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The Problematics of Governance in the Human Rights Movement in Tunisia

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Tunisian lawyer and then President of the Tunisian League for the Defence of Human Rights (LTDH), Mokhtar Trifi, speaks during the opening of its 6th congress in Tunis, September 2011. © EPA / STR



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Independent civil society organizations have played a prominent role in Tunisia, especially after the revolution of 2011, in all areas related to human rights. They increased in number after Decree 88, issued 24 September 2011, to regulate associations¹ and then the constitutional guarantee under Article 35 enshrining the right to association.² Thus, the activities of associations and their number multiplied and intensified during the first years of the democratic transition. The number of CSOs reached 20,858 in late 2017, among which there were 352 rights organization and 175 women's organizations.³ CSOs flourished even more after four associations together received the Nobel Prize in 2014 for their role in preserving and enhancing the democratic transition.

The concept of civil society first emerged in Greek thought, albeit only vaguely, as Aristotle made no distinction between state and civil society. At the end of the 18th century, this concept became more entrenched in modern Western political thought with the increasing discussions of the necessity to limit the state's dominance by a civil society that is able to control its own affairs. In the 20th century, the Italian thinker Antonio Gramsci introduced the concept of civil society as one of the two mechanisms capitalism deployed to manage the burgeoning class struggle: 1) direct control through the state machinery, and 2) ideological and cultural dominance/hegemony through social formations (or the civil society) in which individuals voluntarily address sectoral or social problems and provide solutions to problems to improve their economic, cultural, social living conditions and defend their common interests.

Evidently, civil society did not emerge in liberal political thought as a saviour for the state but in a theoretical and historical association with the concept of state and authority; civil society doesn't exist in the absence of the state. But what kind of state? The state invoked here is one that guarantees human dignity, citizenship, freedom, democracy, and gender equality.⁴ It is also a strong state; for a strong civil society could not arise within a weak state – the two are complementary components with distinct, but not completely separate, roles.

Civil society, however, can effectively achieve its goals only when it is independent and able to operate freely away from any undue intervention of political parties and the state. Civil society is, therefore, characterized by independence, spontaneous organization, a spirit of individual and collective initiative, self-



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denial, voluntary membership, and enthusiasm for serving the public interest. With this concept in mind, civil society becomes one pillar of democracy that plays an important role in its construction and in supporting its development.

Consequently, an ideal civil society rests on four main tenets:

1. Being a voluntary act free of force or pressure
2. Independence from political parties and state institutions
3. Working with other organizations or associations that accept a certain level of diversity and differentiation
4. Not seeking to assume formal political authority, unlike parties whose activities primarily aim to control political institutions.

In Tunisia, the emergence of NGOs dates back to the 19th century. Initially, NGOs took the form of charitable religious entities aiming to assist the poor and the needy and to subsidize students and provide teachers for Islamic religious institutions in mosques, *zawyas* and *katatib*.⁵

The Khaldounia association that emerged in the 19th century (1896) was no doubt the most prominent organization of its period. It promoted cultural exchange between Tunisian and French people and organized meetings, seminars and classes on Islamic Arabic cultural heritage.⁶ From the outset, the Khaldounia worked to disseminate a contemporary reformist culture. In 1905, a second socio-cultural association emerged to help graduating students from Sadiki School to integrate in Tunisia's economic and social life.⁷ The Sadiki Alumni Association worked to promote and popularize modern sciences.

With national independence, a constitution was adopted in June 1959 stipulating in its Article 8 that “freedom to establish associations is guaranteed and exercised according to the terms defined by the law”. The relevant law, promulgated on 7 November 1959, created several obstacles to the general work of associations but stayed in force until 2011. With the change in the political situation and the fall of the dictatorial regime of president Zine El Abidine Ben Ali, there was a clear need to introduce a new law. This is why Decree 88 was issued on 24 September 2011 in order to regulate the work of associations, their management and financing.



Today, the operation of these associations and their current structure is subject to many questions: does the current situation guarantee the continuation of the struggle for human rights? To what extent do these associations, and those active in the rights movement respect the principles of good governance? This paper views good governance generally as a democratic approach to conducting public affairs by involving all stakeholders. It is concretized in laws, systems and decisions that aim to achieve quality and excellence in performance in accordance with the goals of transparency, accountability, responsibility and equality.⁸ For CSOs, good governance means a transparent democratic process that involves all stakeholders and participants, ensuring their contribution in the decision-making process, in achieving the goals of the organization and in the general promotion of human rights.

This paper focuses on the legal framework in which Tunisian CSOs operate and how it affects their management, their funding as well as the achievement of their goals in the field of human rights. To that end, it highlights the experiences of organizations that have been active in the field of human rights for a long time as well as those that were established after the revolution.

