

Tunisia: The Life of Others

Project on Freedom of Association in the Middle East
and North Africa



Kristina Kausch

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Preface

Associations are indispensable to the very survival of democracy and societal progress. Non-governmental organisations (NGOs) defending human rights at the local, national or international levels are the guardians of fundamental liberties, and often constitute the only framework through which minorities and other vulnerable segments of the population can ensure that their voices are heard, their rights are respected and their participation is guaranteed. The degree of effective use of freedom of association therefore constitutes an important barometer for judging the factual situation as regards democracy, human rights and participation in a country.

In addition to being a fundamental right in itself, freedom of association is also a precondition and safeguard of the defence of collective rights, freedom of conscience and religion. It therefore deserves special attention and vigilance. With the rise of transnational terrorism, recent years have witnessed freedom of association being suppressed in many countries in the name of national security. Obligations that expose the founders of associations to arbitrary admission criteria, pedantic verifications and unnecessary administrative hindrances are indicators of governments' efforts to exert political control. This may happen formally – via the adoption of laws that impose inappropriate limitations on freedom of association – or informally – through a failure to apply the law in practice and the predominance of informal rules that replace the rule of law.

Recognising the fundamental significance of freedom of association and a vibrant, active civil society for citizen participation and the dynamics of democratisation, the Club of Madrid – an independent non-governmental organisation made up of seventy former heads of state and government dedicated to democratic practice – embarked, in February 2007, on a project aimed at strengthening dialogue on freedom of association across the Middle East and North Africa

region. With the support of the European Commission's European Initiative for Democracy and Human Rights (EIDHR) and the United Nations Democracy Fund, the objective of the project has been to improve the capacity of both civil society and the authorities to construct a shared vision of how to promote freedom of association. In cooperation with FRIDE and local partners, the Club of Madrid has been engaging in efforts to strengthen dialogue between civil society and government and, on the basis of the Club of Madrid members' own leadership experience, it thus aims to contribute to fostering the inclusion of civil society. With this end in mind, the project hopes to propose constructive legal and policy reforms that contribute to advancing citizen participation in national political debates on freedom of association, and, more broadly, on democratic reform.

This report is one of a series of six country reports that provide independent analyses of the state of freedom of association and civil society in Morocco, Jordan, Bahrain, Egypt, Tunisia and Saudi Arabia, respectively. The reports are intended to accompany and support the aforementioned project led by the Club of Madrid, by identifying both outstanding challenges and civil society's ideas on how to resolve them. Each report is based on a substantial number of consultations and interviews with local civil society stakeholders, government representatives across all levels, parliamentarians, representatives of political parties, journalists, union activists, women's and human rights activists, and lawyers and political analysts, conducted throughout 2008. The aim of this independent analysis is that of facilitating public debate and further societal dialogue on freedom of association in the respective countries under observation. The main findings and recommendations summarise the views expressed by the numerous local stakeholders who kindly granted us some of their time for an interview.

Ben Ali's Tunisia: Repression and Prosperity

Tunisia is widely known for its beautiful beaches and sites of national heritage. Beyond this postcard image, the country, which has been ruled by President Zine el Abidine Ben Ali for over twenty years, is a special case among the countries in the Middle East and North Africa (MENA) owing to its combination of impressive socio-economic development on the one hand, and a high level of political repression on the other. Unlike most of its semi-authoritarian neighbours, which have – under increasing domestic and international pressures for democratisation – embarked on a path of political reform (however limited), Tunisia shows no signs of opening up politically. Indeed, the opposite is true. Whilst in countries like Morocco, Jordan and Egypt openly violent repression belongs largely in the past, behind its façade Tunisia remains an old-style dictatorship built around one man, whose rule is held up by an openly repressive police state with few aspirations to subtlety.

In his speeches, President Ben Ali has been pledging democratic reforms for years, promising a 'republic of tomorrow'. In practice, however, rather than a describing a path towards political modernity, this term has come to represent the government's determination to postpone any genuine democratic reform until an evanescent 'tomorrow'. The remainder of the region has undertaken processes of 'authoritarian upgrading'¹ in reaction to the increasing pressure to democratise, adapting tools and strategies in order to create a smarter, more subtle form of authoritarianism that relies on the duality of democratic discourse and authoritarian control. But such processes have been very limited in Tunisia. While the government does have a pro-democracy discourse, it is applied less

consistently than in other countries, and efforts to portray itself as democratic are largely ineffective due to the widespread measures of systematic and often open repression. The line that the ruling Democratic Constitutional Rally (RCD) takes on democratisation is that reform must advance 'gradually'. In today's Tunisia, however, not even gradualist reform is conceivable. Democracy in Tunisia, according to rights activists, is not progressing, but regressing.

On the one hand, Tunisia cares for its image abroad as it has no significant natural resources and its economy largely depends on tourism, hence it needs to maintain its façade of a peaceful tropical paradise. On the other hand, the limited willingness of the Tunisian government to portray itself as democratic may be rooted in its greater self-confidence, which stems from the country's levels of socio-economic development and its resulting stability, its lack of dependency on foreign aid and the increasing influence of non-democratic players in the region (namely the Gulf countries), which have successfully positioned themselves as alternative partners to the West.

Tunisia's socio-economic development is indeed outstanding when compared to the rest of the region. Achievements in the areas of health, education and women's rights have been impressive. The Tunisian social model is being skillfully applied and translated into budgetary processes. Over the last decade, positive socio-economic development, ethnic uniformity, the absence of serious poverty, progressive gender policies and high levels of education have all contributed to forming a maturing society with the necessary grounds for political liberalisation, and with comparatively little risk of uprisings or destabilisation along the way. As of today, however, Ben Ali's regime shows no inclination to take advantage of this favourable setting other than to secure its own continued rule and privileges.

The undeniable achievements in the social and economic sphere have so far not been matched by any meaningful progress in the political sphere. Rather, the progressive social and economic course of the government stands in striking contrast to the regressive and draconian

¹ Steven Heydemann, 'Upgrading Authoritarianism in the Arab World', Saban Center at Brookings Institution, October 2007.

political conditions it imposes, which concentrate all decision-making power in the presidency. For years the country has been stalled in a political stalemate, characterised by one-party rule and a total repression of dissent. In political terms, Tunisia is thus one of the most backwards countries in the MENA by far, in spite of being one of the most economically and socially advanced – what is often described as the ‘Tunisian paradox’. Some even go as far as describing Tunisia as the Arab version of the ‘Chinese model’.

At a closer look, however, the socio-economic situation appears neither as uniformly positive nor as sustainable as it is usually portrayed. As the country has no significant natural resources, the economy relies largely on tourism and remittances, areas which currently happen to be flourishing, but which render the country fragile. Youth unemployment is on the rise and the government has not yet been able to draft policies to fight it effectively. Given the total absence of genuine political decision-making processes in the country - with all genuine decision-making power lying in the hands of Ben Ali - many pressing problems stay on the backburner. In addition, while the overall economic situation has improved, social and economic inequalities have risen. The families of the president and his wife, supported by the apparatus of the ruling party RCD, are in private frequently compared to a ‘mafia’ that controls the business sector and has a strong influence over public institutions and funds. Corruption and patronage are rampant. The RCD – reportedly the richest party in the Arab world – works like a distribution apparatus that serves pieces of the pie to the corrupt elites. Popular discontent is also growing stronger, leading young people increasingly to turn to radical ideologies, and raising the possibility of a popular uprising. The recent social unrest over unemployment, corruption and lack of equal opportunities in the southern mining region of Gafsa, for instance, has revealed the extent of rage within both the workers’ movement and the wider population. This does not sit easily with the image of a stable and happy land of plenty that Ben Ali tries to convey. According to activists, the desperation in the south which led to the Gafsa uprising is present everywhere

The oft-repeated argument that increasing socio-economic development fosters democratisation by creating an emerging middle class that will eventually demand not only economic but also political freedoms and liberties appears to fail in the case of Tunisia. Tunisian rights activists and opposition politicians complain that the huge middle class that has emerged over the last decade appears to be more keen on consumption and higher living standards than on civil and political rights. At a closer look, this is not quite so surprising: since economic success depends on effective integration in the state’s clientelist structures, from a purely economic perspective the new middle class has only a limited incentive to demand a political opening, as this would likely dismantle the very patronage network that ensures its continuing prosperity. Moreover, as the World Bank has documented, the Tunisian middle class is continuously eroding, particularly due to increasing unemployment. Finally, rampant corruption erodes the sustainability of many policies, as well as creating an unfavourable investment climate. So far, activists say, the government has managed very well to cover up its lack of democratic substance with economic development, but insofar as socio-economic development is unsustainable and inequalities are on the rise, it is questionable how long this will last.

