

Article 13. Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be limited only in such cases and to such extent as are provided for by law.

CIVIL SOCIETY REPORT

on the Implementation of

Chapter II (Prevention) & Chapter V (Asset Recovery) of the

UNITED NATIONS CONVENTION AGAINST CORRUPTION

IN TUNISIA

by I WATCH

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I WATCH is a Tunisian non-profit independent watchdog organization that aims to fight financial and administrative corruption and improve transparency. I WATCH became the official contact point for Transparency International in Tunisia in November 2013 and since 2019, I WATCH is the official affiliate of Transparency International in Tunisia.

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Abbreviations

While the abbreviations are provided in both French and English in the following table, they are used in their original French version throughout the report for institutions and laws and in their English version for names of international institutions or initiatives.

Abbr.	French	English
ARP	Assemblée des Représentants du Peuple	Assembly of People's Representatives
CBGLCC	Commission de la Bonne Gouvernance et de la lutte Contre la Corruption	Commission on Good Governance and the Fight against Corruption
CGF	Contrôle Général des Finances	General Finance Control
CNLCT	La Commission Nationale de la Lutte Contre le Terrorisme	The National Commission for the Fight against Terrorism
CP	Code pénal	Penal Code
CPP	Code de procédure pénal	Code of Criminal Procedure
CRNE	Centre National du Registre des Entreprises	National Center of the Business Register
CTAF	Commission Tunisienne des Analyses Financières	Tunisian Commission for Financial Analysis
HAICOP	Haute Instance de la Commande Publique	High Authority of Public Order
INAI	Instance Nationale d'Accès à l'Information	National Authority for Access to Information
INLUCC	Instance Nationale de la Lutte Contre la Corruption	National Anti-Corruption Authority
INPDP	Instance Nationale de Protection des Données Personnelles	National Authority for Personal Data Protection
ISIE	Instance Supérieure Indépendante pour les Elections	Independent Superior Authority for Elections
JORT	Journal Officiel de la République Tunisienne	Official Journal of the Tunisian Republic
MENAFATF	Middle East and North Africa Financial Action Task Force	Middle East and North Africa Financial Action Task Force
OCDE	Organisation de Coopération et de Développement Economique	Organization for Economic Cooperation and Development
ONMP	Observatoire National des Marchés Publics	National Observatory of Public Procurement
OSC	Organisation de la Société Civile	Civil Society Organization
PIB	Produit Intérieur Brut	Gross Domestic Product
SNBGLCC	Stratégie Nationale de Bonne Gouvernance et de Lutte Contre la Corruption	National Strategy for Good Governance and the Fight against Corruption
TA	Tribunal Administratif	Administrative Court

List of people consulted

Person interviewed	Affiliation	Date of interview
Ms. Fadhila Gargouri	Magistrate at the Court of Auditors	3 March 2022
Mr. Mounir Chedly	General Counsel at the General Directorate of State Litigatio, in charge of the file on assets located abroad	2 March 2022

I. Introduction

Tunisia signed the United Nations Convention against Corruption (UNCAC) on March 30, 2004 and ratified it on September 23, 2008.

This parallel report reviews Tunisia's implementation of selected articles of Chapter II (Preventive Measures) and Chapter V (Asset Recovery) of the UNCAC. The report is intended as a contribution to the UNCAC implementation review process currently underway covering these chapters. Tunisia was selected by the UNCAC Implementation Review Group by a drawing of lots for review in the fifth year of the second cycle.

Scope. The UNCAC articles and topics that receive particular attention in this report are those covering to preventive anti-corruption policies and practices (Article 5), preventive anti-corruption bodies (Article 6), public sector employment (Article 7.1), political financing (Article 7.3), codes of conduct, conflicts of interest and asset declarations (Articles 7 and 8), reporting mechanisms and whistleblower protection (Articles 8.4 and 13.2), public procurement (Article 9.1), the management of public finances (Article 9), access to information and the participation of society (Articles 10 and 13.1), judiciary and prosecution services (Article 11), private sector transparency (Article 12), and measures to prevent money laundering (Article 14). Under Chapter 5, the UNCAC articles and topics that receive particular attention in this report are those covering anti-money laundering (Articles 52 and 58), measures for direct recovery of property (Articles 53 and 56), confiscation tools (Article 54), international cooperation for the purpose of confiscation (Articles 51, 54, 55 and 59), and return and disposal of confiscated property (Article 57).

Structure. The report begins with an executive summary, including the condensed findings, conclusions and recommendations about the review process, the availability of information, and implementation, as well as the implementation and enforcement of selected UNCAC articles. The following part covers the findings of the review process in Tunisia as well as access to information issues in more detail. Subsequently, the implementation of the Convention is reviewed and examples of good practices and deficiencies are provided. Then recent developments are discussed and finally, recommendations for priority actions to improve the implementation of the UNCAC are given.

Methodology. The report was prepared by I WATCH with technical and financial support from the UNCAC Coalition. The group sought to obtain information for the report from government offices and to engage in dialogue with government officials.

The report was prepared using guidelines and a reporting template developed by the UNCAC Coalition and Transparency International for use by CSOs. These tools reflected but simplified the United Nations Office on Drugs and Crime (UNODC)'s checklist and called for relatively

short assessments compared to the detailed official self-assessment checklist. The report template included a set of questions about the review process and, in the section on implementation, asked for examples of good practices and areas in need of improvement in articles of UNCAC Chapter II on prevention and Chapter V on asset recovery.

II. Executive Summary

This report examines Tunisia's implementation and enforcement of Chapter II (Preventive Measures) and Chapter V (Asset Recovery) of the United Nations Convention against Corruption (UNCAC) and is intended as a contribution to the review process of UNCAC implementation of the second review cycle that is currently underway and covers these two chapters. The recommendations contained in the report are intended to encourage the Tunisian government to meet its commitments under the UNCAC through its successful implementation.

Description of the process

The implementation review began with a collection of data and approved and published legal texts. The second phase consisted of data analysis and comparison of national texts with the articles of the Convention and measuring the compliance rate by indicating gaps. In parallel, interviews with stakeholders regarding the implementation process of national laws and the need to synchronize them were conducted. The final phase of the report includes recommendations for the Tunisian state to bring its legislation in line with the Convention and ensure the fair implementation of laws.

Availability of information

The implementation process of the UNCAC was not clear. There was no publication of data from the expert team to reflect the government's assessment of the implementation of the Convention. In the case of laws and legal texts, any text must be approved through the national legislative process. Laws must be approved by parliament and signed by the President of the Republic in order to be published in the Official Gazette of the Republic of Tunisia in paper and electronic form. The texts of application are published after approval of the Council of Ministers, chaired by the Head of Government, on the same website.¹ The major deficiency lies in the lack of future action. There is no vision for plans on the sections of the Convention which have yet to be implemented.

In order to monitor the application of the laws, requests for access to information were sent according to the national legislation in force² to several state institutions, namely: The National Instance for the Fight against Corruption (INLUCC), the Presidency of the Government, the Ministry of State Domains, the Ministry of Justice and the Public Prosecutor. Unfortunately, Tunisian authorities were not cooperative in providing us with the requested information. This lack of clarity and information strongly influenced our report.

Summary of the analysis of UNCAC articles

¹ www.iort.tn.

² Organic Law No. 2016-22 of March 24, 2016, on the right of access to information.

The review of the implementation of UNCAC provisions in this report has brought to light the following key considerations, which can be divided into five broad areas:

A. Anti-corruption policies and mechanisms

Despite Tunisia's accession to the UNCAC since 2008, for years the Tunisian legal corpus has been silent on the issues of anti-corruption and the establishment of reporting and whistleblower protection mechanisms. It was not until the 2011 revolution that a process of legalization of these mechanisms was triggered with the framework decree n° 2011-120 and the integration of corruption prevention into the heart of public action.

The enactment of Law No. 2017-10 on reporting corruption was a significant step that conceived of means and measures for the treatment of reports of corruption, the body responsible for receiving reports, and concrete measures to protect whistleblowers who since 2017, are entitled to physical, moral and legal protection.

One of the virtues of the new legal arsenal lies in its intention to diversify the bodies in charge of the fight against corruption, while centralizing the final processing of cases at the level of the National Authority for the Fight against Corruption (INLUCC), which was established in 2011. Indeed, law n° 2017-10 obliges organizations to establish an internal administrative structure in charge of receiving and investigating suspicions of corruption, to reinforce the accessibility of citizens and public agents to anti-corruption bodies.

Article 130 of the Tunisian constitution of 2014 provides for the creation of the authority of good governance and the fight against corruption, as being the body responsible for preventing and prohibiting corruption. It is also responsible for receiving and processing corruption alerts according to the aforementioned organic law No. 2017-10 of March 7, 2017.

However, this body has not yet been set up and its mandate was covered by the INLUCC. The offices of the INLUCC span across almost the entire nation, thus ensuring public awareness of the corruption prevention body. This is complementary to other communication tools available to citizens, including the toll-free number and the online reporting platform for corruption.

During 7 years of effective work, the authority has been able to conclude several partnership agreements with different actors in society, and has initiated several outreach and awareness-raising campaigns.

Nevertheless, efforts made by the Tunisian authorities, including the INLUCC itself, have not been able to eliminate certain deficiencies related to reporting mechanisms and whistleblower protection. This is mainly due to the ineffectiveness of whistleblower protection measures. In addition to exceeding deadlines set by national legislation for granting protection to whistleblowers and general disrespect for protective measures issued by the INLUCC to public bodies, the freezing of INLUCC's operations since August 2021 has jeopardized the rights and interests of whistleblowers, weakened preventive mechanisms and hindering the fight against corruption in Tunisia.

On the other hand, the draft of the new constitution published in the official gazette on June 30, 2022, and submitted to a referendum on July 25, 2022, indicates the abolition of a constitutional body in charge of the fight against corruption. One must therefore question the fate of the INLUCC and the future of the fight against corruption in Tunisia especially after many years during which the texts remained unenforceable and had no binding effect.

B. *Financial governance*

Public finances are at the crossroads between public policy and public action. Special attention has been granted to the legal framework regulating the management of public funds, in to ensure good financial governance in the country. This goes back to 1883, the year of the introduction of budgetary rules and principles. Since then, legal texts have progressively strengthened the management of public funds by introducing strict rules of accounting, control and audit, and the evaluation of public policies.

Examining the drafting process for the finance laws points to a trend of consolidating budgetary transparency and integrity in Tunisia, by obliging the publication of all information related to the way in which the state budget is prepared, discussed, approved, monitored and concluded.

However, public finances have long been suffering from a structural budgetary imbalance, reducing the capacity to respond to crises. Moreover, the coronavirus pandemic has highlighted deficiencies in the management of public funds. This is coupled with shortcomings in monitoring carried out by the various bodies involved, including the Court of Auditors.

Public finance is also at the heart of public procurement. The latter serves to meet the needs of public bodies that ensure the achievement of the general interest by following a number of rules and principles guaranteeing the sound management of public money. Public bodies must go through public procurement steps which are duly regulated by Decree No. 2014-1039 of March 13, 2014. The principles and rules introduced by this decree, including transparency, competition and equal opportunity, directly respond to the international standards of the Organization for Economic Cooperation and Development (OECD) in public procurement.

In addition, the use of public procurement digitization since 2014 via the TUNEPS platform has minimized corruption risks (by minimizing human intervention at the various stages of bid submission) and facilitated access to information on public procurement.

Yet, the complex architecture of the bodies involved in the public procurement process has become a source of inefficiency in that bureaucracy can impede a rapid response to the needs of the public purchaser. This is in addition to the impossibility of avoiding some corruption, since technical information on public orders is not fully protected and can be disclosed even before the publication of the tender.

In the Tunisian public sector, as in all developing countries, this sector is a social 'shock absorber' used by governments, and is also a "preferred" venue for corruption within the public administration. Despite various attempts by ministers to reform and fight against corruption, this sector remains resistant to reform because its dual role within politics and

governance seem to be the greatest challenge for any reform. Indeed, the close relationship between politics and governance in Tunisia has ruined political life for a decade of the revolution and has never been sufficiently guided by shared interests since 2011.

C. Money laundering

Tunisia has adhered for years to national actions to fight combat money laundering, which has a tool for financing terrorist acts. To this end, Law No. 2015-26 on the fight against terrorism and the suppression of money laundering has introduced certain mechanisms and measures to prevent and punish any act considered as a money laundering operation. This law has expanded the list of entities responsible for monitoring suspicious financial transactions and requires them to notify the authorities responsible for the repression of these acts including, primarily, the Tunisian Commission for Financial Analysis (CTAF).

However, improvements in Tunisian legislation have not covered possible offenses related to the use of online financial services and cryptocurrencies.

D. Open governance

The Tunisian constitution of January 27, 2014 was clear on freedom of information, unlike the draft constitution of June 30, 2022 which contains no reference to the right of access to information.

The National Authority for Access to Information (INAI) is the authority in charge of managing, operating and arbitrating appeals relating to freedom of information. Indeed, the organic law n° 2016-22 of March 24, 2016 related to the right of access to information tried to guarantee this constitutional right by establishing a set of mechanisms such as the obligation of publishing necessary information.

E. Confiscation and restitution of assets

The confiscation of the assets of Ben Ali and his family, looted abroad, was the logical consequence of the misappropriation of public funds. At the dawn of the 2011 revolution, the Tunisian state has, in addition to the confiscation of assets and property of Ben Ali and his family, requested the freezing of assets located abroad for the purpose of confiscation and subsequent return.

Since the confiscation decrees of 2011, the Tunisian legal framework has not considered a regulation relating to the restitution of confiscated assets, whether internally or externally.

