to reveal their sources. It offers journalists protection against any form of pressure or harassment due to their views. It provides for special measures to counter any aggressions on journalists, including the provision of protection.

Particular mention can also be made, in this same context, of other related pieces of legislation such as :

- » Decree-Law 2011-116 dated November 2, 2011, relating to freedom of audio-visual communication, and setting up the High Independent Authority for Audio-visual Communication,
- » Decree-Law 2011-41 dated May 26, 2011, relating to access to administrative documents, and
- » Organic Law 2016-22 dated March 24, 2016, relating to the right of access to information.

2. Legal and practical deficiencies and challenges

Although there are no de jure restrictions imposed on freedom of expression, multiple de facto restrictions and threats undermine the freedom of expression, especially for those who oppose the views and ideas advanced by their political adversaries.

Post-revolution Tunisia witnessed the first threat to freedom of expression with the assassination of Chokri Belaid⁹², one of the politicians known for his defense of human rights and liberal thinking, after having vehemently criticized and spoken out against the reactionary forces that were seeking to impose a system of thinking incompatible with the specificities of the Tunisian people. Under these circumstances, some chose to remain silent instead of speaking out, out of fear for their lives and the lives of their families, especially with the existence of some sort of impunity early in 2013. The majority of civil society actors and opposition parties showed some kind of indifference, despite recurrent threats against other national figures.

The state is required to investigate threats and guarantee effective protection. However, the Government at that time did not take the necessary preventive measures to provide protection to Chokri Belaid, though it was aware of the existence of threats against him prior to his assassination.

It was expected that Decree-Law 2011-115 dated November 2, 2011, relating to freedom of the press and publication, would put an end to the criminal trials of journalists who are exposed to freedom-depriving punishments as a result of the facts or opinions they publish, and to replace the prison sentence by a fine in

⁹² Chokri Belaid is a Tunisian politician and lawyer, a former member of the "High Commission for the Achievement of the Objectives of the Revolution, Political Reform and Democratic Transition", Secretary General of the Unified Democratic Patriots' Party, and one of the founders of the Popular Front and member of its Board. He was one of the fiercest opponents of the Coalition Government in Tunisia. He was assassinated in front of his house by unknown assailants, which was followed by massive demonstrations in the whole country, together with a general strike by the Tunisian General Labor Union.

case of proven defamation. However, Decree-Law 2011-115 did not explicitly repeal the relevant provisions of the Penal Code, which has resulted in legal confusion in this regard.

It is to be noted that courts, in deciding defamation cases, are using the provisions of the Penal Code which provide for prison sentences, though they contradict with the provisions of the Decree-Law 2011-115. The complaints brought against journalists refer, in presenting the facts, to the provisions of the Penal Code, especially article 245 according to which any allegation or attribution of an act likely to be prejudicial to the honor or reputation of an individual or an official body is punishable by a six-month imprisonment and a fine. There is slander when the defamatory act has been judicially declared unproven; or when the slanderer cannot prove the said act. It is punishable by a one-year imprisonment and a fine. Article 248 of the Penal Code provides that anyone who, by any means whatsoever, makes a false allegation against one or several persons to an administrative or judicial authority is punishable by a two-to-five year imprisonment and a fine.

Article 128 of the same Code provides that anyone who attributes, to a civil servant, illegal acts related to his functions without proving their veracity is punishable by a two-year imprisonment.

Article 86 of the Telecommunications Code provides that anyone who intentionally causes harm to others or disturbs their quietude through public telecommunication networks is punishable by one-to-two year imprisonment.

Associations working in the media sector, such as the Tunis Center for Freedom of the Press⁹³, have disclosed many violations. For instance, civil society activists and bloggers have been brought to court for statements or articles considered as defamatory by some public figures who had filed suits against them. With the coexistence of contradictory legal texts, there has been a tendency to use the more severe provisions of the Penal Code instead of those of Decree-Law 2011-115.

Without a direct enforcement of the Constitution, such laws represent a threat to freedom of expression, in addition to the politically-driven lawsuits filed against journalists or independent media institutions.

On August 12, 2015, the National Union of Journalists took note of what it called the "repeated restrictions on press freedom", which it considered as an encroachment upon freedom of expression and opinion. It also drew attention to the fact that an increasing number of journalists are being summoned to court because of their journalistic work, and are charged with penal offenses.

Furthermore, the right to free expression is also curtailed or restricted through laws enacted in fields that seemingly have nothing to do with the exercise of this right, but that actually violate it. A case in point is Organic Law 2015-26 dated August 7, 2015, relating to the fight against terrorism and the prevention of money laundering. Although it makes exceptions for journalists from being classified as perpetrators of terrorist crimes, the law provides a broad definition of terrorism and terrorist acts in a way that might lead to the curtailment of freedom of expression. The broad definition given to such terms as 'terrorism', 'security', 'media support to terrorism or extremism', 'glorification' or 'support of terrorism or extremism', is used as a means

⁹³ See : Report on violations against the press : Tunis Center for Press Freedom demands the withdrawal of the decree setting up the Technical Telecommunications Agency... and accuses parties..." (Assabah news, December 4, 2013).

The report reviews some of the violations :

The journalist Mohamed Ali Ltifi appeared before the correctional chamber of the court of first instance of Ariana in the hearing dated November 19, 2013, in a criminal case involving charges of defamation brought against him by the Director-General of the National Metrology Agency.

On November 14, 2013, Journalists Neji Zairi and Karim Ouannes, from Mosaique FM radio, appeared before the Investigation Department at El-Aouina, for having published, on the website of the radio on February 14, 2013, a piece of news about the death of a prisoner in El-Messadine prison after having gone on hunger strike. The case was brought pursuant to article 54 of Decree-Law 2011-115 according to which "a fine of two-to-five thousand dinars shall be inflicted on anyone who deliberately and through the means stated in article 50 of the present decree-law publishes false news that are likely to disturb public order."

On November 20, 2013, Mr. Lotfi Arfaoui, editor-in-chief of Tunis-Afrique News Agency, appeared before the representative of the public prosecutor for the same reason as the news report was taken from the agency. The summons to appear included the charge of "diffusion of false news about the death of a prisoner."

On November 20, 2013, Mr. Mongi Khadhraoui, a journalist in Al-Chourouk newspaper, was summoned to appear at the police office after a complaint had been filed against him by a judge whose name and photograph had appeared in an article published in the newspaper on September 16, 2011 about a case brought by the Tunisian Judges' Association against a former Minister of Justice.

of limiting freedom of expression. As a result, some journalistic errors can be interpreted as a form of 'glorification of terrorism'. Judicial proceedings were instituted against journalists for having published articles and news related to terrorism. A number of journalists and a photographer from the Tunisian National Television were interrogated by the anti-terrorism department for having broadcasted the image of one of the victims of a terrorist act in October 2015. In all these cases, the 2011 Decree-Law on freedom of the press, printing and publication was put aside, and journalists were prosecuted under laws that have nothing to do with the regulation of the journalistic sector. The judicial authorities brought charges of "complicity with terrorism" against the editor-in-chief of "Akher khabar online", for having published the photograph of the person who killed 38 foreign persons in the attack perpetrated in Sousse on June 26, 2015. In another case, charges of "defamation of a civil servant" were brought against a blogger for having posted, on his Facebook page, a caricature of one of the ministers.⁹⁴

Chapter V: Peaceful assembly

For the most part, the activities of associations and NGOs are carried out through assemblies, gatherings and protests in public spaces, so that they can make their voices heard, and raise awareness among the populations. Accordingly, freedom of association and of expression cannot be exercised if associations have no free access to the public space, and if legal barriers are imposed, making peaceful assembly dependent upon the discretionary power of the ruling political authorities. Such legal barriers certainly have adverse consequences on the efficiency and effectiveness of associative action.

1. Legal texts regulating peaceful assembly

1.1 International conventions

The International Covenant on Civil and Political Rights (ICCPR), which Tunisia ratified on March 18, 1969, guarantees the freedom of assembly. Article 21 of the ICCPR states that : "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others." Tunisia, however, has not developed its own national legal framework in such a way as to bring them in line with the requirements of this article.

1.2 National Legislation

Freedom of assembly is provided for in article 37 of the Tunisian Constitution which states that "the right to assembly and peaceful demonstration is guaranteed". Additionally, Decree-Law 2011-88 guarantees, in article 5 thereof, the right of associations to hold meetings, events, conferences, workshops and all types of civil activities. It explicitly prohibits impeding the activities of associations, which involves, among others, the freedom of association and assembly. It accordingly requires the State to take all necessary measures to ensure the protection, by the competent authorities, of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights, including the right of assembly. It follows that security officers are required to act in a way that protects, and not restricts, the exercise of this right.

Today, the legal texts pertaining to the right to peaceful assembly are inconsistent and even contradictory, given the special political circumstances the country has witnessed after the Revolution. The 2014 Consti-

tution has recognized this right in a clear, explicit and unrestricted way, unlike the 1959 Constitution which made no mention of the right to peaceful demonstration, but only pointed, in article 8 thereof, to freedom of assembly that shall be exercised in conformity with the law.

1.3 Limitations in the application of Law 1969-4 dated January 24, 1969, regulating Public Meetings, Marches, Rallies, Demonstrations and Assemblies.

The 1969 law regulating public meetings, marches, rallies, demonstrations and assemblies, issued in application of the provisions of article 8 of the 1959 Constitution, emptied the right to peaceful assembly of any content or essence. It distinguished between three types of assemblies : (1) organized public meetings requiring prior notification to the competent administrative or security authorities; (2) rallies and demonstrations in the public space which are subject to mandatory prior notification; and (3) gatherings in the public space, which does not require any preparation or organization and subsequently not subject to prior notification or authorization. The last form is considered as a spontaneous assembly that might lead to the disruption of the public order. Accordingly, this third type was explicitly prohibited by the 1969 law.

Article 1 of the 1969 law seemingly provides for the principle of freedom of assembly. It states that "public meetings are free and may take place without prior authorization, under the conditions set by the present law."

Unlike the authorization system, in which the administrative authorities take an explicit decision on whether to allow or refuse an assembly based on their discretionary power and taking into consideration the legal requirements, the prior notification does not presuppose the interference of the administrative authorities as long as the organizers comply with the requirements pertaining to assembly. However, according to article 10 of the 1969 law, "prior notices shall, in compliance with the provisions of article 2 of the present Law, be submitted specifying the gathering points and marching routes for the intended activity, and flags or banners which will be held, if applicable." Article 10 makes reference to article 2 which concerns the meetings that are subject to prior notification. Therefore, saying that peaceful assembly was subject only to a mere notification is not accurate.

Article 12 grants the competent administrative authorities the power to prohibit any demonstration that is likely to disrupt public security or public order, and in such cases organizers shall, via the security officers, be notified of the prohibition. Thus, the way this article is formulated gives security authorities discretionary power to prohibit demonstrations for the mere possibility of disturbance of public order and security, without being required to provide any evidence or reasoning of the decision.

The Tunisian law on peaceful assembly is not in line with international standards which consider that in the exercise of this right, freedom is the rule, and exception applies only in case of:

- » Imminent and serious danger to public order;
- » Absence of any means of preserving public order in case the demonstration is held.

The 1969 law allows security officers to intervene at any moment to disperse the demonstration under the pretext of public order and disturbance of public security. The Ministry of the Interior has discretionary power in this regard.

Security officers can use force and adopt the principle of gradual intervention to disperse a demonstration. First, the assembled individuals are ordered to disperse using a megaphone, or sound or light signals that are capable of ensuring effective notification. In case the assembled individuals refuse to disperse after having these warnings, the security officers can pour water or chase the assembled persons with batons, then spray tear gas, then shoot up in the air, and then shoot at the level of the legs. In cases where the assembled individuals still attempt, by the use of force, to reach their intended destination after all the previously mentioned methods of dispersal have been used, the security officers are allowed to shoot directly at them.

- The Tunisian legal system is not consistent with regard to peaceful assembly. In fact, the highest law, i.e. the Constitution, recognizes the right to peaceful assembly. Yet, Law 1969-4, which is still in force, is in flagrant violation of the Constitution and the relevant international instruments ratified by Tunisia. Moreover, Decree 2011-88 did not provide, in its transitional provisions, for the abrogation of the legal texts that are contrary to its provisions, nor did it specify which articles in law 1969-4 must be repealed.
- The jurisprudence pertaining to the right of peaceful assembly did not involve an effective application of the Constitution and the relevant international instruments in a way that would put an end to the restrictions imposed on this freedom. Most of the judgments were based on Law 1969-4 and did not take into account higher legislative texts.⁹⁵
- Amidst this contradictory situation, freedom of peaceful assembly seems to be torn between various legal texts that are all still in force, with each party sticking to the law that best serves his interests and objectives. On the one hand, civil society sticks to its constitutional right to peaceful assembly which it considers one of the revolution's achievements. On the other hand, the administrative authorities invoke, in case of protests or demonstrations, Law 1969-4 on the ground that it is still in force, that it is the only legislative text that regulates assemblies and that security officers cannot replace the Legislature in providing laws and regulations to deal with the huge number of applications and spontaneous assemblies not preceded by a prior notice.
- From a human rights-based perspective, there is a lack of clear guidelines for dealing with peaceful assemblies.

