

The Role of Parliaments in SSG: The case of Tunisia



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Introduction

The Tunisian Parliament and SSR/G: 2014–2019

Protests in Tunisia that led to the fall of Zine el-Abidine Ben Ali's regime in early 2011 – popularly referred to as the Jasmine Revolution – initiated a series of uprisings that impacted neighbouring countries, such as Egypt and Libya, in the so-called Arab Spring. The Tunisian case provides an opportunity to examine the link between security sector reform (SSR), security sector governance (SSG), and central democratic institutions in a developing democratic system. Compared to other countries of the Arab Spring, Tunisia was most successful in adopting a democratic constitution; and it also created

several novel public institutions tasked with ensuring transparency and governance in the public sector.

The objective of this case study is to analyse the extent to which Tunisia's most representative body, the Assembly of the Representatives of the People (ARP), has been able to influence the national agenda towards necessary reforms of the security and judicial apparatus in the post-constitutional period. We will focus mostly on the first mandate of the ARP (2014–2019), which followed almost four years of the National Constitutional Assembly (ANC).

Background context

The 2014 United Nations Security Council resolution on the security sector (2151) stressed the importance of reforming the sector in developing countries by urging states to foster an inclusive approach and vision for security sector reform and governance, aligned with international democratic values and human rights frameworks. But making such reforms is generally challenging, and the process can be met with extreme reluctance and resistance.

Under Ben Ali's regime in Tunisia, the Ministries of Interior and Defence both paid little heed to principles of SSG, and both played an instrumental role in sustaining the agenda of the dictatorial regime – to oppress human rights activists and ensure every step towards reform was pre-emptively thwarted. These institutions were also rarely subject to monitoring and oversight by the ARP. The post-Ben Ali years have brought significant progress in terms of individual freedoms, though the results are still mixed. Successive governments, hindered from acting most effectively by social and partisan conflict, have been unable to assume their leadership role in a way that has allowed the economy to fully recover. Thus, they have

struggled to implement good governance and the rule of law; i.e., security sector reforms.

Though the ANC may have laid the foundations for a constitutional project in 2014, and one which generated authentic goodwill and consensus, their accomplishment was sadly eclipsed soon afterwards by the increasing partisanship of the domestic political landscape, and an absence of trust and cooperation among political forces and between institutions and civil society. Since the adoption of the Tunisian Constitution, the political class has failed to concretize its vision for the country's future, leaving political leaders without reference to clear principles of governance and elaborated methods for managing public affairs.

Moreover, it is worrying that Tunisia has been in a quasi-continuous state of emergency for years, so that this exceptional and temporary state has ceased to be exceptional and temporary. When establishing trust between security forces and citizens is so critical, one has to wonder just how useful such an operational paradigm can be. Indeed, a lack of trust was among the root causes of the downfall of Ben Ali's regime.

But also, and maybe even more importantly, it is important to question the degree to which the *de facto* permanent application of a state of emergency has become a pretext for *not* engaging the country in difficult and tedious security sector reforms. In the 2019 elections, Tunisian voters rebuked the ruling government

coalition for its inaction and rewarded a fresh crop of political actors with seats of power. President Kaïs Saïed and his supporters are thus political newcomers, without a party base, and it is in this context that the ARP must fulfil its mission and play a leading role in security sector reform and governance.

Authority of the ARP vis-à-vis the security sector

The new constitutional framework of Tunisia sets out the authority of the ARP. It is commonly recognized that parliaments must have sufficient normative and legal authority to oversee the security sector, in order to be effective; and the Tunisian Constitution reinforces the legislative and financial oversight powers of the ARP over the security sector. The text provides for no exceptions to the government's control by legislative power (unlike the Egyptian Constitution, which excludes the military domain), and it demands the Assembly adopt any texts related to the organization of the armed forces and internal security forces in organic laws. This marks a significant advancement as far as security sector governance, given that most texts relating to the security forces were previously adopted by decree (many of which were also deemed "non-publishable"). Additionally, while the Constitution attributes a crucial role to the president in defence and national security policies, it stipulates that decisions related to war and peace require a 60% majority vote in the ARP (Art. 77).

That said, the Constitution also contains some ambiguous formulations, such as when it comes to the obligation of the government to provide the Assembly with all the information necessary to exercise effective control over government activities. Article 59 concerning the powers of standing and special committees, for example, provides that "all authorities must help them in the accomplishment of their tasks," which represents a critical inroad but does not clarify the actual mechanics of implementation. Hence, this will remain an issue of debate for years to come, as it will require more than mere laws and regulation, but changes in institutional culture as well.

