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Political transition in Tunisia

Report[1]
Committee on Political Affairs and Democracy
Rapporteur: Mr George LOUCAIDES, Cyprus, Group of the Unified European Left

Summary

The report covers the developments in Tunisia since the "Dignity Revolution" in 2011. It describes the establishment of the National Constituent Assembly, whose work led to the adoption of the Constitution of 27 January 2014, a true "Constitution of freedom".

The regime put in place by the people of Tunisia, characterised by checks and balances and a strong incentive for political institutions to co-operate, is working. The legislation it has introduced in the fields of protection of human rights and establishment of the rule of law must be welcomed. The Council of Europe has largely contributed to this success.

At the same time, Tunisia faces a double challenge, in the economic and security sectors. If these are not met and if the geopolitical environment of Tunisia does not improve, the achievements of the political transition could be jeopardised.

The report encourages Europe, which already provides significant assistance to Tunisia, to consider it not simply as a neighbour, but as a country on the front line on the democratic and security front and calls on it to recognise this close destiny and to take concrete measures to this end.

1. Reference to committee: Bureau decision, Reference 3889 of 29 June 2012.

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A. Draft resolution[2]

1. Since the “Dignity Revolution” in January 2011, Tunisia is on the road to democracy. Of the countries which experienced the “Arab Spring”, it is the only one to have had a positive outcome.

2. In Resolutions 1791 (2011) and 1819 (2011) and Recommendation 1972 (2001) on the situation in Tunisia, and in Resolution 1893 (2012) on the political transition in Tunisia, the Parliamentary Assembly gave its backing to the democratic aspirations of the Tunisian people and offered its co-operation to place its experience of accompanying democratic transition at the disposal of Tunisia's institutions and civil society.

3. As part of the observation of elections, the Parliamentary Assembly has monitored all of the national ballots held in Tunisia since 2011, namely the election of the National Constituent Assembly in October 2011, of the Assembly of People’s Representatives in October 2014 and of the President of the Republic in December 2014, and has praised their organisation and conduct.

4. The Assembly welcomes the adoption of the Constitution of 27 January 2014, which reflects the expectations of most Tunisians, dedicates an entire chapter to human rights and fundamental freedoms, establishes a Constitutional Court for Tunisia, responsible for ensuring their respect, and puts in place a political system with institutionalised checks and balances.

5. The Assembly pays tribute to the Tunisian people and its leaders, who have been able to successfully complete this constitutional process within a very difficult political and security context, and praises the sense of responsibility and compromise on the part of political decision makers along with the engagement of civil society, including in particular that of the Quartet headed by the Tunisian General Labour Union.

6. The Assembly notes with satisfaction that the new institutional framework is working. The unicameral Parliament, the Assembly of People’s Representatives, has adopted Rules of Procedure giving effect to the rights granted to the opposition by the Constitution. The government has effective political responsibility before the Assembly of People’s Representatives. Lastly, the President of the Republic plays a highly active role, providing momentum within the legislative process and acting as a guarantor of the Constitution.

7. The Assembly calls on the Tunisian authorities to ensure that the independent constitutional commissions, as well as those established by law, are given their rightful place. All these commissions are intended to make a significant contribution to the protection of human rights in accordance with the “Paris Principles” approved by the United Nations General Assembly and Commission on Human Rights, now the Human Rights Council. The Assembly accordingly invites the competent authorities to:

7.1. adopt swiftly the draft organic law laying down common provisions for all constitutional commissions, which has been pending before the Assembly of People’s Representatives since March 2016;

7.2. allocate the constitutional commissions, and those established by law, financial and human resources commensurate with the responsibilities vested in them;

7.3. guarantee the independence of these commissions by providing real assurances of their financial autonomy, as provided for under the Constitution and/or the legislation applicable to them;

7.4. refer to the European Commission for Democracy through law (Venice Commission) both the draft organic law common to the constitutional commissions and the draft organic laws specific to each of the commissions that will succeed the current provisional bodies.

8. The Assembly welcomes the justice system reforms which contribute to the establishment of the rule of law and supports the efforts made by the Ministry of Justice to establish financial divisions capable of effectively combating corruption. It takes note of the removal of the impediments to the election of the Supreme Judicial Council, which should enable the Constitutional Court to be established.

9. The Assembly is aware of the need to take the national reconciliation process to its conclusion, including in the economic and financial fields. However, it recalls that it is important that this reconciliation does not take place at the expense of justice and does not give rise to a sense of impunity. In this regard, it calls on the Assembly of People’s Representatives to take into consideration the principles set forth in the interim opinion of the Venice Commission on the institutional aspects of the draft law on special procedures concerning reconciliation in the economic and financial fields in Tunisia, in the context of a new debate on a revised version of this draft law.

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2. Draft resolution adopted unanimously by the committee on 25 April 2017.

10. The Assembly confirms its firm attachment to the freedom of the media and welcomes the progress achieved in Tunisia in this field. It encourages the Tunisian authorities to preserve genuine independence of journalists and to guarantee that all media groups behave in an ethical manner. In addition, the state of emergency should not be used to interfere in the work of journalists. Civil and criminal procedures are the proper way to deal with infringements which do not endanger national security. In this context, it calls on the Tunisian authorities to:

10.1. fully support the High Independent Authority For Audiovisual Communication in its regulation task and to establish as soon as possible the independent Constitutional Commission in charge of the audiovisual sector;

10.2. settle as soon as possible the issue of the media outlets confiscated and run by the public administration after the fall of Ben Ali's regime, including the situation of the journalists concerned.

11. The Assembly notes with satisfaction Tunisia's spontaneous request that the Council of Europe help it to set up the national mechanism for the prevention of torture. It encourages the Tunisian authorities to:

11.1. implement the recommendations published by the United Nations Committee against Torture in May 2016, according to which abuses committed by law-enforcement officials too often go unpunished;

11.2. provide the National Commission for the Prevention of Torture, as quickly as possible, with the financial and human resources necessary for its operation.

12. The Assembly welcomes the reforms implemented in Tunisia to combat discrimination. In this regard, it gives its backing to the Tunisian authorities' ongoing efforts to promote equality between men and women in accordance with the Constitution.

13. It considers that, while constituting positive discrimination, the voting system adopted for municipal and regional elections, which requires male-female alternation in lists and obliges political parties to ensure that half of the lead candidates in lists are women, will significantly improve the level of women's political representation.

14. In matters of discrimination, it encourages the Tunisian authorities to:

14.1. intensify the efforts to combat economic discrimination against women and to ensure that all legislative advances in the area of equality are implemented, irrespective of their social or geographical origin;

14.2. pursue their efforts in relation to the criminalisation of racism and adopt the draft law to this end currently being debated within the Assembly of People's Representatives;

14.3. reconsider the legality of the provisions of the Criminal Code that criminalise homosexuality in the light of the Constitution, which prohibits all forms of discrimination and guarantees the right to private life.

15. The Assembly expresses its solidarity with the Tunisian people in combating terrorism and welcomes the work done by the law-enforcement authorities. Within this context:

15.1. it calls on the Tunisian authorities to assess the implementation of Organic Law No. 2015-26 of 7 August 2015 on combating terrorism and money laundering, in particular with regard to:

15.1.1. the duration of police custody and the possibility to prevent access to a lawyer during the first 48 hours;

15.1.2. more generally, its effects on freedoms, regard being had to the results obtained in terms of public security;

15.2. it invites the Tunisian authorities to reaffirm their commitment to maintaining the moratorium on the death penalty which Tunisia has respected since 1991, and to undertake that this moratorium will not be called into question by the application of the law of 7 August 2015 or articles of the Criminal Code which provide for the death penalty.

16. The Assembly calls on the member and observer States of the Council of Europe, as well as the European Union, to come to the assistance of Tunisia to enable it to deal with the economic and security challenges upon which the success of its democratic transition depends. It reiterates the call it made in 2012 to the principal international partners of Tunisia to support the relaunch of the country's economy and tourism sector and encourages the Tunisian authorities to use the fight against corruption as a tool for the country's return to growth.

17. It also invites these international partners to pursue their co-operation in the area of security, while respecting Tunisian sovereignty, and considers the Tunisian initiative for Libya to be the best solution at present for enabling the Skhirat Agreement, negotiated under the aegis of the United Nations, to be implemented. As regards the management of Tunisian nationals returning from conflict zones, it encourages Tunisia to establish co-operation with countries that have attained convincing results in the field of deradicalisation, such as Norway or the Netherlands.

18. Taking account of the economic and security challenges currently facing Tunisia, the uncertain geopolitical context within which it is operating and the importance of the economic and human ties that bind it to Europe, the Assembly considers that Europe should do its utmost to prevent Tunisia from becoming destabilised by its immediate surroundings. Tunisia and Europe share a close destiny. A deterioration in the situation in Tunisia would have immediate repercussions for the European continent in terms of both migration and security. Consequently, the Assembly:

18.1. urgently calls on the member and observer States of the Council of Europe and the European Union to take all appropriate measures to maintain stability and to contribute to Tunisia’s transition to democracy;

18.2. draws the attention of the competent institutions of the European Union, and in particular of the European Commission, to the importance for Tunisia of securing a complete and comprehensive free trade agreement that is fair, in particular in the area of agriculture.