Implementation in Law and in Practice

Table 1: Implementation and enforcement summary

UNCAC articles	Status of implementation of law	Status of implementation and enforcement in practice
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Art. 5 – Preventive anti-corruption policies and practices	Fully implemented	Moderate
Art. 6 – Preventive anti-corruption body or bodies	Not implemented	Poor
Art. 7.1 - Public sector employment	Largely implemented	Moderate
Art. 7.3 - Political financing	Largely implemented	Poor
Art. 7, 8 and 12 - Codes of conduct, conflicts of interest and asset declarations	Fully implemented	Moderate
Art. 8.4 and 13.2 - Reporting mechanism and whistleblower protection	Fully implemented	Moderate
Art. 9.1 - Public procurement	Fully implemented	Good
Art. 9.2 - Management of public finances	Fully implemented	Moderate
Art. 10 and 13.1 – Access to information and the participation of the society	Fully implemented	Good
Art. 11 - Judiciary and prosecution services	Largely implemented	Moderate
Art. 12 - Private sector transparency	Partially implemented	Moderate
Art. 14 - Measures to prevent money-laundering	Fully implemented	Moderate
Art. 52 and 58 – Anti-money laundering	Fully implemented	Moderate
Art. 53 and 56 - Measures for the direct recovery of property	Fully implemented	Poor
Art. 54 – Confiscation tools	Partially implemented	Poor
Sections 51, 54, 55 and 59 - International cooperation for the purpose of confiscation	Partially implemented	Poor
Art. 57 – The return and disposal of confiscated property	Partially implemented	Poor

Table 2: Performance of selected key institutions

Name of institution	Performance in relation to the responsibilities covered by the report	Brief comment on performance
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<p>The Assembly of People's Representatives (ARP)</p>	<p>Moderate</p>	<p>The ARP, being the legislative body of the state, is mainly responsible for enacting laws. Looking back at ARP meetings, it seems clear that the fight against corruption with its preventive measures and the recovery of assets are not a priority for the people's representatives.</p> <p>This situation worsened after July 25, 2021, when the President of the Republic decided to freeze the activities of the Parliament.</p>
<p>The National Authority for the Fight against Corruption (INLUCC)</p>	<p>Moderate</p>	<p>The INLUCC suffers from a lack of human resources and solid expertise as a result of a recruitment policy based on the secondment of public servants from other administrations and institutions, and temporary contract workers. The dependence on the presidency of the government is manifested by the attachment of its own budget to the latter, so the appointment of its president is done by government decree following a decision of the president of the republic. As a result, the INLUCC is totally dependent on the government, which has sometimes limited its effectiveness.</p> <p>In addition, the decisions made by the President on July 25, 2021 also affected the INLUCC as its premises were evacuated and closed on August 20, 2021 by law enforcement agencies.</p>
<p>The National Commission for the Fight against Terrorism (CNLCT)</p>	<p>Good</p>	<p>The Commission was created through Organic Law No. 2015-26 on the fight against terrorism and the suppression of money laundering. Conceived of under the Presidency of the Government, this Commission is composed of 19 members representing any body related to the fight against terrorism and money laundering. The decrees of application of this law were published within the deadlines provided by the law.</p> <p>The CNLCT has become the driving force behind the implementation of the national counter-terrorism strategy. It has a number of tools at its disposal to achieve state "objectives" including the ability to freeze the</p>

		assets of individuals or organizations suspected of providing support to terrorism.
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Recommendations for priority actions

Following the analysis of the available data, recommendations for priority actions are presented to both the executive and legislative branches.

The executive branch is called upon to:

1. Ensure interaction with Civil Society Organizations (CSOs) in the review process;
2. Ensure accessibility to official information;
3. Promulgate the texts of application of the laws already in force in the fight against corruption;
4. Further strengthen the human and financial capacity of oversight bodies;
5. Implement the mechanisms for monitoring the implementation of the conventions ratified by Tunisia.

The legislative branch is, in turn, called upon to:

6. Adopt the laws necessary for the fight against corruption and amend those in force to strengthen the independence of the INLUCC and the institutions involved in the fight against corruption and the promotion of transparency and accountability;
7. Strengthen the role of the parliament as the main monitoring body of the state;
8. Take into account the conventions and treaties to which Tunisia has acceded to during the codifying of legislation;
9. Play a more active monitoring role through questions (written or oral) addressed to the Government.

III. Assessment of review process for Tunisia

The government's UNCAC review process is opaque; there is no publication of information about the review process, nor the list of experts, on official websites. Following contact with the government's focal point in July 2021, he informed us that the review team has not yet been appointed.

Report on the review process

Table 3: Transparency of the government and CSO participation in the UNCAC review process

Did the government disclose information about the country focal point?	No	Information about the country's focal point was not published on the official government website.
Was the review schedule published somewhere/publicly known?	No	The schedule for the review is not publicly available.
Was civil society consulted in the preparation of the self-assessment checklist?	No	No information available.
Was the self-assessment checklist published online or provided to civil society?	No	No information available.
Did the government agree to a country visit?	Unknown	No information available.
Was a country visit undertaken?	Unknown	No information available.
Was civil society invited to provide input to the official reviewers?	Unknown	No information available.
Was the private sector invited to provide input to the official reviewers?	Unknown	No information available.
Has the government committed to publishing the full country report?	Unknown	No information available.

Access to information

Access to information is a right constitutionally enshrined in Article 32 of the Tunisian Constitution of 2014,³ consolidated by the organic law No. 2016-22 of March 24, 2016 on access to information.⁴ This law obliges administrations and state institutions to publish any information needed by citizens and to respond to any request for information sent by a legal

³ Article 32 states: "The State guarantees the right to information and the right of access to information. The State shall work to guarantee the right of access to communication networks," <https://legislation-securite.tn/law/44137>.

⁴ Organic Law No. 2016-22 of March 24, 2016, on access to information, <https://legislation-security.tn/law/45656>, accessed on October 10, 2022.

or physical person within the limits of the conditions provided the law.

During the preparation of this report, the experts browsed the websites of several institutions and commissions to verify the existence of the necessary information. While drafting the report, we proceeded to send and file several requests for access to information to several stakeholders (the INLUCC, the Central Bank of Tunisia, the Ministry of State Property, the Public Prosecutor, the Presidency of the Republic, the Presidency of the Government, etc). However, we received very few. Even the INLUCC, the body in charge of anti-corruption policy, has not responded to requests for access to information. The government's resistance remains incomprehensible as the institutions have just ignored the requests without explanation as required by law.

The most accessible information online is legislative texts, which are published on the official website of the Journal Officiel de la République Tunisienne (JORT).⁵ Investigations and press articles, such as Nawaat,⁶ Inkyfada,⁷ Al Qatiba⁸ were useful for examining the implementation of the Convention within the Tunisian legal arsenal. This kind of source gave us an impression of the practice of the law, even if it does not provide accurate overall statistics.

⁵ www.iort.gov.tn.

⁶ <https://nawaat.org/>.

⁷ <https://inkyfada.com/fr/>.

⁸ <https://alqatiba.com>.

IV. Assessment of implementation of Chapter II and Chapter V Provisions

This chapter analyzes the implementation of UNCAC Chapter II on preventive measures and Chapter V on asset recovery in Tunisia through the application of laws, regulations, and practices, highlighting both good practices and areas for improvement.

4.1 Chapter II

With specific reference to Chapter II of the UNCAC, the following points were commented on and analyzed:

4.1.1 Art. 5 - Preventive anti-corruption policies and practices

Preventing corruption, fostering societal participation, and establishing effective practices are the guidelines set forth in Article 5 of the UNCAC.

Since the 2011 revolution, Tunisia has adopted a set of texts with the aim of fighting corruption, which was one of the main factors of the 2011 revolution. The legal arsenal includes:

- Organic Law 10-2017 on the reporting of corruption and the protection of whistleblowers;⁹
- Law 22-2016 on the right of access to information;¹⁰
- Law No. 2018-46 of August 1, 2018, on the declaration of assets and interests, the fight against illicit enrichment and conflict of interest in the public sector;¹¹
- Government Decree No. 2019-1124 of December 9, 2019, establishing the mechanisms, modalities and criteria for granting a monetary reward to whistleblowers;¹²
- Government Decree No. 2018-818 of October 11, 2018, on the establishment of the model for the declaration of assets and interests, and the minimum threshold of assets, loans and gifts to be declared;¹³
- Government Decree No. 2016-1158 of August 12, 2016, establishing the governance committees and setting their powers;¹⁴
- Circular No. 34 of December 24, 2014 on the application of the code of conduct and

⁹ Law online, <https://legislation-securite.tn/law/55295>, accessed 18.07.2022.

¹⁰ Loi en ligne, <http://www.inai.tn/fr/%D8%A7%D9%84%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D8%A3%D8%B3%D8%A7%D8%B3%D9%8A-%D8%B9%D8%AF%D8%AF-22-%D9%84%D8%B3%D9%86%D8%A9-2016-%D9%85%D8%A4%D8%B1%D9%91%D8%AE-%D9%81%D9%8A-24-%D9%85%D8%A7/>, accessed 18.07.2022.

¹¹ Law online, <https://legislation-securite.tn/law/104356>, accessed 18.07.2022.

¹² Law online, <https://legislation-securite.tn/law/104690>, accessed 18.07.2022.

¹³ Law online <https://legislation-securite.tn/law/104404>, accessed on 18.07.2022.

¹⁴ Law online, <https://legislation-securite.tn/law/54715>, accessed 18.07.2022.

ethics of public officials;¹⁵

- Decree No. 2014-4030 of October 3, 2014, approving the code of conduct and ethics for public officials;¹⁶
- Circular No. 16 of March 27, 2012 on the recognition of transparency, good governance and the fight against corruption.¹⁷

The Tunisian Constitution of 2014 established the prevention and fight against corruption as guiding principles for public action. This is verifiable in Article 15 of the Constitution, which has made the public administration an entity at the service of the general interest and acting according to the rules of transparency, integrity, efficiency and accountability. Monitoring and compliance with these rules and principles is entrusted to a number of pre-established bodies (such as the authority for general control of public services under the presidency of the Government) and newly-established bodies (such as independent administrative authorities).

Good practices

In December 2016, INLUCC published its National Anti-Corruption Strategy 2016-2020. This document is the result of participatory work by the national commission composed of representatives of the Government and civil society organizations.¹⁸ This document was supported by the 2019-2020 action plan of the National Strategy for Good Governance and the Fight against Corruption (SNBGLCC).¹⁹

The national anti-corruption strategy adopted by the INLUCC describes among its objectives the emphasis on political will to bring about relevant change in the areas of good governance and the fight against corruption, and support for societal participation and the fundamental role of the citizen. However, this objective is far from being met in the medium term at best.

The adopted policies have been consolidated through regulatory texts, such as decree-law n° 13-2011 concerning the confiscation of assets and movable and immovable property; decree-law n°2011-68 of July 14, 2011, relating to the creation of a national commission for the management of assets and funds subject to confiscation or recovery in favor of the State, and the framework decree-law n°2011-120 of November 14, 2011 relating to the fight against corruption. In addition, since April 10, 1987 Tunisia has adopted an organic law on the declaration of honor and assets of members of the government and certain categories of public officials.

¹⁵ Law online, <https://legislation-securite.tn/law/44602>, accessed 18.07.2022.

¹⁶ Law online, <https://legislation-securite.tn/law/44481>, accessed 18.07.2022.

¹⁷ Law online, <https://legislation-securite.tn/ar/law/44025>, accessed 18.07.2022.

¹⁸ The national strategy for good governance and the fight against corruption, <https://inlucc.tn/wp-content/uploads/2020/12/Strategie-Nationale-de-Bonne-Gouvernance-et-de-Lutte-Contre-la-Corruption-Decembre-2016.pdf>, accessed on 18.07.2022.

¹⁹ The official website of the INLUCC, <https://inlucc.tn/language/fr/>.

As for the INLUCC, it published on its website an activity report entitled "A year of the national strategy for good governance and the fight against corruption."²⁰ Moreover, it published three annual reports for the years 2016, 2017 and 2018.²¹ Since its inception, the INLUCC has been working to follow-up on its actions to prevent and report corruption. It also organizes training sessions for various public institutions.²²

Deficiencies

In its strategy, INLUCC pointed to the lack of coordination among stakeholders.²³ Indeed, it has not been able to establish special anti-corruption bodies in public institutions as provided for by law. These bodies total no more than 91 bodies across 1,200 public institutions, according to the INLUCC's own reporting. These bodies are supposed to deal with cases at the level of public institutions, cooperating with the authority, facilitating its tasks in the case of investigations launched and ensuring better governance within public institutions. The body emphasized the importance of delineating roles to ensure intra-stakeholder synergy. However, the strategy merely criticizes, without proposing alternatives or assigning clear tasks.

Civil society participation remains marginalized. The INLUCC has not opted for a participatory approach with civil society organizations. The body has repeatedly recommended the revision of the Tunisian legal framework and the enactment of the necessary implementing legislation in the fight against corruption.

4.1.2 Art. 6 – Preventive anti-corruption body or bodies

Articles 6 and 13.2 of UNCAC require each State Party to establish one or more preventive anti-corruption bodies. In its preventive role, this body will have a dual mission: to implement the State's anti-corruption policies, and to bolster development in anti-corruption. To carry out its mission properly, this body must have financial and institutional independence.

Article 130 of the 2014 Tunisian constitution provides that "The body for good governance and the fight against corruption participates in the policies of good governance, prevention

²⁰ <https://inlucc.tn/wp-content/uploads/2020/11/star.pdf>, accessed on 18.07.2022.