EU representatives are delighted by the ‘impressive achievements’ in health, education and women’s rights. However, Ben Ali’s European counterparts value Tunisia above all as an island of stability in the troubled waters of the Southern Mediterranean. To put the Tunisian status quo in danger is not in Europe’s interest. By a similar token, Ben Ali’s counter-terrorism policies - though so far mainly reliant on the blunt repression of all Islamist groups - make him a reliable partner for Western interests. The EU’s level of financial cooperation with Tunisia is very limited and EU diplomats complain that the EU’s usual soft power tools do not work there, as well as bemoaning their lack of leverage with the Tunisian government. The latter is keen to cooperate on education, social policy, energy and the environment, but provides few opportunities to discuss the domestic political

situation, let alone improve it. Foreign diplomats often report that even in politically unthreatening areas, their steps are tightly controlled by the government. Many say that Tunisia has been the most difficult placement of their diplomatic careers. As a result of such difficulties, the EU is increasingly inactive when it comes to attempting to support Tunisian human rights and democracy activists, and limits its cooperation to non-political policy areas, thus avoiding confrontation. In turn, human rights activists who risk their own and their families' security in order to defend human rights by tooth or by claw despair before the hypocrisy of the West, which fails to take advantage of its influence in the Tunisian government, instead merely pairing democratic rhetoric with strong support for the status quo.

Secretly-uttered rumours regarding Ben Ali's health and the possible build-up of an 'heir' have generated speculation that '*Ben à vie*' may not be the only option for Tunisia after the 2014 elections. Discussing the successor to Ben Ali is taboo even inside the highest government circles, as it goes against the government's propaganda of continuity. Moreover, President Ben Ali's reported lack of trust in anyone apart from his family, and a number of recent incidents in which close confidants of the president have been demoted for merely alluding to the issue, have cemented the taboo. At present, not even the people closest to the president dare to mention the 2014 elections, as it is not clear whether Ben Ali will be able to run again. In any case, the idea that the end of Ben Ali's presidency is likely to provide a window of opportunity for a genuine democratic opening is controversial among Tunisians. While some say that the interweaving between the government and the ruling RCD will easily allow a prepared successor to take over smoothly and proceed with business as usual, others believe that the extreme concentration of decision-making power in the person of Ben Ali - reportedly designed by him with the very purpose of undermining the political potential of those around him - will lead to a vacuum when he finally steps down. Ben Ali's successor, they say, will not come to power through the institutions but informally, in order to secure the political and economic interests of Ben Ali's family and closest entourage.

Recently, signs seem to be increasing that Ben Ali's son-in-law Sakhr El Matri - a successful businessman with influential connections in the Gulf who has, for example, built up the country's most successful religious radio station - is systematically raising his political and public profile, possibly with a view to being a potential successor. An argument in favour of this theory is that Ben Ali reportedly does not trust anyone but his family (he even had a clause included in the Constitution that secures his family's interests after the end of his rule). It is far from clear, however, that El Matri's recent attempts to raise his profile are part of a succession policy designed by Ben Ali. In fact, many Tunisian observers point out that it is no coincidence that the government is made up of technocrats, that there are no influential figures in Ben Ali's entourage and that those who were becoming powerful were squashed, because the president is said to be 'terrified of the idea of an heir'.

In this overall environment, Tunisian civil society is fighting to defend the narrow space granted to it by the regime.

Associations Landscape

According to official figures, there are 9,205 associations in Tunisia, which are legally categorised according to the field they work in. Most of them pursue social objectives. The biggest social associations exist at the regional and national level, and receive substantial public subsidies. In addition, a large percentage of associations are active in the domains of the environment, urbanism and preservation of the architectural and historical heritage. The rest of civil society is largely composed of sports, science or women's associations.²

² Michel Doucin (ed), '*Guide de la liberté associative dans le monde*', La Documentation française, Paris, 2007, p. 305.

As associations are barred by law from pursuing objectives or developing activities deemed to be 'political', there are hardly any legally-registered associations that are active in the field of human rights and civil liberties, or with goals that have similarly political implications. The few organisations that defend human rights in general or work on particular rights such as freedom of the press, freedom from torture and ill-treatment, or prison conditions are, with a few notable exceptions, denied legal registration and thus forced to work clandestinely. They are thus subject to even heavier state surveillance and harassment. The same applies to the majority of parties of the political opposition. A small number of legally registered associations do work independently, but mostly in very narrow thematic niches, which can never be allowed to become too political. With the exception of the Tunisian League of Human Rights and a few others, all truly independent organisations that work on issues related to human rights and democracy are denied legal recognition, operate under serious financial, organisational and personal constraints, and are placed in constant confrontation with the regime.

Since only those groupings that pledge to play according to the regime's rules have a chance of obtaining legal registration, it can be assumed that most of the legally registered associations depend, in varying ways and to differing degrees, on the state's tutelage. Many of them are GONGOs (governmental non-governmental organisations) set up by the regime to give an image of pluralism whilst spreading government propaganda. Even the High Commission for Human Rights is a governmental organisation. Many of these GONGOs are totally unknown and inactive in Tunisia but are sent to represent 'Tunisian civil society' in international networks and fora, where they reaffirm the Tunisian government's supposed commitment to democratic reform and attempt to discredit the genuine NGOs.

Legal Framework

The Tunisian Constitution of 1 June 1959 guarantees freedom of association and assembly, freedom of expression and opinion, and freedom of the press, under conditions that are defined by law (Art. 8).

Tunisian law distinguishes between the categories 'association' and 'non-governmental organisation' (NGO). While the former refers to regular Tunisian associations, the latter refers to associations active in Tunisia whose activities are international or regional and/or whose founders have multiple citizenship. A number of international organisations, for example, have had their Tunisian branches registered as NGOs. The formation of associations and the carrying out of their activities is codified in the organic law of 7 November 1959, amended in 1988 and 1992 (hereafter the 'Associations Law'). The Associations Law is complemented by the Organic Law of 26 July 1993, which covers the establishment of NGOs (hereafter the 'NGO Law').³

Apart from the Associations Law and the NGO Law, a number of other laws are relevant to free association, as well as to specific segments of civil society. These include the Political Parties Law (1988); the Labour Code (1966), which governs the conditions for the registration and activities of labour unions, professional associations and syndicates; the Press Code of 28 April 1975 (amended in 1988, 1993, 2001 and 2006); and the Anti-Terrorism Law of 10 December 2003, which provides the government with far-reaching powers to limit rights and liberties for the sake of a set of ill-defined criteria that are subject to arbitrary interpretation.⁴

³ Unless indicated otherwise, all the articles quoted in this section refer to articles of the Associations Law.

⁴ All legal texts are available for download from the online database of the Centre National Universitaire de Documentation Scientifique et Technique (CNUDST), <http://www.cnudst.mrt.tn/www-wis/jort.06/form.htm>.

Translations made by the author.

The Associations Law

Registration

Formally, the registration of associations in Tunisia underlies a regime of declaration. This means that when a new association is established, the public authorities must merely be notified (as opposed to a regime of prior authorisation). The founders of a new association must thus deposit an application dossier with the relevant local governor. The requirement that the founders provide the Tunisian national identity card excludes foreign nationals from establishing an association under Tunisian law. Upon submission of the application dossier, the authorities must issue a receipt to the founders (Art 3). In practice, however, the authorities have undermined the legal regime of declaration and de facto condition the registration of associations to prior government consent.

According to the Associations Law, the Minister of the Interior has three months in which he may deny the registration of the association, stating the reasons for his decision in a written notification to the applicants, who may appeal the decision (Art. 5). If, after three months from the submission of the registration dossier to the authorities, the latter have not issued a formal rejection, the association is considered legally registered and may start developing its activities following the publication of its registration in the official government bulletin (Art. 4). In practice, however, the receipt for the submission of the registration dossier is often not issued, thus leaving the founders without any proof of their application. The non-issuing of the receipt, or even the outright refusal to accept a dossier from a given group or individual, leads to the processing of applications being entirely arbitrary. Due to the absence of proof, unsuccessful applicants are thus stripped of the possibility of taking legal action, in the face of the authorities' passive denial.

