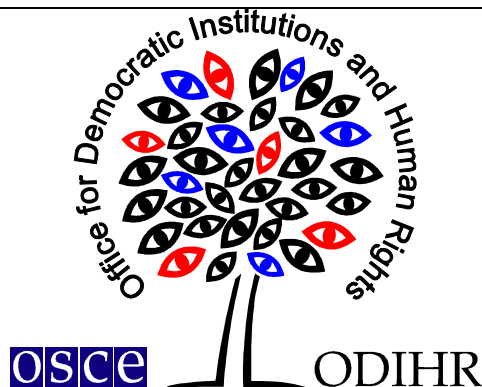


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OPINION

ON THE DECREE LAW

OF THE REPUBLIC OF TUNISIA ON THE

REGULATION OF POLITICAL PARTIES

Based on an unofficial English translation of the Law

This Opinion was prepared by OSCE/ODIHR based on comments and reviews by:

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I. INTRODUCTION

1. *As part of an OSCE/ODIHR project on promoting democratic structures among OSCE/ODIHR's Mediterranean Partners for Co-operation, the OSCE/ODIHR offered to Tunisian authorities to review their existing legislation for compliance with international standards in the first half of 2012.*
2. *Following an exchange of letters in March and April 2012, and consultations between the OSCE/ODIHR and the Head of the Tunisian Permanent Mission to the United Nations Office and International Organizations in Vienna, the OSCE/ODIHR was requested review Tunisian legislation pertaining to the human dimension.*
3. *During a subsequent assessment visit to Tunisia at the end of August 2012, an OSCE/ODIHR delegation met with several counterparts from the Tunisian Government, including representatives of the Ministry of Foreign Affairs, and discussed, inter alia, possible legal reviews on Tunisian legislation, including the Decree Law on the Regulation of Political Parties (hereinafter "the Decree Law").*
4. *By letter of 17 October 2012, the Director of the OSCE/ODIHR confirmed towards the Head of the Permanent Mission of the United Nations Office and International Organizations OSCE/ODIHR's willingness to review the Decree Law for compliance with relevant international standards and encouraged him to send this law to the OSCE/ODIHR for review.*
5. *By letter of 29 October 2012, the Head of the Permanent Mission of the United Nations Office and International Organizations responded by sending the OSCE/ODIHR, inter alia, the Decree Law. The Director of the OSCE/ODIHR thereupon confirmed, by letter of 15 November 2012, that the OSCE/ODIHR would be conducting said review, and that, following standard procedure, it would seek to cooperate with the Council of Europe's European Commission on Democracy Through Law (hereinafter "Venice Commission"), and its experts.*
6. *This Opinion is provided in response to the above-mentioned request, on the basis of comments and review by Professor Richard Katz and Professor Daniel Smilov from the OSCE/ODIHR Core Group of Experts on Political Parties, Ms. Barbara Jouan, OSCE/ODIHR expert from France, and Mr. Nicolae Esanu and Mr. Angel Sanchez Navarro, Member and Substitute Member of the Venice Commission from Moldova and Spain respectively. It was prepared with a view to assisting the Tunisian authorities in undertaking requisite reforms to its legislation on political parties.*

II. SCOPE OF REVIEW

7. *The scope of the Opinion covers only the above-mentioned Decree Law, submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of all available framework legislation pertaining to political parties in Tunisia.*

8. The Opinion raises key issues and indicates areas of concern. The ensuing recommendations are based on relevant international norms and instruments ratified by the Republic of Tunisia, as well as regional standards and practice found in OSCE commitments and European standards, as outlined in the 2010 OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation. In the interests of concision, the Opinion focuses on problematic areas rather than on the positive aspects of the Decree Law.
9. This Opinion is based on an unofficial translation of the Decree Law. Errors from translation may result.
10. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion is without prejudice to any written or oral recommendations and comments to the Law or related legislation that the OSCE/ODIHR may make in the future.

III. EXECUTIVE SUMMARY

11. The OSCE/ODIHR finds that the Law meets many international standards relevant to the regulation of associations. At the same time, in order to ensure the Law's full compliance with such standards, it is recommended as follows:

1. Key Recommendations

- A. to consider having the Decree Law reviewed and adopted by the National Constituent Assembly, once a Constitution is in place; [par 13]
- B. to amend all provisions of the Decree Law providing the Prime Minister with extensive powers in relation to the registration of political parties, financial reporting, and monitoring of political parties (including investigations leading to sanctions) by replacing him/her with a neutral and independent regulatory body; [pars 23-24, 45 and 58]
- C. to specify in the Decree Law the level or percentage of public funding that may be granted on an annual basis, the duties and obligations of the body which shall set and revise this level, the criteria for distributing public funds, and the time when such funds shall be provided; [pas 40-43]
- D. to include in the Decree Law the obligation for parties to also disclose their accounts to the committee as the main regulatory body; [par 46]
- E. to extensively revise the system of sanctions under Chapter 5 by basing it on clear and foreseeable grounds, and ensuring that all sanctions are proportionate to the respective breaches of law; [pars 52-55, 62-65, and 67];

