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# Security Sector Reform in Tunisia Three Years into the Democratic Transition

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Tunisia's 2011 revolution removed the Ben Ali regime but did not overthrow the country's security institutions. While the revolution was mostly peaceful, a serious security breakdown took place when the internal security institutions retreated from their front line roles during the political crisis. The fragile security situation was further threatened when revolution in neighbouring Libya sent refugees and extremist militants across the border. In this fluid political, institutional and security situation, questions remain about the ability of the state to address security issues and establish a security system that breaks with the past and works in service of the citizens within a democratic system.

There have been several improvements to the security establishment in the last three years, including the ratification of a procedural guide on human rights for internal security forces, the revision of laws governing arrest and detention, the legalisation of unions for security personnel and the ending of the electoral role of the Ministry of Interior.

Too many changes, however, have been limited or poorly executed and it has been difficult to build political, legal and institutional support for reform. The rapid replacement of many top-level security officials, done outside of any broader transitional process, and the dissolution of the State Security Apparatus caused confusion within the security structures. Legislation and policy changes have been largely technical, with the focus more on stability and cohesion of the security institutions than on the necessary structural changes for these institutions. The new constitution was an important step, but does not make security institutions subject to parliamentary oversight or accountable to state institutions and the public. To avoid political exploitation, the formation of a national commission should be considered for developing a strategy for security sector reform.

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## 1) Introduction

The Tunisian revolution took place without upending the country's military, judicial and internal security institutions, which continued in their roles, imposing order and enforcing the law. The army played a major role during the revolution by maintaining a neutral position and protecting lives and property. The revolution was largely peaceful, had no clear agenda or political leadership, and ended quickly when the ruling power was ousted without any military confrontation with the people. Violent confrontations did occur, however, between protesters and internal security forces, which the former regime used in suppressing the protesters, resulting in many casualties. These clashes highlighted the shortcomings of the security forces in dealing with the changes that Tunisian society was witnessing. Tunisia was one of the first Arab states to enter the path toward a democratic transition, a route that appeared smooth at first but was soon shown to be very difficult.

The peaceful character of the revolution did not prevent conflict between political groups and security institutions. The protestors in the street were focused on securing the transition of power from the institutions of the former dictator to an interim government that could fulfil the demands of the revolution: to establish a new system of power that broke with the past, was founded on the principles of democracy and respect for human rights, that guaranteed freedom and dignity, and that delivered social justice. Though the country's security institutions were not upended, a major security breakdown took place because of the retreat of the internal security institutions (police, national guard and prison workers) from their front line roles. Tunisia thus witnessed, from the first days of the revolution, many examples of violence, increasing in intensity as protests escalated. The protests were accompanied by vandalism, looting, and the burning of both private and public property, including the outposts, headquarters and equipment of the security forces.

At the same time, Tunisians witnessed the fall of the regime in Egypt and the revolution in Libya, which sent swarms of refugees pouring across their border. The borders were infiltrated by militants and refugees expressing extremist ideologies, a process which played a major role in undermining stability in both Tunisia and its neighbours. This situation created significant pressure on Tunisia's military and security institutions, especially as the continuation of armed conflict in Libya led to the movement and operation of fighting groups on Tunisian territory. This was the greatest military and security challenge that Tunisian forces had faced since the 1980 conflict in the city of Gafsa. Tunisian soil became a passage and springboard for all kinds of crime (arms trade, drugs, illegal immigration, etc.). Extremist Islamist groups thrived, using Tunisian territory to organize and train for operations, with little effective action taken by Tunisian security forces.

On the political level, these events coincided with the imposition of a state of emergency and the suspension of the 1959 constitution. There were demands for election of a National Constituent Assembly (NCA) that could develop a new constitution, breaking with the injustice, oppression and corruption of the past to establish a political system that would be democratic, participatory, civilian, recognize the supremacy of law and protect human rights.

The security establishment witnessed several changes that affected its leadership, structures and functions during the period before the elections of 23 October 2011. These changes impacted the balance of power, but the security establishment has remained engaged in the larger processes of legislative, structural and functional reforms, without making sufficient progress of its own towards the development of a security system in the service of the citizens rather than the regime.

In light of this fragile and fluid political, institutional and security situation, questions remain about the ability of the state to address security issues, especially the reformation of a security system which has remained in place. The challenges are immense, the stakes are high and the political will to enact change has not yet crystallized. Reform efforts have not reached the point of establishing a security system that breaks with the past and works in service of the citizens in a democratic system. The future remains unclear and continued progress on the path of reform remains uncertain.