Running the organizations: Between Democratic Management, Centralization and Attempts of Control by Political Parties and Institutions

One of the factors affecting how organizations are managed is the existence of a number of laws that regulate the establishment of these associations, hinder the free conduct of their activities and that are dependent on the relationship between the association and the state.

The Legal Framework Regulating Associations between 1959 and 2011:

Cementing Centralization and Restricting the Work of Associations

For a long time before 2011, associations were subject to the 7 November 1959 Law that stipulated that associations can only be established after obtaining a permit or license from the Minister of Interior who enjoyed absolute discretion in granting licenses as well as the authority to monitor associations.⁹

The law was revised in 1988 in order to support the functioning of associations and facilitate their establishment. It ruled that if the state failed for three months to respond to a request for establishing an NGO, then this lack of action should be interpreted as an approval. Still the amendments denied citizens the right to associate in entities after only notifying the state. For an association to function it needed to seek permission from the competent authorities and the Minister of Interior, who have the right prior to the expiry of the three-month period from the date of submitting the request to disapprove the establishment of the association. The disapproval decision should be reasoned and notified to the concerned individuals. Such decision may be challenged (under Law 40 of 1972 articles related to abuse of power) in the Administrative Court.¹⁰

At the same time, and to restrict the freedom to set up associations, every planned CSO was required to receive a receipt when it applied for a license at the Ministry of Interior. In most cases, this procedure was a mere formality that documents the application process and determines the beginning of the three-month period during which a decision must be made. However, the authorities came to consider the receipt as an additional requirement turning it into a new tactic to monitor and control associations. Gradually, they began to refuse to deliver a receipt in an attempt to delay the beginning of the three-months period necessary to initiate legal status. This was more common with applications made by independent citizens who are not affiliated with the ruling party or when the association applying for registration is promoting human rights or providing legal aid.

The Terms of Establishment of Associations

Article 3 of the previous law of associations laid down the conditions necessary for the establishment of associations. Applicants wishing to form an association shall



file in the provincial head offices or the district in which the social department exists a statement including the name of the association, its main cause, objectives, head office address, a list of the names and titles of the association founders as well as all those entrusted with management and administration, and the Association Statutes Association Statutes.

The most challenging part of that process is the submission of the Association Statutes as its stipulations form the bases of the association itself; it is issued by the founding members in line with their choices and principles. It governs the internal workings of the association including the relationship among members and office holders as well as the interaction with the competent authorities and other civil society actors.

However, founders are not permitted to freely write the Association Statutes. Rather, they have to adopt a model text set by the competent authorities at the Ministry of Interior that mimics the hierarchies prevalent in governmental organizations. Submitting Association Statutes that do not abide by this model results in the rejection of the application.

Subordination to the Central Authority and Excluding Membership

The model of Association Statutes imposed a certain hierarchical structure on associations starting with a steering committee that represents the highest authority and holds the ultimate decision-making power. The steering committee must have a president, a general secretary, a finance secretary and certain number of members selected by the founders of the association. The Association Statutes should also determine the specific task of each office holder. The association's president is its legal representative and the one who leads the steering committee and executes its decisions. The general secretariat is in charge of the administrative issues of the association. The financial secretariat is in charge of the association's finances and all its financial dealings. All of these positions are imposed upon the associations. The Association Statutes also required the association to have a general plenary that involves all members who meet once a year and could exceptionally convene when needed. The plenary elects office holders every two or three years. However, while any member is an active unit in the general plenary in smaller associations or those without any provincial



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branches, the situation is different in associations with several branches such as the Tunisian League for the Defense of Human Rights (*Ligue Tunisienne pour la Défense des Droits de l'Homme*, LTDH) that currently has 28 branches all over the country.¹¹ For the LTDH, the members takes part in decision-making through branches, as Article 7 of its Statutes stated: “the league consists of participants active in the context of the League’s branches”. A participant is not permitted to attend the national council or take part in the general plenary, the general electoral session or the congress composed of the members of the steering committee and office holders in the branches.

In some associations, an intermediate body, such as a regular or an exceptional congress, that includes representatives from the branches (if present) and members of the steering committee could present a certain issue to branch representatives in order to engage them in the decision-making.¹²

All of these factors hindered a democratic conduct of associations and restricted their activities. Gradually, the president became the most important member of the association. As its legal representative, the president came to enjoy an almost absolute authority in decision-making, thus removing middle layers in the association from the process. This resulted in the alienation of members in some associations, especially the ones with large representation and many branches in the country or those subjected to constant security scrutiny or opposing the ruling party.