Ultimately, laws related to the security sector are now accepted or refused in plenary session, or the plenary can abstain from voting and refer them back to committees. To various degrees, the following committees play a role

in SSR and SSG:

- The Standing Committee on General Legislation, responsible for examining projects, proposals, and questions on the judicial systems and criminal laws;
- The Standing Committee on Rights and Freedoms and External Relations, responsible for examining projects, proposals, and questions relating to public freedoms and human rights, general amnesty and transitional justice, civil society and the media, and external relations and international cooperation; and
- The Standing Committee on Finance, Planning and Development, which plays a role in the fight against corruption, money laundering, and terrorism funding.

Two other committees have an even more direct responsibility for security sector legislation and oversight within the Tunisian parliament:

- The Standing Committee on Administrative Organization and the Affairs of the Armed Forces (COAAFA); and
- The Special Committee on Security and Defence (CSD).

This structure emerged from discussions and debates over the rules of the new parliament in late 2014 and early 2015, which were sometimes more responsive to political imperatives than to the goal of efficiency. In short, the distribution of legislative and oversight functions between two committees was a liveable compromise meant to satisfy diverse political forces.

The COAAFA is charged with: (1) the general organization of public administration; (2) the administrative decentralization and organization of local authorities; and (3) developing laws related to the armed forces. Meanwhile, the CSD is concerned with overseeing and ensuring the effective implementation of national security strategies through means such as listening sessions with security officials and hearings on reform

proposals. While the mandates of these committees remain vague in some cases, this lack of more strictly defined roles also leaves room for greater cooperation and coordination between the committees. For instance, although budget matters are theoretically the role of the COAFA, members of the CSD are available for support and consultation during budget reviews in the Ministries of Interior and Defence. At the launch of these committees, this kind of dual competency or redundancy posed some coordination challenges, especially in a parliament still in its early stages. Though they are not resolved completely, these problems have diminished over the years, but many political actors believe nonetheless that legislative and oversight functions of the security sector should fall to a single, powerful committee.

While committees within the Tunisian Parliament are each tasked with monitoring and overseeing a specific sector/field of expertise, it is worth noting that both the new constitution and the rules of parliamentary procedure allow for regular parliamentary

oversight of government work more generally, as previously mentioned. This takes the form of a vote of confidence for a new government (Art. 143), as well as written and oral questions and inquiries addressed to the prime minister or to cabinet members (Art. 145). The rules specify the timeframe and means of communication between members of the ARP and a concerned party (government agencies). As such, the President of the Parliament is responsible for ensuring the receipt of any questions by the government, and that an answer is provided within ten days.

Similarly, the parliament can organize monthly discussions with the government on public policies and strategies, during which parliamentarians can address their questions to relevant ministers. *Ad hoc* discussions can also be held on an as-needed/emergency basis.¹ Thus, despite some operational imprecision, the ARP has all the authority it needs to both legislate and oversee the security sector. So, let us take a closer look at how qualified it is to perform these functions.

Capacity of the ARP to fulfil its mandate vis-à-vis the security sector

It is often the case that parliamentarians and their staffs lack technical expertise in the area of security sector reform. To improve the ability of the ARP to initiate reforms and conduct oversight of the sector, it must have sufficient resources to fulfil its constitutional roles effectively (particularly through the COAFA and the CSD), including institutional support, access to information, analytical and research capacity, specialized skills, and working relationships with security institutions and civil society. Little has been done to ensure the financial and administrative autonomy of the Tunisian Parliament, though, given that the parliamentary budget is part of the government's overall annual budget. This has direct consequences in terms of the resources available to committees to hire the appropriate personnel to conduct necessary research on the security sector and on international standards.

Furthermore, the composition of any committee is not based on technical expertise requirements. Following parliamentary elections, committee membership is open

to all parliamentarians on the proportional representation principle; meaning, the weight of each party/coalition in the parliament is represented on committees with one seat for every ten members. A lack of security sector expertise on the part of parliamentarians has at least partially contributed to a lack of effective reform of the sector since 2014, despite some timid efforts by committee members to bridge the gap on the most pressing SSR and SSG issues.

