Tunisia

Tunisia presents the most successful model for democratic transition in the Arab region, and of the peaceful management of political and ideological diversity. The Tunisian National Dialogue Quartet, a coalition of civil society and rights organizations, professional syndicates, and business, was awarded the Noble Peace Prize in 2015 for its role in political transition, and mediation between polarized political forces. The award acted, not only as a commitment to the role of civil society, but as a rebuke against other regimes in the region that have opted to repress their civil society in an effort to protect authoritarian regimes. These regimes have done so at the expense of achieving integration and sustainable development that might have led to progress and prosperity. Despite Tunisia's progress, however, it still faces major challenges including economic problems, security concerns, much of which is tied to the deteriorating humanitarian situation on the border with Libya, and religious extremism.

Guarantees for Tunisia's democratic transition are institutional and legislative reform, necessary for the protection of human rights, the balance of power, and accountability. Democratic transition also rests on the state's ability to balance its fight against the threat of terror and its protection of political pluralism and civil freedoms.

Political Context, Post-2014 Elections:

The end of 2014 in Tunisia was marked by the second free and democratic electoral process since the 2011 uprising. The lead-up to the presidential and legislative elections of 2014 had been eventful and characterized by fierce political competition between the Islamist party Ennahda and the secular new party Nidaa Tunis. Nidaa Tounes, a new political party, formed in 2012, presented itself as the alternative to the threat of a religious rule that Ennahda ostensibly represented, and brought together a number of different people; from members of Ben Ali's Constitutional Democratic Rally (RCD) and Ben Ali's entourage, and businessmen associated with the old regime to unionists and leftist independents that were in the opposition before the revolution. Nidaa Tounes claims to have been founded on the values of modernity, secularism and progress with a strong Bougibist¹ referencing and a complex composition. It started gaining ground on the political battlefield in the summer of 2013 by leading a secular opposition alliance, christened the National Salvation Front, and pressuring Ennahda party to peacefully resign from government after what they claimed to be three years of failed rule. According to the National Salvation Front, this failed rule was marked by the rise of violent extremism, mainly the assassination of two leftist leaders, Chokri Bel Aid and Mohamed Brahmi, a delayed constitution drafting process, a highly criticized foreign policy, and a failure to answer to the "demands of the revolution."

The political parties at the forefront of the National Salvation Front² had participated in the national dialogue sponsored by the

¹ In reference to the first Tunisian president Habib Bourguiba (1957-1987) widely praised for leading the building of the first republic that was shaped by a drive for modernity exemplified in the drafting of Tunisia's personal code, which came into force after the country gained independence from the French in 1957 granting women exceptionally progressive rights in the Arab region at the time and focusing on education and building a modern state.

²Announcement of the formation of the National Salvation Front http://nawaat.org/portail/2013/07/26/%D8%A7%D9%84%D8%A7%D8%B9%D9%84%D8%A7%D9%86-%D8%B9%D9%86-

[%]D8%AA%D8%A3%D8%B3%D9%8A%D8%B3-

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[%]D8%A7%D9%84%D9%88%D8%B7%D9%86%D9%8A-%D9%81/ (in Arabic)

Nobel Peace Prize winners, the quartet of civil society organizations, that led the agreement on the road map and timeline to elections after the adoption of the constitution.³ The lead up to the elections in October 2014 after the deliberations of the dialogue agreement in October 2013 and the resignation of the Ennahda-led governing coalition and the creation of a technical non-partisan government was marked by an acute polarization between two seemingly contradictory political agendas: Ennahda's and Nidaa Tounes'.

