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Tunisia: Human Rights Organizations and the State

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Abstract

This paper seeks to describe and analyse in a contextual way how the relationship between human rights organizations and the State in Tunisia has evolved since independence. The establishment and consolidation of national State institutions after independence was the main obsession of the ruling political network in Tunisia. This dictated its antagonistic position and measures against pluralism and inclusion of various political groups, all of which had been once unified in the anticolonial struggle. After independence, this common objective disappeared and differences materialized regarding which political system and policies to adopt in order to building a modern nation-state in Tunisia. The consolidated regime of President Habib Bourguiba succeeded in imposing an authoritarian single-party political system, whose "legitimacy" rested on the anticolonial struggle, that controlled the state, to which all had to show loyalty. The autocratic political system continued after 1987 with the reign of President Zine El Abidine Ben Ali, who presented a retooled authoritarian political vision.

The human rights community represented by the Tunisian League for the Defence of Human Rights came under pressure as the State attempted to coerce it into adopting a tailored vision of human rights compatible with the logic of a dictatorship. Ben Ali regime had also set up a façade of commitment to human rights as expressed in various laws, about which he boasted on all occasions and political events with total disregard for systematic violations by repressive state bodies.

After the fall of Ben Ali following a popular uprising that rejected repression and authoritarianism and expressed a popular longing for freedom and dignity, a new vision began to form of the relationship between the State and the human rights community in Tunisia. The starting point was very positive with long time human rights activists playing a central role in the process of establishing a vision for the new republic based on respect for the principles of human rights. However, the political contention among various political factions and higher state echelons, fuelled by varying ideologies and interests, has affected this relationship, which oscillated between harmony and dissonance.

Introduction

The slogan, Employment, Freedom and National Dignity, was a pillar of the "revolutionary" demands of the Tunisian people during the uprising of 14 January 2011; it also summarized a constellation of rights that were violated or not guaranteed by the regime, and hence sparked the social upheaval against President Zine El Abidine Ben Ali. The formal legal system granted and guaranteed these rights, a formality that the former regime exploited to beautify a dismal reality of human rights in Tunisia. The revolution was the beginning of a radical change towards a redefinition of the relationship between the state and human rights actors. The democratic transition opened a larger and stronger public space, in which civil society was a principal and determined actor influencing, to some extent, state decisions.

Civil society represents the field in which many actors (political, social, economic, religious, etc.) intersect; it is the space for general social interactions that are not related to the direct struggle for power or pursuit of control over the executive authority. It can be seen as a good field for informing/assisting state structures (through various means and channels that could be confrontational) to change policies, amend laws, modify practices of certain state organs without seeking to undermine the state itself or seize power.¹ Civil society is composed of associations, organizations and networks (open or closed for membership) that are focused on issues or problems of public relevance,² either through the provision of direct services or advocating different policies in the various political, economic and social fields.

In that sense, human rights actors represent a watchdog that works for democratizing the State institutions and the establishment of constitutional and legal mechanisms to prevent authoritarianism and violations of political and civil rights. They also work to ensure economic and social rights through different state policies and practices. Therefore, those actors find themselves in a continuous relationship (alternating between conflict and partnership) with all state structures as they act like intermediaries who are focused on pushing the state to comply with human rights as a fundamental principle governing its behaviour, thus preventing the state from encroaching on society, in addition to supporting its capacity to implement public policies, in which citizenship and its rights are central.

The nature of the political system prevailing in Tunisia since independence has defined the dynamics of the relationship between the State and human rights actors. The authoritarian postcolonial State determined to a very large extent the outlines of this relationship. The regime presented a single framework, in which everyone should be included, arguing that the postcolonial state-building phase required a unified approach that may be disrupted by pluralism and multiplicity of views.

The politics of the ruling regime represented a continuation of the dynamics of the anticolonial struggle. Most of the Constitutional Socialist Party (PSD) activists saw the anti-colonial struggle as source of symbolic authority which they tended to exclusively embody in Bourguiba as a national leader.³ The internal conflict among the Tunisian political elite ensued in 1955 between two main

¹ Salem El Sahel. 2003. "Views about civil society and the political community". *Journal of Social Sciences*, No. 55.

² Jürgen Habermas. 1978. *l'espace public : archéologie de la publicité comme dimension constitutive de la société bourgeoise*. Paris. p.38.

³ The Socialist Dostourian Party (better known with its French acronym PSD) was the name chosen for the for the Neo-Dostourian Party after socialism was adopted by participants in the 7th congress in Bizerte, October 1964.

factions: the first was led by Bourguiba, head of the new Free Constitutional party which defended a political settlement with French colonialism, while the leader of the second faction was Saleh bin Yusuf, the Secretary-General of the party, who was a vigorous opponent to such a settlement. Bourguiba won, and he subsequently liquidated the Ben Youssef wing through the so-called vigilance committees that allowed Bourguiba to dominate the political arena and created the one-party hegemony. The party then aligned itself with state institutions and tightened its grip on them under the control of party members.⁴

Bourguiba's power monopoly dominated the political scene. After a failed coup attempt by a group of military officers, the president decided to abolish political pluralism altogether. National institutions became arms of the ruling regime and the PSD.⁵ The Solidarity Initiative,⁶ led by Ahmed Ben Saleh, who controlled the Tunisian Agriculture Union (currently the Union of Agriculture and Fisheries), then failed while a major split hit the Tunisian General Union of Labour (UGTT). These developments helped Bourguiba consolidate his control over the ruling party and the State in the 1960s. Getting used to exercising power unchallenged as the sole leader made it more difficult for Bourguiba to compromise or make any concessions. Moreover, the exercise of power in that way probably brought about psychological transformations in Bourguiba's personality, increasing his self-confidence and sense of own greatness.⁷

The state's deliberate efforts to silence political opponents was itself a major factor in the emergence of an organized human rights movement in Tunisia.⁸ The early organized human rights defenders were understandably more interested in the first generation of rights, mainly civil and political rights,⁹ against systematic violations and harassment of political and human rights activists, which continued in various forms under the rule of the Bourguiba and Ben Ali regimes. The State's relationship with human rights actors was characterized by attempts at domination, control and manipulation to promote a democratic image of a regime that was authoritarian in almost all ways. The State sought to fill the human rights scene with client supporters. This modus operandi continued until the eruption of the 14 January revolution, which was the end point of two authoritarian regimes and the beginning of a shift in the relationship between the State and human rights actors on a path of democratic transition.