## **2) Stability and capacity for reform in the security establishment**

Several changes were made before the 23 October 2011 elections that continue to impact the balance of power for the security establishment as well as the possibility of initiating reform. The most important changes were:

### ***Dismissal of security officials***

This procedure was done by administrative decision outside any transitional justice process. It caused confusion on the operational level of the security structures which lost a group of senior leaders.<sup>1</sup> Regardless of whether those leaders were involved in acts of oppression or corruption under the previous regime, their dismissal did not comply with the regulations and judicial guarantees that were stipulated by the laws organising the security sector. The dismissal decision did not lead to the security structures immediately regaining public trust. Since tension and suspicion pervaded the relationship between the security establishment and the wider public, the resultant security vacuum contributed instead to destabilizing the legitimacy of the security establishment, and increasing its fear of legal prosecution. This created a reluctance to work, especially among the security units that had been at the forefront of suppressing demonstrations (Intervention Forces, State Information Authority). This hasty decision, though in some ways understandable, left some bitterness that might be, in the absence of monitoring and rehabilitation frameworks, a reason for spite, revenge and efforts within security departments to thwart reform attempts.

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<sup>1</sup> The dismissals included directors of 11 security agencies: The General Directorate of National Security, The Directorate of Public Security, The General Directorate of Specialised Services, The General Directorate of Technical Services, The General Directorate of Intervention Units, The General Directorate of Head of State Security and Officials, The General Inspection for National Security, The General Directorate of Formation, The Directorate of the High School for Internal Security Forces, Cooperative for Employees of National Security, Prisons and Penitentiaries, and The Central Directorate for Operations. The process of dismissals took place in multiple stages under consecutive governments.

### *Dissolution of State Security Apparatus and elimination of role for political police*

In the same vein, then-Minister of Interior Farahat Al-Rajhi issued a decree dissolving the State Security Apparatus and eliminating any role for the political police practices they performed.<sup>2</sup> Because of the repressive practices associated with the State Security Apparatus, the dissolution decision was well received among human rights activists, many of whom had been victims of the political police during periods of dictatorship.<sup>3</sup> However, it did not constitute, neither on the structural level, nor formally, a step towards reform inside the Ministry of Interior. The matter of dissolving the State Security Apparatus remains an issue of contention and criticism to this day, with some considering this decision to have been arbitrary, confusing the apparatus itself with some of the people who worked within in it, some of whom who were involved in repression and corruption.<sup>4</sup> The decision also did not take into account the unique position of this apparatus and its intelligence role during the pivotal transition period. Most of the crimes that the State Security Apparatus was fighting were concerned with security issues such as terrorism, extremist and jihadi movements, organised crime, the arms trade and illegal drugs. Its dissolution created a practical and structural vacuum, hurting its capacity to deal with most imminent threats for state security. The danger was exacerbated by the fragility of the internal security situation (especially the border system) and the destabilization of the security situation in the region.

The dissolution of the State Security Apparatus remains an issue that requires objective scrutiny separate from claims about its historical and political importance and the lack of clarity in that field. Whatever the political situation, the decision took place outside the legal framework. It was not accompanied by procedures that might allow the restructuring of the Ministry of Interior, especially on the level of intelligence, in a way could ensure its continuation and efficacy while reinforcing oversight of its work. In addition, there has been a gradual decline in the effectiveness of the dissolution process, especially the dismissal decisions, as a number of affiliated personnel who had been ousted were already reintegrated. This negatively affected the balance of power in the security establishment in terms of the clarity of the chain of command and its efficacy.

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2 The Ministry of Interior announced in a communiqué on 7 March 2011 that it decided to cancel the Directorate of State Security, absolutely breaking with all that can be categorised, in any form, under the term "political police" in terms of structure, functions and practices.

3 Some of the positions were published in the Tunisian press in light of the dissolution of the political police: "A Decision no Less Important than freezing the Rally and Declaring the Constituent Assembly", published in 'Al-Sabah', 8 March 2011, <http://www.tuess.com/assabah/50537>

4 Samira Al-Khayyari Kesho, "What is Political Police.....and what is its Function?", published in Al-Shourouk, 08 March 2011, <http://www.tuess.com/alchourouk/183686>

### ***Stripping any electoral role from the Ministry of Interior***<sup>5</sup>

The decision to establish an independent High Electoral Commission to supervise the 2011 elections, from registering voters to announcing the final results, was Tunisia's most important legal and political procedure on the path to democratic transition. The removal of the Ministry of Interior from the electoral process was a key condition for organising free, fair, transparent and democratic elections. Elections are central to the democratic process and important for any reforms that follow, including of the security sector. Accordingly, the Ministry of Interior and all affiliated security and administrative departments were restricted to undertaking security operations only in coordination with the High Electoral Commission and under its supervision. The elections were held in secure conditions and according to the parameters of law and freedom. This procedure may have been as important legally as it was politically because it was one of the few procedures done on the basis of a clear legal statute and in a clear constitutional framework, it was approved by all parts of civil society, and it took place with the commitment of all state structures and institutions, including the security establishment.

