

BRIDGING GAPS BETWEEN LEGAL TEXTS AND ADMINISTRATIVE PRACTICES WITH REGARD TO FREEDOM OF ASSOCIATION

1. PROBLEMS FACED BY CSOS IN DEALING WITH THE COMPETENT BODIES AND INSTITUTIONS

Despite the Tunisian Constitution's recognition of the right to freedom of association, and despite the liberal and progressive character of the relevant legislation (Decree-Law 2011-88 on Associations) which meets international standards, there are still various discrepancies between legal texts and administrative practices in all matters of concern to CSOs. These discrepancies, which adversely affect the exercise of the right to freedom of association, are attributable to a number of reasons.

1. REASONS BEHIND ADMINISTRATIVE IRREGULARITIES AND DEFICIENCIES

- The Directorate of Associations has limited material and human resources. Its staff are not offered adequate and continuous training with regard to new laws and regulations pertaining to freedom of association. This has led to the re-emergence of some past practices, such as interference with CSOs goals and the conduct of security investigations before issuing the acknowledgement of receipt, in plain violation of the law.
- The Directorate of Associations takes advantage of gaps in the relevant legislation to adopt practices that are incompatible with freedom of association :
 - Imposing conditions and requirements not required by law in case of incomplete applications;
 - Declining to hand over the acknowledgement of receipt;
 - Refusing to publish, within the statutory deadlines, the announcement of the CSO formation in the Official Gazette of the Republic of Tunisia.
- There is a lack of control over CSOs that do not comply with legal requirements in terms of operation and funding. This has led to the spread of impunity.
- The Directorate does very little to familiarize CSOs with their legal obligations.
- There are overlaps between the provisions of the Anti-Terrorism Law and those of the Law on Associations :
 - Proceedings were instituted against CSOs suspected of funding terrorism, on the basis of infractions and irregularities covered by the Decree-Law on Associations.
 - Restrictions are placed on access to foreign funding. The anti-terrorism law includes the expression "cautious management" to restrict CSO access to funding and hamper their work.

PUBLIC FUNDING

- CSOs need to submit many documents so that they can have access to public funding. The criteria for granting public funding lack transparency. Calls for applications are often advertised in an unofficial way. The technical committee in charge of granting public funding enjoys broad powers and is composed exclusively of administrative members.
- The laws pertaining to oversight over sources of funding are not enforced.
- There is an overlap of jurisdictions among ministries, and numerous bodies and institutions are in charge of CSOs and civil society.
- The Official Printing House of the Republic of Tunisia sometimes refuses to publish the announcement of the CSO formation until the acknowledgment of receipt is received. In some cases, it unjustifiably coordinates with the Directorate of Associations and also with security authorities as part of security investigations.

2. DISCREPANCY BETWEEN LAW AND PRACTICE : LAXNESS AND NON-COMPLIANCE WITH THE LAW Regarding the notification procedures / (the first step in a CSO formation process)

- The Directorate of Associations does not comply with the legally set deadlines for registration.
- The Directorate of Association enjoys a discretionary power (given the silence of the law) to set out the procedure to be followed, in case of an incomplete application, to demand the completion of the required information, as listed in article 10 of the Decree-Law.
- The Secretary-General of the Government may refuse to hand over the acknowledgement of receipt. The applicant will then have to wait until the acknowledgement of receipt is issued. It follows that the mere sending, by registered mail, of an application is not, practically speaking, sufficient to form a CSO.

- The “General Directorate of Associations and Political Parties” sometimes interferes with the goals that CSOs state in their Statutes, and demand that these goals be modified, though they meet the requirements of articles 3 and 4 of the Decree-Law on Associations.
- The Directorate of Associations and Political Parties sometimes demands that the founders a CSO introduce substantial changes into its Statutes in a way that would affect its governance and decision-making system.
- Some of the staff members of The “General Directorate of Associations and Political Parties” act in a way that contravenes the spirit of the 2011 Decree-Law on Associations, by demanding that the founders of new CSOs follow pre-established models, as was the case under the 1959 Law on Associations, at a time when the 2011 Decree-Law offers CSOs the freedom to choose the way to draw up their Statutes.

Regarding the CSO formation publicization procedures / (the second step in the CSO formation process)

- The Official Printing House of the Republic of Tunisia refuses to publish the announcement of the CSO formation until the acknowledgment of receipt is received. This is a plain violation of article 11 of the Decree-Law which requires the Official Printing House to publish the announcement of the CSO 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.
- Even when the acknowledgement of receipt is issued and the due fees are paid, the Official Printing House sometimes refuses to 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 of the Republic of Tunisia.
- Procedures for access to public funding are very complex.
- The technical committee in charge of granting public funding is composed exclusively of administrative members, and has wide powers to define the conditions for access to public funding, to identify the additional documents to be submitted, and to set the criteria for the choice of the CSOs that will receive public funding.
- Access to foreign funding is easy. At the same time, there is no adequate administrative oversight.
- The Directorate of Associations exerts little control over non-law-abiding CSOs with regard to funding, be it private, public or foreign.