The ability of the ARP to exercise effective oversight of the security sector is also challenged by the fact that a well-defined national security strategy has yet to be developed, from which detailed policies and plans can be elaborated. In theory, under Article 77 of the Tunisian Constitution, the President of the Republic spearheads the National Security Council and is exclusively competent for defining the national general defence and security policies. But a former member of parliament (MP) who sat on both the COAFA and the CSD, and spoke with the authors, emphasized that a

1 See (in Arabic): http://arp.tn/site/main/AR/docs/reg_int_arp.pdf

document spelling out the general orientations of the national security and defence strategy from the perspective of the President would have been critically helpful in improving the effectiveness of the work of committees with a security sector mandate. This would have allowed committee members to frame a clear set of actions, including hearings, field visits, inquiries, and other control mechanisms, and to reflect on these in the context of those orientations, in order to assess how efficiently they were implemented.²

Budgetary control, for example, which is the competence of the COAFA, entails reviews of the annual defence and security budgets. Yet, without a clear vision for Tunisian national security, it is virtually impossible to conduct valuable financial scrutiny of the sector's spending. Thus, budgetary control is conducted according to the very general guidelines and goals laid out in the current national security strategy, and members of the COAFA essentially compare budget line items against those goals.

Along with the COAFA, the CSD - which has taken on various facets and forms - has also conducted oversight through several field visits to garrisons and other military facilities to check on the condition of stationed troops and discuss challenges with officers in charge. Additionally, security oversight from the CSD has involved questioning the ministers of Interior and Defence regarding response planning for events involving terrorist attacks or national security. On top of this, the CSD has issued written inquiries regarding individual nominations to high-level positions within the Ministry of Interior, often in the wake of public discontent or controversy in the sector. However, to date, none of these inquiries have resulted in changes to nominations for these positions.

Parliamentary oversight by the CSD, in all its forms, is lacking enforcement; and has so far resulted only in reports providing detailed summaries of the questions asked by members of parliament, the answers provided by officials, field observations, and recommendations. These reports are published on the ARP website so that they are accessible to the public, but

current members of the CSD have emphasized the need to present these results during the general plenary to make recommendations more actionable and to result in real reforms.³

According to an MP who was formerly on the CSD, the role of oversight and control was carried out successfully by the Committee when it came to hearings, field visits, and written inquiries; and this is reflected in the annual report published on the ARP website. For instance, in 2019 and 2020, the CSD accomplished the following:

1. field visits to land border-crossing points at Rash-Ejdir and Shousha (on the border with Libya);
2. field visits to airspace border-crossing at Carthage International Airport;
3. field visit to the naval base in Bizerte and to the Coast Guard station in Sidi Bousaid;
4. receipt of testimony of the Minister of Defence regarding news circulating on social media regarding the presence of an American military base; and
5. receipt of testimony of the Director-General of Tunisian Customs.

This MP noted that, even in the absence of a pre-defined action plan, these accomplishments represents a foundation for effective parliamentary oversight of the security sector moving forward.⁴

Under Article 73 of the rules of procedures of the ARP, the CSD, like any other committee, has the right to access all official documents from public institutions in conducting their monitoring and oversight mission. Members of the CSD are also entitled, per their parliamentary prerogatives, to visit any security facility and request information from any relevant official. Similarly, Article 74 of the rules stipulates that the ARP develop legislation that regulates the interactions of committees with public institutions and any other external entities. This law is meant to precisely define: (1) the means of communication between committees and public agencies; (2) the department at each public agency charged with communicating information to committees; and (3) the timeframe allowed to public agencies to share internal data when requested. To date, this

2 Interview by authors, 18 August 2020.

3 "La Commission de la Sécurité et de la Défense décide d'auditionner le ministre de l'Intérieur sur les événements de Tataouine," *La Presse.tn*, 29 June 2020, <https://lapresse.tn/66657/la-commission-de-la-securite-et-de-la-defense-decide-dauctionner-le-ministre-de-linterieur-sur-les-evenements-de-tataouine/> (accessed 21 February 2020).

4 Interview by authors, 17 September 2020, Tunis.

legislation has not been finalized or debated.

The lack of such a law may limit the power and legitimacy of the CSD to ensure democratic practices within security institutions, and more importantly, to generate real reforms that meet the principles of the Constitution and the needs of the general population. The cooperation of all public agencies, including the Ministries of Interior and Defence, is crucial to oversight; but despite an access to information law in place since March 2016, these ministries have been reluctant to share information.⁵ Without the law set out in Article 74, the MP who sat on both the COAFA and the CSD contends it is much harder to get high-ranking military and security officials to comply with requests and hand over sensitive information regarding national security issues. But this is complicated by the fact that committee sessions are generally open to the public and can be joined by other parliamentarians without invitation. In these circumstances, it is not surprising that security sector actors often refuse to release specific information that may be discussed during meetings of these committees. This legislation would therefore need to define precisely how parliamentarians handle sensitive information without jeopardizing the security of the state or any individual.