²¹ 2016 Report: <https://inlucc.tn/wp-content/uploads/2021/01/Rapport-2016.pdf>, 2017 Report: <https://inlucc.tn/wp-content/uploads/2021/01/rapport-2017.pdf>, and 2018 Report: <https://inlucc.tn/wp-content/uploads/2021/01/%D8%A7%D9%84%D8%AA%D9%82%D8%B1%D9%8A%D8%B1-%D8%A7%D9%84%D8%B3%D9%86%D9%88%D9%8A-2018.pdf>, accessed 19.07.2022.

²² Annual Report 2018-INAI, <http://www.inai.tn/wp-content/uploads/2020/01/%D8%A7%D9%84%D8%AA%D9%82%D8%B1%D9%8A%D8%B1-%D8%A7%D9%84%D8%B3%D9%86%D9%88%D9%8A-%D9%84%D8%B3%D9%86%D8%A9-2018.pdf>, accessed 17.07.2022.

²³ The National Anti-Corruption Strategy, source cited above. p. 28.

and the fight against corruption.²⁴ Organic Law No. 2017-10 of March 7, 2017 on the reporting of corruption and the protection of whistleblowers has also entrusted the "body" with the reception and processing of corruption alerts and reports. However, this body, the national anti-corruption authority in charge of these missions, has not yet been created.²⁵

The INLUCC, created under the framework decree-law No. 2011-120 of November 14, 2011 on the fight against corruption, assumes the missions and roles of the constitutional body. Indeed, the INLUCC preceded the anti-corruption body, and was created in 2011 to expose suspicions of corruption that marked the former regime, followed by the legislature's intention to institutionalize or even constitutionalize the multiple efforts to fight corruption.

As mentioned, the constitutional body is "independent" and "autonomous."²⁶ Nevertheless, as a transitional body, the INLUCC is financially attached to the budget of the Presidency of the Government. The budget comes from state budget appropriations, grants and donations. Financial and administrative autonomy allows the body to be less affected by the general political situation, and it works independently of state bodies. However, the appointment of the president of the body is made by a decree on the proposal of the Government from among independent national figures known for their competence in the legal field.²⁷ It is therefore an appointment process that attempts to ensure impartiality, integrity, competence, neutrality and apolitical nature.

The president of the INLUCC carries out his or her duties with the support of a council composed of a maximum of thirty people appointed by decree on the proposal of the government after consultation with the parties concerned for a three-year term, renewable once.²⁸ A diversified composition called to ensure not only the proper functioning of the body, but also its neutrality and integrity. The Council includes:

1. "At least seven members from among senior civil servants and representatives of control, audit, inspection and evaluation bodies,
2. At least seven members from civil society organizations and professional bodies known for their competence and experience in matters relating to the body's missions,
3. One judicial magistrate, one administrative court judge and one judge from the Court of Auditors,
4. Two members from the communication and information sector."

²⁴ Article 13 of the Tunisian constitution 2014, accessed on 25.02.2022.

²⁵ Article 40 of Organic Law No. 2017-10 of March 7, 2017, on the reporting of corruption and the protection of whistleblowers, accessed on 25.02.2022.

²⁶ Article 12 of the Framework Decree-Law No. 2011-120 of November 14, 2011 on the fight against corruption, accessed on 23.02.2022.

²⁷ Article 19 of the Framework Decree-Law No. 2011-120 of November 14, 2011, accessed on 23.02.2022.

²⁸ Article 20 of the Framework Decree-Law No. 2011-120 of November 14, 2011, accessed on 23.02.2022.

It can be noted, therefore, that this composition is characterized by the necessary expertise to ensure the implementation of the national strategy against corruption.²⁹

Good practices

Since its inception, but especially since 2016, INLUCC has launched outreach and awareness-raising campaigns.³⁰ It entered into several partnerships with public entities, among them municipalities, universities and civil services. In 2018, INLUCC had 62 partnership agreements with different actors in the fight against corruption, of which more than 50% were with ministries and public entities and 16% with civil society actors. This demonstrates a participatory approach in the development of the policy of prevention against corruption.³¹

The INLUCC also oversees the implementation of the national anti-corruption strategy. The strategy consists 6 major pillars:

1. Strengthening political will by adopting changes in favor of good governance and the fight against corruption,
2. Encouraging citizen participation in governmental efforts for good governance and the fight against corruption,
3. Improving transparency and access to information in the organization of public services and the management of public expenditures,
4. Strengthening accountability and ensuring equality before the law,
5. Clarifying the roles of public actors involved in the good governance and anti-corruption process, and
6. Improving working tools and building the capacity of stakeholders in the governance and anti-corruption sector.³²

As an assessment, progress made on the national strategy³³ was the subject of INLUCC's 2018 annual report. The INLUCC's progress, its partnerships, different lines of work and the statistics related to its activities are detailed within the report. The body also mentions 225 activities in its report, focusing awareness-raising through 54 dedicated campaigns, 37 trainings, 44 symposia and conferences and several other activities. The report also contains recommendations presented by the INLUCC, 132 of which have been developed and

²⁹ The National Strategy for Good Governance and the Fight against Corruption: <https://inlucc.tn/wp-content/uploads/2020/12/Strategie-Nationale-de-Bonne-Gouvernance-et-de-Lutte-Contre-la-Corruption-Decembre-2016.pdf>, accessed on 20.02.2022.

³⁰ <https://www.facebook.com/inlucc/videos/127590051513212/>,
https://www.facebook.com/inlucc/videos/646117449138749/?locale=bg_BG&_rdr,
<https://www.youtube.com/watch?v=6Ya7q2AzW5M>, videos watched on 26.02.2022.

³¹ Annual Report of the National Authority against Corruption, p. 11, accessed on 26.02.2022.

³² The national strategy for the fight against corruption, accessed on 31.10.2022.

³³ The annual report of the National Authority for the Fight against Corruption, <https://inlucc.tn/%d8%a7%d9%84%d8%aa%d9%82%d8%b1%d9%8a%d8%b1-%d8%a7%d9%84%d8%b3%d9%86%d9%88%d9%8a-%d9%84%d8%b3%d9%86%d8%a9-2018/>, accessed on 26.02.2022.

structured.³⁴

For the follow-up of its 2017-18 action plan, INLUCC participated in workshops organized by the parliamentary academy for capacity-building among parliamentarians. The program for strengthening integrity and accountability included the methodology of 'integrity islands', a program launched in 2017, in the health, security and customs sectors.

The INLUCC also reported some difficulties in the implementation of its 2017-18 action plan, including the lack of a budget package dedicated to the action plan within the state budget, a lack of human resources, a lack of monitoring of the implementation of the strategy and the limited working tools and communications shared by stakeholders - shortcomings that became the subject of recommendations of the body for its 2019-20 strategic work plan.³⁵

Deficiencies

The Bouden government does not include a ministry or secretariat of state responsible for governance or anti-corruption. Currently, the executive branch does not include any senior official in charge of transparency or anti-corruption issues; the president wants this mission to be his exclusively. According to its former president Chaouki Tbib, the INLUCC always lacked the financial means to carry out its missions.³⁶

The failure to establish the constitutional body casts doubt on the state's willingness to fight corruption on an ongoing basis. The appointment of Chaouki Tabib as president of the INLUCC has been widely criticized and has called into question the independence and autonomy of the body. This appointment comes from the head of government after a large-scale controversy and several accusations of corruption and conflicts of interest. Following the appointment, lawyers wondered about the independence of the INLUCC, and protested against the fact that the naming of the body's president is performed through a government decree. The media and communication work of the INLUCC with Chaouki Tabib have contributed to creating a certain image among the Tunisian public opinion that the work of the body is closely related to the personality of its president. After the exceptional presidential measures of July 25, 2021, and particularly with the freezing of the activities of the INLUCC, it is undeniable that the fight against corruption has never been a priority for the post-2011 government.³⁷

Moreover, the draft of the new Tunisian constitution published in the official gazette on June

³⁴ INLUCC Activity Report, 2018, page 11, accessed 13.10.2022.

³⁵ INLUCC Annual Report, 2018, accessed 1.11.2022.

³⁶ https://africanmanager.com/13_corruption-le-travail-de-linlucc-est-plombe-par-le-manque-dindependance/, accessed on 18.07.2022.

³⁷ Chawki Tabib: "Fakhfakh wanted to settle his accounts before his departure", <https://www.jeuneafrique.com/1038662/politique/tunisie-chawki-tabib-fakhfakh-a-voulu-regler-ses-comptes-avant-son-depart/>, accessed on 26.02.2022.

30, 2022 and submitted to the referendum on July 25, 2022 does not include provisions for any dedicated body to prevent or fight corruption and contains no reference to any institution or authority involved in the matter.³⁸

4.1.3 Art. 7.1 - Public Sector Employment

Article 7.1 of the UNCAC requires that each state party ensure an effective and transparent human resources management system within the public sector. The career path of public servants, which begins with recruitment and ends with retirement through retention and promotion, is based on objective criteria such as merit, equity and skills. In any case, public servants must have a salary scale adequate to their skills, the necessary training to hold public positions and to ensure their professional rotation.

In Tunisia, the professional life of public servants within the administration is governed by the law of December 12, 1983, on the general status of personnel of the State, local public authorities and public administrative establishments. The recruitment of civil servants and non-elected public servants is mainly done through "competitive examinations based on qualifications, tests or admission files."³⁹ The procedures established by Chapter 2 of the law are intended to guarantee equal opportunity, equality in the public sector, integrity and transparency in the hiring process.

Advertisements for public service jobs are generally published on the internet, in particular, on the platform of public competitions where you can find all public service competitions.⁴⁰ The announcements are also published on the websites of the relevant public institutions.

Law No. 2017-10 is consistent with Tunisia's commitments under the UNCAC regarding the Code of Conduct for Public Officials and citizens' accessibility to corruption prevention bodies. Thus, this law has broadened the scope of intervention by authorities in the process of repressing acts of corruption, which are no longer limited to the embezzlement of public funds, abuse of authority or illicit enrichment, but rather, to all kinds of reprehensible acts or dangers to the public interest including tax evasion, conflict of interest or even thwarting judicial decisions.

³⁸ Draft Constitution of June 30, 2022, <https://www.carthage.tn/sites/default/files/public/%D8%A3%D9%85%D8%B1%20%D8%B1%D8%A6%D8%A7%D8%B3%D9%8A%20%D8%B9%D8%AF%D8%AF%20578%20%D9%84%D8%B3%D9%86%D8%A9%202022.pdf>, accessed on 18.07.2022.

³⁹ Article 18 new law n° 83-112 of December 12, 1983, on the general status of the personnel of the State, local public authorities and public establishments of an administrative nature, <https://legislation-securite.tn/fr/law/41641#:~:text=Il%20est%20interdit%20%C3%A0%20tout%20agent%20public%2C%20quelle%20que%20soit,nature%20%C3%A0%20compromettre%20son%20ind%C3%A9pendance>, consulté le 22.07.2022.

⁴⁰ <https://www.concours.gov.tn>,

Good practices

Professional training centers organize training sessions and opportunities for civil servants⁴¹ to get the right training and improve their skills.⁴² Thus, we can say that the opportunities and horizons are wide open for individual development among public servants.

On November 12, 2014, the Presidency of the Government requested an opinion from the Administrative Court (TA) on the subject of allocating a percentage of direct recruitments in its institutions to children of employees of public offices and institutions. In its advisory opinion, the Administrative Court stated that recruitment should be done by competitive examination and in accordance with the principles of the Constitution regarding access to public offices. The Administrative Court refused to recognize the demands of the social parties or social partners, in particular the trade unions, to distinguish the sons of workers by granting them priority in recruitment.

Deficiencies

Despite the existence of a law and clear recruitment measures, exemptions still exist. Several stakeholders, including political parties and social actors such as trade unions⁴³ are still trying to derogate from the principle of integrity in recruitment.

The INLUCC has not published any action taken against former civil servants who used '*revolving doors*' to take advantage of their dual-hatted political positions and functions, such as the various lawyers and judges appointed as ministers and civil servants across various governments. The revolving door was one of the characteristics of the pre-July 25 era, when the political class took advantage of the ambition of public officials who used their powers to make more profit when they returned to the private sector, and vice versa.⁴⁴

The phenomenon of phantom officials or fictitious functions is recognized by the state itself.⁴⁵ The Tunisian state does not consider public officials as a "phenomenon" of corruption, but a

⁴¹ <http://www.ena.tn/ar/gouvernance-ar/academie-ar>.

⁴² <http://www.ena.tn/ar/gouvernance-ar/formation-academie-ar>.

⁴³ "UGTT defends legacy and nepotism in the civil service," article published by IWATCH in 2016, <https://www.iwatch.tn/ar/article/11>, accessed 22.07.2022.

⁴⁴ "Fadhel and Ahmed Abdelkafi when conflict of interest becomes the rule," <https://iwatch.tn/ar/article/30>, accessed 18.07.2022.

