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Pushing Back against Narrowing Space for Civil Society in Tunisia
The Power of Coalition

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A Report of the CSIS Human Rights Initiative
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EXECUTIVE SUMMARY

Civil society plays a vital role in society. Non-governmental organizations (NGOs) connect citizens and governments, hold governments accountable, and advocate for citizens’ interests. After being widely celebrated in the 1990s, civil society across the world is now facing shrinking support and growing restrictions. Drivers behind these restrictions in Tunisia include professed concerns about terrorism, a dominant security agenda, and the shift within civil society from service delivery to advocacy, which can seem threatening to governments.1 Government restrictions most often target the social justice sector and obstruct the work of NGOs through legal restrictions, financial measures, and direct threats to civic actors. Recently, many governments have intensified accusations that civil society and its activists are anti-development, work against economic security, or are terrorist sympathizers or supporters.2

This paper explores the status of civic space in Tunisia and its development from the most repressive civic space in the Middle East and North Africa during Zine El Abidine Ben Ali’s regime to an open civic space following the 2011 Arab Spring. In 2011, Tunisian Decree number 88, known as the Associations Law, made it substantially easier for associations to form. Since then, Tunisia has been considered one of the most enabling countries in the region for civil society and NGOs have proliferated, growing from fewer than 8,000 NGOs in 2010 to over 22,000 in 2018.

Within this relatively enabling environment, challenges remain, and some are growing. The government office that oversees NGOs lacks the human and financial resources to efficiently register and monitor the financial and operational performance of current and future NGOs. This results in delays in the registration process of NGOs, concerns among lawmakers and Tunisian society about the funding sources of Tunisian NGOs, and claims that these sources might be illegal.

1 Duncan Green, “5 trends that explain why civil society space is under assault around the world,” From Poverty to Power, August 2015, https://oxfamblogs.org/fp2p/5-trends-that-explain-why-civil-society-space-is-under-assault-around-the-world/.
Tunisian NGOs depend heavily on foreign funding and can access it without major restrictions. However, foreign funding is under pressure, due primarily to concerns about dubious sources of financing. NGOs are required to publicly report foreign funding. Nonetheless, Tunisian authorities have accused NGOs of involvement in terrorist and money laundering activities. The government has attempted several times in the past two years to change or amend the Associations Law to exert more control over NGO financing. While acknowledging problems of weak internal governance and, in some cases, non-transparent financial management, NGOs argue that the solution is to improve the capacity of both NGOs and the government to oversee their finances and enhance transparency, not to amend the Associations Law and make it harder for law-abiding associations to operate. To respond to the threat of punitive regulation, Tunisian NGOs formed an informal coalitions that engaged with lawmakers and staved off several efforts to amend the Associations Law, illustrating that collective action can effectively push back against attempted government restriction.

Very recently, on July 27, 2018, the government unexpectedly adopted a new National Registry Law without consulting with civil society. The law requires both NGOs and economic enterprises to register under the same law, despite the differences in their activities and the fact that NGOs already register under another law. The language of the National Registry Law is vague and, more concerningly, includes potential heavy prison penalties for civil society workers: up to one year of imprisonment and a fine for the failure of NGOs to register in the national registry; and up to five years of imprisonment and a fine for the submission of false information during the registration process. Such penalties are of particular concern for smaller organizations that might lack the capacity to fully meet the law. NGOs, working with parliamentary allies, obtained a judicial review of the law, but it was found to be constitutional. The impact of this newly adopted law remains unclear. The authorities argue that it will not have any negative impact on freedom of association and is only meant to strengthen efforts to combat terrorism and its funding. However, the situation requires attention.

Tunisian civil society actors acknowledge the need to better engage with the media, which might help protect the sector from further excessive regulation. Despite their weak engagement with the media, the informal civil society coalition has for the most part acted effec-
tively to counter legislative efforts that would have restricted their activities. In such a volatile environment, donors and funding organizations should support civil society actors as they work in coalitions to push back on further efforts to inhibit Tunisia’s vibrant civic space.

To that end, this report makes the following key recommendations, among others:

To donors:

- Continue supporting Tunisian NGO efforts to resist attempts to close civic space, through funding seminars, workshops, and various awareness-raising and advocacy activities.
- Provide core and flexible funding to better equip Tunisian civil society to rapidly respond to continuous political and legislative developments that impact basic civic freedoms.
- Help Tunisian NGOs develop capacity in financial management and reporting requirements and demonstrate publicly that they are managed efficiently and transparently.
- Drawing on the Tunisian experience, consider helping civil society elsewhere to form national coalitions preemptively, when efforts to close civic space are still on the horizon, rather than imminent. Such coalitions can be informal and still be effective.
- Provide support and training for civil society to engage effectively with the media to promote understanding of the sector and its value, either via individual NGOs or coalitions. Governmental donors could also engage on this front if national NGOs believe it would be helpful, rather than harmful.