Since 2014, the CSD has gone to great lengths to establish channels of communication and cooperation with the Ministry of Defence. It also has been customary since then for the National Defence Institute (situated with the Ministry) to deliver a one-week workshop and training for members of the CSD, to explain the structure of defence institutions and the current challenges facing the security sector. Yet, these trainings offer relatively basic information and do not sufficiently highlight the urgency of the need to align the sector with the democratic transition undertaken by the country at large. In addition to these trainings, the parliament has occasionally organized knowledge sharing visits with European parliamentarians, so that members of the CSD can learn best practices from the EU in identifying specific reforms and implementing effective oversight.

Still, while knowledge sharing and training are useful tools to improve the capacity of members of the CSD, the scope of the committee's mandate remains undeveloped and is not yet substantive enough to effectively address the sector's most pressing issues. Moreover, it is difficult for MPs to transfer this knowledge into their day-to-day practice, and the continuous rotation of committee members as well as the option that MPs can sit on more than one committee makes it strikingly difficult to instil in parliamentarians a culture of truly effective security sector oversight and reform. This becomes a particularly salient issue when dealing with security establishments that are as arcane and impenetrable as the Tunisian Ministries of Interior and Defence, where officials are sometimes especially reluctant to cooperate with committees if they deem MPs have not absorbed sufficient important knowledge and understanding about these institutions; which hinders the ability of relevant committees to bring critical security reform issues to debate in the public sphere.

The unrealized potential of Article 49 of the Tunisian Constitution is another example of how the capacity of the ARP, and state authorities in general, has yet to be fully manifested. Article 49 concerns limitation clauses that can be imposed on the exercise of the rights and freedoms guaranteed in the Constitution, stipulating that these limitations - at one time, set by decree - must be established in law. Restrictions could be put in place, for example, to preserve a civil and democratic state and protect the rights of certain groups; or to ensure public order, national defence, public health, or public morals, with the caveat that some proportionality between these restrictions and any stated objectives must be sought. The Article also stipulates that judicial authorities are to ensure that guaranteed rights and freedoms are protected against violations, and that no amendment to the Constitution may undermine the human rights and liberties guaranteed within it.

Bringing Article 49 to life requires political will, however, and means that Tunisia must grapple with certain realities. Indeed, compliance with the Article demands legislative reforms that touch on the entire arsenal of rights and freedoms established in this rather legalistic country. But a lack of understanding

⁵ Efforts to apply the Law on Access to Information (adopted 24 March 2016) have been ongoing and it will likely take years to fully implement, if this is ever achieved.

or assimilation of the content of the Article and, consequently, of its legal and practical effects, is hampering its realization. Various actors are hesitant about or concerned by the prospect of applying Article 49, even within the limits of their respective roles (parliament, executive authorities, and the courts), and it is vital that all of them strengthen their understanding of its provisions to enable its appropriate implementation, especially when it comes to the principle of proportionality.⁶

The sensitive security context that has faced Tunisia since the fall of Ben Ali's regime has served as a pretext to disparage Article 49, and to continue practices that significantly limit rights and freedoms. Meanwhile, the absence of legislative advances in this area has enabled the executive, based on unconstitutional laws that remain in force, to use the Article to carve out exceptions within the new constitutional framework.

Commitment of the ARP to the democratic process

A strong commitment to the democratic process is a requisite among members of parliament, both because their work is likely to meet resistance and because it invites temptations to enrich oneself illicitly. But if parliamentarians must have sufficient normative and legal authority to oversee the security sector, they also need some form of immunity to protect them from retribution. The principle of parliamentary immunity is enshrined within the 2014 Tunisian Constitution in Article 68, which states that “[a] member of the Tunisian parliament may not be prosecuted in civil or criminal proceedings, arrested or tried for opinions, prepositions, or acts accomplished as part of his/her parliamentary tasks.” It is possible to lift this immunity in some cases, according to the internal regulations of the parliament itself (Section IV), through a request submitted by the judiciary to the President of the Parliament for investigation by the Standing Committee on Immunity and Parliamentary and Electoral Laws. On the basis of this investigation, the Committee presents its findings during a plenary session, before a vote on whether immunity should be lifted.

But even where immunity exists, it does not entirely mitigate tensions between MPs and actors in the security sector. A canonical case has been that of Yassine Ayari, elected to parliament in 2017, who has a long history of hostilities with the Tunisian Army that date back to 2013, when he was civilian blogger. In March 2018, Ayari was charged by military justice mechanisms with crimes including treason and defamation of the military institution, following a Facebook post that criticized the President's nomination of a high-ranking military officer.