Activities

The aims and objectives of the association must not 'be contrary to the law or morality' nor 'disturb public order or damage the integrity of the national territory

and the republican order of the state' (Art. 2). Moreover, the activities and objectives of an association must not be political in nature (Art 24). Within this framework, the Associations Law establishes that each association must belong to one of the thematic categories given in the law: women; sports; science; culture and the arts; charity, aid and other social aims; development; friendship; and general (Art. 1). Founders of a new association must indicate the category of their association when registering with the authorities. The thematic scope of the activities of the association are limited to the category under which it is registered. Associations of a general character are freer in the range of their activities, but they must also allow anyone to join as a member. Moreover, the founders and leaders of a general association cannot have any important function within the central organs of a political party.

Funding

According to the law, all legally registered associations may receive public funding (Art. 8). Associations receiving public funding on a regular basis are subject to regular financial control and auditing (Art. 9). As regards foreign funding: since the adoption of the 2003 Anti-Terrorism Law, any funding from abroad needs the involvement of an intermediary resident in Tunisia (Art. 69 of the Anti-Terrorism Law) and – in the case that the intermediary is suspected of having links with a terrorist organisation – the prior authorisation of the Ministry of Finance (Art. 72 of the Anti-Terrorism Law). A copy of the final decision is then forwarded to the Tunisian Central Bank, which serves as a gatekeeper for all bank transfers from abroad and is thus able to block any foreign funding of which the government does not approve. In consequence, Tunisian associations are practically unable to receive any direct funding from abroad, unless it comes in the form of cash in a suitcase. International donors such as the EU, which used to fund NGOs and unions quite extensively, have therefore largely given up trying to support Tunisian rights groups financially, since the Tunisian government has substantially tightened its control over financial movements and is not hesitant in sentencing activists to jail.

Fiscal regime

Associations of a social nature that receive public grants or subsidies on a regular basis are subject to a special fiscal regime, the modalities of which are laid down in a decree of 30 March 1982. The provisions outlined in the decree include a number of control mechanisms but also substantial tax exonerations.

Public utility

The Associations Law foresees the possibility of associations being recognised as having national interest (Art.12-15 of the Associations Law). At the request of the association - and following a proposal by the Minister of the Interior - the relevant administrative authority must issue a decree which includes the decision to grant or deny the status of having national interest (Art. 12). Associations that obtain this status do not enjoy any particular privileges, although some of their assets are considered public property and grants and donations must be previously authorised by the Ministry of the Interior (Art. 14). Currently there are 87 associations that have been granted this status, most of which are active in the social, cultural and research domains.⁵

Other legal forms

Legal forms under which civil society can be organised other than the form of an association include professional associations, syndicates and NGOs. The provisions for professional associations and syndicates are laid down in articles 242 to 257 of the Labour Code. In order to create a syndicate or union, a registration dossier must be submitted to the local governor. In contrast with the association, the law states that a syndicate is legally registered and obtains legal status from the moment the dossier is submitted to the authorities. The NGO was introduced as a new legal form with the passing of the NGO Law on 26 July 1993. According to Art. 3 of this Law, the detailed provisions to be followed in order to establish an NGO in Tunisia are specified in each case by a decree issued following consultation with the Ministers of the Interior and of Foreign Affairs.

⁵ Doucin, p. 303.

Foreign associations

Foreign associations are defined in the Tunisian Associations Law as follows: 'Associations are considered foreign, no matter the form under which they may be concealed, when they have the characteristics of an association and have their seat abroad'; those which have their seat in Tunisia are also considered foreign if they are 'directed by an executive board of which at least half the members are foreigners' (Article 16). No foreign association may establish a branch in Tunisia, nor exercise its activities on Tunisian soil, without previously having had its statutes cleared by the Minister of the Interior, following consultation with the Minister of Foreign Affairs (Art. 17). The given permission may be temporary, subject to additional conditions, and may be withdrawn at any moment (Art. 19).

Foreign organisations that fall under Tunisian law's definition of an NGO can establish their headquarters or a branch in Tunisia only via a decree issued by the Tunisian authorities following consultation with the Ministers of the Interior and of Foreign Affairs. If permission is granted, the decree specifies the modalities of the establishment as well as of the rights and obligations of the NGO. Foreign associations that set up branches or carry out their activities on Tunisian soil without the permission of the Ministry of the Interior are considered null and void, and the authorities may deploy 'all the appropriate measures to assure the immediate implementation of this decision' (Art. 21). Unless indicated otherwise, foreign associations active in Tunisia must conform to the same provisions as Tunisian associations (Art 18).

Foreign organisations are indeed present in Tunisia, although there are not many of them. They have the legal status of a foreign association, an NGO or an association '*passerelle*' (directed by Tunisians residing abroad or with double nationality). Almost all registered foreign organisations belong to the social domain, a small number being active in the field of human rights.⁶ Many well-known international human

⁶ Doucin, p. 303.

rights advocacy organisations have been unable to establish a branch in Tunisia. Amnesty International's regional office is located in Tunis but is not able to work on Tunisia itself.

Dissolution

Any association that is founded in violation of the Associations Law can be declared null and void by court decision (Art.10). Prior to the final judgement, the Ministry of the Interior, stating its reasons, may within eight days close the premises of the association and prevent its members from meeting, until the pronouncement of the final judgement by the relevant court (Art. 10). According to the Law, in cases of 'extreme urgency and in an attempt not to disturb public order', the Minister of the Interior may, stating the reasons for his decision, order the immediate closure of an association's premises and the suspension of all its activities and meetings. This provisional closure and suspension of activities may not continue for more than fifteen days, but in the absence of a definitive court decision it may be renewed for another fifteen days by order of the president of the competent Court of First Instance.

The Ministry of the Interior may also ask the Court of First Instance to dissolve an association 'when there is a grave violation of the provisions of the Associations Law, when the real objectives, activity or scheming of the association turn out to be against public order and morality, or when the association has an activity of which the objective is of a political nature' (Art. 24). During the dissolution procedure, the Minister of the Interior may at any moment demand the Court to proceed with a provisional closure of the association's premises and a suspension of its activities. The carrying out of these measures is immediate, notwithstanding appeal (Art. 25).

Penalties

Non-compliance with any of the provisions in the Associations Law is punishable with a prison sentence of one to six months or a fine of between 50 and 500 dinars. The same penalties apply to anybody who has helped an illegal association to hold meetings (Art.

29). Anybody who takes part in the direct or indirect reform or maintenance of an association that has been dissolved or declared null and void may be condemned to a prison sentence of one to five years and/or to a fine of between 100 and 1000 dinars (Art. 30). The 'provocation of a crime' caused by the discourse, publications, advertisements or meetings of an association can also lead the director of the association to be condemned to a fine of 10 to 100 dinars and/or a prison sentence of three months to two years (Art. 31).

In a country where the rule of law is as weak as in Tunisia, however, the legal framework can but provide a glimpse of what happens in practice. The legal framework contains important flaws and loopholes which urgently require reform. However, more important are the major obstacles to free association which lie in the way that provisions of the law aimed at safeguarding freedoms and liberties are implemented and enforced in practice, the degree to which legal loopholes are exploited by the state to undermine those rights, and the extent to which citizens are able to use legal resources effectively against such assaults on their rights. In this regard, the practice of Tunisian associations paints a very different picture to the one provided by the law or in Ben Ali's speeches.

Key Obstacles to Free Association

In the everyday practice of Tunisian civil rights activism, key obstacles to free association include the extra-legal position of the majority of political civil society; the regime's policy of systematic surveillance and harassment of activists, the opposition and other critics; the tight governmental control over the media and telecommunication channels; and the regime's persistent policy of repression towards Islamists of any current, thus dividing society along the lines of Islamists and Secularists.

The extra-legal position of political civil society

The arbitrary way in which registration is denied to associations, putting constraints on them that seriously affect their ability to function, is rooted in both the legal provisions and their application in practice.