To Tunisian civil society:

- Intensify coordination and collective action to address attempts to close civic space. NGOs advocating for an open civic space should reach out to developmental NGOs and community-based associations outside the capital. Wide, cross-sector alliances are more influential when facing attempts to close civic space.
- Develop new ways to engage effectively with the media to deepen understanding of the value of civil society to the broader public, potentially including by working with popular cultural figures who might help civil society engage with the media and proactively gain traction before there is a crisis that draws negative attention to the sector.
• Use social media to build support, as was done in a campaign to improve a draft freedom of information law in Tunisia.³

INTRODUCTION AND METHODOLOGY

Civil society is crucial for creating channels between citizens and governments, holding governments accountable, and advocating for citizens’ interests. Civil society’s role was celebrated widely in the 1990s, especially following the end of the Cold War. However, support has recently dwindled for a number of reasons: fear of terrorism, the dominance of the security agenda, and the shift within civil society from service delivery to advocacy, among other reasons.\(^4\)

The International Consortium of Closing Civic Space (iCon) notes that closing space ultimately impacts all of civil society, but that government restrictions most often initially target the social justice sector. Civil society organizations (CSOs) working on social justice—whether in human rights, development, environmental justice, or anti-corruption and transparency—typically employ some form of advocacy (in addition to research, legal strategies, and other methodologies) to engage with and hold the private sector and governments accountable to the needs of their citizens. This advocacy often brings them into conflict with the government.

Governments can obstruct the work of CSOs through legal restrictions, financial measures, and direct threats to civic space. Recently, many governments intensified their accusations that civil society and its activists are anti-development, work against economic security, or are terrorist sympathizers or supporters.\(^5\) The International Center for Not for Profit Law (ICNL) noted that some 120 restrictive laws were adopted in approximately 60 countries between 2012 and 2015.\(^6\) A shrinking or a closing civic space is characterized by restrictive regulations on freedom of association, assembly, and expression; the stigmatization and criminalization of activists and groups; securitized environments and counter-terrorism measures, including mass and targeted surveillance; threats and violence against activists and communities; and blocked funding.

The most prevalent definition of civil society is that of CIVICUS: “the arena, outside of the family, the state, and the market, which is created by individual and collective actions, organizations and institutions to advance shared interests.”\(^7\) Charles Kojo Van Dyke proposed another definition for civil society sustainability: “an ecosystem of organized and organic social and cultural relations existing in the space between the state, business, and family, which builds on indigenous and external knowledge, values, traditions, and principles to foster collaboration and the achievement of specific goals by and among citizens and other stakeholders.”\(^8\) iCon itself defines civil society as a broad term that covers a wide range of organizations, from trade unions, to religious organizations, to community-based voluntary associations. In all these definitions, civil society includes several types of organizations, as well as forms of activism, including national and international NGOs, labor unions, social movements, and all types of non-formal civic activism.

\(^4\) Green, “5 trends.”
\(^5\) Oram and Doane, Why Shrinking Civil Society.
This paper focuses more narrowly on associations as defined in Tunisian Decree no. 88, or the Associations Law, which includes NGOs but excludes labor unions and syndicates. In addition to a desk review of the state of civic space in Tunisia, the author conducted 15 semi-structured interviews with various stakeholders in Tunisia: ten local NGOs, two international organizations with registered offices in Tunisia, and three funding organizations. The ten local NGOs are diverse in terms of years of operation, size, and specialization, including political participation, advocacy and governance, human rights, community development, and arts and culture. Nonetheless, all the interviewed NGOs were based in the capital city of Tunis, and only two of them had branches outside the capital. Future research could focus on rural organizations outside the capital to better assess their access to resources and the operational and administrative impediments they may face.

CIVICUS identifies an open civic space as one in which civil society and individuals can organize, participate, and communicate without hindrance, and in doing so, influence the political and social structures around them. This paper focuses on the legal and operational issues affecting associations in Tunisia and does not extend to closely connected rights such as freedom of expression and assembly. However, various recent studies that address the wider context of other civic freedoms also guide the findings of this paper.

BACKGROUND AND CONTEXT

Tunisian Civic Space before 2011

Tunisian civic space has gone through several phases, from the extremely restricted conditions during Zine El Abidine Ben Ali’s regime to an outburst of many types of civic activism and a proliferation of NGOs, especially after the 2011 revolution.

During the Ben Ali regime, Tunisia was perceived as one of the most restrictive countries for civil society in the Middle East and North Africa, despite its image as a progressive state otherwise, especially regarding women’s rights. Government repression targeted civil society actors, including student unions, workers, opposition parties, journalists, and the few independent associations operating in Tunis. Authorities maintained a persistent pattern of rejecting registration of new associations and human rights organizations. During that time, independent associations faced restrictions on their work, and their public and even private meetings were banned by security forces.

Although the 1959 Constitution’s Article 8 stipulates that “freedom to establish associations is guaranteed and exercised according to the terms defined by the law,” the Association Law of 1959, which remained in force until 2011, created several obstacles to the enjoyment of the right, and associations could only form through a prior authorization from the Ministry of Interior.

9 Other civil society actors such as unions and syndicates and the Tunisian General Labor Union (UGTT) are governed by a distinct labor code.


In 1988, the law was revised so that associations could come into being when they sent a declaration to the Ministry of Interior. If the Ministry failed for three months to respond to a request to establish an NGO, this lack of action was supposed to be interpreted as an approval. However, the Ministry had the right to disapprove the establishment of an association any time prior to the expiry of the three-month period.

Additionally, a newly established NGO was required to receive a receipt when it applied for authorization at the Ministry of Interior. This procedure was supposed to be a mere formality that documented the application process and determined the beginning of the three-month period during which a decision must be made. However, the authorities treated the receipt as an additional requirement and began to refuse to deliver it, blocking the formation of associations. This method particularly targeted independent organizations not affiliated with the ruling party and associations promoting human rights or providing legal aid. The ministry was authorized to interfere in the activities of these associations, and it rejected the registration of some NGOs based on their mandate and objectives.