⁴⁵ Due to fictitious jobs, Tunisia has an annual deficit of 250 billion for the chemical complex, article published on the site Arabesque, <https://www.arabesque.tn/ar/article/87376/%D8%A8%D8%B3%D8%A8%D8%A8-%D8%A7%D9%84%D9%88%D8%B8%D8%A7%D8%A6%D9%81-%D8%A7%D9%84%D9%88%D9%87%D9%85%D9%8A%D8%A9-%D8%AA%D9%88%D9%86%D8%B3-%D8%AA%D8%B3%D8%AC%D9%84-%D8%B9%D8%AC%D8%B2-%D8%B3%D9%86%D9%88%D9%8A-%D8%A8%D9%80250-%D9%85%D9%84%D9%8A%D8%A7%D8%B1-%D9%84%D9%84%D9%85%D8%AC%D9%85%D8%B9-%D8%A7%D9%84%D9%83%D9%8A%D9%85%D9%8A%D8%A7%D8%A6%D9%8A>.

tool for social peace. President Kaies Said does not escape this logic, despite his statements against corruption. Proof of this is in the complementary finance law of 2021, which authorizes the salaries of 23 officials which never existed within the Constitutional Court, and 16,831 other employees not assigned any role in a table of figures on public sector employment.⁴⁶

The criteria for excluding a person from candidacy are not fair. We can cite two examples: Nabil Karoui, whose party 'Ennahdha' and its allies wanted to prevent him from running for election by amending the electoral law and obstructing his candidacy.⁴⁷ The second example is Youssef Chahed: a candidate for presidential elections who did not meet the conditions of nationality.⁴⁸

4.1.4 Art. 7, 8 and 12 - Codes of conduct, conflicts of interest and asset declarations

Law n°83-112 of December 12, 1983 on the general status of the personnel of the State, local public authorities and public establishments of an administrative nature is the text that regulates the status of public officials in Tunisia. The Penal Code devotes its third chapter to offenses committed by public officials during their work.⁴⁹

The Code of Conduct for Public Officials was promulgated by Decree No. 2014-4030. An old text dating from 1987 relating to the declaration on honor of the assets of members of the government and certain categories of public officials was the first text to concretize the obligation to declare assets and interests, having been repealed by Law No. 2018-46 of August 1, 2018, on the declaration of assets and interests, and the fight against illicit enrichment and conflicts of interest. The latter includes a specific list of positions and functions whose candidates are subject to the declaration obligation⁵⁰ which does not include all public officials.

Judges are also subject to Law No. 2018-46 of 1^{er} August 2018, on the declaration of assets and interests and the fight against illicit enrichment and conflicts of interest, which requires

⁴⁶ « Des fonctionnaires fantômes dans le journal officiel », article published on the business news website,

<https://ar.businessnews.com.tn/%D8%A7%D9%84%D9%88%D8%B8%D8%A7%D8%A6%D9%81%D8%A7%D9%84%D9%88%D9%87%D9%85%D9%8A%D8%A9%D9%81%D9%8A%D8%A7%D9%84%D8%A5%D8%AF%D8%A7%D8%B1%D8%A7%D8%AA%D8%AA%D9%8F%D9%86%D8%B4%D8%B1%D8%A8%D8%B7%D8%B1%D9%8A%D9%82%D8%A9%D8%B9%D9%84%D9%86%D9%8A%D8%A9%D9%88%D8%B4%D9%81%D8%A7%D9%81%D8%A9%D8%A8%D8%A7%D9%84%D8%B1%D8%A7%D8%A6%D8%AF%D8%A7%D9%84%D8%B1%D8%B3%D9%85%D9%8A>, 520,23197,3.

⁴⁷ <https://www.observatoire-securite.tn/fr/2019/06/21/amendement-de-la-loi-electorale-ceux-qui-disent-non/>, accessed on 18.07.2022.

⁴⁸ <https://www.facebook.com/I.WATCH.Organization/videos/497526237461095/>.

⁴⁹ The Tunisian Penal Code promulgated by the decree of July 9, 1913.

⁵⁰ Ibid.

them to "declare their assets and interests, within a maximum period of sixty days, from the date of proclamation of the final results of the elections, the date of appointment or the date of assumption of office, depending on the case."⁵¹

Circular No. 34 of December 24, 2014, on the application of the code of conduct and ethics of public officials, under title 4 covers conflict of interest, declaration of assets and the provision of gifts for public officials. In the preamble to the Code, the legislator has made it clear that the code of conduct is intended for public officials in the broadest sense: elected or appointed. The measures generally apply to all public officials.

Law No. 2018-46 of August 1, 2018, on the declaration of assets and interests, and the fight against illicit enrichment and conflicts of interest provides that the declaration should include assets and interests. The declaration also includes domestic or foreign property. In fact, it should reflect:

- Income: the person subject to the obligation declares the salaries, fees, income from built and unbuilt buildings, income from sales and trade and other income accruing to him/her as well as those accruing to his/her spouse and children (minors);
- Real estate: the person subject to the obligation declares all the real estate belonging to him and those belonging to his spouse and children (minors), regardless of their value and their origin of ownership;
- Personal property: the person subject to the obligation declares personal property belonging to him and those belonging to his spouse and his children (minors), whose unit value exceeds ten thousand dinars (approximately 3000 euros);
- Loans: the person subject to the obligation declares the loans taken out by him and by his spouse, which were not completely refunded by the date of deposit of the declaration, and whose principal exceeds thirty thousand dinars (approximately 9000 euros).⁵²

The statement of interest includes:

- The professional activities carried out by the declarant and his/her, spouse in the three years preceding the declaration.⁵³
- The membership of the declarant or his/her spouse, in decision-making and managerial bodies of private companies, associations, political parties or international governmental and non-governmental organizations, in the three years preceding the declaration.
- Gifts obtained by the declarant, for his or her own account or for the account of his or

⁵¹ Section 5 of Act No. 2018-46 of August 1, 2018.

⁵² Article 3 of Government Decree No. 2018-818 of October 11, 2018, on the establishment of the model for the declaration of assets and interests, and the minimum threshold of assets, loans and gifts to be declared.

⁵³ Article 4 *ibid*.

her spouse or children (minors), in the three years preceding the declaration.⁵⁴

The declarations also cover the spouse and children. The frequency of declaration is specified at a renewal every three years in case of keeping the same function,⁵⁵ but also in case of a relevant change in the initial declaration situation.⁵⁶

The law has entrusted the anti-corruption authority with the mission of monitoring compliance with the provisions in force by public officials and their administrations to update the statutes of asset and interest declarations. Through statistics that it receives from the administration, the INLUCC keeps an eye on compliance with respect to the mentioned requirements.⁵⁷ According to the INLUCC, in 2018 the number of declarations amounted to 106,930, and 144,152 declarations were recorded in 2021.⁵⁸

Good practices

For the recruitment of civil servants, the competitions held by public administrations are published on their websites as well as the official website for all public competitions.⁵⁹

Candidates for elected public office must not be disqualified from holding political office because of a criminal conviction, as stated in the election law. However, they are not required to demonstrate the absence of potential conflicts of interest, but must file a declaration of assets and interests before taking office.⁶⁰ In case of false information in the declaration, the law includes sanctions (a fine equal to ten times the value of the concealed assets).

The text entrusted the INLUCC with maintaining an electronic database (which is not publicly accessible),⁶¹ and the anti-corruption department within the public body with investigating and verifying the accuracy of asset declarations.⁶²

The law provides for alerting the INLUCC about ex-officials within 5 years of their termination of post, before recovering their investments or other entrepreneurial activities. The same article provides that it is forbidden for such individuals to professionally consult the state

⁵⁴ Government Decree No. 2018-818 of October 11, 2018, on the establishment of the model for the declaration of assets and interests, and the minimum threshold of assets, loans and gifts to be declared.

⁵⁵ Article 10 Law No. 2018-46 of August 1, 2018, on the declaration of assets and interests, and the fight against illicit enrichment and conflicts of interest.

⁵⁶ Article 11, *ibid.*

⁵⁷ Law No. 46 2018: Art 12,13,14 and 15.

⁵⁸ Annual Report of the National Authority for the Fight against Corruption, accessed on 23.02.2022.

⁵⁹ <http://concours.gov.tn/>.

⁶⁰ Law 46-2018 Law No. 2018-46 of August 1, 2018, on the declaration of assets and interests, and the fight against illicit enrichment and conflicts of interest.

⁶¹ Article 8, *ibid.*

⁶² Article 15, *ibid.*

within 5 years of their last position within state authorities.⁶³

Deficiencies

Although the code of conduct includes several provisions that are relevant and appropriate to the public sector and the status of public servants, its provisions are neither binding in nature nor are they monitored through sanctions. The code does not provide for effective administrative or criminal sanctions.

The INLUCC has never shared its working methods with civil society or citizens. The example of the case of former head of government, Ilyes el Fakhfekh, may be significant in terms of the supposed continuous monitoring done by the INLUCC on the files received.⁶⁴ In this case, the INLUCC only became aware of a violation through remarks made in an interview, and reacted to the statement made by the head of government by sending a warning letter.

The legislator provided for administrative channels through, firstly, the normal hierarchy of civil servants, and secondly through the INLUCC in the case of a conflict of interest. For the sending of warnings, the INLUCC struggled to convince the relevant state bodies to create special organs to combat corruption, and facilitate its own tasks, ensuring coordination with investigative authorities. The sanctions are dissuasive once they are applied, but for many years, it has been apparent that there is no will to apply these provisions.

Even before its closure by a decision of the Minister of the Interior, the INLUCC never published information on its monitoring of declarations. This is something it could publish like any other activity on its website, or even in its annual report. This calls into question the ability of the national body to manage declarations and monitor them. The proof was not long in coming, with the aforementioned case of conflict of interest concerning the Head of Government, Ilyes el Fakhfekh.

4.1.5 Art. 7.3 - Political Financing

Article 7.3 of the UNCAC aims to ensure transparency and integrity in political life by adopting appropriate legislative and administrative measures to increase transparency in the financing of candidates for elected office and political parties.

In Tunisia, Organic Law No. 2014-16 of May 26, 2014, on elections and referendums, attempts to ensure the transparency and integrity of campaign financing. Section 2 of the law, entitled "on campaign financing," sets out the modes of financing, modalities for monitoring and

⁶³ Article 19 of Law No. 2018-46 of August 1, 2018, on the declaration of assets and interests, and the fight against illicit enrichment and conflicts of interest.

⁶⁴ <https://www.businessnews.com.tn/chawki-tabib--nous-avons-adresse-une-lettre-davertissement-au-ef-du-gouvernement,520,99599,3>, accessed on 22.07.2022.

financial and electoral offenses. First, the law defines the limits of financing by identifying in section 81 the ceiling of election expenses according to various criteria, "notably the size of the electoral district, the number of its voters, the cost of living."⁶⁵ These criteria are intended to ensure equality of opportunity among candidates and maintain the integrity of elections.

For the 2019 legislative elections, the election spending limit has been identified as follows: ⁶⁶

- The overall election expenses limit is set at a maximum of 6 times the amount of the public allowance.⁶⁷
- The self-financing limit must not exceed 4 times the amount of the public allowance.⁶⁸

The amount of the public allowance is identified according to criteria (mentioned above) for five essential categories, per thousand voters:⁶⁹

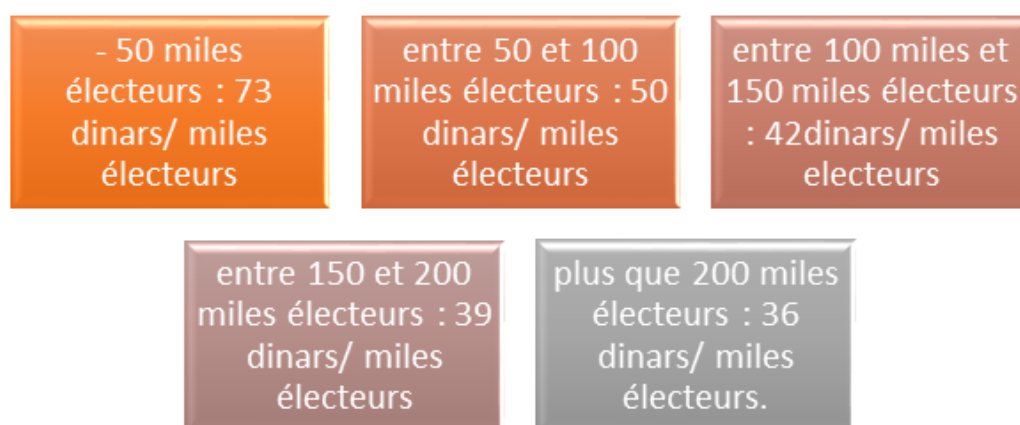


Figure 1: Public election allowance amounts by category.

This indicates that the amount of public compensation varies according to the number of voters per constituency; proportionally the overall amount of funding and the amount of self-financing vary according to the same condition.

Secondly, the law defines the purpose and the period in which the money spent can be considered as election expenses, in its article "Election expenses: It is the total of the expenses in cash and in kind incurred during the election period or the referendum period by the candidate or the list of candidates or the party, or on their behalf, and which have been

⁶⁵ Article 81 of the Organic Law No. 2014-16 of May 26, 2014, on elections and referendums.

⁶⁶ Government Decree No. 2019-755 of August 22, 2019, establishing the overall ceiling for election campaign expenses as well as the ceiling for private financing and the ceiling for public financing and its conditions and procedures for the legislative elections for the year 2019, accessed 01.03.2022.

⁶⁷ Ibid, article 1, accessed on 01.03.2022.

⁶⁸ Ibid, article 2, accessed on 01.03.2022

⁶⁹ Ibid, article 5, accessed on 01.03.2022.

consumed or paid in order to pay the costs of the election campaign or the referendum campaign with a view to gaining the confidence of the electorate and obtaining its vote."

According to the article, it only refers to the electoral period, which is "the period encompassing the pre-election or pre-referendum phase, the campaign and the silent period."⁷⁰ Money spent outside of this period is therefore not considered as "election expenses," even if it was spent to win votes or to create political propaganda. Here the legislator limits the financial relationship between candidates and voters; although in the election period it is much more extensive.

On the other hand, the law governing elections establishes limits on "self-financing and private financing,"⁷¹ aimed at eliminating all forms or sources of suspicious financing. Foreign financing of electoral campaigns is prohibited by Article 80 of the law. The sum of the contribution is limited by the same article to twenty times the guaranteed interprofessional minimum wage in non-agricultural sectors, with regard to legislative elections; and thirty times with regard to presidential elections or the referendum, for each list of candidates, candidate or party. Thus, the law requires a ceiling on the contributions and donations that "natural persons excluding legal persons" can make to electoral campaigns.