However, the complexity of the fierce competition between the two parties and its implications goes far beyond the clash between ideologists backward religious and enlightened advocates. The challenges faced by the successive governments after January 2011, and that will be faced by the next party to rule, were multi-layered and are still the main priorities for the political class and civil society today. The social and economic rights related demands. especially on issues of unemployment, which fueled the uprising, remain unanswered by governments that have so far failed to devise clear employment strategies and have struggled to handle the increasing protests of various social movements.⁴ In the light of the increasing rate of unemployment, which reached 15.3% at the end of 2015, there is a crisis between workers unions and the government.⁵ This has brought to light the necessity of creating a sound foundation for democratic rule that protects and respects fundamental rights as well as insures the requirements for transitional justice. This includes taking the responsibility to hold accountable perpetrators of human rights violations during the previous regime and installing safeguards for non-recurrence of these violations. In addition, the government and parliament have the responsibility to uphold the constitution by legislating the organic laws that will put into practice and uphold the implementation of its values and to protect the rights it stipulates. The

³http://www.publicprivatedialogue.org/workshop%202015/2015%20-%20Public%20Private%20Dialogue%20in%20Tunisia3.pdf

⁴ According to the Tunisian Social Observatory, in October 2015 the total number of protest movements reached 910 which constitutes a drastic raise from 275 in august 2015 http://ftdes.net/2015/11/rapport-ost-mouvements-de-protestation-en-octobre-2015/

⁵According to the Tunisian National Institute of Statistics http://www.ins.nat.tn/indexar.php

aforementioned responsibilities should be at the heart of any political debate and top the agenda of the government and parliament that came about after a tedious and delicate transition period and after an acute political crisis that the led the Troika out of government in 2013.⁶

However, these responsibilities only formed a layer of the political scene because the rise of the terrorist threat and the magnification of the misguided binary between secular and Islamist debate have been prioritized over other imperatives. Accordingly, the ideological debate has dominated the political scene and overshadowed other urgencies. It is important to note that the frenzied race between the two parties has been overwhelming for a nascent democracy, from the election of the Constituent Assembly to the drafting of the constitution, political assassination, legislative challenges and the presidential and legislative elections. However, the strategic grounds for dealing with the ailing economic and social environment, the crucial need for concrete transitional justice mechanisms and the protection of the gains of the revolution in terms of rights and freedoms should not be in the background of the political debate but at its heart.

After the legislative election results, released on October 30, it became clear that neither of the parties would be able to constitute a majority. Nidaa Tounes, the main anti-Islamist political force topped the elections, but in an assembly of 217 seats, they only obtained 85 seats. Whilst victory went to the party's candidate for presidency, El Beji Caid Essebsi, the party still had to form a strong alliance in parliament. While the Nidaa Tounes electoral campaign was built on their opposition to Ennahda and their strong messaging against its policies and religious referencing, they have managed to adopt a language of consensus. In an interview with the private channel *al-Hiwar al-Tounsi* on October 27, El-Beji Caid Essebsi declared, "We [Nidaa Tounes] took a decision before [the elections] that Nidaa Tounes, even in the case of obtaining an absolute majority, will not govern alone. We must govern with others, in the interest of Nidaa Tounes and the country's," he continued, "we will form an alliance

⁶ For more information, see, Crisis Group, "The Tunisian Exception: Success and Limits of Consensus" Jun. 5, 2014, http://www.crisisgroup.org/en/regions/middle-east-north-africa/north-africa/tunisia/b037-l-exception-tunisienne-succes-et-limites-du-consensus.aspx

with the closest to us, the democratic family between quotation marks."

Such a statement, widely understood to imply the exclusion of Ennahda party from a potential coalition on the grounds of what was assumed to be ideological differences between the two parties, was quickly proven wrong. Nidaa Tounes found itself compelled to ally itself with Ennahda's parliamentary group of 69 deputies. This was unexpected by the electorate and predicted by political analysts. The coalition, which includes the two major groups in parliament as well as two other smaller parties, will govern for five years and will share the political responsibility of maintaining the gains of the transition period, best exemplified in the constitution and the strong open political dynamic marked by the participation of a strong and thriving civil society.