Due to all these factors, associations faced several limitations on how freely they could carry out their activities. Moreover, these regulations and structures undermined good governance. When a high commission was established after the revolution to supervise the democratic transition, the Law on Associations was reviewed and replaced by the High Authority for the Realization of the Goals of the Revolution, Political Reforms and Democratic Transition.¹³ The current legislation was issued under a decree from this body to free the establishment of associations from the restrictions that hindered their work and to ensure the availability of a set of guarantees that enable associations to function under the best possible conditions.¹⁴



The Independence of Civil Society Organizations between Law and Practice: The Law as a Mechanism to Disempower and Weaken Independent Associations

Although CSOs are based on the principle of independence from political parties and state institutions, the history of Tunisian CSOs shows ceaseless attempts of control from these two sides. We will use the LTDH as an example of the state's behaviour towards independent organizations.

The LTDH had been the main human rights organization in Tunisia and among the first associations of its kind in Africa and the Arab world. Established in May 1977 under an authoritarian political regime, but at a time characterized by relative openness after the trials of left-wing political organizations ended in harsh sentences by a State Security Court on charges of affiliation with an unlicensed organization.¹⁵

The LTDH suffered from attempts of control by politicians as its establishment was based on an agreement reached among political parties, both in power and in opposition, and some independent candidates, under a quota system. The LTDH formation in this manner was a compromise between the ruling party and some opposition parties, to enable it to perform its role in defending human rights and mediating between the state and victims of human rights violations. The LTDH constantly monitored the human rights situation in the country to the extent that the ruling party once accused it of becoming an opposition party.¹⁶

With Ben Ali's accession to power in 1987, and particularly after the 1989 elections that gave him legitimacy, freedoms, especially those related to associations, were severely curtailed. The LTDH was especially affected as it continued to address and condemn human rights violations and to demand compliance with human rights norms from state institutions, leading the ruling party to attempt to infiltrate it to undermine its independence, especially after the trials of Islamist politicians. At the same time, some prominent human rights activists made it to the steering



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committee and the presidency of the organization such as Moncef Marzouki, which made the regime more anxious.

After a crisis in the early 1990s, the government acted to weaken the League. In 1992, it amended the Law on Associations requiring that CSOs be categorized according to the nature of their work. In that regard, the first article of the law stated that “associations are subject to categorization in accordance with their activities and goals as follows:

- Women Associations
- Sports Associations
- Scientific Associations
- Cultural and Arts Associations
- Charity, Emergency and Social Associations
- Development Associations
- Amicable Associations
- General purpose Associations.¹⁷

This amendment introduced a new restriction on the conduct of associations. This restriction lacked specificity, however, because the legislation only presented a list of categories without clarifying the criteria for each. At the same time, the legislation necessitated that the founders select one category from this limited list but deliberately overlooked one important category: human rights, despite the existence of long-standing human rights associations in Tunisia such as the LTDH and the Tunisian branch of Amnesty International.

This new categorization was meant to limit an association’s activity to one specified area and ensure associations do not carry out any activities under a different category than the one selected at registration.

The categorization of existing CSOs, on the other hand, was to be decided by the Minister of Interior which enjoyed full freedom and discretion in that regard. The minister categorized some associations in an arbitrary manner. For example, he categorized some amicable associations as development associations and some medical associations as scientific, development or social associations. The general-purpose category continued to be the most problematic due to its vague nature



and because it is subject to a special set of conditions related to accountability and membership regulations. This left the door open for the government to impose arbitrary categorization on human rights associations as general-purpose entities, subjecting them to these strict but ambiguous conditions. As a result, the LTDH filed a suit at the Administrative Tribunal in order to annul the Minister of Interior's categorization.¹⁸

To further restrict the work of human rights organizations, such as the LTDH, the conditions on general-purpose associations included not to “refuse to admit as member any person who is committed to its principles ... unless the person in question does not enjoy full civic and political rights, or if the person in question engages in activities or practices incompatible with the objectives of the association.” In the event of a dispute arising over the right of membership, the applicant can file a case at the Court of First Instance at the municipality of the association's headquarters. With regard to accountability, the legislation considered that general-purpose associations cannot elect individuals assuming functions or responsibilities in the central governing bodies of political parties as members of the association's steering committee, as well as to sections, branches, related organizations or secondary groups...¹⁹ Since then, the LTDH activities have been frozen by a decision issued on 13 June 1992 on the grounds of non-compliance with the Law on Associations.

In 2000, following the LTDH's 5th Congress, that created a steering committee that did not include at least one representative of the ruling party, several League participants affiliated with the ruling party filed around 30 cases at the courts. As a result, on 27 November 2000 the steering committee was suspended by a court order. The court appointed a judicial guard and banned the December 2000 congress from taking place. The government also launched a vicious media campaign against the LTDH whose offices were attacked and vandalized several times. For the following 10 years, the authorities continued to block the LTDH's congress.²⁰

The League was only able to obtain an actual acknowledgement of its activities and regain its full rights to work independently of the state after 14 January 2011 when it regained control of its headquarters, resumed its activities and held its 6th Congress in September 2011.²¹ The 28 LTDH branches throughout the country



function and a steering committee was re-elected in 2016 during the 7th Congress comprising nearly 30% of women and youth.