In practice, any grouping that is not in line with the ideas of the regime is excluded from legal registration. In most cases they do not receive a receipt upon submission of the registration dossier and never hear from the authorities again. Still, they cannot consider themselves legally registered (after a period of three months' silence from the authorities, as is stated in the law) because they have no proof of having submitted their dossier in the first place and thus remain legally unfounded (e.g. the Association for the Defense of Secularism). In other cases, the civil servant or governor in charge not only fails to issue written proof of the submission but refuses to accept dossiers from certain groups or individuals from the outset. Activists have even mentioned cases of applicants being prevented from entering the Ministry of the Interior building when they come to submit their dossier, and of local governors turning around and going home when they see applicants from a politically controversial group waiting in front of their office. Contrary to the claims of officials, the non-issuing of a receipt is not the exception but the rule: the first time a Tunisian NGO ever received a receipt upon submission of its dossier was in 2004 (the International Association for the Support to Political Prisoners).

The advantage to the authorities of not issuing a formal rejection is above all that they effectively block the group's freedom to operate whilst at the same time avoiding leaving traces of repression. In some cases receipts were issued, but the group eventually received a letter of refusal of registration from the Ministry of the Interior. When operating in a system characterised by a separation of powers, the judiciary should be in charge of reviewing the application dossier to ensure its compliance with the law. According to Tunisian legislation, however, it is the Ministry of the Interior that

is responsible for reviewing applications and it retains all decision-making power on matters concerning the registration and activities of associations. With an official rejection letter in their hands, applicants may attempt to appeal against the decision, but in practice the courts do not pursue such matters, and the process therefore stalls. The criteria for rejection in the law are so broad that any grouping that does not please the regime can be easily denied registration. In practice, all legal associations and NGOs need the blessing of the government and control over them is thus assured (for example, by placing an MP or another member of the ruling party on the board).

The main consequences of being denied legal registration (by inaction or explicit rejection) are that the association does not have the status of a legal person and thus cannot maintain premises, employ personnel, receive public funding, participate in certain international non-governmental platforms or networking mechanisms. Moreover, the activities of the association and its members will be systematically blocked, via permanent and systematic control, surveillance and various forms of harassment. The regime thus has a divide-and-rule approach; it tries to split up and therefore weaken civil society. The last truly independent association active in the fields of human rights and civil liberties to have obtained legal recognition was the Tunisian Association of Democratic Women in 1989. Those associations that are allowed to obtain legal registration, by contrast, are de facto forced to give up their independence, to submit to the will of the authorities - and even implement their policies in order to be left alone. Aside from providing legitimacy to the regime, the legal associative sector is assigned special tasks. Non-independent associations thus support the elections and laws, use the language of human rights as provided by the authorities, and confirm that equality, human rights and democracy exist in modern Tunisia. Indeed, the foundation of non-independent, i.e. non-threatening, associations is being encouraged by the authorities. The rising number of registered associations allows them to keep up the façade that there is a vivid civil society in the country.

Another deliberate legal obstacle is the requirement for associations to choose a thematic category for their activities upon registration. If the association or its members go on to engage in any activity that does not fit into the chosen category, they are therefore breaking the law and can be shut down. Tunisian legal experts affirm that this ranking of associations on the basis of their thematic focus not only violates the underlying principles of free association but is also against the Constitution, as well as being against the norms of International Law.

Practically all associations that work on issues with political implications are denied legal registration. A notable exception is the Tunisian League for Human Rights, a well-established human rights institution that is based in Tunis and also has local branches all over the country. The oldest organisation of its kind in the Arab world, the League was founded in 1970 and thus existed before the current Tunisian regime. It is very well-known, well-connected internationally and is widely respected, both by the Tunisian people and abroad. Under the present government, however, the League has fallen from grace and in recent years has been subject to increasingly open confrontation and attempts by the regime to sabotage its ability to function and to suffocate the organisation as a whole. Whilst the League's domestic and international backing prevents the regime from shutting it down, the government is going a long way effectively to block the organisation's activities.

The League used to enjoy relatively fruitful relations with the authorities, but, according to some of the League's members, as Islamists came to be in the ascendant the regime became more closed, thereby prejudicing both the League and civil society as a whole. Members say the organisation has since resisted all attempts to co-opt it but that the government is now trying to 'suffocate the League little by little' and block all the League's funding. Due to such constraints, members say, the organisation urgently needs to hold its general congress in order to find solutions, but the government is preventing it from doing so. Since it is registered as a 'general' association, the League is

obliged to accept members of the RCD and the government as members. In 2000, the League held its general congress and elected a new executive bureau, but the members who belong to the *pouvoir* (the ruling elite and its clientelist entourage) were not elected to it. Since then, members say, the government has successfully blocked the League's efforts to hold its congress, with the help of the judiciary, which issued a ruling that annulled the rental contract for the congress venue. The judgment stated that the landlady had not been in possession of her full mental capacities and her signature on the rental contract was therefore null and void. International observers have also come to support the organisation's right to hold its congress, but to no avail. When asked about the League, the RCD's Secretary General, Mohamed Gheriani, says that, just like anybody else, RCD members have the right to run for the board of an association, and that the current difficulties that the League faces with its congress and its operations are not due to government interference but rather to the League's own internal squabbles.

The situation as regards political parties is no better than with associations. The formation of new political parties is subject to similar constraints as the foundation of associations (applicants submit the dossier but never get a receipt and are thus devoid of legal resources). Apart from the ruling RCD, there are 8 legally registered opposition parties, 6 of which are represented in the parliament. The electoral code states that 80 percent of the seats in parliament go to directly-elected candidates, whilst the remaining 20 percent (25 percent, from the 2009 elections on) are to be distributed in proportion to their electoral results amongst parties that have been unsuccessful overall. In practice this means that 80 percent of the seats go to the ruling RCD and 20 percent to the opposition, since an opposition candidate has practically no chance of winning a local constituency. A side effect of this provision is that it encourages opposition candidates to present themselves in as many constituencies as possible, in order to have the slightest chance of getting into parliament. This again creates a sense of competition, which is not conducive to partnership

between opposition parties and – by design, opposition politicians say – fosters domestic divisions.

The registration of a new political party is rare, and is usually the result of many years of informal negotiations. There are many de facto political parties that have long asked to be legalised but without success. Some observers in Tunisia say the regime only legalises elitist parties and parties with a niche programme. Islamist and leftist parties are the ones which the current politicians would be least inclined to legalise. International pressure, they say, helps parties to get legal recognition, as in the case of the Forum Party, which was legalised following pressure from the French government. The last party to have gained legal status was the Green Party (in 2006). Legal opposition parties are the leftist Attajdid, the Democratic Progressive Party (PDP), the Forum Party, the Social Liberal Party (PSL), the Unionist Democratic Union (UDU), the Party of Popular Unity (PUP), the Movement of Socialist Democrats (MDS) and the Green Party.

Opposition party representatives are sure that it is Ben Ali himself who decides on the legalisation of political parties. Members of both legalised and non-legalised parties agree that the regime's aim of keeping the opposition legal is to project its democratic image, but the government's message to them upon registration is clear: 'you are being legalised so we can talk about pluralism, but the condition is that you stay on the margin and play by our rules'. Those parties who are not legally recognised face many limitations, including being denied their own premises or the use of public space, and having cases filed against people who ask to join them. But even after legalisation, all parties other than the ruling party have very limited space in which to operate and are subject to constant harassment and attempts to put obstacles in their way. Thus they end up facing similar pressures to those parties that are not legally recognised. For most non-registered parties legal recognition is an objective, although their extra-legal situation does not prevent them from being active ('we are gouging into the public space little by little').

The electoral framework is hardly conducive to the holding of free and fair elections. Citizens eligible to vote have to register in order to be able to do so, but in practice the authorities often deny them the registration card required to cast their vote. There is no electoral commission in Tunisia,⁷ in spite of the fact that the opposition has been demanding this for years. Polling station personnel are not chosen by the community but by the ruling party. Legally, the distribution of parliamentary quota seats among the opposition is based on a proportional distribution, in line with the election results attained by each party. In practice, opposition politicians say, it is a purely arbitrary decision of the *pouvoir*, led by nepotistic considerations. Accordingly, they choose not only the parties but even the individual MPs. In fact there are no real 'elections', since the results are decided in advance.

