A Chronicle of Legislative Developments in the Aftermath of the Tunisian Revolution
A Revolution Seeks the Means to Succeed!\(^1\)

Our “chronicle of legislative developments” in the wake of the Tunisian Revolution effectively started on January 15, 2011, within hours of the departure of the ousted President.

It was on the morning of that day that the revolution – which started on December 17, 2010 and came to a head when the former President departed on January 14, 2011 – achieved legal status, as a result of legislation approved by the Constitutional Council. The new legislation, representing the very first legal, constitutional and political outcome of the revolution, dealt the coup de grace to the supreme power in charge of the former regime’s hierarchy of authority, opening the door to a series of decisions and measures.

If we refer to the Official Gazette of the Republic of Tunisia, Al-Ra’ed Al-Rasmi, we find that the laws, ordinances, decrees and resolutions issued since January 15, 2011 have all sought (1) to help the revolution succeed and (2), as far as possible, to lay the foundations for a better political future.

1. A Revolution Seeking to Succeed: Making Hard Choices
The transitional period was difficult, especially with regard to choices. A transitional period is invariably a period of economic, social and political turmoil, consequently the challenge during such a period is to find an equilibrium between stability in the broadest sense (in terms of e.g. national security, socio-economic stability, and so on) – which, in Tunisia, meant maintaining continuity with the conditions prevailing prior to January 14, 2011 – and, on the other hand, the dismantling of institutions, structures, personal fiefdoms and patterns of behavior associated with the former regime and decisions made by the latter.

This complex equation is best resolved by (1) implementing immediate structural reforms; (2) initiating an administrative and judicial purge, and (3) initiating a purge of the political scene.

Immediate Structural Reforms: the Economy, the Media and Human Rights
If we peruse the Official Gazette since January 15, 2011, we find the first action that was taken involved the nation’s finances and, more specifically, Tunisia’s Central Bank. This was followed by a large number of financial and economic measures, as well as other actions relating to the media, communication and personal freedoms. Following the appointment of a new Prime Minister, the Government’s
first priority was to stabilize the financial and economic situation, so their first action – on January 17, 2011 – was to appoint a new Governor of the Central Bank of Tunisia. This reflected widespread concern that state funds might be spirited away or misappropriated. But this was not the Government’s sole concern with respect to financial issues and the associated corruption which had existed previously and which, it was feared, might rear its head again. Their additional concerns were manifested on at least two levels:

First: dissolution of the Supreme Committee for Major Projects pursuant to Ordinance 148 of January 29, 2011. A committee established under Ordinance 2927 of November 1, 2005, had enabled a number of people who now stand accused of corruption to control several major projects and share the spoils.

Second: amendment of Decree 1865 of 2004, relating to the Tunisian Financial Analysis Commission, by Ordinance 162 of February 3, 2011. The new ordinance decreed that “the members of the Commission shall exercise their duties within the Commission entirely independently of their original administrative functions.”

This amendment, as well as various other measures, gave the impression that the present Government prioritizes economic and financial matters at the expense of other issues.

Media and communication: the former regime monopolized and exerted total control over all media and other forms of communication. The Ordinance of February 3, 2011 dissolved the Ministry of Communication and effectively liberated the media, thereby responding to one of the key demands of the revolution: for freedom of information. In the absence of an effective role for the Supreme Council of Communication, however, or an influential role played by trade unions or associations of media professionals, the lack of basic controls and of a professional ethical framework meant that this liberalization resulted in a totally unregulated media environment which further fuelled political tensions. This prompted the establishment of an independent public body for media reform and the appointment of an independent media personality as its head.

Establishing civil liberties: this period was also distinguished by the establishment of social and political freedoms, including the freedom of assembly and association. The rapid evolution of this phenomenon is clearly reflected in the proliferation of political parties and associations, and the explosion of political manifestations such as rallies, sit-ins and demonstrations. Nevertheless, we observe that the rules applying to political parties on the one hand and associations on the other remain somewhat uneven. Under the law regulating political parties which is currently in force, political parties are subject to a licensing system. New parties have been obtaining licenses at greatly increased speeds (as evidenced by the sharp increase in licensed political parties, from less than ten prior to January 14 to more than 40 by March 10, 2011). Associations, by contrast, are not regulated by a licensing system, but must instead wait for a mandatory 3-month period before they are deemed legally valid and can become fully active; this requirement dates from before the revolution. In practice this stipulation is largely ignored: associations generally launch their activities as soon as they have submitted their applications.