A long-standing organization such as the LTDH was not able to freely stand up to a dictatorial regime and guarantee respect for human rights without grappling with restrictions by the ruling party and the security agencies. Even though the League was established by members both from within and outside the ruling party, and despite the fact that it only accepted independent candidates recommended and approved by the parties represented in the League's bodies, it rapidly became embroiled in a conflict with the authorities and the ruling party. The LTDH continued to experience crises that would erupt whenever the authorities sensed signs of too much independence; they would then intervene claiming that the League is not respectful of the political consensus among the ruling party and the remaining recognized or unrecognized parties.

The League continues to experience attempts of control by political parties even after the 2011 revolution. For example, in its last conference in September 2016, divisions erupted when some opposition politicians from parties affiliated with the Popular Front (leftist opposition represented by 15 members of parliament) disputed responsibilities and quotas at the core of the steering committee. A number of members supported by the Tunisian General Labour Union won the majority of seats in the steering committee. The crisis escalated with the temporary withdrawal of some members in rejection of the distribution of posts claiming that certain party affiliations were treated more favourably. However, interventions by several senior League activists to resolve this problem helped in overcoming the divisions and in accepting the redistribution of responsibilities and tasks, especially with regards to assigning the general and finance secretariats to the dissenting group after the congress. This highlighted once again how fragile the LTDH governance systems and independence are and the difficulty of operating in a democratic manner without political interference. Such issues are not confined to the past nor caused by the existence of obstructive and restrictive laws but also continue in the present as a result of the political conflicts taking place within these associations.

Advantages of the New Decree

Pertaining to the Freedom of Associations: Enshrining the Right to Establish Associations

On 24 September 2011, a new decree was issued pertaining to the regulation of associations, thus eliminating the law that governed associations since 1959.²² This decree guarantees, according to its first article, the freedom to establish and join associations and the freedom to conduct activities within its framework. It also supported and further developed the role played by CSOs and enhanced their independence.

No More Licenses Needed!

One advantage of the new decree was the elimination of the previously required license to establish an association. An association now is established the moment a request or a statement is submitted to the government. An association is almost automatically then given permission to operate. Associations no longer have to wait to obtain a receipt as proof of application or to wait for a license to be issued to function normally as a new legal entity. Moreover, to avoid the absolute and unchecked authority that the Ministry of Interior previously enjoyed in vetting applications, candidates now could file their applications to the Government's General Secretariat through a registered letter at the post office.

However, the decree specifies information that should be included in the application. These include the name of the association, its purpose, objectives, address, the locations of its branches, if any, a copy of the national identification cards of the founders of the association (for Tunisian founders) or copies of the residence permits (for foreign founders) and original copies of the Association Statutes signed by the founders or their representatives. When the registered letter is sent, the authorities have a period of 30 days to return the registered letter receipt, after which an announcement should be submitted to the Official Gazette providing the name, purpose, objectives, and address of the association in seven days after the receipt of the registered letter or within 30 days of the letter's mailing in case the registered letter receipt is not returned.



The official publication is required in the Official Gazette within 15 days of the date of submission. In some cases, however, the official publication does not take place in the Gazette despite the expiration of the required period, placing the association in an ambiguous or probably illegal situation. This was the case with Shams association formed in January 2015. In spite of Shams' compliance with all procedures when its founders announced its establishment on 18 May 2015, its formal registration has not been published in the Gazette as of late 2016, when this paper was being finalized. Shams has been unable to open the door for membership nor to apply for funding to carry out its daily activities. The State Attorney General submitted a complaint to suspend the association based on a newspaper article.²³ The complaint claimed that the association had changed its name from "Shams Association" to "Shams Association for the Defense of Homosexuality" and that it opened an office in Sousse (140 kilometers south of Tunis) without notifying the Government's General Secretariat. When Shams objected and insisted that its name has not changed, nor had it opened a branch in Sousse and that its objectives included the defence of sexual minorities, mitigating risks of suicide and working peacefully to eliminate laws that discriminate against sexual minorities,²⁴ the suspension was dismissed on appeal. Nevertheless, the announcement has not been published in the Official Gazette as of this paper going to print.

In contrast to the situation before the 2011 revolution, the new decree does not dictate the content of the Association Statutes, stipulating only that they include the official name of the association, its address, a statement of objectives and method of implementation, a membership and termination criteria and the rights and duties of each member, a statement of organizational structure, method of election, and the powers of each administrative body of the association, identification of the body within the association which has the power to amend the internal bylaws and make decisions regarding dissolution, merger or division, decision-making procedures, dispute resolution, and the value of monthly or annual membership dues, if any.

