



DEMOCRACY AND CITIZENSHIP IN NORTH
AFRICA AFTER THE ARAB AWAKENING:
CHALLENGES FOR EU AND US FOREIGN POLICY
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**CITIZENSHIP IN POST-AWAKENING TUNISIA:
POWER SHIFTS AND CONFLICTING PERCEPTIONS**

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SUMMARY

With the passing of its new Constitution, Tunisia is rightly celebrated as the Arab state that has advanced the most in strengthening democratic rights provisions. The Constitution formally enshrines the progress Tunisia has made especially on women's rights; the rights of expression and assembly; freedom of the press; the rights of political parties; and the formal recognition of social and economic rights. However, the Constitution does not definitively resolve tensions between individual and religious rights. In order to maintain consensus between the differing opinions in Tunisia, the document remains ambivalent on the state's precise role in protecting the 'sacred'. Tunisia has made much progress, but the Constitution is likely to perpetuate rather than close debates over different concepts of rights.

INTRODUCTION

The contemporary history of Tunisia is rich in terms of breakthroughs in the field of rights and freedoms. First, in 1846 the King of Tunis proclaimed the abolition of slavery. In 1857, a bill of rights –the "Fundamental Pact"- guaranteed the security of persons and property and the equality of all subjects, regardless of their religious affiliation. However, shortly afterwards, under the French protectorate, rights and freedoms were curtailed, as denounced by the National Movement.¹ After independence, led by Habib Bourghiba, Tunisia witnessed both the expansion and the limitation of rights: on the one hand rights were constitutionalized in 1959, but on the other laws were enacted which limited their application.

In the absence of rule of law mechanisms, authoritarian practices and arbitrary rule prevailed. Despite some openings, as symbolized by the creation of the Tunisian League of Human Rights in 1977, rights and freedoms suffered from systematic violations.²

Most slogans in the 2011 Tunisian revolution centred on social and economic rights against a regime that fostered social gaps and socio-economic imbalances between the disadvantaged regions (non-coastal areas and the South) and favoured regions (coastal areas of the North).³

Since January 2011, political developments in Tunisia have been intense. Initially politicians expanded freedoms of association and expression with the goal of establishing a pluralistic and participatory democracy. The High Commission for the Achievement of the Objectives of the Revolution set up an independent body for the elections (ISIE) which, with the support of the Government, organized elections for a National Constituent Assembly (NCA). The 23rd of October 2011 elections to the Constituent Assembly were free and fair. The Assembly worked for over two years, both as a traditional Parliament and to draft a new constitution.⁴

With over 41% of the votes, the Islamist party Ennahda dominated the NCA and tried to navigate the difficult path in finding compromises over both concrete and identity-related issues.

¹ C.H. Moore, *Tunisia since independence. The Dynamics of one-party Government*, University of California Press, Los Angeles, 1965, pp. 20-22.

² J.N.D. Anderson, "The Tunisian Law of Personal Status," in *The International and Comparative Law Quarterly*, vol. 7, no. 2, Cambridge University Press, Cambridge, 1958, pp. 262-279.

³ H. Yousfi, Social Struggles in Tunisia: A Curse or a Revolutionary Opportunity?, in *Jadaliyya*
http://www.jadaliyya.com/pages/index/10839/social-struggles-in-tunisia_a-curse-or-a-revolutio

⁴ A. Stepan, "Tunisia's transition and the twin tolerations", in *Journal of Democracy*, vol. 23, no. 2, Johns Hopkins University Press, Baltimore, 2012, pp. 89-103.

Compared to Egypt, attempts at dialogue and consensus were more evident. This produced a more constant advancement on key rights issues, ending up with less regime restrictions on rights than in Morocco.⁵

The first elected cabinet, led by the Nahdawi PM Hamadi Jebali, expressed views on the future shape of the country that were at odds with those of the more secular opposition.⁶ Moreover, the constitutional process took longer than the one year originally foreseen, something which elicited criticism including accusations against Ennahda of holding on to power illegitimately. In January 2014, the Constitution was finally approved. After two political assassinations in 2013 and the dissolution of two transitional governments the Tunisian transition is slowly making progress..