This coalition government will also face new challenges related to national security and stemming the rise of violent extremism without stifling the progress made in terms of rights and freedoms or prioritizing security and counter-terrorism strategies over transitional justice, and repressing social protests instead of devising social and economic strategies to respond to the urgent needs and demands of the people. From the beginning, high doubts were cast on the ability of the coalition government to address these demands in a strategic, comprehensive and timely manner not only because the electoral programs of these parties differed, but also because the coalition itself is built on very precarious grounds. On the one hand, the ideological differences between Nidaa Tounes and Ennahda make it difficult to believe in the sustainability of their joint-rule and their ability to compromise on problematic issues related to rights and freedoms. On the other hand, the cracks within Nidaa Tounes, due to major rivalry between its members and the great disparity of their backgrounds have led to an internal crisis that could constitute the end of this coalition government at a time where the country needs strong political stability

to face security threats and where signs of regression in terms of human rights protection increase in the name of security and stability.⁷

The year 2015 was also marked by a legislative struggle that included all stakeholders and triggered much debate over human rights safeguards in the country. After the adoption of the constitution, the parliament moved to adopt many organic laws. The discussion on the law on the High Judicial Council was a significant landmark in this process. The first draft of the law⁸ was challenged by several civil society actors mainly the Tunisian Judges Association⁹ for falling short of international standards 10 and containing some unconstitutional provisions in a fight to ensure that the law guarantees optimal independence of the judiciary. The opponents of this draft took the law to the temporary commission for the examination of the constitutionality of laws, where it was deemed that some of its provisions were unconstitutional. The commission demanded parliament revise the law accordingly. This was a victory for civil society. The law is nonetheless still a subject of discussion as further revision was asked from the committee and the Judges Association. 11

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 $\frac{http://www.aljazeera.com/news/2015/11/analysis-identity-crisis-tunisia-ruling-party-151107080841744.html}{}$

⁷ Ezzeddine Abdelmoula, "Analysis: The identity crisis in Tunisia's ruling party, As Rising Internal Struggles Grip the Leadership of Nidaa Tounes, is Tunisia's Nascent Democracy at Risk of Collapse?" *alJazeera*, Nov. 7, 2015,

⁸ http://www.e-justice.tn/fileadmin/fichiers_site_arabe/actualites/projet_loi_csm.pdf
9 http://www.assabahnews.tn/article/111496/%D8%B1%D8%A6%D9%8A%D8%B3
%D8%A9-%D8%AC%D9%85%D8%B9%D9%8A%D8%A9-

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¹⁰ International Court of Justice, "Tunisia: Amend Draft Law on the High Judicial Council to Comply with International Standards, Sept. 14, 2015,

http://www.icj.org/tunisia-amend-draft-law-on-the-high-judicial-council-to-comply-with-international-standards/

¹¹ Table figuring the unconstitutional elements in the draft law on High Judicial Council. http://goo.gl/A8FkcR

The Constitutional Court Law has also caused much concern among rights advocates and lawmakers for not complying with international standards with regard to judicial independence. The independence of the constitutional court is the cornerstone for rule of law and will safeguard human rights as guaranteed by the constitution.¹²

Torture has also surfaced again as a priority concern for rights advocates in Tunisia as cases of torture and other ill-treatment, especially in detention facilities, were reported.¹³

Countering Terrorism and Human rights:

Tunisia was no exception to other countries in the MENA region after the events of the Arab Spring and has been struggling with serious security threats from the rise of violent extremism and the terrorist movement in the region. Subsequent to various attacks against security forces and the army since 2011¹⁴ and the Bardo Museum attack of March 18, 2015, which resulted in 23 casualties, mostly foreign tourists, the Tunisian government brought forward with nervous urgency different legislative initiatives that are indicative of the shaky reaction to the rising threat of terrorism. The reaction raised concern about the sustainability of the democratic transition process and the progress made so far in terms of human rights protection, triggering a public debate that did not spare human rights NGOs.

https://www.hrw.org/news/2015/08/13/tunisia-case-tests-political-will-end-torture

¹² ICJ, "Tunisia: Revise Draft Law to Ensure the Constitutional Court is Independent and Able to Protect Rights," Nov. 3, 2015,

http://www.icj.org/tunisia-revise-draft-law-to-ensure-the-constitutional-court-is-independent-and-able-to-protect-rights/

¹³Human Rights Watch,

¹⁴ Terrorism in Tunis: Timeline for events after January 14th

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Various human rights organizations, including major international rights NGOs, ¹⁵ expressed alarm when the government proposed a bill in April 2015 entitled "repression of attacks against the armed forces" following the Bardo Museum attack. While the bill's purpose was said to enhance the protection of armed forces, it contained provisions that directly hindered a number of fundamental rights. The bill was incompatible with Tunisia's obligations to protect human rights including freedom of expression, access to information, due process and fair trial. ¹⁶ The bill, for example, would criminalize the "denigration" of police and other security forces, thereby undermining freedom of expression for example.