The Tunisian revolution re-formulated the parameters of the relationship between the two sides by changing the nature of the regime itself. This had a major impact on increasing the space of freedom of expression and assembly for human rights actors, thus enabling them to press the state even further to introduce more legal and institutional reforms, in which human rights and citizenship were central drivers. The revolution also contributed to the reformulation of the strategy and objectives of human rights actors, thus adding diversity to the human rights scene, and shifting focus from the first-

⁴ Taoufik Elmadini. 2001. *Al-Mo'areda Altunisia, Nash'atha wa Tatwriha* (Tunisian Opposition: Emergence and Evolution), Damascus: Arab publishers' union. p. 26. (Arabic)

⁵ Moncef Matri, 2014. *De Saint-cyr au peloton d'exécution de Bourguiba*. Edition Noukouch Arabiya.

⁶ The Solidarity Initiative lasted throughout the 1960s as an economic, political, and socialist initiative led by trade unionist Ahmed Ben Saleh and adopted by UGTT and later the new free Destourian Party.

⁷ Robert Mitchel. 1988. "Political Parties", In Thomas Bottomore, *Elites and Society*, (Arabic translation consulted) Alexandria: Dar El Marefa Elgameya. p. 9.

⁸ The LTDH was founded as the first Tunisian human rights organization in 1977.

⁹ Foremost among which were the freedoms of expression, assembly, fair trial, conscience and the right to combat torture. All these relied on the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

generation rights, which became more or less secured, toward second generation economic, social and cultural rights.¹⁰

The rest of this paper will examine the history of the relationship between the state and various human rights actors since the birth of the human rights movement. On the state side, it will look at laws, institutions and policies in addition to the official human rights narrative. For human rights actors, we will consider strategies which ranged from confrontation to partnership. The review will be based on available literature and a number of interviews with relevant actors.

This history is being reviewed in an attempt to answer several questions: How was the human rights movement affected by (and how did it affect) its relationship with the State? How did the human rights movement evolve as a result of the dynamics of its relationship with the State from the emergence of the movement until the 2011 revolution? Has the human rights movement influenced state institutions in terms of legislations and practices after 2011? And how? And, finally, what is the role of the democratic transition process in reshaping that relationship?

First: A State with a narrow view of human rights

The nature of the political system in Tunisia has had a profound impact on the human rights movement. The Bourguiba regime had long indulged in top down processes to build state institutions including a demarcation of lines and spaces for non-state actors in the civil society (including human rights actors). Though restrictive, this approach by the State allowed for the continued existence of organizations and a space for activities by their members, but it was difficult or even impossible at times to carry out any meaningful or influential work outside certain limits laid out by the state.

After Ben Ali came to power a bloodless coup in 1987, the regime adopted a relatively open approach, especially on the economic front, and built a democratic political façade represented by regime clients. It introduced legislative and institutional changes that superficially complied with international treaties and used deployed human rights rhetoric, seldom backed by actions. The Ben Ali regime refused to engage in any real partnership with human rights activists who disagreed with the authority or criticized its practices. Soon it began to oppress and constrain them.

1. The State's view of human rights at the level of legislative structure

Authoritarian regimes in Tunisia adopted a monolithic vision that prohibited pluralism and restricted both political and civil spaces. This resulted in policies and laws aimed at silencing dissenting voices, especially in the field of human rights. However, the Bourguiba and Ben Ali regimes did this in the conviction that this field is exclusively the concern of the state and is subject to other internal prerogatives, even if at time it took into account, at least ostensibly, international political exigencies (especially for Western partners) which at times pressured the regime to improve its image or reduce the severity of violations.

¹⁰ The rights included in articles 22-27 of the International Covenant for Economic, Social and Cultural Rights.

After independence, and within the framework of building the nation state in Tunisia, various conflicts emerged, both within the single domineering party or generally on the political scene, especially with regard to the economic and political organization of the state.¹¹ Opposition groups emerged against the growing authoritarianism of Bourguiba among leftists and Arab nationalists, as well as against the state's liquidation of its opponents, either through political trials or actual physical attacks, as was the case in the trials of the "Aafak" leftist group, known as "Perspective", the Arab nationalist movement, trade unions, the Islamist Tendency, and the Islamic Front.¹²

Those repressive practices continued with the Ben Ali regime in the trials of members of the Nahdha movement (formerly the Islamist Tendency) and followers of the Tunisian Communist Workers Party (POCT).¹³ Despite the relative openness during the Ben Ali era, it did not extend beyond liberalization of the economy and mild openness towards a weak multiparty system. The State adopted clear liberal economic policies translated into privatization of state institutions and advocating individual consumerism among Tunisians to expand the middle class. In view of social and political crises by the end of the rule of Bourguiba, Ben Ali introduced small political reforms to move allegedly towards a pluralistic democratic system. The regime claimed it worked for human rights to protect the safety, freedom and dignity of all Tunisians including the banning of torture and corporal punishment and guaranteeing freedom of belief, expression and the press.¹⁴ But soon the regime turned against these principles after it had erected a democratic façade maintained by regime clients, including "opposition" parties, the majority of which were pro-regime, just to complete the trappings of a democratic scene.