3. DISCREPANCIES BETWEEN LAW AND PRACTICE : ADVERSE EFFECTS ON CSOS

Shift, practically speaking, from the legally established ‘notification regime’ to a masked ‘approval regime’ for registration /

- The acknowledgement of receipt is not issued within the statutory deadlines set by law.
- The Directorate of Associations delays, for a period ranging from three months to one year, the examination of registration applications, by imposing requirements and demanding the submission of additional documents or information not stated in the Decree-Law. The maximum period to form a CSO is, according to the Decree-Law, 30 days.
- Though they just theoretically need to send a correspondence by registered mail, those seeking to register a new CSO are obliged to go to the capital to follow up on their applications, as they receive no response from the Directorate of Associations.

CSOs do not know the legal implications of the refusal, by the Secretary General of the Government, to hand over the acknowledgement of receipt as the Decree-Law is silent on this matter (which is not the case for the registration of subsidiaries of foreign CSOs).

- The formation of CSOs may be hampered as certain documents may not be obtained automatically.
- Given the existence of some overlaps of jurisdictions, it is difficult to identify the official body in charge of CSO affairs.
- Some applicants end up abandoning the CSO formation procedure as a result of the tough and illegal requirements imposed by the competent administration.
- The freedom of CSOs to define their goals has been circumscribed by the authorities’ resort to past practices ended by law.

Shift from the automatic publicization of CSO formation to the conditioned publicization /

- Some activists have chosen to quit associative action, opting instead for individual, volunteer and spontaneous activities, away from administrative hurdles and illegal and non-transparent practices.
- Most public funding beneficiaries are CSOs that include civil servants working in public administrations. This undermines the principle of equal access to public funding.
- Some CSOs have very low chances of receiving public funding for failure to submit all the needed documents. This makes them turn to other, less complicated sources, such as foreign funding and donations.
- CSOs wishing to receive public funding are overburdened with complex and bureaucratic procedures.
- Some CSOs are receiving suspect funds. The absence of the state’s control has led to an increasingly spreading impunity (except for CSOs raising terrorism-related suspicions).
- The credibility of associative work is be.
- Some CSOs, especially the newly-formed ones, are incapable of meeting the requirements of administrative and financial management, the fact which hampers their operation.

2. ALTERNATIVES AND SUGGESTIONS TO GUARANTEE THE RIGHT TO FREEDOM OF ASSOCIATION AND IMPROVE THE WAY THE COMPETENT ADMINISTRATIVE AUTHORITIES DEAL WITH CSOS

Structural and procedural alternatives /

- Strengthening the capacities of the competent administration, by :
 - providing it with the needed financial and human resources ;
 - increasing the number of staff in the competent administration ;
 - offering the competent administrative staff the needed training ;
 - establishing regional (decentralized) directorates so as to bring services closer to CSO formation applicants ;
 - establishing an electronic system for the follow-up of CSO activities ;
 - Clarifying certain vague provisions in order to avoid unilateral interpretations by the competent administration in a way that might restrict freedom of association;
 - Strengthening the capacities of the judiciary to rule, within reasonable periods, on appeals against administrative decisions to refuse CSO registration;
 - Clearly identifying the relevant official bodies and competent authorities so that CSOs know how to act in case of administrative infringement or irregularities;
 - Clearly defining the procedures to be followed by the competent administration to demand the completion of an application.
- Issuing and widely disseminating a simplified procedure manual.

Legal and financial alternatives /

- Clarifying the legal barriers imposed on CSOs without undermining the principle of freedom of association and other public freedoms, and without placing further restrictions on CSO formation applicants;
- Ensuring compliance with the law by the competent administration, by removing the condition (not required by law) of receiving the acknowledgement of receipt for the publicization of the CSO formation, and defining the legal and judicial implications in case such administrative infringements take place;
- Reinforcing the means for instituting expedited proceedings before the Administrative Tribunal to rule on cases involving appeals against decisions to refuse CSO registration ;
- Criminalizing any illegal administrative practices aimed at restricting freedom of association ;
- Setting objective criteria, based on competence, projects and activities, for granting public funding in line with the legal requirements ;
- Changing the composition of the technical committee in charge of public funding toward ensuring more neutrality, while including civil society representatives in its membership ;
- Increasing legal oversight and ensuring more coordination between the concerned institutions (Central Bank, Financial Analysis Commission, Ministry of Finances, Directorate of Associations) with regard to foreign funding, without imposing undue restrictions on CSOs.