19. The Assembly welcomes the intense and fruitful co-operation between Tunisia and the various bodies of the Council of Europe, which is making a strong contribution to its democratic transition. This co-operation should be developed further and extended to other sectors, including Tunisia's decentralisation process, with which the Congress of Local and Regional Authorities of the Council of Europe has been called upon to assist.

20. The Assembly considers that this co-operation would be more effective if it were supplemented by dialogue at a parliamentary level. It is ready to reinforce its links with the Assembly of People’s Representatives and invites Tunisia's elected representatives to take full advantage of the opportunity which it provides to participate in European parliamentary dialogue.

B. Draft recommendation[3]

1. The Parliamentary Assembly refers to its Resolution … (2017) on political transition in Tunisia. It also refers to its Recommendation 1972 (2011) on the situation in Tunisia and the reply thereto from the Committee of Ministers.

2. It welcomes the decisive advances made by Tunisia in the area of democracy, the promotion of human rights and the establishment of the rule of law as well as the contribution made through co-operation between the Council of Europe and Tunisia to the country's reform process. In this regard, it expresses its satisfaction that Recommendation 1972 (2011) has been implemented.

3. Taking account of the high degree of co-operation between Tunisia and Council of Europe bodies, along with the results obtained, the Assembly recommends that the Committee of Ministers increase the volume of requests for funding through voluntary contributions in preparation for the 2018-2020 Neighbourhood Partnership, so as to consolidate and reinforce programme resources relating to:

3.1. the promotion of women's rights, in particular in relation to combating discrimination against women;

3.2. the defence of children's rights, in particular through the provision of support to Tunisia with its accession to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, “Lanzarote Convention”);

3.3. freedom of expression and freedom of the press;

3.4. decentralisation, an area in which co-operation should be stepped up following the municipal and regional elections scheduled for December 2017.

4. Lastly, taking account of the economic and security challenges currently facing Tunisia, the uncertain geopolitical context within which it is operating and the importance of the economic and human ties that bind it to Europe, the Assembly considers that Europe should do its utmost to prevent Tunisia from becoming destabilised by its immediate surroundings. Tunisia and Europe share a close destiny. A deterioration in the situation in Tunisia would have immediate repercussions for the European continent in terms of both migration and security. The Assembly invites the Committee of Ministers to endorse this statement and to draw consequences from it when implementing the neighbourhood policy of the Council of Europe.

3. Draft recommendation adopted unanimously by the committee on 25 April 2017.

C. Explanatory memorandum by Mr George Loucaides, rapporteur

1. Introduction

1. Since the beginning of the "Dignity Revolution",[4] the Parliamentary Assembly has stood together with those in Tunisia who have applied themselves to building a new society – a society attached to democracy, good governance and respect for fundamental rights. This was a major challenge and this is why the Committee on Political Affairs and Democracy has followed developments in this country closely and why the Assembly adopted three Resolutions in 2011 (1791 and 1819) and 2012 (1893). In the latter text we noted that Tunisia was on the right path and called on the National Constituent Assembly (NCA) to give Tunisians "a constitution commensurate with the revolutionary ideals and consistent with international constitutional standards and practice".

2. It was at the initiative of the committee that the President of the European Commission for Democracy through Law (Venice Commission), Mr Gianni Buquicchio, met representatives of Tunisian civil society in 2011[5] and offered to make this body's constitutional expertise available to them, and it was in the framework of a "post-observation" mission of our Assembly that Mr Buquicchio and Ms Simona Granata-Menghini, Deputy Secretary of the Venice Commission, travelled to Tunisia on 16 and 17 January 2012, when the NCA was being set up. Our committee followed the preparation of the new Tunisian Constitution step by step, through exchanges of views with the Venice Commission Secretariat, on 15 November 2012, and representatives of the NCA, at the April 2013 and April 2014 part-sessions – the latter attended by Mr Mohamed El Arbi Abid, Deputy Speaker of the NCA.

3. Our committee also initiated the visit to the Assembly of Mr Mustapha Ben Jaafar, who spoke about the situation in his country when the third report by our colleague Ms Anne Brasseur was debated in plenary sitting on 28 June 2012.

4. More recently, a delegation from the unicameral parliament which succeeded the NCA in Tunisia attended the meeting of the Sub-Committee on the Middle East and the Arab World on 21 April 2015, and I myself had the opportunity to speak to three members of that parliament last January.

5. Although we have been active since 2011, it has to be said that the last situation report presented to our Assembly dates from 2012. Since then, the circumstances have, in part, changed. Tunisia has moved beyond establishing a new institutional framework. It adopted its new Constitution in January 2014 and has begun to apply it: parliamentary and presidential elections were held the same year, and Tunisia had a change of government in summer 2016.

6. The purpose of the present report is to present the main political developments since our last resolution (June 2012), identify the challenges which Tunisia faces and assess the extent of its co-operation with the Council of Europe. It draws in particular on the fact-finding visit which I made to Tunis from 27 to 30 March 2017.

2. The preparation of a new Constitution

7. The drafting of the Constitution of 27 January 2014 was not a sedate affair. In the summer of 2013, Tunisia was on the brink of civil war, with fears of going the same way as Egypt uppermost in the minds of all the political players. Yet nothing of the sort happened: balancing on a knife edge, Tunisian society was able to make the necessary compromises to maintain its unity and turn the page of transition, establishing durable institutions.

2.1. The framework (2011-2012)

8. Elected on 23 October 2011, in a vote winning praise from international observers and our Assembly,[6] the NCA fulfilled the functions of a parliamentary assembly for just over two years, passing laws and supervising the actions of the government, as well as serving as a constituent assembly. On 10 December 2011, it passed the Law on the Provisional Organisation of Public Authorities (POPA law), sometimes known

4. "The Dignity Revolution" is the expression used in Tunisia to refer to the overthrow of the Ben Ali dictatorship in 2010-2011, while the term "Jasmine Revolution" evokes his seizure of power in 1987.
5. Meeting of the Committee on 9 March 2011, before the NCA was elected.
6. Observation of the election of a National Constituent Assembly in Tunisia (23 October 2011), Election observation report, Doc. 12795 (rapporteur: Mr Andreas Gross).

as the “Little Constitution”, providing Tunisia with a minimal constitutional framework, creating *inter alia* the institutions of the Presidency of the Republic, the Government and the Prime Minister. The POPA law applied until the entry into force of the 2014 Constitution.

9. Once this law was passed, the so-called “Troika parties” – Ennahdha (moderate Islamic), the Congress for the Republic (CPR, secularist and pan-Arabist nationalist) and Ettakatol (secular left-wing and member of the Socialist International) – formed a governing coalition, holding the majority in the NCA with 138 seats out of 217. Four months later, in mid-February 2012, work on the Constitution began in earnest. It was divided between six constitutional drafting committees, elected proportionally from the groups. Their role was to draft the articles of the Constitution falling within their field of competence and then forward their draft to a joint drafting and co-ordination committee, which could refer texts back to them before submitting a complete draft to the NCA meeting in plenary session.[7] The draft was then to be adopted in two phases: firstly article by article, by a two-thirds majority, then in a vote on the entire text, again by a two-thirds majority. In the event of that majority not being attained, the draft was to be put to a referendum, which did not happen in the end.

2.2. Deterioration of the political climate (2011-2013)

10. The NCA was challenged fairly quickly by the opposition, and the political situation became ever more tense, polarising Tunisian society between the supporters of the Troika and its critics.

11. First and foremost, Ennahdha, with 37% of the vote and 89 seats out of 217, while the second-placed CPR held only 8.7% of the vote, raised fears of hegemonic tendencies.

12. That fear was expressed as early as December 2011, during the vote on the “Little Constitution”, with opposition criticism focusing on the division of powers which it felt to be concentrated in the hands of the Troika, and on the failure to set a duration limiting the NCA's term of office.

13. One year later, the NCA had still not managed to adopt a draft Constitution despite the political majority having pledged to do so when election campaigning in 2011. Moreover, notwithstanding the efforts made by part of the NCA’s administration, the Troika members in that administration had not involved civil society in their proceedings as much as they could have done.[8]

14. But it was above all the committee debates that revealed the fault lines between the Islamist party and the secular parties. The two sticking points concerned the place of Islam in the Constitution and, to a lesser extent, the nature of the regime, sometimes triggering major street protests.