Thus, it can be said that the law defines the list of donors, the limits of contributions and their purposes, but it does not define the types of in-kind contributions that lists or candidates may receive. It should be noted that public entities are prohibited from contributing financially to the electoral campaign, using public resources for the benefit of a candidate or list.⁷²

In terms of the forms and modalities of financing, subsection 2 of the electoral law entitled "Subsection 2 - Obligations of lists of candidates, candidates and parties" establishes a well-defined system of election expenses. Indeed, candidates must open a single bank account approved for the electoral campaign, managed by a single agent and declared to the Independent High Commission for Elections, which determines the modalities of the opening, closing and monitoring of accounts in coordination with the Court of Accounts.⁷³ At the same time, the list or the candidate must:

- "Keep a register listed and initialed by the INLUCC, tracing all the receipts, expenses and their chronology, without erasure or alteration, with the reference of the supporting document.
- Keep a list of the events, activities and meetings carried out, approved by the INLUCC,
- Draw up a summary of election revenues and expenses, with reference to the register of said operations, signed by the head of the list, the candidate or the legal

⁷⁰ Ibid, article 1, accessed on 01.03.2022.

⁷¹ Ibid, articles 75 and 76, consulted on 03.03.2022.

⁷² Ibid, article 53, accessed on 03.03.2022.

⁷³ Ibid, article 85, accessed on 03.03.2022.

representative of the party."⁷⁴

These measures are designed to prevent the scattering, falsification or alteration of election expenses to ensure its integrity and transparency. The transition from an authoritarian to a more democratic political system requires the establishment of rules and policies to ensure the transparency of elections. This political context has imposed tight controls on campaign financing in order to ensure a level playing field and to avoid a repeat of the pre-revolutionary experience of flawed elections.

On their part, political parties are called upon to ensure total traceability of their financial operations, and that their accounting conforms with the accounting system of companies provided for by law n° 96-112 of December 30, 1996, relating to the accounting system of companies.⁷⁵ In addition, an annual audit is planned according to the standards provided by the Order of Chartered Accountants, the intervention of an accounting technician or an auditor is provided in some cases.⁷⁶ In the same vein, Decree-Law No. 2011-87 of September 24, 2011, on the organization of political parties defines a threshold for donations and contributions, and imposes their traceability and archiving in Article 17.

The application of these provisions is guaranteed through the involvement of several parties, but mainly that of the Independent Superior Electoral Institution (ISIE) and the Court of Audit. The ISIE is the body responsible for the proper conduct of elections, which implies its primary responsibility to monitor and ensure the integrity and transparency of election expenses by ensuring the implementation of measures provided by the electoral law.

The Independent Superior Electoral Body is an independent public body with legal personality and financial and administrative autonomy,⁷⁷ created and governed by organic law N° 2012-23 of December 20, 2012. This body breaks with the reign of the Ministry of the Interior over elections. Conceived of in a context of democratic transition, this body offers guarantees of electoral integrity and tries to honor its responsibilities in this matter.

As for the Court of Auditors, it ensures the *a posteriori* control of election expenses and publishes a general report on the results of the monitoring of election financing. The report of the Court of Audit examines compliance with the legal framework governing electoral financing. It also reveals electoral offences and misdemeanors that may be subject to legal proceedings.⁷⁸

⁷⁴ *ibid*, article 83, accessed on 03.03.2022.

⁷⁵ Decree-Law No. 2011-87 of September 24, 2011, on the organization of political parties, Article 33, accessed 05.03.2022.

⁷⁶ *Ibid*, article 26, accessed 05.03.2022.

⁷⁷ Official website of the ISIE, <http://www.isie.tn/isie/creation-et-mission/>.

⁷⁸ Court of Auditors report on the 2019 legislative and presidential elections: <https://idaraty.tn/fr/publications/rapport-de-la-cour-des-comptes-elections-presidentielle-et->

Throughout the period of democratic transition, since 2011, Tunisia has gone through different elections: constituent, legislative, presidential and municipal. These different transitions now allow us to examine the reliability and effectiveness of the measures provided by the law. After each election, several civil society organizations publish their campaign finance audit reports, including I WATCH.⁷⁹ The Court of Auditors also publishes its report.⁸⁰

Best practices

Public entities are prohibited from contributing financially to the electoral campaign, using public means for the benefit of a candidate or a list.

Candidates must open a single bank account validated for the electoral campaign, managed by a single agent and declared to the Independent Superior Electoral Body, which determines the modalities of the opening, closing and monitoring of the accounts in coordination with the Court of Accounts.

Political parties are required to ensure full traceability of their financial operations, and that their accounting is in line with the accounting system of companies.

Detailed and downloadable reports and data on campaign finance are published on the official website of the ISIE. The Court of Auditors even organized a press conference to present its report on campaign financing for the 2019 elections.⁸¹

The participation of various actors in the organization of elections has led not only to greater transparency, but also to thorough monitoring of the electoral campaign financing. In addition to the monitoring conducted by the state, independent bodies and civil society exercise effective control over the financing of campaigns by concretely examining the expenses of candidates or lists of candidates.

Deficiencies

Money spent outside of the election period is not considered "election expenses," even if it was spent to win votes or for political propaganda. The law does not define the types of in-kind contributions that lists or candidates may receive.

The delay in the publication of reports, whether by the ISIE or the Court of Auditors, reduces the effectiveness of sanctions. Moreover, on January 5, 2022, the Correctional Chamber at the Court of First Instance of Tunis, decided to refer to its jurisdiction 19 people on the basis

[legilatives-2019](#), accessed on 04.03.2022.

⁷⁹ 2019 Election Report, <https://www.iwatch.tn/ar/article/818>, accessed 04.03.2022.

⁸⁰ Report of the Court of Auditors on the results of the 2019 legislative and presidential elections, http://www.courdescomptes.nat.tn/Fr/actualites_7_22_D170, accessed 05.03.2022.

⁸¹ http://www.courdescomptes.nat.tn/Fr/actualites_7_22_D170, accessed on 05.03.2022.

of electoral crimes committed during the early presidential election of 2019. Among these crimes⁸² are those related to transparency of campaign financing, including illegal advertising.

The electoral law was repealed and amended by the decree-law No. 2022-55 of September 15, 2022, amending the organic law No. 2014-16 of May 26, 2014, on elections and referendums. Through this change, the public financing of election campaigns has been completely eliminated: in the elections of December 17, 2022, there was no longer any funding from the state.

4.1.6 Art. 8.4 and 13.2 - Whistleblower protection and reporting mechanisms

Despite the ratification of the United Nations Convention against Corruption in 2008, the reign of authoritarianism and mismanagement of state resources in Tunisia has hindered its implementation. This trend came to an end at the dawn of the revolution, between December 17, 2010 and January 14, 2011 with the launch of a constitutional process for the new Republic. The framework decree-law No. 2011-120 of November 14, 2011 on the fight against corruption demonstrates the establishment of the cornerstone of a policy to fight corruption.

Tunisia has embarked on a process of preventing corruption by strengthening its mechanisms for reporting corruption. To this end, the Assembly of People's Representatives adopted on March 7, 2017 organic law n°2017-10 on the reporting of corruption facts and the protection of whistleblowers.⁸³ The whistleblower must address the INLUCC, either directly or by a registered letter, and the authority is required to provide a mandatory receipt.

Any report on corruption must disclose to the authority: "The surname, first name, address and identity card number of the whistleblower, the company name and registered office, if the whistleblower is a legal entity, the facts that are the subject of the report, and the identity of the person or organization that is the subject of the report..."⁸⁴

It should be noted, moreover, that the protection of whistleblowers requires the intervention of other actors including the National Authority for the Protection of Personal Data (INPDP), the Ministry of the Interior and the courts. This also implies the application of other legal texts such as legislation relating to the protection of personal data, criminal and civil proceedings, among others.

Whistleblower protection

⁸² <https://africa24tv.com/tunisie-19-personnalites-politiques-poursuivies-pour-delits-electoraux/>
<https://www.businessnews.com.tn/delits-electoraux--la-justice-inflige-des-amendes-a-des-candidats-dont-marzouki-et-chahed,520,117018,3> accessed on 06.03.2022.

⁸³ JORT No. 20 of March 10, 2017, p.765ff.

⁸⁴ Article 12 of Organic Law No. 2017-10 of March 7, 2017, accessed on 26.02.2022.

Since the promulgation of Organic Law No. 2017-10 on the reporting of corruption and the protection of whistleblowers, the INLUCC has been in charge of receiving whistleblowers who are, under Article 2a of this law, "any natural or legal person reporting in good faith, to the competent authorities, information constituting serious presumptions or giving rise to a serious presumption of the existence of acts of corruption..." In addition, among the new measures introduced via Law No. 2017-10, we can cite those related to the protection of whistleblowers. A distinction must be made between two types of protection: legal protection and physical protection.

The whistleblower may benefit, upon request or at the initiative of the INLUCC after their consent, from protection against retaliation or discrimination that they may be subject to because of their whistleblowing.⁸⁵ Protection "measures" may include the personal, moral and physical protection of the whistleblower, the provision of means for immediate communication and any other measure that may protect the whistleblower.

In addition, Law n°2017-10 introduced an incentive mechanism to encourage the population to report corruption. Indeed, the State grants an incentive to whistleblowers whose reporting would have prevented the commission of any corruption offence in the public sector, aided its discovery, the identification of its perpetrators (or of some of them), or the recovery of the funds. INLUCC's experience has shown that public officials have been able to access the authority to report certain abuses or acts of corruption without identifying as whistleblowers, through autonomous reporting measures or systems. Indeed, the reporting procedures are the same for all persons, and the national authority ensures that they are applied equally to all whistleblowers.

With regard to the accessibility of citizens to the INLUCC, it is necessary to recall that the body has offices in all regions (24), which can be understood as a concretization of the commitments of Tunisia under Article 13.1 of the UNCAC in that the body for corruption prevention is known by the public, so that it can report any facts considered as constituting an offence/act of corruption, while guaranteeing the possibility of maintaining anonymity.

In terms of reporting tools, INLUCC has provided whistleblowers with a toll-free number (80102222) to report whistleblowing, which is considered to be the main tool for reporting corruption. In fact, according to the latest annual report published by INLUCC in 2018, 61% of whistleblowers from that same year reached out via the toll-free number.⁸⁶ In 2018, INLUCC:

⁸⁵ Retaliation may take the form of either continuous harassment or disguised sanctions or, in general, any abusive measure against the whistleblower, including disciplinary measures, such as dismissal, refusal of promotion, refusal of the request for transfer or abusive transfer, or the form of threat or physical or moral aggression, against the whistleblower or any person closely related to him or her within the meaning of Article 26 of Law No. 2017-10.

⁸⁶ INLUCC Annual Report, 2018, p. 145, <https://inlucc.tn/wp-content/uploads/2021/01/%D8%A7%D9%84%D8%AA%D9%82%D8%B1%D9%8A%D8%B1->

- Received 8150 alerts, of which 2461 were from people working in the public sector;
- Granted protection to 36 whistleblowers, with 16 cases referred to the competent jurisdictions for retaliation.⁸⁷

Since then, we are able to confirm that the launch tools made available by the INLUCC to whistleblowers guarantee anonymity, which can be confirmed by the fact that 32% of the alerts in 2018 were received by unknown persons.

Best practices

Article 7 of Law no. 2017-10 obliged public bodies subject to this law to designate an administrative structure to receive and investigate reports of suspected corruption, which can be seen as both a tool to facilitate the reporting of corruption for public officials and a guarantee within the public administration to ensure compliance with standards. All organizations involved in whistleblower protection are required to comply with the requirements of personal data protection in accordance with organic law no. 2004-63 of July 27, 2004 on the protection of personal data.⁸⁸ From its end, the INLUCC is explicitly required to keep the whistleblower's identity confidential: it can only disclose it with the whistleblower's prior written consent.⁸⁹

The body has offices in all regions (24), which can be understood as a fulfillment of Tunisia's commitments under Article 13.1 of the UNCAC, in that the anti-corruption body is known to the public so that it can report any facts considered to constitute a corruption offence/act.

INLUCC has provided whistleblowers with a toll-free number (80102222) to report whistleblowing. This is considered as the primary tool for reporting corruption. In fact, according to the latest annual report published by INLUCC in 2018, 61% of whistleblowers from that same year reached out via the hotline.

Therefore, these measures constitute a faithful translation of the UNCAC requirements for Tunisia under Articles 13.2, 32 and 33.

Deficiencies

The effectiveness of the law and, subsequently, of the work of the anti-corruption body remains dependent on a number of political, economic, social and other factors. To this end, the work of the anti-corruption body is not immune to socio-political changes. The following is a summary of the main deficiencies:

[%D8%A7%D9%84%D8%B3%D9%86%D9%88%D9%8A-2018.pdf](#), accessed 03.03.2022.

⁸⁷ Ibid, p. 14.

⁸⁸ JORT n° 61 of July 30, 2004.

⁸⁹ Article 22 of Law No. 2017-10.

Whistleblowers have always been presented, in the Tunisian context, as an essential means to reveal the truth and an effective accountability mechanism. They often take enormous risks to expose themselves to public opinion and confront political and economic forces.

Once the whistle has been blown and the media effect has been forgotten, the whistleblower is isolated and begins to face legal proceedings, threats and pressure. This has created reluctance among citizens in recent years and has led to a decline in their fundamental role of preventing corruption. This is due, on the one hand, to the inability of the INLUCC to guarantee effective protection for whistleblowers owing to the refusal of public bodies to enforce protection orders. On the other hand, the effectiveness of the intervention by the anti-corruption body remains dependent on other actors, such as the judiciary, which is a work in progress, and political authorities. With the freezing of INLUCC's activities, whistleblowers have become isolated from the administration.