1.4 Restrictions on freedom of peaceful assembly related to the declaration of the state of emergency

The state of emergency is regulated in Tunisia by Decree 1987-50 dated January 26, 1978. It was extended many times, the last extension being for three months, as from March 23, 2016,⁹⁶ following a terrorist act that targeted presidential guards. The declaration of the state of emergency, in accordance with the requirements of public order and security, empowers the competent authorities to forbid the movement of persons or vehicles, to ban strikes even if planned before the state of emergency was declared, and to deny residence to any person who seeks, in any way, to undermine the work of the public authorities. Under the state of emergency, the public authorities are also empowered to ban all types of meetings that might cause disorder, as well as to control the press and all types of publications, as well as radio programs, film screenings and theatre shows.⁹⁷

• Based on an examination of the legal texts regulating freedom of peaceful assembly, it seems that the restriction of this freedom is essentially linked to the disruption of public order and secu-

rity. These texts need to be reviewed in accordance with a human rights-based vision that falls in ⁷⁹ In the case No. 1/16754 dated March 28, 2008, (Abdessalam Ben Amor acting for his minor daughter Amira versus the Officer in Charge of State Litigations for the Ministry of the Interior and Local Development), the court considered that "assembly on roads and public squares ... involves a danger, pursuant to article 17 of the law on the Administrative Tribunal, resulting either from what the assembled persons can do or the means they can use, or from the prerogatives given to security forces to shoot directly at the assembled persons if they insist by the use of force to reach their intended goals. The responsibility arising from the caused damages is established as soon as the damage and the causal relationship are proven, and the administration can refute this responsibility only by proving the existence of a case of force majeure or an error attributed to the victim himself." In its decision in the case No. 310938 dated May 28, 2011, the Administrative Tribunal considered that the responsibility of the administrative Tribunal, and is an objective responsibility that can be established only by proving the damage and the causal relationship, and cannot be refuted, wholly or partially, unless it proves the existence of a case of force majeure, or that the damage for which recovery is sought is the result of an error made by the victim himself, as assemblies in roads and public squares involve a danger resulting either from what the assembled persons can do, or from the prerogatives given to security forces and which may reach as far as shooting directly at the assembled persons. ⁹⁶ Extension of the state of emergency for three months, Turess, March 22, 2016.

⁹⁷ Articles 4, 5 and 6 of Decree 1978-50.

line with the Tunisian Constitution, the relevant international human rights instruments and the Decree-Law on Associations. The 1969 law regulating the right to peaceful assembly, currently in force, should, therefore, be repealed.

- As part of the comprehensive reform of the security system, and at the initiative of the Ministry of the Interior, a new bill pertaining to the right to peaceful assembly has been prepared. It regulates this right in line with international standards, and defines the rules for the exercise of this right based on the provisions of international instruments dealing with civil and political rights. The bill was submitted to the Parliament in May 2013. However, it has not been considered as a priority.98
- Although many civil society associations and political parties have spoken out against the unconstitutionality of Decree 1987-50 as it violates the rights and freedoms guaranteed in the Constitution and by international instruments, no initiative has been taken to have the Decree repealed and replaced by another law as required by the Constitution. For the regulation of the exercise of freedoms is now one of the prerogatives of the Legislature, unlike the said Decree issued by the Executive authority. Besides, the state of emergency no longer has a constitutional standing, as was the case under the 1959 Constitution. In fact, article 80 of the Constitution gives the President of the Republic, in the event of imminent danger threatening the nation's institutions, security and independence, or hampering the normal functioning of the state, the power to take any measures necessitated by the exceptional circumstances, after consultation with the Head of Government and the Speaker of the Assembly of the People's Representatives and after informing the President of the Constitutional Court. The President is required to announce the measures in a statement to the people. The state of emergency is declared especially after terrorist attacks, in order to allow security officers to conduct large-scale security campaigns that involve raids, seizures and arrests of large numbers of persons suspected of being involved in terrorist acts and of belonging to terrorist organizations.

2. Practical obstacles and challenges related to freedom of peaceful assembly

The scattered and sometimes contradictory legal texts, and the importance of the right to peaceful assembly for civil society, even under a law that subjects assembly to an authorization from the Ministry of the Interior, have, in reality, resulted in a battle between the authorities and civil society components. Sometimes civil society has managed to enforce their right to peaceful assembly; at other times, the authorities have managed to impose their point of view, while considering some forms of assembly as a threat to public order, and holding the 'perpetrators' accountable for that.

2.1 Imposing the exercise of freedom of peaceful assembly

Before the revolution, most notification or authorization applications were refused, though they were in conformity with the legal requirements, with applicants respecting the unfair conditions stipulated by the law. Moreover, the few authorized small demonstrations held by some associations that were not close to the regime were soon dispersed under the pretext of order and security.

After the revolution, a state of weakness befell the security institution, which led many people and associations to disregard the notification or authorization requirements. As a result, it has become possible for each and every one to hold an assembly or a demonstration, without even coordinating with security authorities. Some places were even 'occupied' for advocacy and the recruitment of new members, especially by groups and associations that claim to adopt the Salafist ideology.

⁹⁸ See : "Civil Society Index – Rapid assessment", a study prepared by Dr. Wahid Ferchichi, Hana Ben Abda and Khaled Mejri, in cooperation with CIVI-CUS and the Arab Institute for Human Rights, 2014.

Moreover, Habib Bourguiba Avenue has become the symbol of freedom of assembly and of the Tunisian Revolution; and associations and human rights defenders insisted on holding assemblies and demonstrations in this specific place so as to maximize the impact and ensure a wide media coverage. Some associations followed the legal procedure of notification of the competent authorities. Assemblies and demonstrations became more and more frequent in this avenue which is of crucial economic importance for many merchants whose incomes decreased as a result of the demonstrations. An incident occurred on 25 March 2012 after two demonstrations were authorized at the same time and in the same place, one to a Salafist group and the other to a group of artists celebrating the World Theater Day, resulting in acts of violence perpetrated by Salafist groups. This led the Ministry of the Interior to decide, on March 28, 2012, to "indefinitely ban the holding of demonstrations, marches, assemblies and all other forms of collective expression in Habib Bourguiba Avenue." ⁹⁹

Several associations and political parties, having previously called for organizing a march on April 9 in commemoration of Martyrs Day, insisted on holding the march despite the indefinite ban on assemblies in Habib Bourguiba Avenue.

The march, however, evolved into riots, and security forces resorted to excessive use of force against demonstrators, causing fractures and other injuries to some of them. To disperse the demonstrators, security forces threw tear gas canisters at the demonstrators, and used batons and sharp instruments.100 Security forces were assisted by persons with civilian dress who were chasing and attacking demonstrators and journalists using extreme violence. Politicians, journalists and ordinary citizens were all victims to these aggressions.¹⁰¹

Given the tragic consequences resulting from the Ministry's decision which was in total contradiction with international standards, the Minister of the Interior, on April 11, 2012, reversed his decision to ban peaceful assemblies and demonstrations in Habib Bourguiba Avenue.

Other demonstrations were also banned, and security forces resorted to the excessive use of force. On November 29, 2012, the inhabitants of the town of Siliana held a peaceful demonstration as a protest against the deterioration of their social and economic conditions, the increase of unemployment, and the absence of developmental projects and programs. The protestors demanded immediate resignation of the Governor appointed by the Head of Government. To disperse the demonstration, security forces used excessive force against the demonstrators. They encircled the town and isolated it from neighboring towns. They even used lead shot, an internationally banned munition, causing injuries to a large number of people. Many of the victims brought cases against the security officers; others have resorted to the Administrative Tribunal seeking compensation of physical and moral damages.

Moreover, the Ministry of the Interior also prevented Ansar Al-Sharia group from holding its third annual congress, scheduled to take place in Kairouan on May 20, 2013, on the ground that it involved a violation of the laws and a threat to public security and order, and because no prior notice was sent to the competent authorities within the legal deadlines.¹⁰²

Today, associations find it somewhat difficult to obtain authorization, given the existence of threats related in particular to terrorist crimes. Many associations generally hold assemblies without authorization, but the security forces are always there. During some demonstrations, police officers resorted to the use of violence.

⁹⁹ See : "Civil Society Index – Rapid assessment", a study prepared by Dr. Wahid Ferchichi, Hana Ben Abda and Khaled Mejri, in cooperation with CIVI-CUS and the Arab Institute for Human Rights, 2014.

¹⁰⁰ The National Constituent Assembly set up a fact-finding committee to investigate the events of April 9, 2012. The Minister of the Interior was summoned to appear before the Assembly, and a representative of the Ministry of the Interior recognized, during a hearing before the Commission, that the legislative texts in force suffer from many weaknesses and deficiencies, and that the Ministry is seeking to present a bill that respects the right to peaceful assembly in accordance with international standards. The Commission has not so far published the results of its work. ¹⁰¹ HRW communiqué, April 12, 2012.

¹⁰² Decision of the Ministry of the Interior banning the holding of Ansar Al-Sharia Conference, May 17, 2013.

Some of these officers were referred to the disciplinary board.

- The Ministry of the Interior deals with the issue of freedom of peaceful assembly under the cover of preserving public order and security, but not on the basis of a unified and consistent vision. In fact, demonstrations are banned at times because they are critical of the government and decision-makers, as was the case in the events of Siliana. At other times, public assemblies are banned to preserve peace and public order and to avoid damage caused to others, as was the case in the events of April 9; or applying formally the authorization requirement to prevent an assembly with potentially adverse consequences on order and security, as was the case with Ansar Al-Sharia congress.
- Sit-ins and protests held especially by unemployed youth in front of ministries and state institutions are also prohibited. The competent authorities often refuse to negotiate or talk with the protesters. They rather force them to end the sit-in, and even at times commence judicial proceedings against some of them on charges of impeding the smooth running of institutions.
- In the absence of a law that guarantees the full enjoyment of the right to freedom of assembly, the investigation of acts of violence, and the prosecution of security officers that use excessive force against demonstrators, the right to freedom of assembly will remain restricted and totally unprotected.

Social movements that seek to pressure the Government to open dialogue with the protesters have increased since 2015.¹⁰³ These movements have evolved from political claims specifically related to the transitional process, as was the case with the Bardo sit-in, into claims involving the right to work and the right to lead a decent life, which is guaranteed by the Constitution. The protest is directed at the right to work and the need to put an end to unstable employment, improve the living conditions of the poor, and redress the injustices to which the interior regions of the country have been exposed, especially in light of the deteriorating development indicators five years after the Revolution. Protesters consider that the Government is no longer temporary, and that the ruling political parties have been elected based on programs that aim at promoting employment, putting an end to the vulnerability and marginalization of the underrepresented regions, and implementing the constitutionally-guaranteed social and economic rights. Some of these protests, however, were met with force by security officers.¹⁰⁴ On its part, the Government has not adopted a clear program and vision to curb unemployment. It has simply responded to some circumstantial events occurring in a number of regions, but its response has not been efficient.¹⁰⁵ At a time when social movements are diversifying their peaceful forms of expression, through sit-ins, demonstrations, field activities and suggestion of alternatives, the Government continues to turn a blind eye to these movements. The Government has even levelled accusations at the protesters and instituted judicial proceedings against some of them.

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¹⁰⁴ Some of the protesters were arrested and brought before the court on charges that some considered as fabricated, such as holding sit-ins (in Tunis, Kerkennah, Kef and Kasserine). Report of the Tunisian Forum for Economic and Social Rights, issued on April 26, 2016, and signed by national and international associations.

¹⁰⁵ One of the unemployed protesters died during the sit-in held in one of the regions, which provoked a wave of protests that obliged the Government to propose a number of suggestions so as ease tension in the region. These suggestions were not up to the expectations of the unemployed protesters.

SECTION FOUR Optional dimensions

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Chapter V : Government-CSO Relations

Before the revolution, the relationship between the Government and civil society was limited to associations that were closely tied to the regime and that were constantly glorifying it and polishing its image at the national, regional and international levels. Associations opposed to the regime, whose number did not exceed 10 associations, were exposed to various forms of harassment, such as the freezing of their funds. It was a confrontational relationship that involved protesting against and putting pressure on the authorities. After the revolution, associations are no longer exposed to harassment and are allowed to carry out activities in all fields without discrimination. They have transcended the traditional fields of action in support of the state's development effort to include other issues such as the transitional process and human rights in their broad sense which encompasses political, economic, social, environmental, cultural and educational rights. There has been, in fact, a need to keep up with the political evolution in Tunisia, through strengthening the rule of law, establishing the principle of participatory democracy, and promoting human rights in line with international standards. Associations have assumed a new role based on the principles of participation, suggestion and initiative for change, which has enabled associations to influence policy development and to impose human rights-based approaches.

1. Civil society and political participation

It is worth recalling that non-governmental organizations in most of the Arab world have always been subjected to harassment, while their activities have been circumscribed and limited to specific fields.¹⁰⁶ Laws have been enacted to ban civil society action, especially in the political and governance field.¹⁰⁷ Other laws in the region classify associations in terms of their activity and goals.¹⁰⁸ This has further restricted freedom of association, as associations are required to act exclusively in a number of specific fields, and have no way out of the specific category in which they are placed. In Tunisia, the Decree-Law on Associations came to free associations from accusations of lack of neutrality, as it allows them to express their political views and their positions vis-à-vis issues of public concern. However, as a result of the accumulations of the past, some believe that associations are required to be neutral and should not interfere with public and political issues.

1.1 Associations and candidacy for elections

To guarantee a political climate based on the principles of transparency, equal opportunities for all candidates, and respect for democratic rules, article 9 of Decree-Law includes an exclusionary condition: the founders and managers of associations may not hold a position within the central managerial bodies of political parties. This separation between decision-making positions within political parties and those within associations is legitimate and justified, because political parties are, in terms of funding, subject to restrictions that do not apply to associations. One such restriction is the prohibition to receive foreign funding or funding from moral entities, in addition to setting a ceiling for the funding received from private individuals. The risk of the associations' funding of political parties increases during election campaigns. In fact, the Electoral Law¹⁰⁹ prohibits the financing of election campaigns with funds from foreign sources, including governments, institutions and private individuals. The law has also set a ceiling for the financing of election campaigns for electoral lists or presidential candidates.¹¹⁰ Preventing the formation of associations to serve as a reservoir for funding political parties or their candidates in an illegal way is the purpose of the legislator behind the prohibition. It should be noted, however, that the Decree-Law on Associations prohibits only the funding of

¹⁰⁷ See : Law 2002-84 and Decree-Law 2002-178 relating to associations in Egypt.