A. Human rights structures and State control

• Government structures

After independence in the mid 1950s, the concept of civil society was not firmly rooted in the collective political consciousness. Civil associations which emerged during the anticolonial struggle, later became part of postcolonial state-building under the Isteklal party (Free Destourian Party then the Socialist Destourian Party *PSD*). After independence, associations became subject to Law 154 of 1959.

Tensions within the PSD in the 1970s after adopting a liberal economic policy led by Prime Minister Hedi Nouira, led to a split by some senior party members who went on to establish the movement of socialist democrats (MDS).¹⁵ Founders of this movement were the driving force behind the establishment of the Tunisian League for Human Rights (LTDH) in 1977.¹⁶ At the time, the regime

¹¹ The PSD faced a crisis after the failure of the socialist Solidarity Initiative by the late 1960s. The failure was blamed on Ahmed Ben Saleh, Minister of Planning and Economy. In the 1970s, the State adopted liberal economic policies led by Prime Minister Hedi Nouira, but that too foundered and led the country to the 1978 protests including confrontations between the state and UGTT members.

¹² After the 2011 revolution, it became the Reform Front Party and received a license in March 2012.

¹³ A Group of Researchers. 2015. *Political trials in Tunis: 1956 – 2011*, Tunisia: The Higher Institute for Contemporary History of Tunisia.

¹⁴ A National Charter was signed by civil society organizations, political parties and professional unions on 7 November 1988, which included a political road map for a pluralistic democratic regime (for a copy in Arabic see the High Commission for Human Rights and Fundamental Freedoms at www.droitsdelhomme.org.tn/?page_id=102).

¹⁵ The disagreement began during the 1971 party congress. The internal opposition was led by Ahmed Elmestiri, Mostafa Ben Gaafar, Ismail Bulehya, Hamuda Ben Salama, Eldali Elgazi, and Abdelhay Showeikha. They were expelled from the party during the 1974 congress and organized under the banner of the Socialist Democrats as of 1978, a few months after they started the Raiy newspaper in 1977. The paper was joined by leftist and Islamist writers and was published until forced to stop under government pressures in 1987.

¹⁶ Saad El Din Elzamarly was the first LTSH chair. He was one of the founders of the movement of Socialist Democrats.

sought to control the LTDH through imposing representatives of the ruling party inside the organization board of governance.¹⁷

The human rights movement, represented by LTDH, became a party to the political struggle spearheaded by the UGTT, especially in 1978¹⁸ in response to austerity measures and restrictions on trade unions and political activities. The ruling party took off the gloves, closing down the UGTT headquarters and putting its leaders in prison.

Tunisia witnessed a short political spring after Ben Ali assumed power in 1987.¹⁹ Several laws were amended as an expression of goodwill, and to comply with some international human rights legal norms. Among the first decisions of the new regime was the abolition of State Security Courts, which served as the main legal institution overseeing violations of human rights. These courts tried most of the politicians who opposed the Bourguiba regime. In 1988, Tunisia ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,²⁰ and introduced new provisions guaranteeing the rights and duties of prisoners according to international standards.²¹ In 2001, the supervision of detention institutions was transferred from the Ministry of Interior to the Ministry of Justice, to which was annexed the human rights sector in 2002.²² To further strengthen the protection of human rights within the bureaucracy, the government appointed a Human Rights Coordinator in the Ministry of Justice in 2004.

In order to further polish the regime's image in terms of its alleged concern for human rights, specialized councils were set up, some of which dealt with rights-based issues. These councils monitored specific situations within their mandates and prepared annual reports. Most of those councils were advisory and the government appointed their supervising bodies, and thus their remit never went beyond the boundaries of monitoring and evaluation. They included:

- ❖ The National Council for Women, Family and the Elderly.²³
- ❖ The Higher Council for the Promotion of Employment.
- ❖ The Higher Council for Social Development and Welfare of Disabled Persons.²⁴

These councils were headed by the Prime Minister and included various ministers according to the mandates of their ministries, in addition to general secretaries of political parties represented in the

¹⁷ Souhayr Belhassen. 2004. "La LTDH ou la gestion des paradoxes". *Confluences Méditerranée*. Vol. 4:51), pp. 103-125 and p. 104.

¹⁸ Social and political conditions deteriorated in the late 1970s until a crisis pitted the UGTT members against the regime led by prime minister Hedi Nouira. The decades-long alliance between the main labour movement and the ruling PSD dissolved. UGTT secretary-general Habib Ashour resigned from the PSD after the UGTT board concluded that the party was legitimizing a dictatorship based on violence and intimidation. The UGTT declared a general strike on 26 January 1978. Security forces besieged the UGTT headquarters and fired at protesters (400 were killed according to labour activists but only 52 according to the government). For more details see Yacine Nabil. "The events of 26th January 1978: Memories Smuggled from the Registers of the Regime". *Nawat*. 26 January 2016 and available in Arabic at bit.ly/2r2V9la

¹⁹ Former president Ben Ali removed his predecessor Bourguiba, on 7 November 1978, in a bloodless coup on the pretext of the latter's allegedly deteriorated health and inability to rule the country. The claims were supported by a report signed by a number of physicians.

²⁰ Ratification without reservations took place in June 1988.

²¹ Law No. 14 in 2001.

²² Tunisian legislations improved in the area of detention thanks to Law No. 77 of 2000 which established the penal enforcement institution, the powers of which were regulated by Law No. 92 of 2002 granting its judges the power to monitor and enforce freedom-depriving penalties in prisons and detention centres, and to assess the extent to which the rights of the prisoners are respected in these facilities.

²³ Decree no.1702 in 2003 on the formation, structure, function and administration of the council. See the Official Gazette, No. 67 for 2003.

