

SUPPORT TO THE CONSTITUTIONAL PROCESS PARLIAMENTARY DEVELOPMENT AND NATIONAL DIALOGUE IN TUNISIA

Lessons learned and future perspectives



Presentation overview

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- Human rights protections in the new Tunisian constitution
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- Current activities and key areas for future UNDP support

Context

- Jasmine Revolution of January 14 2011 launched the Arab Spring
- Apparently positive economic development statistics hid wide regional disparities, social exclusion, and corruption within a personalized authoritarian regime – confirmation of the diagnosis of AHDRs
- Under popular pressure for a comprehensive transition, it was decided a National Constituent Assembly would be elected to draft a new Constitution drafted from scratch; the NCA initially planned to complete its work within 12 months.

Political developments and crisis

- October 2011 democratic elections resulted in the Ennahdha party winning 37% of the popular vote and 89 of 217 seats in parliament; no other party won over 10% of the vote. A government was formed between Ennahdha and two smaller centre/centre-left parties
- A series of four drafts of the constitution were produced by the ANC in 2012 and 2013, the last in June 2013
- 2 political assassinations in February and July 2013 deepened crisis and mistrust, resulted in mass demonstrations opposition boycott of the NCA and suspension of constitutional work for the latter half of 2013; government, the ANC and at times the entire transition process was contested

Competing legitimacies and National Dialogue

- The political crisis of 2013 generated competing claims of legitimacy
- The governing Troika coalition based their claims on **electoral legitimacy**; their success in the October 2011 election;
- Demonstrators asserted **popular legitimacy** – they argued that the assassinations, non-respect of the 12 month limit for constitutional drafting, and government failure invalidated the government's electoral legitimacy; they also claimed that the primordial demands of the revolution were not being respected;
- The Quartet: the UGTT trade union, the employers association UTICA, the main human rights association and the lawyers association asserted their **corporatist legitimacy**; they established themselves as interlocutors in the political crisis and organized talks between political parties that continued indirectly and then directly for several months

The compromise – the Road Map

- **Eventually agreement was reached through ‘The Road Map’; an agreement tying:**
- 1. Resignation of the Troika government and its replacement by a government of technocrats,
- 2. Agreement on the formation of the electoral commission, and
- 3. A consensual approach within the NCA to resolving the final points of disagreement on the constitution, based on establishment of a Consensus Commission to assure broad agreement on constitutional clauses before debate and adoption in plenary
- Opposition members returned to the NCA
- On January 3 2014 the NCA began debating the constitution clause by clause
- The NCA continued to fine-tune the constitution, in particular strengthening clauses protecting rights and freedoms

January 26 2014
Adoption of the
constitution



The constitutional debate within the ANC

- The plenary debate on the constitution was carried out efficiently while providing room for debate on remaining controversial clauses
- Between five and fifteen clauses per day on average were debated and voted during January 2014
- Where major disagreement still existed, articles were referred back for negotiation between the parliamentary groups, while debate continued on subsequent clauses
- On several occasions when debate in the plenary became heated, the session was suspended for several hours for talks within and between the party groups
- The NCA continued to make changes to draft articles until the last day; three articles were amended on January 26th before the whole constitution was put to a vote
- The vote of 200 in favour, 12 opposed and 4 abstentions demonstrated the remarkable level of consensus achieved

The new Tunisian constitution: a progressive and balanced document with strong human rights protections

- Strongly-worded commitments to the **rule of law**, **free elections**, the **separation and balance of powers**, the **open nature of Islam**, freedom of association, pluralism, respect for human rights, judicial independence, gender equality, a healthy environment and sustainable development (preamble)
- **Freedom of conscience and belief** (art 6)
- **Equality, including on the basis of gender, before the law** (art 21)
- A right to privacy (art 24)
- **Freedom of opinion, thought, expression, information and publication** (art 31) and of access to information (art 32)
- **Equality of opportunity for women**, including the protection of women's accrued rights, and a duty of the State to work toward numerical equality in elected assemblies and to eradicate violence against women (art 46)
- **Freedom from discrimination** on the ground of disability (art 48)

The promise of accountable government based on balanced powers and an effective parliament

- A **strong and independent legislature** (art 52) to which the government is accountable (arts 71-101)
- Guaranteed rights for the **political opposition** (art 60)
- A **robustly independent judiciary** (arts 102-124)
- Independent commissions for **elections, human rights, sustainable development, and good governance and anti-corruption** (arts 125-130)
- Commitment to **democratically elected, decentralized governance** (arts 131-142)
- A strong statement about the **public ownership of natural resources**, and a requirement that contracts for their exploitation receive parliamentary approval (art 13)
- The right to a healthy and balanced **environment** and to participate in the protection of the climate (art 45)