Inclusion of the classification of associations in Law 1959-154 relating to associations in Tunisia.

¹⁰⁶ See : "Manual on Freedom of Associations in Arab Countries", prepared by Mervat Rishmawi, Arab NGO network for Development.

¹⁰⁸ See : Article 1 paragraph 2 (new) added by Organic Law 1992-25 dated April 2, 1992, and Article 2 of Law 1959-154 dated November 7, 1959 relating to associations, as amended by Organic Law 1992-25 dated April 2, 1992.

¹⁰⁹ See article 80 of Organic Law 2014-16 dated May 26, 2014, relating to elections and referendum.

¹¹⁰ See Decree 2014-2761 dated August 1, 2014, setting the overall ceiling for electioneering expenses, and the ceiling for private funding and public funding as well as the related conditions and procedures for the legislative elections.

political parties by associations, but does not prohibit non-material support to political parties, electoral lists or candidates in presidential, legislative, regional or municipal elections.

For infractions of these provisions, the Decree-Law on Associations provides penalties including the possibility of the dissolution of the association. However, the Law on Political Parties provides no such provisions (dissolution for example) in case a political party receives funding from an association, except for general provisions related to illegal funding. In practice, the involvement of some associations in the funding of political parties¹¹¹ does, in fact, exist, and it involves both the source of the funding and the recipient thereof. The latest report of the Court of Audit has even pointed to the involvement of one of the presidential candidates in donating large amounts of funds to an association so that it would support him in his election campaign.

Organic Law 2014-16 dated May 26, 2014, relating to elections and referenda, states, in article 163 thereof, that "if the Court of Audit finds with proof that a candidate or an electoral list has received foreign funding for the electoral campaign, it shall require the candidate or electoral list to pay a fine ranging from 10 to 50 times the amount of the received foreign funding, and the members of the list having received the foreign funding shall lose their membership of the Assembly of the People's Representatives. A presidential candidate who receives foreign funding shall be sentenced to five years of imprisonment. Any candidate or member of an electoral list who is proved guilty of having received foreign funding for his election campaign is banned from standing in subsequent legislative and presidential elections."

The Electoral Law entrusts the Court of Audit with the task of monitoring the funding of election campaigns subsequently to the final proclamation of the election results. Proven reception of foreign funding might lead to the termination of membership. The Court of Audit, having monitored the presidential electoral campaign, concluded that it did not have sufficient means allowing it to effectively control foreign funding in relation with electoral campaigns. It affirmed in its report that some associations had received foreign funds which had been used in the electoral campaign of one of the presidential candidates. The Court of Audit did not seek the intervention of the Public Prosecutor in that matter to initiate legal proceedings. On the basis of the Court of Audit's report, the Public Prosecutor started an investigation whose results have not been announced yet.¹¹²

It is indisputable that associations in general have different, but undeclared, political affinities. Most of them, however, deny their affiliation with any specific political formation or ideology. Though the Decree-Law on Association allows associations to express their political views and their positions with regard to issues of public concern, many associations still adhere to the conservative vision about civil society's need to demonstrate neutrality, to avoid being involved in political matters, and to be confined to a unique field of action. Some associations have even included a clause in their internal regulations banning the expression of any opinion in support of or against any political party.¹¹³

Furthermore, a member of an association is allowed to stand for elections either as part of an independent list or on the list of a political party, provided that the association does not finance the electoral campaign of any of its members. The law does not, however, prohibit associations from freely expressing their political views during electoral campaigns, but this must not turn into a form of material or moral support to a candidate. The candidacy of a member of an association does not involve any penalties or denial of tax incentives, or any other form of restrictions.

During the recent elections, and due to the specific post-revolution situation in Tunisia, many activists have chosen to move from civil society to political parties. Certain leaders of some CSOs stood as candidates on the electoral lists of political parties. Some of them have won the elections and are holding political positions.

¹¹¹ See "Monitoring political funding in electoral campaigns : Evaluation of the experience of the 2014 elections", Al-Kawakibi Democracy Transition Center, Tunis, April 2015.

¹¹² Report of the Court of Audit on the control of the funding of the 2014 presidential elections, July 2015, available at : www.courdescomptes.nat.tn. ¹¹³ Panel discussion on "the state of associations in Tunisia", organized by Al-Kawakibi Democracy Transition Center in partnership with "Jamaity" association, on May 4, 2016 at the headquarters of "Jamaity" association in Tunis.

1.2 Associations and the ability to influence decision-making

Civil society has played a positive role after the Revolution,¹¹⁴ especially in a context of the breakdown of the state institutions and the dissolution of the Chamber of Deputies and the Chamber of Advisors. Civil society, in fact, served as a substitute in the absence of the state in the turbulent aftermath of the revolution. After the revolution, a High Commission for the Achievement of the Objectives of the Revolution, Political Reform and Democratic Transition was set up to serve, de facto, as a legislative body, though the Decree-Law that established this commission gave it only the power to suggest to the President of the Republic draft decree-laws that would subsequently be adopted. All political formations were represented in this Commission, along with representatives from civil society. It was this Commission which drafted Decree-Law 2011-88 with its liberal outlook in line with international standards and human rights principles. Driven by their enthusiasm, many activists gained a rich experience and were trained in various fields of expertise such as elections. Capacity-building was also promoted with the support of foreign experts and international organizations based in Tunisia.

Even after the initial transitional period after the Revolution, civil society has continuously been playing an influential role in terms of policy-making and development. A couple of examples can be cited in this regard :

- » A number of long-established women's associations, hand in hand with new associations created after the revolution, undertook to monitor decisions that might threaten women's rights, and to follow up the process of drafting the new Constitution.
- » The efforts of the National Dialogue Quartet spared the country a civil war, as the Quartet sought to find a platform for dialogue among all influential forces on the political scene, to come out with an initiative based on the principle of peaceful alternation of power, and to draw up a roadmap to which all stakeholders were committed.

Gaining expertise in the associative field has allowed civil society components to shift from a force of protest whose only concern was to stand in opposition to the ruling authorities¹¹⁵ into a force of pressure and suggestion that is actively involved in national issues of public concern. It has thus managed to transcend the classical role it used to play before the revolution as a counter-power that monitored and exerted pressure on the authorities, to assume, after the revolution, a new participatory role that involves taking initiatives and making suggestions.

In view of the new role that civil society is called on to play in the management of public affairs, and in line with the principle of participatory democracy enshrined in the Constitution, the work of associations can acquire more significance when public affairs are not confined to representative or parliamentary democracy that, in the end, has its limitations and cannot alone guarantee a wider and more effective participation of all citizens in decision-making and in the establishment of local authorities. Some consider that this shift in the role of civil society is best reflected through civil society's involvement in taking up social, humanitarian, environmental and human rights challenges and issues, as well as through suggesting needed reforms and pressuring the authorities to adopt them.

A continued dialogue has been engaged with civil society components whose role is no longer limited to providing recommendations regarding draft laws submitted to the legislative committees; they now suggest bills and submit them to the parliamentary committees so that they subsequently use them when drafting

¹¹⁴ According to a study by Ms. Hafidha Chekir, to which Mr. Amine Ghali referred in this conference, Tunisia was one of the most repressive countries in terms of freedom of association. Before the Revolution, out of 9000 associations, only 8 or 9 were independent associations, and 80% of their effort was devoted to ensuring their survival as they were in constant confrontation with the repressive authorities and were continuously placed under control.

¹¹⁵ An association is "a counter-power that seeks to stand against the abuses of the public administration and political authorities. It is, in this sense, a core element of democracy."

See "the public funding of associations", a study prepared by Al-Kawakibi Democracy Transition Center, December 14, p.7.

laws.116

Civil society offered an adequate framework for many dialogues and was involved in peaceful assemblies and sit-ins (Kasba, Bardo ...). It also played a significant role in changing the proposed draft constitution of June 1, 2013, as it expressed reservations with regard to certain provisions dealing with rights and freedoms. A consensus-building committee was then set up outside the elected Assembly to make sure the new Tunisian Constitution would be progressive and protective of rights and freedoms.¹¹⁷ The new Constitution was adopted on January 27, 2014.

The principle of participatory decision-making has been constitutionalized in the Preamble which states the fundamental principles and tenets upon which the Tunisian state is founded. It has been insisted that the country has a republican, participatory system which is one of the requisites for local governance and the promotion of decentralization in the management of local affairs at the level of regions and municipalities. In the same context, article 139 of the Constitution states that "local authorities shall adopt the mechanisms of participatory democracy and the principles of open governance to ensure the broadest participation of citizens and of civil society in the preparation of development programs and land-use planning, and follow up on their implementation, in conformity with the law."

It is to be stressed, in this regard, that civil society has managed to assert its presence in the public arena as a force of suggestion, and has become a key actor in drawing up general policies and laws.

Interaction of civil society with regard to the legislative process follows one of two ways :

- 1/ The Government, being the initiator of legislation, seeks to present its draft laws to the regions of the country and takes into consideration their observations, after having already published the draft law.118 Some of the meetings were important and influenced the law-making process.
 - 2/ Civil society can request public hearings to the Assembly of the People's Representatives. Procedures in this regard are not complicated. CSOs only need to submit a request at the Registry Office of the Assembly, which is then submitted to the specialized committee that will respond to the request. In case the request is not accepted, the concerned CSOs are usually informed thereof and asked to provide the Assembly with their suggestions in writing. It is to be pointed out that hearing sessions with civil society have sometimes hampered the work of the Assembly, which has obliged it to establish a schedule to that end. Applications submitted after the set date are rejected.

The initiatives of associations have had a significant impact in changing some draft laws, especially if the matter was widely debated in the media and evolved into a public opinion issue. The assessment of this type of interaction depends on the achieved results. In some cases, the matter did not go beyond a mere hearing session¹¹⁹. In others, interaction had a genuine impact on certain laws.¹²⁰

Aware of the importance of involving civil society, and following the elections of 2014, the position of Minister in charge of Relations with Constitutional Bodies, Civil Society and Human Rights was created. In January 2016, it was transformed into an independent ministry, regulated by Governmental Decree 2016-465 dated April 11, 2016 which defined its powers and duties. One of the fundamental objectives of this ministry is to promote continuous dialogue between the Government and civil society in line with the principle of participa-

¹¹⁶ The Association of Tunisian Judges, the Union of Judges, the Union of Administrative Judges, and the League of Tunisian Women-voters proposed, to the Assembly of the People's Representatives, bills related to the Supreme Council of the Judiciary.

¹¹⁷ "Over 6,000 citizens, 300 civil society organizations and 320 university representatives provided input to a nationwide dialogue on the new constitution. In a sign of the consensus achieved in the final document, the constitution was eventually approved by an overwhelming 200 of Tunisia's 216 National Constituent Assembly members."

Donia Jemail, "Tunisian civil society : from revolutionaries to peacekeepers"; published in the World Bank Blog, October 15, 2015.

¹¹⁸ Bills relating to transitional justice, electoral law, local collectivities, ...

¹¹⁹ Bill relating to the Supreme Council for the Judiciary.

¹²⁰ Bill relating to access to information

tory democracy.

Under the aforementioned Governmental Decree, the Ministry is in charge of :

- ensuring respect for the freedom to establish, join and act within associations, and to develop associations and preserve their independence;
- establishing adequate mechanisms to promote continued dialogue between the Government and civil society;
- strengthening the relationship between the government and civil society;
- endeavoring to involve civil society in setting national priorities and governmental programs.

Though it includes important principles, the decree mentions an endeavor and not a commitment to involve civil society.

In addition to the aforementioned Ministry, positions have been created at the level of the Presidency of the Republic, the Assembly of the People's Representatives, and the Government, to be in charge of interaction with civil society. Some of the ministries, such as the Foreign Ministry and the Social Affairs Ministry, have created the position of officer in charge of civil society.

- Some associations have highlighted the difficulties they face in terms of communication with local administrative authorities regarding certain matters related to their goals and activities. They also stressed the fact that the involvement of civil society at the local level is only formal, and sometimes selective. They noted that the "Associative Vigilance" indicator is low, and associations have little or no knowledge of the judicial means to settle disputes and are not aware of the need to provide a risk budget for immediate action and response.121
- During the transitional period, civil society has been the safety valve against certain deviations, and monitored the decision-making process in a way that was disturbing but influential. After 2014, there were attempts to regulate and impose some restrictions on the presence of associations in the parliamentary assembly, but under the pressure of civil society, these attempts were always unsuccessful.
- 1/ Since 2011, the legitimacy of governmental initiatives has largely become dependent upon the involvement of civil society. Unilateral governmental initiatives are often met with objection not only from opposition parties but also from CSOs, as was the case with the draft law on the protection of security officers proposed by the Government. The relationship between the Government and civil society oscillates between coordination and cooperation, on the one hand, and opposition and confrontation, on the other hand.
- 2/ The process of institutionalizing dialogue between Government and civil society is not so clearly engaged, despite the existence of bodies within a number of administrations in charge of that dialogue. Most of the time, it is civil society that takes the initiative to demand a hearing session or to provide suggestions.
- **3/** Associations exerted a significant influence especially during the drafting of the new Constitution. With regard to laws, some of civil society's repeated suggestions since 2011 were taken into consideration, such as the principle of horizontal men-women parity in local elections, claimed by many associations, especially those concerned with women's rights.

It should be emphasized, in this context, that many civil society components in Tunisia have acquired tech-

¹²¹ Panel discussion on "the state of associations in Tunisia", organized by Al-Kawakibi Democracy Transition Center in partnership with "Jamaity" association, on April 24, 2016, Golden Yasmine La Kasbah Hotel, Kairouan.

nical expertise in approaching decision-makers and in providing justified recommendations that fall in line with the Constitution and with the international instruments ratified by Tunisia. That is why parliamentary committees find it difficult, from a technical point of view, to reject these recommendations, although they are sometimes rejected for political considerations.