All this means that political parties have to make a strategic choice: either they must integrate with the system and play by the regime's rules, or choose the '*voie publique*'. Differences in strategic choices thus account for a great deal of disunity among opposition parties, with some accusing others of co-optation, or of assuming ambiguous stances in order to maintain their seat in parliament (which requires them to retain the sympathy not of the voters, but of the RCD), with all the advantages this entails (including public financing, official premises and well-distributed party journals). Extra-parliamentary opposition parties do not receive any public funding and must subsist on membership fees and private donations. Most legalised parties try to stay within the law, in spite of all its limitations, and stay clear of provocation. Some opposition politicians point out that the way opposition parties are being treated by the regime has developed over the last decades: once they were all treated like political dissidents and now they are at least treated like a political party. However, others note a deterioration even in the way elections have been handled by the current regime. In 1981, they say, the rulers burned the

⁷ Legal competence with regard to electoral matters lies with the Administrative Court (which is able to reverse administrative decisions which do not comply with the law).

ballot papers in front of opposition politicians' eyes, now they do not even look at the ballots before distributing the seats. Most opposition parties say they know they cannot win the elections, but that they participate due to their belief in the Tunisian people's right to choose and the latter's demand for an alternation of power. They also claim that they hope their participation will encourage others to participate, and that they want to make a contribution to generating alternatives and 'providing ideas for the post-dictatorship era'.

For the upcoming 2009 presidential elections, four opposition parties have fielded candidates: Attajdid, the PDP, the Forum Party and the PUP. A recent amendment to the electoral code will, however, prevent Nejb Chebbi - chairman and presidential candidate of the PDP - from running. The amendment stipulated that only the elected secretary generals of legal parties, who had held the office for a minimum of two years, could be designated as presidential candidates. The PDP believes the amendment was purposely designed to prevent Mr. Chebbi's candidature but decided to proclaim him candidate anyway, in order to create a symbol of the people's right to freely choose their representatives. There is broad consensus among opposition parties that amendments to the electoral code during the last years have been tailor-made by the ruling party in order to block specific people or groups.

Unions and syndicates are increasingly attempting to regain their independence. The trade union sector is currently being dynamised. There are more and more strikes and an ever greater degree of political contestation, to an extent which is increasingly scaring the regime, according to activists. Likewise, many of the professional associations have been trying to recover their autonomy. Even the highly regime-dependent judiciary has tried to do so, by attempting to vote for independent representation for judges in free and fair elections (although the democratically-elected board of judges was eventually replaced by the government, and its members systematically harassed). There is a social movement emerging around the workers' unions, towards which public opinion is very

favourable. The single Unions Federation, the Tunisian General Union of Labor (UGTT), is very strong. As a potential mass force, workers' strikes have a much greater weight than protests organised by NGOs. The UGTT tries to control the strikes and make sure everything keeps within certain margins.

Systematic harassment

In order to keep civil society at bay and to tear out dissent at the root, the government takes an approach of systematic harassment and constant surveillance, in which activists and their families are fully exposed to the arbitrary will of the authorities and the security services. Human rights activists are exposed to this just as routinely as opposition politicians, union leaders, journalists, lawyers, judges - indeed, anyone who gives the regime reason to assume that they do not back away from criticising it. Such broad surveillance over the whole population requires a large labour force and the Tunisian Ministry of the Interior accordingly maintains a police force of 130,000 people, who are responsible for 10 million inhabitants (France, for example, has 160,000 policemen for 90 million inhabitants). The police's mandate is not publicly available and thus appears to be a state secret. The Ministry of the Interior also maintains an informal network of plainclothes policemen (or *flics*), reportedly hired specifically for the purpose of political surveillance. These are commonly referred to by Tunisians as the 'political police'.

The main rationale behind the policy of systematic surveillance and harassment, Tunisian observers say, is to demonstrate the overwhelming power of the state and to intimidate people by making them feel that every step they take will be monitored and that any minor transgression will be punished. The regime thus relies for its own safety and survival on fear among the people, which it tries to instil and exploit on a daily basis. The personal price to pay for acts of rebellion must be kept so high that people are dissuaded from engaging in them. This logic works, too; activists complain of apathy among the population. Most people try to stay clear of politics because they are afraid and

prefer to be left alone rather than to risk their neck in a fight they are sure to lose.

Every citizen is said to be documented in an unofficial personal record file, which Tunisians jestingly call 'Bulletin no.2' (in reference to 'Bulletin no.3', the official personal record that Tunisian citizens need to present in order to be employed, among other reasons). This secret personal file, activists say, is consulted whenever the government needs to verify someone's regime alignment (for example, when somebody wants to work for the government). The record is easily compiled.

The most obvious expression of the regime's policy of harassment is the constant surveillance by the plainclothes security agents that are omnipresent, and who follow key activists and opposition figures wherever they go. Surveillance and harassment have become such a common occurrence in Tunisia that civil society activists already know 'their' *flics* individually. The way in which these agents do not even attempt to hide, but rather act in a very obvious manner and even nod or talk to their targets, shows that the aim of this policy is not primarily reconnaissance but intimidation. Civil society in Tunisia carries a heavy burden, in the knowledge that - with the exception of completely private conversations - nothing can remain a secret and that, potentially, "they" see and know everything'.

The rental and maintenance of premises always presents a lot of difficulties, and the shutting down and/or barricading of the premises of NGOs or political parties is a common way to prevent such groups from effectively functioning. In this regard, the police do not in principle differentiate between legal or illegal organisations. The police routinely block visitors from entering the offices of even the legal political parties, for example, by holding people back in the entrance and telling them that as non-members they are not allowed to enter. The Tunisian League for Human Rights is able to meet as a Central Committee but all of its fourteen local offices across the country have been closed and sealed by the police, and its central premises in Tunis are constantly surrounded by twelve security officers.

League activists calculate that every day there are two hundred *flics* alone who are deployed in branches of the League. In other cases, landlords are being threatened into denying or cancelling rental contracts with the NGO or party in question, often under dubious excuses. One leftist opposition politician said his party was lucky that his landlord belonged to a religious minority because it meant that the regime left him alone, since they could not put him under pressure without a loss of face. In 2005, two leaders of the legal PDP opposition party carried out a hunger strike lasting one month, in order to press the regime to refrain from closing down their offices. The incident was well-publicised by international broadcasting chains and was eventually successful, as the government gave in to the PDP's demands and left their premises open.

By a similar token, associations and political parties are often prevented from holding meetings, congresses and rallies. As was mentioned previously, the Tunisian League for Human Rights has been unable to hold its general congress since 2000, in spite of various attempts to do so and substantial international advocacy. Other groups, such as the National Council for Liberties in Tunisia (CNLT), have chosen to hold their general assembly abroad. With the exception of the two weeks before general and presidential elections, political parties are not allowed to hold rallies or engage in any sort of public campaigning. If they try to book a venue in a hotel, they find that it has been fully-booked years in advance, or the prices are skyrocketing, or the electricity has suddenly broken down. Even the legally-recognised parties are almost as unlikely to be able to hold an annual congress (which must be cleared by the authorities, and thus encounters the usual problem of not getting a receipt). Most civil society representatives also report being systematically prevented from gathering if they are more than a handful, even in a private house, otherwise the police are likely to enter the building and dissolve the meeting. Some activists are on such bad terms with the government that they are not allowed to receive any visits at their home or office, or they are prevented from leaving their house to go to a specific event.

People who attend events, visitors and other supporters are often questioned regarding their identity, their relation with the group in question and their family. Even the leaders of legal parties note that their number of members is just a fraction of their actual supporters, given that anyone opting for official membership 'must have a lot of courage'. Under such conditions, civil society is being deprived of practically all possibility of efficiently engaging in networking and strategic planning.

Many activists have their workplace transferred to the province, or are barred from travelling. While in theory every Tunisian citizen is entitled to a passport, the ID papers of individuals considered disagreeable are routinely confiscated. Alternatively, renewal after they expire is often denied, which effectively prevents these citizens from travelling abroad. On the other hand, some people are forced to travel or commute. For example, several judges - democratically elected members of the Board of the Judges Association who had planned to introduce some major internal reforms - were replaced and eventually transferred to courts several hundred kilometres away from their home town. In another example, the son of a human rights activist working on torture was suddenly transferred to a school in a town hundreds of kilometres away from his parents' house.

Often it is not political but economic pressure that is meant to make an individual compliant. A judge and member of the Tunis-based International Association for the Support to Political Prisoners (AISSP), who had been the first to publish an article about solitary confinement in Tunisia, was beaten up in the street and then the hotel owned by his family was closed by an administrative decision. Eventually he had to stop working as a judge, and his family has hardly enough to live on. This example also illustrates how the *pouvoir* operates not only through economic pressure but through physical attacks as well.