Running the Associations

Tunisian associations are now run according to a set of rules drawn by the members and included in its Statutes, the internal bylaws or a charter in some



cases. The Association Statutes are of great importance because they stem from the will of participants and are not subject to the supervisory government authority. The internal bylaws guarantee the smooth internal operation of an association and act as a form of moral bond among the members of an association. This is the case with the internal bylaws of the LTDH that includes several chapters relating to participation and membership in the League, the organization of the branches, the general plenary and the congress.²⁵

The Charters of the Association

A Tunisian association may adopt a charter that sets out the goals and ethical and moral principles agreed upon by the members when founding an association or when a new member joins the association. A number of Tunisian associations have drawn a charter such as the code of ethics by the Association of Tunisian Journalists and the charters of the Tunisian Association of Democratic Women (*Association Tunisienne des Femme Démocrates*, ATFD) and the LTDH.

Removing the Requirement for Legal Categorization of Associations

The new decree removed the categorization requirement introduced by the 1992 amendment that placed restrictions on association, enabling them to conduct their activities without fear of legal violations that would restrict their work or subject them to suspension or even dissolution in some cases.

Despite its advantages, the decree was criticized for shortcomings that affected the actual application of some of its rules. These shortcomings and loopholes relate specifically to issues of establishment and funding procedures and the penal code, which are discussed in Mounir Snoussi's 2013 study.²⁶ With regards to establishment procedures, some associations found the period given for filing and publishing an announcement in the Official Gazette of the Tunisian Republic, stipulated in Article 11, too short and insufficient especially for associations outside the capital. Other associations questioned the legal consequences for not publishing or making an announcement in the Official Gazette and considered the decree to be vague on the issue. Moreover, various associations raised the issue that the decree does not indicate the consequences for the Official Gazette's refusal to publish an announcement and suggested that the decree should commit



the official publisher to a specific timeframe. Another concern was the vagueness on the possible legal consequences when the General Government Secretariat fails to return a registered letter receipt.²⁷

Funding: Almost non-existent public funding and limited self-financing

Before 2011, the Law on Associations of 1959 regulated the associations' resources in its Article 8, enabling legally established associations to acquire, own and expend its funds. The law also limited members' contributions to no more than 30 Tunisian dinars and permitted donations for emergency and charitable associations upon the approval of the state secretariat at the Ministry of Interior.

Article 9 dealt with the issue of public funding; it monitored every association benefiting from regular state subsidies, regional or local groups or public institutions, and required it to present its annual accounts, budgets and supporting documents to a supervisory body. All funds provided by the state or a public group that is not spent within 12 months for its specified purpose should be transferred back to the state's Treasury.²⁸

It's worth noting that while the law does not distinguish between associations when it comes to the right of use of public funding, the application of the law is selective. In reality, funding was particularly allocated to associations that are aligned with the ruling party, which is in control of state resources. In contrast, the government occasionally allocated public funding to independent associations upon the pleading of members of their steering committees. However, these associations could later have their funding suspended or interrupted whenever they took positions against the state's violations of freedoms or human rights. This was the case with the Tunisian Association for Democratic Women that enjoyed financial support to the value of 50m Tunisian dinars twice – the first in the early years of its establishment in 1990. This financial support ceased when the association demanded that the state respect human rights, cease to torture detainees and comply with criteria for fair trials. The association received funding a second time after applying in 2008 to coincide with the first UPR (Universal Periodic Review) report submitted by the Tunisian state to the UN Human Rights



Council.

In this manner, the state employed double standards in its allocation of public funding by taking into account political affiliations and loyalties and disregarding transparency and independent standards, leading to the shrinking of the activities of independent associations that were made dependent either on limited self-financing or on seeking foreign funding from the European Union or European foundations. Nevertheless, the state still intervened to freeze accounts of associations and prevented them from accessing such funds. Such was the case with the LTDH and the ATFD where the state intervened on several occasions to prevent their access to foreign funding, suspended their accounts in Tunisian banks or forced them to return funding, all in an attempt to weaken these associations and hinder their work. Thus, public funding generally became conditional upon loyalty to the ruling party.

Private funding, on the other hand, was based on the associations' request to organize educational or solidarity events, cultural and awareness campaigns of various purposes²⁹ or on presenting parallel reports to international organizations regarding the implementation of international human rights treaties in the country.³⁰ Foreign donors funded meetings or campaigns for specific issues in line with their agendas or to conduct specific activities. For example, when an association's objective is the elimination of violence, some donors such as Oxfam (The Tunisian office), suggested organizing a campaign to urge the parliament to adopt a law against violence against women in 2016.

Tunisian associations may seek funding from embassies of foreign countries. However, this depends on the nature of the request as well as the politics of these countries. Some associations, for example, request funding from the Scandinavian embassies, such as Sweden and Denmark, to conduct specific activities. However, many organizations declined funds from the US embassy and its affiliated Middle East Partnership Initiative (MEPI) provided by the US State Department in protest against US foreign policy in the Middle East, especially regarding the Palestinian issue or its support for dictatorial regimes in the region.