In line with the principle of transparency, the Assembly of the People's Representatives publishes, on its website, all draft laws and related reports before submitting them to the plenary session for approval.. They are normally made available to the public for a reasonable period of time. This policy has also been adopted at the level of ministries through the "Open Government" system established by the Presidency of the Government. All the governmental projects and strategies are made available on the website, pursuant to article 32 of the Constitution according to which "the state guarantees the right to information and the right of access to information and communication networks." In practice, however, though it is possible to have access to programs and strategies, there are organizations that do that only when there is an urgent need to be familiar with a program or strategy that is directly related to their activities. Sometimes they are informed about the availability of the information on the Government's website through the media. Some consider that the Government has not established an efficient communication strategy to inform stakeholders and the public at large of its important programs and strategies.

2. Associations and the right to litigation

Tunisian laws, especially Law 1972-40 dated June 1, 1972 relating to the Administrative Tribunal, guarantee the right of anyone to file a case to the Administrative Tribunal, provided that the conditions of capacity and interest are met. As defined by the Administrative Tribunal, it is the material or moral right or benefit, being established, personal, direct and legitimate, that the plaintiff seeks, through the case he has filed, to protect or obtain.¹²²

Many associations have filed cases before the Administrative Tribunal for having been denied their right to form an association, or for restrictions posed on their activities without any legal basis.

Decree-Law 2011-88 provides for a number of fundamental guarantees, one of which being the right to litigation in all that concerns the goals of the association. This means that governmental decisions related to the association's goals give the association the capacity to be a litigant.

The Administrative Tribunal has looked into many cases and has recognized the capacity and interest of associations to be a litigant.¹²³ A jurisprudential precedent was created in the proceedings initiated by an association concerned with elections (Tunisian Association for Transparent and Democratic Elections) to suspend the execution of a decision that established criteria for the choice of the members of the Independence High Electoral Commission. The Administrative Tribunal accepted the case and recognized the association's capacity to be a litigant as the decision under review fell within its field of interest. The Administrative Tribunal also examined a case filed, pursuant to Decree-Law 2011-88, by the same association concerning the procedures followed by the National Constituent Assembly for the selection of candidates to the membership of the Independent High Electoral Commission. The Administrative Tribunal accepted the case and ruled, on September 19, 2013 in plenary session, to cancel all the procedures followed by the National Constituent Assembly in determining the composition of the Independent High Electoral Commission.

Until present, the Administrative Tribunal has not received many cases with regard to governmental decisions. However, the recognition of the principle is of great importance, as it provides a judicial precedent that can be referred to in future cases, especially in situations where there are laws that may be in contradiction

¹²² Appeal judgement in case No. 26587 dated May 22, 2009.

¹²³ "Landmark decisions in the Administrative judiciary", under the supervision of Mohamed Ridha Ben Hammed, University Publication Center, 2007, decision No. 21, pp. 347-358, Case No.1404-1405 dated July 17, 1989, Union of Central Bank officers v. Governor of Central Bank of Tunisia.

with one another. For instance, the Electoral Law 2014-16 explicitly and clearly identifies the parties that have the right to appeal decisions pertaining to candidacy, electioneering and results. It does not, however, give this right to associations active in this field.

3. Partnership between civil society and the Government

Associations in Tunisia are increasingly involved in public affairs, especially in this decisive period of democratic transition. Some associations are wholly devoted to charitable activities; others, however, are working in the field of advocacy, government accountability and public policies, and have gone beyond the activities related to their specific fields of interest. Many managers and members of associations have received training and have acquired the necessary expertise allowing them to follow-up the process of transition in Tunisia.

There are no restrictions - legally and in practice - on these activities by associations.

In view of the political developments in the country, and after the 2014 elections, the relationship between the Government and civil society has been institutionalized, though the vision remains unclear. One of the most significant developments in the relationship between the Government and civil society was the tripartite dialogue that involved the Tunisian Government, the European Union and civil society representatives (Euro-Mediterranean Human Rights Network; Tunisian General Labor Union; National Bar Association; Tunisian Human Rights League; Tunisian Judges' Association; Tunisian Forum for Economic and Social Rights; Tunisian Association of Democratic Women). Civil society managed to pressure not only the Tunisian Government but also the EU representatives to offer Tunisia a special treatment that differs from the way the EU usually deals with its partners.

Moreover, openness to regional and international initiatives has made it possible to boost partnership between civil society and the Government, through involving some specialized associations in decision-making. For instance, in partnership with civil society experts concerned with women's rights, the Government has drafted a bill on the elimination of violence against women. The presentation of this bill will coincide with an advocacy campaign organized by women's associations. This campaign aims at publicizing the bill not only among decision-makers but also and particularly among concerned women in all regions. It seeks to raise awareness of the importance of adopting it, while refuting all conservative views saying that such a law will not be accepted in society.

This participatory process should not overshadow the existence of problems and challenges in the relationship between civil society and the Government. Sometimes, the Government holds public hearings with civil society participation but without tangible results. Some observers are convinced that the relationship between the state's institutions and civil society is deteriorating, as the scope of dialogue and joint action is narrowing in comparison with the period before 2015. For example, the Minister in charge of Women's Affairs refused to receive a group of women's associations in May 2016, to discuss the bill on the elimination of violence against women.¹²⁴

Government-civil society cooperation and partnership will be more fruitful if they are based on mutual trust and if the principle of transparency is respected. Associations need to have timely access to information, so that they can monitor the process at all its stages, and contribute to the state's efforts. Moreover, civil society's participation and involvement should not be a mere formality, especially seen that the Government has the sole decision-making power and can reject suggestions of civil society. In case of "legitimate rejections", the government must communicate with associations and justify its decision not to include their suggestions.

124 A communiqué, dated May 13, 2016, denouncing the refusal of the Minister of Women, the Family and Children to receive civil society organizations.

Chapter II: CSO cooperation and coalition

Some CSOs coalitions are composed of associations sharing the same objectives, such as the "Alliance for Tunisia's Women", created on September 6, 2012 with the objective of defending women's rights, and the Civic Associations Coalition "Lam Echaml", created on April 29, 2011 with the aim of promoting human rights and gender equality, ensuring separation between state and religion, and protecting freedom of belief and conscience. Other CSOs coalitions took the form of alliances in pursuit of a common goal, such as the National Alliance Against the Death Penalty, created in 2007. Local, development-oriented alliances were also established, such as the alliance of associations in "Menzel Bourguiba", whose purpose is to coordinate the various activities of associations in this town and to provide training to their members in order to ensure an efficient associative action. Other notable coalitions include the CSOs Coalition for the Sustainable Development of Oases, created in November 2011 and more recently the CSOs Coalition in Ben Guerdene.

In addition to those legal entities created in the form of coalitions or alliances, there are more loose coalitions established around issues of public concern such as election monitoring. They typically involve both associations specialized in elections at the national level and local associations that do not necessarily act in the field of elections but may, thanks to their proximity and direct access to the target populations, be involved in election-related activities. Particular mention can be made, in this regard, of the experience of the "League of Tunisian Women Voters" with local associations in Thala, Djerba, Sbeitla, Nabeul and Bizerte.

Coalition-building, in some cases, involves certain difficulties related, in particular, to the 'narcissism' that characterizes the way associations deal with one another, which, in the end, would lead to the failure in the formation of the coalition.¹²⁵ The problems of egos and rivalry in the leadership of the coalition, and failure to share the same choices, goals and visions, have, for instance, thwarted a program for building a coalition of 67 associations in the Governorate of Kairouan. This can only reduce the chances of coalition-building, despite the advantages that CSOs coalitions can offer in terms of sharing of good practices, assistance with litigation, and provision of technical and knowledge support.¹²⁶

Recommendations for successful CSOs coalitions

Coalitions in Tunisia are usually circumstantial, imposed by a general context witnessing political developments. In most cases, their founders do not think of institutionalizing them and ensuring their durability. Adequate criteria should, therefore, be set to ensure the success of CSOs coalitions and preserve them so that they can manage to keep up with all developments.

- Forms of coalition-building : Coalition-building can involve organizations having similar fields of specialization or areas of action. Through coalitions, CSOs share expertise and coordinate to ensure a wider and more efficient coverage of the regions and target populations. A group of CSOs can also form a coalition to address a specific issue from different perspectives, with each CSO contributing with an in-depth treatment of a particular aspect of the issue according to its area of specialization. In that way, coalition-building offers a qualitative input.
- **Methods of coalition-building :** For a successful coalition, there should be a preliminary platform that starts from the minimum agreed-upon and then moves to broader matters. Coalition-building also involves a professional management of the affairs of the CSOs coalition, continuous communication, the establishment of databases, and the follow up of meetings.

¹²⁵ Panel discussion on "the state of associations in Tunisia", organized by Al-Kawakibi Democracy Transition Center in partnership with "Jamaity" association, on April 24, 2016, Golden Yasmine La Kasbah Hotel, Kairouan.

¹²⁶ Panel discussion on "the state of associations in Tunisia", organized by Al-Kawakibi Democracy Transition Center in partnership "Jamaity" association, on May 4, 2016 at the headquarters of "Jamaity" association in Tunis.

- **Technical partnership and fund-raising :** The durability of the CSOs coalition depends on the availability of the needed material, logistical and human resources for its sound management and for preparing all activities within the coalition. Each CSO, as a recognized legal entity, may contribute to the coalition's fundraising action.
- **Coalition-building for setting priorities :** Coalition-building proceeds from an agreed-upon goal to which all efforts and all material and human resources should be devoted, as part of a clear and shared vision.
- **Schedule-based coalition-building :** Setting priorities according to a time-schedule is necessary for establishing short-, medium- and long-term objectives in order to achieve the sought results.
- **Coalition-building through professional management :** A CSOs coalition needs to have an administration to be in charge of organizing the meetings and activities of the components of the coalition, and thus ensure continuous communication and interaction among them.

Chapter III : Taxation

The purpose of taxation is to provide the state with funds, from private individuals and institutions, to finance vital sectors and public facilities. Identifying taxpayers is usually based on the principle of tax equity and fairness, so that taxation should not become a burden that encumbers taxpayers and makes them unable to carry on their activities. Though associations are not profit-making institutions, as explicitly provided for in article 4 of the 2011 Decree-Law, they are subject to several tax obligations in various fields of activity. They are also required to file a declaration of existence in order to obtain a taxpayer identification number.

1. Procedural and formal obligations

Associations are required to register with the tax authorities and to obtain a declaration of existence and obtain a taxpayer identification number. The required documents, along with a certificate of ownership or a lease contract of the association's premises need to be submitted to the tax authorities. It has been observed, however, that tax authorities are reluctant to accept the registration files of association's freedom of activity. Moreover, the associations created before the start of enforcement of the tax registration requirement faced many difficulties, as in some cases they were required by the tax authorities to pay penalties for late payments calculated from the year of the formation of the association which in some cases meant several years.

An association that does not have a tax identification number violates the law and may not, accordingly, enjoy the tax advantages granted to associations. As the administrative authorities are not exerting sufficient control over associations, the contravening associations are threatened with tax inspection that might lead to imposing financial penalties, in addition to the tax obligations established by law.

Associations are required to file a monthly tax return for all taxes to which they are subject, even in case there are no taxes to pay. Compliance with tax obligations (i.e. registration and the monthly tax return) is one of the conditions for access to public funding.¹²⁷

Associations are subject to the same tax procedures applicable to companies. This requirement does not take into consideration the voluntary and non-profit character of the work of associations. Such a situation leads to an excessive administrative burden on associations and often requires them to use the services of accounting and tax specialists, which comes with certain additional costs.

¹²⁷ Decree 2013-5183, setting the standards, procedures and conditions for granting public funding to associations.

2. Tax obligations

2.1 Exemption of associations from the income tax

The tax system related to associations is unclear. With the enactment of Decree-Law 2011-88, associations, as legal entities, are no longer subject to the income tax. Under the 1959 Law on Associations128, associations were subject to the corporate tax. This change has created a discrepancy between associations established under the law of 1959 and those under the decree-law of 2011. The principle of equal treatment is upheld in the 2011 Decree-Law which stipulates, in its transitional provisions, the necessity to update the Statutes of associations formed under the 1959 law so as to bring them in line with the new legislation.

Exception to the rule

Given certain irregularities that have been observed, as some associations are undertaking profit-making commercial activities and are distributing profits over their members while evading taxation, these associations were subjected, pursuant to article 21 of the 2015 Finance Law, to the corporate tax since they have contravened the provisions of the Decree-Law on Associations and have exercised a profit-making activity and distributed profits over their members. However, the article in question was not formulated with sufficient precision as to identify the cases in which association can be subjected to the income tax.

Associations are subject to other fiscal obligations, some of which are procedural, and others concern indirect taxes.

2.2 - Indirect taxes

Associations are not subject to tax deduction at source. They are only subject to a 20% deduction at source on incomes from movable capital (e.g. savings accounts). The association shall withhold taxes at source for the payment of salaries and suppliers in accordance with the law.

Transactions made by associations are subject to the value added tax, except for certain vital fields in the activities of associations, including :

- Operations having a charitable character¹²⁹ carried out by associations¹³⁰;
- Transactions exempt from VAT by their very nature, such as the import, composition, production and sale of newspapers and publications, the import and production of cinematographic films, or the production, and sale of musical instruments and of sound and light devices
- Goods, materials, works and services provided to the association as a donation as part of international cooperation.¹³¹ A VAT Exemption Certificate will be handed over to the association by the territorially competent tax authorities.

As is the case for companies, associations are not subject to taxes on vocational training.

Associations are subject to the tax for the "Fund for the Promotion of Social Housing for Wage-Earners" at the rate of 1% calculated on the basis of the gross wages and salaries paid monthly, including fringe benefits.