In addition, anonymity, which is not always guaranteed, may be a factor for such reluctance. Despite INLUCC launching tools for whistleblowing, such as email or the toll-free number, whistleblowers are required to reveal themselves to the authority as stipulated in Article 11 of Law No. 2017-10: "The whistleblower must reveal his identity to the Authority. He may request to keep his identity confidential in all stages of verification of his report."⁹⁰

The prevention and investigation body within the INLUCC (responsible for investigating corruption offenses) has not yet been set up due to the lack of a decree designating its members. In addition, the lack of human and financial resources within the INLUCC has led to a backlog of cases and stalled decision-making in the authority's council, which has affected the process of fighting corruption and the efficiency of preventive measures undertaken since 2011.

Statistics are available for permanent display on the INLUCC website, but the question is whether the statistics really reflect the status of whistleblowing. Indeed, the national authority does not publish statistical data on the cases received and their judicial follow-up, statistics on protection decisions granted, or even the results of each case received. The statistics are so vague, that no conclusions can be drawn to evaluate its performance. The indicator should be sanctions taken against violations of legal provisions, and the outcome of corruption cases. Civil society organization I WATCH has repeatedly pointed out shortcomings in the body's whistleblowing channels and investigation methods.⁹¹

⁹⁰ If the report of corruption does not contain "the name, surname, address and identity card number of the whistleblower", the INLUCC invites the whistleblower to complete them within 7 days from the date of receipt of the report. If the whistleblower fails to do so, the body shall refuse to examine the uncompleted files, except in cases where the body considers that the facts that are the subject of the alert require further examination (Article 13 of the 2017 Law).

⁹¹ <https://www.iwatch.tn/ar/article/682>, accessed on 18.07.2022.

In addition, INLUCC's decisions regarding the granting of protection in accordance with Law No. 2017-10 are often overtaken by other authorities that prevent their implementation. For example, several public officials (whistleblowers received by the legal advisors of YAKEDH *Advocacy and Legal Advice Center* of IWATCH (YALAC)) who were dismissed because of their reports to the authority, are waiting to resume their positions because of the administration's refusal to implement the decisions of the INLUCC, or even the orders of the administrative court.

Whistleblowers have been unable to request or benefit from the protection provided by Law No. 2017-10 since the closure of the INLUCC. The public no longer has access to this corruption prevention body and can no longer use its tools for reporting corruption.

4.1.7 Art. 9.1 - Public Procurement

Public procurement is an increasingly fundamental pillar of strategic governance. It is no longer a mere administrative task, but contributes to a better use of public money and to the achievement of public policy objectives. Effective procurement is therefore vital for public administration, and public purchasers in general, to perform their core functions. At the same time, public procurement is an area that is highly vulnerable to mismanagement and corruption, especially given the quality of the actors involved in the procurement process and the amounts involved.

The national commission of investigation on corruption and embezzlement has highlighted in its October 2011 report,⁹² cases of overspending in procurement through the development of specifications, such as conditions that can be met only by a single supplier who knows the terms of the contract in advance. In Tunisia, "public procurement accounts for 18% of Tunisia's Gross Domestic Product (GDP) and nearly 35% of the state budget. This area was particularly affected by corruption under the former regime. It was therefore necessary for the government to react immediately after the revolution to make the public procurement system more transparent and efficient."⁹³

The legal framework for public procurement dates back to the early years of French colonization. Indeed, the decree of 25 July 1888 regulating the formalities for the awarding of public works shows the attention given to public procurement. The public accounting code of 31 December 1973 contains a multitude of provisions related to public procurement. Indeed, articles 99 to 118, 251 and 234 set out the main principles of contracts for the State, local

⁹² https://www.iwatch.tn/ar/uploads/Rapport_fran%C3%A7ais_optimis%C3%A9.pdf, accessed on 12.07.2022.

⁹³ OECD (2013), OECD Review of the Public Sector Integrity Framework in Tunisia, OECD Reviews of Public Governance, OECD Publishing, p. 67.

authorities and public establishments. Article 105 of the same code refers to a decree⁹⁴ which determines the procedures for awarding public contracts.

Public procurement contracts are currently regulated by Decree No. 2014-1039 of March 13, 2014. In addition to determining the rules applicable to all stages of contracting, this decree determines the bodies responsible for monitoring implementation and compliance with these rules. It "was adopted in a particular context, marked by both a post revolution period of January 14, 2011, but also by the beginning of a persistent economic crisis in Tunisia."⁹⁵

In terms of the Tunisian state's commitments under Article 9.1 of the UNCAC, the Tunisian legal framework for public procurement reflects a genuine commitment that is part of a broader mission to cleanse the former regime's legacy, marked by nepotism, abuse of power and corruption. However, the efforts undertaken have not been able to definitively eliminate the so-called dangers that can affect the integrity of public procurement.

Good practices

The principles and procedures set out in the public procurement regulations reflect a commitment to transparency, competition and efficiency in public procurement. The regulation is aligned with OECD principles to strengthen the integrity of public procurement including transparency, good management and prevention of improper behavior, compliance and oversight.⁹⁶ In this regard, Decree No. 2014-1039 determines a good number of procedures that guarantee the transparency of the public procurement process.

Public buyers are required "to develop at the beginning of each year an annual provisional plan for the award of public contracts, in accordance with the draft budget based on a standard model and a defined schedule,"⁹⁷ which will allow interested citizens and economic operators to learn about future tenders and prepare for the market. Thus, the decree has set the deadlines for the publication of tenders and maximum deadlines for finalizing the stages of public procurement.

The Tunisian legal framework determines the thresholds above which the public purchaser is

⁹⁴ Tunisia has had five decrees implementing Article 105 of the Public Accounting Code: Decree No. 74-754 of July 27, 1974, Decree No. 89-412 of April 22, 1989, Decree No. 2002-3158 of December 17, 2002, Decree No. 2011-623 of May 23, 2011 and Decree No. 2014-1039 of March 13, 2014.

⁹⁵ Cryslen Tirolien, "Reflections on the Regulation of Public Procurement in Tunisia," Village of Justice, <https://www.village-justice.com/articles/reflexions-sur-reglementation-des-marches-publics-tunisie,26879.html>, January 10, 2018, accessed on 02/23/2022.

⁹⁶ Article 6 of the 2014 Decree states that "Public procurement is governed by the following principles: competition, freedom of access to public procurement, equality before public procurement and transparency and integrity of procedures. Public procurement also obeys the rules of good governance and takes into account the requirements of sustainable development."

⁹⁷ Section 8 of Executive Order 2014-1039.

obliged to conclude a public procurement contract, and therefore to implement competitive mechanisms.⁹⁸ Moreover, "Experience in OECD countries has shown that it is essential to avoid any risk of corruption to define as precisely as possible the conditions under which the public manager is authorized not to resort to competitive bidding."⁹⁹

With regard to the rules relating to bidders, the Tunisian legal framework relating to public procurement contains a number of provisions that tend to guarantee their integrity, by obliging them to comply at any stage of public procurement. Thus, Law No. 2018-52 of October 29, 2018 on the national register of companies assumes the exposure of beneficial owners¹⁰⁰ of bidders, which implies greater transparency in the award of public contracts. In this same logic, government decree No. 2016-498 of April 8, 2016¹⁰¹ was issued to set the conditions and procedures for exclusion from participation in public procurement pursuant to Articles 177 and 178 of Decree No. 2014-1039. Pursuant to Decree No. 2016-498, the High Authority for Public Procurement (HAICOP) shall establish the list of participants for whom a decision of temporary or permanent exclusion from participation in public procurement has been issued.¹⁰²

Representatives of public purchasers and bodies responsible for the governance of public contracts, and generally speaking any person intervening either on behalf of a public purchaser or on behalf of an approval or control authority, are subject to the legislative and regulatory rules on the fight against corruption and conflict of interest.¹⁰³ In this regard, and

⁹⁸ According to Article 5 of Decree No. 2014-1039, must be the subject of public contracts orders whose amount, including all taxes, is greater than or equal to:

- Two hundred thousand dinars (200,000 dinars/62,500 euros) for works.
- One hundred thousand dinars (100,000 dinars/31,200 euros) for studies and the supply of goods or services in the computer and communication technologies sector,
- One hundred thousand dinars (100,000 dinars/31,200 euros) for the supply of goods or services in the other sectors,
- Fifty thousand dinars (50,000 dinars/15,600 euros) for studies".

<http://www.marchespublics.gov.tn/onmp/documents/document.php?lang=fr&id=456>, accessed on 10.10.2022.

⁹⁹ OECD (2013), OECD Review of the Public Sector Integrity Framework in Tunisia, OECD Reviews of Public Governance, OECD Publishing, p. 73, https://read.oecd-ilibrary.org/governance/evaluation-du-cadre-d-integrite-dans-le-secteur-public-tunisie_9789264193574-fr#page1, accessed 12.07.2022.

¹⁰⁰ According to Article 2 of Law No. 2018-52, the beneficial owner is "any natural person who ultimately owns or exercises effective control or direct or indirect domination over a legal person or legal arrangement or over the administrative or management bodies, as well as any natural person, for the benefit and on behalf of whom transactions are carried out through a legal person or legal arrangement. It is also any natural person who is a partner, shareholder or member of a legal person or legal structure whose capital or voting rights enable him to exercise effective control over that person.

¹⁰¹ JORT No. 31 of April 15, 2016, p. 1394ff.

¹⁰² <http://www.marchespublics.gov.tn/onmp/exclusion/listexclusion.php?lang=ar>, accessed on 24.02.2022.

¹⁰³ Section 173 of Executive Order 2014-1039.

according to Article 5 of Law No. 2018-46 on the declaration of assets and interests and the fight against illicit enrichment and conflicts of interest, the members of the evaluation, award and monitoring commissions of contracts relating to public procurement are required to declare their assets and interests, within a maximum period of sixty days from the date of appointment or the date of taking office.

In addition, since 2014 Tunisia has opted to digitize the procurement process. In order to minimize human intervention (with all the risks it entails, especially in terms of corruption and favoritism) in the public procurement process, a computer system known as "TUNEPS" (*Tunisian e-procurement system*) was set up.¹⁰⁴ This system allowed for:

- Accelerating the preparation of administrative and financial files for contracts (filing is done online);
- Entrenching the principle of equal opportunity between suppliers/competitors;
- Reducing project costs and the time required to conclude public contracts.

The National Observatory of Public Contracts¹⁰⁵ (ONMP), established by Decree No. 2014-1039, provides quick access to information related to public order, although this does not include all information related to public procurement contracts which can be the subject of a freedom of information request, in accordance with Organic Law No. 2016-22 of March 24, 2016 on the right of access to information.

Generally speaking, public procurement regulations have set up numerous bodies responsible for ensuring compliance with the principles and rules for awarding and performing public contracts. These bodies are sometimes internal (i.e., directly linked to the public purchaser), and at other times external, with 'powers' ranging from simple monitoring of legality to approval and decision making.¹⁰⁶

Deficiencies

Despite its virtues, current regulation on public procurement suffers from practices that hinder better market regulation. The establishment of TUNEPS has not eliminated embezzlement and corruption. This can be verified at two levels:

1. The first relates to the pre-contract phase: for example, the measures/procedures set out by Decree No. 2014-1039 do not guarantee the security of information relating to public order. A future bidder may have knowledge of the eligibility criteria and the desired technical characteristics even before the call for bids, thus benefiting from insider trading.¹⁰⁷

¹⁰⁴ <https://www.tuneps.tn/index.do>.

¹⁰⁵ <http://www.marchespublics.gov.tn/onmp/content/index.php?lang=fr>.

¹⁰⁶ Section 143 et seq. of Executive Order 2014-1039.

¹⁰⁷ It is the fact of having the privilege of knowing the information related to the public order before the publication of the tender. This constitutes a fact of corruption within the meaning of Article 2 of Law No. 2017-10 on the reporting of corruption and the protection of whistleblowers.

2. The second relates to the post-market phase, that is to say: during the execution phase of the contract or at the time of final reception - the risk becomes significant at this phase because of human intervention. Moreover, the president of the High Authority of Public Order (HAICOP) specified in a media statement in 2019¹⁰⁸ that suspicions of corruption relating to market systems essentially relate to the operations and carrying out of projects by contractors.

In addition, the complexity of the computer system was an obstacle that prevented its best use. Since September 2018, this system has become "mandatory" for all public buyers, including public companies. The latter suffer, in addition to budget deficits, from an absence of trained staff ready to use the system and ensure regular procurement procedures.

Regarding public access to detailed information on public contracts by citizens or economic operators, the regulation of public procurement in Tunisia does not allow access to post-award information, including the full contract and accompanying documents. Thus, details relating to other types of public contracts (such as concessions, public-private partnerships etc.) are absent, and not available online nor accessible to the public.

The complex architecture of the bodies involved at all stages of procurement and the execution of public contracts has contributed to the system's inefficiency. Indeed, the current regulation of public procurement in Tunisia requires intervention from several structures that, in general, do not know enough about the needs of the public purchaser. Practice has shown that several structures do not always give advice, which can hinder the process planned by the public purchaser and will create more opportunities for misappropriation and corruption. In the last report published by the INLUCC in 2018, it was revealed that 257 of the reports filed concerned corruption in public procurement.¹⁰⁹

4.1.8 Art. 9.2 – Management of public finances

Public finance has always been at the heart of debates and public attention. Its importance can be seen in the implications it has on the Tunisian socio-economic and political context. It constitutes a complex set of rules, procedures and means allowing public authorities to manage resources in order to ensure the financing of public institutions and guarantee an efficient and continuous response.