The killing of Mohamed Brahmī by Salafi extremist organization Ansar al-Sharia⁷ last July prompted several deputies to leave the chamber in protest at what they thought were cover-ups, and the overly timid approach by Ennahda vis-à-vis jihadist groups paralysing the work of the NCA had not helped perceptions. Only last October, the Troika (Ennahda, Ettakatol and CPR) and the main trade union (UGTT) launched a roadmap for a national dialogue based on three pillars: the completion of the new Constitution within four weeks, the formation of a new government within three weeks, and the commitment to continue the national dialogue. These demands were met in December 2013. The NCA has started voting on the Constitution article by article, while the government led by Ali Larayedh (who followed Hamadi Jebali) resigned in favour of a new technocratic government led by Mehdi Jomaa.⁸

THE ACQUIS OF THE REVOLUTION

The political change that took place in Tunisia opened unprecedented opportunities for creating a regime that could respect freedoms and human rights. Earlier restrictions on the freedoms of the press, expression, assembly and association were largely lifted, and the population has benefited from these new freedoms, especially in terms of political participation during the run-up of the first, open, inclusive and democratic elections. Since the fall of the Ben Ali regime, politicians and exiled human rights activists have returned to the country, political prisoners have been released and human rights activists have begun to conduct their activities without interference or intimidation from the government.

Since the first Constitutional draft, submitted in August 2012, political freedoms have been greatly enhanced.⁹ The NCA has undertaken responsibility to safeguard and promote the rule of law and principles of good governance, starting with complete political freedom.¹⁰ The new legal framework has simplified the rules for the creation of new parties and associations as well as their

⁵ E. Dalmaso, F. Cavatorta, "Democracy, civil liberties and the role of religion after the Arab Awakening : Constitutional reforms in Tunisia and Morocco", in *Mediterranean Politics*, vol. 18, no. 2, Routledge, London, 2013, pp. 225-241.

⁶ See the declaration made by PM Jebali about the "Sixth Caliphate" soon after the NCA elections. <http://www.tunisia-live.net/2011/11/16/ennahdha-flipflopping-the-sixth-caliphate-a-misunderstanding/>

⁷ Government deems Ansar al-Sharia illegal organization, in *Tunisia Live* <http://www.tunisia-live.net/2013/05/21/government-deems-ansar-al-sharia-illegal-organization/>

⁸ *Tunisia PM Ali Larayedh hands over to Mehdi Jomaa*, BBC, 9 January 2014. <http://www.bbc.co.uk/news/world-africa-25669687>

⁹ For all the Constitutional drafts, see the official website of the Tunisian National Constituent Assembly : <http://www.anc.tn/site/main/AR/index.jsp>. In the case of political freedoms, the draft released in August 2012 stated that : « the creation of political parties, trade unions and associations is free » (art. 11).

¹⁰ Rights to Health and Free Education Approved in Tunisian Constitution, in *Tunisia Live* <http://www.tunisia-live.net/2014/01/07/rights-to-health-and-free-education-approved-in-tunisian-constitution/>

funding. The new laws have also removed obstacles to obtaining aid, donations and legacies, whether national or international.¹¹

Freedom of association has allowed for the creation of more than 150 political parties and over 5000 associations. The trade union landscape has also benefited from the new conditions as manifested by the creation of two new unions for workers and one for employers.¹² This expansion of freedom of organization was possible thanks to the decrees passed by the High Commission for the Achievement of the Objectives of the Revolution adopted during the first phase of the transition.¹³ Immediately after the revolution, as a break with the past, all barriers to the creation of association, political party or any other organization were eliminated. To create a party or an association, it now suffices to be in accordance with the Constitution, the law, repudiate violence and assure economic transparency (Constitutional draft art. 34).

Since 14 January 2011, restrictions on **freedom of religion** have been lifted. Under Bourguiba and Ben Ali's secularist policies, places of worship were open to believers only for prayer times, something which has now been liberalized¹⁴.

With this brings new challenges that Tunisia must face, 10% of the country's mosques (500 in 5000) are run by the Salafi extremist movement which have used these venues to recruit new members and to promote illegal propaganda (such as encouraging young people to become jihadists in Syria)¹⁵. In fact, a significant number of places of worship have been converted into 'hot houses' for terrorism, and enjoy a *laissez faire* approach from the Ministry of Religious Affairs which is led by the Islamist Nouredine Khadmi.

If the liberalization of worship has benefitted orthodox Islam, popular Islam (maraboutism) as a result has suffered increased attacks by Salafist forces. In 2012-2013, more than a hundred incidents of fire and looting have targeted *zawiyas* (sufi lodges).¹⁶ These acts are part of a strategy to change the model of the Tunisian society, for example through the long-term plan of imposing Wahhabi Islam. Religious liberalism in other words risks perverting religious freedom, even if the general benevolence of Ennahda toward Salafism diminished after the killing of Brahmi the depiction of this organization as a terrorist group has meant that all Salafi groups have been labelled as such, leading to a potential increase in radicalization which has become more significant.