### ***Legalisation of unions for security personnel***

This is considered a key result of the revolution which provided benefits for security personnel. Following the appearance of a security vacuum and the deterioration of the relationship between security force and the public, security personnel ended the silence that had muted them for decades. They were anxious to explain their deteriorating financial, social and professional situation. They demanded the right to form unions and defend their interests as members of the public and as victims of tyranny themselves. The first unions were formed outside of any legal framework, though recognised later. These burgeoning organisations became active in security discussions and later in political discussions, influencing relations with the leadership of security institutions and with Tunisia's political leadership. Conspicuously, though the experience of unionism was new, there was unprecedented support, which affected how unions dealt with each other, with professional and security issues, and with political matters in general.<sup>6</sup>

The formation of unions by security personnel affected relationships between various actors because union activities were not restricted to social and professional rights but, for many reasons, were also connected to the political sphere. After the security situation had reached a point of crisis, with terrorist acts, political assassinations and the targeting of security and military establishments by armed groups, some security unions challenged that political and security leaders were being lax in dealing firmly with the threat of terrorism. There were even suggestions about the possible existence of a "parallel security" that works for interests

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<sup>5</sup> The Ministry of Interior used to perform important functions in the electoral process. Chapter 3 of Directive No. 342 of 30 May 1975, which deals with regulation of the scope of the Ministry of Interior, states: "The Ministry of Interior is responsible for organisation and the proper conduct of the electoral process as well as authorising its results".

<sup>6</sup> Basma Al-Maallawy: "The experiment of security syndicates is rare universally: security personnel in Tunisia reject the voices calling for disbanding their syndicate and hold on to their rights to unionize", African Manager (in Arabic), 7 March 2014, [http://www.africanmanager.com/site\\_ar/detail\\_article.php?id=26455](http://www.africanmanager.com/site_ar/detail_article.php?id=26455)

outside the security institutions, seeking to undo its unity as part of a broader strategy to push Tunisia off the path toward democracy. Security unions became active players in political life and involved themselves in political choices, including who would be chosen as Minister of Interior, issuing statements to demand support for the security establishment and preservation of its stability. The unions pressured political parties, the national dialogue process and the designated prime minister to accept their suggestions. There were union calls for the neutralization of the Ministry of Interior to ensure that security operations were distanced from all political pressures. There were also calls from unions to rally around the security and military establishments and support their efforts to resist terrorism and to defend the integrity of the homeland. It was through these different activities and their intense media presence that they communicated directly with the public, creating a new kind of communicative sphere between security personnel and the public that had not previously existed. The wider public became the centre of a contest between the government and the security unions searching for the truth of what was happening in the country.

This union movement called for in-depth understanding of the relationships between different actors in the security sector, as well as between themselves, civil society and the public. With the ratification of the new constitution, the appointment of a government of technocrats, and the move towards new elections, Tunisia may exit the transition phase and develop permanent institutions that will be able to determine the status and role of security unions, guiding their work and repositioning them in relation to the political and security reality in a way that ensures more professionalism in the security establishment.

### **3) Prospects and challenges of reforming Tunisia's security sector**

There were several changes in the Tunisian security sector in the three years between the revolution of 14 January 2011 and the time of writing (March 2014), but the changes were often limited, affecting only certain parts of the Ministry of Interior, the Ministry of Justice and personnel working in internal security. Changes were often dictated by circumstances and by political and security pressure in a country undergoing transition.

The legal, structural and leadership changes in the security sector have taken place in an unstable political and institutional context. Six interim governments have succeeded one another since the fall of the Ali regime, three of them after the 23 October 2011 elections. Legislative power was shared between the executive and the government for almost a year, and with the National Constituent Assembly (dominated by an Islamist majority and its allies - the ruling 'Troika') for two years. This period ended with the ratification of the constitution on 27 January 2014 after a consensus was found in the framework of national dialogue to end the transition phase, ending a severe political crisis.