Periods of transition are generally characterized by a tendency to purge former administrations as a whole – including, more specifically, the security apparatus and the senior management of various public utilities – as well as the Department of Justice and the judiciary.
Purging the Administration and Judiciary

Periods of transition are generally characterized by a tendency to purge former administrations as a whole — including, more specifically, the security apparatus and the senior management of various public utilities — as well as the Department of Justice and the judiciary. The transitional period after the revolution of January 2011 was no exception. The Official Gazette shows that starting on January 29, 2011, large numbers of letters of dismissal were issued to civil servants occupying administrative and political posts. The first wave of dismissals started at the presidential palace, where all the ministers and advisers attached to the Presidency were relieved of their posts, followed by the Director General of the Tunisian Foreign Liaison Agency. This agency, which controlled the media and was responsible for marketing Tunisia’s image abroad, was then disbanded. Political appointees in the Prime Minister’s Office were also dismissed.

The Ministry of the Interior then dismissed some 40 civil servants from their posts! Next in line were judges and the Ministry of Justice. Dismissals included the State Attorney General in charge of the judiciary, the Director of the Court of Appeals in Tunis, and a number of officials from the Court of First Instance in Tunis, including the Deputy Attorney General and the Investigating Judge. These dismissals reflect the assumption that the dismissed officials either supported or collaborated with the former regime, or were guilty of corruption or collusion with the former regime. But such an assumption does not, in itself, indicate whether these individuals were the only ones involved with the former regime. Would it not have been better to await the decisions of the courts or the findings of the Anti-Corruption and Fact-Finding Commissions in order to establish their complicity?

Furthermore, while it was (legally) possible to dismiss officials in the former regime’s civil service using such administrative mechanisms, it did not make sense to dismiss judges in such a manner, especially in view of the fact that judges can only be relieved of their duties under a separate system established by Law 29 of July 14, 1967 relating to the judiciary, the Supreme Council of the Judiciary and the Statute of Judges. According to these provisions, judges can only be relieved of their duties within the framework of the Supreme Council of the Judiciary. While perhaps justified by the exceptional circumstances, this breach of protocol nevertheless gave the impression that legitimacy had been compromised by making an assault on an authority which is formally recognized as independent by the Constitution. A better course of action would have been to take precautionary measures (by suspending the judges, for example) until the Supreme Council of the Judiciary had issued final decisions on their cases.

A principal characteristic of revolutions is that they invariably pass through critical periods which may result in their failure, bring them to a premature end, or turn them into dictatorships.

These dismissals were also criticized by the Tunisian Bar Association, which rejected these actions despite the fact that the judges who were dismissed were notoriously corrupt.

Movement to Purge the Political Scene

This movement manifested itself in particular through actions taken against the former ruling party, the “Democratic Constitutional Rally”. The latter had ruled the country since 1987 as the successor to the “Destourian Socialist Party”, which had in turn held the reins of power since 1956! These actions had a special significance since, in addition to the overthrow of the regime, the revolution had specifically demanded the disbanding of the ruling party — a clear, emphatic demand which was regularly
This eventually resulted in the Minister of the Interior’s decision, on February 6, 2011, to close down the party headquarters and suspend its activities for a one-month period in order to avoid breaches of public order.\textsuperscript{14} A lawsuit was subsequently filed at the Court of First Instance in Tunis, requesting the dissolution of the party on the grounds that it had violated Articles 6 and 17 of the Political Parties Act, which requires that political parties should renounce violence in their activities. The lawsuit accused the party of collusion in acts of violence and looting which followed the fall of the regime on January 14, 2011. It also accused the party of violating Article 16 of the same law, which requires that political parties should maintain financial accounts and submit annual reports to the Court of Auditors.