This did not apply to all organizations. For example, the *Lamechaml*³¹ association has accepted US funding and conducted a number of activities on decentralization



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and local democracy, while the LTDH and ATFD, despite limited financial resources, declined such funds.

After 2011, according to the provisions of Chapter 6 of the new decree regulating associations, the association's resources were composed of subscriptions of its members as specified in its Statutes; public assistance; donations, grants and wills whether domestic or foreign; and revenues resulting from the association's assets, its activities, and its projects.

The decree required that the state allocate necessary funds to support and assist associations on the basis of their efficiency and the impact of their projects and activities. It also permitted associations to accept foreign funding more freely. This was the case with the LTDH, which for a long time was unable to gain access to funds allocated to it by the European Union but which remained blocked in accounts in Tunisian banks. The decree prohibits accepting foreign funds from states that have no diplomatic ties to Tunisia or from organizations that defend the policies and interests of these countries.

When associations obtain foreign funding, they are required to publish information on their source, value and purpose in the press and on their website within one month of the date of accepting the grant. Associations are also required to inform the Government Secretary General of the same in a registered letter within the same period to ensure transparency inside the association and towards various stakeholders. All associations are required to disburse their funds on activities that achieve their objectives.

With regard to public funding, Government Order 5183 of 18 November 2013, on criteria, procedures and terms for public funding set the standards for the allocation of public funds to associations, its procedures, terms, and expenditure monitoring mechanisms. This Order defines the concept of public funding in its Article 2 as “money allocated within the state budget, or local community budgets, institutions of an administrative nature, public establishments and institutions, public shareholding companies where public funds exceed 34% of the capital, or establishments with a public majority, in order to support associations and assist them in implementing projects and developing activities in an efficient manner for feasible projects.”³² The decree also obliged associations to appoint external



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auditors through the plenary. The auditor must submit a regular report to the General Government Secretariat and to the head of the association's steering committee.

However, by facilitating access to foreign funding, the new regulations opened the door to possible violations, especially from political parties or groups, officially prohibited from receiving such funding by Decree 87 of 24 September 2011 pertaining to the regulation of political parties. Some of these parties started to rely on loyal organizations to channel foreign funding. The increasing number of huge and well-funded charitable associations raised doubts about their relationship to political forces and links to foreign donors. Some complained about weak or absent monitoring by the Ministry of Finance, the Tunisian Central Bank and the Department of Accounting. Observers even suggested that foreign funds might have been previously used by some organizations to purchase and distribute arms and carry out acts of violence.³³

The issue of foreign funding had been raised during the discussions of the High Authority for the Realization of the Goals of the Revolution. Some activists demanded prohibiting associations from obtaining foreign funds as they could influence national interests and undermine the independence of these associations. However, the High Authority eventually allowed foreign funding for local CSOs together with adequate monitoring mechanisms to ensure transparency. The High Authority decision was motivated by a desire to comply with international standards, including a broad understanding of Article 13 of the UN General Assembly Resolution adopting the Declaration on human rights defenders which stipulates that “Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.”³⁴

In general, despite some violations, several CSOs regularly publish in mass media and the Official Gazette the foreign funds they receive. Foreign donors, in turn, disclose in their annual reports the financial assistance they provide for CSOs in Tunisia. Additionally, several organizations including, for example, LTDH, ATFD, *La Association Tunisienne pour Intégrité et la Démocratie Des Elections* (ATID), Al-



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Bawsala, and the Arab Institute for Human Rights report foreign funds they receive on their websites.³⁵ Their donors include Oxfam, the Office of the High Commissioner for Human Rights (OHCHR), the United Nations Population Fund (UNFPA), the European Union, the EuroMed Rights Organization, and the Arab Human Rights Fund as well as some German foundations such as Friedrich Naumann, Heinrich Böll, and Friedrich Ebert. All these international and regional organizations fund activities in the field of human rights training, legal education, capacity building of rights activists, advocacy campaigns and programmes, and documentation and reporting on human rights violations.

The working conditions of human rights organizations in Tunisia remain volatile and fragile. Contributing to this situation is the absence of adequate public funding and lack of self-financing mechanisms. There are private funds, but they seem to be channelled disproportionately in favour of more recent and younger associations to allegedly enable them to survive and consolidate. The major issue for funding (foreign or local) remains how to install effective monitoring mechanisms to register flows, expenditures and administrative costs. This would be, for example, very important when it comes to associations affiliated with various political parties such as *Musawah* (Equality) which is close to faction of the Tunisian Labour Party, *Horra* (Free) which is close to the Democratic Patriots Party or the International Organization for the Support of Political Prisoners believed to be close to the *Ennahdha* Party.

