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What Role for Tunisia's National Dialogue under the Interim Unity Government?

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Tunisia's National Dialogue, established in October 2013, is a necessary institution for resolving differences. It is not a substitute for the National Constituent Assembly (NCA). The members of the Dialogue are high level leaders who are able to take decisions and implement them through their representatives in the NCA. This situation has created a compromise between electoral legitimacy and consensus legitimacy. The elections represent the core of the democratic process, but the process remains incomplete, requiring support and broad agreement to safeguard the transitional phase and to ward off the "arrogance of the elected".

The fledgling unity government was founded through compromise and will require continuation of the National Dialogue, particularly in the face of the difficult economic situation. The resumption of the Dialogue, to help complete the implementation of the road map, settle new differences and support its role in the future, grants popular legitimacy to the unelected caretaker government. It represents a place to find solutions to existing differences and to travel a transitional path that is fraught with dangers. The National Dialogue continues the work of the government, with powers to make decisions and resolve disputes until the next elections. The success of the past two years, though the experience was not ideal, shows that the establishment of dialogue can support progress on the path of democracy in Tunisia.

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1) Introduction

Tunisia's National Dialogue began at the end of October 2013. Its first major achievements, in January 2014, were the swift ratification of the constitution, the formation of a caretaker government and the election of an Electoral Commission for overseeing elections. Efforts in June 2014, a month after the coming into force of the electoral law on 27 May, resolved the issue of synchronizing the elections, setting October and November 2014 dates for the legislative and presidential elections. The national economic dialogue held on 28 May is considered to be of great importance, despite differences in opinion over its usefulness.

The National Dialogue came together anew in the headquarters of the Ministry of Justice, Human Rights and Transitional Justice on 5 May 2014. This was more than four months after the formation of the fledgling unity government, and a month after the 7 April announcement by the Tunisian General Labour Union (UGTT - Union Générale Tunisienne du Travail), one of the groups sponsoring the National Dialogue, of the start of consultations aimed at resuming the meetings of the National Dialogue. This announcement came immediately after the return of acting Prime Minister Mehdi Jomaa from a trip to Washington. During this new meeting of the National Dialogue, the President of the Electoral Commission spoke about the legal and substantive difficulties concerning elections and different scenarios for running them either simultaneously or separately.

Is there still a role for the Dialogue after its remarkable earlier success in leading the country out of the deep crisis that had almost pushed it off the path to democracy? The role of the Dialogue is not over, in spite of hesitations arising from the disparity in support for further talks. Moreover, its role needs to be supported in the coming months to help the caretaker government, which was not formed as a result of the electoral process, to respond to new demands and to avert any dangers or developments that may threaten its future.

2) The creation of the National Dialogue

The National Dialogue began in October 2013 in a situation characterized by a lack of trust and vision, political instability, criticism of the government's performance, and the deterioration of the security situation.

The disagreement between the majority and the opposition within the National Constituent Assembly (NCA) in 2012-13 had made it impossible to develop a balanced constitution within the defined time limit. The NCA was originally elected only for one year in accordance with the decree issued by the interim government in May 2011 and ratified by eleven political parties in September 2011, a month before the elections. Once elected in October 2011, the NCA produced draft constitutions in succession without agreement over the most important points for founding a civil, non-religious, democratic order with a balance of powers and protected freedoms. The fourth draft of the constitution, issued on 6 June 2013, dashed many hopes. It included nearly twenty basic points of disagreement (excluding minor differences) which a committee for agreements within the NCA was unable to resolve. Equally, the NCA

was not able to complete the election of nine members to an Electoral Commission that was required to replace the previous structure which had overseen the elections of October 2011 and which was then dissolved by Hamadi Jebali's new government.