²⁴ Those councils were established by decree no. 3080 in 2010. See the Official Gazette, No. 98 for 2010.

House of Representatives and national federations.²⁵ Most of those were political clients amenable to the manipulations of the ruling regime, while most of the independent civil society actors and organizations, especially those working on human rights were completely absent. Those councils met once a year which was inadequate to the complexity of the tasks entrusted to them.

In the same context, human rights units were introduced in the Ministries of Interior,²⁶ Justice,²⁷ Foreign Affairs and Social Affairs. They were mandated to receive complaints relevant to the remit of each ministry, communicate with various international bodies and foreign NGOs active in the field of human rights, and follow up on issues related to state treaty obligations. Although these units could have played a supervisory role with regard to human rights and report to higher levels of the ministries, they did not. They were ultimately part of the regime, unable to challenge the political authorities or combat violations by security agencies, even in internal reports concerning conditions of political prisoners, their treatment or constraints imposed on them, foremost the alleged members of the Islamist Nahdha Movement and a number of human rights defenders.

The regime also complied with the Paris Principles regarding the creation of national human rights structures, ensuring their independence and granting them powers to ensure effectiveness. The regime amended the legal status of the High Commission for Human Rights and Fundamental Freedoms to make it legally independent from the state. However, its statutes and regulations still²⁸ subordinated it to the presidency whereby the president enjoyed the power of appointing the chair of the Commission, who enjoyed absolute authority in running the affairs of the institution, and thus ensure its subservient role within the ruling regime and compliance with its directives.²⁹ The Commission's work did not go beyond preparing consultative reports. Through its silence, it somewhat contributed to whitewashing rights violations by the regime in front of international organization and other relevant actors.³⁰

In short, Ben Ali's strategy in the field of human rights was based on a ceaseless attempt to fully assimilate and integrate human rights actors and structures within state institutions and to impose restrictions on the remaining independent human rights activists.

2. State interaction with human rights activists (co-optation or repression?)

A. Official discourse

The Ben Ali regime deployed a rhetorical framework highlighting an alleged interest in human rights and contrived achievements in this regard. The former president dedicated part of his speeches on

²⁵ The UGTT, the Union of Industry and Commerce, and professional unions (doctors, engineers, lawyers, etc.).

²⁶ Memo No. 32 in 1992 by the Minister of Interior.

²⁷ Decree no. 1330 in 1992.

²⁸ The Commission had been affiliated to the presidency by decree no. 1954 of 1991. In compliance with the Paris principles, law 37 for 2008 was passed to regulate the Commission. See Official Gazette, No. 51 for 2008.

²⁹ The position was held by Rashid Idriss (1991-2000), Mohamed Kamal Sharaf El din (2000-2003), Mohamed Hussein Fantar (2003-2009), Monser El Roueissy (2009-2012), all of whom are known for loyalty to the former regime.

³⁰ National reports by the Commission from 2003 till 2007 dwelt on 'harmless' subjects such as development of laws on the rights of the child, housing, funding of legal parties, while staying away from sensitive such as torture, conditions of political prisoners, and public freedoms.

every anniversary of his ascent to power on November 7 to brag about the regime's achievements in the field of human rights. The government also officially marked the international human rights' day or the 10th of December, the anniversary of the Universal Declaration of Human Rights. Most of these speeches focused on alleged rights achievements and continued political openness, pluralism, protection of the rights of children and women, etc. The elaborate party machinery dominated all public sectors, notably the media organs, marketing a bright picture of the status of human rights in the country, while at the same time attacking and vilifying independent rights activists and political opponents.³¹ Likewise, some political parties represented in the House of Representatives contributed to the polishing of the regime's human rights record.³²

B. Dealing/duelling with human rights defenders

In dealing with the human rights scene, foremost independent human rights defenders and political activists, the state focused on containment. It appointed some defenders in political positions,³³ while it oppressed others and restricted their ability to work.³⁴ In other words, the state sought to contain those who were containable and to oppress those who insisted on confronting the state and its negative human rights record.

The LTDH remained the only independent human rights organization for a long time. Regime interventions failed to dissolve the organization because of its deeply rooted position since the anticolonial struggle era but, nevertheless, these measures almost paralyzed the LTDH. Until 2000, the organization was the principal actor exposing human rights violations in the country. It was sought by most of the oppressed in all aspects of life and constituted a refuge for them, where they submitted their complaints regarding violations against by various state structures.

On the other hand, the UGTT constituted a dual space for both containing defenders of economic and social rights as well as a space of confrontation of the regime. The UGTT historical legacy and aura since the anticolonial years and its strong and influential leaders such as Mohamed Ali Al-Hami, Ferhat Hashad and El Habib Ashour protected the union from state full co-optation. These factors, however, did not prevent the ruling regime from confronting the UGTT and restricting its work.

Security forces besieged the offices of human rights organizations such as Freedom and Justice (or Hurriya wa Insaf), which was closely under surveillance and had some of its members arrested.³⁵ Security agencies went after the LTDH to prevent meetings and impede interaction with complainants, especially political activists. Human rights activists were harassed in their homes, as was the case with human rights defender Ali bin Salem, whose residence in Bizerte had been besieged

³¹ See few reports in the Arabic Kol Elnass magazine, issue 1084, 5 December 2009.

³² During the 2011 uprising, loyal parties issued successive statements in support of Ben Ali. See Turess. "Opposition Parties Deplore Exaggerated Media Coverage of Events in Tunisia". 27 December 2010. Available in Arabic at www.turess.com/tap/32384

³³ For example, El Dali El Jazi, an LTDH founder and a member of the Social Democrats bloc, was appointed minister in several cabinets between 1989 and 2004.

³⁴ For example, the trial of Khomais El Shamari, an LTDH leader and a member of the Social Democrats, and the trial of human rights activist Radhia Nasrawi in 1999 for "facilitating a meeting for an association that disseminates hatred" in reference to the Communist Party of Tunisia.