The issue of freedom of religion has been at the heart of constitutional debates. Article 6 of the last draft of the Constitution provides:

"The state is the guarantor of the religion. It guarantees freedom of conscience and belief and freedom of belief, it is the protector of the sacred, guaranteeing the neutrality of places of worship in relation to partisan manipulation".

¹¹ Human Rights Watch, *World Report 2012: Tunisia* <http://www.hrw.org/world-report-2012/world-report-2012-tunisia>

¹² M.S. Omri, Trade unions and the construction of a specifically Tunisian protest configuration, in *Jadaliyya*, <http://www.opendemocracy.net/mohamed-salah-omri/trade-unions-and-construction-of-specifically-tunisian-protest-configuration>

¹³ See, for instance, the decree laws no. 14 of 23 March 2011 and no. 27 of 18 April 2011.

¹⁴ J. Esposito, J. Piscatori, "Democratization and Islam", in *Middle East Journal*, vol. 45, no. 3, Middle East Institute, Washington, 1991, pp. 431-432.

¹⁵ Tunisia's 'Road to Jihad' in Syria Paved by Muslim Brotherhood, in *al-Monitor* <http://www.al-monitor.com/pulse/security/2013/10/tunisia-jihadists-syria-brotherhood-ennahda.html#ixzz2qrRnxCPs>

¹⁶ Tunisia Salafists take aim at Sufi shrines, in *Middle East on Line* <http://www.middle-east-online.com/english/?id=54891>

The text attributes the role of the guarantor of places of worship to the state, so as to prevent their politicisation. This potentially threatens to curtail freedom of expression when religious matters are concerned. Namely, before protecting “what is sacred” (*muqaddasat* in Arabic), the State, through the judiciary should define what is sacred and what is not. Eventually after much debate, the Constitution did not mention the “blasphemy clause” proposed by Salafis, but the framing of Article 6 did not dispel all the doubts raised.¹⁷ Some NCA members tried to limit the scope of personal freedoms: several deputies (Wissem Yassin, Ibrahim Hamdi, Azed Badi and Mabrouk Hrizi) proposed without success, to delete the expressions “*It [the State] guarantees freedom of conscience*” and “*freedom of belief*”. Others tried, also unsuccessfully, to expand these freedoms to other religions: Ahmed Brahim of al-Masar and Khemais Ksila of Nida Tounes proposed to add ‘other religions’ after stating that the ‘state is the guarantor of Islam’. These examples show the intricate debate on religious freedom and sheds lights on the struggle to reach a consensus within the NCA.

Freedom of the press continues to go through contentious reforms. Soon after the revolution, the High Commission for realisation of the revolutionary goals drafted decree laws 115 and 116 establishing two High Commissions to examine the codes of the press of the Ben Ali’s regime, stipulating the topics the media could cover, and establishing sanctions against offenders. Before the election of NCA, the temporary Government led by Mohammed Ghannouchi created a ‘Committee on reform of the media and information’, an independent body in charge of media reform.¹⁸ After consultations with the Government, the Committee elaborated new rules for the licensing of radios and televisions. It also proposed the establishment of a new public broadcasting service to disseminate information and allow the formation of an informed and non-partisan public opinion.

After the elections of October 23 2011, the government created the first independent High Authority for Audiovisual Communication (HAICA), which would ensure freedom and pluralism in the audiovisual production.¹⁹ It took seventeen months to reach the final composition of the High Authority of Audiovisual Communication²⁰ (HAICA) and the High Authority is still struggling from an organizational point of view. HAICA has been accused of overstepping its mandate, such as when it advanced a review of the terms of appointment of directors of public media in September 2013, or last October when it recommended journalists not to mobilise in the political arena.

In reaction, the Union of Journalists had requested through Decree 115, to reverse the restrictive penal codes and to establish more liberal practises. The new rules contained in the Decree 115 was decreed by Interim Prime Minister Beji Caid Essebsi in 2011 but was largely ignored by prosecutors and courts. The new press code has also abolished the criminalization of defamation of State institutions and the publication of offensive content on the president.²¹ In short, a comprehensive legislation regulating the functioning of the media (press, radio, TV, new media) is still needed. The press code is only a piece of an on-going process of reform. Moreover, a

¹⁷ No blasphemy clause in new Tunisia constitution, in *Ahramonline*, <http://english.ahram.org.eg/NewsContent/2/8/55412/World/Region/No-blasphemy-clause-in-new-Tunisia-constitution-Sp.aspx>

¹⁸ Tunisian Media Reform: An Incomplete Process, in *Tunisia Live*, <http://www.tunisia-live.net/2011/12/30/tunisian-media-reform-an-incomplete-process/>