The publications of associations are subject to the tax for the "Fund for the Promotion of Competitiveness in Industry, Services and Handicrafts", at the rate of 1% of the turnover exclusive of VAT.¹³²

¹²⁸ See article 45 of the law on income and corporate taxes.

¹²⁹ This point raises many practical problems, as it is difficult to specifically determine whether the association's activities are charitable or non-charitable. In the end, the association is a not-for-profit institution.

¹³⁰ Item 6 of Table A attached to the VAT Code, as amended by article 46 of the 2012 Finance Law, and article 56 of the 2012 Complementary Finance Law.

¹³¹ Item 16 of Table A attached to the VAT Code.

¹³² Article 36 of law 1999-101 relating to the 2000 Finance Law, as amended by articles 15 and 16 of Law 2010-58 relating to the 2010 Finance Law.

Occasional shows organized by the association are subject to the tax on shows, except for:

- Exceptional shows organized for charitable organizations receiving state aid;
- Theatrical or musical shows organized by authorized artistic associations that do not include professional artists, with the aim of promoting art;
- Fairs and events organized free of charge;
- Shows whose ticket price does not exceed an amount to be set by decree.

Associations are not subject to the tax on institutions, but are subject to the tax on built and non-built property, calculated according to the Local Taxation Code. The tax is calculated on the basis of the covered area and the number of services provided by the local collectivity.¹³³

With regard to customs duties, associations do not enjoy any tax benefits, except in case of importing cultural or sports materials, or materials to be devoted to social and educational activities, by sports and socioeducational associations falling under the Ministry of Youth and Sports.

3. Control of associations by tax authorities

Tax authorities have the power to freeze transfers to an association if it is proved that the association has not complied with its tax obligations, through the Budgetary Decision Support System.

Once established, associations must obtain a taxpayer identification number that proves their legal existence. They must also file the required tax returns and pay the aforementioned taxes. Tax authorities may adopt the rescheduling system to help associations fulfill their fiscal obligations.

Unfortunately, the taxation system may have an adverse effect on the work of associations. In fact, an association can find itself paralyzed and its activities suspended following a tax decision issued by the tax authorities in case the association has not fulfilled its fiscal obligations.

4. Weaknesses and practical challenges

With regard to the tax system applicable to associations, many find it unusual to subject public funding to taxation, as this would empty the public subsidy of its essence and utility, and would also encumber the bene-ficiary associations with tax burdens, especially those that pay social security contributions.¹³⁴

Moreover, there are many scattered legal texts pertaining to the taxation system applicable to associations. Associations are granted tax exemptions in the transitional provisions of each legal text. Therefore, each association has to collect all the legal texts having to do with taxation, and check whether it is offered tax exemption or not, something requiring capacity that associations often do not have. For that reason, associations call for adopting a unified taxation code that facilitates the association's fulfillment of its fiscal obligations.¹³⁵

The representatives of some associations also noted that in Morocco, for instance, there is what is called the "public utility status" which allows the association to enjoy considerable VAT exemptions. Moreover, the Tunisian 2014 Finance Law allows any funder having obtained from the Ministry of Culture a license for "funding having a culture character" to recover the VAT amounts.¹³⁶ They demand the extension of this experience to all Tunisian associations without exception.

¹³³ Decree 2007-1185 dated May 14, 2007

 ¹³⁴ Panel discussion on "the state of associations in Tunisia", organized by Al-Kawakibi Democracy Transition Center in partnership with "Jamaity" association, on May 4, 2016 at the headquarters of "Jamaity" association in Tunis.
 ¹³⁵ Panel discussion on "the state of associations in Tunisia", organized by Al-Kawakibi Democracy Transition Center in partnership with "Jamaity"

association, on May 4, 2016 at the headquarters of "Jamaity" association in Tunis.

¹³⁶ Panel discussion on "the state of associations in Tunisia", organized by Al-Kawakibi Democracy Transition Center in partnership with "Jamaity" association, on May 4, 2016 at the headquarters of "Jamaity" association in Tunis.

There are calls for unifying the accounting and taxation system applicable to associations, while alleviating the tax burdens imposed on associations through offering them tax exemptions and benefits, as is the case with foreign organizations and consultancy firms.¹³⁷

Conclusion

The Decree-Law on Associations (No. 2011-88 dated September 24, 2011) was enacted to regulate associative life. It was, in fact, a reaction to the past unfair law on associations. It protects associations from all forms of restrictions that might be imposed on them, and seeks, through the principles enshrined therein, to offer an enabling environment for associative action. It has opted for the system of declaration/notification for the formation of an association, instead of the previous system of authorization. It has offered the right to form an association to any person aged 16 and over, without limiting this right by conditions relating to the person's private life such as the need to prove the absence of any criminal record. It has made associative action an adequate framework within which youth, probably the country's future decision-makers, are, from the age of 13, imbued with the principles of democracy, human rights, and rejection of violence and hatred. The Decree-Law does not subject associations, in their action and activities, to the authorization or funding of the administrative authorities. It rather allows them to receive funding from donors operating in a legal manner, including foreign donors. Under the Decree-Law, freedom of choice is the rule. In the event of dissolution, the association can freely choose to whom it will transfer its properties.

However, the enforcement of this Decree-Law has coincided with political developments that have sometimes strengthened and sometimes weakened associations and associative action. In fact, while the Tunisian Constitution of 2014 has guaranteed freedom of association, expression, thought, opinion, belief and conscience, the fact remains that a series of terrorist events have made it imperative to pass an anti-terrorism law, to declare the state of emergency in the country, and to use the 1969 Law on the Regulation of Public Meetings, Marches, Rallies, Demonstrations and Assemblies.

It is clear that providing a legal environment that promotes associative action depends not only on the laws and regulations in force, important though they are, but also on the complementarity between all the parties involved. Moreover, laws and regulations should be enforced and implemented while adopting a human-rights-based approach which must be guaranteed by an independent judiciary. It follows that reforming laws necessarily requires a highly competent administration that adheres to the principles of neutrality and equality.

On the other hand, to overcome the obstacles that hamper the work of associations in Tunisia, it will be necessary to establish a legislative policy that adopts the human rights approach in regulating associative action without undermining the principle of freedom. It is also important to avoid that legal provisions are too broad and open to discretion, so that these provisions will not be used to restrict or interfere with freedoms.

Moreover, the contradictions between the legal texts issued before 2011 which were, for the most part, restrictive, and other subsequent laws and regulations that were issued after the revolution such as the 2014 Constitution, should be resolved as they are a source of considerable confusion for all the concerned parties.

¹³⁷ Panel discussion on "the state of associations in Tunisia", organized by Al-Kawakibi Democracy Transition Center in partnership with "Jamaity" association, on May 4, 2016 at the headquarters of "Jamaity" association in Tunis.

RECOMMENDATIONS

Recommendations concerning the formation and operation of associations

Recommendations to the Assembly of the People's Representatives /

- Clarify the legal restrictions with regard to the formation of associations, without compromising public freedoms, the principle of civil state, and associative action;
- Criminalize any illegal action aimed at restricting freedom of association;
- Observe the legal period for the formation of associations and for granting them legal personality, and criminalize any refusal to publish the announcement of the formation of an association if all legal requirements are met;
- Reinforce the means of appeal against decisions to refuse registration before the Administrative Tribunal, through expedited proceedings;
- Give every stakeholder the right to demand the judicial dissolution of non-law-abiding associations directly, without passing through the Secretariat-General of the Government to institute the judicial proceedings against the concerned association;
- Bring the provisions of the Decree-Law on Political Parties (No. 2011-87 dated September 24, 2011) in line with the provisions of the Decree-Law on Associations (No. 2011-88 dated September 24, 2011), with regard to criminalizing and providing penalties for political parties that receive funding from associations, instead of penalizing associations only.

Recommendations to the Government /

- Establish clear regulations allowing the concerned institutions to implement the liberal provisions of the Decree-Law;
- Put an end to illegal administrative practices against certain associations, especially at the level of registration (declaration), such as the refusal to publish the announcement in the Official Gazette of the Republic of Tunisia (articles 11, 12, 22 and 28 of the Decree-Law), as well as identify and seek remedies for irregularities in the submission of applications.
- Reinforce the powers of the competent administrative authorities so that they can refuse the formation of 'uncivil' associations that categorically reject the fundamental principles spelled out in articles 3 and 4 of the Decree-Law;
- Set up decentralized regional administrations in charge of associations so as to bring them closer to citizens and to facilitate sensitization, monitoring, and compliance with the law;
- Support the Directorate of Associations with adequate human and financial resources, and promote the training and capacity development of its staff members.

Recommendations to associations /

- Litigate before the Administrative Tribunal to stand against any illegal practices that seek to hamper the registration process;
- Embrace the right to freedom of association whatever the bureaucratic obstacles encountered.

Recommendations concerning access to resources and taxation of associations

Recommendations to the Assembly of the People's Representatives /

- Enforce the provisions of article 65 of the Constitution, and issue an organic law regulating the funding of associations;
- Establish a system of taxation specific and accessible to civil society, or issue a clear policy in order to clarify the taxation system currently in force that is applicable to associations;
- Involve the "Anti-Corruption Commission" in investigating suspicious foreign funds transferred to national associations;
- Offer economic incentives and tax advantages to associations active in the field of socio-economic support;
- Provide financial incentives to associations in the Finance Law and in the State Budget Law, particularly with regard to indirect taxes, as associations are a partner to the state in terms of employment promotion; and offer associations the same advantages granted to companies as part of the encouragement of investment, such as exemption from contributions in return for the employment of disabled persons or the employment of youth, the employers' social security contributions being borne by the state.
- Encourage development-oriented associations active in the economic field, and offer them some of the incentives provided for in the Investment Code, while intensifying control so that these associations do not deviate from their development goals;
- Consider development-oriented as partners in the process of socio-economic development in Tunisia, ensure the good governance of their activities so that they can achieve the goals for which they were established, follow up the implementation of their activities, and penalize all infractions and abuses.
- Set reasonable deadlines, at the level of the Central Bank, for the disbursement of funds;
- Strengthen the independence of the judiciary so that it can fulfill its responsibility in penalizing infractions and abuses, and in providing an enabling environment for associative action.

Recommendations to the Government /

- Grant public funding with transparency as a guiding principle, as required by article 36 of the Decree-Law on Associations and by Decree 2013-5183;
- Avoid any conflict of interests within the public committee in charge of granting public funding, and ensure the representation of civil society within this committee;
- Ensure more transparency in monitoring foreign funding at the level of the Financial Analysis Commission in the Central Bank, the Presidency of the Government, and the Ministry of Finance;
- Exhort the Ministry of Finance to issue the Order setting the accounting standards applicable to associations, pursuant to article 39 of the Decree-Law on Associations;

- Adopt an efficient information and communication policy, at the level of the Secretariat-General of the Government, to publicize laws and regulations governing associative action;
- Draw upon comparative experiences in terms of public funding, grant public subsidies to all associations in a neutral and objective way, and adopt clear and transparent standards in examining applications for public funding by associations;
- Gather and update all the scattered legal texts pertaining to the monitoring of public funding, organize training to familiarize associations with them, comply with the rules set out in these legal provisions, and support inspection bodies to enable them to accomplish their task in accordance with accurate accounting rules based on transparency and the declaration of financial resources;
- Adopt the principle of good governance in the work of the government, through setting up a mechanism
 of coordination between all the ministries and administrations concerned with associative affairs, establish a unified and comprehensive database on associations, adopt an approach that guarantees sound
 management and effective monitoring, and formulate an efficient control strategy, with the fight against
 corruption being one of its core elements;
- Encourage associations to undertake income-generating activities (self-funding);
- Reinforce the human, technical and material resources of public centers concerned with the collection of data and statistics on associations;
- Ensure that the database includes all calls for applications related to public funding, so that associations can submit their applications in a timely way;
- Activate the mechanisms of financial and accounting control, pursuant to articles 34 through 44 (Chapter Six entitled 'financial provisions');
- Limit the broad powers granted to the Minister of Finance with regard to the prosecution of associations on terrorism-related charges, and clearly define his prerogatives pursuant to the Decree-Law on Associations, and ensure judicial control on all potential abuses.
- Develop the means to stand against non-law-abiding associations;

Recommendations to associations /

- Meticulously comply with the legal requirements when submitting declaration applications;
- Submit financial statements to the competent authorities and publicize any foreign funding received;
- Attend all training sessions dealing with the management of associations, accounting systems, and obligations of associations.

Recommendations concerning peaceful assembly

Recommendations to the Assembly of the People's Representatives /

- Repeal Law 1969-4 on the Regulation of Public Meetings, Marches, Rallies, Demonstrations and Assemblies whose provisions are in violation of the 2011 Decree-Law on Associations, and enact a law that guarantees and protects the right to peaceful assembly and that protects demonstrators through a 'republican security';
- Enact a law pertaining to the 'exceptional measures' provided for in article 80 of the Constitution, and repeal the Decree on the State of Emergency or set specific regulations in this regard.

Recommendations to the Government /

- Provide security officers with adequate training on how to deal with peaceful assemblies;
- Break with the policy of impunity in case abuses are committed.

Recommendations to associations /

- Avoid unjustified confrontations with security officers during demonstrations;
- Comply with the legal procedures before holding assemblies.

ASSESSMENT MATRIX

EENA ASSESSMENT MATRIX

Note :

This table serves as a guidance tool for EENA partners to conduct an assessment of their findings and evaluate the situation in terms of a green (enabling), yellow (partially enabling) or red (impeding) flag "ranking". The examples provided in the table are highly context dependent and cannot be seen as universal guides to good or bad practices. However, they intend to provide a sense of the typical situations when law or practice is considered enabling, partially enabling or impeding the work of CSOs in a given country. The rankings will necessarily be subjective and hard to compare across different contexts; the purpose of the ranking is to provide a basis for discussion at the National Consultations and for the Advocacy Plan. For purposes of comparison across countries, it is important to retain justifications for the rankings in the actual country; thus EENA partners will be asked to provide summary information to back up their assessment of various dimensions and the factors within each.