### ***Changes at the top of the security establishment***

Several changes happened at the top of the security establishment, especially in the Ministry of Interior where five ministers succeeded one another, without counting the appointed ministers and bureaucrats. Several items should be noted about the changes:

- ⤴ They took place under political pressure with the aim of neutralizing the Ministry of Interior and the independence of individual ministries. They were done at the request of the democratic opposition, supported by the professional unions, after the Ennahda Party took the portfolio of the Ministry of Interior.
- ⤴ The updated portfolio of "reform" for the Ministry of Interior was abandoned after the formation of the most recent government cabinet composed of independent technocrats.
- ⤴ The changes were not restricted to the head of the Ministry of Interior but included the central security leadership inside the ministry. Change was accomplished by dismissing existing staff and appointing new general directors at the top of the most important security services, including: the General Directorate for National Security, the Directorate of Public Security, the General Directorate for Specialised Services, the General Directorate for the National Guard, the Directorate of Intervention Units, the General Directorate for Training, the General Directorate for Common Services, and the Counter-Terrorism Directorate. These changes often took place as a consequence of the security crisis, with failings attributed to security leadership, though some of these were the consequences of changing the Minister of Interior.

The military establishment, for its part, underwent critical changes in the summer of 2013 in its top leadership (the heads of land, sea and air forces, and the heads of General Intelligence of the Armed Forces and Military Security). This came following the decision of the Chief of Staff of the armed forces, General Rachid Ammar, to leave military service due to the age limit. These changes occurred in a political and security context that was not less turbulent than that facing the rest of the security sector, including the Ministry of Interior and its affiliated bodies.

In contrast, the changes that affected the Tunisian security sector at the level of government policy and legislation were minimal, restricted mostly to some professional aspects. The National Constituent Assembly did not exercise its legislative power to restructure the Ministry of Interior and security agencies, redefine their duties and role in society or regulate their legal framework to ensure democratic oversight over security sector.

Despite calls for urgent legislative reform of the security system from civil society organisations, security unions, political parties and security specialists, legislators were unable to intervene quickly in that area. The ratification of a constitution with provisions related to security and defence, including the specification of complete neutrality of the security and military institutions, remains the most prominent legal reform related to security over the past three years. Even these provisions, however, are difficult to consider as the start of a reform process because they did not show a new conception for the security sector that could be the

starting point for legislative and structural changes that break with past practices and pave the way for a security establishment in the service to the public, working within the framework of the law, subject to civilian oversight and accountable for its functions to state institutions and the entire society. Therefore, the public still holds expectations for a legislative policy that can properly frame the security sector and establishes democratic security.

At the level of security policies, it is difficult to speak of clear existing changes. In addition to disruption of reform processes, the focus was more on preservation of the stability and cohesion of the security establishment than on introducing fundamental changes, such as new work strategies, a new administration, or clarifying basic security choices that could lead to the establishment of a new security doctrine focused on security in the service of citizens and on public security. It is not surprising that the obsession for preserving the cohesion of the security establishment, together with the absence of reform processes, led to the reproduction of the old security system via acquiescence to changes at the leadership level. In the absence of competent, capable and neutral staff, this ensured the loyalty of the security establishment without any changes in policies, but created a crisis between the imagined government and the security apparatus. This is the same factor used by some powers to interrupt the process of reform from within and to confuse the security institution itself. This kind of negative interaction is what prevailed during the last two years.<sup>7</sup>

Security policies for confronting terrorism, organised crime, religious extremism and other dangers remain unclear. All that has been made public are practical procedures to fight different kinds of crime that compromise public security. These differ in seriousness and efficacy according to different circumstances and different political and security stakes (founding path, terrorism, smuggling weapons and drugs, etc.), and have been affected by the absence of strategy, an unclear vision for the future, and limited capacity to lead the reform process.

### ***Absence of an appropriate political framework to push reform***

The political transformation that the country has gone through had a direct impact on the security sector and the security situation. These effects can be defined on two levels:

#### **i. Deteriorating security position**

The security conditions have not been stable after the revolution with increased lawlessness in a fragile security situation, dominated by instability, increases in different forms of violence and crime, the avoidance of punishment and the emergence of jihadi movements that use violence against the state and society. This situation revealed the weakness of state institutions, particularly security institutions, in facing those threats.