15. Regarding the first issue, Ennahdha tried, until 2013 and often in the face of opposition from its Troika partners, to make the Muslim faith a source of Tunisian law. It tried to secure the adoption of a definition of the family based on the “complementarity” of men and women and not on the principle of equality. It also proposed counterbalancing the civil nature of the Tunisian State by the recognition, in the draft Preamble to the Constitution, of “constants of Islam” to which the Constitutional Court could refer, and wished that no revision of the Constitution could “undermine Islam as the State religion”.

16. The differences were less pronounced over the nature of the regime. The question of a mixed regime in which the Head of State was assigned real prerogatives was swiftly settled, and the main focus of discussions was on the sharing of powers between the Head of State and the Head of Government.

17. The deterioration of the political climate and the gulf between the positions of those drafting the Constitution, whose visions of society were difficult to reconcile, explain why, by June 2013, the NCA had examined four drafts of the Constitution[9] without ultimately adopting any of them. At the same time, the security situation was deteriorating.

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7. The six committees, each comprising 22 members, were: the Committee on the preamble, fundamental principles and revision of the Constitution, the Committee on rights and freedoms, the Committee on legislative power, executive power and relations between them, Committee on general court, administrative, financial and constitutional justice, Committee on constitutional commissions, committee on local and regional public authorities.

8. See the comments of Jawher Ben Mbarek, The constitution-making process and civil society: from negation to acceptance?, p. 263 ff, in The Constitution of Tunisia, United Nations Development Programme, 2016, of Badredine Abdelkafi, The National Constituent Assembly and the civil society: What is the relationship?, p. 139 ff, and the report by Ms Anne Brasseur of 7 June 2012, Political transition in Tunisia, Doc. 12949, paragraph 33.

9. 13 August 2012, 14 December 2012, 22 April 2013 and 1 June 2013.

2.3. A deteriorating security situation and the crisis of summer 2013

18. As of 2012, law-enforcement agencies violently repressed certain demonstrations of a political[10] or social[11] nature but appeared to find it difficult to do likewise where the Salafists[12] or pro-government militias[13] were involved.

19. The assassination of two opposition leaders within six months of each other, Mr Chokri Belaïd, on 6 February 2013, then Mr Mohamed Brahmi, on 25 July 2013, apparently by the same team of jihadists, triggered waves of protest and the placing of blame on the Troika, criticised either for its incompetence or its alleged indulgence of jihadists and Salafists. Ennahdha was also accused of complicity with the assassins.[14]

20. Mr Mustapha Ben Jaafar, the leader of Ettakatol and former Speaker of the NCA, described these weeks, when the country teetered on the brink of civil war:

> *"The second assassination [that of Mohamed Brahmi] brought the country to an outright halt, prompting the Errahil (departure) sit-in on Bardo Square for around a month, which called for the dissolution of the Assembly. A major crisis took hold of the country and there was very real deadlock.*
>
> *…*
>
> *Debate in Tunisia at that time was heavily influenced by events in Egypt [on 3 July, the Egyptian army overthrew President Mohamed Morsi, a member of the Muslim Brotherhood]. Some dreamt of recreating a Tunisian-style 'Tamarod' (Rebellion) to drive the elected majority out of power, while others called on the population to resist any attempted putsch or military coup d'état.*
>
> *The political scene was split in two, and the channels of dialogue were cut off. Different blocks began to form on either side of the dividing line between secularists and Islamists, which I had always dreaded and condemned. Worse still, most of the political, non-governmental organisations and trade unions had abandoned their regular participation in institutions in favour of 'street politics' and direct confrontation.*
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> *The opposition was laying claim to a 'new' popular legitimacy acquired through power relations, while the Islamists proclaimed that they had been legitimately elected. The opposition had formed a National Salvation Front, demanding the government's immediate resignation and the dissolution of the NCA which, they said, was no longer representative.*
>
> *Indeed, 50 or so members of parliament decided to withdraw from the NCA and join the demonstrators on Bardo square.*
>
> *On the other side, the majority was mobilising its supporters with a 'call to the people' to block the counter-revolution under way. This intimidating climate was further exacerbated by the deaths of eight national servicemen in one week, all victims of terror attacks."*[15]

21. On 6 August 2013, Mr Mustapha Ben Jaafar suspended the proceedings of the NCA.

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10. On 6 April 2012, the police, with the help of Islamist militia according to some journalists, repressed demonstrators commemorating Martyrs' day so violently that the NCA decided to set up a committee of inquiry.
11. On 26 November 2012, inhabitants of the governorate of Siliana, a poor province in the north-west of the country, demonstrated in favour of the region's economic development. The rally turned into a riot and the police fired buckshot, leaving at least 177 injured.
12. On 14 September 2012, Salafists stormed the American Embassy and wrecked the American school, despite law-enforcement officers being present.
13. On 18 October 2012, in the south-eastern town of Tataouine, the League for the Protection of the Revolution, a militia heavily associated with Ennahdha, clashed with Lofti Naguedh, a co-ordinator for the Nidaa Tounes opposition group, and Mr Naguedh died shortly afterwards. The leader of Nidaa Tounes, Beji Caïd Essebsi, described his co-ordinator's death as "Tunisia's first post-revolution political assassination". Céline Zünd, *Le Temps*, La mort mystérieuse du militant Lofti Naguedh divise la Tunisie, 24 October 2012.
14. *L'Obs* avec AFP, Un haut responsable de l'opposition assassiné, 6 February 2013: "Chokri Belaïd, leader of the Democratic Patriots party, was shot dead when leaving home. His brother accused the party in power, Ennahdha, of 'having him assassinated'", http://tempsreel.nouvelobs.com/monde/20130206.OBS7861/tunisie-un-haut-responsable-de-l-opposition-assassine.html.
15. Mustapha Ben Jaafar, former Speaker of the NCA and leader of the Ettakatol party, Le processus transitionnel en Tunisie (2011-2014): De la crise au Dialogue national (4ème partie) [The Transitional Process in Tunisia (2011-2014): From Crisis to National Dialogue (4th part)], *Huffington Post*, published on 12 October 2016, updated on 19 October 2016.

2.4. Defusing of the crisis and speeding up of work on the Constitution (summer 2013-2014)

22. The crisis was resolved thanks to civil society. A quartet made up of the Tunisian General Labour Union, the Tunisian Confederation of Industry, Trade and Handicrafts, the Tunisian Order of Lawyers and the Tunisian Human Rights League organised a National Dialogue open to the political groups agreeing to sign a roadmap fixing a point to be reached at the end of the NCA's work. Twenty-one of them did so, with the exception of the CPR, a Troika member. The Dialogue sessions started up in mid-September.

23. They paved the way for the resumption of work on the Constitution through the setting up of a body not provided for in the NCA's rules but desired by its Speaker, namely the Consensus Committee, which made its final arbitrations and submitted its last report on 28 December 2013.

24. On 26 January 2014, the NCA adopted the Constitution of the 2nd Republic of Tunisia almost unanimously, with 200 votes for, 12 against and four abstentions. It was promulgated the following day, on 27 January.

25. Different factors can explain this success.

26. They include the dynamism of civil society, which was capable of acting as a last-resort mediator. Indeed, the Quartet was awarded the Nobel Peace Prize in 2015 for its work during the National Dialogue.

27. The backing of the international community also played a role. In this respect, co-operation between the Tunisian authorities and the Venice Commission was excellent, with the latter monitoring the process of preparation of the Constitution from the beginning, providing expert drafting input and producing several opinions on the drafts submitted to it, including the final draft. Indeed, its role was recognised when its Deputy Secretary, Ms Simona Granata-Menghini, participated as a guest in the signing ceremony for the new Constitution on 24 January 2014 in Tunis. The then President of the Assembly, Ms Anne Brasseur, was also invited to the ceremony but, as this coincided with the Assembly's January part-session, she could unfortunately not attend.

28. The United Nations was also a factor, particularly via the United Nations Development Programme, which provided support for those drafting the Constitution throughout their work.

29. But it was above all the ability of the political stakeholders to make major concessions, "where they believe that there is an imminent threat to the country's security and unity", as a member of civil society, Mr Salah Eddine Al Jourchi, wrote,[16] which was decisive.

3. The Constitution of 27 January 2014

30. Stating its opinion on the Preamble of Tunisia's fundamental law, the Venice Commission noted that "the principles of political and legal organisation asserted therein are generally those on which democracies are founded: sovereignty of the people, the rule of law, separation and balance of powers. These tie in with the three pillars of the Statute of the Council of Europe, namely human rights, democracy and the rule of law. The emphasis placed in this Preamble on the principal values of a democratic State is to be welcomed".[17]

31. This view is subsequently borne out by the Constitution's 149 articles, divided into ten chapters.

3.1. The enshrining of rights and freedoms

32. Chapter 2 is devoted entirely to rights and freedoms, and those, together with the rights and freedoms mentioned in the other chapters, particularly the first chapter dealing with general principles, form a long list attesting to the constitution-makers' preoccupation with breaking with the dictatorial regime in place before the Revolution.