2. Additional Recommendations

- F. to amend the definition of political party under Article 2 so that it reflects the fact that political parties shall express the political will of citizens, including through participation in the management of public affairs; [par 16]
- G. to clarify the wording of Article 4 and reduce it to banning those political parties which threaten democracy or aim to overthrow the constitutional order by violent means; [par 18]
- H. to specify in Article 5 that only lawful activities of political parties shall be free from intervention by public authorities; [par 19]
- I. to outline, in the Decree Law, the meaning of the full enjoyment of civil and political rights under Article 6; [par 20]
- J. to define, if needed, the term “nationality” under Article 6; [par 21]
- K. to narrow and clarify the requirements for refusing to register a political party under Article 10; [par 27]
- L. to reconsider the limitation of party membership to Tunisian nationals; [par 28]
- M. to amend Article 7 as follows:
 - 1) reconsider the ban on multi-party membership; [par 29]
 - 2) remove the ban on joining political parties for governors and other high-level administrative staff in administrative-territorial units; [par 30]
- N. to clarify the requirement for party statutes to follow “rules of democracy” under Article 8, and ensure that this reflects principles of equality and transparency; [pars 31-32]
- O. to include in the Decree Law references to internal and external dispute resolution mechanisms for parties; [par 33]
- P. to outline in the Decree Law which activities of political parties shall be funded by the sources of funding outlined in the Law, and which shall not; [par 35]
- Q. to base the limits of contributions and donations for political parties on a specified form of indexation; [par 36]
- R. to consider exempting certain categories of persons from the obligation to pay membership fees; [par 37]
- S. to clarify the ban on funding by foreign organizations under Article 19; [par 38]
- T. to specify the contents of financial statements that are published, as well as how long they shall remain on party websites, and whether this obligation under Article 26 applies to all parties; [pars 47-49] and
- U. to specify the role of the Court of Accounts under Article 27; [par 50].

IV. ANALYSIS AND RECOMMENDATIONS

1. Preliminary Comments

12. At the outset, it should be noted that in many ways, the contents of the Decree Law, replacing previous legislation on political parties and political party financing, appear to be in line with international standards of political party regulation. At the same time, parts of it would benefit from some revision and additions.
13. Generally, and without prejudice to the contents of the Decree Law, it is noted that laws should be passed by a parliament, following an inclusive, transparent and open legislative process. Once the constitutional reform process has been completed, it is advised to consider having the Decree Law reviewed and adopted by the Tunisian National Assembly. As part of this process, the recommendations contained in this Opinion may be helpful in order to enhance and strengthen such future legislation.
14. As for the Decree Law itself, Article 1 states that it guarantees the freedom to establish and join political parties and activism within such, as well as to secure the freedom of political organization, supporting political pluralism, and establishing the principle of transparency in administering political parties.
15. The term “party” is defined in Article 2 of the Decree Law as an association which is constituted based on the mutual agreement of Tunisian citizens, which shall contribute to the political education of citizens and help establish the values of citizenship. Further, Article 2 states that parties shall “aim at participating in elections with the purpose of exercising power at the national, regional or local level”.
16. While it is true that political parties shall also educate citizens on political matters, and establish values, one of the main aims of a political party is to express the political will of citizens, including through participation in the management of public affairs.¹ It is recommended to consider enhancing Article 2 in this manner.
17. As rightly recognized by Article 1 of the Decree Law, political parties play an important role in ensuring pluralism and the proper functioning of democracy.² At the same time, they are legally private associations, and should thus enjoy the same rights as other associations in Tunisia, based on the right of association under Article 22 of the International Covenant on Civil and

¹ See the definition of political parties in the OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, adopted at the 84th Plenary Session of the Venice Commission (15-16 October 2010), par 26.

² See the ECtHR judgment in the case of *Refah Partisi [the Welfare Party] and Others v. Turkey*, of 13 February 2003, par 88; see also the *United Communist Party v. Turkey*, judgment of 30 January 1998, pars 43-44. This is also reflected in OSCE commitments, namely in the 1990 Concluding Document of Copenhagen, par 3, which notes that political pluralism, fostered by competition and opposition parties, is critical to the proper functioning of democracy.

Political Rights³ (hereinafter “ICCPR”). According to Article 22 par 2, this right may be restricted, but only if prescribed by law, and if necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health and morals, or the protection of the rights and freedoms of others. Any such restrictions must follow a strict proportionality test.

18. The prohibition of violence, hatred, intolerance, or discrimination based on religious, denominational, gender or regional basis in relation to parties set out in Article 4 of the Decree Law is welcomed as far as it refers to violence and hatred. At the same time, intolerance and discrimination are quite wide terms, and could, as the prohibition under Article 4 may lead to the refusal of state authorities to register a political party, or to the dissolution of a party, be applied in an arbitrary and discriminatory manner themselves (see par 52 *infra*). This provision should thus be re-considered, and perhaps, following the adoption of a new Constitution, be amended to the extent that prohibition or dissolution of a party should only be possible in cases where it threatens democracy, or aims to overthrow the constitutional order by non-peaceful means.
19. Article 5 of the Decree Law bans public authorities from, directly or indirectly, obstructing or delaying activities undertaken by political parties. For the sake of clarity, it would be preferable if this provision would refer to lawful activities undertaken by political parties; unlawful or illegal activities may and should be obstructed by public authorities. In particular, the Decree Law should include safeguards against the abuse of state resources, to avoid any unfair advantages to political parties, and ensure equal treatment of all parties.⁴

2. Registration of Political Parties

20. The founding of political parties, and the registration process, are regulated under Chapter 2 of the Decree Law. Based on Article 6, persons wishing to found and be part of the leading structure of a political party need to be Tunisian nationals, and fully enjoy their civil and political rights. As these rights are generally enjoyed by all individuals, this latter part of Article 6 is slightly unclear, but presumably refers to adults with full mental capacity. Clarification of this point should, however, be considered.
21. Given that the Decree Law appears to distinguish between nationality (Articles 6 and 7), and citizenship (e.g. Article 18), it may be helpful to include in the Decree Law an indication of whether nationality is essentially the same as citizenship, or whether this term implies belonging to a certain ethnic group. In case of the latter, this could be interpreted in a discriminatory manner. For this reason, it is recommended to, if the distinction between nationality and citizenship is intentional, define the term nationality in the Decree Law.

³ International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, and ratified by the Republic of Tunisia on 18 March 1969.

⁴ In this context, see the OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, *op cit* note 1, par 207.