The Tunisian Intifada and the Libyan war pushed the reorganisation of smuggling networks and routes, weakening the control of the state and paving the way to more dangerous patterns

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<sup>7</sup> To better understand the phenomenon of counteracting reforms, see interview: “ Ask a professional: security and democracy in Tunisia”, Haykel Ben Mahfoudh and Fabio Merone, *Open Democracy*, 20 March 2014, <http://www.opendemocracy.net/arab-awakening/haykel-ben-mahfoudh-fabio-merone/ask-professionalsecurity-and-democracy-in-tunisia>

for arms and goods smuggling. Drug smuggling was added to the relatively small amounts (at least up until now) of weapons and explosives that enter the country regularly through the borders with Libya and Algeria. This became a source of serious security fears, especially considering the weakness of the border authorities in confronting the growing phenomenon of smuggling.<sup>8</sup>

The security vacuum that followed 2010-2011 Intifada, and the chaos that resulted from the revolution in Libya, frayed the Tunisian border fabric so that it was easily infiltrated, not only from criminal rings, but also armed groups. The border regions became a focus for jihad and smuggling.<sup>9</sup> These groups started exploiting the fragility of the interior regions and the rising political crisis which prevented the country from undertaking the necessary security, economic and social measures that could limit infiltration of the country's borders. Over time, groups emerged that combine jihad and organised crime inside smuggling networks operating at the borders. The combination of criminal and jihadi activity extended to the suburbs of major cities and remote poor villages. Groups engaged in terrorist acts targeting political leaders and security and military institutions with the purpose of causing instability, aborting the democratic process and striking down state institutions.

The security measures that were taken, including the creation of a buffer zone<sup>10</sup> and a military operations zone,<sup>11</sup> were not sufficient to address the border issues and the movement of arms to Tunisian territory by smugglers and jihadi cells. The problem was not operational capacity or the lack of border control capabilities from a technical point of view as much as it was the diminishing desire of the state, and some of the field leadership, to protect the territorial integrity of the country, instead showing tolerance of smuggling activities and movements of extremist groups and jihadi fighters.

The weakness of consecutive governments in dealing seriously with these factors, especially terrorism,<sup>12</sup> the politicisation of the dangers the country is going through, the absence of political consensus, and the scarcity of intelligence information due to the weakening of the intelligence services and its susceptibility of being infiltrated from certain parties served to slow the efforts of the security apparatus and prevented focus on the structural, legislative and institutional reforms of the security sector. The crisis worsened in the absence of a clear and successful strategy to address security issues such as the borders, organised crime, terrorism, illegal immigration and public security.

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8 Kartas, Moncef, "On the Edge? Trafficking and Insecurity at the Tunisian – Libyan Border", working paper of the Small Arms Survey / Security Assessment in North Africa Project, Graduate Institute of International and Development Studies, Geneva, December 2013.

9 International Crisis Group, "Tunisia the Borders: Jihad and Contraband," Middle East and North Africa Report No.148, 28 November 2013.

10 See Presidential Decree No. 121 for 2011, dated 12 August 2011, concerning the declaration of a border buffer zone.

11 See Presidential Decree No. 122 for 2011, dated 12 October 2011, concerning the declaration of a military operation zone.

12 The hesitation in categorising Ansar Al-Sharia as a terrorist organisation is a testament to the miscalculation of the threat of terrorism in Tunisia and to the weakness in dealing with it, in political or security terms.

In the light of the turbulent local and regional climate, the risks posed by the return of Tunisian fighters from Syria, the pressure of the presence of Libyans on Tunisian soil, and the impact on state institutions and the economy,<sup>13</sup> the issue of reforming the security sector has not been free from politicisation, considering the absence of a minimal level of consensus between political powers regarding the future of the country. Despite what the country accomplished in overcoming the political crisis, ratifying the constitution on 27 January 2014 and forming a government that won political support from most political, economic and social actors in the country, the issue of reforming the security sector remains hostage to the political climate. With all of the security pressures and political disputes, it remains a challenge to produce an integrated, national strategy that wins wide consensus from government, political parties, civil society and the security institutions.

ii. Weakness or absence of capacity to lead the reform process

The process of security system reform requires clear political will and pragmatic leadership. However, it appears from the political and security context, even after the 23 October 2011 elections, that the capacity of the government is still limited to address the security challenge with its various political, legal, military, social and economic components. This failure is due to several reasons, including:

- The lack of a clear and practical political, legal and procedural framework from the government or the legislature, either from national committee or sectorial commissions for planning and reform. Such a framework should enable commitment to reform of the security establishment and its leaders while ensuring continuity on the path of reform which could be evaluated and reviewed as required. Perhaps the best evidence is the halting of the reform process as programs and projects were abandoned, for political reasons or practical ones, such as the bureaucrats at the Ministry of Interior who have been responsible for reform but granted insufficient power to follow through.
- Inadequate political support to the reform process through involvement of all actors (government, parliament, the security establishment, political parties, security unions, civil society and media) in a way that could ensure the legitimacy of the reform process and allow it to be accepted by all parties who might otherwise thwart it.
- The absence of a comprehensive strategy or implementation plan for reform of the security sector from consecutive governments or the political elite. Lessons were not properly drawn from the security crises that the country went through, and the reform process was dealt with in a way that lacks efficiency, experience and methodology.
- A lack of strategic goals or priorities for reform and a delay in developing a new culture of change inside the security establishment that could break with past practices and eliminates nepotism inside the institution.