Like other authoritarian regimes, the Ben Ali regime favored associations with an economic development mandate over those working on human rights and controlled public funding to serve its own interests. During this era, very few independent NGOs functioned in the fields of human rights and advocacy. Those that did—like the Tunisian League of Human Rights and the Tunisian Association of Democratic Women—faced extensive pressure and restrictions in the mid-1990s. The government denied both organizations access to foreign funding from the European Union or European foundations and, in some cases, froze their bank accounts.

In 2007–2010, security forces used physical methods of intimidation: they physically assaulted human rights defenders, ransacked their offices, damaged their cars or homes, prevented them from holding public meetings, and placed their offices or homes under security surveillance. By the end of 2010, there were only 9,000 registered associations in Tunisia, most of them facing repression and restrictions, while many other groups were denied permission to operate.

**Tunisian Civic Space after the 2011 Revolution**

With the eruption of the 2011 revolution and ousting of Ben Ali, the landscape for civic space changed drastically. In fact, civil society played a crucial role in the Tunisian transition to democracy. The four civil society organizations forming the Tunisian Quartet—the Tunisian General Labor Union, the Tunisian Confederation of Industry, Trade and Handcrafts, the Tunisian Human Rights League, and the Tunisian Order of Lawyers—won the Nobel Peace Prize in 2015 for their role in the Jasmine revolution.

13 Ibid., 9.
17 Ibid., 8, page 73.
18 Ibid., 9.
In 2011, the interim government established the Higher Authority for the Realization of Revolutionary Objectives, Political Reform and the Democratic Transitions, which reviewed various repressive laws and regulations and issued several decrees to guarantee the enjoyment of civic freedoms, including laws regulating elections, the establishment of political parties, and free audio-visual media. In September 2011, the authority issued the Associations Law, which allowed associations to establish themselves by a simple letter or statement of notification to the office of the Prime Minister. Associations can now access foreign funding and work in previously restricted fields, including human rights, advocacy, and governance. They can access information, evaluate the role of state institutions, and submit proposals to improve state performance. They can organize meetings, conferences, demonstrations, and all kinds of civic activities. This radical regulatory shift led to the creation of 21,000 associations in Tunisia.

Although the new laws facilitate formation of associations, the government struggles to implement them, as explored below. The coming sections will assess the current status of Tunisian civic space, looking more specifically at the regulatory framework, both formally and in terms of how the regulations operate in practice. The report will also consider the ability of Tunisian associations to access funding and sustain their operations. It also looks at financial accountability and transparency in the Tunisian NGO sector, and the sector’s collective action to push back against attempts to restrict civic space.

**THE LEGISLATIVE FRAMEWORK: BETWEEN THEORY AND PRACTICE**

The Associations Law, Decree no. 88 of 2011, was a major breakthrough that totally transformed the civic space in Tunisia into the most enabling environment in the Middle East and North Africa. The right to freedom of association was further consolidated in Article 35 of the Tunisian Constitution, adopted in 2014, which guaranteed “the freedom to establish political parties, trade unions, and associations.” It specified that, in return, “political parties, unions and associations must respect the provisions of the Constitution, the law, financial transparency and the rejection of violence.”

**Formation of Associations**

The Associations Law reflects an effort to avoid the multiple restrictions of the Ben Ali years. In theory, any two Tunisians and/or foreigners residing in Tunisia can form an association simply by submitting a notification letter—including several documents—to the government. The government first ensures the information is accurate, then acknowledges receipt of the materials and approves the association. On approval, the new association should appear in the government gazette. To overcome the shortcomings of the previous law and practices before 2011, the law allows an association to operate 30 days after submitting its notification letter, without waiting for an acknowledgement receipt from the government. An association legally exists once it sends the letter of notification, but it only

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19 Ibid., 12.
21 Ibid., 7.
23 Ibid.
gains the legal character needed to open a bank account and enter into contracts when its registration information is published in the official gazette.

In practice, there are complications. Associations experience delays in receiving the acknowledgment of receipt from the Secretariat General. Although an association exists legally 30 days after the government receives its notification letter, NGOs cannot open bank accounts or perform other vital functions without publication in the official gazette, which refuses to publish the declaration of an association without a notification receipt from the government. According to the latest ICNL report on the state of civic freedoms in the Middle East and North Africa, “over a quarter (27%) of CSO stakeholders in Tunisia said that the process to register a CSO suffered from government delays beyond what is provided for by law.” In addition, “12% said that more than six months elapsed after submitting their notification of establishment before the process was complete.” In some cases, associations had to wait for over a year. Delays also affected a number of foreign associations seeking to operate in Tunisia.

Some interviewees believe that the delays in processing are systematic and purposeful, and advance the government’s implicit policy. Others believe that secretariat staff and the gazette have been conditioned to operate under a repressive environment and have not adapted to a post-revolutionary environment.

All of the interviewed stakeholders confirmed that the very limited human and material resources of the Associations Directorate in the General Secretariat are one of the main drivers of the obstructions. This single government office, with only 20 staff members, receives the notifications of associations from all over Tunisia, making it almost impossible to process registration requests within the 30-day timeline. Another problem is the centralization of the service: there is only one office in the capital city of Tunis, and no branches or regional directorates in the 26 governorates of Tunisia. In addition to the delay and backlog, there is also a problem of access. Associations from distant areas of the country have to travel to the capital to follow up on their registration process or to submit the acknowledgment of receipt to the gazette for publishing, as there is no electronic system for communication or registration. Some interviewed NGOs and stakeholders also argued that the directorate staff themselves are not trained in or familiarized with the Association Law’s new procedures. The directorate, on the other hand, stated that it organized open houses and direct meetings with associations in all governorates, to facilitate and accelerate the formation of associations and to provide necessary advice and clarifications, as part of promoting a participatory relationship between the administration and civil society.