The bill also exonerates the security forces from criminal liability for using lethal force in the case of attacks against their homes, objects and vehicles if it is deemed necessary and proportionate. This triggered an unprecedented public debate about the priority of security versus rights. National human rights groups including the Tunisian League for the Defense of Human Rights (hereafter LTDH), the journalists' union, the judges' association, the Tunisian Forum for Social and Economic Rights along with different political groups have voiced strong criticism and called upon the government to revoke the bill. For them, the bill exemplifies the state's security approach in its reaction to the terrorist threat and signals the return of the police state which people had revolted against in 2010/11. It also shows a tendency to backtrack on the rights and liberties stipulated in the constitution of 2014.

The review of this draft law was put on hold for a number of reasons. The parliament and government were faced with immense pressure from human rights groups who drew attention to the way the

¹⁵ Amnesty International, Article 19, Avocats Sans Frontières – Belgiam, Action of Christians Against Torture (ACAT), Euro Mediterranean Human Rights Network, International Federation of Human Rights, Human Rights Watch, International Commission of Jurists, International Media Support, World Organisation Against Torture, Oxfam, Reporters Sans Frontières and The Carter Center

¹⁶ For more details on the bill see: Human Rights Watch, "Tunisia: Drop or Amend Security Bill: Provisions on State Secrecy and 'Denigrating' Security Forces Undermine Free Speech," May 13, 2015,

https://www.hrw.org/news/2015/05/13/tunisia-drop-or-amend-security-bill ibid.

bill violates Tunisia's human rights obligations under international law. The debate over the security versus rights-approach to terror resurfaced after a law on counter-terrorism and the suppression of money laundering was hastily adopted in the aftermath of the Sousse attack on 26 June and after the declaration of a 30-day state of emergency by the president. The adoption of the counter-terrorism law was considered a priority by the legislators and the government and triggered criticism from human rights advocates who voiced concern over some of its provisions that infringe civil liberties and do not respect human rights and analysts who considered it to be a reactionary state tool that prioritized security.

On July 25, 2015, amidst simmering tension, the law was voted in by 174 deputies of 217 with 10 abstentions. The few parliamentarians that had criticized the law's provisions chose not to vote against it but to abstain or not attend the voting session for fear of the political implications a negative vote will have in the context of such a debate. The media played a significant role in demonizing every critical voice of the law and ridiculing the human rights arguments in the face of the urgent need for a strong and strict security reaction. Newspapers, like the state-owned La Presse, ran a smear campaign against the ten parliamentarians that did not vote for the draft law. Human rights organizations that expressed concerns were also accused by media outlets as being supporters of terrorism.

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¹⁸ "Deadly Attack on Tunisia Tourist hotel in Sousse Resort, *The Guardian*, Jun. 26, 2015,

 $[\]underline{http://www.theguardian.com/world/2015/jun/26/tunisia-tourist-hotel-reportedly-\underline{attacked}}$

¹⁹ See the two op-eds in La Presse; Faut-il attaquer en justice les deputes contre la loi anti-teroriste ("Should the deputies that opposed the terrorism law be brought to justice?")

http://www.lapressenews.tn/article/faut-il-attaquer-en-justice-les-deputes-contre-la-loi-anti-terroriste/94/3911

and Des Complices Intouchables

http://lapresse.tn/28072015/102209/des-complices-intouchables.html

²⁰ See Ces ONG qui commencent a agacer

 $[\]underline{http://www.espacemanager.com/ces-ong-qui-commencent-agacer-reponse-du-collectif.html}$