The lawsuit – which ended in a decision to dissolve the ruling party – represented the first real test of the judiciary in this new phase and also revealed its political role. Effectively, this trial was the first trial of the former regime, hence the first legal building block in uncovering the truth. A closer look, however, shows that the decision was compromised, because the trial was politically motivated and the culpability of the former ruling party predetermined. It would have been preferable to put the matter before the Fact-Finding Commission, which was charged with the task of investigating the excesses and abuses witnessed by the country since December 17, 2010 – especially because this task forms part of the country’s collective and historical responsibility, and because one of the main tenets of the revolution was to break with the past and build a better future.


A principal characteristic of revolutions is that they invariably pass through critical periods which may result in their failure, bring them to a premature end, or turn them into dictatorships. So when a revolution aims to establish democratic rule, it must first pass through a transitional phase. This in turn involves what is known as a system of transitional justice, the premises of which are different from those of traditional justice. Unlike the latter, transitional justice seeks to identify collective responsibilities, acknowledge historical facts and prepare for comprehensive reconciliation, thereby paving the way for a political, social and legal future based on principles of justice, freedom, equality and participation. The Tunisian Revolution is currently passing through this phase, as reflected in current efforts to establish a core framework for transitional justice by (1) setting up commissions for the purpose of investigating the past, (2) preparing for a better future, (3) declaring a general legislative amnesty and (4) ratifying a number of international treaties.

Commissions of Inquiry

The intention to create such commissions had already been announced prior to January 14, 2011. In his last speech on January 13, 2011, the former President promised to establish three commissions: the first as a fact-finding mission investigating events since December 17, 2010; the second to investigate bribery and corruption, and the third for political reform.

These commissions – the chairs and members of which were appointed on January 19 and 22, 2011, respectively – can be considered as early achievements of the revolution.

It would have been better if the Commission’s remit covered the investigation of human rights abuses over the entire period of the former regime’s tenure in power.

Commission for the Investigation of Truth and Abuses

At first sight, this Commission appears to be a “Truth and Reconciliation Commission” similar to those established in other countries which...
have passed through transitional periods such as South Africa, Rwanda and Sierra Leone, Chile and Morocco. What we find, however, is that the Commission's remit is limited to human rights violations committed since December 17, 2010: it does not cover the entire 23-year period during which the former regime was in power. The initial impression of this finding is that the Commission will not attempt to determine the ultimate responsibility of the regime as a whole – which is the normal remit of Commissions of Truth and Reconciliation – but will instead simply determine individual responsibility and end up by recommending financial compensation or other reparations. It would have been better if the Commission's remit covered the investigation of human rights abuses over the entire period of the former regime's tenure in power. Furthermore, there is no indication that the Commission will act as a commission for national reconciliation. It is therefore premature to consider this Commission as a suitable body for achieving transitional justice. Instead, it merely represents a first step towards what we must hope will be an extended remit to investigate a longer time period, i.e. the entire period in power of the former regime or even the entire duration of the Republic since its foundation in 1957. This would enable the Commission to conduct a retrospective investigation and establish collective responsibilities over the period as a whole, and also to evolve into a Commission of Reconciliation – a major element in a transitional justice system. This would enable the Commission to reconcile the Tunisian people with their past, helping them to accept it, turn the page and pass on to the next phase.¹⁵

**Fact-Finding Commission on Bribery and Corruption**¹⁶

The authority of this Commission, while more clearly defined than that of the above-mentioned Commission for the Investigation of Truth and Abuses, raises some fundamental questions, especially in relation to the judiciary. The Commission's remit is restricted to an investigation of financial corruption under the former regime, thereby confining its function to a very specific area. Nevertheless, the overlap between the work of this Commission and that of the judiciary has been criticized, especially since the judiciary is already examining charges of corruption and bribery brought against the former President, members of his family and many former officials. The most important of these cases is Investigative Case 19592, brought before the Investigative Judge in Tunis in relation to crimes allegedly committed by the former President and his wife. The case has been taken in charge by the Dean of Investigating Judges at the Court of First Instance in Tunis. The overlap between the Commission's remit and the work of the judiciary, and the resulting tension, both came to a head when the Commission organized a search of the presidential palace in Sidi Bou Said on February 19, 2011. The Commission was subsequently accused of unlawful interference with the work of the judiciary and of disregarding sequestration procedures, thereby jeopardizing the admissibility in court of all the work done to date, as well as destroying the fingerprints of people who handled the money found at the palace. The charges were extremely embarrassing for the Commission!