Conclusion

Tunisian human rights associations certainly face several structural and financial obstacles that prevent them from freely conducting their activities in line with principles of good governance, such as accountability, transparency and the engagement of all members of an association in managing its affairs, determining its direction and setting main priorities. CSOs' work is primarily based on voluntarism demanding the commitment of members to the goals and principles of the association. This explains the general reluctance in Tunisia, especially among young women and men to volunteer in CSOs. This has had a negative impact on the democratic development of these associations which remain largely elitist.



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No doubt, the difficulty and arbitrariness human rights organizations face in obtaining public and foreign funds hinder their activities and undermines their programmes. There is a need to examine in more detail the question of how funding sources, availability, mechanisms and conditionality affect the governance of Tunisian CSOs and their very programmatic priorities.

Despite their shortcomings and challenges, Tunisian CSOs remain important actors in monitoring state policies and actions, pressing state actors to respect and guarantee human rights, raising awareness among citizens about the significance of defending their own rights as citizens without any discrimination. Developing the legal framework, improving governmental practices towards associations and creating stable and transparent funding environment, should all improve governance within these associations, enhance internal democratic mechanism, protect their independence and bring more and more members into various circles of decision making, therefore, enabling them to help set priorities and devise strategies to effectively advance human rights in Tunisia.



Endnotes

1. The Official Gazette of the Republic of Tunisia, “Decree Number 88 for the year 2011 pertaining to the regulation of associations”, Issue 74, 30 September 2011, p. 1996.
2. See article 35 of the new Tunisian constitution dated 27 January 2014, which stipulates that: “The freedom to establish political parties, unions, and associations is guaranteed. In their internal charters and activities, political parties, unions and associations must respect the provisions of the constitution, the law, financial transparency and the rejection of violence” issafrica.org/ctafrika/uploads/TunisiaConstitution2014Eng.pdf
3. According to the October 2017 report from *Centre d'Information, de Formation d'Etudes et de Documentation sur les Associations* (IFEDA). See www.ifeda.org.tn/stats/arabe.pdf
4. Abdul Elah Belakziz, *On Democracy and Civil Society*, Rabat: Ifriqiya Al-sharq, 2001, p. 29.
5. Al-Ogaily Al-Tlili, *Sufi Orders in Tunisia and French Colonialism*, Tunis: Faculty of Arts, 1992, p. 55.
6. Tlili Béchir, *Crises et mutations dans le monde Islamo – Méditerranéen contemporain (1907-1918)*, T1, Fondements et positions des réformistes, Tunis : Publications de la faculté des lettres et des sciences humaines, 1978, pp. 38-40.
7. Sadiki school was the first contemporary secondary school established in Tunisia in 1875 by reformist Khayr al-Din El Tunisi.
8. Olivier Paye, “La gouvernance: D’une notion polysémique à un concept politologique”, *Études internationales*, 36:1, 2005, pp. 13-40.
9. Haykel Ben Mahfoudh, *Le phénomène a associatif en Tunisie et au Maroc*, Mémoire DEA, Faculté des sciences juridiques, politiques et sociales de Tunis, 1995, p.113.
10. See Article 5 of the law regulating associations as revised by Law 1988/90 dated 2 August 1988.
11. According to the opening speech by the League’s president in the opening session of the League’s 7th national congress held in Tunis in September 2016.
12. See the LTDH’s Statutes ratified in the 6th National Congress held in Tunis in September 2011 where Article 19 states that “the congress is composed of members of the steering committee and heads of the branches ... The steering committee can exceptionally call on former heads of the League, advisors, members of the disciplinary board and honorary members of the League as observers.”
13. From February 2011 to October 2011, the Authority prepared six important texts to regulate political life in the country after the revolution and to introduce reforms to the most important laws relating to civil liberties. This was important especially after the suspension of the Constitution and the decision to set up a constituent assembly to write a new constitution. These new laws were the bills for the election of the national constituent assembly, the Independent High Authority for Elections, political parties, associations, freedom of visual and audio communication and freedom of the press. See Minutes of the Authority from March to October 2011, in 2 parts, Tunis, January 2011.
14. Decree 6 of 18 February 2011 pertaining to the introduction of the High Authority for the Realization of the Goals of the Revolution, Political Reform and Democratic Transition.
15. Hafidha Chekir, « Quelques réflexions sur la cour de sureté de l’Etat », RTD, 1980, p. 189.
16. Larbi Chouikha et Eric Gobe, « Les organisations de droits de l’homme dans la formule politique tunisienne : acteurs de l’opposition ou faire valoir du régime », *L’année du Maghreb*, 2009, pp. 163-182.
17. The categorization rule was introduced in Articles 3 and 4 for Chapter 1 of the Law on Associations pursuant to Decree 25/1992 of 2 April 1992.