³⁵ Truth and Equity Organization, "Board Members from Arrest and Questioning to Siege and Surveillance", 18 November 2010.

for years as of 2005.³⁶ Other activists and defenders were legally persecuted with trumped up charges such as the case against rights defender and journalist Taoufik Ben Brik.³⁷ Security agencies sought to curtail internet access for activists and monitor it closely, such as the case of the important Tunisia News website.³⁸ Human rights defenders were obstructed and prevented from documenting abuses, forcing many of them to work underground to communicate with survivors and/or document cases in order to prepare reports on the human rights situation in Tunisia.³⁹

Human rights actors' strategies almost exclusively focused on documenting state human rights violations in order to expose and shame state actors through collaboration with international organizations concerned with the human rights situation in Tunisia, such as the International Federation of Human Rights (FIDH), the European Commission for Human Rights and the UN Office of the High Commissioner for Human Rights. This collaboration led to various reports and advocacy campaigns.⁴⁰

In order for the Ben Ali regime to tighten its grip on the civil society in general and human rights organizations in particular, it amended the law of associations,⁴¹ to enable members of the ruling party to join associations, whose statutes until then required that new members be approved by the board of the relevant association.⁴² The law states that "associations of a national nature may not deny membership to any person who adheres to its principles and decisions unless this person was stripped of his civil and political rights... In the case of a disagreement regarding membership, the applicant may file a case with the court of first instance in the constituency of the association". The LTDH was the primary target of this amendment law to prevent it from rejecting the authority's attempts to engage and control it through its structures.

As of 2000, public freedoms (freedom of expression, assembly and associations, etc.) were priorities on the agenda of the human rights movement in view of the systematic violations by the state, in addition to advocacy efforts against torture of political activists from various factions by security agencies.

In response to the increase in human rights activism and the publication of international reports addressing Tunisia's violations, the state escalated its policies to tighten its grip on the political space in general and the human rights scene in particular. The regime boycotted the annual meeting of the UN human rights committee in 1998 and obstructed the organization of the annual congress of LTDH in 2000 after it dismissed pro-regime board members. Pro-regime members filed a case to invalidate the proceedings of the LTDH congress. They succeeded after eight long years of litigation and in

³⁶ Turess. "Breaking the Siege on the House of Ali ben Salem to Deliver the Award of Mohammed Chakroun for Human Rights". 25 April 2008. Available in Arabic at www.turess.com/alwasat/10891

³⁷ A joint statement by LTDH, NCLT, National Monitor for Freedom of the Press, the International Association for the Support of Political Prisoners, the Tunisian Association against Torture, and the Truth and Equity Organization. The statement was issued on 26 October 2009 after opposition journalist Taoufik Ben Brik was attacked by a woman in front of his daughter's school; the woman claimed that he hit her car and filed a complaint against him, for which he was sentenced to 3 months in prison.

³⁸ Tunis news was a central website for human rights activists and opposition groups. It published reports on violations of human rights in Tunisia and was blocked by the government.

³⁹ LTDH, untitled statement on 2 June 2006.

⁴⁰ This collaboration led to several reports by international organizations such as the International Federation for Human Rights (FIDH). The FIDH submitted a report to the UN concerning the situation of freedoms in Tunisia in November 2007. This report addressed restriction on the freedom of organization and assembly, freedom of expression, violations against human rights defenders, lack of independence of the judiciary, and violations committed under the pretext of counterterrorism. The report was posted on FIDH website.

⁴¹ Law 25 in 1992 complementing law 154 issued in 1959 concerning associations.

⁴² Chapter I of Law 25 for 1992.

2009,⁴³ they confirmed their “right” to stay on the LTDH board. The regime used the same tactic to file lawsuits in order to invalidate regional LTDH conferences that had excluded members of the ruling Democratic Constitutional Rally (RCD). Different measures followed to clamp down on rights⁴⁴ activists through the use of various media outlets to distort, defame and disrupt their work.⁴⁵

The regime continued to deploy a mix of encouragement and intimidation tactics with human rights activists. During the wide scale protests in the mining basin in 2008,⁴⁶ human rights activists and journalists were prevented from entering the area by security forces. Activists and non-activists were arrested including Adnan Al-Hajji (spokesman of the protests in the mining basin), who was sentenced to 10 years, of which he served 17 months to be released after a UGTT mediation to help calm down activists in the turbulent area, a role that the UGTT often played as an intermediary between the state and labour protesters.⁴⁷

Second: A participatory vision of human rights

Accumulated political and social problems and continuous rights violations by the dictatorial authorities, all compounded by the failure of economic policies with a grave impact on the low-income classes led to a social explosion that began on 17 December 2010 and extended to January 2011. The days of the popular uprising ended with the flight of President Ben Ali, the overthrow of his regime and the participation of the opposition political movement, the human rights movement and other civil society organs in the reformulation of the political system of the state and a process of democratic transition on the basis of citizenship, framed by human rights principles at the levels of legislation, practices and institutions. A partnership between human rights actors and the state bureaucracy evolved, but then eventually began to fray and fluctuate due to economic pressures and political differences.

1. Consensus in vision

The January 2011 revolution created an opportunity for human rights actors to play a central role in building a democratic state. It was an opportunity that was valued by human rights activists, many of whom were also in various ways political or labour activists, through the participation of the LTDH, the Tunisian Association for Democratic Women (ATFD) and the National Council for Liberties⁴⁸ (CNLT)⁴⁹ in the Higher Authority for the Realization of the Objectives of the Revolution, Political Reform, and Democratic Transition.⁵⁰ This body oversaw the early stages of the democratic transition, particularly the measures necessary to dismantle the former repressive regime. Human

⁴³ Case no. 11692 in 2001 was not adjudicated until 2009. The court annulled the proceedings of the LTDH congress.