The management of public finances in Tunisia has a history of instability – it has always been dependent on the ability of decision-makers to plan. The Tunisian legal framework governing the management of public finances was, for the most part, faithful to the rules of good

¹⁰⁸ <https://www.turess.com/fr/letemps/111784>, accessed on 26.01.2022.

¹⁰⁹ INLUCC Annual Report, 2018, p. 164, <https://inlucc.tn/wp-content/uploads/2021/01/%D8%A7%D9%84%D8%AA%D9%82%D8%B1%D9%8A%D8%B1-%D8%A7%D9%84%D8%B3%D9%86%D9%88%D9%8A-2018.pdf>, accessed 03.23.2022.

governance, including transparency, efficiency and accountability. By consulting this legal framework, we can detect the features or even the translation of the "directives" specified by certain international texts by which Tunisia is bound, including Article 9.2 of the UNCAC.

In the case of Tunisia, since the early years of colonization the French authorities introduced their budgetary rules and principles through the two Beylical decrees¹¹⁰ of March 12, 1883 and December 19, 1883, organizing the establishment and regulation of the budget of the Kingdom. This legislation was reinforced by the promulgation of the Beylical decree of May 12, 1906 on the regulation of public accounting. At the dawn of independence, the Constitution of June 1st strengthened public financial management with a multitude of rules and principles relating to the management of public funds in order to guarantee security and good governance. This framework was thus consolidated by the first organic budget law n° 60-1 of March 12, 1960, which was then repealed by law n° 67-53 of December 8, 1967.

Today, the Tunisian Constitution of January 27, 2014 has reserved many provisions for proper financial governance. This text is consolidated by the new financial "constitution", subject of law No. 2019-15 of February 13, 2019 on the organic law of the budget.

Good practices

Consultation of the legal corpus relating to public finance allows us to confirm that it meets Tunisia's commitments under the UNCAC. Indeed, Law No. 1973-81 of December 31, 1973 promulgating the public accounting code is a true translation of the implementation of auditing and accounting and monitoring standards which aim to ensure better management of public funds and their use in the general interest.

Moreover, the Tunisian Constitution of 2014 confirmed the logic of budgetary management in its objectives, among them a pillar on good public financial management. Thus, the Constitution encompasses a good number of provisions/procedures that will ensure the preparation, development and adoption of finance laws, such as the translation of public policies following an open process with timely communication of revenues and expenditures.¹¹¹ This is confirmed by the organic law n° 2019-15 which has, in article 7, made the Minister of Finance, under the authority of the Head of Government, responsible for ensuring the preparation of the draft of the finance law according to a set schedule and the follow-up of its execution, in order to honor the commitments and obligations of the State and to preserve financial balance within the framework of budget sustainability.

Every budgetary bill must be "completed" before its adoption by a number of documents that

¹¹⁰ At the time of the Bey, the legal texts took the name of "beylical decrees". They currently match the law.

¹¹¹ Articles 62, 63, 64, 65 and 66 of the 2014 Tunisian Constitution.

will serve to facilitate discussions at the legislative level.¹¹² The public has the opportunity to participate in discussions on the state budget and public policies planned for the next fiscal year. This can be confirmed by the participation of IWATCH in the discussions on the budget law for 2021 at the level of the Committee on Finance, Planning and Development of the Assembly of People's Representatives (ARP) on November 19, 2020.¹¹³

Law No. 2019-15 introduced a change in the budgetary architecture in that the budget is divided into missions and programs with well-defined objectives and a medium-term budgetary framework. The possibility of amendments has not been omitted. Indeed, the complementary finance law could provide for corrective measures to adapt the choices to the context.

In terms of monitoring and evaluation of public finance management, the Court of Audit has a fundamental role in ensuring compliance with the rules/guidelines of public finance. This is verifiable at the level of the Court's by organic law n° 2019-41 of April 30, 2019, relating to the Court of Accounts.

In this context, the 32nd report of the Court of Accounts¹¹⁴ has identified certain failures related to, for example, the non-recovery of large sums of money belonging to the state and the failure to comply with procedures for the award of public contracts. According to the Court, this constitutes a violation of national regulations and a breach of standards of good management for public funds.

Deficiencies

Despite the evolution that has taken place over the years, the legal framework for public financial management still lacks effective risk management systems. Planned measures have not prevented more aggravating financial crises since 2011. In addition, the internal and external monitoring system which has been set up has quickly shown its shortcomings, which are compounded by the absence of real strategies for financing and managing public finances.

The Covid-19 health crisis has further exacerbated the situation and has forced decision-makers to make urgent, even vital, adjustments for a rapid economic recovery. Public funds were at the heart of the crisis and the state was forced to exceed its financial capacity, reserved for unforeseen expenses, included in the 2020 budget law for the management of 757 million Tunisian dinars (about 246.4 million euro).¹¹⁵

¹¹² Article 46 of Law No. 2019-15 specifies the list of documents that must be attached to the finance bill, including the report on the state budget in the context of overall balances, the annual performance projects by mission for the budget year concerned, a report on public enterprises, a report on tax expenditures and financial benefits granted, etc.

¹¹³ <https://majles.marsad.tn/ar/event/2020/11/19/09/finances>, accessed on 18.05.2022.

¹¹⁴ <http://www.courdescomptes.nat.tn/upload/rapport32/rapport32.pdf>, accessed on 12.07.2022.

¹¹⁵ See: Ahmed Bedoui, "Facing covid-19: the urgency of public finance transparency," May 5, 2020,"

The pandemic response, involving public funds, justified the increased use of direct agreements with known and trusted suppliers to expedite the procurement process. The authorities in charge of regulating public procurement, such as the High Authority for Public Procurement (HAICOP), have had to provide additional guidance on the management of the process, especially in a situation requiring rapid action. The famous case of the "barrier masks"¹¹⁶ shows a lack of transparency. It concerns a deal of 3.8 million dinars (about 1.1 million euros), for an order of 2 million masks, "negotiated" by the Minister of Industry and a supplier, deputy at the ARP. Following the controversy generated by this case and suspicions of corruption, the General Committee for the Control of Public Expenditure was charged with conducting an investigation. The preliminary report of the inspection mission,¹¹⁷ published on April 27, 2020, noted several violations and breaches including conflict of interest and the leakage of insider information.

With regard to the effectiveness of monitoring carried out by the various parties involved, it should be noted that the absence of legal constraints directly affects compliance with standards for the preparation, approval and execution of the budget. Indeed, the Tunisian legal framework relating to public finance does not prescribe any consequences following non-compliance with laws, regulations and procedures applicable to budgetary matters.

The General Control of Finance (CGF), under the authority of the Minister of Finance, carries out compliance and regular monitoring missions in public services and organizations. However, the reports of this body have never been voluntarily published. Generally speaking, the public is only aware of the overruns and shortcomings raised through a whistleblower who discloses reports from the body. This marks a blatant lack of transparency that requires the public to be aware of how public funds are managed and the failures in their management.

4.1.9 Art. 10 and 13.1 - Public reporting and civil society participation

The Tunisian Constitution of January 27, 2014 indicates in Article 32 that, "The State guarantees the right to information and the right of access to information" and that it "works

<https://nawaat.org/2020/05/05/face-au-covid-19-lurgence-de-la-transparence-des-finances-publiques/>, accessed 13.07.2022.

¹¹⁶ See: Manel Derbali, "Covid 19 in Tunisia: Legal insights into the mask case," published April 30, 2020, <https://nawaat.org/2020/04/30/covid-19-en-tunisie-eclairages-juridiques-sur-laffaire-des-masques>, accessed 18.07.2022.

¹¹⁷ <https://www.shemsfm.net/amp/ar/%D8%A7%D9%84%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1-%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1-%D8%AA%D9%88%D9%86%D8%B3%D8%A7%D9%84%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1-%D8%A7%D9%84%D9%88%D8%B7%D9%86%D9%8A%D8%A9/248656/%D8%B5%D9%81%D9%82%D8%A9-%D8%A7%D9%84%D9%83%D9%85%D8%A7%D9%85%D8%A7%D8%AA-%D9%85%D9%84%D8%AE%D8%B5-%D8%AA%D9%82%D8%B1%D9%8A%D8%B1-%D8%A7%D9%84%D9%85%D9%87%D9%85%D8%A9-%D8%A7%D9%84%D8%B1%D9%82%D8%A7%D8%A8%D9%8A%D8%A9>, accessed 14.07.2022.

to ensure the right of access to communication networks," thus insisting on the principle of proactive publication of information from the public administration.¹¹⁸ Indeed, this is one of the achievements of the Tunisian revolution of January 14, 2011 in terms of rights and freedoms. This constitutional guarantee has been strengthened by the adoption of an organic law No. 2016-22 of March 24, 2016 on the right of access to information in order to strengthen the principles of transparency and accountability and especially with regard to the management and quality of public services, and the strengthening of confidence in the bodies subject to the provisions of this law, as well as strengthening public participation in the development, monitoring, implementation and evaluation of public policies. In this law, the Tunisian legislator clearly defines the means and procedures for access to information in Chapter 3, "Access to information on request", Section 1, "Procedures for submitting requests for access."

Article 9 of the said law states that "[a]ny natural or legal person may submit a written request for access to information in accordance with a pre-established template, made available to the public by the body concerned, or on plain paper containing the compulsory information provided for in articles 10 and 12 of this law." However, this organic law provides for certain limitations to this freedom. In this regard, article 24 of chapter 4 states: "The body concerned may refuse access to information only when this would be harmful to national security or defense or international relations or the rights of the third party with respect to the protection of his privacy, personal data and intellectual property."¹¹⁹ These areas are not considered absolute exceptions to the right of access to information. They are subject to the harm test provided that the harm is serious, whether concurrent or consequential. They are also subject to the public interest test of accessibility or inaccessibility to information in relation to each request. The proportionality between the interests to be protected and the reason for the access request will be taken into account. In case of refusal, the applicant will be informed by an explanatory letter. The refusal ends with the expiration of the reasons expressed in the response to the access request.

In addition, Article 25 adds that "[t]he right of access to information does not include data relating to the identity of persons who have submitted information to denounce abuses or cases of corruption." It should be recalled in this context that "[t]he exceptions provided for in Article 24 of this law do not apply to information whose disclosure is necessary to reveal serious violations of human rights or war crimes or the investigation thereof or the prosecution of its perpetrators, provided that it does not prejudice the supreme interest of the State, or where the public interest must prevail over the harm that may be caused to the interest to be protected, by reason of a serious threat to health or safety or to the environment, or by reason of the commission of a criminal act "as set out in section 26.

¹¹⁸ Article 32 of the 2014 Constitution.

¹¹⁹ Article 24 of Organic Law No. 2016-22 of March 24, 2016 on the right of access to information, accessed 05.03.2022.

Furthermore, this right to information covers all public and private legal entities that have public funding or that manage a public service. Article 2 of the first chapter of the aforementioned law indicates that the law applies to various bodies, including:¹²⁰

- The Presidency of the Republic and its agencies;
- The Presidency of the Government and its agencies;
- The Assembly of People's Representatives;
- the Ministries and the various organizations under supervision at home and abroad;
- the Central Bank.

Furthermore, this right covers all documents held by organizations subject to the provisions of this law in the course of their activities, regardless of the form in which the information is stored, its source and the date of production.

In order to guarantee the respect of the right to access to information, the Tunisian legislator has set up an appeal mechanism in case of rejection of requests for information, which decides on the complaints. In this regard, Article 37 of the said law provides for the creation of an autonomous public body with legal personality called the "access to information body." According to Article 38, the Authority is responsible for deciding, informing, adjudicating and publishing decisions on appeals relating to access to information. It is also called upon to issue an opinion on draft laws and regulations related to its field of intervention. In addition, the authority ensures the promotion of the culture of access to information, its promotion and raises awareness on the matter. In addition, the body periodically evaluates the implementation of the right of access to information by the bodies subject to the provisions of the law and publishes an annual activity report.

Good practices

Access to information in Tunisia is a free service, although the administration may require the applicant to pay a fee proportional to his request, but the cost of the documents requested in paper form must be calculated.

On the websites of the administrations, the name and contact of the information access officer must be published, as well as a section where information can be requested online. In addition, each institution must publish on its website all data and information that must be known by the public. Municipalities, for example, must publish the minutes of the meetings of the municipal councils in order to inform the public of the decisions and negotiations of

¹²⁰ Other bodies include: public enterprises and establishments and their representations abroad; local and regional public bodies; local authorities; judicial bodies, the Superior Council of Magistracy, the Constitutional Court, the Court of Accounts; constitutional bodies; independent public bodies; regulatory bodies; persons under private law entrusted with the management of a public service; and organizations and associations and all bodies receiving public funding. Article 2 of Organic Law No. 2016-22 of March 24, 2016 on the right of access to information, accessed 06.03.2022.

their mandate.¹²¹

Since the establishment of the Open Government Partnership (OGP), Tunisia joined in 2014 and has prepared and initiated 3 action plans, the last one for the period 2021-2023.¹²² In order to implement an OGP, Tunisia focused on 5 areas, among them: "Transparency of government actions, opening of public data and fight against corruption" as the fourth pillar, and the "Promotion of integrity, participatory approach and local governance" being the fifth pillar.¹²³ We can therefore deduce that the participation of civil society is a key area for Tunisia.

Deficiencies

The work of INAI and the State in general on awareness-raising is weak: no campaigning has been done to explain to the general public the right of access to information, its importance, its applications and its exceptions. The right of access to information has not yet been introduced in the Tunisian educational system, neither in schools nor in faculties.