It is important to note that this law came to replace an infamous law adopted in 2003. The government of the ousted Zine El Abidine Ben Ali tried about 3,000 people on terrorism charges under this law before he was ousted in early 2011. The 2003 law was highly criticized for not conforming with international standards related to the respect of human rights while countering terrorism. Notably the law was criticized for its broad definition of terrorism and provisions undermining the right to a fair trial and due process. It also opened up the possibility for the former regime to use it against political Former Special Rapporteur on the promotion and dissidents. protection of human rights and fundamental freedoms while countering terrorism Martin Scheinin stated that this law contains deficiencies on several levels and needed to be revised in order to comply with international standards at the end of his visit to Tunisia in January 2010.²¹ After 5 years of the Tunisian uprising and the visit of the special rapporteur, the hopes for a law that would make the fight against terrorism more efficient while respecting human rights were dashed with the adoption of a law that contains many of the same problematic provisions found in the 2003 law.

Human Rights NGOs severely criticized²² the new law for not complying with international standards²³ and analysts claimed that it could pave the way for the return of authoritarianism in the name of counterterrorism. Moreover, the legislation itself was deemed to be inefficient and shortsighted because it did not entail a comprehensive national strategy that addresses the root causes of terrorism and ways of protecting the rights of citizens according to the constitution and international obligations. The new law criminalizes terrorist actions, but it does not provide measures for their prevention or for facing the

²¹ ICJ, "Tunisia: Revise Counter Terrorism Law to Conform to International Standards," Aug. 6, 2015

http/::www.icj.org:tunisia-revise-counter-terrorism-law-to-conform-to-internationalstandards:

²²Human Rights Watch, "Tunisia: Flaws in Revised Counterterrorism Bill Strengthen Safeguards for Detention, Abolish Death Penalty," Jul. 7, 2015, https://www.hrw.org/news/2015/07/07/tunisia-flaws-revised-counterterrorism-bill

For more about these provisions, see ICJ, "Tunisia: Revise Counter-Terrorism Law to conform to international standards," Aug. 6, 2015.

http://www.icj.org/tunisia-revise-counter-terrorism-law-to-conform-to-internationalstandards/

radicalization wave of Tunisian youth, who do not only execute attacks in Tunisia, but also constitute one of the largest contingents of ISIS' foreign fighters. ²⁴ The government acknowledged the need for a global strategy to counter terrorism and violent extremism by announcing the convening of a national congress against terrorism to be held in September. The congress would bring together government, civil society, and stakeholders to discuss the different economic, social, political, and cultural dynamics and come up with a comprehensive strategy. There is, however, a lack of political will, as the congress never happened and keeps being postponed. ²⁵

Reactionary security measures have been taken after the most recent attack that killed a dozen presidential guards at a bus explosion at the heart of the capital on November 24.²⁶ In an atmosphere of panic where the president declared a month-long state of emergency and a curfew on the entire city, security forces demonstrated great hostility towards journalists²⁷ and human rights advocates found themselves the target of blame and attack.²⁸ The police violently raided more than 50 households in the northern suburb of Tunis arresting and interrogating a number of young men in total violation of their civil rights.²⁹

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²⁴ "Why and how Westerners go fight in Syria and Iraq," Aug. 30, 2014, http://www.economist.com/news/middle-east-and-africa/21614226-why-and-how-westerners-go-fight-syria-and-iraq-it-aint-half-hot-here-mum

²⁵ "National Conference against Terrorism maintained, Essid Says," http://www.tap.info.tn/en/index.php/politics2/29971-national-conference-against-terrorism-maintained-essid-says

²⁶ "Tunisian Bus Blast Strikes Presidential Guard in the Heart of the Capital," *Washington Post*, Nov. 24, 2015,

 $[\]frac{https://www.washingtonpost.com/world/tunisian-bus-blast-strikes-presidential-guard-in-the-heart-of-the-capital/2015/11/24/5463cf6a-92da-11e5-8aa0-5d0946560a97_story.html$

²⁷https://inkyfada.com/2015/12/terrorisme-excuse-droit-liberte-atteinte-police-tunisie/

²⁸ https://www.youtube.com/watch?v=tOyeXMYPopo&feature=youtu.be

²⁹http://www.jawharafm.net/fr/article/descentes-musclees-a-la-goulette-une-citoyenne-denonce-la-violence-des-agents/90/30624