⁴⁴ LTDH statement issued on 11 June 2009

⁴⁵ LTDH statement issued on 20 July 2009

⁴⁶ Gafsa and Sidi Buzid areas have Tunisia’s richest phosphorus mines. Social protests erupted there against the lack of adequate services and rising unemployment despite the abundant natural resources. Police forces brutally suppressed the protests.

⁴⁷ Adnan Haji was charged with a long list of offences including setting a group to plan attacks against people and property, blocking public roads and traffic, possession of incendiary materials and throwing it at properties, assaulting a public servant and taking part in a mutiny after calling for it through public speeches, meetings, advertisement and leaflets. See Turess. “After Serving 17 Months, Abdelsalam Jarad Receives Leaders of the Protest Movement”. 4 November 2011. Available in Arabic at www.turess.com/kalima/742

⁴⁸ AFTED, which is focused on women’s rights, obtained legal license on 6 August 1989.

⁴⁹ CNLT was founded on 10 December 1998 but was not recognized by the state to operate legally till after the revolution.

⁵⁰ The Higher Authority was founded on 15 March 2011 with representatives of 12 political parties, 18 CSOs, and some public figures, provincial representatives and representatives of families of the martyred during the January revolution.

rights defenders played a key role to insert universal principles of human rights as the minimum standards for the restructuring of state institutions in view of the changing sentiment of the Tunisian people, who broke long entrenched barriers of fear of the oppressive police machinery.

At the level of political and civil rights, the human rights movement and the new regime were in agreement. This contributed to achieving a complete openness in the political arena, especially with respect to the freedom of expression and organization (formation of parties and associations).⁵¹ The number of human rights organizations rose to nearly 1,000 between by 2016.⁵² Human rights activists had an important supervisory role during the democratic transition to ensure the adequate adoption of human rights principles through active participation in liquidating the legacy of the old regime as well as in the vigils (which came to be known as Kasba I)⁵³ that objected to attempts of whitewashing former regime's symbols. These protests forced the government of Mohamed al-Ghannouchi to fire ministers who belonged to the former regime and then forced him himself to resign and assign Beji Qaid El-Sebsi to head the interim government in March 2011.

The initial consensus between human rights activists and the state institutions resulted in the reconsideration of a number of official structures dealing with human rights through the establishment of independent committees and bodies such as the Truth Commission on Corruption and Bribery,⁵⁴ the Independent High Electoral Commission, chaired by Kamal Jendoubi, a human rights activist and member of the Euro-Mediterranean Human Rights Network,⁵⁵ and the National Fact-Finding Commission on abuses documented during the period from 17 December 2010 to the completion of its tasks, headed by human rights defender Taoufik Bouderbala, a former LTDH president.⁵⁶ The assumption of veteran human rights activists of leadership positions in such independent bodies reflected the new status of the human rights movement in the reformulation of state institutions as well as an expression of harmony between the transitional state and human rights activists who were looked upon as a driving force leading the state towards establishing a rule of law based on guaranteeing various human rights (political, civil, economic, social and cultural).

Given the state of political repression that the country had experienced since independence in the mid-1950s, political and civil rights have dominated the reforms associated with the transition away from the fallen dictatorial regimes. With the election of members of the Constituent Assembly on 23 October 2011 and the beginning of formation of state institutions, differences emerged regarding constitutional principles which frame economic and social rights.

2. A relationship disturbed

The relationship between human rights actors and the state became complicated during the process of drafting the constitution because of the way public policies were formulated and managed,

⁵¹ The number of political parties reached 206 (there were only six state-recognized parties before the revolution). The number of CSOs rose to 1,600 compared to 900 before the revolution. A large number of human rights organizations emerged that defended specific minority rights including sexual, ethnic and cultural minorities (e.g. Amazigh)

⁵² Almonther Buseneina, Chef de Cabinet of the Minister of Relations with Constitutional Bodies, Civil Society and Human Rights, "Intervention in a National Seminar Organized by Kawakibi Center for Democratic Transition on Human Rights Governance in Tunisia between Needs and Priorities". 18 October 2016. Tunisia.

⁵³ The protest broke out on 27 January 2011, with a large number of independent and party-affiliated Tunisian youth, including the Progressive Socialist Party, the Tunisian Communist Party and the Nahdha movement.

⁵⁴ Decree no. 7 issued in 2011.

⁵⁵ Decree no. 27 issued in 2011.

⁵⁶ Decree no. 8 issued in 2011 stipulated that the Commission's work would conclude after processing all cases within its jurisdiction.

resulting in confrontations and differences between various political parties, most notably the ideological struggle between nationalists, secularists and Islamists.

These tensions expressed the normal contentious nature of interaction between human rights defenders and a state since such activists should in essence monitor and critique state policies and practices in order to prevent violations of political and civil rights or to ensure economic, social and cultural rights.

Certain human rights organizations focused on countering any attempt by the emerging regime to reproduce the decades-old repressive strategies. Tunisia has since been grappling with a complex and shifting political alliances, an entrenched economic crisis, and a complicated social reality.

A. Impact of human rights principles on the relationship with the state

The drafting of the Constitution was the first milestone to highlight the complexities of the relationship between the state represented by the Constituent Assembly⁵⁷ and human rights actors. Ideological diversity created a political diversity reflected in contradictions and differences between the various political parties and NGOs in Tunisia. Despite the existence of other human rights activists who were interested in gender, race and sectoral rights represented by professional unions (journalists, labour, judges, etc.), two fundamental trends prevailed on the rights scene, the modern and the Islamist. Ideological differences constituted a defining point in the relationship, even though they met at certain levels that lacked the ideological component. For example, the Tunisian Association for the Defence of *Laïcité* (secularism), which focused on basic human rights including the right to a fair trial operated in the same sphere as the Tunisian Observatory for Rights and Freedoms, which is primarily concerned with defending terrorism suspects.⁵⁸ Both organizations defended the right to a fair trial, but radically differed in their views of the essence of those types of cases because of their ideological differences.