¹⁹ S. Sbouai, Média : La HAICA se lance, in *Nawat*,

²⁰ Nouri Lajmi, lecturer at the Institute of Press and Sciences of Information, was appointed as its President and three professors, a former journalist, and three journalists composed its board

²¹ Striking Journalists Demand Use of New Press Code, in *Tunisia Live*, <http://www.tunisia-live.net/2013/09/17/striking-journalists-demand-use-of-new-press-code/>

significant proportion of newspapers and magazines in Tunisia are affiliated to a political party and consequently remain far from representing a truly independent media scene.²²

On the other hand, **freedom of access to the Internet** has become effective, as web-censorship has been outlawed. This has happened despite those arguing for the imposition of filters against immoral websites.

On the human rights level, arbitrary detentions and torture, well-known practices under the Ben Ali regime, mostly are a thing of the past. The draft constitution enshrines the prohibition of all forms of mental and physical torture. However, sporadic episodes brought to international attention remain serious and demand thorough investigations, such as the death of an alleged offender as a result of torture by the police investigators last November.²³ To curb this problem, the government has decided to set up an elected national authority for the prevention of torture. Even if the creation of this authority represents an improvement, it will have no powers to prevent torture without the cooperation of the internal security forces, the judicial system and the prison service.

Tunisia will still be in transition until the rule of law becomes enshrined in its constitution and in its legal practices. This has major implications for the implementation of the new Constitution and especially in the fields of human rights. So far, there are still doubts about the independence of the judiciary. An independent higher authority of the judiciary has recently been elected by the ANC,²⁴ which represents a step towards achieving this goal. The Authority was however, soon subject to restrictions by the minister of justice. Last October the Minister made new appointments to high judicial office, bypassing the Higher Independent Authority of the judiciary. His uncompromising attitude has caused unprecedented discontent among a large majority of judges who have observed a series of strikes. The problem of the independence of the judiciary was also debated in the NCA.²⁵ The examination of the articles related to the judiciary provoked criticism due to several controversial articles.

The Constitutional draft is accused of giving huge powers to the executive in the domain of judicial appointments. Article 103 stated only that judges are appointed by presidential decree, upon the opinion given by the High Council of the Judiciary. This article, deemed too weak, was repealed (98 votes against 13, 12 abstentions). After several amendments, article 103, which is still under debate, maintains the above mentioned formula, adding that the high ranks of the judiciary are appointed after consultation of the Prime Minister with the High Council of the Judiciary. Moreover, the law must define precisely the duties of the judges. Deputies Sana Mersni and Latifa Habachi of Ennahdha proposed another amendment which gave the government the duty to appoint the high ranks of the judiciary upon the opinion of the Minister of the Justice. This amendment, accepted by 109 votes, allows for a powerful executive which could undermine the independence of the justice system.²⁶

²² F. Cavatorta, R.H. Haugbølle, "Vive la grande famille des médias tunisiens. Media reform, authoritarian resilience and societal responses in Tunisia", in *The Journal of North African Studies*, Vol. 17, No.1, Routledge, London 2011, pp. 97-112.

²³ Tunisian police accused of torture, in *al-Jazeera* <http://www.aljazeera.com/indepth/features/2013/11/tunisian-police-accused-torture-2013111011124902997.html>

²⁴ Tunisia: Marzouki Receives Members of the Independent Higher Authority of the Judiciary, in *All Africa* <http://allafrica.com/stories/201308160756.html>

²⁵ Tunisie: manifestation de magistrats pour réclamer leur indépendance, in *Jeune Afrique*

²⁶ Tunisia: Justice chapter voting continues after two-days stop, in *Tunis Times* <http://www.juancole.com/news/the-tunis-times/2014/01/tunisia-justice-continues>

CIVIL RIGHTS: INSTITUTIONALISING A PRECARIOUS STATUS QUO?

Regarding **women's rights**, it was agreed among all political parties not to curtail women's legal achievements. In terms of political participation no law prohibits women from voting or participating in political life on an equal footing with men. In an effort to include more women in the electoral process, the transitional Government led by Mohammed Ghannouchi, under the pressure of the High Commission for the Achievements of the Revolution, has adopted a very advanced law of Gender Parity, which requires that political parties include an equal number of male and female candidates on electoral lists.²⁷ They must also comply with the alternation of the names of male and female candidates in order to increase the probability of the choice of female candidates. Eventually, however, only 26% of the 217 members of the Constituent Assembly are women.

The wording²⁸ of certain articles in the first constitutional draft opened up doubts concerning the true intention of the majority group in the Assembly.²⁹ The equality between men and women was not clearly marked and the use of terms such as 'complementarity' between men and women suggested a desire to change the status of women. Criticism and pressure from civil society and external actors such as the European Union led them to backtrack and to explicitly mention equality in the new draft.