22. Registration of a political party requires sending a statement of the party's name, programme, logo and headquarters, as well as copies of the identification papers of the party founders, and two copies of the party's statute signed by the founders thereof, to the Prime Minister via registered mail. Should the party statute conflict with Articles 3 and 4 of the Decree Law, then the Prime Minister may take a reasoned decision to reject the request for registration of the party within a period of sixty days (Article 10). Party founders may appeal against this decision in accordance with administrative court procedures.
23. In this context, it is noted that the Prime Minister plays the main role in the registration of political parties, and additionally a substantive role in financial reporting (auditor reports are also submitted to him under Article 26 par 6). He/she is also involved in proceedings leading to sanctions for violations of provisions of the Decree Law under Article 28. This would mean that a significant amount of powers are in the hands of one person, who is at the same time the main executive organ of the State. This raises concerns in relation to the independence and neutrality of such regulatory body.
24. While it is not uncommon to entrust the executive with the registration of political parties, it would be preferable if such procedure were entrusted to a more impartial body, e.g. a judicial body. Even within the executive, a ministry or department seen as less partisan and less involved in day-to-day party politics would appear to be more suitable than the Prime Minister.⁵ It is important to send a message that the practice of registration of political parties will be stable, consistent, and will not change with a change in the government. It is thus recommended to transfer the competences for registering political parties to an objectively more neutral and impartial body.
25. While requiring parties to submit a statute for registration is *per se* not illegitimate, this should not be used by state authorities to unfairly disadvantage, or discriminate against political parties that espouse unpopular or offensive ideas.⁶ Such behavior would be in violation of the freedom of expression under Article 19 of the ICCPR, unless justified as being necessary in a democratic society based on national security, public order, public health or morals, or the protection of human rights of others.⁷ Thus, while the refusal to register a political party due to calls for violent or unlawful behavior (Article 4) could at times be considered justified, the refusal to register all parties with programmes that could, e.g. lead to intolerance or discrimination may be excessive – in the interests of political pluralism, it could be better to allow parties to engage and challenge intolerant or potentially discriminatory parties through political dialogue rather than preventing them from registering.

⁵ See the OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, *op cit.* note 1, par 218.

⁶ See the OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, *op cit.* note 1, par 72.

⁷ In this context, see also, in relation to the similar provision of Article 11 ECHR, the ECtHR judgment in the case of *Refah Partisi v. Turkey*, *op cit* note 2, par 89, which confirms that based on the principle of political pluralism, the freedom of expression is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb.

26. Furthermore, some of the requirements for parties under Article 3 (transparency or democracy), while welcome as general principles that parties may be encouraged to follow, would appear to be too vague to serve as justifications for refusing to register a political party. This could well lead to arbitrary or inconsistent applications of the law, e.g. if a party aims to reinstall a monarchy, it could be refused registration, even if its programme foresees the use of peaceful means to achieve this goal.
27. In order to avoid arbitrary or restrictive practices, the requirements for refusing to register a party should thus be narrowed considerably, and clarified.

3. Membership and Administration of Political Parties

28. According to Article 7 of the Decree Law, members of political parties are required to have Tunisian nationality (in relation to the definition of this term, see par 21 *supra*), and must be at least sixteen years of age. While international standards do not forbid the limitation of the right of political participation in this manner⁸, it should also be borne in mind that this would restrict foreign and stateless residents of Tunisia, regardless of the time that they have spent in the country, from ever participating in political life. Under Article 22 of the ICCPR, everyone generally has the right to associate; in order to avoid discrimination against long-time foreign or stateless residents, it is advised to reconsider this limitation to party membership based on nationality, in line with a general and growing trend within European and OSCE countries.⁹
29. Also under Article 7, it is stated that multiple memberships of political parties are not allowed. Generally, the right to freely associate is a fundamental right that should not be limited by requiring individuals to limit themselves to membership in one party; laws that require this must show compelling reasons for such limitation.¹⁰ At the same time, it would appear difficult to enforce this particular provision in practice, as lists of party members are not (and should not) be public. This part of Article 7 should thus be re-discussed, and ideally amended.
30. Article 7 par 2 contains a list of different categories of individuals who may not join political parties; next to military servicemen, judges, and members of security forces and of the police, this list also includes governors, and other heads or otherwise high-level staff of regional and local administrative territorial units (*gouvernorats, délégations, and imadas*). It is not clear why the holders of administrative posts in the regions should not be permitted to join political parties (in particular as such a ban does not appear to exist for the

⁸ See the OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, *op cit.* note 1, par 120.

⁹ *Ibid.*, par 120 states that human rights instruments applicable in the OSCE region provide stateless persons and foreigners with the same general protection of rights as citizens. The Council of Europe Convention on the Participation of Foreigners in Public Life at the Local Level, CETS-No. 144, adopted on 5 February 1992 contains similar rights with regard to elections.

¹⁰ See the OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, *op cit.* note 1, par 119.

holders of similar posts at the federal level). This provision should thus be reconsidered and preferably deleted.

31. Article 8 states that the administration of political parties shall be regulated by their statutes, based on the rules of democracy. This term is quite vague, and would benefit from clarification in the Decree Law; it is recommended to include herein references to the principle of equality, and transparency. Overall, the selection and appointment of party leadership should be based on clear and transparent criteria laid down in the party statute, in order to allow new members (including women and minorities) to gain access to decision-making positions.¹¹
32. In this context, it should be noted that according to Article 3 of the United Nations Convention on the Elimination of Discrimination against Women¹² (hereinafter “CEDAW”), States shall take all necessary measures, including legislation, to ensure the full development and advancement of women, in order to guarantee the exercise and enjoyment of human rights and freedoms in the basis of equality with men.¹³ Party qualifications for membership, candidacy and party activities may be one way to achieve this, possibly also the creation of a women’s section, or gender division within a political party. Such sections can help ensure women’s participation by allowing women to discuss issues of mutual concern, and serve as a forum for expertise-building activities.¹⁴ Given the Republic of Tunisia’s already very positive practice of enhancing the number of women in parliament in the 2011 elections, political parties could perhaps be encouraged to consider similar measures to help ensure a proper gender balance within political parties, both in terms of membership, but also in terms of leadership structure.
33. It is noted that the Decree Law does not contain references to internal dispute resolution mechanisms, nor to administrative or judicial bodies dealing with inter-party disputes. As legal entities with specific rights and obligations, party members should have recourse to internal and external bodies against the abuse of a party’s contractual obligations to its members¹⁵. Reference to such remedies should be included in the Decree Law; however, any legal regulation of inter-party disputes should take care not to infringe upon the free functioning of political parties with regard to their decision-making procedures and policies.