33. This enshrining of rights and freedoms and the legal means of ensuring respect for them through the challenge of unconstitutionality provided for in Article 120 is also to be welcomed. It prompts only one remark, one reservation and one suggestion.

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16. Structure et évolution du paysage politique pendant la transition [Structure and evolution of the political landscape during the transition], p. 206, in La Constitution de la Tunisie, op. cit.
17. Venice Commission, Opinion on the final draft Constitution of the Republic of Tunisia, Opinion 733/2013 of 17 October 2013, paragraph 13.

34. My remark is to stress that this is a compromise text, particularly as regards the question of the place of Islam. In this respect, the civil nature of the State was ultimately confirmed by Article 2 of the Constitution, and the draft articles intended to restrict its scope were discarded. That said, the Constitution still contains numerous references to the Muslim religion,[18] one example being that only a Muslim may stand as a candidate for the office of President of the Republic (Article 74). The Venice Commission did not fail to point out the "tensions between, on the one hand, the predominant position given to Islam, and on the other hand, the civil nature of the Tunisian State and the principles of plurality, impartiality and non-discrimination"[19] as well as the fact that "the exclusion of any candidate (male or female) who is not of the Muslim faith does not tie in well with those provisions".[20] But bearing in mind the prevailing context surrounding it, this compromise is doubtless the best that could have been reached. As for the obligation to be a Muslim in order to hold the office of Head of State, it is regrettable but similar principles are followed in States generally regarded as models of democracy, such as the United Kingdom, where the monarch must be an Anglican, or Denmark (Article 6 of the Constitution of 5 June 1953) or Norway (Article 4 of the Constitution of 17 May 1814, in its version of 2013), where the monarch must be a Lutheran.

35. There is another provision stemming from this compromise which is problematic: Article 22 authorises the application of the death penalty "in extreme cases established by law", which is deeply regrettable, and all the more so as a *de facto* moratorium has been in place since 1991.

36. Finally, I agree with the Venice Commission's suggestion concerning certain fundamental rights protected by international instruments[21] which do not appear in the Constitution and could be included in it in the future or be accommodated in the case law of the Constitutional Court.[22]

37. That said, I believe that our Assembly can concur with the words of Mr Ben Jaafar, former Speaker of the NCA, when he addressed his colleagues upon the adoption of the Constitution of 27 January: "The Tunisian revolution is a revolution of freedom, and you today, by passing your constitution, are giving tangible form to and symbolising that success."[23] That was very much the case.

3.2. A mixed parliamentary system

38. Emerging from a long period under an undemocratic regime, the constitution-makers opted on the one hand for a "power to be a check to power", and on the other hand for mechanisms that encourage the different players to strike compromises. Any concentration of powers was studiously avoided, which is without doubt a wise move for a fledgling parliamentary democracy.

3.2.1. The Assembly of People's Representatives (APR)

39. Made up of 217 members, the same number as the NCA, it is elected for a term of five years by closed-list regional proportional representation using the largest remainder method in 33 constituencies, 27 in Tunisia and 6 abroad.[24] It has all the powers of a unicameral parliament, passing legislation and supervising the action of the government, including through votes of confidence or censure. The Constitution accords special status to the opposition, granting it *inter alia* the Chairmanship of the Finance Committee and the role of rapporteur of the Committee dealing with international relations and authorising it to set up a committee of inquiry once a year.

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18. The Constitution begins with the words "In the Name of God, the Merciful, the Compassionate" and ends with the words "God is the guarantor of success", the Preamble mentions "our people's commitment to the teachings of Islam" and "our Islamic-Arab identity", and states that "We, in the name of the Tunisian people, with the help of God, draft this Constitution", with the parliamentarians (Article 58), the Head and members of the Government (Article 89) and the President of the Republic (Article 76) having to swear a religious oath, with no provision for any alternative.
19. Venice Commission, op. cit., paragraph 28.
20. Ibid., paragraph 102.
21. Ibid., paragraph 77.
22. These are the right to respect for family life (Article 8 of the International Covenant on Civil and Political Rights of the United Nations), the prohibition of slavery, servitude and forced labour (Article 8 of the Covenant) and the principle of *ne bis in idem* (Article 14.7 of the Covenant).
23. Mustapha Ben Jaafar, Le processus transitionnel en Tunisie (2011-2014) : Adoption de la Constitution et épilogue (5ème partie) [The transitional process in Tunisia (2011-2014): Adoption of the Constitution and epilogue (5th part)], *Huffington Post*, published on 26 October 2016, updated on 26 October 2016.
24. Proportional voting is not mentioned in the Constitution which provides only for election by direct suffrage and leaves the arrangements to electoral law.

40. The APR adopted its Rules of Procedure on 2 February 2015. Among other things, they organise its proceedings through nine standing committees[25] each with 22 members and nine special committees.

3.2.2. Co-operation between authorities

41. The choice of a mixed regime where the Head of State is also elected by direct universal suffrage for a five-year term of office, which is renewable once, leaves the bulk of executive power to the Head of Government but allows the Head of State to influence the work of both the APR and the government.

42. By way of example, the President has a suspensive veto which may be lifted only by a vote supported by a two-thirds majority of the APR, which is a truly effective weapon when faced with an Assembly where majorities may not be clear owing to the voting method. The President may also ask the APR to take a vote of confidence in the government, with a maximum of two votes permitted during the presidential mandate.

43. In other words, the President has powers enabling him to “force” a consensus or establish that there is none.

44. This conciliatory approach can also be seen in the vote of no-confidence against the government, which draws heavily on the German constructive vote of no-confidence: the vote of no-confidence can be adopted only if the APR, during the same vote, approves the candidature of the person to replace the Head of Government, which implies that the opposition parties must be capable of agreeing on an alternative government.

3.2.3. Provision for independent constitutional commissions acting as a counterweight

45. There are five independent constitutional commissions, acting in support of democracy and enjoying legal personality and financial and administrative independence, according to Article 125. Within their field of competence, they have at least a power of consultation (Commission for Sustainable Development and the Rights of Future Generations) and may be tasked with the regulation of their sector (Audiovisual Communication Commission), the organisation and supervision of the various elections (Elections Commission) or investigation (Human Rights Commission, Good Governance and Anti-Corruption Commission).

3.3. A living framework that is proving its worth

46. The parliamentary elections held on 26 October 2014, which were praised by our Assembly,[26] were marked by a polarisation of the political landscape: Nidaa Tounes (37% of votes cast and 86 seats), a secularist movement which positioned itself as an adversary to Ennahdha, became the main political movement in the APR, followed by Ennahdha (27% and 69 seats). The four parties following them took less than 5% of the vote. With the exception of Ennahdha, the parties making up the old Troika lost over 50% of the votes they obtained in October 2011. Mr Mohammed Ennaceur, a member de Nidaa Tounes, became the first Speaker of the APR.

47. On 21 December 2014, Mr Beji Caid Essbsi, leader of the Nidaa Tounes party and Prime Minister during the transition period, was elected President of the Republic with over 55% of the vote in an exemplary election.[27]

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25. Under Article 85 of the Rules of Procedure, in their version of 2 February 2015, the standing committees are the committee on general legislation, the Committee on rights and freedoms and international relations, the Committee on finance, planning and development, the Committee on agriculture, food safety, trade and services, the Committee on industry, energy, natural resources, infrastructure and environment, the Committee on health and social affairs, the Committee on youth, cultural affairs, education and research, the Committee on armed forces organisation, administration and affairs and the Committee on rules of procedure, immunity, parliamentary laws and electoral laws.

Under Article 91 of the Rules of Procedure, in their version of 2 February 2015, the special committees are the Committee on security and defence, the Committee on administrative reform, good governance, combating corruption and supervision of public funds management, the Committee on regional development, the Committee on martyrs and injured of the revolution, application of the general amnesty law and transitional justice, the Committee on disabled persons and vulnerable categories, the Committee on women's, family, children's, youth and elderly persons' affairs, the Committee on affairs regarding Tunisians abroad, the Electoral Commission and the Committee on supervision of voting and vote-counting operations.

26. Observation of the parliamentary elections in Tunisia, Election observation report, Doc. 13654 (rapporteur: Mr Andreas Gross).

27. Observation of the Presidential elections in Tunisia, Election observation report, Doc. 13672 (rapporteur: Mr Jean-Marie Bockel).

48. The formation of the government led by Mr Habib Essid, an independent, showed that the incentive mechanisms incorporated in the Constitution worked: when at risk of failing to win the confidence vote of the APR, he had to extend the composition of his government and include Ennahdha and Afek Tounes, a social-liberal party, alongside Nidaa Tounes.

49. Similarly, in 2015, the Head of Government dismissed the Minister of Justice and the State Secretary for Security Matters under the Minister of the Interior prior to a ministerial reshuffle, at the beginning of January 2016, with the APR passing a vote of confidence in the individual ministers.

50. Finally, after the President of the Republic had expressed the wish for a national unity government and secured the agreement of the political parties and trade unions in June 2016, Mr Essid did not wish to resign but instead asked the APR for another vote of confidence, which it refused on 30 July 2016.