However, the verdict was not implemented due to the immunity from which Ayari benefits, and no parliamentary action was taken to lift it.

Numerous journalists have also been tried in military courts for supposedly attacking the reputation and waning morale of the military. In other cases, the military justice code has been used by those with political ambitions to eliminate rivals. It has become apparent that this code, written in 1957, is no longer compatible with Tunisia's new path towards democratization and must be reformed. In fact, several of its clauses are clearly at odds with democratic values and human rights, and hence pose a direct threat to effective democracy building.

Indeed, it is no wonder that military courts have been suppressed, or their powers narrowed to only military concerns, in Western democracies. There is a clear lack of independence of military judges from the executive, as their appointments, promotions, and transfers are all approved by the Minister of Defence.⁷ At times, parliamentary oversight bodies have represented the concerns of the general public and civil society on this issue, especially in the case of two highly controversial laws - one aimed at reforming military courts and the other on the protection of security officers.

In 2018, the need to reform the military justice code, and specifically to prohibit the trial of civilians by military courts, entered public debate after a sequence of cases in which civilians and journalists were all tried by the military in similar circumstances. Human rights activists, civil society organizations, and international non-governmental organizations

6 It should be noted that a national commission for the harmonization of legal texts relating to human rights conventions has been established to identify unconstitutional laws and propose modifications to them that take into account Article 49.

7 Mighri and Grewal, “Reforming Tunisia's Military Courts: Order from Chaos,” The Brookings Institution.

joined efforts and urged members of parliament to shed light on this trend. Yet, debate on these reforms within the COAFA was soon curtailed and then overshadowed by discussion of the prevailing law on decentralization; and to date, a law to reform military courts has not returned to the agenda of the Committee. This puts the personal freedom of journalists, bloggers, and regular citizens at risk. It is typical in authoritarian states that their military justice system has jurisdiction over civilians, and it is difficult to root this out, which is why this is often the last thing to be reformed in democratizing countries. It seems this may also be the case in Tunisia.

Since the fall of Ben Ali, Tunisia has also grappled with attacks on Ministry of Interior forces, which have especially increased since 2015.⁸ This has led to debate over a controversial proposed law, put forth in 2015 (No. 2015-25), related to protection for armed forces and customs officers. It should be noted that the Tunisian security sector is resistant to change and has been seeking, for some five years now, to insulate itself through several legalistic efforts, mostly presented as indispensable to the fight against terrorism and money laundering. These initiatives have often undermined individual and collective freedoms and have been repeatedly denounced by Tunisian and international civil society organizations.

Still, by far, the law proposed by the sector that has generated the most controversy has been No. 2015-25, which was brought about by an attack on an officer of the National Guard. As presented to parliament in April 2015, it included several articles that increased the powers of security forces and reduced scrutiny over them. Since then, the Standing Committee on Rights and Freedoms and External Relations has held several rounds of discussion with civil society organizations to amend the draft law. According to a member of that committee, the bill has undergone several amendments, and articles that risked violating human rights have been abandoned. Still, the Constitutional Court has not yet been established (to offer review), and the rise of the COVID-19 pandemic as a national priority is likely to further postpone its inception.

On the topic of legislation, it is worth noting that neither the CSD nor COAFA have proposed any noteworthy legislation in the past six years. However, in November 2018, a group of parliamentarians presented a security bill proposing a legal framework to organize the structure and work of the intelligence community in Tunisia. Proponents of the bill argued that adoption of this law was crucial in order to clearly define the work of this vital yet enigmatic part of the national security system. This would have centralized information sharing among the country's three main intelligence centres - in the Ministry of Interior, the Ministry of Defence, and the Presidency. Moreover, it would have provided a clear set of prerogatives for these intelligence bodies in terms of data collection and sharing, while ensuring respect for privacy and human rights. The bill did not pass, but MPs who proposed it are convinced that if it had become law, it would have improved the confidence and trust of citizens in security institutions.⁹

Ultimately, the success of proposed laws is also contingent upon any draft laws emanating from the Presidency of the Republic and the Government, as those always take precedence over any others. Article 62 of the Constitution explicitly states that laws proposed by the Premier and the President have the highest priority, and that parliament should prioritize them in its own agenda. For instance, in the case of the bill described above on information sharing among intelligence agencies, the Presidency had also put forth a bill in the same period meant to address this issue, but from a somewhat competing perspective. Although the co-existence of these two bills may have created some tension between MPs and the executive, relations between the executive and legislative branches must evolve so that tension of this sort does not hinder the adoption of legislation affecting entire sectors. The ARP can undoubtedly add value in the security sector, but the legislative and executive will need to find ways to improve their cooperation on legislation that develops in response to issues emerging from the sector.