4. Financing Political Parties

34. The Decree Law stipulates different forms of funding political parties in Chapter 3. According to Article 17, party resources may comprise membership

¹¹ *Ibid.*, par 113.

¹² Convention on the Elimination of Discrimination against Women, adopted by General Assembly resolution 34/180 of 18 December 1979, and ratified by the Republic of Tunisia on 19 September 1985.

¹³ In this context, see also the OSCE commitments, in particular the Athens 2009 Ministerial Council Decision No. 7/09 on Women’s Participation in Political and Public Life, pars 2 and 3.

¹⁴ See the OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, *op cit.* note 1, par 100.

¹⁵ *Ibid.*, par 41.

fees, aids, donations, gifts and bequests, revenues generated from assets, and loans. Public funding for political parties is also provided under Article 21.

35. At the outset, it should be clarified whether this funding is intended for normal, day to day party functions, or whether it may also be used for campaign financing. Since electoral campaigns are not regulated in the Decree Law, it is assumed that all matters pertaining to such campaigns will be regulated in relevant elections legislation.¹⁶ In this case, Article 17 of the Decree Law should clearly distinguish and define what type of activities shall be funded by the party resources described in this provision, and which activities shall not.¹⁷ The activities that shall not benefit from these resources, e.g. possibly political campaigning before elections, shall also be clearly defined, and references shall be included to relevant legislation regulating the funding of these activities.
36. Private funding of political parties is a form of political participation, and legislation should require that all political parties be financed, at least in part, through private means as an expression of minimum support.¹⁸ However, reasonable limitations on private contributions may include the determination of a maximum level that may be contributed by a single donor. In the Decree Law, annual membership fees may not exceed TND 1,200 (Article 17) and donations are limited up to TND 60,000 (Article 19) per person and per year. In this context, and in order to take into account the possibility of future inflation, it is recommended to base such limits on some form of indexation, such as minimum salary values, rather than absolute amounts.¹⁹
37. Also, the Decree Law should foresee the possibility of exempting certain individuals from membership fees. This would especially apply in cases where people face financial hardships, as it would allow them to also participate in political parties, and thereby in political life. The inclusion of such provision is encouraged, to ensure that political participation is not limited to persons with sufficient financial means. Such exemptions could be based on a sliding scale, to take into consideration the specifics of each case.²⁰
38. Restrictions on certain forms of private funding are contained in Article 19 of the Decree Law, which includes funding from foreign organizations. This ban could be interpreted to mean that political parties may also not receive any capacity-building aid, or other types of training or services from international organizations or foreign organizations. This should be clarified.
39. Providing public funding to political parties is often seen as a way to prevent corruption, support political parties, and limit undue reliance on private donors.²¹ It likewise ensures equal opportunities among political parties, and strengthens political pluralism. Legislation should ideally attempt to create a

¹⁶ Similarly to Decree Law 35/2011, which set up a system of electoral campaign funding for both political parties and candidates for the 2011 elections to the National Constituent Assembly..

¹⁷ See the OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, *op cit.* note 1, par 162

¹⁸ *Ibid.*, par 170

¹⁹ *Ibid.*, par 175, which mentions this principle in the context of maximum ceilings for private donations.

²⁰ *Ibid.*, par 164.

²¹ *Ibid.*, par 176

balance between private and public funding of political parties, but should never infringe upon a party's independence. Mechanisms should be in place to periodically determine the impact of such funding, and, as needed, alter the amount of funding allocated.

40. The system for allocating public support to political parties should be determined by relevant legislation to ensure equal opportunities for all parties and enhance political pluralism. While Article 21 specifies that political parties are entitled to public funding, it does not go into detail as to the criteria for receiving such funding. In particular, it should be specified whether public funding is granted to all parties indiscriminately, or whether it perhaps is granted only to parties which are in parliament. The level or percentage of public funding allocated by the annual budget is also not determined, and the means of distribution are likewise not clear.
41. The allocation of public funding may be provided to all parties equally, or on a proportionate basis, in line with a party's proven level of support or election results. At a minimum, it should be provided to parties represented in parliament. The level of available funding should be set out clearly in relevant statutes and regulations, and the duties and obligations of the body competent to set and revise the maximum level of financial support should also be clearly defined in law. Public support must be accompanied by supervision of parties' accounts by specific public bodies.²²
42. Parties should, however, fulfill certain requirements in order to become eligible for public funding. Minimum requirements should be included in legislation, which may include registration as a political party, proof of a minimum level of support, proper completion of financial reports, and compliance with relevant accounting standards. Gender balanced representation and special support to women candidates (as a special measure under Article 4 of the CEDAW)²³ may also be a ground for receiving additional funding.
43. Next to direct financial support, public funding may also be provided in the form of tax exemptions for party activities, access to free media airtime, or the free use of public meeting halls.²⁴ Both financial and in-kind support shall be provided on the basis of equality of opportunities to all parties and candidates. The allocation of funding, and in particular the timing of such allocations (whether before or after elections) shall be regulated in relevant legislation; it should be borne in mind that providing public funding after an election may prevent small, new or less wealthy parties from effectively competing for votes.²⁵

5. Financial Reporting

44. Recording and accounting provisions are contained in Chapter 4 on Records and Account Auditing. The main provision under this Chapter is Article 26,

²² *Ibid.*, par 189.

²³ *Op cit* note 12.

²⁴ *Ibid.*, par 179

²⁵ *Ibid.*, par 184.

which provides in its par 5 that financial statements of political parties shall undergo an annual audit, after which auditors' reports shall be submitted to the respective party's senior official, and a committee presided over by the Senior President of the Administrative Court, otherwise composed of the Senior President of the Court of Appeals of Tunisia, and the Chairman of the Institute of Chartered Accountants of Tunisia. According to Article 26 par 6, the auditors' report shall also be submitted to the Prime Minister within one month after the date when the party's financial statements are delivered by the auditors.