51. A new government formed by Mr Youssef Chahed, more broadly based than the previous one, gained the confidence of the Assembly on 26 August 2016. It underwent a minor reshuffle in February 2017 during which the Prime Minister appears to have reinforced his authority over the parties supporting him, having failed to consult them in advance of the appointment of three ministers.[28]

52. It is noteworthy that this functioning of the country's institutions was not disrupted by a split within Nidaa Tounes, resulting in the departure of 32 MPs from its parliamentary group in November 2015 and the creation of a new party, Machrou Tounes. This schism made Ennahdha the leading political force in the APR, which is still the case today.

4. The building of a State ruled by law: a work in progress

53. In order to fully and effectively implement the rights and freedoms set forth in the Constitution, Tunisia is having to overcome certain practices, cultural habits and areas of resistance.

4.1. Independent constitutional commissions and those established by law

54. So far the constitutional commissions do not have their own legal framework. The draft organic law on common provisions for the independent constitutional commissions was adopted by the Council of Ministers on 15 March 2016, but has not been examined by the APR. Only one out of the five commissions provided for under the Constitution is operating in accordance with its own organic law, which moreover needs to be amended. This is the Independent High Commission for Elections. Three other commissions are still governed by provisional legislation (those responsible respectively for human rights, audiovisual media and the fight against corruption) and are awaiting the enactment of their own organic laws, while the last Commission, responsible for sustainable development, does not exist as a legal entity.

55. During my meeting with the chairpersons of these commissions, who were joined by the chairpersons of the commissions established under ordinary legislation rather than constitutional law, such as the National Commission for the Prevention of Torture or the National Commission for Personal Data Protection, it became clear that efforts need to be made in order to enable all of the commissions to become operational.[29] In this regard, the situation of the National Commission for the Prevention of Torture is telling: this body is not operational due to a lack of staff and the failure to adopt a decree concerning the remuneration of its members.

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28. On the reshuffle, see *Huffpost Tunisie*, Après l'intention de démission de Bikri: Youssef Chahed effectue un remaniement ministériel [Youssef Chahed carries out a reshuffle in the wake of Bikri's attempted resignation], 25 February 2017, www.huffpostmaghreb.com/2017/02/25/briki-chahed-remaniment-_n_15005792.html.

On the failure to consult Nidaa Tounes in relation to the reshuffle, see Globalnet, Hafed Caïd Essebsi dénonce l'enregistrement fuité où il critique Youssef Chahed [Globalnet, Hafed Caïd Essebsi denounces the leaked recording in which he criticises Youssef Chahed], 7 March 2017, www.gnet.tn/actualites-nationales/hafedh-caid-essebsi-denonce-lenregistrement-fuite-ou-il-critique-chahed/id-menu-958.html.

29. On 5 January 2017, three provisional commissions along with the National Commission for the Prevention of Torture, the National Commission for Personal Data Protection and the Truth and Dignity Commission complained of interference by the political authorities in their operation and declared that they were dissatisfied "at the way in which the draft [organic] laws [concerning them] have been framed, transforming the process into a simple routine procedure [deprived] of its principal objectives", according to their joint statement. The President of the National Commission for Personal Data Protection pointed a finger at what he called "the deep administration", which he alleged still does not accept the sharing of any of its power, see *La Presse*, Instances constitutionnelles: malaise institutionnel [Constitutional commissions: institutional malaise], 6 January 2017.

56. The feeling amongst my interlocutors was that the political institutions and senior officials serving them had not made it a priority to enable these commissions to function effectively, with the exception of the Independent High Commission for Elections. Of course, there are considerable budgetary constraints in Tunisia. It is true that the concept of "independent commissions" is new in Tunisia. It is understandable that granting powers to them will arouse fears that certain ministerial departments may lose their prerogatives. However, these commissions do not represent a dismembering of the State but constitute a recognised and desirable safeguard in the area of the promotion of human rights, if only in relation to the "Paris Principles".[30] This is all the more true in a State which is undergoing reform and whose history up until the recent past has been highly authoritarian. The French State, which is Jacobin par excellence, has not been undermined by the creation of independent administrative commissions, the operation of which is very similar to that of the Tunisian commissions. The Tunisian Government and Parliament should be reassured: the same will be the case in their country.

4.2. Justice

57. The setting up of the Supreme Judicial Council, a symbol of the independence of general civil and criminal, administrative and financial courts, has been eventful: the law instituting it has been criticised both by members of the judiciary and by non-governmental organisations (NGOs) and associations believing that it could have done more to reinforce guarantees of independence. The election of its members in October 2016 did not enable the Council to meet in its definitive composition, and the decisions it took in December 2016 were challenged before the Administrative Tribunal by the Association of Tunisian Magistrates, which appears to be at loggerheads with a rival union, the Tunisian Magistrates Trade Union.

58. These impediments were circumvented only by the urgent adoption, on 28 March 2017, of a law amending the rules governing the functioning of the Supreme Judicial Council. The Association of Tunisian Magistrates has criticised its content and called for strike action. In addition, a collective of civil society organisations has branded the government's initiative as interference in the judiciary.[31] Furthermore, members of the APR have challenged the constitutionality of this law before the Provisional Commission for the Review of the Constitutionality of Draft Laws. Leaving aside the role played by the Supreme Judicial Council in the life of judges and the courts, its establishment is all the more important in that it has the power to appoint constitutional judges. The blocking of the Supreme Judicial Council has resulted in the postponement of the establishment of the Constitutional Court, that is to say one of the guarantors of the rule of law.

59. The developments regarding the Supreme Judicial Council must not overshadow the significant advances made by Tunisia in the area of justice system reform. The Minister of Justice confirmed to me that vacancies have been advertised in order to recruit 500 new judges in 2017-2018 and provided details concerning the establishment of specialist financial divisions in which the judges specialise exclusively in this type of litigation. He also indicated that, in the area of criminal law, his ministry is working to reduce case processing times.

60. In parallel to the reform of the court apparatus, Tunisia has instituted what is known as "transitional" justice intended to reveal violations of the most fundamental human rights committed during the period leading up to the Revolution to the whole of society in order to placate it and promote reconciliation. In this connection, the Truth and Dignity Commission, which is the cornerstone of transitional justice, has enjoyed mixed fortunes: the hearings of the victims of the regimes established since independence commenced in November 2016 and triggered real awareness in society of the scale of human rights violations, which is a welcome development. On the other hand, it is regrettable that, for a topic of such key importance, the workings of the Truth and Dignity Commission have not been harmonious, as demonstrated by the resignation of some of its members and the sharp criticism of its Chairperson, Sihem Ben Sédrine.[32]

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30. "The Paris Principles" are comprised of a series of recommendations concerning the role, composition, status and functions of "national human rights institutions". They were approved by the Commission on Human Rights in March 1992 (Resolution 1992/54) and by the General Assembly of the United Nations (A/RES/48/134 of 20 December 1993).

31. See the declaration published on 23 March 2017 in French on the website of the NGO Euromedrights, of which the Tunisian League for Human Rights is said to be a signatory, www.euromedrights.org/fr/publication/les-risques-de-linitiative-legislative-du-conseil-superieur-de-la-magistrature/.

32. *HuffpostMaghreb* avec TAP, Sur fond de bras de fer entre le contentieux de l'État et l'Instance: Deux membres de l'IVD accusent Sihem Ben Sedrine d'"abus de pouvoir" [Two members of the IVD accuse Sihem Ben Sedrine of "abuse of power"], 5 October 2016.

61. In addition, President Béji Caïd Essebsi is behind a draft law giving transitional justice jurisdiction to deal with economic and financial crimes and offences committed under the Ben Ali regime. The President wishes to avoid judicialising the procedure, in particular in order to keep the timescales under control, and to incorporate it into the process of national reconciliation. An initial version of this draft law, which gave the competence to hear these cases to a Commission separate from the Truth and Dignity Commission, resulted in a highly critical opinion from the Venice Commission in 2015.[33] I can but endorse the Venice Commission's viewpoint: although the Truth and Dignity Commission does not have a monopoly over transitional justice, the key point is that the new body competent to hear cases concerning corruption or the misappropriation of public funds should offer the same guarantees of independence as the Truth and Dignity Commission and that the procedure followed should be equivalent in terms of the establishment of facts by this new body and the publication of its decisions.

4.3. Combating torture and ill-treatment

62. Torture was widely practised within the security forces under Ben Ali, and still goes on, according to the concluding observations of the United Nations Committee against Torture (CAT) published in May 2016.[34] In particular, CAT recommends amending Article 101*bis* of the Criminal Code to bring it into line with the definition of torture set out in Article 1 of the Convention against torture and ensure that those committing acts of torture and ill-treatment do not go unpunished.[35]

63. The context of combating terrorism makes it more difficult to eradicate torture within law-enforcement agencies, as CAT pointed out in its observations.[36] The visit by Mr Ben Emmerson, United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, in early February 2017, provided a reminder that counter-terrorism efforts should be grounded in human rights. Among other things, he was concerned by the high number of imprisoned terror suspects awaiting trial and the use of the counter-terrorism law and other legislative acts against journalists.[37]

64. This view concurs with those expressed by certain NGOs and civil society with regard to the adoption of the organic law on combating terrorism and money laundering, known as "Law 26",[38] which gave the security forces increased powers.