8 "Tunisie: Une attaque « terroriste » au couteau tue un gendarme en patrouille," 20 Minutes, 6 September 2020, <https://www.20minutes.fr/monde/2854991-20200906-tunisie-attaque-terroriste-couteau-tue-gendarme-patrouille> (accessed 21 February 2020).

9 Interview by authors with former MP, 18 August 2020.

The ARP and the COVID-19 crisis

Since the start of the COVID-19 pandemic in March and April 2020, the Tunisian government has decreed several partial and total lockdowns, the effectiveness of which has been impacted by a lack of both proper health infrastructure and public awareness. Security forces have been an integral part of the national campaign to stop the spread of the coronavirus, and President Saïed has deployed the military to support security forces in enforcing lockdowns. Within parliament, the CSD has met to discuss the evolving COVID-19 pandemic, and on March 16th, Committee chair Imed Khmiri issued recommendations to close Tunisian borders to international travel as soon as possible, and urged that security forces be deployed to impose safety measures on citizens.¹⁰ Despite considerable efforts by forces of the Ministry of Interior, violations of the lockdown were common, and only lessened after the deployment of Army forces.

In concrete terms, though, the Tunisian security services have been omnipresent and, in some ways, more powerful than ever. At the beginning of the crisis, actors who typically play a part in monitoring the security sector and holding security forces accountable to local populations were under curfew and confined to their homes, stuck behind computer screens, striving just to keep democratic processes functioning at a minimum level. And on April 4th, parliament approved a bill that delegated legislative power to the Prime Minister for two months, allowing the unilateral declaration of decree-laws to mitigate the pandemic; with 178 votes in favour out of 197 MPs present, and backing from all political parties.¹¹ A previous version of the bill had allowed just one month

of this unilateral power, but the period was extended due to the need to contain a clearly ongoing pandemic.

All members of the parliament also agreed to allow the government the legal tools to ensure the pandemic is contained by the enforcement of laws on confinement and mobility. However, as we mentioned earlier, an official state of emergency – which involves the transfer of additional powers to the executive – has been practically applied in Tunisia since 2011, but for a few short periods between 2011 and 2015. With additional prerogatives granted to the government, and consequently to internal security forces, there is the risk of an overuse/abuse of power by security agents. Indeed, several human rights watchdog organizations such as the Alliance Sécurité et Libertés (ASL) and Inkyfada have reported cases of excessive use of force by Ministry of Interior forces against the elderly and minorities.¹²

This has been brought to the attention of the CSD, which held a meeting in April 2020 with then Minister of Interior Hichem Michichi and other ministry officials to discuss instances where police officers had overreached in enforcing containment measures and how to prevent this behaviour. In this way, the COVID-19 crisis has highlighted the importance of better defining the scope of the CSD, something that several parliamentarians attempted to do between 2014 and 2019, without success.¹³ It is clear that trust between the authorities and average citizens needs to be rebuilt and strengthened; a goal that may take a painstaking long time to reach given the legacy of the Ben Ali era and the instrumental role of the police in meting out the trickled-down oppression of his regime.

10 “Coronavirus : La commission parlementaire Sécurité et Défense appelle à la fermeture immédiate de toutes les frontières,” Kapitalis, 16 March 2020, <http://kapitalis.com/tunisie/2020/03/16/coronavirus-la-commission-parlementaire-securite-et-defense-appelle-a-la-fermeture-immEDIATE-de-toutes-les-frontieres/> (accessed 21 February 2021).

11 “Law on delegating power to PM to issue decree-laws, submitted to Presidency (Parliamentary source),” Tunis Afrique Presse, 6 April 2020, <https://www.tap.info.tn/en/Portal-Politics/12533648-law-on-delegating> (accessed 21 February 2021).

12 Par Haïfa Mzalouat, “COVID-19 en Tunisie: Concentration et abus de pouvoirs sous couvert d’épidémie,” Inkyfada, 30 June 2020, <https://inkyfada.com/fr/2020/06/30/tunisie-covid19-concentration-abus-pouvoirs/> (accessed 21 February 2021).