This overlap between the work of the two above-mentioned Commissions and the judiciary, and the fact that the latter does not accept the necessity to establish Commissions (which it does not consider legitimate in that they are effectively competing with the judiciary
in investigating an area for which, after all, the judiciary is responsible, thereby wasting time and potentially also obstructing justice) all point to a lack of clarity regarding the concept of transitional justice and a lack of awareness of the relevant techniques and methods. The Commissions started work immediately after January 20, 2011, despite an absence of any legislation to regulate them or define their remits, frames of reference and working methods, or indeed to define their relationships with the Government and the judiciary. This effectively weakened the Commissions, attracting harsh criticism and prompting many calls for their dissolution. As a result, a summary court ruling was passed on March 3, 2011, stipulating that the Fact-Finding Commission’s work should be suspended. The ruling was upheld on Thursday, March 10, 2011 by the First Circuit Court of Appeals in Tunis, which rejected the Commission’s request for an injunction pending completion of legal procedures relating to the composition and functioning of the Commission, and insisted that its members should hand over all documents in their possession to the public prosecutor.

Reform Commissions

Two reform commissions were created: the Commission for Political Reform and the National Commission for the Reform of the Media.

The Commission for Political Reform: As in the case of the two commissions mentioned above, the Chairman of this Commission was appointed on January 19, 2011, and three days later the Commission started work as an independent advisory committee of experts. Its role was to make recommendations to the Government with the aim of reforming the basic legislation which governs and regulates public life, including the Electoral Code and the Political Parties Act, as well as the law regulating associations and other legal provisions up to and including the Constitution, if requested to do so. Given the enormity of this Commission’s work and its potential impact on the country’s future, it was bound to face harsh criticism from political forces and influential players on the political scene as the latter start to appear, assume their political roles and call for participation in shaping the country’s political future. A number of such players have been involved in setting up the “Council for the Protection of the Revolution”, which includes numerous influential members of political parties, trade unions and professional associations such as the Tunisian General Labor Union, Renaissance Movement and Bar Association.

This Council has vested itself with a set of powers which it has vigorously defended and reasserted, the most important of which is participating in the formulation of legislation, overseeing the Government’s work, and remunerating the Commission for Political Reform, which has already submitted a number of proposals for constitutional reforms and other scenarios. The emergence of the Council for the Protection of the Revolution on the political scene has galvanized a trend to add new powers to the existing powers of the Commission for Political Reform, such that it should become a “Commission for Attaining the Goals of the Revolution, Political Reform and Democratic Transition”. The purpose of this name change is to make it clear that political reform is deep-rooted in the principles of the revolution, and that its ultimate aim is to achieve...
a transition to democracy. And it will probably also result in a merger of the Commission with a new body which the Government wants to christen the “Supreme Authority for the Protection of the Revolution and Democratic Transition”, effectively causing the Council for the Protection of the Revolution to evolve into a higher authority which will participate directly in decision-making and governance.

The National Commission for Media Reform: The creation of this organization and appointment of its Chairman and members pursuant to the Decree of March 2, 2011 was the first practical step towards a reform of the media sector. The latter had been corrupted by the former regime and left without any ethical or professional standards – a state of affairs reflected by the media mayhem even after January 14!

The organization has been entrusted with “assessing the status of the media at the regulatory and structural levels, and providing recommendations for upgrading media institutions so that they communicate to the standards envisaged by the Revolution.” It is also expected to “make recommendations regarding applications to set up new radio and television stations pending the establishment of a specialist authority competent to deal with such applications…”

The Commission, acting as an advisory body, will play the role of the Supreme Council for Media and Communication until a new version of this council is set up. Meanwhile the Commission’s chairman has promised to publish its recommendations and views on various proposals so that they are entirely transparent.

Setting up such independent commissions could also bring about reform in a number of other sectors. The number of such commissions is sure to multiply, eventually including sectors such as the prison service, national security, education, the judiciary, the financial industry, agriculture, the environment and so on.