CIVICUS and ICNL welcome any comments and suggestions to improve the usefulness of the Assessment Matrix.

The Enabling Environment National Assessments (**EENA**) are part of the Civic Space Initiative (**CSpI**) implemented by **CIVICUS** in partnership with the International Center for Not-for-Profit Law (**ICNL**), ARTICLE 19, and World Movement for Democracy (**WMD**), with the support from the Government of Sweden.



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	FFNA Accessment Matrix	ment Matrix	
A X. X. X. X. X	Mandatory Dimensions	Dimensions	
Dimension #1 : Formation		No Kok Andrew	
Factual Questions	Green Flag	Yellow Flag	Red Flag
1/ What legal instruments (laws, regulations, decrees, etc.) currently govern(s) the formation of Civil Society Organizations (CSOs) ¹ ?	Few enabling legal instruments; clear, non-overlapping regula- tory regimes	Several legal instruments; some overlap, lack of clarity in regula- tory regimes	Many legal instruments; unclear, overlapping regulatory regimes
2/ Who is legally permitted to serve as a CSO founder? Who is excluded from serving as a founder?	Minimal eligibility requirements (e.g., residency of founders)	Extensive eligibility requirements (e.g. residency and citizenship of (founders	Extremely burdensome eligibil- ity requirements (e.g. citizenship and clean criminal record or license/oc- cupation of founders)
3/ What minimum number of individuals is required to form a CSO? What are the requirements of membership?	Fewer than 5 minimum mem- bers; minimal eligibility require- ments	minimum members; exten- 5-10 sive eligibility requirements	More than 10 minimum members; extremely burdensome eligibility re- quirements
 What procedures are required to register/incorporate a CSO? (A comparison can be made with registering business entities.) 	Minimal registration procedures; comparable with registration of for-profit legal entities	Extensive registration procedures	Extremely burdensome registration procedures
5/ Is there a minimum capitalization requirement to register a CSO?	No minimum capitalization re- quirement (except for a reason- able requirement for founda- tions)	Nominal minimum capitalization requirement for most CSOs and/ or burdensome capitalization requirement for foundations	Burdensome minimum capitalization requirement for associations and/or foundations
6/ What are the specific grounds for rejecting a CSO's application for registration/incorporation? Are such grounds sufficiently detailed?	Minimal, clearly defined grounds for rejecting a CSO's application	Numerous, somewhat unclear grounds for rejecting a CSO's ap- plication	Extensive, vague grounds for reject- ing a CSO's application (excessive discretion accorded to registrar)
7/ Must CSOs adhere to certain cat- egories of purpose before being al- lowed to form; or are some CSOs with certain agendas (human rights protection or democracy-promo- tion, for example) forbidden from forming?	No restrictions on CSO's pur-	Requirement that CSOs adhere to purposes stated in the law	Restrictions on CSO's purpose; prohi- bition of certain purposes

8/ Can registration decisions be appealed? If so, how frequently are registration decisions appealed? What are the results?	Clear, available means for unbi- ased appeal	Somewhat unclear or unavailable means for appeal; biased review (appeal is to the registrar or other implicated official)	No means for appeal
9/ What documentation is required for a CSO's incorporation/registration?	Minimal documentary require- ments (such as basic contact in- formation and bylaws)	Extensive documentary require- ments (e.g., minutes of founders' meeting, ministerial certification, detailed statement of purpose/ activities)	Extremely burdensome documentary requirements (contact information for all board/members/staff/partici- pants, workplans, statement of as- sets)
10/ Are CSOs required to regularly renew their registration?	No renewal required	Renewal required every few years	Renewal required annually
11/ What registration fees are re- quired?	No or nominal registration fees	Nominal registration fees; com- parable with private sector regis- tration fees	Burdensome registration fees; ex- cessive compared to private sector registrations fees
12/ What is the approximate cost to register a CSO, and how long does the process typically take?	Nominal registration costs; clear deadlines in the law; less than 30 days	Burdensome registration costs; unclear deadlines for the regis- trar; 30-90 days	Prohibitive registration costs; unclear or no deadlines for the registrar; more than 90 days
13/ How many CSOs are currently reg- istered?	Please include your own assessme - The # of CSOs registered, - The # of CSOs/1000 people, - The % of pending applications; or another relevant indicator.	nclude your own assessment of the situation based on : # of CSOs registered, # of CSOs/1000 people, % of pending applications; ner relevant indicator.	
14/ Are there draft laws or regulations that, if adopted, would restrict or, alternatively, ease the formation of CSOs? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.	Pending legislation / regula- tions that will significantly ease the formation of CSOs	Pending legislation/regulations that may restrict the formation of CSOs	Pending legislation/regulations that will severely restrict the formation of CSOs

Perception Questions	Green Flag	Yellow Flag	Red Flag
1/ Is the entity responsible for regis- tering CSOs sufficiently funded and staffed?	Yes	Some lack of capacity/resources	Unable to fulfill mandate
2/ Is registration easily accessible? E.g., are there sufficient locations/ centers around the state for reg- istering CSOs, or is the process all done electronically?	Yes	Registration difficult to access for many CSOs	Registration accessible to only a few CSOs
3/ What non-legal and/or non-govern- mental barriers, such as slow or ineffective bureaucracies, inability to access funds, or difficulty buying/ leasing property, affect the forma- tion of CSOs?	No non-legal or non-govern- mental barriers to formation	Some non-legal and/or non-gov- ernmental barriers to formation, such as unreasonable bureau- cratic delays that make it signifi- cantly more difficult to form a CSO	Prohibitive non-legal and/or non- governmental barriers to formation, such as banks refusing to work with CSOs, that create a significant barrier to entry
4/ To what extent is there a perception of excessive discretion, favoritism (political, ethnic, religious, etc.), and/or corruption in the registration process?	None	Some perceived unfairness (dis- (cretion, favoritism, corruption	Widespread perceived unfairness (discretion, favoritism, corruption)
Dimension #2 : <i>Operation</i>		- A A A A A A A A A A A A A A A A A A A	
Factual Questions	Green Flag	Yellow Flag	Red Flag
1/ What law(s) directly govern(s) the operation of CSOs? Do any other laws affect or influence the opera- tion of CSOs?	Few enabling laws; clear, non- overlapping regulatory regimes	Several laws; some overlap, lack of clarity in regulatory regimes	Many laws; unclear, overlapping reg- ulatory regimes
2/ Are CSOs required to notify the gov- ernment of any meetings? If so, of each meeting or only key meetings? Are they required to notify the gov- ernment of the list of candidates for the board of directors? Of the re- sults of elections?	No/minimal required notifica- tion (i.e. only in case of changes in the board of directors or legal representatives of the CSO)	Some notification requirements beyond the minimal ones	CSOs required to notify the govern- ment of all meetings, elections, elec- tion results
3/ Are CSOs required to submit period- ic reports to the government? What kind of reports – e.g. activity or fi- nancial reports –, and how often?	Annual reporting appropriate to CSO's size	Multiple and/or extensive annual reports required	Extremely burdensome, frequent re- porting required

4/ Are CSOs required to periodically report to the government for any other reasons? What reasons and how often?	No/minimal other reporting	Some other reporting required	Extremely burdensome, frequent other reporting required
5/ Are CSOs subject to government audits or inspections? How often, and what types?	Annual audits; small CSOs ex- empt	Annual audits regardless of size; risk of unwarranted inspection	Frequent and/or politically-motivated audits, unwarranted inspections
6/ What types of information are CSOs required to publicly disclose?	No/minimal other disclosure required (e.g., use of public re- sources)	Some other disclosures required (e.g., salaries of lead officials)	Extensive other disclosures required (e.g., names of all members)
7/ What administrative requirements affect the operation of CSOs?	Minimal, clear administrative re- quirements, such as basic docu- mentation of the CSO and a con- tact person	Several, somewhat unclear ad- ministrative requirements, such as certifications from multiple sources	Many, unclear administrative require- ments making it prohibitively difficult to abide by the rules
8/ Are CSOs mandated to align their activities with governmental priorities as defined in national development plans?	No alignment required	Some alignment required (e.g. for certain types of CSOs)	Full alignment required; and/or non- alignment is penalized
9/ On what grounds is the government legally permitted to terminate or dissolve a CSO? Is there an opportunity to appeal this decision?	Very limited grounds for termi- nation/dissolution; sufficient opportunity to unbiased appeal	Many, somewhat unclear grounds for termination/dissolution; limit- ed availability of unbiased appeal	Extensive, vague grounds for termi- nation/dissolution; no means for un- biased appeal
10/ On what grounds can a CSO be vol- untarily dissolved?	No limitation on voluntary disso- lution	Some limitation on voluntary dis- solution	Voluntary dissolution prohibited
11/ Are there draft laws or regulations that, if adopted, would restrict – or, alternatively, ease - the operation of CSOs? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.	Pending legislation/regulations that will significantly ease the operation of CSOs	Pending legislation/regulations that may restrict the operation of CSOs	Pending legislation/regulations that will severely restrict the operation of CSOs

Perception Questions	Green Flag	Yellow Flag	Red Flag
1/ What level of oversight does the government have over CSOs? Ex- tensive, moderate, or light?	Light, e.g. required annual re- porting with rare, justifiable ad- ditional oversight	Moderate, e.g. frequent reporting requirements, permits for certain activities, and/or frequent inspec- tion or auditing	Extensive, excessive reporting and permission requirements and near-constant oversight;
2/ In practice, do the legal and admin- istrative requirements referred to above act as impediments to the productive operation of CSOs? Are they helpful to the daily operation of CSOs?	Helpful administrative require- ments [e.g., reasonable docu- mentation related to claiming tax benefits]	Administrative requirements somewhat impede CSO's opera- tion (e.g., requests for additional information once the legally re- quired reports are submitted; slow bureaucracy holds up CSO activities etc.) and/or more than 20% of total staff time devoted to compliance.	Administrative requirements severely impede CSO's operation (e.g. detailed reports on CSO events required for the government; frequent audits on a range of regulations - labor, tax, so- cial security etc.); and/or more than 50% of staff time devoted to compli- ance.
3/ Are there non-legal grounds that, in practice, the government uses or cites to terminate or dissolve a CSO? In practice, how have such termina- tions been conducted: according to the law or otherwise?	No non-legal grounds for termi- nation/dissolution	Non-legal grounds, such as poli- cy directives, sometimes used to terminate/dissolve CSOs	Non-legal grounds, such as action without any stated justification, fre- quently used to terminate/dissolve CSOs
4/ Is there a history of state harassment of CSOs for allegedly not adhering to administrative and/or legal requirements? Is there a history of state harassment of CSOs for other reasons or in general?	No history of harassment	Some history of harassment	Frequent harassment

Dimension #3 : Access to Resources	ine anvironment		
a. General questions about the fund Formal Original		Vallow Hlow	Dad Hor
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1/ Which financial resources do CSOs have legal access to: State funds? Earned income? Donations? Foreign donor funding? Other?	No limitation on funding	Some limitations on funding (e.g., legal requirements related to cer- tain income types or volumes of income)	Burdensome limitations on funding (e.g., key funding sources of CSOs are inaccessible)
2/ What legal barriers hinder access to each of these potential sources of funding?	No legal barriers to funding	Some legal barriers to funding (e.g., must register to receive foreign funding; must establish a company to generate any earned income;)	Burdensome legal barriers to funding (e.g. may not receive foreign funding; may not engage in economic activi- ties)
3/ Do laws and/or regulations prohibit CSOs from distributing profits or otherwise providing inappropriate private benefit to officers, directors, or other insiders?	Clear prohibition on profit distri- bution, private benefit	Somewhat unclear regulation of profit distribution, private benefit	Vague regulation of profit distribu- tion, private benefit
 4/ Upon dissolution or termination, what happens to a CSO's assets? What laws and/or regulations affect distribution of assets upon dissolu- tion? 	Few, clear enabling laws on CSO assets after termination/disso- lution	Multiple or unclear laws on CSO assets after termination/dissolu- tion; some space for governmen- tal discretion on use of assets	Nonexistent or vague laws on CSO assets after termination/dissolution; ample space for governmental discretion on use of assets
5/ Are there draft laws or regulations that, if adopted, would restrict – or, alternatively, ease – CSOs access to resources? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.	Pending legislation/regulations that will significantly ease CSOs' access to resources	Pending legislation/regulations that may restrict CSOs' access to resources	Pending legislation/regulations that will severely restrict CSOs' access to resources
Perception Questions	Green Flag	Yellow Flag	Red Flag
1/ What non-legal and/or non-gov- ernmental barriers hinder access to each of the potential sources of funding for a CSO?	No non-legal or non-govern- mental barriers to funding	Some non-legal and/or non-gov- ernmental barriers, such as an under-developed banking sys- tem, lack of CSO fundraising ca- pacity	Burdensome non-legal and/or non- governmental barriers, such as fi- nancial transaction restrictions, lack of CSO fundraising capacity