As with religious freedoms, the State is the guarantor of all the legal aquis in favour of women's rights since the Personal Status Code of August 13, 1956. The debate on women's rights inside the NCA intensified over the current inheritance laws which, as in most Arab countries only permit women the right to inherit half of what male sons inherit. The modifications proposed by Ennahda would have widened the institution and practice of Waqfs,³⁰ thereby further limiting women's inheritance rights. Waqf properties become properties of the community and are inalienable, i.e. could not be left to children through the standard inheritance laws. Indeed, this proposal, despite the slim chance of being passed, further alienated Tunisia's secular and secularist forces in accusing Ennahda of an undercover Islamization agenda.

It should be noted that the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by Tunisia in 1985 had been a subject to a general statement, and specific reservations had been raised about a number of articles. Many scholars have praised the text of the Decree -Law of 24 October 2011 which paved the way for the withdrawal of reservations, which, however, has failed to take place. Tunisian feminist groups have continued to criticize the Laraayedh government (and all successive governments after the adoption of the principle of withdrawal of the reservations) for failing to notify the United Nations of the withdrawal of reservations to CEDAW.

Concerning **minority rights**, no formal discrimination was part of Tunisian legal provisions, even before the revolution: formally, there is no legal discrimination between different ethnic, racial, or religious groups; all are Tunisian citizens and have the same access to the different freedoms and rights.³¹ In terms of political participation no law prohibits any persons belonging to minority

²⁷ Tunisia's Ennahda Reconsiders Gender Equality, in *al-Monitor* <http://www.al-monitor.com/pulse/politics/2013/08/tunisia-ennahda-women-rights-threat.html>

²⁸ The Waqf is a form of donation made by an individual to an institution of public utility (school, hospital, mosque etc.) for charitable purposes.

²⁹ L. Sadiki, Tunisia: Women's rights and the new constitution, in *al-Jazeera*, <http://www.aljazeera.com/indepth/opinion/2012/09/2012918102423227362.html>

³⁰ N. Chabaane, Pourquoi ce projet de loi ?, in *Nadia Chaabane's personal blog* <http://nadiachaabane.wordpress.com/2013/11/24/pourquoi-ce-projet-de-loi/>

³¹ Tunisia Makes Progress on Minority Rights — And the World Ignores It, in *Forward* <http://forward.com/articles/190831/tunisia-makes-progress-on-minority-rights-and-th/#ixzz2qxVTb68N>

groups the right to vote or to participate in political life on an equal basis with other citizens. In an inclusive effort, the constituents suggest the adoption of a quota system in favour of the Jewish people, but this suggestion was refused by the Jewish community, which thought there was no need for such a positive discrimination. However, on specific political rights matters, the problem of discrimination remains since Jews have no possibility to present their candidacy for the presidential elections.

Protection of minorities is also linked to the debates over article 6. When one of Ennahda's members called a secular deputy an 'infidel', the assembly responded by outlawing *takfir* (apostasy), which could serve as incitation to religious violence.

SOCIAL AND ECONOMIC RIGHTS AT THE HEART OF REVOLUTIONARY REQUESTS STILL UNANSWERED

The two pillars of the Tunisian revolution were freedom and dignity, and although many fear the process is stalled, much has changed for freedom. Yet almost nothing has changed for socio-economic rights, supposedly the backbone of Islamist parties' platforms.³²

Regionally speaking, during the long oppressive regime of Ben Ali, one could see that the capital and in second tier, the urban and touristic coastal line of the country were the focus of the government's social and economic investment.³³ The rural interior, the eastern hinterland and the southern desert were ranked lowest in the list of administrative priorities.

In terms of social hierarchy, a 'system' of expectation rule the state-citizen relations. To a certain extent a 'trade-off' was the basis of a decade of stability and growth. Tunisia's generally left-leaning political orientation evolved into a corporatist state-led economy. The main features of this trade-off were: for the lower classes progressive social policy and guaranteed low food prices; for the middle class, the regime guaranteed high education and job perspective, while among the business and upper classes there were expectations of economic pay-offs (tax cuts, good business climate).

As such there was a certain implicit 'social contract', with oppressive and corrupt elements. Seen this way, many argued³⁴ that economic decline had already set in before the revolution led the regime to break its contract concerning food prices and jobs, and through the corruption predominately perpetrated by Ben Ali's clan. Breaking its side of the contract on all three levels, the regime was forced out.