Since 2000, the regime has increasingly employed legal forms of harassment, via the judiciary (rather than the police), in order to keep control over dissent. According

to human rights activists, the judiciary is totally controlled by the government and issues political decisions in a judicial wrapping. Instead of being accused of political activity, activists find themselves charged with all kinds of illegal but non-political activities. One presidential candidate for an opposition party reported that currently he has no less than twelve cases against him pending. Financial irregularities and drug charges are common ways of silencing uncomfortable individuals. In 2008, a critical journalist was convicted on drug charges while protesting his innocence. Incidentally, whilst convicting secular activists on grounds of terrorism is unpopular, doing the same with Islamists is an easier task for the regime, since harsh measures against Islamists sell well on the international market.

Political engagement also has serious professional consequences for many activists. For example, one lawyer reported that the *flics* contact and threaten her clients and tell them not to work with her, at the same time manhandling them in front of the lawyer's offices and preventing them from entering. By harassing the lawyer's clients and telling them their cases are lost if they work with a lawyer who has fallen from grace with the government, they have succeeded in substantially reducing her stock of clients. In a similar way, the authorities engage in systematic defamation and slander, which activists say is intended to harm political activists' reputation and income. The official website of the Ministry of the Interior publishes defamations against a number of individual human rights defenders, that usually have very little to do with their actual activity (for example, the site claimed that a prominent female activist working on torture was illegally trafficking cosmetics from Italy).

Arrests and interrogations in the ministries and in police stations are among the standard measures used to intimidate activists, their families and their supporters. According to the AISSP there are currently about 1,300 convicted political prisoners in Tunisian prisons. After the release of most of the en-Nahda prisoners on 7 November 2008, the majority of political prisoners are mainly unionists and young men

with an Islamist leaning. Activists agree that an amnesty for all political prisoners is among the preconditions for any process of democratisation. The security forces are also increasingly overpowering when it comes to the growing number of social uprisings. Recent peaceful strikes among students, for example, were clamped down upon by hundreds of policemen. Rights activists reported this to the UN Human Rights Council, but the Minister of Justice claimed that these were only isolated cases, in which police had to be deployed to maintain public order.

Indeed, harassment is by no means limited to psychological techniques; human rights defenders report that physical assaults and torture are an integral and even common part of the picture. A number of activists report of being assaulted and beaten up in the street by police or security officers, in reaction to activities that crossed a line with the regime. These included the public denunciation of torture and solitary confinement, or giving critical interviews to international broadcasting chains. Whoever gets beaten up by *flics* in the street has no legal means of bringing the perpetrators to justice because they have no physical proof, and even if they do, the judiciary is likely to drop the case. There have been no judgments on torture cases so far.

Tunisians who have too much contact with foreigners - in particular with pressure groups and government representatives - are subject to reinforced harassment and attempts at intimidation. Indeed, the press often states that too much contact with foreigners is to be avoided. Also the foreigners themselves, even diplomats and politicians, are not exempt from systematic harassment. To show they are present, security agents get physically close to foreign visitors who take an interest in Tunisian domestic politics, and also take other measures in order to scare them. On occasion this has included physical attacks - on journalists, for instance, and even on a member of the European Parliament. Just before the World Information Summit was held in Tunis in 2005, a journalist from the French paper *Libération* was attacked with a knife at a demonstration. The journalist filed a case but there was

no follow-up by the Tunisian courts, and eventually, the case was dropped. In May 2006, a delegation of foreign observers including EUMP H elene Flautre and some prominent international activists were attacked in the street by security agents. In 1999, the UN Special Rapporteur for Freedom of Expression was invited to visit the country. This was the only time any Special Rapporteur has ever been invited (he was a friend of the Tunisian Ambassador at the UN). When the man wanted to visit some illegal organisations, however, the *flics* actually denied him access to the building. The Rapporteur left horrified, reportedly saying he had never seen or experienced anything like that.

The consequences of systematic harassment for Tunisian political life are far-reaching. Tunisians must live with the permanent sensation of being followed and observed. In consequence, people develop an outright paranoia and they think twice before engaging in 'subversive activities'. Self-censorship and anticipatory obedience grow naturally. Moreover, during the last few years, the personalisation of power has grown even stronger. Today, Ben Ali's picture is hanging in every barber shop.

Control of the media and telecommunications

Tunisia routinely figures at the bottom of international rankings of press freedom and freedom of expression. With only a few exceptions, the media landscape is totally controlled by the government, hence it is very difficult to obtain remotely objective information about the situation in the country. Journalists are potentially subject to the same harassment as political and human rights activists when they go beyond the narrow boundaries set down for them by Ben Ali's regime. Red lines that should not be crossed include, for example, reports about President Ben Ali and his family, including the various scandals that involve them, but also positive comments on Islamists. Reports about democracy and human rights, and even mild criticisms of the government in this regard, are not automatically

problematic – as long as they are couched in very general language – as they often serve the regime’s PR of pluralism.

Of all the authoritarian regimes in the region, the Tunisian authorities have acquired the greatest notoriety for their far-reaching efforts and sophistication in systematically blocking and controlling unwanted internet content. Specific sites such as Facebook and YouTube are sometimes fully, partially or temporarily blocked to users trying to access them from within Tunisia. The Tunisian Internet Agency (ATI) at the Ministry of Communications is in charge of centrally-controlled internet surveillance. This task is facilitated by the fact that the ATI is also the central internet service provider, through which almost all other Tunisian providers are channelled. This enables the agency to control practically the whole network, including not only websites but also e-mails. E-mail accounts of suspicious individuals are monitored just as routinely as e-mail exchanges with users abroad.

Tunisian activists have therefore got used to asking for confirmation of receipt when sending an email, or using a number of different email addresses for different purposes. People help each other by passing on downloaded proxies that conceal the identity of the user on the internet, thereby preventing emails from being monitored – that is, until the ATI has tracked and disabled the proxy and a new one has to be found. In spite of the increasing sophistication of internet surveillance, rights NGOs maintain websites and publish their articles and news on the internet, and many of them stubbornly create a new site anytime the previous one gets blocked. Under these conditions, however, fluent communication among and with Tunisian activists – both by email and via websites – is becoming increasingly difficult.

Public and private broadcasting media are almost entirely controlled by the state. A notable exception has been the radio station Kalima, which has gained a reputation for its outstanding attempt to provide ‘real’ information, that is, information untainted by state

interference. While Kalima only functioned as a radio station it was tolerated by the government, but when it was about to start broadcasting via satellite the police stormed Kalima’s premises, taking away computers and documents. Today, however, Kalima is still able to broadcast a one-hour programme that is repeated five times daily and is sent by satellite from technicians in Italy – beyond the reach of the Tunisian authorities. Kalima journalists work in a largely *ad hoc* manner. For example, they are conducting interviews over Skype which, they believe, the ATI is still unable to control. As the station’s premises remain closed and journalists have been denied internet access at their home and offices, they go to a public cybercafé and do their work in a corner. Kalima journalists argue that on the one hand they have become good at improvising, but on the other they struggle to maintain the level of professionalism required for thorough reporting.

However, in spite of its popularity among listeners, many people are afraid to support Kalima openly. The phone numbers of Kalima staff are widely known so many people call them up to share information. But Kalima staff report that when they tried to distribute papers with their radio frequency on the streets of Tunis, many people refused them out of fear. Most print media have never published Kalima’s frequency, including opposition party organs. Producing the programme itself only costs about €1,000 a month, which is being provided by an NGO from Qatar. Indeed, Kalima staff are confident about the future of their programme. Even if the government infiltrates their network, they say that they have little to hide because it is all on their radio programme. In one instance, the government successfully bribed a journalist working for Kalima who came from a very poor background, and who then wrote articles critical of the programme. Kalima has been doing pioneering work in the Tunisian media landscape. Partly in order to counter-balance Kalima’s appeal, and above all the influence of Islamist satellite networks, the government has now set up its own radio station – the religious but pro-governmental channel Zeytouna.

With regard to print media, there are three kinds of newspapers in Tunisia: pro-government papers, private

papers, or the journals of political parties. The state has a direct grip on all three, to varying degrees. While the private papers are somewhat freer in their editorial line, they also depend on advertisements for their survival. These are de facto controlled by the government. The regime, editors say, 'opens and closes the tap as it wants'. As a result, there are no outlets that can be considered totally independent. The law states that legal opposition papers are to receive state subsidies. Most other private outlets, however, depend on advertisements and sales for their survival. According to editors, those papers that do get subsidies are from time to time called up by the authorities and asked to publish on specific topics. In relative terms, some papers such as *Le Temps* and *Sabah* are slightly more straightforward than others. The journal *L'Expression* was also considered relatively independent until a few months ago, when its editor was sacked and replaced by an RCD member.