65. Finally, it is important to point out that, while Tunisia has not applied the death penalty since 1991, the courts continue to pronounce it, for example for crimes against children[39] or terror crimes, such as those committed against officers of the security forces,[40] as authorised by Law 26. It should be noted that our colleague Ms Marietta Karamanli, General Rapporteur on the death penalty, strenuously objected to the adoption of this law in July 2015.[41]

4.4. Combating discrimination

4.4.1. Discrimination against women: significant progress

66. Already a pioneer in this area in North Africa and the Arab world, Tunisia has continued to progress along the path to equality. In its Resolution 1873 (2012), adopted during a debate on equality between women and men: a condition for the success of the Arab Spring, the Assembly had listed several recommendations for Tunisia.[42] It must be pointed out that most of them have been acted upon.

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33. Opinion No. 818/2015 of 27 October 2015.
34. Document CAT/C/TUN/CO/3, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=1&DocTypeID=5.
35. Paragraph 19 of the Concluding observations: "The Committee is concerned about consistent reports of the lack of due diligence exercised by judges and the judicial police, which report to the Ministry of the Interior and are responsible for investigating cases of violence committed by State officials."
36. Paragraph 11 of the Concluding observations: "The Committee is concerned about reports it has received on incommunicado detention before the arrest has been officially registered in cases related to counter-terrorist activities and in which claims of torture have been made."
37. United Nations, UN expert urges Tunisia to further ground in human rights its fight against extremism and terrorism, 9 February 2017, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21159&LangID=E.
38. www.courrierinternational.com/article/tunisie-loi-antiterroriste-attention-au-chantage-securite-contre-liberte.
39. On 3 January 2017, the Tunis Military Court handed down a sentence of death by firing squad against an army corporal accused of having kidnapped, raped and stabbed to death a 4-year-old child in 2016.
40. In March 2016, three jihadists were sentenced to death for the killing of a policeman in the central part of the country in 2012.
41. http://assembly.coe.int/nw/xml/News/News-View-fr.asp?newsid=5726&lang=1.

67. On 23 April 2014, the United Nations confirmed receipt of the notification by Tunisia of the official withdrawal of its specific reservations to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).[43] On 10 November 2015, an amendment to the draft law on passports and travel documents enabled women to travel with their underage children without having to seek prior authorisation from their father. Finally, in the area of representation, Tunisian women benefit from positive discrimination for both legislative elections (they account for more than 30% of the members of the APR) and municipal elections. For the next local elections in December 2017, the legislature has thus obliged political parties to present alternating male-female lists and to ensure that half of the lead candidates in lists are women.

68. In addition, since the end of March 2017, the APR has been discussing a draft organic law to combat violence against women. This text represents the first attempt to deal with this type of violence overall and provides for a mix of criminal, social and financial responses. After some initial hesitancy, the repeal of Article 227*bis* of the Criminal Code, the application of which had caused a major outcry in Tunisia, was reincorporated into this draft, despite previous plans to repeal it separately.[44]

69. While this progress must be welcomed, some advances still remain to be made, for example in the area of inheritance – where women are at a disadvantage compared to men – or custodial rights – regarding which Article 58 of the Personal Status Code clearly discriminates against women. These are sensitive issues in Tunisia and, as I was told by one of our colleagues from the APR in relation to inheritance, are perceived by one segment of society to be associated with a question of identity. Aside from the identity-based argument, other current issues concern the application of this progressive legislation to all women, irrespective of their social or geographical origin, the prevention of financial insecurity to which they are particularly exposed and more generally all forms of "economic violence" to which they are subject, namely the pay gap and access to positions of responsibility.

4.4.2. Combating racism: spontaneous draft legislation

70. In the area of combating discrimination, Tunisia is about to adopt a law dealing specifically with racism, which represents a first. The draft legislation was tabled before the APR in March. It came in the wake of a knife attack against three people of Congolese origin.[45]

4.4.3. Combating homophobia: progress still to be made

71. While Tunisia is taking the lead in combating discrimination in important areas, this is less the case in relation to homophobia. Article 230 of the Criminal Code criminalises homosexual relations and is applied by the courts.[46] The Minister of Justice called for it to be repealed in 2015, which was refused by the President of the Republic.[47] The principle of non-discrimination guaranteed by Article 21 of the Constitution is clearly being disregarded. There does not appear to be any let up in prosecutions[48] and this criminalisation certainly does not help in reducing the number of homophobic attacks in Tunisia.[49]

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42. Resolution 1873 (2012), paragraphs 8, 9, 11 and 12.
43. There only remains a very brief general declaration stipulating that "the Tunisian Government declares that it will not adopt any administrative or legislative decision in accordance with the Convention that could be liable to breach the provisions of chapter 1 of the Tunisian Constitution".
44. Article 227*bis* of the Criminal Code, which enables a man having "subjected a female child under the age of 15 years to sexual intercourse without the use of violence" to avoid prosecution if he marries his victim. This article was applied by a Court of first instance in El Kef in the case of a minor aged 13 years who had been made pregnant by a relative. Following a wave of protests, the government approved a draft law amending Article 227*bis* on 30 December 2016. This case, in which the spokesman of the El Kef court said that "the child had not been forced into it" and the marriage was desired by both families to "avoid a scandal", shows how much there is to be done to firm up the rule of law, according to *Jeune Afrique*, Rebecca Chahoun, Tunisie: mobilisation contre l'article de la honte [Tunisia: mobilisation against the article of shame], 14 December 2016.
45. *Jeune Afrique*, Racisme en Tunisia: "On nous donne l'impression d'être des sous-hommes" [Racism in Tunisia: "We are made to feel like sub-humans"], 29 December 2016.
46. See, for example, the sentencing to 3 years' imprisonment, non-suspended, accompanied by a ban on entering the city of Kairouan, of six Tunisian students by the first instance judge in January 2016 or the case of Marwen, sentenced to two months in prison, non-suspended, on appeal in December 2015.
47. France24, Sarah Leduc, Le président Essebsi s'oppose à la dépénalisation de la sodomie en Tunisie [President Essebsi opposes the decriminalisation of sodomy in Tunisia], 7 October 2015.
48. *Jeune Afrique*, Tunisie: deux jeunes arrêtés et poursuivis pour homosexualité à Sousse [Two young people arrested and prosecuted for homosexuality in Sousse], 14 December 2016.
49. *Huffpost Maghreb*, Tunisie: Nouvelle agression homophobe en plein centre-ville [New Homophobic Aggression in the City Centre], 28 November 2016.

72. This work in progress must not overshadow the general advances made in the area of public freedoms since 2011. When questioned concerning the objectives achieved six years after the Revolution, Tunisians placed freedom in first position with 60% of respondents considering that it had been attained.[50]

5. Major challenges facing Tunisian society

73. There seem to be two main challenges on which the success of Tunisia's democratic transition depends.

5.1. The economic challenge

74. As Ms Anne Brasseur pointed out in her report of 2012, the Revolution has not improved the economic situation. Even so, Tunisia's production has not collapsed.

75. Although growth in gross domestic product (GDP) was less than 1% in 2015, it stood at 3.9% in 2012, 2.3% in 2013 and 2.4% in 2014. It was forecast as slightly below 2% in 2016 and the International Monetary Fund (IMF) projections put it at 3% in 2017. Even though security issues have wrecked tourism (receipts down by 35% in 2015), a sector which accounted for 7% of GDP before the Revolution, Tunisia has not experienced a recession.

76. However, GDP growth is currently too weak to reduce unemployment, which stands at 15% of the working population, with women (23%), university graduates (31%) and young people (32%) particularly affected.

77. Although the annual rate of inflation has remained below 6% since 2012 and is falling – it should be 3.6% in 2016 – "households are feeling the effects of inflation more strongly, resulting in a widely shared impression of reduced purchasing power, further reinforced by the falling dinar",[51] the national currency (11% down against the euro between 2015 and 2016).

78. These two factors partly explain the social movement of January 2016, triggered by the death of an unemployed man in Kasserine and reaching a scale not seen in Tunisia since 2011. In April 2016, the Tunisian Forum for economic and social rights inventoried 987 collective social movements!

79. A total of 2.9 billion dollars' worth of loans were granted to Tunisia by the IMF for the period 2016-2020, and 5 billion by the World Bank. But these loans are contingent on structural reforms, one of these being to improve the make-up of public spending, i.e. by cutting the share allocated to paying public officials' salaries in relation to investment expenditure. The aim is to reduce the proportion of spending on State administration and reorient the export sectors of the Tunisian economy towards products and services with higher added value than, for example, olive oil or phosphate, two major resources for exports.