NGOs also noted unexpected government intervention in their organizational statutes. In some cases, the secretariat requested minor changes in the wording of these statutes. For example, the Secretariat requested that an NGO concerned with spreading cinematic culture in Tunisian society change their objective from “spreading” to “contributing to the spreading.” The founders accepted this minor comment since it had little impact on their

25 Ibid.
26 Ibid.
28 Ibid., 21.
objectives and they wished to quickly finalize the registration process, but it suggests that the government continues to interfere in the mandates of NGOs, even if benignly for the moment. The extent of such interference is not known.

“I have been there—a small office in the cabinet premises, with five to seven employees surrounded by hundreds of folders.”

– an interviewee

Restrictions on Activities

Articles 3 and 4 of the Associations Law state that associations must observe the principles of the rule of law, democracy, plurality, transparency, equality, and human rights in their activities. Associations are prohibited from implementing activities that incite violence, hatred, intolerance or discrimination on the basis of religion, gender, or religion. Most of the interviewees describe operating without restrictions on their activities: they were free to hold workshops and conferences, access information, attend parliamentary sessions, defend victims of torture, and carry out many other activities.

There are, however, exceptions. Some organizations—those that work on taboo topics or engage with groups disliked by the government—have faced restrictions. One of the local associations interviewed for this report works on civic participation with youth. They decided to reach out to all youth groups and organizations, including the football fans known as ultras. Ultras are known for their fanatic support to their teams that sometimes turns into violent clashes that destroy stadiums or even cause deaths. As one of the ultra leaders stated, “the police consider the ultra groups delinquents and terrorists whose sole purpose is to raise mayhem, cause violence, and commit crimes.”

However, the association wanted to establish channels with the ultras, especially as many ultra members come from impoverished neighborhoods. The association claims that they had to cancel an open meeting with the ultras due to pressure from the Ministry of Interior. The event was only rescheduled rather than canceled, but it is likely that such pressures will continue, given the ultras’ strained relationship with the police.

Shams—an association that openly defends lesbian, gay, bisexual, transsexual, and queer rights—faced a different form of government interference. Since Shams was established in May 2015, the state prosecutor has filed five cases against the association as a result of campaigns against Shams by religiously conservative groups. These cases have cited the incompatibility of the association’s activities with its bylaws, and claimed that its activities violate public order.

In the latest reported case against Shams in January 2016, the first instance tribunal in Tunis suspended the group’s activities for 30 days, following a December 2015 complaint by the government’s Secretariat General that warned the group to cease alleged violations of the Associations Law. The government’s complaint alleged that the association deviated from the goals in its statute and quoted a Shams media statement that its aim is to “defend homosexuals,” an activity not mentioned in its statute. The complaint also claimed that Shams had not completed its legal registration and thus lacked the legal status to pursue its work. Shams took the case to the Administrative Court and defended its position. Shams presented its statute, which includes among its objectives the “support of sexu-

30 Ferchichi, “Threatening the Right.”
Regarding its legal status, Shams presented evidence that it completed the required steps for its legal registration, including a receipt from the official gazette showing that the association paid the fee as required by law to have its name published so it could function legally, although the gazette had not published the association’s statute and announcement. In February 2016, the Administrative Court overruled the suspension decision and dismissed the case against the association.33

NGOs in Tunisia generally operate freely, with very minor interventions in their activities. However, the strained relationship between ultras and the police as well as the cultural stigma around LGBTQ rights, along with pressure from conservative religious groups, may have triggered the restrictions faced by both organizations. Shams’s experience illustrates that legal pushback against such restrictions can be effective in Tunisia.

ACCESS TO FUNDING AND RESOURCES

The Associations Law identifies the legitimate sources of funding for associations as follows: member subscriptions, public funding, subsidies and grants, donations, gifts and wills—both national and foreign—and revenues stemming from the associations’ properties, activities and projects. The law permits funding from international donors based in Tunisia or abroad.34 The decree only prohibits aid, gifts or donations from states that have no diplomatic relations with Tunisia, or from organizations defending the interests and policies of those states.

In reality, public funding from the government of Tunisia is challenging to obtain, so most associations are dependent on foreign funding, as explored below.

Public Funding

In late 2013, the government issued a separate decree, no. 5183, that regulates NGO access to public funding and sets out criteria and procedures. The state grants public funding to associations pursuing goals that fall in line with the objectives of the state or as demanded by the concerned public institution. For example, if an association acting in the cinematographic field has a project to develop the capacities of cinematographers, it may receive public funding from the Ministry of Culture. The project ends with the achievement of the goals for which public funding has been granted.35

In practice, access to public funding is very limited, primarily due to the extensive paperwork required, including the NGO’s statute, registration documents, several types of financial audit reports, and documents proving compliance with tax and social security laws. Civil society actors complain that the criteria for granting public funding remains vague and unclear—arguably due to the absence of civil society representatives in the technical committee that grants public funding, which is made up mainly of administrative staff.36 As was found in other studies, most of the interviewed associations stated that they had almost no access to already limited public funding. The onerous application process is the key perceived impediment, compounded by

32 Ibid.
34 The Associations Law was issued in September 2011.
lack of information about the amount of funding available and the criteria for receiving it.