Rights activists are supposed to believe in principles that represent the framework for interaction between them and the state, the latter usually being accused of violating rights or not providing enough guarantees for their protection. In reality, however, the ideological affiliations prevailing within human rights organizations and networks in Tunisia sometimes interfere with this referential framework. This situation even led to conflicts in practice when the ideological underpinnings of a given organization were themselves contradictory. For example, the Observatory of Rights and Freedoms, which was created mainly to defend the rights of terrorism suspects was set up by various Islamist individuals.⁵⁹ According to them, modernists in control of the state, to whom the Islamist Nahdha movement had ‘acquiesced’ were waging a political campaign against ‘independent’ Islamists in the name of counterterrorism. It is noteworthy that the Observatory did not participate in the defence of any other rights such as sexual rights or equal inheritance for women and men. At times, the observatory even expressed support for radical religious groups, claiming they were victims of violations committed under the guise of the antiterrorism law⁶⁰.

⁵⁷ This assembly was the outcome of the elections of 23 October 2011 when Nahdha movement won a majority of seats.

⁵⁸ The Observatory was founded by lawyer Anwar Welad Ali who defends suspects in terrorist cases.

⁵⁹ Such as Anwar Welad Ali, a lawyer, Seif El Din Makhoul, a lawyer, and Marwan Eljadd, who is an Islamist activist.

⁶⁰ The Observatory claimed that the Salafist movement and Islamist societies had been exclusively targeted for months. See the Tunisian Observatory for Rights and Freedoms, “The Observatory’s Response to a Complaint by the Ministry of Interior”. 23 November 2013. Available in Arabic at www.babnet.tn/rttdetail-75252.asp

Meanwhile, several other organizations were established to monitor government activities such as the I Watch, which is a watchdog organization focused on financial and administrative corruption and issues of transparency. *I Watch* had a visible impact in the political arena as it closely monitored and campaigned on certain issues. It even filed lawsuits against violators.⁶¹

Human rights actors played a prominent role in shaping the emerging regime, especially when the Islamists dominated it for a while, to include human rights principles in the constitution. For example, the LTDH led a protest in front of the headquarters of the National Constituent Assembly to demand to be heard. Members of the Committee on Rights and Freedoms at the assembly responded to the⁶² demand of expanding consultation before the final draft was completed.⁶³ Other committees in the Assembly followed suit and held various hearings on issues such as the right to work, the right to strike, security unions, etc.

The development that epitomized this mutual and complex interaction was the number of prominent human rights activists who assumed positions of power in political and other state institutions. Kamal Jendoubi presided over the Independent Electoral Commission; Mohamed Al-Moncef Marzouki, the prominent Tunisian rights activist, became the President for a while, to face criticism from human rights defenders, especially when he handed over the last Libyan premier under Gaddafi to the ruling authorities in Libya. Al-Baghdadi Al-Mahmoudi had written to Marzouki few months earlier to seek guarantees for his rights as a prisoner in Tunisia and expressed concern about being handed over to an unstable state that cannot provide full guarantees for a fair trial.⁶⁴

But within this tumult, it was clear that the state was bent on creating formal structures, enshrined in the constitution, whose role is to monitor the state itself for rights abuses and play a an ombudsman role in issues in which the state cannot be both a party to the conflict and a judge.⁶⁵ Still, some independent human rights actors criticized those structures because most of them were of a consultative nature, and the selection of their members and senior officers not streamlined enough since they were in essence based on ensuring acceptable political quotas. This is what happened, for example, when selecting the members and chair of the Truth and Dignity Commission.⁶⁶ The Constituent Assembly which conducted the process went through internal disputes and then reached consensus around nominees, especially the president of the commission, Seham Ben Sedrin,⁶⁷ herself a prominent human rights activist who had been known for bravely challenging the former regimes.

B. The impact of state choices on the relationship

⁶¹ *I Watch* was established in 21 March 2011. See its website at www.iwatch.tn. It filed a case against Qarawi & Qarawi, which owns Nesma satellite TV channel for suspected tax evasion.

⁶² A protest vigil was organized by LTDH activists together with other human rights organizations on 22 November 2011.

⁶³ The Committee on Rights and Freedoms at the Constituent Assembly invited LTDH chair Abdelsattar Ben Moussa and the coordinator of the International Association for the Support of Political Prisoners Saida Elakramy to a hearing on rights and freedoms in the draft constitution.

⁶⁴ Elboghadi Elmahmoudi was the last Libyan Premier under Gaddafi. Despite a written plea, he made to the interim president AlMarzouki in May 2012, expressing concerns about the lack of guarantees of a free and fair trial in his home country, he was handed over to transitional Libyan authorities two months later.

⁶⁵ Interview with Almonther Buseneina, Chef de Cabinet of the Minister of Relations with Constitutional Bodies, Civil Society and Human Rights.

⁶⁶ The Commission was established under law no. 53 in 2013 to identify and investigate human rights violations.

⁶⁷ Ben Sedrin was elected on 17 June 2014 by the Commissioners.

The relationship between state institutions and rights actors was characterized by consensus, even overlapping and multiple role playing, since the National Constituent Assembly elections in 2011, and later, the legislative and presidential elections of 2014. However, it was gradually subjected to various pressures.

Tensions first rose when debating the principles of the 2014 constitution then dramatically increased as economic, social and international factors complicated the policy formulation arena in Tunisia. The slowdown in economic growth and the popular demands on the state, fuelled the increasing challenges that the state could not meet and led to rights-based popular protests including the right to work and adequate social services in the fields of health and education.