After the revolution, the main demand became a regional re-balancing policy. The legal framework, already developed before the revolution, had guaranteed a large number of social and economic rights, and recognized a wide social coverage for the poorest. However, it was distorted by cronyism, nepotism and corruption. The biggest challenge for the government is to guarantee the continuity of public subsidies for certain products (staple foods, energy) and services (health and

³² Ruth Hanau Santini. « Tunisia and Egypt: foreign loans and domestic consensus », in *Aspenia online*

<https://www.aspeninstitute.it/aspenia-online/article/tunisia-and-egypt-foreign-loans-and-domestic-consensus>

³³ C. Alexander, *Tunisia: Stability and Reform in the Modern Maghreb*, Routledge, New York 2011, pp. 68-77.

³⁴ L. Achy, « Tunisia's Economy one year after the Jasmine Revolution », in *Carnegie Middle East Center*, December 27, 2011

education), which is why the government is preferential to making subsidies available only to the most disadvantaged categories.

As the current government is an interim or ‘care-taker’ government it has been reluctant and unsuccessful in developing policy and action on socio-economic issues, which should have been considered the absolute political priority. According to the World Bank statistics, GDP growth was only 2.7% in the first quarter of 2013, and 3.2% in the second quarter of the same year. The average for 2013 is around 3.2% against 3.6% in 2012. Inflation had steadily increased since 2012 due to high food prices to peak at 6.5 percent in March 2013. It has since stabilized to 6% at the end of 2013 responding to tighter monetary policy adopted by the Central Bank.³⁵

Ensuring the safety of persons and property, which justifies granting the State a monopoly on coercion, remains a pre-requisite for the enjoyment of socio-economic rights. However, given the significant increase in security threats and crime, the safety of persons and property is increasingly threatened.

Voters had been largely attracted by the political party programmes which have promised economic and social demands as their main axis. Ennahda in particular based its campaign on the recovery of the Tunisian economy in light of the Islamic concept of social justice.³⁶ But since then, the government has only adopted measures of social housing and proposed laws that benefit the “blessed of the revolutions”, thus deepening, and not lowering, social inequalities. Moreover, Ennahda has been accused of having adopted a neoliberal agenda, not so different from the one of the former regime. The Minister of Investment for the Jebali government, Riadh Bettaib, made it clear that Tunisia expected \$1 billion in World Bank loans to boost foreign direct investments and tourism revenues.³⁷

The Tunisian General Labour Union (UGTT), the biggest Union in the Arab world, has proposed the inclusion in the constitutional draft of several social and economic rights, including social justice (art. 12), the right to decent work (39), syndicate rights (including the right to strike art. 35-36), the right to health (art. 37), the right to education and the right to a decent life (art. 38). All those demands were adopted in the so called “Social Contract” signed by the relevant actors including the Government, the labour union UGTT, and the Entrepreneurs Union (UTICA) . Different political forces stressed different social priorities, for example, an amendment to article 12 was proposed by Anour Marouki of Popular Petition and has been accepted by 144 votes. Marzouki proposed to recall the principle of “positive discrimination” giving the State the duty to enforce social justice and the balance between the wealth of the regions.³⁸ The leftist opposition also proposed amendments on article 39: according to the new formulation, the right to work is ascribed to all citizens, men and women alike. Lobna Jeribi of Ettakattol (one of the members of the governing Troika) proposed to suppress from article 36 the provision that the right to peaceful demonstration must be exercised as defined by the law. These examples demonstrate differences in perceptions of citizenship rights but also shed light on the constructive negotiations conducted by all political parties.

³⁵ Tunisia overview <http://www.worldbank.org/en/country/tunisia/overview>

³⁶ M. Lynch, Tunisia’s new al-Nahda, in *Foreign Policy*, http://www.foreignpolicy.com/posts/2011/06/29/tunisias_new_al_nahda

³⁷ Tunisia: al-Nahda’s failures lead Sidi Bouzid to rise again, in *al-Akhbar*, <http://english.al-akhbar.com/node/11211>

³⁸ The positive discrimination refers to policies that take factors such as race, religion, sex or national origin, into consideration to benefit an underrepresented group.

WHO PUSHES FOR CHANGE AND WHO OBSTRUCTS IT?

In a context of high social tensions and continuous protest, change does not have the same meaning for all.