Foreign Funding
Most of the interviewed associations depend on foreign funding as the main financing for their operations and activities. They do not face any restrictions accessing funding from all types of donors inside or outside Tunisia, in contrast to the days before the revolution.

The nascent NGO sector in Tunisia, however, lacks the capacity to meet the reporting requirements and complicated application procedures of some donors. Large grants, in particular, require online applications in French or English, as well as quantitative data and logical frameworks that are challenging, in particular for small NGOs outside of the capital. Civil society members explained that donors prefer NGOs in the capital, with significant operations, demonstrated experience, and strong technical and financial capabilities.

According to some interviewees, many donors have created smaller and more flexible programs to reach new associations and small initiatives outside the capital, but small NGOs in the countryside are skeptical about donors’ motivations to support local NGOs on issues related to democratic and political reforms. Donors attributed these concerns to low levels of awareness about foreign funding outside of community development, along with the need for better communication with local NGOs on the grassroots level. After donors were criticized in 2013 for centralizing their efforts in the capital, they recognized the need to decentralize. According to both donors and associations interviewed, funding is expanding outside the capital, including a program launched by the French Ministry of Foreign Affairs that targets community-based associations in rural areas and enhances citizen initiatives through small grants.

Language requirements are another challenge. Tunisians point out the need to allow Arabic as a full working language, including in funding proposals, especially when reaching out to rural areas. In response, some donors providing small grants targeting rural areas are accepting applications in Arabic.

How financially sustainable is civil society in Tunisia? Foreign funding has already begun to fall compared to the early years of the revolution. The interviewed associations voiced their concern about the sustainability and future of their organizations once the influx of foreign funding to Tunisia decreases. Some associations are looking at strategies to sustain their operations, such as sharing their technical experience with other NGOs in exchange for consultancy fees. Others are looking at possible means to buy permanent premises, fearing funding cuts or sudden decisions from the authorities to prohibit or freeze foreign funding that would make it impossible for them to pay rent.

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39 Ibid.

40 The French Embassy’s Fund for Innovative Projects for Civil Societies and Coalitions of Actors (Projets Innovants des Sociétés Civiles et Coalitions d’Acteurs, or PISCCA) program is implemented by the French Cultural Institute in rural areas of Tunisia. PISCCA, http://www.piscca.tn/fr.
In addition to the question of sustainability, donor project-based funding has impacted associations’ missions, as associations shift from one specialization to another depending on donor focus areas. Current donor approaches develop project-related skills, since the funding is for project-related positions, but does not support management and leadership positions, diminishing the emphasis on leadership and implementing the organizations’ own visions.41

**ACCOUNTABILITY AND TRANSPARENCY**

Creating public confidence in the accountability and transparency of Tunisian civil society is urgent. NGOs already are required to publish their sources of foreign funding, and meet other complex financial reporting requirements, which can be challenging for smaller organizations. The government lacks the capacity to oversee and enforce these laws. This lack of effective enforcement—and thus a perceived lack of transparency by civil society—has left NGOs vulnerable to accusations that they receive terrorist funds or are involved in money laundering. These fears, stoked by the media, have in turn led to proposals for new laws to more tightly regulate civil society. Civil society has fought back, with partial success.

The legislative framework rigorously regulates NGO finances: associations that obtain foreign funding are required to publish their funding sources, value, and purpose in the press and on their website within one month of accepting the grant. Once an NGO receives funding, it is required to inform the directorate in a registered letter within 30 days.42 All of the interviewed associations state that they follow the decree’s financial procedures and inform the directorate as required. However, financial management that complies with the decree is a complicated process that requires a full-time accountant or a financial manager. Such expertise is not available to all associations, especially small ones with limited resources that cannot hire a full time, well-trained financial officer. With the directorate’s limited resources and lack of regional offices, many of the small associations, especially those outside the capital and main cities, are not fully attuned to an association’s financial responsibilities under the decree, a situation compounded by the complicated financial reporting process.

All the interviewed organizations stated that they regularly publish their foreign funding in public media and the official gazette. Also, as reported in other studies, the big, well-known organizations—including the Tunisian League of Human Rights, the Tunisian Association of Democratic Women, Al-Bawsala, and the Arab Institute for Human Rights—report their foreign funding on their websites. Their donors include Oxfam, the Office of the High Commissioner for Human Rights, the United Nations Population Fund, the European Union, the EuroMed Rights Organization, and the Arab Human Rights Fund, as well as certain German foundations, all of whom are transparent and openly announce the names of organizations they fund in their annual reports in accordance with the law.43 Nonetheless, civil society actors acknowledge that disclosure is imperfect, arguably due to NGOs’ lack of financial management capacity and the government’s weak financial oversight. Civil society actors themselves repeatedly raised concerns about the government’s weak financial oversight, which is per-

41 Cherif, *Improving Foreign Support*.
42 Ibid., 7.
43 Ibid., 21.
ceived to have led to a culture of impunity. They also raised concerns about suspicious activity by some organizations accused of supporting terrorism.\footnote{Ibid.}

In 2016, the Minister of Relations with Constitutional Bodies, Civil Society and Human Rights released a press statement noting that 157 organizations faced judicial proceedings on the suspicion of receiving funds or other linkages to terrorism, and/or for having changed their field of activity without prior authorization.\footnote{Tristan Dreisbach and Asma Smadhi, “Tunisian government criticized for ‘arbitrary’ restrictions on liberties,” Middle East Eye, August 31, 2014 https://www.middleeasteye.net/news/tunisian-government-criticised-arbitrary-restrictions-liberties-1822081879.} The statement froze their activities. The ministry froze the activities of associations without any transparency, never published the list of the suspended associations, and never made the exact charges public. The charges may not have been entirely without merit: the NGOs interviewed for this report admitted that some small number of organizations may have misused funds.

