

## On the 10<sup>th</sup> anniversary of the Tunisian Revolution Ten Years of Legislation on Rights and Freedoms: Current State of Affairs and Future Challenges



*“Work, freedom, dignity”*

This slogan, which was created at the beginning of the Tunisian Revolution (December 17, 2010) and has accompanied it at all its stages, shows a desire for liberation through work, insists on freedom as a fundamental value and sets an ultimate goal for human rights: the realization of human dignity.

The slogan also sums up all generations of human rights and their objectives, confirming the presence of a collective awareness since the beginning of the events of the Tunisian Revolution, affirming that there is no distinction, nor difference, between human rights and freedoms, and highlighting their comprehensiveness, interdependence and universality.

Ten years have passed since the birth of this slogan and the call for a comprehensive system for the defense of human rights. What has been achieved? What were the challenges in establishing such a system? What are the challenges today?

In an attempt to answer such questions, we will focus on what has been achieved at the legal and institutional level, while analyzing the context in which this new edifice was built. In doing so we offer our observation of political, parliamentary and social life, through a combined reading of official reports and publications by civil society organizations.

In presenting the decade following the Revolution in terms of rights and freedoms, we adopt a chronological, historical and analytical approach in order to identify the most salient periods of legislative and institutional development in this field, as well as the challenges that have marked each of these periods over the last ten years. This approach is necessary since, while it is certainly possible to point to important achievements in the field of human rights, they remain, nonetheless, incomplete.

To carry out this retrospective review, we divide the past decade into four stages, according to their impact on the regime of rights and freedoms in Tunisia:

- The granting of rights and freedoms by decree-laws (January 14, 2011 to December 16, 2011);
- The establishment of the foundations of rights and freedoms during a development phase (December 2011 to October 2014);
- The evolution of rights and freedoms during the first legislature (December 2014 to December 2019); and,

- The fate of rights and freedoms since the rise of populism: what next? (December 2019 to date).

### **Concluding remarks: did the first decade of the Revolution live up to its promises?**

Did the first decade of the Revolution keep its promises in terms of rights and freedoms? What has been achieved to sanctify the slogan of the Tunisian Revolution "employment, freedom, national dignity"?

**At the legislative level:** the contributions of the first decade of the Revolution vary both in terms of the category of rights on the one hand and the level of political will on the other.

Although many legislative documents guaranteeing rights and freedoms were introduced in various areas (associations, political parties, press and publishing, audiovisual media, access to information, prevention of torture, criminalization of human trafficking, elimination of all forms of violence against women, elimination of racial discrimination, etc.), economic, social, cultural and environmental rights remain poorly addressed during this decade.

In other words, important legislation capable of bringing about real social, economic and environmental change has not been adopted. As a result, the first decade remained insensitive to a significant number of the demands of the Revolution, in particular employment in the broadest sense of the concept, i.e. the recognition of economic and social rights.

In addition, many legal texts adopted before the 2014 Constitution were left untouched.

Although the Constitution has enshrined a number of individual freedoms detailed in the draft Code of Individual Rights and Freedoms, there still exist in the Tunisian legislative system legal texts and provisions that are entirely contrary to the notion of freedom and the essence of individual freedoms. These include: the Code of Obligations and Contracts of 1906, the Penal Code of 1913, the Personal Status Code of 1956, and Law No. 92-52 of May 18, 1992, relating to narcotics.

**At the institutional level,** the first decade after the Revolution saw the creation and establishment of the most important democratic institutions of the State: the Parliament, the High Council of the Judiciary, local democracy, the adoption of legislation relating to the Constitutional Court and most constitutional bodies including the Independent High Authority for Elections, the Human Rights Commission, Authority for Good Governance and the Fight against Corruption, the Authority for Sustainable Development and the Rights of Future Generations, etc.

**At the stakeholder level,** the human rights system has been strengthened through the establishment of a National Commission for the Coordination, Preparation and Presentation of Reports and Follow-up of Recommendations in the Field of Human Rights,<sup>1</sup> complemented by the creation of a National Committee for the Harmonization of Legal Texts relating to Human Rights with the provisions of the Constitution and the ratified international conventions,<sup>2</sup> alongside a Ministry in charge of Human Rights.<sup>3</sup>

In the 10 years since the Revolution, several advisory structures and bodies have also been set up to assist the Executive in taking decisions in areas related to human rights. These include the National Observatory for the Prevention of Violence Against Women, the National Council for Social Dialogue and the National Council for Tunisians Residing Abroad, etc.