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<sup>13</sup> The numbers circulating in the media and informed circles (in the absence of official statistics) indicate the presence of more than half a million Libyan citizen residing in Tunisia.

- Sticking to procedures for the benefit of security aides or the military rather than pursuing necessary structural reforms such as reviewing tasks or restructuring some ministries, chiefly the Ministry of Interior.
- The delay in introducing urgent amendments to the laws that regulate the security sector in a way that ensures the quality of the security service as well as its commitment to transparency, accountability, respect for human rights and compliance with the law. Changes were limited to partial revision of some legal provisions, and there was considerable obstruction of legal proposals that would support the development of democratic behaviour inside the security establishment and improve its efficacy, such as the proposed counter-terrorism law.
- Focus on the technical aspects of reforming the security establishment (reinforcing capacities and capabilities), especially concerning border protection and the fight against resisting terrorism, rather than on monitoring mechanisms and respect for human rights. This misplaced focus weakens public support for the technical measures due to the absence of transparency. This issue is very important, particularly in relation to international support that can be provided by many states and specialised international organisations. These supporting actors look to create a balance between political support for the reform process and technical assistance for the Tunisian state (equipment, training, operational cooperation) within a framework of transparency and respect for human rights.
- Absence of coordination between different actors (Ministry of Interior, Ministry of Justice, Ministry of Defence, security and military forces, security unions, civil society) and between different reform programs in the process of development or implementation.

All these factors make the reform programs set by the government unsustainable and incapable of achieving the necessary changes to the security system. This does not mean that nothing accomplished so far has been of any use. Some programs have been positive, such as the ratification of the procedural guide on human rights for the internal security forces<sup>14</sup> or the work on revising the laws governing arrest and detention. The proposal to combat methods of mistreatment during detention, developed through cooperation with the International Red Cross was positive, coming in the context of Tunisia's commitment to fighting torture and developing a national mechanism to prevent torture.<sup>15</sup>

But in spite of the efforts by state institutions to commit to human rights protection by security forces, the problem remains in providing political, legal, institutional and professional support for reform programs when faced with the high cost of reform and limited technical and practical capacity in achieving all the desired change. Changes are slow, the existing challenges are many and public expectations are great, making the pace of reforms

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14 "The Standards of Human Rights for the Internal Security Forces in Tunisia" - pocket book - the Ministry of Interior (The Tunisian Republic) with the support of the Office of the United Nations High Commissioner for Human Rights in Tunisia, 27 January 2014.

15 Basic Law #43 for 2013, dated 21 October 2013, concerning the National Authority for Torture Prevention, the Official Journal of the Tunisian Republic, issue 85 published 25 October 2013.

slow, turbulent and below expectation. While the responsibility of reform falls on the shoulders of the government and security establishment, the role of civil society, political parties and security unions remains below expectations. These actors in the security system have not lived up to the levels of their proposals to effect the required legal and structural changes. They have not set a comprehensive vision for reform of the State Information System or the generation of mechanisms to oversee security establishment performance that could assure their commitment to the law and respect for human rights. This is due to their lack of specialisation and experience in matters of reform and good governance for the security sector, with most of their focus on current security issues of terrorism, smuggling and comprehensive security.<sup>16</sup> Others focus on the achievement of strictly professional demands such as promotions and correcting the career track of internal security personnel.<sup>17</sup> Most of these actors have not proposed even basic suggestions for reforming the security sector, partly due to the politicisation of the issue and the absence of true understanding about the requirements of reform. All these factors hurt the prospects for security system reform and the establishment of good governance and democratic oversight for the security sector.

#### **4) Points of entry for reforming the security sector: the constitutional framework**

Due to the security and political situation, the absence of political consensus, and the lack of capacity, there has been limited desire to pursue security sector reform. While the issue is complex and demands a lot of time, this does not waive the obligation to define the rules and criteria that should be adopted for reforming the security sector. In this sense, the new constitutional framework constitutes the main approach for the reform process, at least from a legal and institutional perspective, and forms the basis for building a democratic security system, moving from defining criteria to real commitment.