Persistent Challenges to a Concrete Transitional Justice Process in Tunisia:

Hesitant and shaky steps towards installing a transitional justice process have been taken by successive governments since 2011 and have constituted a priority for several main human rights organizations. However, the process has not been finalized at the end of the transitional period. The adoption of the new constitution and the legislative and presidential elections at the end of 2014 marked the beginning of what was thought to be the last opportunity for achieving justice and accountability for crimes committed under the previous regimes. The law on transitional justice ³⁰ was constitutionalized and a national mechanism to implement it was set with the foundation of the Truth and Dignity Commission (IVD). The IVD is responsible for providing reparations to victims, investigating the state's previous human rights violations, and drafting, discussing, and adopting the legislations that will bring about institutional reforms and insure the strong basis for a democratic and rights-based rule of law.

After a slow start, the process of transitional justice seems to have been launched. However, criminal prosecution of individuals allegedly involved in human rights violations at the time of Ben Ali from various security services have been very limited. Only twenty-three suspects have been tried for acts of violence allegedly committed between December 17, 2010 and the January 14, 2011 (the period of the uprising). Furthermore, verdicts of the military courts were marked by relatively short sentences highly criticized by advocates of accountability and justice. The sentences of high-profile members of the regime, including former Interior Minister Rafik BelHaj Kacem and the former head of the presidential guard of Ben Ali, Ali Seriati, have been the target of particular criticism. The defendants were sentenced to three years in prison for causing death and injury of demonstrators during the uprising in the cities of Thala, Kasserine, Sfax and Greater Tunis. The verdicts meant that each was released

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³⁰Organic Law on Establishing and Organizing Transitional Justice http://www.ohchr.org/Documents/Countries/TN/TransitionalJusticeTunisia.pdf

³¹ Human Rights Watch, "Flawed Accountability Shortcomings of Tunisia's Trials for Killings during the Uprising" Jan. 2015,

https://www.hrw.org/sites/default/files/reports/tunisia0115_ForUpload.pdf

within two months of the sentence because of time already served. Ben Ali was, however, given a long sentence on charges of misappropriation of public funds and the murder of protesters during the uprising. Frustration among the families and communities of the victims of state violence is growing and the willingness to seek truth and justice for victims has faded.

The president presented a draft bill in July dubbed the reconciliation bill³² that further casts doubt on the political will to achieve transitional justice. This draft law triggered much protest from the opposition, rights advocates, and anti-corruption activists. The bill, presented without any consultation with civil society or the Truth and Dignity Commission, provided amnesty to former and current government employees charged with financial crimes, including embezzlement. The first article of the draft states that it aims at "supporting the transitional justice apparatus, to ensure an appropriate investment environment, to develop the national economy, and to boost trust in state institutions." Yet, a closer look at the draft makes clear that by granting amnesty and immunity from any corruption charges under condition of returning the embezzled funds it is impunity that is being supported not transitional justice. This draft law was also criticized for impeding the work of the Truth and Dignity Commission. Article 12 of the law foresees the establishment of a committee to examine requests for restitution submitted by former employees and businessmen to whom the law would apply. Concern was raised over the independence of this committee particularly that the Truth and Dignity Commission, which is an independent constitutional body, has the mandate to scrutinize corruption charges.

Civil society organizations opposed to the bill believe it obstructs transitional justice. ³³ This controversy has been another battlefield for Tunisian civil society who have expressed their criticism and renewed their pledge to secure a transitional justice process that will hold perpetrators of violations under the old regime accountable and bring

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³² "Will Tunisia's Economic Reconciliation Law Turn the Page," Sept. 29, *Atlantic Council*,

 $[\]underline{http://www.atlanticcouncil.org/blogs/menasource/will-tunisia-s-economic-reconciliation-law-turn-the-page}$

³³ Interview with Sihem Ben Sedrine http://goo.gl/8MgA3u (in Arabic)

forward substantial reform where the rule of law will guarantee non reoccurrence. The draft bill was presented to the government but has not yet been discussed by the parliament.