The role of these commissions, however, remains subject to political pressures and the acceptability of their recommendations to all political parties. Hence it would be better to involve political parties, trade unions and professional associations in the work of these commissions from the outset, both in order to ensure a degree of pragmatism in their recommendations, and to ensure that it is feasible to implement the latter.

General Amnesty

The General Amnesty Decree was issued on February 19, 2011; it was the first decree to be adopted by the interim President after obtaining parliamentary authorization on February 9, 2011. The decree has a number of political and social implications.

General amnesty had been a political demand for decades. Decree No. 1 of 2011 introduced such an amnesty in Tunisia for the first time ever. The amnesty reflects a clear trend towards the reinstatement of human rights and the release of political detainees and prisoners of conscience. It represents an attempt to correct previous injustices. And yet from the perspective of transitional justice, it remains incomplete and limited in context for several reasons, most notably the following:

- The list of crimes covered by the amnesty, the majority of which represent “crimes of conscience”. These include political crimes such as attacks on state security personnel; violation of anti-terrorism laws; breaches of the Press Code; breaches of provisions applying to public meetings, processions, demonstrations and other large gatherings; breaches of the law governing political parties and associations as well as strikes, sit-ins and civil disobedience in the workplace; and publication, distribution or simply possession of banned writings and books… Furthermore, it is common knowledge that a number of these breaches of the above-mentioned provisions occurred in the period after January 14.

However, granting amnesty for crimes listed in Articles 131-135 of the
Penal Code – namely those relating to troublemakers – raises certain legal complications, because while those Articles have been used to prosecute individuals and groups on the grounds of their political or organizational affiliations, they have also been used as the basis for prosecuting common criminals. This may allow those who have been convicted under the above-mentioned Articles for reasons having nothing to do with politics to benefit from the general amnesty.

- The General Amnesty only applies to a specific time period, covering “crimes” committed prior to January 14, 2011. Indeed, the first section of the Decree stipulates that “all those who were sentenced or convicted by the courts at any level prior to January 14, 2011, shall benefit from the general amnesty.” This time limit means that the amnesty is only applicable to past events; it does not cover any violations committed during the period between January 14 and the date on which the Amnesty Decree was issued: February 19, 2011.

- The Amnesty Decree does not provide a basis for transitional justice. It excludes acts committed after January 14, 2011 – a period that witnessed many abuses, arrests, investigations and the beginnings of trials for acts of public disorder, looting and attacks on individuals and property. These abuses were purely punitive in nature, and took place in exceptional circumstances which the country as a whole had to endure. The exclusion of these abuses from the General Amnesty may be due to the difficulty of deciding which of these acts should or should not be pardoned.

- It is also clear that the Decree does not include any perpetrators or individuals involved in the activities of the former regime, whether in the previous era or during the time of the uprising. This confirms the impression that the amnesty does not represent a genuine effort to achieve a comprehensive reconciliation with the era which preceded January 14, 2011, and supports the notion that the idea of “reconciliation with the past” has not yet gained any real traction at the present time.

This impression is further strengthened if we consider the “decree confiscating the assets of the former President, his family and his in-laws”. In addition to its questionable constitutional legitimacy, this decree also violates the United Nations Convention against Corruption (UNCAC) and once again raises the issue of incompatibility with any efforts at national reconciliation. With respect to the international Convention against Corruption, it should be noted that the latter confines the authority to confiscate assets to the judiciary, except in cases where perpetrators cannot be prosecuted, either because they are dead, absent or have fled the country. If, by virtue of this decree, the Government was able to directly confiscate assets owned by members of the President’s family who fled abroad, then surely it should be legally possible to confiscate the property of those who remained in Tunis through the courts? In the interests of national reconciliation and with a view to establishing a degree of transitional justice, property should not be confiscated until the Fact-Finding Commission on Bribery and Corruption has completed its work.20

Ratifying International Treaties
A number of international treaties and conventions were ratified immediately after the General Amnesty Decree was issued. These included:

- The International Convention for the Protection of All Persons from Enforced Disappearance.21

- Optional Protocol to the International Covenant on Civil and Political Rights.22
- Rome Statute of the International Criminal Court and Agreement on the Privileges and Immunities of the International Criminal Court.23

- Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.24

These ratifications had two main objectives: a principal one and a conditional one. The latter was achieved by signing up to the Rome Statute of the International Criminal Court, which means that Tunisian officials could be prosecuted before this international tribunal if it should prove impractical to try them before Tunisian courts.