UNDP's support to the constitutional process, parliamentary strengthening, and national dialogue

- **\$18 million project over three years, April 2012 to April 2015**
- **Supported by Japan, Belgium, the EU, Sweden, Denmark, Norway, and Switzerland**
- **Three project pillars:**
 1. Support for the NCA during the drafting process of the Constitution
 2. Technical and logistical assistance to the NCA in the performance of their parliamentary functions
 3. Support for civil society to promote dialogue among all segments of Tunisian society during the transition process

Highlights: Support to the constitutional process

- Supported **national and decentralized consultations and dialogue on the constitution** in all 24 governorates of the country, permitting wide engagement of citizens and civil society organizations.
- Provide comparative perspectives of **constitutional, institutional and legislative procedures**, in particular on the relationship between legislative and executive powers.
- **Support to reform of the rules of procedure** of the Assembly
- **Specialized expert advice** in integrating the decisions of the National Dialogue into the work of the NCA to facilitate resolution of the political impasse of late 2013.
- **Supported integration of international human rights principles in the Constitution**, including gender equality
- **Publication and communication of the new Constitution, including in French and English translation as well as the official Arabic version**, made available on the day of the adoption of the Constitution, and since **widely distributed within Tunisia and internationally**.

Highlights: strengthening the parliamentary institution

- **Capacity building strategy for members and secretariat of the National Constituent Assembly:** built on long-term partnerships with sister parliaments Partner activities have been developed with the Belgian, Danish, French, Lebanese, Swiss and with the European Parliament, with which the project has an intensive collaboration.
- **Support for the reform of the organization of the parliamentary secretariat and the modernization of infrastructure,** particularly in information technology and communication.
- **Development of a “media centre” currently underway** facilitating press reporting activities of parliament, ease interactions between elected members and journalists, and provide training to media.

Highlights: fostering dialogue and inclusion of civil society

- **Needs identification and mapping** of civil society needs to enable their engagement in dialogue and the policy process
- **Technical and financial support to civil society dialogue** : The project is supporting civil society initiatives in areas including constitutional dialogue, anti-corruption, gender equality, youth engagement and transitional justice.
- **Training of facilitators** from civil society organizations and from local and regional political party leaders in **mediation and consensus building techniques**, in all 24 Tunisian governorates.
- **Support to capacity development of civil society**, particularly through fostering development of project implementation consortia pairing more experienced CSOs, with less experienced organizations particularly from disadvantaged regions of the country

Activities being engaged in 2014-2015

- Documentation of the constitutional process
- Provide technical and international knowledge-sharing support in the implementation of the Constitution
- Develop and implement a comprehensive programme of orientation for the incoming elected members of the new Assembly of the Representatives of the People.
- Continued strengthening of the parliamentary secretariat through partnerships with sister parliaments enabling the sharing of best practices in parliamentary organization and administration.

Request for UNDP support to implementation of the new Constitution and democratic strengthening

- On April 16 2014, Tunisian National Constituent Assembly President Mustapha Ben Jaafar wrote to UNDP Administrator Helen Clark and requested continued support to the NCA and its successor Assembly of Representatives, through the first five year mandate of the new parliament.
- UNDP's global practice in parliamentary strengthening and constitutional building provides an unparalleled resource to support Tunisia in anchoring its new democratic system
- Dialogue has begun with parliamentarians, the parliamentary secretariat, development partners, and national and international democratic development and parliamentary strengthening experts on the content of a new programme of support to the Tunisian parliament and to constitutional implementation over the next years

Lessons learned

- Trust and relationship building through on-the-ground presence of strong technical capacity
- Important to respect national sovereignty and respond to requests - which will come
- Impact is often measured in the longer-term – for example in the development of the debate on women's equality
- Political impartiality essential and requires continuing attention
- Challenges in reforming existing administrative structures
- Effective transition processes require time; programmes must be flexible to allow roll-out in line with national political developments

Key areas for potential future support

1. **Strengthening parliament's capacity to play an effective role throughout the national budget cycle**, including budget development, debate, oversight, and audit.
2. **Supporting constitutional implementation through technical assistance** in the development of priority organic laws as identified by the Assembly of the Representatives of the People
3. **Sharing high level international experience** of democratic transition, conflict prevention and resolution, and effective dialogue processes, through intensive interactions between Tunisian and international leaders
4. Supporting the **institutionalisation of parliamentary political groups** as effective actors in parliamentary business, facilitating consensus-building within parliament
5. **Fostering women's participation and leadership** through all project activities, and particularly in facilitating the legislative implementation of the equality provisions of the 2014 Constitution.

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