45. The funding of political parties shall be monitored by an independent body, to avoid discriminatory or biased treatment. Such monitoring shall include supervision over the accounts of political parties, the expenses involved in election campaigns, as well as their presentation and publication.²⁶ In the Decree Law, it is welcome that the auditors' reports are submitted first to an independent body made up of high-ranking representatives of the judiciary and the Institute for Chartered Accountants. At the same time, it is unclear why the auditors' reports shall later also be submitted to the Prime Minister. Aside from receiving such reports, the Prime Minister does not appear to have any additional tasks in relation to financial reporting, given that only the committee endorses parties' financial statements (Article 26 par 7). Furthermore, as opposed to the committee, and as stated in par 23 *supra*, the Prime Minister would not appear to possess the requisite neutrality and impartiality of an appropriate monitoring body, as he/she is the main representative of the executive, and often himself in a high position in a ruling political party. It would thus appear advisable to delete par 6 of Article 26, so that the only remaining oversight body over financial reporting is the committee.
46. In this context, it is noted that parties are only held to submit the auditors' reports to the monitoring committee, but that the Decree Law does not foresee the monitoring of party accounts by the committee. In order to ensure full transparency and accountability of party financing, it is recommended to include in the Decree Law the obligation of political parties to also disclose their accounts to the committee as the regulatory monitoring body.²⁷
47. Under Article 26 par 8, parties shall publish financial statements in daily newspapers and their websites. It is not clear how detailed these financial statements will be – should they include, e.g., names of donors, then this may raise concerns with regard to the privacy rights of individual donors. This should be clarified under Article 26.
48. Moreover, the Decree Law does not specify how long financial statements shall remain on the party websites. Should such statements only be published for a day or two, then the requisite public scrutiny would not appear to be possible. It is thus recommended to outline in the Decree Law how long

²⁶ See, as a regional example, Article 14 of the Recommendation 2003(4) of the Council of Europe's Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns, adopted by the Committee of Ministers on 8 April 2003, at the 835th meeting of the Ministers' Deputies.

²⁷ See the OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, *op cit.* note 1, par 214.

parties shall keep such information on their websites; ideally, this should be for at least 6 months.

49. Furthermore, Article 26 seems to imply that the requirement to publish financial statements in newspapers and on websites shall apply for all political parties. Should this be the case, then such requirement would be quite burdensome for smaller political parties with limited funding. Bearing this in mind, it may be helpful to explore whether, as a matter of course, financial statements could not also be published on the website of the oversight committee which endorses these statements under Article 26 par 7.
50. In this context, it is also noted that according to Article 27, parties shall submit detailed annual reports to the Court of Accounts. The role of this court, and in particular which type of monitoring and other powers it exercises, should be outlined in greater detail in this provision.

6. Sanctions against Political Parties

51. Sanctions against political parties are regulated in Chapter 5 of the Decree Law. According to Article 28, the violation of a number of provisions of the Decree Law will render a party liable to sanctions. These provisions are Article 3 (principles that parties are obliged to respect), Article 4 (prohibition of calling to violence, hatred, intolerance or discrimination), Article 7 (membership of political parties), Articles 8 and 16 (principles and contents of party statutes), Article 9 (formalities for registering), Article 17 (party resources), Article 18 (providing citizens with privileges), Article 19 (prohibited types of funding), Article 22 (appointment of a fiscal agent), Articles 23 - 25 (maintenance of party accounts and records), Article 26 (annual audit of financial statements), and Article 27 (indication of sources of funding in audit report).
52. It is reiterated that Articles 3 and 4 contain quite vague terms (see par 18 supra) that could easily be interpreted widely or arbitrarily. Basing sanctions on such vague wording raise concerns with regard to the exercise of political parties' right to associate under Article 22 of the ICCPR which may only be limited in cases where this is necessary in a democratic society in the interests of national security, the public order, public health or morals, or the protection of the rights of others (Article 22 par 2 of the ICCPR). The criteria for sanctioning political parties should be formulated with greater clarity, and in line with the permissible restrictions laid down in Article 22 par 2 of the ICCPR.
53. It is equally difficult to see how sanctioning parties for not including the methods of administration in their party statute (Article 8), or for not regulating temporary suspension, dissolution or liquidation of assets in the statute (Article 16) would be permissible under the requirements listed above. Moreover, requiring parties to include specificities such as these in their party regulations under threat of sanctions could well constitute undue interference into internal party affairs.
54. As for sanctioning the failure to adhere to formalities for registering (Article 9), it is questionable whether sanctions would even be needed here, given that

these seem to be a requirement for being registered as a party in the first place. The decision to not register a political party would already appear to be a sufficiently negative result for potential parties not adhering to registration formalities. It is thus recommended to delete the reference to Article 9 from the list of provisions rendering parties liable for sanctions. Generally, if the formalities of registering are not adhered to, it would be preferable if the respective party would be informed about that prior to being denied registration, so that it would still have time to amend its application.