Some, such as members of Ennahda, have been accused of trying to maintain power in the long term without contesting general elections. One of the most important points raised by the opposition is the review of all nominations/appointments made by Ennahda, especially the nominations of provincial administrative bodies. These nominations were contested and considered as a tool of Ennahda self-empowerment.³⁹

Others, such as Salafists, aim to change society, without refraining from the use of violence as Ghannouchi himself admitted.⁴⁰ The two 2013 assassinations of opposition politicians were attributed to them or their affiliates, such as Ansar al-Sharia, now outlawed as terrorist organization. Ansar al-Sharia (Supporters of Islamic Sharia) seem to have close ties to al-Qaida and its members continue to intermittently confront the Tunisian army and security forces in the mountains of central and north-west region, fostering a sense of insecurity among the population.⁴¹

The police and the military forces seem to be resisting change, trying to use the same old repressive methods, while calling for a new image in the society.⁴² The police unions are increasingly challenging the authority of the political power, criticizing it and trying to secure more rights and advantages, but continue using the same tools of the past, in particular torture and other harsh treatments, violence and abuses.⁴³

The strong polarisation between Islamist and secularist forces stalled political and constitutional progress for months. The stalemate was partially linked to the struggle between a universal conception of human rights –considered to be part of the modernist-secular political trend- and a traditional conception of the Arab-Muslim identity. This also explains why the agreement on the specific provisions of freedoms within the NCA was difficult to achieve. Traditionalists cannot foresee freedoms without important limitations and so, even within the NCA, they adhered to the consensus around the realization of some rights, but tried to circumscribe their implementation. This happened in domains such as the relationship between State and religion, freedoms of expression and opinion, and freedoms of worship and faith.

However, a sense of *super partes* national responsibility has finally emerged and on January 23rd the last article of the constitution was voted on by the NCA.

³⁹ D. Ottaway, Tunisia's Islamist-led democracy founders, in *Wilson Center*,

<http://www.wilsoncenter.org/publication/tunisia%E2%80%99s-islamist-led-democracy-founders>

⁴⁰ Le Ghannouchi nouveau est arrivé, in *Leaders* <http://www.leaders.com.tn/article/le-ghannouchi-nouveau-est-arrive?id=13112>

⁴¹ Tunisia's Borders: Jihadism and Contraband, *International Crisis Group*, November 2013,

<http://www.crisisgroup.org/en/regions/middle-east-north-africa/north-africa/tunisia/148-tunisia-s-borders-jihadism-and-contraband.aspx>

⁴² Security Sector Reform in Tunisia. A year after the Jasmine revolution, in *USIP – United State Institute for Peace* <http://www.usip.org/sites/default/files/SR304.pdf>

⁴³ http://www.hrw.org/sites/default/files/related_material/tunisia_2012.pdf, report, page 5.

Under Ben Ali, the exercise of **freedom of opinion and expression**, notably a political one, was a privilege for some, and an adventure for others. In 2013, both freedoms were enshrined in the constitutional draft. Indeed, Article 30 stated: "Freedom of opinion, thought, expression, information and publication is guaranteed", but there was no absolute freedom, insofar as the same text stated that "freedom of expression, information and publication may be restricted by law". Deputies Hasna Marsit (independent) and Salma Mabrouk (former member of Ettakatol, now al-Massar) proposed to delete this sentence, an amendment accepted by 169 votes.⁴⁴

These limitations were justified by the protection of "the rights of others, their reputation, their safety". But the words "others", "reputation" and "security" remained vague, and this uncertainty raised the question of undue enlargement of limitations. The right of access to information - the corollary of the freedom of information- is guaranteed but with clear boundaries for reasons of national security.

It is clear that the respect of **freedom of expression and information** is a *sine qua non* condition for the realization of the democratic transition. The media landscape has been complicated by the proliferation of partisan new media outlets, created by some political parties, and by their desire to "control" public media by using political pressure, sit-ins against "journalists of shame" (Ben Ali loyalists) and threats. A comprehensive reform of the media is still needed.⁴⁵

Some indicators support the idea of the spectacular flowering of freedom of expression and information in Tunisia after 14 January 2011, including the increase of the number of titles of newspapers, private radios and televisions. However since 2012, an increasing number of journalists were prosecuted. It is the same for artists sentenced for having expressed an opinion through songs. One example is the case of a young rapper Ala Yacoub, author of the song called "Cops are dogs", who was sentenced to two years of prison for a "moral affront to officials of internal security forces".⁴⁶

Freedom of expression and information are also challenged by provisions supporting the respect of the religion and the sacred in general, and the identification of the line of demarcation between the two. Social networks, including Facebook, have evolved into the preferred means of information sharing but they are also an arena where many users allow all kinds of excesses. There is a kind of struggle between "Facebook militias" serving certain political parties. Indeed, on these pages information is infused with disinformation, creating at times an unpleasant atmosphere. This raises a very serious question concerning the difficulty of regulating this field, while preserving it as an area of freedom.