Jebali's government was unable to take advantage of the electoral support that the government majority enjoyed. This majority consisted of three ruling parties (Ennahda, the Democratic Forum for Labour and Liberties (Ettakatol) and the Congress for the Republic), known as the Troika, which formed a government which went through more than 75 ministers and secretaries of state. They lacked experience and were overcome by political wrangling. The government wanted pressure on the media and the subjugation of the judiciary, and followed a populist policy based on the absorption of the unemployed through assignments to the civil service, financed through international borrowing. The government did not take criticisms seriously but considered them to form part of a systematic campaign by the opposition. The current acting prime minister, Mehdi Jomaa, recently explained in a televised discussion about the unprecedented size of the deficit, estimated at nearly 12 billion dinars (9 billion dollars), confirming beyond any doubt the failure of successive transitional governments. According to Prime Minister Jomaa, the government has borrowed the equivalent of the annual budget (25 billion dinars) over the last three years.

The work of the Jebali government coincided with a security breakdown in the face of a wave of violence led by extremist religious groups, obstructing investment and tourism. This breakdown led to the assassination of Chokri Belaid in April 2013, kindling disagreement between the government and the opposition. Ennahda was besieged with accusations of being involved with terrorism, exacerbated by the controversial statements of some of its leaders. Following the demand by the opposition to form a caretaker government positioned midway between the political blocs in the NCA, Jebali's government resigned in March 2013 in favour of a government managed by Ali Laarayedh. The assassination of NCA representative Mohamed Brahmi at the end of July 2013 pushed nearly 60 representatives to leave the NCA and led to a protest in Bardo Square in front of the NCA. Thousands of citizens joined in the Bardo protest, which lasted nearly the whole month of August, demanding the dissolution of the NCA and the resignation of the government, both of which the protesters felt had lost their legitimacy according to the law. The response of the ruling majority was the mobilization of supporters in a counter-demonstration in the same square, and the creation of a front defending their legitimacy. This front was composed of 12 parties which considered dissolution of the government and NCA to be "red lines" which were non-negotiable.

In a context charged with tensions exacerbated by the quasi-military coup in Egypt, the UGTT, which was seen as having played a twofold role in the fight for independence and in the building of the modern state, set about creating a quartet of civil society organizations to oversee a National Dialogue. The quartet included the UGTT itself, the Tunisian Union for Industry and Commerce, its historical partner, as well as the Tunisian Human Rights League and the Tunisian Bar Association. The civil quartet aimed to bridge the gap between the viewpoints of the majority, which was obstinately clinging to its electoral legitimacy, and the opposition, which was calling for the government's replacement through the legitimacy of consensus. Quartet-led consultations led to the arrangement of the National Dialogue with the participation of parties represented in the NCA. This stirred up the resentment of the dozens

of unrepresented parties and protestations from those elected to the NCA without party affiliation. In this way, the Dialogue was developed under the guidance of the civil quartet to include 21 parties on the basis of one representative member from each party, whatever its electoral share, with the exception of the parties that removed themselves (the Party of Loyalty to Tunisia and the Congress for the Republic.) The Dialogue put in place a road map with three paths: governmental, constitutional, and electoral, with internal committees created for this end. The Dialogue almost stopped more than once due to the intransigence of the groups during the proceedings and their differences regarding the road map clauses and whether to implement the three paths in parallel (as the ruling majority was demanding) or each path separately, following the government's resignation (as the opposition demanded). It was expected that the Dialogue would arrive at a solution in a few weeks, but the marathon meetings lasted nearly three months, leading in the first week of January, 2014 to the choice of Mehdi Jomaa as prime minister. At the same time, the committee within the NCA succeeded in resolving the constitutional differences and the NCA was asked to hasten the election of a supreme body to oversee the elections.

3) The work of the National Dialogue

Having arrived at an agreement and having formulated a consensus constitution, is the proposal to pursue the Dialogue now in a more favourable political climate since Mehdi Jomaa became Prime Minister? In reality, the role of the Dialogue is not over because some of the points that were agreed upon in the road map have not subsequently been completed. Among the important unresolved issues were three issues that put the legitimacy of the Jomaa government in the balance, and which the government has begun to deal with:

The first issue is a review of the party appointments made by previous governments, estimated as being in the thousands at all levels and institutions. The Ennahda party took exclusive possession, by the end of 2013, of more than 80% of the key positions: 19 executives (out of 24), and 229 commissioners (out of 264) according to the President of the National Union for Transparency, Neutrality of the Administration and General Welfare. Prime Minister Jomaa replaced the 24 executives as an initial step, followed by changes to the 264 commissioners (divided according to the geographical division of Tunisia) due to the importance of this group for the electoral process.