3. EXECUTIVE MECHANISMS FOR THE PROPOSED STRATEGIES

Legislative and governmental mechanisms /

- Strengthening the oversight role of the Assembly of the People's Representatives, by convening the Presidency of the Government and the Directorate of Associations to hearing sessions or dialogue sessions to follow up on the state of freedom of association and to regularly hold the government accountable for the relevant infringements and irregularities ;
- Providing adequate financial resources to establish and support the work of regional (decentralized) directorates, and allocating sufficient funds, within the State Budget, to guarantee CSOs' access to adequate public funding ;
- Calling on the Presidency of the Government to establish clear regulations that enable the concerned bodies to effectively enforce the provisions of the 2011 Decree-Law on Associations, so that the liberal character of this piece of legislation will not be undermined ;
- Calling on the Presidency of the Government to issue explanatory circulars regarding the enforcement of the Decree-Law on Associations, and to remedy the deficiencies and shortcomings observed.
- Amending the decree regulating public funding toward setting clearer and more transparent criteria and procedures for access to public funding ;
- Enforcing the regulations concerning oversight over public and foreign funding ;
- Issuing and disseminating an annual report on the state of civil society, through a partnership between the Ministry in charge of constitutional bodies, civil society and human rights on the one hand, and civil society organizations on the other hand.

Positive

Alternatives and mechanisms to remedy administrative irregularities regarding the publicization of CSO formation

- **Require the competent administration** to comply with the law and its requirements.
- **Remove the condition** (not required by law) of receiving the acknowledgement of receipt for the publicization of the CSO formation, and define the legal and judicial implications in case such administrative infringements take place.

Alternatives and mechanisms to remedy administrative irregularities regarding the notification of a CSO formation

- **Require the competent administration** to comply with the law and its requirements.
- **Clearly define the procedure** to be followed to demand the completion of an application.
- **Clarify vague legal provisions** through circulars issued by the Presidency of the Government, in order to avoid unilateral interpretations by the competent administration.
- **Reinforce the means** for instituting expedited proceedings before the Administrative Tribunal to rule on cases involving appeals against decisions to refuse CSO registration.
- **Criminalize any illegal administrative practices** aimed at restricting freedom of association.
- **Establish regional** (decentralized) directorates so as to bring services closer to CSO formation applicants.

Alternatives and mechanisms to solve problems with regard to funding

- **Set objective criteria and less** complicated procedures for access to public funding, by amending the decree related to public funding.
- **Change the composition** of the committee in charge of granting public funding toward ensuring more neutrality, while including civil society representatives in its membership.

Alternatives and mechanisms to increase oversight

- **Increase legal control and ensure** more coordination between the concerned institutions (Central Bank, Financial Analysis Commission, Ministry of Finances, Directorate of Associations) with regard to foreign funding, without imposing undue restrictions on CSOs.
- **Strengthen the oversight role** of the Assembly of the People's Representatives, by convening the Presidency of the Government and the Directorate of Associations to hearing sessions or dialogue sessions to follow up on the state of freedom of association and to regularly hold the government accountable for the relevant infringements and irregularities.

Official Printing House of the Republic of Tunisia

Stage 2 :

Automatic publicization of the CSO formation

Generate Directorate of Associations and Political Parties

Stage 1 :

CSO registration under the notification regime

CSOs

Official bodies in charge of public funding

Access to various types of funding

Oversight bodies

Control over administrative and financial management

Negative

Illegal practices hampering CSO formation by making automatic publicization subject to a condition.

- **Refusal to publicize** the CSO formation unless the acknowledgement of receipt is issued (a plain violation of the law), and sometimes refusal to publicize even when the acknowledgement of receipt is issued and the due fees are paid.
- **Delayed publicization** in some cases (an average delay of 7 months)
- **Refusal to publicize** the CSO formation until a facsimile is received from the "General Directorate of Associations and Political Parties" including the list of associations authorized to be publicized in the Official Gazette of the Republic of Tunisia.

Illegal practices hampering CSO formation by turning the notification regime into a masked approval regime.

- **The competent administration does not comply** with the legally set period for registration.
- **The competent administration enjoys** a discretionary power to set out the procedure to be followed, in case of an incomplete application, to demand the completion of the required information/documents.
- **The Secretary-General of the Government may refuse** to hand over the acknowledgement of receipt. The applicant will then have to wait until the acknowledgement of receipt is issued. The mere sending, by registered mail, of an application is, practically speaking, not sufficient to form a CSO.
- **The competent administration sometimes demand** that the founders of a CSO introduce substantial changes into its Statutes in a way that would affect its governance and decision-making system (violation of the law)
- **The competent administration sometimes demand** that the founders of new CSOs follow pre-established models at a time when the 2011 Decree-Law offers CSOs the freedom to choose the way to draw up their Statutes (violation of the spirit of the law).

Complex procedures for access to public funding

- **The competent administration imposes** heavy procedural burdens on CSOs seeking to receive public funding.
- **The technical committee in charge** of granting public funding is composed exclusively of administrative members, and has wide powers to define the conditions for access to public funding, to identify the additional documents to be submitted, and to set the criteria for the choice of the CSOs that will receive public funding.

Weak oversight

- **No adequate administrative oversight** over CSO funding, with easy access to foreign funding.
- **Little control over** non-law-abiding CSOs with regard to funding.