With regard to **human rights**, the proposed provisions establish the right to life, but at the same time provide the possibility of harm to it "in extreme cases established by law". This last formula very explicitly maintains the death penalty. However, many local and international activists, including a number of citizens and activists request the abolition of the death penalty, considering it as a gauge of respect for the fundamental right to life.⁴⁷ Representatives of the majority in the NCA

⁴⁴ Selma Mabrouk: Une épée de Damoclès plane sur la tête de nos filles, in *Leaders* <http://www.leaders.com.tn/article/selma-mabrouk-une-epée-de-damocles-plane-sur-la-tête-de-nos-filles?id=13006>

⁴⁵ Le Livre noir des « journalistes amis » en Tunisie sous Ben Ali, in *Le Monde*, http://www.lemonde.fr/international/article/2013/12/05/le-livre-noir-des-journalistes-amis-sous-ben-ali_3525709_3210.html

⁴⁶ Tunisia frees rapper jailed for calling police dogs in song, in *Reuters* <http://www.reuters.com/article/2013/07/02/us-tunisia-singer-idUSBRE9610MM20130702>

⁴⁷ <http://www.peinedemort.org/National/pays.php?pays=98>, example of participation : <http://touensa.org/2012/09/25/journees-de-dialogue-avec-la-societe-civile-a-lanc-pourquoi-faire/>, also UNDP report on "The National Dialogue on the project of the constitution" March 2013.

were (for ideological considerations related to the application of Islamic law) inflexible⁴⁸. This solution is far from satisfying the abolitionist party, which however is perceived to be a minority.

It should also be noted that the State intends to protect the privacy and the inviolability of the home, confidentiality of correspondence, communications and personal data which is subject to penal protection. But after January 14th, information and social networks have not respected the individuals' rights to privacy, in particular for public figures.

In terms of Rule of Law provisions, the Constitutional draft enshrines four important principles: the presumption of innocence, the personal nature of liability, the principle that all offenses must be prescribed by law and non-retroactivity of criminal laws.

Recognition and respect for the rights and freedoms as values is dependent on the place that is reserved for them in the scale of values as understood by different cleavages of Tunisian society (rural vs urban, literate vs illiterate, traditional vs modernist). Indeed, different values coexist in the society, and certain categories of people do not agree with shared values, a fact that creates a lot of misunderstandings and a lot of frustration.

Which are the freedoms to be accepted? What are their limits? This crisis in particular affects the drafters of the Constitution, some of whom are followers of a maximalist conception of rights and freedoms while others opt for a minimalist design. The issue of freedoms, including individual, still generates animated and very passionate debates.

CONCLUSION

Three years after the revolution, citizens' physical conditions remain difficult, but a lot has changed in terms of rights and freedoms. On the level of social rights, the right to work is largely implemented and new social rights are implemented in the draft of the Constitution. The same draft enlarges the domain of the political and civil rights compared to the previous Constitution, and reinforces those rights and their guarantees. The most important difference is that in the 1959 Constitution almost all citizenship rights were enjoyable under the limits of the ordinary law, giving the government huge discretionary power. Now, rights are sanctioned by the Constitution and, even if after harsh debates, are proclaimed in an absolute manner.

The polarization between Islamists and secularists is a serious threat to the transitional process in Tunisia, it has already led to political assassinations, the first of this kind in the history of independent Tunisia.

The most extreme Islamists advocate violence to produce change by force in a society that they consider made up of 'unbelievers'. Salafists are organized in groups, hiding and training themselves in the mountains of the centre of the country and challenging the army, which have tried to dislodge them without success. After the events in Egypt (June-July, 2013) even the more moderate Islamists are threatening those who plan to recreate the Egyptian scenario in Tunisia or those who challenge the legitimacy of the power in place with public "lynching".

⁴⁸ http://www.e-justice.tn/fileadmin/fichiers_site_francais/codes_juridiques/Code_penal_12_07_2010_fr.pdf

This threat of violence, although condemned by a broad spectrum of political and civil society in Tunisia, remains heavy and very dangerous; others organize and implement, fortunately not yet armed, militias but at the first confrontation it is the process of change which will pay the price. This political violence is accompanied by unprecedented social tension: daily life does not change for millions of Tunisians who live in poverty. The inexorable rise of unemployment, economic recession and inflation rates reaching historic highs, are likely to exacerbate the tense socio-economic climate. The fear that this situation will lead to a second revolution, which would certainly be bloodier than the first one, is not realistic for the moment. After more than two years the Constitution-making is reaching the end and thus the transitional period also. However, it remains to be seen if the consensus built around the Constitution will be sufficient to soften the pressure that comes from the society.