2/ How reliable is a CSO's access to legally permissible funds? And how freely available are these funds?	Reliable, available funds	Unreliable, somewhat unavail- able funds	Extremely unreliable, limited avail- ability of funds
3/ How much does a CSO's financial sustainability depend on government oversight and approval?	Not at all (as long as CSO com- plies with reasonable regula- tions)	Somewhat (e.g., government can exercise discretion in approving or influencing access to certain sources for CSOs)	Entirely (e.g., government has control over key resources of CSOs; and/or resources are prohibited)
4/ How effectively does the legal and policy framework support the mobi- lization of local resources?	Effectively, e.g., the government takes measures to encourage lo- cal philanthropy	Somewhat effectively, e.g., the laws allow donations but do not incentivize them	Not at all effectively, laws hinder phi- lanthropy or it is otherwise not pos- sible to practice philanthropy
5/ Does government and donor fund- ing support the full range of CSO programming and activities, includ- ing e.g., innovation, core funding, policy development and advocacy?	Yes, such funds are generally available	Limited availability of such funds (e.g., only from a couple of donors or for a few types of CSOs)	Such funds do not exist or are re- stricted to a very small group of CSOs
6/ What type of source of funding are CSOs most dependent on?	A variety of funding sources	Few/not sustainable funding sources	One or no funding source
7/ What is the perceived reliability of different sources of funding? (or what source of funding is more reliable for CSOs)	A variety of reliable funding sources	A few reliable funding sources	No reliable funding sources
8/ Are you seeing any recent changes in the funding environment at the national level? What are the impacts of any changes on CSOs?	Funding environment is improv- ing or already enabling and likely to remain so	Funding environment deteriorat- ing and/or at risk of significantly deteriorating	Funding environment significantly deteriorating
b. Government funding	a solate and	M. M. M. M. M.	
Factual Questions	Green Flag	Yellow Flag	Red Flag
1/ Is government funding currently available for CSOs? If so, is it available for any type of CSO or are there special types of CSOs that are supported by the government?	Government funding generally available	Government funding somewhat available (e.g., from certain de- partments for certain types of CSOs)	Practically no government funding available

c. International funding			North Nelling
Factual Questions	Green Flag	Yellow Flag	Red Flag
 Are there different standards/re- quirements for accessing foreign sources of funding versus domestic sources of funding? 	No additional criteria/require- ments for foreign funding	Some additional criteria/require- ments for foreign funding [e.g., separate registration require- ment]	Burdensome additional criteria/re- quirements for foreign funding (e.g., need to align activities to government plans)
2/ What are legal barriers to access- ing and using foreign resources by a CSO, if any? E.g. is there govern- ment notification and/or oversight required to acquire foreign fund- ing? Are there additional reporting requirements when using foreign funding?	No legal barriers to foreign fund- ing	Some legal barriers to foreign funding (e.g., notification requirement) ment)	Burdensome legal barriers to foreign funding (e.g., permission and oner- ous reporting requirements)
3/ Are there bilateral or multilateral agreements in place that affect foreign donors' ability to donate and establish partnerships with CSOs? If yes, what kind of agreements are they [statement of medium to long-term commitment to a relationship; funding framework, etc.]	Bilateral and/or multilateral agreements facilitate access to foreign funding	Few bilateral/multilateral agree- ments regarding foreign funding	No or restrictive bilateral or multi- lateral agreements regarding foreign funding
Perception Questions	Green Flag	Yellow Flag	Red Flag
1/ What non-legal barriers to receiving foreign funds exist in practice?	No non-legal barriers to foreign funds	Some non-legal barriers to for- eign funds (e.g. complex applica- tion and reporting processes)	Prohibitive non-legal barriers to for- eign funds (e.g. complex application and reporting processes; dramatic decrease in donor funding)
2/ Has the overall state of governance and rule of law in the country affected donor's contribution to CSOs? If so, how?	Overall governance and rule of law encourages donors	Overall governance and rule of law a risk for donors	Overall governance and rule of law prohibitive for donors

d. Philanthropy	PAR AND A	A New York	1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1
Factual Questions	Green Flag	Yellow Flag	Red Flag
1/ What are the laws and/or regula- tions specifically addressing philan- thropy?	Few, clear laws/regulations en- courage philanthropy	Multiple, somewhat unclear laws/ regulations regarding philanthro- py	Many and/or vague laws/regula- tions regarding philanthropy
2/ Are tax exemptions available to those who engage in philanthropy?	Tax exemptions easily available	Limited tax exemptions available	No tax exemptions available
3/ Are CSOs permitted to be the recipients of both corporate and individual philanthropy?	Yes, under reasonable criteria (e.g., charitable purposes)	Some unreasonable or unfavor- able restrictions on CSOs as re- cipients of corporate and/or in- dividual philanthropy (e.g. must provide a report to every single donor)	Burdensome restrictions on CSOs as recipients of corporate and/or indi- vidual philanthropy (e.g., annual re- registration as charity to be eligible)
Perception Questions	Green Flag	Yellow Flag	Red Flag
1/ Does the legal and regulatory framework encourage philanthro- py? If so, how? If not, how?	Yes basic laws are in place to provide tax benefits for dona- tions, options to create founda- tions and endowments, volun- teering	Somewhat – e.g., donations and volunteering are allowed but there are no incentives or the procedures are burdensome or unclear	No – prohibition (in law or in prac- tice) of donations and/or volunteering (e.g., lack of legislation resulting in a de facto prohibition)
2/ Is there a philanthropic tradition? What encourages it? What discourages it?	Yes	Somewhat	No
3/ Do CSOs regularly fundraise from the domestic public or corpora- tions? Do CSOs have fundraising ca- pacity? Or capacity to diversify their funding?	Yes - e.g., there are established practices or well-known ex- amples of domestic fundraising, and an increasing level of CSO income is from domestic philan- thropic sources	Somewhat – e.g., there is growing awareness of the importance of domestic fundraising, some "pio- neering" organizations and suc- cessful programs to build such capacity of CSOs	No – e.g., the vast majority of CSOs are not allowed to conduct, or neglect to conduct domestic fundraising
4/ Do individuals regularly donate to CSOs?	Yes – e.g., people regularly do- nate to a variety of CSOs or there is at least a broad segment of CSOs that receive such dona- tions (e.g. humanitarian, chil- dren's etc.)	Somewhat – e.g., there is a grow- ing trend in donations to CSOs, e.g., with a focus on more "popu- lar" causes	No - regular donations are insignifi- cant in the income of most CSOs
5/ Do corporations regularly donate to CSOs?	Yes - e.g., companies regularly donate in various forms (money, in-kind, expertise) to a variety of CSOs	Somewhat – e.g., there is at least a group of companies that intro- duced giving programs	No – company donations are insignifi- cant in the income of most CSOs

Dimension #4 : Expression		00.00.00.00	00000000
Factual Questions	Green Flag	Yellow Flag	Red Flag
1/ What laws affect a CSO's ability to freely express their opinions? What rights are guaranteed under the existing legal framework, includ- ing the constitution, with respect to expression, including access to the Internet?	No/minimal restrictions on CSOs' expression, restrictions in conformity with international norms	Some restrictions on CSOs' ex- pression	Stifling restrictions on CSOs' expres- sion; clear violation of international norms
2/ Which international treaties have been ratified that affect the ability to publicly express oneself? What treaties have been ratified that af- fect the right to access the Internet?	All relevant treaties have been ratified (UDHR, ICCPR, regional HR treaties)	All or most relevant treaties are or will be ratified in the near fu- ture	Few or no relevant treaties have been ratified or are likely to be ratified in the near future
3/ What laws and/or regulations regulate the content of expression? What restrictions are placed on this content [i.e., restrictions for national security, "fighting words", commercial speech, obscenity)?	Few, clear laws place minimally regulate expression in conformi- ty with international norms	Multiple and/or somewhat un- clear laws regulate expression	Many and/or vague laws stifle ex- pression
4/ Are there time, place and manner restrictions placed on expression?	No/minimal time, place and manner restrictions	Some time, place and manner re- strictions	Burdensome/stifling time place and manner restrictions
5/ What legal barriers, if any, hinder a CSO's ability to openly express its opinions, particularly on matters critical of government policies?	No/minimal legal barriers to CSOs' expression	Some legal barriers to CSOs' ex- pression	Prohibitive/stifling barriers to CSOs' expression
6/ Are there draft laws or regulations that, if adopted, would restrict – or, alternatively, ease – CSOs' freedom of expression? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.	Pending legislation/regulations that will significantly ease the expression of CSOs	Pending legislation/regulations that may restrict the expression of CSOs	Pending legislation/regulations that will severely restrict the expression of CSOs

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1/ What non-legal barriers hinder a CSO's ability to openly express its opinions?	No non-legal barriers to expres- sion	Some non-legal barriers to ex- pression (e.g. limited number of independent media outlets that	Prohibitive/stifling non-legal barriers to expression [e.g., fully government controlled news and internet media]
		will give space to USU voices)	
2/ Is open criticism of government pol- icies and practices tolerated? What, historically, has been the reaction of the government to such open criti- cism?	Public criticism is tolerated	Public criticism is condemned by the government and/or occasion- ally retaliated	Public criticism is prohibited by the government and if it happens, it is promptly retaliated
Are individuals and CSOs aware of their rights with respect to expres- sion? Does the political culture openly support these rights? Or are they actively suppressed regardless of legal protections?	Individuals and CSOs are aware of their rights; political culture supports free expression	Many individuals and CSOs are aware of their rights; political culture frowns on free expression	Few individuals and CSOs are aware of their rights; political culture hin- ders free expression
Dimension #5 : Peaceful Assembly	NUN UNIV	A CONTRACTOR OF A CONTRACTOR	
Factual Questions	Green Flag	Yellow Flag	Red Flag
1/ What laws address the rights to peaceful assembly, including do- mestic legislation/regulations and international treaties to which the country is a signatory?	Few, clear enabling laws gov- erning assemblies; all relevant treaties have been signed and ratified	Multiple, somewhat unclear laws governing assembly; some rel- evant treaties have been signed and ratified	Many, vague laws governing assem- bly; many relevant treaties have not been signed or ratified
2/ Are there limits placed on who can assemble? Are groups with certain agendas or orientations forbidden from assembling?	No/minimal limits on who can assemble; limitations in confor- mity with international norms	Some limitations on who can as- semble; limitations may be un- reasonable, vague or allow for government discretion	Prohibitive limitations on who can as- semble (e.g. groups promoting cer- tain issues or affiliations are not al- lowed to assemble); clear violation of international norms
3/ Are individuals or CSOs planning a strike/protest required to seek permission or notify the government in advance of the strike/protest?	No permission or advance notice required, except reasonable ad- vance notice to local authorities e.g., if the protest would block traffic or security is requested; however, spontaneous assem- blies allowed	Advance notice always required and/or should be provided to mul- tiple authorities; spontaneous as- sembly not allowed	Permission required

	place No/minimal limits on time place Some limits on time place and	e nlace and Prohibitive limits on time place and	in time place and
Violence is avoided and con- tained; security response is pro- portionate Pending legislation/regulations that will [significantly] ease the right to peaceful assembly No history of violence or aggres- sion Crean Flag Sion Criticism and protest are toler- ated Few, clear laws protect internet freedom; no restrictions on the ability to ac-	and manner of assembly		lya
Pending legislation/regulations Pending that may reacting that may reacting that may regulations right to peaceful assembly Pending that may reacting that may regulations No history of violence or aggres- Some history of violence or aggres- Sion Criticism and protest are toler- Criticism ated ated Multiple, some restrictions on the ability to ac- Multiple, some restrictions on the ability to ac-	Violence is avoided and con- tained; security response is pro- portionate	ll contained; Violence is escalated; se s not strictly sponse is disproportionate	ated; security re- rtionate
Green Flag No history of violence or aggres- sion criticism and protest are toler- ated Criticism and protest are toler- ated Few, clear laws protect internet freedom; no restrictions on the ability to ac-	Pending legislation/regulations Pending that will (significantly) ease the that may right to peaceful assembly	tions Pending will seve	legislation/regulations that rely restrict assemblies
No history of violence or aggres- sion Criticism and protest are toler- ated ated Few, clear laws protect internet freedom; no restrictions on the ability to ac-	Green Flag Yellow Flag		Red Flag
Criticism and protest are toler- ated	No history of violence or aggres- sion	or ag-	Frequent instances of violence or ag- gression
Green Flag Few, clear laws protect internet freedom; no restrictions on the ability to ac-	Criticism and protest are toler- ated	are con-	Criticism and protest are met with re- prisals
Green Flag Few, clear laws protect internet freedom; no restrictions on the ability to ac-	LON AN AN ANAN AN AN	S. Nor Con Con	
Green Flag Few, clear laws protect internet freedom; no restrictions on the ability to ac-	lom on one of the second se		
Few, clear laws protect internet freedom; no restrictions on the ability to ac-	Green Flag		Red Hag
cess the internet			Many, vague laws governing internet access; severe restrictions on inter- net access

Prohibitive technical barriers to in- ternet access	Prohibitive technical barriers to mobile phone access	State severely limits access to content on the internet (dissent or non-traditional social practice is (mostly blocked	Internet and mobile phone access have been shut down by the state once or more times	Pending legislation/regulations that will severely restrict internet freedom	Red Flag	Internet freedom is severely lim- ited	Internet rarely used for advocacy and mobilization
Some technical barriers to internet access	Some technical barriers to mobile phone access	Some content is blocked by the state (moral or politically objectionable content is sometimes blocked)	The state has threatened or at- tempted to shut down Internet and mobile phone access; shut down has been limited to some sites	Pending legislation/regulations that may restrict internet free- dom	Yellow Flag	Some internet freedom is toler- ated	Internet occasionally used for ad- vocacy and mobilization
No technical barriers to internet access	No technical barriers to mobile phone access	No/minimal content is blocked by the state (e.g., child pornog- raphy, other explicitly criminal content)	Internet and mobile phone ac- cess have never been shut down by the state	Pending legislation/regulations that will (significantly) ease in- ternet freedom	Green Flag	High level of internet freedom is tolerated	Internet commonly used for ad- vocacy and mobilization
2/ Are there technical barriers [e.g. centralised infrastructure, state- run monopolies, state control of fibre optic cables and copper wires) to internet access?	3/ Are there technical barriers (e.g. centralised infrastructure, state- run monopolies, state control of fibre optic cables and copper wires) to mobile phone access?	4/ Does the state place limits on in- ternet content by blocking access to information on the World Wide Web concerning social and political is- sues?	5/ In times of political crisis, has there been a shutdown of the internet or mobile phone access?	6/ Are there draft laws or regulations that, if adopted, would restrict - or, alternatively, ease - internet free- dom? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.	Perception Questions	1/ In practice, what level of Internet freedom is tolerated in the country?	2/ Is internet - email, social media tools - used as a common tool by CSOs and citizens for advocacy and mobilization purposes?