When a wave of terrorist attacks and political assassinations hit Tunisia in 2013 and intensified in 2015,\footnote{Al Khadrawy Mongy, “Political Assassination in Tunisia after the Revolution: How the ‘blood machinery’ functioned,” Alchorouk, December 2016, http://archive.alchourouk.com/220588/662/1/1/}.\footnote{Ibid., 34.} civil society actors faced a media smear campaign connecting them to terrorism. Interviews for this report revealed strong concerns about civil society actors’ relationship with the media. NGOs felt that the media rarely acknowledges their role and contributions to development and democratic processes. Instead, when a terrorist attack occurs and the public is outraged, the media suddenly remembers civil society. In the best-case scenario, the media demands that NGOs denounce terrorism. In the worst case, it adopts ready-made accusations against civil society as foreign agents working against the national interest. The NGOs accused the government of using terrorism and money laundering allegations to restrict a growing civil society that sometimes criticizes government policies and closely monitors the democratic transition.

Meanwhile, the authorities’ accusations of the possible links between associations and terrorism funding escalated and reached the Tunisian legislature. In November 2016, the Assembly of the Representatives of the People announced a plan to amend the Associations Law to enhance the oversight and control of associations receiving foreign funding.\footnote{Ferchichi, “Threatening the Right.”} A controversy erupted as civil society organizations rejected the accusations and argued against changing the decree.\footnote{“MEPs confirm Commission blacklist of countries at risk of money laundering”, News: European Parliament, February 7, 2018, http://www.europarl.europa.eu/news/en/press-room/20180202IPR97031/meps-confirm-commission-blacklist-of-countries-at-risk-of-money-laundering.} The authorities’ accusations further intensified after the European Parliament issued a statement in February 2018 accepting the European Commission’s decision to add Tunisia to the list of non-EU countries considered to have strategic deficiencies in their anti-money laundering and terrorist financing regime.\footnote{Ibid., 34.} The Tunisian authorities hence renewed their calls for the amendment of the Associations Law.

In response, Tunisian civil society actors argued that the state did not need to amend the law but rather to more fully exercise its existing oversight authority over associations’ operations and funding. In fact, they called for more robust monitoring by the Ministry of Finance and the Tunisian...
Central Bank, stating that all the foreign funding that the many legitimate associations receive is transparent and received through bank transfers. If there are any suspicious transactions, it is the Central Bank’s role to identify them. From its side, the Central Bank indicated that most of the financing of terrorism operations is made in cash, which is hard to address. In contrast, bank transfers are subject to the automatic control of the Central Bank.  

Civil society actors also called for greater financial and human resources to allow the government to properly oversee associations, establish regional offices, and establish an electronic system to track associations’ activities. The state has not responded to these calls: it did not establish a database of active associations, nor did it draw up a plan of action to monitor their operations. This lack of oversight continues despite the proven existence of non-registered associations involved in suspicious activities.

Some government officials claim that there are no adequate legal tools to combat terrorism and money laundering. This is not the case. In addition to the provisions of the Associations Law that provide for governmental oversight, Decree no. 26 (2015) addresses counter-terrorism and prevention of money laundering. Under this decree, the Minister of Finance can subject institutions suspected of having links to terrorism—those that are linked with persons, organizations, or activities involved with terrorism or money laundering, or that fail to follow accounting rules to prevent these crimes—to a prior authorization requirement for any financial transfers from abroad. Additionally, the minister can request that the court of first instance issue an order to subject the suspected institution to an external audit. The law also gives the national committee to combat terrorism the authorization to freeze any accounts suspected of crimes related to terrorism or money laundering.

Instead of restricting civic space for NGOs, the government could effectively fight terrorism by more fully implementing the existing laws and strengthening the financial intelligence unit headed by the governor of the Central Bank.

“We know there are financial violations in the NGO sector and among associations—like anywhere else in the world—but the solution is to have better oversight from the government and not to amend the Associations Law.”

– NGO member

**COLLECTIVE ACTION AND COALITION BUILDING**

Repeated attempts to amend the Associations Law and introduce new legal restrictions on civil society catalyzed NGO collective action, although the process that led to the coalition was not straightforward. Coalition building among NGOs and associations, in Tunisia as elsewhere, is a complicated task due to competition between associations, disagreements over strategies to address attempted restric-


52 Ibid., 9.


Rivalry over coalition leadership and the lack of a shared vision are additional obstacles to achieving a common goal. Various generations of Tunisian associations have differing approaches, according to interviews. Some of the newer NGO actors perceived the traditional associations, particularly those that functioned during the repressive time of Ben Ali, as non-democratic in their internal decision-making. Meanwhile, older associations perceived funding to be channeled disproportionately to more recently created, younger associations, supposedly to enable them to survive and consolidate.