The second issue is the dissolution of the "leagues for the protection of the revolution", as they were known by the Interior Ministry, which were proved to be involved in acts of violence such as the attack on the official headquarters of the UGTT on 4 September 2012, according to an investigation committee which supplied the results to the prime minister. It seems that the recent sentencing to prison of one of the league members on the outskirts of Tunis, on an accusation of incitement to violence, is an exception for the judiciary after doubts that had hovered around its independence during the patronage government of Ennahda. Prime Minister Jomaa explained that protecting the revolution is a matter for which the state is responsible, saying frankly that "the revolution has a state to protect it". In an encouraging development, the court of first instance in Tunis ruled on 26 May 2014, subject

to appeal, in favour of the dissolution of the National Association for the Protection of the Revolution and of all of its branches, as well as the confiscation of its property, due to its involvement in acts of violence.

The third issue is the neutralization of the mosques by limiting the control of religious extremists in their hundreds and by working to prevent calls of “excommunication and hatred and violence” from the highest pulpits and beyond, according to what was put forward in Section VI of the constitution of January 14th 2014. There are positive signs in this direction arising from a serious political wish to restore to the state her powers to appoint imams and preachers.

Achieving these aims does not require the extension of the life of the Dialogue, but new issues of dispute have required and still require its intervention and arbitration. Among them are the settlement of electoral requirements and consultation on the economic dossier. With regards to the elections, it was incumbent on the Dialogue to define dates and choose whether to run the presidential and legislative elections separately or at the same time, especially after the electoral law was recently ratified by a majority (132 votes for, 9 abstentions, and 11 against), and the temporary constitutional court’s rejected five appeals put forward by the opposition. The law was based on the most important clauses of the previous electoral law, such as the division of electoral constituencies, the number of seats in each constituency and whether the balloting lists should be done proportionally or with men and women alternated. Also, Chapter 167 which excludes former party leaders from being candidates, was dropped and the suggestion for the illiterate (of whom there are estimated to be around a 1,000,000) to be accompanied in a secret room on the day of the ballot was rejected.

The opposition put forward five appeals to the temporary constitutional court, the most important being the appeal around Article 6 that prevents security and military personnel from exercising their right to vote and which, according to the appeal, violates the principle of equality. They also put forward an appeal around the reliance on vertical equality without stipulating horizontal equality: that women should be at the top of half of the candidate lists for each party. This violates Article 46 of the constitution stipulating that the state should strive to achieve equality in elected councils. With the appeals rejected, it is possible for the law to be officially sanctioned by the Electoral Commission starting from its entry into force on 27 May. The question of whether to run the Presidential and parliamentary elections separately or simultaneously was resolved, with both now planned to be run before the end of December 2014 as stipulated in the constitution.

As for the economic dossier, this is more complicated and dangerous since there are organizational and structural issues on which the Jomaa government cannot take decisions without broad political agreement. Some of these decisions would have consequences for the standard of living for Tunisians and a very negative impact on the purchasing power of those with a low income, such as limiting state subsidies for food and fuel. Consequently, the government is asking for a national conference for economic dialogue to be held and a timetable for its actions. The UGTT did not initiate this proposal, but expressed its support in May 2014 in the activities of the preparatory committees after the government's agreement to some of its conditions. The UGTT had previously interrupted the activities of these

committees protesting that the timetable was being ignored for actions on two fundamental issues, taxes and prices. The economic dialogue is shrouded in mystery after some criticisms were directed at the government for its lack of a work document and clear plan. The situation is becoming more complicated with the announcement by the Popular Front (the third political group) that it is officially boycotting the economic dialogue in protest at the government's policy which it claims is dictated by international financial institutions, especially the International Monetary Fund,. It has also expressed its surprise at the government's request to keep the activities of the economic dialogue secret.

4) The future of the National Dialogue and of Tunisia

Since political developments in the country continue to require the addressing of controversial issues, the importance of the National Dialogue is likely to continue and to grow. The intention, according to statements by the civil quartet sponsoring the Dialogue, is to create a committee to follow up the actions of the government. The features of such a committee remain unclear and, more than that, the country may make the Dialogue the mainstay of its political life and place of final resort after what Prime Minister Jomaa said about the depth of the economic crisis.