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18. Case 13918, dated 13 May 2003.
19. These provisions were added to Law 25 for the year 1992 dated 2 April 1992.
20. Statement of The Tunisian League in its regular session as it continues to consider the difficulties preventing its congress, 3 December 2009. “The LTDH steering committee met for its regular session the evening of Wednesday 2 December 2009 and continued to look into a number of issues relating to the internal state of the League with the aim of overcoming the various difficulties preventing the holding of its congress. After reviewing important relevant information, the steering committee is relieved to announce that if the news reports and promises it received were true, this might open the door for a final settlement to the issues facing the association and protect its independence and existence. On that occasion, the board renews its pledge to cooperate with different stakeholders who believe in the League as a national asset deserving of protection. Accordingly, the following decisions have been taken: First: Resolving to hold the 6th Congress no later than next March and the willingness to hold it before then if the right circumstances existed. Second: Continuing the dialogue with all the League’s members without exception including the complainants, with whom initial meetings have already been set, and working to engage everyone in the ongoing dialogue on making the circumstances appropriate for the Congress. Third: Believing that a conciliation congress, that excludes no one and that is supported by all League members, is the ideal solution to resolve the crisis facing the League for years. Fourth: Setting up a committee to run the internal dialogue and lead negotiations headed by Mokhtar Trifi and including Slaheddine Jourchi, Khalil Zaouia, Anouar Kousri, and Mustapha Tlili. In conclusion, it is hoped that the conditions will be made appropriate for the steering committee to communicate with all the branches by lifting the imposed blockade – as a first step – on its main headquarters to enable it to receive members, and that the same blockade would be lifted off LTDH branches. The Tunisian League for the Defense of Human Rights, The Steering committee, President, Mokhtar Tarifi
21. Yassine Bellamine, “The LTDH: Another Victim in the Political Swamp”, 21 April 2015, Nawaat, available at: nawaat.org/portail/2015/04/21/
22. Decree 88 of 24 September 2011 pertaining to the regulation of associations, the Official Gazette of the Republic of Tunisia, Issue 74, 30 September 2011, p. 1996.
23. Information obtained from Mr. Bouhdid Belhadi, one of the founders of the association and member of its founding authority and spokesman, in an interview conducted on 2 November 2016.
24. Cited in Article 3 of Shams’ Statutes.
25. See the Internal bylaw ratified by the Congress held on 8-9 April 2012 in Tunis.
26. Mounir Snoussi, “The Legal Environment for Civil Society Institutions in Tunisia: Status and Prospects”, (in Arabic) available at goo.gl/dM7zF9
27. Some associations argued that assigning the establishing authority to the General Government Secretariat turns the process into a licensing system in disguise and restricts the freedom of association. Some rights associations believed that it is better to assign more powers to the establishing authority in order to allow for a rejection of some applications specially those made by associations that reject the general principles set out in Articles 3 and 4 of the decree, arguing that these associations should not obtain a license for legal establishment. Similarly, with regard to the rules of establishment, the decree contains some shortcomings such as the necessity to add clear and precise cases for the procedures for a rejection of an application of establishment: the public authority in question should resort to the courts in accordance with Article 21 of the International Covenant on Civil and Political Rights exercised in other states such as France, the USA and Britain. Similarly, the decree does not lay down clear procedures for the public authority to undertake when the requested data is incomplete, such as a form for completing data – an issue that was highlighted by the International Center for Non-Profit Law. In other states when the requested data is incomplete, the competent authority can proceed with the necessary legal procedures to dissolve the association. The decree contains some other loopholes such as the failure to address public interest associations and foundations. See Mounir Snoussi, op. cit.



- from the State, regional or local groups or public institutions has to present its annual accounts, budgets and supportive documents to an annual audit by the Ministry of Finance.
28. The law of 7 November 1959, mentioned above, pertaining to the regulation of associations. Article 8. In Article 9
 29. ~~The Tunisian Association of Democratic Women (TADW) argued that funding associations that benefit from the subsidies of the Tunisian Personal Status Code from the German Heinrich Böll foundation in August 2015.~~
 30. NGOs affiliated with the Alliance of Independent NGOs (the Tunisian League for the Defense of Human Rights and the Tunisian Association of Democratic Women) received funding from UN Women to prepare and present a report to the concerned committee.
 31. Lamechaml association was established after the revolution in 2011. It is specifically active in the areas of local democracy, decentralization and local elections: www.lamechaml.org
 32. Order 5183 of 2013, dated 18 November 2013, on controlling criteria, procedures and terms for public financing of association, The Official Gazette of the Tunisian Republic, No. 102, 2013.
 33. Dorra Gharbi, “Religious Associations involved in Terrorism: Smuggling arms, funding Sharia supporters and sending youth to Syria”, Akher Khabar, 18 September 2013.
 34. UN General Assembly, “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”, 8 March 1999, available at goo.gl/eKkpg7. See also the International Principles Protecting Civil Society at goo.gl/zG3b2U issued by World Movement for Democracy in 2009 on the rights of CSOs to secure foreign funding from legal sources.
 35. Mounir Snoussi, op. cit.



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