The print media have a comparatively small readership. In spite of this, every issue is carefully screened and blocked if necessary. Single issues of papers do not require prior authorisation to be published, but in practice, editors report that the *flics* go to the printers to read every issue before they hit the kiosks and some issues are banned from distribution. Alternatively, very few copies are sent on to the sellers so that the paper is sold out immediately, or the kiosk sellers are given instructions not to openly display the paper in question, so that people need to ask for it. For example, an issue of the opposition party journal *Attariq al-Jadid* was recently blocked because it published an article containing the minutes of a trial of a leader of the Gafsa events, which - according to the Ministry of the Interior - risked 'disturbing public order'. The paper appealed the decision but received no reply from the court. Editors say the *pouvoir* decides beforehand the maximum number of copies that a paper will be allowed to sell, but there nevertheless remains a 'democratic minimum' of copies that must be published in order to prove that the journal exists. There are two kinds of distribution companies for opposition papers with a nation-wide distribution: a private distribution company (in which the state can

easily intervene) or the central governmental distributor Sotupress, which has a monopoly in Tunis. Local papers, by contrast, have their own distributors and can escape state intervention more easily.

There are two main professional associations for journalists: the Tunisian Journalists Association, which has been in existence for over four decades, and the Tunisian Journalists Syndicate, which was founded in 2008. The two organisations differ, above all in their approach towards the regime, with the Association voicing more direct criticism whilst the Syndicate sees itself rather as a mediator that tries to 'build bridges and enter into dialogue' with the authorities, thus rejecting what they call a 'confrontational approach'. The Journalist Association's publication of a very critical report on the situation in the Tunisian media made the organisation fall from grace with the authorities, who have now broken all ties with it. The Syndicate also seeks to promote freedom of expression and of the press, but always moves within the boundaries of Tunisian law, in order to avoid conflicts with the authorities. Both associations are internationally connected and are members of global press networks such as the International Journalists Federation and the Arab Journalists Association. Relations with and support from international actors are deemed highly important to give the associations protection against regime clampdowns. In spite of their differing approach, however, both organisations agree that the press in Tunisia mainly serves to distribute government propaganda, rather than constituting an information service for citizens. Both note that journalists have hardly any opportunities to spread objective information about democracy and human rights in the country and have been under increasing pressure over the past few years.

Not surprisingly, the role of the media during electoral campaigning is largely that of a state propaganda apparatus. Opposition politicians claim that they have not appeared on TV for decades (except in photographs on screen, accompanied by texts stating what they allegedly have to say on social, health or employment issues). As a result, some opposition presidential

candidates complain that people hardly even know their faces. Others note, however, that in spite of their inability to campaign openly, not one day passes without people approaching them in the street to greet and encourage them.

Throughout most of the year, public rallies, the distribution of party programmes or advertising are forbidden, and young party activists have in the past been sent to prison for several years just for putting up posters of a legally registered opposition party on their university campus. With international attention focused on Tunisia, campaign time is exceptional. The two weeks in the run-up to the elections, during which international networks report extensively from Tunis, are a short window in which the government strategically provides a 'break' from its usual grip on political opposition. For two weeks, people have slightly more freedom to move around and discuss issues, and opposition parties are even allowed to hold rallies, distribute programmes and put up posters in the street. Once the election is over, however, all goes back to normal.

During the 2004 legislative and presidential elections, every candidate had the right - according to the electoral law - to appear for a given period of time on TV and radio (five minutes for the head of each list running for parliament, and two hours for presidential candidates). In practice, however, the contributions of each candidate were screened and modified by the authorities before being put on the air, and were broadcast at the times of day when viewing figures are at their lowest, such as at night or during the rush hour. In the upcoming 2009 elections, not even this will take place, as the electoral code has now been amended. According to opposition candidates, a further amendment to the electoral law is about to be passed that will install pre-censorship for presidential candidates' speeches by the Higher Council of Communication, without any clear criteria being established. Except for five members originating from political parties, the members of this body are all directly appointed by the president. Presidential candidates may appeal against this decision but have

no realistic chance of judicial follow up. In preparation for the 2009 presidential elections, all papers were full of long lists of organisations that collectively pleaded with President Ben Ali to run again as a candidate - a demand which he mercifully accepted in a well-publicised public announcement.

Given the impossibility of campaigning on Tunisian media outlets, opposition parties increasingly count on new media and international satellite TV networks as a means of campaigning. International TV channels offer positive opportunities for opposition parties to become known to a wider audience and to speak relatively openly about the situation in Tunisia. International networks such as Al Jazeera, BBC and France 24 have covered opposition parties' campaigns. Opposition candidates stress that this coverage, in addition to reaching people in Tunisia and abroad, provides them with an important cover against the actions of the Tunisian regime. However, correspondents of international channels also need the government's approval to get accreditation in Tunisia and many (the latest example being the correspondent of Al Jazeera) have been in serious trouble with the government and have been expelled from the country. Moreover, the electoral code forbids Tunisians from giving any electoral recommendations on foreign TV or radio during the election campaign.

Anti-Islamist policies

The 2003 Anti-Terrorism Law gives the authorities broad powers to clamp down on almost anyone for breaching 'national security'. However, the regime has used the Law almost exclusively against Islamists. The main reason for this is that jailing secular human rights activists on unproven terrorism charges is not popular with Tunisia's international partners, whereas the latter do not object to the jailing of Islamists on the same grounds. Until recently, most political prisoners were members of en-Nahda, Tunisia's largest and most influential Islamist movement. Since the release of the Nahda prisoners in late 2008, however, the majority of political prisoners have been young people with an Islamist leaning, often accused of illegal internet

activities (such as critical blogging or visiting jihadist websites). Defending Islamism is among the biggest taboos in Tunisian public life, and the regime is ready to clamp down ruthlessly on anyone, be they Islamist or secular, who even broaches the issue. There is real fear amongst the population that lending even five dinars to an Islamist could eventually lead to prosecution for supporting an illegal organisation. Most importantly, however, political activists of all colours agree that the regime is successfully using the Islamist terrorist threat as a way of blocking democratisation.

The RCD's policy of repressing and excluding Islamists is widely considered a main reason for increasing youth radicalisation. Like most countries in the region, Tunisia hosts different currents of Islamism, ranging from moderate, non-violent reformers to radical, militant Salafists. But instead of prosecuting radicals and empowering moderates, the government sticks with its approach of confronting all Islamist tendencies alike. Selling all Islamists as potential terrorists has provided the regime with a convenient pretext for its tight grip on society as a whole and forms part of its international PR. Like other authoritarian rulers in the region, Ben Ali has successfully convinced his international counterparts that if he were not in power, radical Islamists would take over – an idea that still serves to erase all European doubts. Accordingly, the Tunisian regime does not look favourably on the recent alliances between secular and moderate Islamist currents which, reputedly inspired by the Egyptian Kefaya movement, aim to promote their common aim of a shared political project for democratic reform. Unlike Bourguiba - observers say -, Ben Ali is a clever strategist who has succeeded in breaking up civil society and political parties through his policy of divide and rule. Recognising moderate Islamists as legitimate societal actors presents the regime with a number of fundamental dilemmas, since its own illegitimate grip on power is not compatible with the empowerment of a potential competitor, and at the same time erases one of the major tools the regime uses to keep this competitor under control while keeping domestic and international criticisms at bay. So far the strategy of repression has worked well because it is easier to

maintain and is perceived by the regime as less risky than a tiresome cohabitation. Moreover, there has not been any significant pressure on the regime to end its blunt repression of Islamists. This is slowly changing though as US and European governments increasingly view moderate Islamists as interesting interlocutors.