The state adopted harsh measures in response. These measures were criticized by human rights defenders after repeated attacks on journalists and UGTT activists, as well as the use of violence to break up sit-ins, such as happened in the Siliana protests,⁶⁸ which were severely suppressed by Tunisian security forces in November 2012 resulting in the injuries to more than 100 people.⁶⁹ In justifying the repressive reaction, Minister of Interior, Ali Larid, at the time stated that he was not authorized to give detailed orders on how security forces reacted to social protests, and that he had no knowledge of the means used in that respect.⁷⁰ In order to appease human rights actors, the government often formed fact-finding team to investigate such incidents, including in Siliana. The latter did not produce any clear conclusions or recommendations, nor was it expected that any disciplinary action would be taken against security officers who caused physical injury to protesters, whom the state at the time provided with health care. The state followed the same conduct after an attack on UGTT activists, denying any ties to the attackers who belonged to the associations for the protection of the revolution. There again, a fact-finding committee was formed with the participation of human rights activists, among them LTDH members.⁷¹

The anti-terrorism law also led to a confrontation between rights actors and the state. Although some rights actors acknowledged the importance of having such a law, they demanded that defendants enjoy all their constitutional rights. Although human rights activists participated in the drafting of the anti-terrorism law, the state, they claimed, did not fully comply with it in practice, particularly with regard to the prevention of torture. The Tunisian judiciary documented repressive and degrading practices of prisoners based on medical reports. Human rights actors criticized reports by the commissions of inquiry, which included members of the House of Representatives, and described them as biased in favour of security agencies.⁷² In this context, human rights organizations stressed the continued practice of torture in prisons and detention centres,⁷³ and LTDH announced that more

⁶⁸ The Siliana protests erupted on 28 November 2012 in front of the municipality where a large number of young people demanded the resignation of the Nahdha-appointed governor.

⁶⁹ See the coverage of Tunisie24 for Silian's protests at www.tunisie24h.com/2012/11/28/

⁷⁰ Interview with Ali Larid, former Premier and former Minister of Interior, 10 October 2016.

⁷¹ These UGTT activists were celebrating the memory of the assassinated labour leader Farhat Hashad on 4 December 2012. The suspects in the attack belonged to the Leagues to Defend the Revolution which were established after January 2011 until dissolved by a court order in May 2014. The Leagues were established by leftists to press the first post revolution cabinet led by Mohammed Ghannouchi who had enlisted some ministers from the Ben Ali regime.

⁷² A parliamentary committee was formed to investigate cases of alleged torture of detainees arrested in terrorism cases.

⁷³ The LTDH 2015 report on the situation of public freedoms in Tunisia, presented by its chair Abdelsattar Ben Moussa during a press conference, 28 September 2016.

than 400 cases of torture were documented between October 2013 and October 2015. The authorities remained silent regarding these accusations and, in flagrant cases, promised to investigate.

Conclusion

Seven years following the Tunisian revolution, one can document various gains on the human rights front resulting from a radical change in the relationship between the state and the human rights discourse and defenders. Paramount was the transition of the ruling regime away from the autocratic and authoritarian nature that characterized it for almost all the post-colonial era. A solid track has been opened towards a state for its citizens under rule of law with a range of rights and freedoms within the framework of a democratic setup in state institutions, subject to oversight by a human rights community that plays the role of monitor, critic, advisor and sometimes even partner with state institutions.

However, there had also been some failures that resulted from Tunisia's political and economic transformations and threats by terrorist groups. The most negative element lies in the failure of the state and the human rights community to pressure or push towards realistic policies to address the most complex problems of Tunisia, i.e. those of the economy. The increasing unemployment, economic stagnation and the adoption of neoliberal policies (and even attempts at reconciliation with some businessmen of the old regime) have led to a sense of abandonment among large sectors, especially among young people and residents of impoverished marginalized areas, especially in the south. Instead of moving towards a change in economic policies, which may have been difficult in view of regional and international dynamics, the role of the state was largely limited to confronting the consequences of economic failures. This translated into confrontations with successive social protests in ways that violated fundamental rights, and which at times even included arresting bloggers.⁷⁴ More alarming was the return of the practice of torture as documented by human rights defenders in detention centres and prisons, not only against detainees in terrorist cases, but also others held for criminal offences.⁷⁵

The prospects of human rights work in Tunisia in the future remain full of challenges, perhaps for many years. They are subject to the precarious political and economic situation and its impact on a suffocating social reality. This relatively gloomy picture is further complicated by the danger of terrorism by Jihadist groups, large numbers of whose members, according to claims by the state, have returned to Tunisia from war-torn countries in the region.⁷⁶

In the absence of realistic, but quick, solutions for these economic and security challenges and in light of the State's inability to meet various social obligations due to regional and international circumstances and the policies of the ruling regime, human rights in Tunisia will remain under threat.

⁷⁴ For example, the police arrested blogger Hamadi Elkhalfy for publishing a photo of president Sebsi, which the judiciary considered to be a call for the assassination of the president. He was later released after a protest rally in front of the Municipal Theatre in Tunis on 23 December 2016.

⁷⁵ Mohamed Samieh Albaji Akaz. "Administrative Surveillance from the Detention Room to a Daily Siege". Nawat. 20 December 2016. Available in Arabic at bit.ly/2I2DOAP

⁷⁶ Statement by Minister of Interior Alhadi Almaghdoub in a hearing at the House of Representatives on 23 December 2016, where he claimed that 800 Tunisians Jihadis had returned from war-torn areas such as Syria, Iraq, and Libya.

The threat is likely to continue despite the clear political will of the majority of the ruling class, refusing to return the country to the pre-January 2011 regime.

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ABOUT ARI

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