80. In parallel to the undertakings made, Tunisia organised a "Tunisia 2020" conference for institutional investors in November 2016: 14 billion euros were pledged for the period 2017-2020, in the form of donations, investments and debt for investment swaps.

81. One of the challenges for economic recovery is the introduction of tools for combating corruption. With the support of the Council of Europe, the Chairperson of the Anti-corruption Commission submitted a report at the beginning of February 2017 stressing *inter alia* the need to increase the transparency of the administration for the benefit of Tunisian and foreign investors. He proposed the periodic publication of all the information, indicators and data relating to corruption and its effects on the national economy and citizens. The government also signed a pact, with the Anti-corruption Commission, establishing a national anti-corruption strategy in December 2016 and on 22 February 2017 held a vote on a law establishing mechanisms for reporting corruption and protecting whistle blowers.

82. The other economic challenge is to redress the major imbalances within the country, between the relatively wealthy coastal regions and those of the more neglected west and south, where the Revolution took root. The holding of the first municipal and regional elections, which are scheduled for December 2017, along with the implementation of territorial reform, should contribute to this rebalancing between the coast and the interior of the country. In order to implement this reform successfully, the Tunisian authorities have called in

50. Survey carried out by the Sigma Conseil Institute, early 2017, www.huffpostmaghreb.com/2017/01/23/open-sigma-2017_n_14331938.html.
51. Analysis of the economic and financial situation in Tunisia by the Directorate general of the French Treasury, November 2016.

particular on the expertise of France, according to the Minister of Foreign Affairs. Contacts were also made with the Congress of Local and Regional Authorities on 28, 29 and 30 March 2017 in order to determine the support that it could provide within the framework of its South-Med Partnership.

5.2. The challenge of security: from combating terrorists to managing "returning fighters"

83. The period of threats to public order by the Salafist groups, criticised in Resolution 1893 (2012), is over, and a new period of terrorism by Ansar Al-Charia, Al Qaeda in the Islamic Maghreb (AQIM) and Daesh has begun. Tunisia is on the front line, having not only to counter terror attacks, such as those in 2015 against the Bardo museum, a beach resort in Sousse or a bus full of presidential guards in Tunis,[52] but also to defend itself against infiltrations of jihadists across its borders. Mount Chaambi, in the west of the country on the border with Algeria, was the scene of the first armed clashes between the Tunisian forces and AQIM groups in 2013, and these are still going on today. Elsewhere, in March 2016, Daesh fighters crossed the Libyan border and tried to take the town of Ben Guerdane.

84. The measures taken by the authorities have entailed arresting a thousand or so people and banning 15 000 others from leaving the country, declaring a state of emergency, still in place, reorganising the security forces, notably by setting up the Defence Intelligence and Security Agency and doubling the defence budget (1.2 billion euros in 2016), closing 24 mosques and building a protective wall along part of the border with Libya.[53] It is in this context that the APR adopted Organic Law No. 26.

85. At the same time, the Tunisian State has forged closer co-operation with the Algerian army,[54] the United States,[55] Great Britain and France[56] to secure its western and southern borders.

86. These efforts appear to be paying off: no large-scale terrorist attacks have been committed in Tunisia since March 2016, and the jihadists are a less potent force in the Mount Chaambi area than in 2012.

87. Beyond the Libyan question, the challenge of the future will be managing the return of the Tunisian jihadists who went to fight in "conflict zones", to use the expression of the authorities, i.e. in Syria, Iraq, Yemen or Libya, estimated at 6 000 in 2015 by the United Nations.[57] The political community and civil society are divided, firstly regarding the possibility of preventing the jihadists from re-entering the country – with the Head of Government coming out against this, with the support of some 6 000 demonstrators, and the President of the Republic pointing out that a "return to one's homeland" is a constitutional right (Article 25 of the Constitution) – and then regarding the treatment to be reserved for them,[58] including in connection with acts of "repentance".[59]

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52. These attacks cost the lives of 59 foreign nationals, 1 policeman and 12 members of the presidential guard.
53. *Jeune Afrique*, Marlène Panara, Tunisie: qu'ont fait les autorités tunisiennes depuis l'attentat à Sousse? [What have the Tunisian authorities done since the attack in Sousse?], 10 July 2015.
54. *Huffington Post*, Hebba Selim, Vaste opération algéro-tunisienne en vue pour éradiquer les terroristes à Châambi, [on a joint Algerian-Tunisian anti-terrorist operation in Chaambi], 2 August 2014.
55. Radio France International, Tunisia admits that American drones are present at the Libyan border, 23 November 2016, www.rfi.fr/afrique/20161123-tunis-reconnait-presence-drones-americains-frontiere-libyenne.
RFI, Controversy over American drones in Tunisia, 28 October 2016, www.rfi.fr/afrique/20161028-tunisie-polemique-drones-americains-libye.
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57. Working Group of the Office of the United Nations High Commissioner for Human Rights on the use of mercenaries in Tunisia – visit from 1 to 8 July 2015,
www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=16219&LangID=F.
58. The President of the Republic first said that there was not enough space in the prisons to imprison all those returning, before specifying that they would "each be dealt with according to their acts".
Jeune Afrique, Rebbeca Chahouch, Tunisie: ce que prévoit la loi (et ce qu'a dit le Président) sur le retour au pays des ressortissants jihadistes [Tunisia: what the law stipulates (and what the President says) about Tunisian jihadists returning to the country], 9 December 2016.
Tunis Tribune, www.tunistribune.org/retour-terroristes-syrie-nous-nallons-pas-les-mettre-tous-prison-dixit-bce-24330.
RFI, Houda Ibrahim, Vives critiques contre l'éventualité d'amnistier des jihadistes [Sharp criticism over possible amnesties for jihadis], 2 January 2017, www.rfi.fr/afrique/20170102-tunisie-critiques-amnistie-jihadistes-terrorisme-essebsi.
59. *Jeune Afrique*, Ennahdha et les repentis du djihad, 28 December 2016. Report that Ennahdha wants repenting jihadists not to be prosecuted but to testify before the Truth and Dignity Commission.

88. In addition, despite breaking off diplomatic relations with Syria since 2012, Tunisia has maintained a presence in Damascus in the interests of "close co-ordination in the matter of Tunisian terrorists and prisoners".[60]

89. According to the Tunisian Ministry of the Interior, 800 returnees have been imprisoned or placed under surveillance since 2007.

90. A study published in October 2016 by the Tunisian Centre for Research and Studies on Terrorism, set up within the Tunisian Forum for economic and social rights, profiles Tunisian jihadists through 1 000 individual court files,[61] which should help the Tunisian Government to implement the national counter-terrorism strategy adopted in November of the same year.

91. Finally, the APR voted to set up a committee of inquiry into the channels recruiting Tunisians into jihadist organisations at the end of January 2017.

6. Co-operation with Europe and the role of the Assembly

6.1. The European Union, an indispensable partner

92. Co-operation with Tunisia, as the first southern Mediterranean country to sign a European Union Association Agreement, which entered into force in 1998, became an integral part of the European neighbourhood policy launched in 2004. In November 2012, after the Revolution, Tunisia was granted a Privileged partnership with the set objective of strengthening bilateral economic relations, *inter alia* by concluding a Deep and Comprehensive Free Trade Agreement (DCFTA).

93. This new agreement is intended to go beyond the liberalisation of trade initiated by the Association Agreement and more closely integrate Tunisia's economy in the European single market. The DCFTA should supplement and develop the free trade area for manufactured products, expanding it to new sectors such as services and agriculture. The first round of negotiations was held in April 2016. It was pointed out at that time that the opening up of markets would be asymmetrical, to take account of the differences in development, and would be progressive and accompanied by the necessary support measures to help make Tunisia's economy more competitive.

94. The negotiations on the DCFTA are of key importance, as the European Union is by far Tunisia's leading trade partner, absorbing 71% of its exports.

95. Beyond trade relations, between 2011 and 2015 the European Union provided 2.8 billion euros' worth of support to Tunisia, all types of mechanisms included (donations, macro-financial assistance, loans).

96. Technical and financial co-operation form part of a Single support framework, including its 2014-2016 version, defining three priority sectors of intervention: support for socio-economic reforms and backing for more balanced and sustainable development in all the regions; strengthening of the rule of law and governance; support for civil society organisations.

6.2. Highly satisfactory co-operation with the Council of Europe that could be more dynamic at parliamentary level

97. On 4 February 2015, the Committee of Ministers approved the Neighbourhood Partnership with Tunisia 2015-2017.[62] This followed on from the Partnership covering the period 2012-2014 and focused chiefly on facilitating the country's political transition via support for the preparation of the Constitution and assistance for the electoral process.