Dimension # 7 : Government-CSO Relations	clations	M. Sol M. N. N.	00,001,001,000
Perception Questions	Green Flag	Yellow Flag	Red Flag
1/ To what extent are CSOs permitted to engage in the political (electoral) process? E.g., are they permitted to nominate candidates for public office? Support or oppose political parties/candidates? Fundraise for political parties/candidates? If so, under which conditions?	CSOs generally permitted to en- gage in political process; few, clear enabling laws governing CSOs and the political process, which establish reasonable limi- tations (e.g., CSO may not be eli- gible for tax benefits if engages in the political process; must disclose funding provided to a political party)	CSOs are generally allowed to en- gage in the political process but there are multiple and/or unclear laws governing CSOs and the po- litical process that allow for gov- ernment discretion	CSOs prohibited from engaging in the political process; or total lack of leg- islation / many, vague laws governing CSOs and the political process result- ing in a de facto prohibition
2/ To what extent are CSOs allowed to participate in public policy activi- ties? Are they allowed to advocate (campaign) and lobby for legisla- tion? If so, under which conditions?	CSOs allowed to participate in public policy activities; advocacy and lobbying are permitted with no/minimal restrictions [e.g., CSO must disclose its lobbying efforts]	CSOs are partially allowed to par- ticipate in public policy activities; vague laws allow for government discretion; there are some un- reasonable restrictions on advo- cacy and lobbying activities (e.g., must obtain government permis- sion to organize an event)	CSOs, or a significant segment of CSOs, are forbidden from participat- ing in public policy activities, includ- ing advocacy and lobbying
3/ What are legal / institutionalized op- portunities for CSOs to participate in the decision-making process? E.g., are there open hearings, con- sultations, multi-stakeholder work- ing groups?	Multiple legal/institutional op- portunities for CSOs to partici- pate in decision-making pro- cesses on a regular basis	Limited legal/institutional oppor- tunities for CSOs to participate in decision-making processes (e.g. only one department organizes such forums; only CSOs with a large membership are allowed to participate in such forums etc.)	No or insignificant legal/institutional opportunities for CSOs to participate in decision-making processes
4/ To what extent are there compacts, liaison officers, committees, or oth- er similar mechanisms to promote cooperation and communication be- tween government and civil society?	At least one well-functioning mechanism available to promote cooperation and communication between government and civil society	At least one mechanism to pro- mote cooperation and communi- cation between government and civil society is being considered, or exists with some challenges in its implementation	No mechanisms available to promote cooperation and communication be- tween government and civil society
5/ Are there draft laws or regulations that, if adopted, would inhibit – or, al- ternatively, ease – government-CSO relations? If so, please summarize the content of the key provisions and in what stage of the legislative pro- cess it currently stands.	Pending legislation/regulations that will [significantly] ease the government-CSO relations	Pending legislation/regulations that may restrict government- CSO relations	Pending legislation/regulations that will severely restrict government- CSO relations

7/ Does the Government view CSOs as partners and allies in their own work, or as potential threats to their agenda?	CSOs are viewed by government as partners	CSOs are sometimes viewed by government as partners and sometimes as a threat, or largely ignored	CSOs are generally viewed by govern- ment as a threat
8/ Are CSOs capable of participating in a broad range of public policy initia- tives and activities, or are they re- stricted by non-legal barriers to a narrow range of circumscribed ac- tivities?	No/minimal non-legal barriers to CSOs public policy participa- tion (e.g., government denounc- es CSOs but does not prevent them from participating)	Some non-legal barriers to CSO public policy participation de- pending on the type of activity or policy issue involved (e.g., par- ticipation mechanisms only exist in a few "less sensitive" areas, such as humanitarian aid or child welfare; and/or CSOs are not well organized to participate)	Severe non-legal barriers to CSO public policy participation (e.g., raid- ing CSO premises, harassment or in- carceration of CSO leaders and mem- bers; CSOs lacking basic capacity to participate)
9/ Have there been any significant changes in relations between civil society and the government in your country in the last two years? If so, please describe these.	Relations between civil society and government have improved in the last two years	Relations between civil society and government have deteriorat- ed somewhat in the last two years	Relations between civil society and government have deteriorated sig- nificantly in the last two years
10/ Have any global events or process- es in the past two years affected state-civil society relations at the national level? If so, how? (i.e. The Aid effectiveness debate, etc.)	Global events / processes affect- ed state-civil society relations in a positive way (e.g. government involved CSOs in planning for de- velopment)	Global events/processes have not affected state-civil society relationship; or have had a con- troversial effect (e.g. a restrictive draft law that was successfully rebuked)	Global events or processes had an adverse effect on state-civil society relations (e.g., a restrictive law on foreign funding was adopted as part of an international counter-terrorism initiative)
11/ What conditions do you feel need to be in place to allow for a good and effective relationship between state and civil society?			
Dimension # 8 : CSO Cooperation and Coalition	id Coalition	No. No. No. No.	
Factual Questions	Green Flag	Yellow Flag	Red Flag
1/ Do(es) the law(s) governing CSO operations similarly regulate co- alitions of CSOs working together? Does the law(s) allow or prohibit such groupings? Does it encourage or hinder without outright prohibit- ing such groups?	Few, clear enabling laws facili- tate coalitions; or law is silent on coalitions without presenting ob- stacles to their formation	Law inhibits coalitions (e.g., par- ticipation opportunities are only open for individual CSOs, not co- alitions);	Law forbids coalitions directly or in- directly (e.g., legal entities may not form an association; mandatory reg- istration of groupings etc.); or en- forces coalitions (e.g. prescribes a nation-wide CSO umbrella body with mandatory membership)

2/ Are domestic CSOs legally able to partner with foreign CSOs, and vice versa? If not, what are the condi- tions for cooperation? What level of government oversight/notification is required, if any, for such alliances?	International partnerships are allowed or facilitated	Some restrictions on internation- al partnerships (e.g., government notification required)	Burdensome restrictions on interna- tional partnerships (e.g., government permission or presence required)
3/ Are coalitions, platforms or simi- lar voluntary groups of CSOs, com- mon? Are such coalitions often found working together for a com- mon agenda?	Coalitions are widespread and mostly effective	Coalitions are rare and some- times ineffective	Coalitions are rare and/or usually in- effective
4/ Have CSOs adopted any means of voluntary self-regulation? ² If so, please describe this shortly.	CSOs have adopted clear, en- abling, and effective means of voluntary self-regulation; or those are now being developed through an inclusive, participa- tory process	CSO self-regulation is not vol- untary (e.g., undertaken to fulfill government expectations) and/or effective (e.g. principles were ad- opted but are not complied with)	No voluntary CSO self-regulation
5/ Are there draft laws or regulations that, if adopted, would restrict - or, alternatively, ease - CSO coopera- tion or coalition-building? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.	Pending legislation/regulations that will significantly ease coop- eration and coalition-building	Pending legislation/regulations that may restrict cooperation and coalition-building	Pending legislation/regulations that will severely restrict cooperation and coalition-building
Perception Questions	Green Flag	Yellow Flag	Red Flag
1/ What is the nature of the relation- ship between and among CSOs? Are they able and willing to cooperative- ly work with one another? Are there certain sectors [e.g. environment, women, human rights etc.] where this is more typical than others?	CSOs are generally cooperative; some sectors show a good mod- el that others aim to follow	There are some examples of co- operation, but it is generally a challenge; well-organized sec- tors are isolated from the rest of the organizations	CSO cooperation is rare; there are factors that severely restrict coop- eration [e.g., security, government harassment]; and/or there are deep divisions in the sector that prevent it from cooperation

² A Civil Society Organization (CSO) is defined, for the purposes of this assessment, as a formalized group of individuals that are independent of government and do not function as for-profit businesses. Owing to the fact that different legal frameworks govern their formation, CSOs in this assessment do not include trade unions, political parties, or communities of worship.

Dimension # 9 : <i>Taxation</i>	Now we want	00.00100.00	00,00,00
Factual Questions	Green Flag	Yellow Flag	Red Flag
1/ What taxes are imposed on the in- come of CSOs? Do they affect their earned income, grants, invest- ments, or purchased goods and services?	Few, clear enabling tax laws that provide exemptions on non- economic income of CSOs (e.g., grants, donations, membership fees are not taxed)	Multiple, somewhat unclear tax laws; non-economic income may be taxed - regulations allow for government discretion in deter- mining taxable income	Many, vague tax laws and regulations; all CSO income is taxed regardless of it source or purpose
2/ Are CSOs subject to VAT and customs toms taxes?	No; or under clear and reason- able criteria (e.g. generally sub- ject to customs taxes but chari- table donations are exempt)	Yes; regulations are unclear, al- lowing for government discretion	CSOs are subject to prohibitive taxa- tion (e.g. must pay VAT on a grant that is not an allowable expense for the donor)
3/ Are CSOs subject to local taxes, fees or charges, in addition to federal taxes? Are any other level of taxes imposed (regional or state taxes, for example)?	CSOs are generally tax exempt, or are eligible to receive tax ex- emptions (e.g. based on chari- table activities)	CSOs face some taxation in addi- tion to federal taxes; any criteria or procedures for exemptions are not clear and allow for discretion	CSOs face prohibitive local taxation
4/ What are the tax and regulatory requirements on CSOs that engage in economic activities?	Few, clear tax laws/regulations enabling CSOs to engage in eco- nomic activities through partial exemptions	Multiple, somewhat unclear tax laws/regulations on CSO eco- nomic activities; economic activi- ties are generally taxed with mini- mal exemption	CSOs may not engage in economic activities; or there are many, vague tax laws/regulations on CSO econom-ic activities
5/ Are tax exemptions granted to all CSOs? Are only certain categories of CSOs granted tax exemptions?	Exemptions are available to all CSOs or to those with a pub- lic benefit (charitable) purpose; there are clear criteria and pro- cedures for acquiring tax exemp- tions	Exemptions are available on a select basis to CSOs (e.g. yes for humanitarian organizations but not for human rights CSOs); criteria and procedures for receiving exemptions are unclear / discretionary	Tax exemptions are not available or available only to a very limited num- ber of CSOs (e.g., international or- ganizations only); exemptions fully based on government discretion
6/ Are there draft laws or regulations that, if adopted, would affect the taxation of CSOs? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.	Pending legislation/regulations that will significantly ease CSOs' tax burdens	Pending legislation/regulations that may increase CSOs' tax bur- dens	Pending legislation/regulations that will severely increase CSOs' tax bur- dens

Perception Questions	Green Flag	Yellow Flag	Red Flag
1/ Have taxes been used by the state as a form of repression of CSOs practices? If yes, how so?	No	Sometimes / arguably	Yes, regularly
2/ Is CSOs financial sustainability affected by taxes, duties and/or fees? Does tax legislation facilitate or impede CSOs in achieving sustainability in their finances?	CSO financial sustainability is enhanced by tax legislation, e.g. by exempting economic activities related to the CSO's mission	Tax legislation has an ambigu- ous effect on CSO sustainability depending on the type of CSO or government discretion	Tax legislation has a stifling effect on CSO sustainability, e.g., by prohibiting economic activities or levying prohib- itive taxes or duties on core activities
3/ To what extent are the tax laws/ regulations enforced? Are taxes regularly paid? What is the capacity of the government to enforce tax payments?	There is an affordable and acces- sible system to pay taxes that is enforced by the government	Government struggles to enforce tax laws/regulations and pay- ments; paying taxes is a cumber- some and costly process	Government has little capacity to en- force tax laws/regulations and pay- ments; avoiding taxes is the norm
Dimension # 10 : Access to Information	n	NOVANANANANA.	
Factual Questions	Green Flag	Yellow Flag	Red Flag
1/ What laws and/or regulations gov- ern or affect a CSO's access to infor- mation? Do they vary based on the type of information being sought?	Few, clear enabling laws govern CSO access to information	Multiple, somewhat unclear laws govern CSO access to information	Many, vague laws govern CSO access to information; laws fail to establish a clear right of citizens to access in- formation
2/ Is there an appeal process for information? Has it been denied?	There is a fair and effective appeal process	There is limited opportunity for fair and effective appeal	There is no opportunity for fair or effective appeal
3/ To what extent are government officials themselves accessible to the public? What opportunities exist for the public, including CSOs, to meet with govern- ment officials about their personal or organizational interests and needs?	Government officials are gener- ally accessible	Some opportunities exist for pub- lic to access government officials	Minimal opportunities for public to access government officials
4/ Are there draft laws or regulations that, if adopted, would restrict – or, alternatively, ease – CSOs' access to information? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.	Pending legislation/regulations that will significantly ease ac- cess to information	Pending legislation/regulations that may restrict access to infor- mation	Pending legislation/regulations that will severely restrict access to infor- mation

Perception Questions	Green Flag	Yellow Flag	Red Flag
1/ Is the process of obtaining gov- ernment information transparent, smooth, sufficiently easy to navi- gate, and based on the rule of law, or is it difficult, seemingly arbitrary, slow, and mired in bureaucratic redProcess for obtaining information is includes some governmental discretion and/or includes multiple burdensome stepsProcess for obtaining information is includes some arbitrary, slow and mired in red tape and mired in red tape	Process for obtaining informa- tion is transparent, smooth, easy and based on the rule of law	Process for obtaining informa- tion is unclear; includes some governmental discretion and/or includes multiple burdensome steps	Is the process of obtaining gov- ernment information transparent, tion is transparent, smooth, easy tion is unclear; includes some arbitrary, slow and mired in red tape governmental discretion and/or includes multiple burdensome steps to mise and mired in red tape arbitrary, slow and mired in red tape arbitrary, slow and mired in red tape arbitrary arbitrary and based on the rule of law, and mired in bureaucratic red in bu





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