The principal goal, however, was to fulfill the charter of human rights in Tunisia, hitherto incomplete. The ratification of these conventions means that the Tunisian justice system is now complete, and also represents an appropriate response to legal demands for the validation of human rights.

**Concluding Remarks**

Since January 14, 2011 – the date marking the start of what is now known as the Tunisian Revolution – developments in Tunisia may genuinely be described as revolutionary at all levels, but especially at the level of politics, civil society and the media. The revolution was accompanied by a number of new legal enactments which could form the basis for a period of “transitional justice”. They include in particular the establishment of fact-finding and anti-corruption commissions, the creation of the Commission for Attaining the Goals of the Revolution, Political Reform and Democratic Transition in preparation for a new political era, and finally the liberation of the media sector – accompanied by new standards of ethical professionalism – through the establishment of a National Commission for Media Reform.

What is missing at this stage is the pursuit of a clear path which would effectively and systematically establish a system of transitional justice: a clear strategy in this respect has thus far been lacking. The resulting improvisation has had an impact on a wide range of issues and decisions:

- Commissions, while representing an important step along the road to transitional justice, were established in haste and subsequently made a number of mistakes which drew fierce criticism and, in the case of one commission at least, legal scrutiny.

- Furthermore, while acceptance of the principle of compensation for victims represents an important premise for transitional justice, once again there is an absence of clear vision in this respect. On January 28, 2011, the Government started paying out compensation to the families of victims killed since December 17, 2010, despite the fact that the investigation by the Fact-Finding Commission was still in progress and the judiciary had not yet finished processing the relevant lawsuits.

- Despite the fact that economic and social rights were among the principal goals of the Tunisian Revolution, these have yet to find their way into relevant legislation! This does not necessarily imply a lack of official awareness, since a number of social and economic demands have already been incorporated into certain decisions and programs – in particular decisions to pay out unemployment benefits to unemployed university graduates, accept many demands for social concessions and trade unions, and prepare for the initiation of social negotiations while at the same time recognizing the importance of
of development. It would have been logical to form commissions – similar to the four commissions mentioned above – responsible for investigating these requirements and recommending a social, economic and sector-specific plan.

The salient feature of the period which has elapsed since the start of the revolution is vigorous political activity, accompanied by preliminary thoughts about certain aspects of economic and social development. While this phase had laid the foundations for a system of transitional justice, official decisions have been significantly affected by a number of difficulties, including security issues and economic problems, as well as a degree of chaos on the political scene and in the media. These difficulties include the fall of the first Government (on February 27, 2011); the formation of a new Government on March 7, 2011, and the declaration of a new roadmap on March 3, 2011. The latter includes a series of new proposals: first, to suspend the Constitution; second, to maintain the interim President and Government in office until the National Constitutional Assembly starts to function, by issuing a decree for regulating public authorities during the transitional period. Third and finally, to organize elections for the National Constitutional Assembly on July 24, 2011...

... and thus the Chronicle of Revolutionary Legislative Developments continues!

Endnotes

1 This chronicle was kept until the end of March 2011 and will be continued at a later stage.
3 Al-Ra‘ed Al-Rasmi issue 8, 1 February 2011: p. 163.
7 Cf. the first decision issued by the Minister of the Interior on January 22, licensing a political party named the Ba‘ath (Rebirth) Movement; also the decision of the Minister of the Interior on 2 March 2011 licensing the Al-Nahda (Renaissance) Movement Party.
12 Article 65 of the Tunisian Constitution.
14 In accordance with Article 18 of the Political Parties Act of 1988.
15 Decree No. 8 of 2011 dated 18 February 2011 refers to the creation of the National Commission for the Investigation of Truth and Abuses committed since 17 December 2010 and until the need for it ceases, Al-Ra‘ed Al-Rasmi issue 13 of 2011: p. 203.
22 Decree No. 3 of 2011, dated 19 February 2011.
23 Decree No. 4 of 2011, dated 19 February 2011.
24 Decree No. 5 of 2011, dated 19 February 2011.