98. There are two aspects to the Partnership: on the one hand, enhanced political dialogue ranging from high-level strategic dialogue with the Secretary General of the Council of Europe and the Committee of Ministers on topics on the bilateral agenda and political issues of common interest, to more technical consultations relevant to the implementation of the Partnership; and on the other hand, co-operation activities in the fields of human rights, the rule of law and democracy.

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60. Statement by the Minister of Foreign Affairs, Khemaies Jhinaoui, reported by Agence Tunis Afrique Presse, in which Mr Jhinaoui said that there was co-ordination with Syria in the matter of Tunisian terrorists, 15 January 2017, www.tap.info.tn/fr/Portail-%C3%A0-la-Une-FR-top/8718093-jhinaoui-affirme.
61. *Inkyfada*, Walid Mejri, 4 January 2017, https://inkyfada.com/2017/01/terroristes-tunisie-dossiers-justice/.
62. CM/Del/Dec(2015)1218.

99. The Partnership is largely funded by a joint European Union/Council of Europe regional programme (69%), supplemented by voluntary contributions (31%). Funding for 2015-2017 should be 5.4 million euros.

100. The Interim progress report of the Rapporteur Group on External Relations (GR-EXT) of 16 August 2016 stated that co-operation with Tunisia in 2015 and for the first six months of 2016 could be seen as very positive and the Council of Europe had received increased demand from Tunisia, including in areas in which co-operation had not been initially foreseen, such as the national mechanism for the prevention of torture, the prevention of terrorism, legislation against trafficking in human beings, violence against women and sexual abuse of children.

101. One of the highlights of that period was the granting of observer status with the European Commission for the Efficiency of Justice (CEPEJ) to Tunisia, which now has no longer four but ten pilot courts involved in the judicial reform process. On 1 February 2017, in Tunis, the Group of States against Corruption (GRECO) presented its assessment of Tunisian institutional and legislative anti-corruption framework, making 69 recommendations. In August 2015, the APR requested an opinion from the Venice Commission on the draft Organic Law on the Constitutional Court, which was provided in October that year. According to the GR-EXT, its representatives have also participated in inter-parliamentary activities on the Council of Europe's conventions and played a major role in setting up the national prevention mechanism on torture. In addition, Tunisia is a member of the Venice Commission and of the European Centre for Global Interdependence and Solidarity (North-South Centre) based in Lisbon and recently expressed its interest in the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, "Lanzarote Convention").

102. This dynamism of the APR in co-operating with Council of Europe bodies would benefit from being extended to the parliamentary sphere. Although our Tunisian counterparts are systematically invited to attend all part-sessions of our Assembly and, indeed, sometimes do attend part-sessions of the Assembly or meetings of the Committee on Political Affairs and Democracy, their presence is not regular. Moreover, the objective set in the Neighbourhood Partnership of discussing, as of 2015, the granting of partnership for democracy status is yet to be followed up.

7. Conclusions

103. At the end of the fact-finding visit which I made to Tunis from 27 to 30 March 2017, there appeared to me to be contrasting trends in the country.

104. Tunisia has made enormous progress in the area of democracy, human rights and the establishment of the rule of law, which is without equivalent in North Africa or the Arab World. It has a first rate political and administrative elite, which is motivated, capable of compromise and genuinely committed to reform. Its civil society is extremely dynamic, whether it proposes, controls or criticises action on the part of the public authorities.

105. At the same time, Tunisia has entered a delicate phase of its transition. The enthusiasm triggered by the Revolution, and following the adoption of the "Constitution of freedom", has given way to a form of disillusionment expressed by members of civil society or journalists whom I met.

106. In part, this disillusionment can be ascribed to "normalisation" for Tunisia and to the procedural aspects of the democratic process, which does not always permit a response to the impatience of a people calling for the swift implementation of change. It also reflects a range of concerns: for example, that the fight against terrorism might limit the reconsideration of police practices; that the leaders of the previous regime might interfere with public affairs[63] (and, in this regard, the draft law on national reconciliation in the economic and financial fields is not the best signal to be sending to the Tunisian people); and finally that certain economic

63. Two major figures within the resistance to the Ben Ali regime, who played a prominent role in the Dignity Revolution and the transitional period of the ANC agreed on this point. Mr Yadh Ben Achour noted in relation to the "return of the old figures and blatant instances of corruption" that "impunity reigns supreme, without any calls for forgiveness, pardoning or judgment. The major figures from the RCD are shamelessly coming out of the shadows again" in Yadh Ben Achour, *Tunisia, une révolution en pays d'islam* [Tunisia, revolution in an Islamic country], Tunis, Cérès éditions, 2016, p. 351. Similarly, former ANC President Mr Mustapha Ben Jaafar stated in 2014 that "it is regrettable to note that some of these players from the former regime do not have any humility or acknowledge their past responsibilities, but adopt an arrogant and provocative stance" in Mustapha Ben Jaafar, *Un si long chemin vers la démocratie, entretiens avec Vincent Geisser* [Such a long road to democracy, interview with Vincent Geisser], Tunis, Nirvana, 2014, p. 198.

actors could disrupt the democratic process by fostering a wheeler-dealer climate that is conducive to corruption or by gaining a hold over the media so as to be able to propagate their interests and influence elections.

107. This is in addition to the fact that the material circumstances of journalists, in particular those working for groups placed under State protection, are not always optimal. Moreover, the press release issued by the National Union of Tunisian Journalists[64] following the Minister of the Interior's decision of 3 April 2017, taken under the state of emergency to ban the publishing of a controversial media outlet, should lead us to encourage the Tunisian authorities to preserve the genuine independence of journalists, which is an achievement of the Revolution, to guarantee that all media groups behave in an ethical manner and to favour civil and criminal procedures to deal with infringements which do not endanger national security. In order to do so, the High Independent Authority For Audiovisual Communication should be supported in its regulation task and the independent Constitutional Commission in charge of the audiovisual sector should be established as soon as possible. Finally, the settlement as soon as possible of the issue of the media outlets confiscated and run by the public administration after the fall of Ben Ali's regime, including the situation of the journalists concerned, should help to stabilise the audiovisual sector.

108. For their part, the representatives of civil society and the chairpersons of independent commissions whom I met agreed that they would have to be particularly vigilant in relation to future developments.

109. However, the fear that surpasses all others, and which is shared by a large number of actors from Tunisian life, concerns the geopolitical context. On one hand, the Tunisian Initiative launched by President Béji Caïd Essebsi for Libya, which seeks to find a negotiated solution within the framework defined by the United Nations, as set forth in the Skhirat Agreement, and which is supported by Algeria and Egypt, is currently deadlocked due to the refusal on the part of the authorities in Tripoli and Tobruk to negotiate. On the other hand, the uncertainties relating to the succession of Algerian President Mr Abdelaziz Bouteflika may considerably destabilise the regions of southern and western Tunisia bordering with Algeria.

110. Within this changing context, Europe must not forget that Tunisia is not a simple next-door neighbour situated 75 km from its borders. Tunisia is a close relative with limited resources which, within an uncertain geopolitical framework, finds itself on the front line in terms of both democracy and security.

111. The Council of Europe and the European Union are providing considerable assistance to Tunisia. However, Tunisia expects recognition of its special circumstances and the risks it is facing. If Tunisia is a model for the region and for the Arab World, as Europeans repeatedly assert, then it deserves that Europe does more than negotiate a "complete and comprehensive free trade agreement" with it.

112. Europe must reassure Tunisia that it will not let it be destabilised by its surroundings. Europe must also acknowledge that its destiny and that of Tunisia are closely interlinked as it is by far its first economic and commercial partner and above all because, if the situation in Tunisia deteriorates, aside from the negative symbolic impact on the rest of the Arab World, Europe will directly suffer the consequences in terms of security and migration.

113. It should be remembered that in 2012 more than one million people crossed the border with Libya and, in 2011 alone, the Tunisian Forum for Economic and Social Rights estimated that almost 40 000 Tunisian migrants crossed the Strait of Sicily towards Italy.[65]

114. Of all the countries where the Arab Spring took root, Tunisia has been the only one to have experienced a successful transition to democracy. It is now establishing the rule of law, experiencing confrontation, compromise, demonstrations and strikes… It is of the utmost importance that the Council of Europe and the European Union stand alongside it in order to enable it to experiment with pluralism with the full vigour of youth without having to suffer from regional instability.

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64. www.businessnews.com.tn/le-snjt-exhorte-le-ministere-de-linterieur-a-retirer-sa-decision-de-suspension-du-journal-athawra-news,520,71448,3.

65. *Huffington Post*, Le Haut-Commissariat des Nations Unies pour les réfugiés aide la Tunisie à se préparer à un afflux potentiel de réfugiés [United Nations High Commissioner for Refugees helps Tunisia prepare for potential influx of refugees], Yassine Bellamine, 20 October 2016 www.huffpostmaghreb.com/2016/10/20/hcr-tunisie-refugies_n_12574188.html.