The discussion about a democratic security establishment is necessitated by the nature of the transition to a participatory republican system that reinforces the supremacy of democratically elected civil authorities, is based on the rule of law, respect for human rights and freedom, and where good governance is both a foundation of the state and pillar of a society where everyone enjoys security, freedom, justice and dignity.<sup>18</sup> Although the constitutional and legal infrastructure is not the only basis for those principles, it is the central pillar and the main approach for democratic oversight of security and defence. Thus, "constitutionalisation", or

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16 Most organisations active in security system reform, and whose creation took place over the last three years, are mainly concerned with strategic, security and military studies and with comprehensive security policies. On the contrary, organisations that are concerned with structural, institutional or legal reforms are rare and weak in their activity. Most of the registered activities are in the forms of seminars, meetings and workshops lacking documentation, publication, vision and follow-up, with the exception of some such as the "Democracy Informant" Association and the "Reform" Association.

17 The issues of promotions and career paths, which the security unions are seeking to address, pose several problems for the structural balance between different degrees and ranks inside the security establishment because they can cause administrative inflation in a hierarchical system. In addition to the cost of these promotions, which will exert more pressure on the state budget, there is a problem of who is deserving of promotion, not from a legal perspective but from a professional efficiency perspective.

18 These principles were included in the preamble to the constitution in 27 January 2014.

safeguarding the security establishment through the constitution, is the main approach to the vital changes that are demanded by political parties, civil society organisations and security and defence forces. What is striking is that the issue took a political dimension due to the demand of "republican security" by certain actors.

From this point, we can look at the text of the constitution and the principles and rules that it lays out to establish a democratic security system that breaks with nepotism, injustice, repression and past practices, and will be in the service of the citizens. Despite what the constitution includes about the rule of law, human rights, transparency, accountability and commitment to democratic principles, it is inadequate in relation to the security sector. This might lead to the belief that the framers of the constitution did not assimilate the principles of democratic security, or, as some are calling it, republican security.

A review of the constitution's provisions shows its limits in establishing rules and criteria for democratic oversight over the security sector.

On the level of concepts and visions, the constitution did not guarantee the citizen's right to security as a basic right. It right remains mainly connected to safeguarding the integrity of the body for individuals. The sections on rights and freedoms are the most progressive in the constitution, providing basic guarantees to exercise rights such as access to information or a fair trial. The approach in relation to the security sector, however, is functional and does not provide basic guarantees that security and defence forces must respect the rights and freedoms of individuals. This conviction is reinforced by looking at the chapters concerning security and defence (mainly chapters 18, 19 and 20) that simply indicate that the state has a monopoly in forming security and defence forces and define the functions of the military establishment and the internal security forces, which are not priorities for a constitution.

In contrast, other central issues concerning the relationships between the head of state, the government, the parliament and the different armed forces are under defined. Questions about the distribution of power, leadership, subordination and oversight, and mechanisms for supervision and monitoring, especially by the parliament, remain almost absent. The absence of these mechanisms contrasts with the inclusion of the security and military institutions at the heart of the constitution. The specification of their functions can be interpreted legally and practically to make these institutions into authorities with autonomous constitutional status and power to disengage from state institutions and act directly. This is not acceptable for meeting the prerequisites of democratic oversight over armed forces.

A constitution sets a legal and institutional framework for civilian-military relations. It should explicitly and unequivocally reinforce the principle of respecting the rule of civilian authorities and the principle of state monopoly over means of coercion and force, removing possible contestation of the authority of the state by political, jihadi or parallel security organisations outside of the law.

This issue is critical and sensitive enough that the constitution should have put laws in place to strictly organise relations between the security agencies and civil authorities, primarily the executive power to guarantee the legitimacy of security operations and make them subject to law. The Tunisian people rebelled against the practices and laws that allowed the use of the

security establishment as a tool of the former regime to undermine freedoms, retain power and preserve political and economic interests by repression, corruption and bribery. The constitution should thus have a mechanism to prevent and respond to the risk of using the security apparatus outside of the democratic context. The risk is compounded under regimes where there is most impunity from oversight and accountability, either due to the absence of oversight mechanisms (such as through parliament) or their weakness (judicial, media and civil society oversight).

There is also a need for parliamentary oversight of the security sector as a foundation for security sector reform and good governance. The framers of the constitution chose conventional parliamentary oversight mechanisms (setting laws, pursuing accountability through interrogation and commissions of inquiry, etc.) without delegating direct oversight powers over security, military and intelligence agencies. The powers of the parliament in the areas of security and defence remain limited in comparison to the broad powers of the executive. This is seen in the lack of a specialised parliamentary committee on defence and security in the constitution, the rescinding of the role of parliament in the appointments of senior military and security leaders, and the limitation in defining these roles through law. This reflects an imbalance between the roles of the executive branch and the parliament, and an absence of true understanding of parliamentary supervision of security and defence.