However, these developments, including, in particular, the creation of three national bodies, responsible for contributing to the prevention of torture, guaranteeing access to information and combating trafficking in persons respectively, have remained unfinished at the level of the establishment of

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<sup>1</sup> Government Decree No. 2015-1593 of October 30, 2015, on the creation of a National Commission for the Coordination, Preparation and Presentation of Reports and Follow-up of Recommendations in the Field of Human Rights (The Official Gazette No. 88 of November 3, 2015, p. 2612).

<sup>2</sup> Government Decree No. 2019-1196 of December 24, 2019, setting up a national committee in charge of harmonising legal texts relating to human rights with the provisions of the constitution and with ratified international conventions and fixing its missions, composition and operating methods (The Official Gazette No. 1 of January 3, 2020, p. 6).

<sup>3</sup> Government Decree No. 2016-662 of May 30, 2016, establishing the Ministry of Relations with Constitutional Bodies and Civil Society and Human Rights (The Official Gazette No. 47 of June 10, 2016, p. 1829).

fundamental constitutional structures that are necessary for a democratic system, the most important of which is the Constitutional Court.

Even though the law relating to the Constitutional Court was enacted on December 3, 2015, the future composition of the Court has not yet been agreed upon and the judges are yet to be appointed. Similarly, while the laws relating to the organization and functioning of the constitutional bodies have been enacted, with the exception of the Independent Higher Authority for Elections, the rest have not yet been introduced, for lack of appointment of their respective members. In addition, the law relating to the Independent High Authority for Audiovisual Communication has not yet been enacted.

These various factors are disruptive to the democratic transition as a whole, as well as to the guarantee of rights and freedoms. It is therefore urgent to set up these bodies and organs concretely through the appointment of their members and the allocation of all the necessary logistics for their functioning.

**In practice**, the Tunisian revolution has led to a general climate of freedom (in particular freedom of opinion and expression) and a broad representation of the different components of Tunisian society in the Assembly of People's Representatives. This in turn has resulted in improved practices in terms of rights and freedoms, particularly regarding citizens' relations with the administrative and security apparatus or with the judiciary.

Such practical improvements were made possible thanks to the repeal of various circulars depriving people of their liberty, such as the one of November 5, 1974, prohibiting the marriage of a Tunisian woman to a non-Muslim,<sup>4</sup> or the circular relating to children's first names.<sup>5</sup>

Other notable improvements include better access to information and administrative documents, the increased police tolerance of the presence of lawyers, and the improved quality of service provided by the units specializing in combating violence against women, as well as the numerous judicial decisions reinforcing and protecting rights and freedoms.<sup>6</sup>

However, despite all these developments, many of the problems and violations persist and continue to visibly affect rights and freedoms. This is mainly due to the fact that some active laws are in clear conflict with the provisions of the Constitution (in particular the Penal Code), and are yet to be revised and amended, or repealed.

As discussed above, the new legal texts introduced after 2011 are still not properly internalized in the system, and there are few real guarantees of rights and freedoms in general by political actors and the administration, and in particular by the security apparatus and by the many judges who continue to apply an outdated legal system. This unfortunately leaves the process of realizing human rights in Tunisia incomplete and open to threats by the many populist ideas and currents that do not believe in institutions, organized labor or the rule of law.

Consequently, civil society organizations must remain vigilant and continue their advocacy for human rights and freedoms. It is also in their interest to coordinate their activities with political movements that believe in freedoms. This is necessary in order to form a front for the protection of democracy and the establishment of a human rights-based system. Indeed, there is no other way to counter populism and right wing conservative movements than by uniting and renewing mechanisms for communicating with citizens, especially youth and women, in order to mobilize them in favor of changing the Tunisian political landscape and ensuring the proper implementation of the provisions of the Constitution.

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<sup>4</sup> Repealed on September 8, 2017.

<sup>5</sup> Circular of December 2, 1965, repealed by Circular No. 19 of July 15, 2020.

<sup>6</sup>One of the most notable cases was the one brought by the General Counsel of the State against the Shams association (judgment of the Court of Appeal of 21 February 2020 (unpublished)), following the action of the imams' union against Shams (judgment of 14 February 2018 (unpublished)). Other cases include a gender reassignment case (9 July 2018 (unpublished)) and other judgments that applied the Law on the Elimination of Violence against Women and decided in favour of women victims of violence.

Various sentences have also been handed down in order to guarantee the right to create associations (judgment in favour of the Hassan Saadaoui Foundation of 23 December 2015 (unpublished) and judgment in favour of the Tunisian Baha'ai Association handed down by the Administrative Tribunal on 21 February 2019 (unpublished)).