Nonetheless, associations in Tunisia put aside their differences in the face of the government’s threat to amend the Associations Law, which would have impacted their freedom to operate and function freely. An effort to build one overarching, formal union for all the associations and NGOs working in all fields and regions failed. Instead, they formed the Working Group on the Protection of Civic Space, an informal group of NGOs that met periodically and coordinated efforts to ensure an open civic space for civil society to function freely. Two Tunisian NGOs helped coordinate the group. It included long-standing organizations as well as newly established ones and some international organizations with offices in Tunisia. While most of those NGOs were based in the capital city, they have reached out to others outside of Tunis through meetings and seminars to warn against the changing or amending of the law. They launched an advocacy campaign against the amending the law, putting out joint public statements and targeting governmental and philanthropic donors, embassies, and various state institutions, including the Parliament.

One of the coordinators of the group acknowledged that they failed to create better channels of communication with the media. The reasons are various but derive in part from a general lack of awareness of the role of civil society and the importance of an open civic space for both economic development and democratic transition. The media usually looks for a crisis or hot issue to focus on. For example, it was not particularly interested in the role of civil society until the controversy about the National Registry Law arose.

Despite weak engagement with the media, the campaign and collective action were mostly successful in channeling the key message against any amendment to the Associations Law. Later, in 2017, when the U.S. State Department funded the international NGO Democracy International to try to change the Associations Law—under the assumption that if the law would be changed anyway, it would be better to shape the conversation—the coalition pushed back and collectively rejected this attempt. The coalition voiced its fears that the Tunisian government

56 Ibid., 9, 68. The example is based on a panel discussion on the state of associations in Tunisia, organized by Al-Kawakibi Democracy Transition Center in partnership with Jamaity association, on April 24, 2016 in Kairouan.
57 Ibid., 9.
58 The working group is non-formal, and the exact number of its members is not clear. It is led by coordinators from Al-Kawakibi Democracy Transition Center, Jamaity NGOs. The following is a link to their recent statement against the registry law: https://jamaity.org/.
59 Democracy International started a project funded by the U.S. Department of State to amend the Associations Law. For more information on the project, see “Tunisia Improving the Regulatory Environment for Civil Society Organizations Project,” Democracy International, http://democracyinternational.com/projects/tunisia-improving-the-regulatory-environment-for-civil-society-organizations-project/.
would misrepresent the Democracy International program as U.S. support for revising the law, making it more difficult to stop adoption of the legislation.\(^6\)

The negotiations resulted in a middle ground solution that satisfied both the Ministry of NGOs and Human Rights and civil society actors. The solution was to develop a separate organic law that would create a digital platform, transforming paper-based, onerous administrative procedures into efficient and transparent electronic ones.\(^6\) The creation of a separate law setting up an online data base for associations was satisfactory to all stakeholders, especially given frequent civil society recommendations to the Tunisian authorities to digitize the database of associations and enhance the capacities of the Associations Directorate.

However, in a surprise development in 2018, the Parliament passed law Decree no. 30, which required associations, among other economic actors, to report through an electronic database called the National Registry of Institutions. The law is confusing because it treats CSOs and for-profit entities in the same manner. It is also not clear how this new National Registry of Institutions relates to the existing National Registry of CSOs or the previous initiative to establish an online platform for registering CSOs. In addition to being repetitious, the law includes potential jailtime for civil society workers, including imprisonment for up to one year and a fine of approximately $4,000 for the failure of CSOs to register in the national registry.\(^6\) The penalty is increased to five years of imprisonment and a fine of approximately $20,000 for the submission of false information during the registration process.\(^6\)

Again, civil society actors started an advocacy campaign in a very short period of time against the inclusion of associations in the law, with initial success.\(^6\) In 2 August 2018, 30 Members of Parliament asked the Temporary Authority for Reviewing the Constitutionality of Legislations to review the law on account of several purportedly unconstitutional provisions.\(^6\) In September, the authority published its binding recommendation rejecting the request to exclude associations from the law, stating that the law conforms with government measures to combat terrorism financing and money laundering. It further added that associations’ registration in the planned registry system does not contradict the right to association, nor does it prevent associations from forming through notification.\(^6\) Following his visit to Tunisia end of September, Clément Nyaletsossi Voule, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, voiced his concerns over the adop-

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61 As the Project on Middle East Democracy reported, U.S. officials explained that the U.S. embassy in Tunis elected to fund this project after concluding that the United States could not prevent the passage of a new NGO law and viewed this project as the best means to influence the outcome of any new legislation. See Andrew Miller and Todd Ruffner, President Trump’s Second Foreign Affairs Budget: Democracy, Governance, and Human Rights In the Middle East and North Africa in FY19 (Washington, D.C: Project on Middle East Democracy, 2018), https://pomed.org/fy19-budget-report/.


63 The fine is TND10,000, which is $4,000.

64 The fine is TND50,000, which is $20,000. Szakal, “National Registry,” 7.


66 The authority is performing a role similar to the Constitutional Court until the process of establishing a Supreme Constitutional Court is finalized.

tion of the National Registry Law “without further debate on its impact on associations” and “urged the Tunisian authorities to reconsider the approval of a regressive law for civil society.”

Notably, coalitions in Tunisia have previously successfully pushed back on other problematic draft legislation, in part through effective social media campaigns. For example, a coalition of NGOs and journalists used an online campaign to stop the inclusion of clauses in Tunisia’s freedom of information act that would have created large exceptions to disclosure. Although the effort against the National Registry Law was not ultimately successful, NGO coalitions nevertheless appear to be a potentially effective mechanism to push back on laws in Tunisia: working together, civil society actors were able to mount a rapid campaign against the National Registry Law. Unfortunately, this effort failed, and civil society actors now face a risk of criminal penalties if they violate the law by simply entering the wrong information by mistake into the electronic platform.