In sum, the constitution, by focusing on functional aspects, does not adequately achieve the prerequisites for democratic oversight. The constitution did not explicitly include transparency and accountability among the principles that govern the work of the security establishment, but instead provided only a few detailed provisions for the functions and roles of the security and military establishment, which were subject to criticism. It was not decisive on pivotal issues such as those concerning the decision to disobey commands that violate the law, including those laid out in the constitution or international treaties, or those issues concerning the integrity of state workers in implementing the law and respecting human rights. Even those issues that were considered, such as neutrality, were formulated in a manner that does not reflect a critical and comprehensive vision of the requirements of active democratic oversight of security and defence sectors. There is even a decline or obfuscation of some of these principles in comparison with the second copy of the draft of the constitution, particularly with respect to the suggested amendments of the committee on executive authority and legislative authority and the relationship between them.

There remains one last issue related to basic guarantees for military and security personnel and all workers in the sector. The constitution does not safeguard the basic rights of members of the armed forces, which violates the spirit of the constitution and international standards. One of the requirements for designing appropriate military-civilian relations is the safeguarding of the rights and obligations of workers in the sector to guarantee the legitimacy of their operations and to provide appropriate conditions to practice them. This narrow perception of security personnel is affecting the current situation through the ongoing debate over the rejection of the principle of participation of security and army personnel in elections, which is moving toward sanctioning this denial in the heart of the electoral law in the process development.

## 5) Summary and recommendations

In reviewing the path of democratic transition in Tunisia over the past few years and the attempts at reform of the security sector, we can have some confidence in the likelihood of changing the mentalities and practices at the heart of the security establishment, but with some important conditions:

- Political exploitation of security system reform should be avoided by all actors, especially the political class, to distance the security institutions from political and ideological bickering and from conflicts over economic interests, in word and deed.
- The capacity of the political leadership must be developed to allow it to set necessary reforms and to lead in a way that is serious, responsible and without hesitation.
- A culture of service, efficacy, quality and accountability for security personnel should be established.
- A national multi-purpose commission should be formed at the highest level of government to set a national strategy for security sector reform. This commission should determine the priorities and objectives for reform, create implementation plans and follow them up with reviews and neutral evaluation.
- Structural reforms should be initiated urgently, including the restructuring of the Ministry of Interior to handle problems of inflation in size, functions and powers, and weakness of oversight. Partial or circumstantial changes should be avoided if they will simply reconstruct the old practices and mentalities from inside the institution.
- Prepare a periodic evaluation and review of the ability of the security and defence sector to withstand the challenges it faces, and the risks and threats that target Tunisian national security. This review should be adopted as a springboard to reformulate a policy for Tunisian national security on proper, realistic and legal foundations.
- Use people with expertise and specialisation in setting and implementing the projects and programs of reform.
- Focus on the roles of civil society and the media, supporting them as partners and inspectors of the process of reform.

In conclusion, reforming the security establishment is an integral part of the constitutional and political reform process for the country. Setting a new constitution would confer new legitimacy for a security establishment which has to transform into a democratic institution that is subject to oversight from other democratic institutions. This may be hard to accomplish because it assumes that security is part of the democratic equation. It might take some time for the security establishment to learn democratic practices, just as it will for citizens, political parties, civil society organisations and the government. The constitution is a framework and a key area for these principles, but it will be necessary to implement these rules and have them accepted by the workers in the security sector through conviction and not necessity. This will be a difficult task.

## **About ARI**

The Arab Reform Initiative (ARI) is a consortium of policy analysis institutes that mobilizes research capacity to advance knowledge and nurture home-grown programs for democratic reform in the Arab world. ARI seeks to generate, facilitate, and disseminate knowledge by and for Arab societies. In the quest to build free, just and democratic societies, ARI focuses on the current revolutionary processes in the Arab world, on the new patterns of interaction between political forces, governments and societies, on today's political, socio-economic and cultural transformations, and on social justice. It opens a space for diverse voices and brings in the key actors in the transformation processes at play: intellectuals, activists, women, civil society representatives, human rights groups, social movements, political parties, the private sector and the media.

ARI produces policy research, supports networks of young scholars, convenes policy dialogues and organizes regional platforms on critical issues related to the transition processes.

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