In sum, the National Dialogue enjoys powers of decision making and dispute settlement in support of a democratic trajectory. The Dialogue could become more important after the coming elections if we may rely on the statement of the Ennahda leader that they will not make any obstacles to the Jomaa government continuing indefinitely. One of the leaders of Call for Tunisia also supported this statement.

Initially, the previous government majority objected to the Dialogue, fearing that it would become a substitute for the elected institutions in a framework lacking legitimacy. They were apprehensive about delegating power in parallel with the opposition which could then dictate to the government what it was commissioned by the people to do. This argument seems logical, but resorting to the Dialogue was done reluctantly by the NCA, which was delayed in carrying out its mission but has since has turned into a normal council overseeing the government and enacting laws. Some of them are outside its mandate and should be dealt with by the coming government. The phenomenon of absenteeism was also wide ranging in the NCA. Personal differences flared up the extent that accusations were exchanged and there was recourse to the judiciary.

The choice was between eroding the electoral legitimacy of the foundational NCA, tarnishing its image, taking to the streets, or imagining an alternative political solution. The Dialogue functions as an institution for resolving disputes. It is not a substitute for the NCA, as shown by the fact that the NCA still exists. Moreover, the members of the Dialogue are high level leaders who can take decisions and implement them through their representatives in the NCA. Although the organisation process of the Dialogue was amended to give participants equal weight regardless of the election results, the civil quartet overseeing the Dialogue granted Ennahda the right of veto in appointing a prime minister, which allowed it twice to reject the

appointment of a prime minister that had obtained the majority of votes in the Dialogue. There was, therefore, a compromise between electoral legitimacy and consensus legitimacy.

Elections represent the core of the democratic process, despite being a flawed process needing support of a broad consensus to safeguard the transitional phase and to protect against the "arrogance of the elected". Even the exclusion of groups not represented in the Dialogue is only relative, as many are able to participate indirectly through consultations within coalitions of parties they are affiliated to, most importantly the Union for Tunisia and the Popular Front. Given day to day requirements, it is far from inevitable that the Dialogue will end when it reaches an agreement. Though its function needs to be defined more precisely, the fear that it will weaken the government if it continues is unjustified. This was explained by Prime Minister Jomaa in a lecture to the Center for Strategic and International Studies in Washington on 2 April 2014. He stated that his government had been founded on compromise, and was preparing for dialogue, as required by the difficult economic situation.

Jomaa also explained this to the decision makers in the state (the President of the Republic and the President of NCA), the leaders of the opposition, and the director general of the UGTT two days before he left for Washington. He stressed that the state may be unable to pay staff wages and pensions in the coming months, pushing the government to ask for a national economic dialogue to grant political legitimacy to measures that might not be popular. Therefore, any flight from participation in, or doubtfulness about the value of, the National Dialogue represents a danger.

The resumption of the Dialogue to complete the implementation of the road map, to solve issues and to support its role in the future, grants popular legitimacy to the unelected compromise government. It represents a solution to the political differences and security challenges along a path fraught with dangers if democracy is not recognized as the only basis upon which political life is founded. In order to preserve this channel and continue its success in the future, some conditions need to be satisfied:

1. Groups represented in the National Dialogue need to be pushed to resume work on of the first road map and to seek appropriate solutions to outstanding issues.
2. Groups not participating need to be convinced to support the Dialogue and to work for its success, especially given that a number of active parties can express their opinion through connections with political coalitions that are represented in the Dialogue.
3. There needs to be a precise definition of contentious issues and ordering of priorities so that the Dialogue is not weighed down with secondary issues or sidetracked and does not end up interfering with issues that should be under the jurisdiction of other groups or frameworks.
4. There needs to be coordination between the Dialogue, the government and elected institutions in maintaining a balance between electoral and consensus legitimacy.

Finally, the success of the past two years, although they have not been ideal, shows that the Dialogue supports a democratic trajectory in Tunisia, continuing the work of the government while enjoying powers to make decisions and resolve disputes until the next elections.

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