55. As for the remaining provisions listed in Article 28, violations of provisions relating to permissible party membership, funding, and auditing could well lead to sanctions, but such sanctions would need to be proportionate to the respective violation.
56. Based on Article 28, the violation of one or more of the provisions cited therein will first lead to a warning to discontinue and remedy the violation, issued by the Prime Minister. Should the violation not be removed, then the President of the Court of First Instance of Tunisia shall, upon request from the Prime Minister, suspend the party's activities for a period of up to 30 days. The party may challenge this decree.
57. Finally, should the specified violations not be discontinued or remedied after the warning and suspension, and after the exhaustion of all means of appeal against the suspension, the Court of First Instance, upon request of the Prime Minister, shall order the dissolution of the party.
58. As noted previously, the Prime Minister plays an important role in the monitoring of political parties and ensuing procedures potentially leading to sanctions. As it is the Prime Minister who first issues warnings in cases of alleged violations, it is assumed that he/she does so on the basis of prior investigations. As stated earlier (pars 23 and 45 *supra*), monitoring and regulatory bodies should be neutral and independent, to avoid all aspects of possible bias or discrimination. For this reason, the strong role of the Prime Minister in monitoring and political parties and initiating proceedings leading to sanctions should be reconsidered. His/her involvement in proceedings against political parties, in particular if such proceedings lead to their suspension, or even dissolution, could be seen as partisan and possibly biased from the beginning. It is thus advised to amend Article 28 so that such monitoring activities, also in relation to procedures involving sanctions, are conducted by an independent and impartial body, e.g. an elections commission or state audit institution.
59. It is further noted that under Article 28 of the Decree Law, all types of violations of the law are treated the same; regardless of whether a political party statute foresees calls for violence or hatred, or whether it simply lacks certain provisions, or whether a party has not complied with party financing or auditing provisions, the possible sanctions are always first a warning, then suspension, and finally dissolution. Other sanctions, such as fines, are not included in Article 28, but may rather be imposed as additional sanctions under Article 29.
60. According to international standards, there is a general presumption in favour of the formation, functioning and protection from dissolution of political

parties.²⁸ Their formation and functioning should not be limited, nor their dissolution allowed, except in extreme cases as prescribed by law and considered necessary in a democratic society. Sanctions against political parties should at all times be objective, enforceable, effective and proportionate.²⁹ Generally, the dissolution of a party should only be applied in the most serious cases³⁰, as a measure of last resort, if the requisite aim (e.g. protection of national security, public order, human rights, etc) cannot be achieved by applying a less invasive measure.

61. When going through the possible reasons for sanctions under Article 28, threatening a political party with suspension or dissolution due to calls for violence and hatred could, depending on the seriousness of the matter, indeed be considered necessary and proportionate, provided that other possible sanctions such as fines have not led to remedial action on the side of the party. Should a party actively call for the violent overthrow of the government in place, or for violent attacks against the constitutional order, once in place, then its suspension or dissolution would be considered justified.
62. At the same time, the suspension or dissolution of a party due to this party's acceptance of non-Tunisian nationals, persons under 16 years of age, or military servicemen, judges, local politicians, or members of the police (see Article 7) would appear to be disproportionate. If the purported aim of the sanction is to prevent parties from accepting certain individuals as members, then sufficiently dissuasive administrative fines, or other punitive measures such as loss of eligibility for state funds, or for other benefits, should normally suffice to achieve it. In extreme cases, a party could also lose its registration status.³¹
63. While criminal sanctions are reserved for serious violations that undermine public integrity, there should be a range of administrative sanctions available for the improper acquisition or use of funds by parties.³² In relation to such violations, including transgressions concerning the types of funds that parties may receive, a less invasive and more appropriate sanction would be to deprive parties of any funds received in violation of Articles 17 and 19. This would allow the party to continue to exist, and may dissuade it from accepting illegal funds in future. Depending on the extent of the violation, an administrative fine could additionally be imposed. Administrative fines would also appear to be proportionate measures in response to the illegal provision of privileges to citizens under Article 18.
64. As for violations of recording and auditing requirements (Articles 22 – 27), the extent of the violation and its repetitiveness should be taken into account when determining the sanction. Also here, failure to record information on donations

²⁸ See the OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, *op cit.* note 1, par 43.

²⁹ *Ibid.*, par 224.

³⁰ See the ECtHR judgment in the case of *the Republican Party of Russia v. Russia*, application no. 12976/07, of 12 April 2011, par 201. See also the case of the *United Macedonian Organization Ilinden – PIRIN and others v. Bulgaria*, application no. 59489/00, of 20 October 2005, par 56.

³¹ For other examples of possible sanctions, see the OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, *op cit.* note 1, par 225.

³² *Ibid.*, par 217.

received, or to ensure the proper audit of records should lead to the loss of all or part of such funds for the party. Possibly, criminal investigations against key party officials for attempts of fraud or corruption could supplement the sanctions imposed against the party. The suspension or dissolution of a party for such reasons would generally be considered disproportionate.

65. In order to ensure that the sanctioning system under the Decree Law is compliant with international standards on freedom of association, and permissible limitations of this right, it is recommended to revise Article 28 extensively, to ensure a system of sanctions that is based on proportionate responses to violations, bearing in mind that the suspension or dissolution of political parties should always be measures of last resort. In this context, it is recommended to explore other types of sanctions, such as sanctions of a financial nature, and restrictions on parties in times of elections.³³
66. Under Article 28 par 2, the provisions of the Code on Civil and Commercial Procedures shall apply to judicial procedures for the dissolution of parties, and asset liquidation thereof. It is presumed that these provisions also include the right for associations, including parties, to appeal against decisions on dissolution.
67. Under Article 30, whoever violates Article 19 pars 1 and 2 shall be punished with one to five years of imprisonment. This refers to the acceptance of funds prohibited by law, namely funding from foreign organizations and from unknown sources. It is questionable why specifically these two violations should lead to prison sentences, whereas the call for violence or hatred under Article 4 would not. Moreover, it is not clear who exactly should be punished under Article 30, whether this only relates to party officials accepting illegal donations, or whether this would also cover the senior administration of a party, or perhaps also the donor. It is advised to supplement the Decree Law with clear and foreseeable provisions relating to serious violations of relevant provisions, and, as needed, with references to relevant criminal legislation.