13 Interview by authors with former MP, 17 September 2020, Tunis.

International and domestic support programmes for SSR

Since the early stages of the Arab Spring, the international donor community has placed its bet on Tunisia as a potential success story in a turbulent region. Consequently, several international donors – including the United States Agency for International Development (USAID) and the EU – have invested considerably to support Tunisia’s democratic transition. While most of this aid has been targeted towards voters and civic engagement, inclusive growth, and reducing socioeconomic disparities, donors have also had their eye on reforms of the security sector due to the imminent terrorist threat of neighbouring Libya. Historically, bilateral aid in this area took the form of technical assistance, trainings and exchange programs for Tunisian officers meant to improve their preparedness to deal with terrorism, and the facilitation of access to advanced armaments. Now, with Tunisia in the midst of a democratization process, that pattern of aid has evolved and now extends to the ARP and its security committees, as well as to the Ministries of Interior and Defence. For example, external actors such as DCAF, the United Nations Development Programme (UNDP), the EU, and the Westminster Foundation for Democracy (WFD) have all been focused entirely or partially on supporting reforms of the security sector, working closely with parliamentarians and competent ministries, and sharing expertise.

The longstanding problem of technical knowledge deficiency in the ARP is not unique to the security and defence sectors, though, and looms over the work of the institution as a whole. A survey administered several years ago to the 217 members of parliament showed that a large proportion simply lack the requisite knowledge to effectively carry out their mandate. This motivated the development of the Parliamentary Academy, created in late 2016 in partnership with the UNDP and the Hanns Seidel Foundation. Although the role of parliamentarians in security sector reform and oversight does not occupy a pre-eminent place in the curriculum of the Academy, it is certainly not ignored. The training revolves around three main areas: (1) oversight and control of the work of government agencies; (2) understanding legislation in various fields; and (3) communications and media strategy.

DCAF has initiated similar projects that are focused on involving citizens in security-related

decision making. It has also cooperated with the UNDP to promote more strategic planning among the parliamentary committees with a security sector mandate. This initiative, underway in 2015–16, was less fruitful than anticipated, but it could be relaunched and has the potential to generate more political will for the structural optimization of parliament. The objective of the initiative was to support parliamentary committees in reflecting on how they may fulfil their respective mandates better, including by considering ways to improve their structures and capacities but also by developing strategies to make their interactions with stakeholders more productive. It was meant to be a trust-building exercise between MPs and the institutions they oversee. But opposing views among parliamentarians themselves on the role of the ARP vis-à-vis the security sector kept this effort from moving forward. Some MPs felt their engagement on security sector issues should remain limited, allowing the executive to adopt a more traditional model of control. Others insisted that their actions on security matters should reflect the spirit of the 2014 Constitution, which is quite explicit about the importance of legislative oversight of the sector.

DCAF has worked closely with the CSD specifically, to improve capacities and expand the knowledge of committee members to help them better carry out their oversight mission. Just in the months before the 2019 elections, and then the pandemic, DCAF offered support to parliamentarians on a wide range of security-related issues – including on parliamentary oversight of the intelligence community, the application of the state of emergency, and the protection of human rights – with the objective to inform and encourage parliamentary debate on related draft bills. DCAF has also consulted on the role of the ARP in budgetary and financial control of security sector and defence procurements.

On top of this, DCAF is an implementer of an EU effort to create a police ethics commission, which is part of its larger programme to reform and modernize the Tunisian police forces in alignment with international standards and human rights. The actions of DCAF are aimed specifically at supporting the process of creating a police ethics body, as an independent commission or as a sub-commission of a body

tasked in the Constitution with overseeing the application of the code of conduct of the internal security forces of the Ministry of the Interior. In the end, this necessitates engagement by parliament, as legislation is required. The principle of involving parliament in establishing an ethics commission for police is based on acceptable practices; the approach is quite a novelty in a nascent democracy, however. Donors must understand that, despite this new era for Tunisia, the ARP might as well be a UFO to many in the security apparatus, composed in part of members of political parties who were not in the good graces of the former regime. This lack of trust between leading security providers and the ARP will certainly affect any parliamentary effort to create an ethics commission, meaning that patience and

understanding will be necessary to move this initiative forward.

The phenomenon of corruption is often associated with the security sector and is thus another crucial issue to tackle in sector reforms. In 2015, the WFD played an important role in establishing the Special Committee on Administrative Reform, Good Governance, Anti-Corruption and Oversight on the Management of Public Money in the ARP. The WFD emphasizes the necessity of parliamentary financial oversight in the MENA region and provides training to MPs on financial scrutiny, even organizing visits to the British and Scottish parliaments, allowing parliamentarians from places like Tunisia to observe and learn from the parliamentary oversight of public money management in these countries.¹⁴

14 "Towards effective financial scrutiny in Tunisia," WFD, 16 May 2016, <https://www.wfd.org/2016/05/16/towards-effective-financial-scrutiny-in-tunisia/> (accessed 21 February 2020).