However, the government's traditional harshly secular approach towards the role of Islam in society has lately been undergoing some changes. From the early 1990s, the leadership of en-Nahda was jailed, its remaining members persecuted and its structures dismantled. Part of the leadership under Sheikh Gannouchi is still active whilst in exile in London. Over the years, en-Nahda underwent a process of moderation, rejected violence and turned to advocating participation in politics. With harsh repression and jailed Nahda leaders becoming an increasingly embarrassing issue for the Tunisian regime internationally, the government decided to release all Nahda prisoners (although one was almost immediately returned to jail). On the other hand, the general trend in the region towards a revival in practising Islam can also be observed in Tunisia (for example, the share of women wearing headscarves has risen noticeably in recent years), as the regime increasingly seeks to use religion in order to bolster its own position. With the structures of formerly powerful Islamist movements being largely dismantled, the regime attempts to benefit from the rise of 'popular Islam'. While maintaining its officially secular stance, many observers believe that the regime has now embarked on a new strategy to 'Islamicise society', but in the way that it chooses. While the strategic use of religion to bolster the government is not new in itself (for example, Tunisian Imams are obliged to praise Ben Ali in their sermons), it is now being done in a much broader and more systematic way.

By means of Ben Ali's son-in-law Sakhr El Matri, the regime has set up the aforementioned religious radio station Zeytouna (olive, after the famous mosque of Tunis). Thanks to heavy government promotion and support, radio Zeytouna has quickly turned into one of the most popular radio stations in Tunisia. Essentially, the station was set up to prevent people from watching

Islamic satellite channels to counterbalance Islamist influence. It marks a turnaround in strategy by the regime, following the introduction of satellite TV in Tunisia three years ago. Other examples of the government's new strategy include the opening of Qur'an schools in the wealthy quarters of Tunis ('to capture the bourgeoisie', activists say), and the establishment of an Islamic Bank. Increasing influence from the Gulf also plays an important role, as the share of Gulf investment in Tunisia is sharply rising and some Gulf businessmen make their investment conditional on the improvement of the 'negative, un-Islamic image' of modern Tunisia. Here, too, Ben Ali's son-in-law plays an increasingly influential role as the 'man from the Gulf'.

In spite of the government's recent Islamisation efforts, however, confrontation between Islamists and secularists continues, albeit in a more subtle manner. While the Tunisian government is under increasing international pressure to legalise en-Nahda and other moderate Islamist movements, this is not likely to happen in the foreseeable future. By trying to employ a more religious discourse, the regime also aims to outrun the Islamists, by providing its own interpretation of popular Islam. The government's new discourse – which typically consists of very general moral statements about Islam being a faith of tolerance, love and peace – is well received by the population, and stands in stark contrast to both the anti-Islamic discourse of the Bourguiba regime and to Western discourse, which is often perceived as Islamophobic. With its new strategy that combines pro-Islamic and anti-Islamist elements, the government tries to display an overall attitude that is pro-religious but modern at the same time.

State – Civil Society Relations

The need to develop and strengthen civil society has been stressed by Ben Ali on numerous occasions and is nominally an important element in government policy and public discourse. Indeed, the government cooperates with civil society organisations in many instances. A number of measures have been adopted to foster the emergence of new associations and civil society networks. Government activities in this regard include the creation of a national day of associations and the establishment of a microcredit financing system from which new associations not entitled to public funding can benefit. In 2000, the Centre for Information, Training, Studies and Documentation on Associations (IFEDA) was created by decree as an 'observatory' for the association sector and an administrator of public grants to associations. Several ministries have partnerships with associations, and civil society has increasingly been providing support for services in the fields of social work, education, youth, women, sports and the environment.⁸ Crucially, however, rights activists say that such types of support and cooperation are largely aimed at empowering GONGOs and encouraging associations working on apolitical social and development issues, but exclude independent associations which are active in the field of democracy and human rights.

In contrast to the majority of civil society associations that are active in the social and cultural fields, the relationship between political civil society (including human rights associations and political parties) and the state is extremely strained. Tunisian rights activists cynically point out that in reality, the main state interlocutors for associations and political parties are the police who follow and harass them on a daily basis. Many political activists and organisations would like to engage in dialogue with the regime over issues of

⁸ Doucin, p. 305.

political reform and human rights. But at present the government shows no inclination even to talk to independent civil society, let alone engage in any kind of regular consultation. No exception to this are the *Conseils Supérieures* that are organised by each ministry (except for those of International Affairs, Defence, the Interior and Justice) in their respective policy area. Each *Conseil* meets once a year behind closed doors and includes the parties represented in parliament. The output consists of a report of which all participants get a copy (and to which opposition parties contribute about five lines). The associative sector is excluded from these Council meetings, and their practical significance is negligible. Negotiations over registration and other issues concerning associations nevertheless take place informally, wherever people have personal contacts in the government. For example, one opposition politician talked over his party's failed attempts to register over a coffee with a former classmate, who happened to be a minister in government. But beyond this ad hoc and personalist approach, no other dialogue between the two sides, let alone institutionalised consultation, is taking place. This is all the more astonishing since wider Tunisian civil society is highly moderate and does not seek to organise a revolution, so the regime could establish dialogue, thus demonstrating inclusion, with little risk to its own prospects.

The Tunisian League for Human Rights, which at a theoretical level seems predestined to play the role of intermediary between civil society and the government, is a thorn in Ben Ali's side. The president, activists were told in private, reportedly has a personal problem with the association. With the League being besieged by the government, there is currently no actual or potential intermediary institution that may induce a dialogue between political civil society and the government. During the early 1990s, the League had an honorary president who had personal access to Ben Ali, which facilitated the organisation's relations with the government substantially. However, no such personal links exist today. Lately, the League has been trying to start up an informal dialogue with the government, contacting it through intermediaries to find out what it

is thinking and whether they would be willing to negotiate, but none of these attempts so far have borne fruit and the situation remains at a standstill.

On the whole, the government appears to lack both the will and the need to agree to any sort of negotiations or systematic consultations with civil society over political matters.

Local Calls for Reform

The absence of consultations or systematic dialogue between civil society and the government on matters of political reform implies that, unlike rights NGOs in other parts of the region who have formed alliances and drawn up concrete proposals and reform programmes, Tunisian political civil society has little room to draw up concrete demands for legal and political reform. Struggling for survival, many rights organisations lack both the capacity and the freedom to publicly present a set of calls for reform that challenge the status quo other than in a very general, abstract manner. In a legislative framework that forbids NGOs to engage in 'political activities', it is hard to conceive how the latter should be able to draw up concrete demands of political reform, let alone discuss them with the authorities. While political opposition parties represented in parliament do have this freedom in theory, they know that their permanence in the system would be threatened by any attempted advances that cross the red lines drawn by the regime.

Activists point out that even if the government were open to civil society's demands, such a dialogue would be of only limited use due to the highly personalised and centralised nature of Tunisian politics, which reduces the circle of people who have any decision-making power to a handful (or even just one). At the end of the day, civil society activists agree that efforts to strengthen particular rights and liberties in an

isolated way are hardly ever effective or sustainable. The current highly repressive political climate in Tunisia suffocates political participation and impedes the emergence of both an active, independent civil society and a political party landscape able to provide alternatives for an era after Ben Ali. Everything comes down in the end to the need to implement a genuine process of democratisation that goes beyond isolated cosmetic measures that do not touch any of the regime's prerogatives.

While the above described legal and factual obstacles to free association in Tunisia constitute important obstacles in the path of civil society, it is clear that

freedom of association, expression and assembly cannot be achieved via selective reforms in specific areas, but rather they must be developed within a framework of a genuine, systematic process of democratic political reform. Civil society representatives agree that such a process needs to start with an amnesty for all political prisoners and must provide, among other matters, for a disconnection of governmental institutions from the RCD party, a massive reduction of the president's powers, the establishment of a genuine separation of powers via Constitutional reform, and an institutionalised guarantee for the accountability of political leaders, who are to be chosen in free and fair elections.

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Beyond Tunisia's postcard image, the country ruled by President Zine el Abidine Ben Ali for over twenty years is a special case among the countries in the Middle East and North Africa (MENA) due to its combination of impressive socio-economic development on the one hand and a high level of political repression on the other. Unlike most of its semi-authoritarian neighbours, which have – under increasing domestic and international pressures for democratisation – embarked on a (however limited) path of political reform, Tunisia shows no signs of opening up politically. Indeed, the opposite is true. Whilst in countries like Morocco, Jordan and Egypt openly violent repression belongs largely in the past, behind its façade Tunisia remains an old-style dictatorship built around one man, whose rule is held up by an openly repressive police state with few aspirations to subtlety.

This paper outlines a number of key obstacles to free association in the everyday practice of Tunisian civic rights activism. These include the extra-legal position of the majority of political civil society; the regime's policy of systematic surveillance and harassment of activists and opposition; the tight governmental control over the media and telecommunication channels; and the regime's persistent policy of repression towards any political actors with an Islamist leaning.

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