[END OF TEXT]

³³ *Ibid.*

Annex 1:

[Decree Law No. 87/2011 dated 24th September 2011 on the Regulation of Political Parties](#)

The Interim President of the State,

Upon the proposal of the Higher Commission for the Achievement of the Objectives of the Revolution, Political Reform and Democratic Transition;

Having reviewed organic Law No. 32 dated 3rd May 1988 on the Regulation of Political Parties;

Law No. 8/1968 dated 8th March 1968 on the Regulation of the Accounting Department, and all the revisions and supplements thereof;

Law No. 33 dated 3rd May 1988 on Tax Privileges for Political Parties;

Law No. 112/1996 dated 30th December 1996 on the Corporate Accounting System;

Law No. 48/1997 date 21st July 1997 on Public Funding of Political Parties;

Law No. 65/2001 dated 10th July 2001 on Lending Organizations;

Decree Law No. 6/2011 dated 18 February 2011 on the Establishment of the Higher Commission for the Achievement of the Objectives of the Revolution, Political Reform and Democratic Transition;

Decree Law No. 14/2011 dated 23rd March 2011 on the Interim Regulation of Public Powers;

Decree Law No. 35/2011 dated 10th May 2011 on the Election of the National Constituent Assembly;

Ordinance No. 118/1970 dated 11th April 1970 on the Regulation of the Council of Ministers, and all the revisions and supplements thereof; and

The deliberations of the Council of Ministers;

The following Decree Law is hereby promulgated:

Chapter 1

General Principles

Article 1 – The present Decree Law shall guarantee the freedom to establish and join political parties and activism within such, and shall further aim at securing the freedom of political organization, supporting political plurality and the development thereof, and establishing the principle of transparency in the administration of political parties.

Article 2 – A “party” shall be an association composed by the agreement of Tunisian citizens, which shall contribute to the political framing of citizens and establishing the values of citizenship, and shall aim at participating in the elections with the purpose of exercising power at the national, regional or local level.

Article 3 – Political parties shall, in statutes, activities and funding thereof, respect such principles of the Republic, as the rule of law, democracy, pluralism, peaceful rotation of power, transparency, equality, impartiality of administration, safety of places of worship and public utilities, independence of the Judiciary and human rights as stipulated in international conventions ratified by the Republic of Tunisia.

Article 4 – Political parties shall, in the statutes, statements, programmes or activities thereof, be prohibited from calling to violence, hatred, intolerance or discrimination on religious, denominational, gender or regional basis.

Article 5 – Public authorities may not, whether directly or indirectly, obstruct or delay activities undertaken by political parties.

Chapter 2

Establishment and Administration of Political Parties

Article 6 – Founders and administrators of a political party shall be required to hold Tunisian nationality and to fully enjoy their civil and political rights.

Article 7 – Members of a political party shall be required to have Tunisian nationality and be of sixteen (16) years of age at minimum. Multiple memberships of political parties shall not be allowed.

The following may not join a political party:

- Active military personnel and civilians during their exercise of military duty;
- Judges;
- Governors, first deputies, public clerks of governorates, deputies and mayors;
- Active members of interior security forces ; and
- Municipal police members.

Article 8 – A political party's statute shall regulate the methods of administration thereof based on the rules of democracy.

Article 9 – People wishing to establish a political party shall send a registered mail with acknowledgement of receipt to the Prime Minister, including:

- a- A statement of the party's name, platform, logo and headquarters. A party's name must be different from the names of legally constituted parties.
- b- A copy of the national IDs of party founders; and
- c- Two copies of the party's statute signed by the founders thereof.

A bailiff shall, upon delivery of the aforementioned correspondence, verify the completion of the data specified hereinabove and shall, to the party representative, issue a duplicate copy of a verification of completion report.

Article 10 – In cases where the requirements of the Statutes conflict with the provisions of Articles 3 and 4 hereof, The Prime Minister may take a justified decision rejecting the founding of the party within sixty (60) days as of the date of receipt of the correspondence specified in paragraph 1 of Article 9 above.

Party founders may challenge the decision rejecting the party foundation as per the procedures applicable in the Article on Exceeding Powers in accordance with the provisions of the Law No. 40/1972 dated 1st June 1972 on the Administrative Court.

Upon receipt of the notification of receipt or upon notifying of the final decision of the Administrative Court ruling the abrogation of the rejection decision, the party representative shall, no later than seven (7) days, make an announcement in the Official Printing House of the Republic of Tunisia stating the party's name, field of specialisation, objective and address of the head office thereof, accompanied with a copy of the report referred to in Article 9 or with the decision of the Administrative Court.

The National Printing House of the Republic of Tunisia shall, within fifteen (15) days from the day of deposit, publish such notice in the Official Gazette.

Failure to return the notification of receipt within sixty (60) days as of sending the correspondence referred to in Article 9 above shall implicitly be deemed a no objection to founding the party.

Article 11 – A political party shall be legally constituted and shall acquire the legal personality as of the date of publishing the notice in the Official Gazette of the Republic of Tunisia.

Article 12 – A political party legally constituted shall have the right to litigation, compensation, ownership and disposal of the resources and assets thereof, and may accept aids, donations, gifts and legacies as per the conditions stipulated in Chapter 3 hereof.

Article 13 – Founders, administrators, employees and members of a political party shall not be deemed personally responsible for the legal liabilities thereof. Party creditors may not demand the abovementioned to pay off debts on their own money.

Article 14 – Administrators of a political party shall notify the Prime Minister via a registered letter with acknowledgement of receipt of the content of every revision to the statute thereof no later than one month as of the date of deciding on the amendment. Informing the public of such amendment shall be through an official daily newspaper issued in Tunisia and via the official website of the party, if any, provided that every amendment shall not conflict with the provisions hereof.

Article 15 – A political party may establish political relationships with other parties either national or foreign, or with an international consortium of political parties.

National political parties may form political fronts or electoral alliances.

Article 16 – A political party's statute shall regulate temporary suspension of activities thereof or the dissolution thereof upon an initiative by the administering structures of the party or by a number of the involved members as specified in the statute.

A party's statute shall regulate the liquidation of the money thereof and assets returned thereto in case of dissolution of party upon an initiative thereby as per the requirements of the statute thereof.