Conclusions and Recommendations

Ultimately, the value of the COAFA and the CSD hinges upon the fate of the ARP. The need to debate and finalize a legal structure that ensures its financial and administrative autonomy is key to providing sufficient financial and technical resources to members of parliamentary committees with security sector mandates, so as to assess and implement the most needed reforms. But effective reform and oversight also require a legal framework; one that regulates relationships between the various committees and other public institutions. And while legislation regulating access to information was passed and has been implemented to some extent, the Ministries of Defence and Interior remain largely impenetrable and continue to use the threat to national security as an argument for refusing to share security-related documents with the public and with the ARP.

To ensure the ARP has a significant impact on the security sector, and in compliance with the country's democratization process, several important reforms must be discussed by parliamentary committees:

1. **Establishment of the Constitutional Court (per Article 147 of the Tunisian Constitution)** - the Court is critical to strengthening the democratic model and to effective reform and governance of the security sector. It is the only independent guarantor of the constitutionality of laws and the practice of parliamentary oversight. Equally importantly, the Court will ensure high standards for human rights protection and will thereby improve the trust of citizens in security institutions.
2. **Military justice reform** - the current code of military justice represents an infringement on the democratic values enshrined in the 2014 Constitution by allowing the trial of civilians in military courts. As has been a common practice in more classic democracies, Article 5 ought to be amended to: (1) limit the competence of military courts to strictly military affairs, and (2) avoid any ambiguities that may grant the military the right to arrest civilians.
3. **Reforms to the State of Emergency law** - following terrorist attacks in 2015, a state of emergency was again declared, and has been extended for various reasons since then, from imminent terrorist threat to the spread of COVID-19. The text used by the president to declare a state emergency is the same decree-law (No. 78-50 of 26 January 1978) that was used to oppress Tunisian General Labour Union (UGTT) protesters in what is known as "Black Thursday." In 2019, a law organizing the state of emergency was submitted by President Béji Caid Essebsi after consultation with the ministerial council, but it has not yet been taken up. It is critical that members of security sector committees and other parliamentarians examine this text closely, as it has raised eyebrows among human rights activists and legal experts. In particular, the law gives additional power to the executive to use security forces and the Army. Without the control of a seasoned parliament, this has the potential to result in human rights violations and risks running afoul of the democratic principles enshrined in the Constitution.¹⁵
4. **Regulation of the intelligence sector** - regulating the work of security intelligence organs has become more urgent than ever, not the least because Tunisia remains imperilled by terrorist threats due to its geographic location. It is crucial to establish a legal base that sets the structure, prerogatives, and limitations of intelligence services. According to one expert on legislation in the sector, this will also contribute to improving the efficacy of the security sector in general, since there are intelligence directives within the Ministries of Defence and Interior, as well as within the Presidency. Regulating their work would improve intelligence-sharing capabilities while ensuring respect for human rights and privacy.¹⁶

Given the Tunisian context, the accomplishments of parliamentary legislative and oversight committees thus far is promising. Continuing down this path could very well

15 "Projet de loi de l'état d'urgence en Tunisie: Est-ce si urgent?" Leaders, 13 March 2019, <https://www.leaders.com.tn/article/26684-projet-de-loi-de-l-etat-d-urgence-en-tunisie-est-ce-si-urgent> (accessed 21 February 2020).

16 Interview by authors with expert on security sector legislation, 4 September 2020

lead to the eventual implementation of reform proposals mentioned above. Indeed, MPs in general and especially those with seats on security sector committees have the necessary immunity and protection to carry out their mission of controlling, overseeing, and recommending reforms in the sector. However, in its current form, the ARP lacks the resources to ensure regular monitoring of the security sector and best governance practices. International donors continue to provide valuable technical assistance, including training and knowledge sharing with countries

that have succeeded in implementing effective SSG, and this support is critical to helping MPs in Tunisia build the strong analytical and research skills required to understand current issues in the sector and areas in need of reform. Still, because oversight tasks demand a clearly defined authority for MPs so that they can access information related to national security, a lack of legislation in this area is a hindrance to effective reform, especially in areas related to data privacy, human rights protection, and intelligence collection and sharing.



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