CONCLUSION AND RECOMMENDATIONS

The Tunisian civic space shifted dramatically from an extremely repressive environment for civil society to the most open civic space in the Middle East and North Africa over the course of only ten years. The early adoption of the Associations Law in 2011 was one of the main gains of the Tunisian Revolution that ensured civic freedoms. It triggered a significant wave of civic activity that capitalized on the momentum created by the revolution. Young people started to become heavily involved in civic space, while the founders of the old civil society organizations that survived a prolonged repressive environment played an important role in the democratic transition. In addition to the ability to form associations freely via notification, significant funding from both governmental and philanthropic donors enabled civil society to expand its operations and activities. Eight years after the beginning of the Arab Spring, Tunisia has become a hub for civil society in the Middle East and North Africa, while civil society in other countries in the region faces major repression from the authorities.

However, the past two years have witnessed several attempts from the Tunisian authorities to restrict civic space, which they justified by insisting on the need to combat money laundering and terrorist financing. The government also accused some NGOs of a lack of financial transparency and proper financial management, triggering a media campaign that further tarnished the image of civil society and brought back memories of the Ben Ali regime’s ready-made accusations of NGOs being foreign agents working against the national interest.

Civil society actors, on the other hand, believe that the government already has tools available to counter terrorism, and is using these revisions to restrict a vibrant civil society that sometimes critiques the government. Notably, other laws also address terrorism and money laundering, such as Counter-Terrorism law no. 26, issued in 2015. Civil society actors contend that the Associations Law includes adequate financial regulations that the government simply needs to enforce. They argue that government is not performing its role of proper financial oversight and monitoring of association’s operations. They have called for the government to increase its financial and human resources to fulfill these roles and to decentralize these activities by establishing branches outside the capital.


Tunisian civil society actors formed an informal collective that until recently successfully pushed back against legal changes that would have closed civic space through political and legal means. The new National Registry Law may adversely affect freedom of association because it contains onerous penalties if NGOs fail to closely follow all registration requirements. Nevertheless, the collective demonstrated certain successes and could be replicated in other countries where there is some risk of civic space closing if supported by donors preemptively.

**Recommendations**

In the current volatile political environment that threatens civic space, donors should continue their support to Tunisian civil society. Recommendations for donors to Tunisian civil society include:

- Continue supporting Tunisian NGO efforts to resist attempts to close civic space, through funding seminars, workshops and various awareness raising and advocacy activities.

- Provide financial management capacity building for Tunisian NGOs within their funding programs. Grants and projects should also cover the expenses of hiring full time financial managers so NGOs can comply with onerous financial reporting laws.

- Listen to their partners from local civil society and support their collective position to reject risky amendments to the Associations Law.

- Better equip Tunisian civil society to rapidly respond to continuous political and legislative developments that impact basic civic freedoms by providing core and flexible funding.

- Design programs to help NGOs become sustainable, rather than just focusing on project implementation.

- Engage the government to support the current, streamlined approach to forming associations under the Associations Law, an action especially important for international government donors. [Help the Tunisian government strengthen its systems and mechanisms for financial oversight as an alternative to repressive counter-terrorism laws that adversely impact civil society.]

Broader considerations for donors to other countries include:

- Consider helping NGOs form national coalitions preemptively, when efforts to close civic space are still on the horizon rather than imminent. Such coalitions can be informal and still be effective.

- Provide support and training for civil society actors to engage effectively with the media to promote understanding of the sector and its value, via individual NGOs or coalitions. Governmental donors could also engage on this front if national NGOs believe it would be helpful, rather than harmful. Donors and NGO partners could also consider whether well-known public figures might help civil society engage with the media and gain traction before there is a crisis to draw attention to the sector.

As for civil society, collective action and better coordination among civil society actors is essential for safeguarding an open civic space in Tunisia. NGOs should:

- Respect financial regulations and develop their own internal governance structures. Better financial transparency and internal regulation is indispensable for a healthy civil society, and it also improves its image among the public.

- Conduct better and preemptive outreach to the media to counter negative narratives
painting NGOs as harbors for terrorist and money laundering activities.

- Intensify coordination and collective action to address attempts to close civic space. NGOs advocating for an open civic space should reach out to developmental NGOs and community-based associations outside the capital. Wide, cross-sector alliances are more influential when facing attempts to close civic space.

- Deepen advocacy and efforts to reach out to members of Parliament.

- Work with social movements to tackle the issue of closing civic space and its impact on social and economic rights.

- Use social media to build support for coalition efforts to push back on closing civic space.

- Find a new term for “closing civic space.” It is an elite term that is not easily comprehensible to the general public and community-based organizations. Tunisian CSOs should seek an alternative and more accessible term to describe the legal and operational challenges faced by CSOs.

International NGOs also play a vital role in cooperating with local NGOs and providing them with the appropriate knowledge to build their capacity. More specifically, recommendations for international NGOs include:

- Help national NGOs access and leverage international advocacy platforms.

- Focus on transferring their knowledge to national NGOs instead of monitoring and micro-managing their operations when funding goes through international NGOs to local organizations. Work to build the capacity of local NGOs to manage projects and funding.
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