Chapter 3

Financial Provisions

Article 17 – Resources of a political party shall comprise:

- All types of Membership subscriptions, provided that any one subscription shall not exceed one thousand and two hundred (TND 1200). Should the registration fees exceed TND 240, payment shall be made via a bank or postal cheque or a postal transfer.
- Aids, donations, gifts and bequests shall be within the limits stipulated in Article 19 hereof;
- Revenues generated from the assets and the activities thereof;
- Loans, provided that aggregate undertakings to all lending institutions stipulated by Law No. 65/2001 dated 10th July 2001 on Lending Institutions shall not exceed two hundred thousand 200,000 TND.

Article 18 – No political party may provide citizens with any financial or in-kind privileges.

Article 19 – Political parties shall be prohibited from accepting:

- Any direct or indirect funding in cash or in kind from any foreign organization;
- Any direct or indirect funding from an unknown source;
- Aids, donations and gifts from legal personalities, whether private or public, except budgetary funding;
- Donations, gifts and bequests from natural persons, the annual value of which exceeds sixty thousand (60,000) DNT for each donor.

Article 20 – Provisions of Article 19 shall apply to in-kind donations, gifts and bequests as well as gratuitous services.

Article 21 – Political parties shall be entitled to public funding.

Article 22 – A party shall appoint a single fiscal agent who shall be responsible for making the financial statements stipulated in Article 24. The party's statute shall identify the structure for appointing the fiscal agent.

The political party shall open a single bank or postal account for all the financial transactions thereof.

All financial transactions of a party exceeding five hundred 500 TND, whether on the expenditures or revenues sides, shall be made through bank transfers or bank/postal cheques, and such transactions may not be broken down into smaller ones to stay below the specified amount.

Bank or postal accounts held by political parties may not be subject to freezing except by a judicial decision.

Chapter 4

Records and Account Auditing

Article 25 – A political party shall maintain the accounts thereof in compliance with the corporate accounting system stipulated in Law No. 112/1996 dated 30th December 1996 on the Corporate Accounting System.

The accounting standards applicable to political parties shall be established by virtue of a decree by the Minister of Finance.

Article 24 – A political party shall also keep the following records:

- A members' register;
- Deliberation records of party's administrative bodies;
- Record of aids, donations, gifts and bequests, categorized into cash and in-kind, mentioning the value and the names of the donors thereof. The party shall keep such record in the head office thereof.

Article 25 – A political party shall keep the financial documents, reports and records thereof for ten (10) years.

Article 26 – A political party's financial statements shall undergo an annual audit. Auditing political parties' accounts shall take place as per the standards set forth by the Institute of Chartered Accountants of Tunisia.

Each party with annual resources not exceeding one million (1,000,000) DNT shall appoint an auditor certified by and registered with the Institute of Chartered Accountants of Tunisia or the Accountant Association of Tunisia as accounting experts.

Parties whose annual resources exceed one million (1,000,000) DNT shall select two (2) auditors from among chartered accountants registered with the Institute of Chartered Accountants of Tunisia.

The party shall pay the auditor's fees.

The auditor's report shall be submitted to the party's senior official and to a committee presided over by the Senior President of the Administrative Court of which the members shall be the Senior President of the Court of Appeals of Tunisia and the Chairman of the Institute of Chartered Accountants of Tunisia.

Auditor's report shall be submitted to the Prime Minister within one month after the date of delivery of the party's financial statements by auditors. Should auditors' hold conflicting opinions, they shall make a joint report incorporating the perspective of each.

Based on the auditor's report, the abovementioned committee shall endorse or reject the party's financial statements.

Each political party shall publish financial statements thereof accompanied with the auditor's report in a daily newspaper in Tunisia and on the party's website, if any, within one month after the date of the endorsement of such financial statements.

Article 27 – Each party shall submit an annual report of a detailed description of the sources of funding and expenditures thereof to the Accounting Department.

Chapter 5

Sanctions

Article 28 – Any violation of the provisions of Articles 3, 4, 7, 8, 9, 16, 17, 18, 19, 22, 23, 24, 25, 26 and 27 shall render a political party liable to sanctions as per the following actions:

- 1) Forewarning: The Prime Minister shall specify the violation committed and warn the party to remove such no later than thirty (30) days as of the date of reporting such forewarning.
- 2) Suspension of Party: Should the violation be not removed within the period stipulated in the first paragraph of the present Article, the President of the Court of First Instance of Tunisia shall, upon request from the Prime Minister, decree the suspension of a party's activities for no more than thirty (30) days. The party may challenge the suspension decree as per the procedures of summary justice.
- 3) Dissolution: Such shall take place by virtue of a ruling of the Court of First Instance at request of the Prime Minister in cases where the specified violations are not eliminated after receiving a forewarning, facing a period of suspension, and exhausting all means of appeal against the suspension.

Provisions of the Code on Civil and Commercial Procedures shall apply to judicial procedures for the dissolution of parties and asset liquidation thereof.

Article 29 – In addition to the punishments stipulated in Article 28 hereof, a fine shall be imposed on the violating party, equal to the value of the resources or in-kind aids acquired by party or delivered to a third party in violation of the provisions of Articles 18 and 19 above.

Article 30 – Any violation of the provisions of the first or second paragraphs of Article 19 above shall be subject perpetrator to a jail term ranging from one year to five years.

Chapter 6

Interim and Final Provisions

Article 31 – Organic law No. 32 dated 5th May 1988 on the Regulation of Political Parties and No. 48 dated 21st July 1997 on the Public Funding of Political Parties shall be repealed.

Article 32 – Law No. 33 dated 3rd May 1988 on Tax Privileges for Political Parties shall remain in force.

Article 33 – Provisions of Articles 9, 10 and 11 hereof shall not apply to political parties legally founded on the date of the enforcement hereof.

Article 34 – Considering licensing applications for the composition of political parties submitted before the date of the enforcement hereof shall continue in accordance with the provisions of the Organic law No. 32 dated 3rd May 1988 on the Regulation of Political Parties.

Article 35 – The present Decree Law shall be published in the Official Gazette of the Republic of Tunisia and shall enter into force on the date of the publication thereof.

Tunisia, 24th September 2011

Interim President of the Republic

Fouad al-Mbazza'