In addition, INAI publications do not take into consideration the popularization of ATI procedures as a line of their work. There are no guides or brochures aimed at civil society or citizens to facilitate better understanding and application of the right of access to information.

4.1.10 Art. 11 - Measures relating to the judiciary and prosecution services

Article 102 of the 2014 Constitution provides that the judiciary is independent and guarantees the establishment of justice. According to the same article, judges are independent and are subject in the exercise of their functions only to the authority of the law. The establishment of a superior council of magistracy by articles 112, 113, 114 of the constitution is governed by law no. 2018-34 of 28 April 2018.

Good practices

In order to ensure the independence of the judiciary, the Tunisian Constitution of 2014 established an institution: the Higher Council of the Judiciary. The Council guarantees, within the framework of its attributions, the proper functioning of justice and the independence of the judicial authority, in accordance with the provisions of the constitution and ratified international conventions. It enjoys administrative and financial autonomy and the free management of its affairs, and has regulatory powers within its area of competence. In 2021,

¹²¹ Commune of Tunis: <http://www.commune-tunis.gov.tn/publish/content/default.asp>, accessed on 22.07.2022.

¹²² Fourth National Action Plan of the BMP 2021 - 2023: <http://www.ogptunisie.gov.tn/fr/index.php/2021/06/25/quatrieme-plan-daction-national-du-pgo-2021-2023/>, accessed 01.11.2022.

¹²³ <https://www.pagof.fr/pays/tunisie/>.

the Council of the Judiciary issued a note to end the secondment of judges to governmental functions and bodies.¹²⁴

Judges are also subject to Law No. 2018-46 of 1st August 2018, on the declaration of assets and interests and the fight against illicit enrichment and conflicts of interest, which requires them to "declare their assets and interests, within a maximum period of sixty days, from the date of proclamation of the final results of the elections, the date of appointment or the date of assumption of office as the case may be."¹²⁵

Deficiencies

Despite their obligation to declare their assets and interests, judges are not subject to a specific procedure that prevents situations of conflict of interest and the risks of pressure that judges may be subjected to. It is, therefore, the responsibility of the INLUCC to prevent these risks, especially with the susceptibility of the mission of judges in ensuring the rule of law.

The Supreme Council of the Judiciary is the body responsible for, in addition to the management of the justice service, ensuring the independence of the judiciary from, among others, the executive. However, Decree-Law No. 2011-11 of February 12, 2022 on the creation of the Provisional High Council of the Judiciary,¹²⁶ replaced the former Council. Under this decree-law, the president of the Republic has a monopoly on the appointment of members of the Council and intervenes extensively in the management of judges' careers. This constitutes a flagrant threat to the independence of the judiciary, which is linked to the executive branch.

In June 2022, the decree-law No. 2022-35 of 1st June 2022, supplementing the decree-law No. 2022-11 of February 12, 2022, on the establishment of the provisional Supreme Council of the Judiciary, appeared in the Tunisian Official Gazette.¹²⁷ Through this decree, President Kais Saied has given himself the authority "in case of emergency, or undermining public security or the best interest of the country, and on a reasoned report of the competent authorities, to issue a Presidential decree pronouncing the dismissal of any magistrate because of a fact attributed to him and which is likely to compromise the reputation of the judiciary, its independence and its proper functioning."¹²⁸

¹²⁴ <https://www.alarabiya.net/north-africa/2021/06/09/%D8%AA%D9%88%D9%86%D8%B3-%D9%82%D8%B1%D8%A7%D8%B1-%D8%A8%D8%A7%D9%86%D9%87%D8%A7%D8%A1-%D8%B9%D9%85%D9%84-%D8%A7%D9%84%D9%82%D8%B6%D8%A7%D8%A9-%D9%81%D9%8A-%D8%A7%D9%84%D9%88%D8%B8%D8%A7%D8%A6%D9%81-%D8%A7%D9%84%D8%B3%D9%8A%D8%A7%D8%B3%D9%8A%D8%A9>, accessed on 12.07.2022.

¹²⁵ Section 5 of Act No. 2018-46 of August 1, 2018.

¹²⁶ <https://legislation-securite.tn/law/105201>.

¹²⁷ Decree-Law No. 2022-35 of 1^{er} June 2022 supplementing Decree-Law No. 2022-11 of 12 February 2022 on the establishment of the Provisional High Council of the Judiciary, <https://legislation-securite.tn/law/105296>.

¹²⁸ Article 2 of Legislative Decree No. 2022-35, source cited above.

Based on this decree-law, the head of state decided to dismiss 57 judges¹²⁹ accused of corruption and other crimes. It is important to note that this dismissal did not follow a disciplinary procedure, but among the 57 judges we find, for example, Taieb Rached and Bechir Akermi, who have been subject to disciplinary decisions since 2021.¹³⁰

4.1.11 Art. 12 - Private Sector

The private sector is not spared from corruption and embezzlement, hence the need to take measures to prevent them by providing for civil, administrative and penal sanctions as well as the application of rules of good conduct to private companies.

Good practices

In Tunisia, the National Center of the Business Registry (CRNE) was created under Article 4 of Law No. 2018-52 of November 29, 2018 on the national register of companies and organized under Decree 2019-52 on the administrative and financial organization of the CRNE. Its mission is to collect information on companies and make it available to the public.¹³¹ The public has access to the register on the condition that it creates a user account. The register provides data in reusable form and consists of the following sub-registers:

1. A trade register where traders, trading companies, permanent establishments, representative offices with a subsidiary or branch in Tunisia, legal entities, public companies, non-administrative public establishments and legal entities specified in the laws or regulations as well as craftsmen, requires registration in accordance with the legislation in force governing the organization of the trades sector;
2. A professional register where professional companies and self-employed professionals are registered and carry out a paid activity;
3. A register of associations and networks of associations where the associations constituted in accordance with the legislation in force are registered and where the acts, documents and registers held by the association are deposited;
4. A register of beneficial owners in which the beneficial owners are listed in accordance with a model established for this purpose, the data of which are determined in accordance with the provisions of Article 19 of this Law.¹³²

The Regulation defined beneficial owners as "any natural person who ultimately has or exercises effective control or authority, directly or indirectly, over a legal person or legal arrangement or over the administrative, managerial or executive bodies, as well as any

¹²⁹ <https://www.jeuneafrique.com/1351082/politique/tunisie-kais-saied-revoque-57-juges-et-assure-son-emprise-sur-la-justice/>, accessed on 23.07.2022.

¹³⁰ <https://www.businessnews.com.tn/affaire-des-juges-beir-akremi-et-taieb-raed--le-csm-reunit-un-conseil-de-discipline-520,106627,3>, accessed on 23.07.2022.

¹³¹ Official website of the National Business Registry, <https://www.registre-entreprises.tn/rne-public/#/>.

¹³² Article 8 of Law No. 2018-52 of October 29, 2018, on the National Register of Companies.

natural person for whose benefit and on whose behalf, transactions are carried out through a legal person or legal arrangement. It is also any natural person who is a partner, shareholder or member of a legal person or legal structure whose capital or voting rights enable him to exercise effective control over that person.¹³³

Cooperation between the registry and the administration in question is an obligation provided by law, "It is compulsory to proceed, within the framework of the interconnection of public databases, the instantaneous electronic exchange of information, data and documents between the National Register of Enterprises and all the public institutions concerned."¹³⁴

Deficiencies

In accordance with Article 12 of the UNCAC, Framework Decree-Law No. 120 considered bribery to be a corruption offence. However, as with the entire post-revolution anti-corruption legal framework, it remains far from judicial enforcement. This inapplicability does not affect its legal existence, since no enactment for bribery in the private sector has been scheduled until now, despite several studies¹³⁵ which repeatedly warn about the importance and scope of corruption in the private sector, which increasingly influences the Tunisian political and public scene.¹³⁶

The same remark arises with regard to foreign officials who are not covered by the law. The Tunisian State is called upon to reflect and rethink its legal arsenal, because nothing justifies the ignorance of the private sector in the legal arsenal for the fight against corruption, not to mention the failures of application for the Tunisian judicial system. According to Chawki Tabib,¹³⁷ the private sector must be regulated to contribute to efforts to fight corruption, including the criminalization of bribery.¹³⁸

¹³³ Article 2 of Law No. 2018-52 of October 29, 2018, on the National Register of Companies.

¹³⁴ Article 3 of Law No. 2018-52 of October 29, 2018, on the National Register of Companies.

¹³⁵ Perception of Corruption in Tunisia, December 2020 - Quantitative Study, <https://www.giz.de/en/downloads/Perception%20de%20la%20Corruption%20en%20Tunisie%20D%C3%A9cembre%202020%20E2%80%93%20Etude%20Quantitative.pdf>.

¹³⁶ Study on petty corruption conducted by the Tunisian Association of Public Auditors, <http://atcp.org.tn/wp-content/uploads/2022/02/%D8%A7%D9%84%D9%81%D8%B3%D8%A7%D8%AF-%D8%A7%D9%84%D8%B5%D8%BA%D9%8A%D8%B1-%D9%81%D9%8A-%D8%AA%D9%88%D9%86%D8%B3-vf.pdf?fbclid=IwAR2TBBs53HPfHpieZw02y1ZulxkO3aezYsd9YYeqAIGoPfVWEJrEFwZVa6I>.

¹³⁷ Lawyer, former President of the National Bar Association and former President of the National Anti-Corruption Commission (INLUCC).

¹³⁸ Le site web de la radio Shems FM, lien de la déclaration (2019), <https://www.shemsfm.net/amp/ar/%D8%A7%D9%84%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1-%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1-%D8%AA%D9%88%D9%86%D8%B3%D8%A7%D9%84%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1-%D8%A7%D9%84%D9%88%D8%B7%D9%86%D9%8A%D8%A9/224063/%D8%B4%D9%88%D9%82%D9%8A-%D8%A7%D9%84%D8%B7%D8%A8%D9%8A%D8%A8->

4.1.12 Art. 14 - Measures to prevent money laundering

Money laundering is a blatant phenomenon that is nowadays increasingly pronounced in Tunisia. Organic law n°2015-26 of August 7, 2015 relating to the fight against terrorism and money laundering, amended and completed by the organic law n° 2019-9 of January 23, 2019 has established a system to combat money laundering.

Good practices

Article 92 of Organic Law 2015-26 of August 7, 2015 on the fight against terrorism defines acts considered 'money laundering', and insisted that this act be intentional. Furthermore, "[t]he offense of money laundering is independent of the predicate offense as to its constitution."¹³⁹ The mention of this idea in the law establishes money laundering as a crime. This reminds us of the general legal principle of the legality of penalties and offenses. The legislator is interested in money laundering as a crime in its own right and aims to criminalize it.

In order to cooperate with judicial authorities and be the national center responsible for receiving and analyzing suspicious transaction reports, a financial intelligence unit called the Tunisian Commission for Financial Analysis (CTAF) was established by Article 118 of the Act of 26-2015 on combating terrorism and suppressing money laundering. The Commission is an administrative financial intelligence unit, a member of the Egmont group¹⁴⁰ and the FATF.¹⁴¹ This Commission has the necessary budget for the exercise of its missions allocated by the budget of the central bank.¹⁴² Moreover, its members are appointed by government decree for a period of six years.¹⁴³ The law provides for sanctions in Articles 93-97 of the law. In order to prevent money laundering, it also requires the identification and verification of the clients of the concerned bodies with regard to transactions and financial operations. In addition, any entity is required to report all suspicious transactions to the Tunisian Financial Analysis Commission.

Internal monitoring rules were introduced by Circular No. 2017-08 of September 19, 2017, as amended by Circular No. 2018-09 of October 18, 2018 on the implementation of internal monitoring rules for the management of money laundering and terrorist financing risk.

[%D8%A7%D9%84%D8%B1%D8%B4%D9%88%D8%A9-%D9%81%D9%8A-%D8%A7%D9%84%D9%82%D8%B7%D8%A7%D8%B9-%D8%A7%D9%84%D8%AE%D8%A7%D8%B5-%D8%BA%D9%8A%D8%B1-%D9%85-%D8%AC-%D8%B1-%D9%85%D8%A9-%D8%A5%D9%84%D9%89-%D8%A7%D9%84%D9%8A%D9%88%D9%85](#), accessed on 13.07.2022.

¹³⁹ Article 92 the organic law 2015-26 of August 7, 2015 on the fight against terrorism.

¹⁴⁰ Official website of the group, egmontgroup.org/members-by-region.

¹⁴¹ Official website of the Tunisian Financial Analysis Commission, ctaf.gov.tn.

¹⁴² Article 15 of Government Decree No. 2016-1098 of August 15, 2016, establishing the organization and operating procedures of the Tunisian Financial Analysis Commission.

¹⁴³ Article 2 of Government Decree No. 2016-1098 of August 15, 2016, establishing the organization and operating procedures of the Tunisian Financial Analysis Commission.

Indeed, the text contains measures such as the identification obligation, and relevant institutions under the law¹⁴⁴ must verify certain conditions in relation to their correspondent.

The measures available show a first-line watch for identification and verification by the financial bodies concerned, the second phase of procedures being reporting suspicious operations or transactions to the CTAF through the designation of agents responsible for reporting to the CTAF. In order to provide the information requested by the CTAF in the shortest possible time, these agents must have the necessary expertise to carry out their task, including attending the commission's periodic meetings.

Deficiencies

Despite this legal framework, Tunisia did not escape the blacklist of countries with high exposure to money laundering and terrorist financing in 2018.¹⁴⁵ On the other hand, Tunisia is rated "Compliant" with 10 recommendations, "Largely Compliant" with 26 recommendations, and "Partially Compliant" with 4 recommendations, following the analysis of the 4th upgrade request. According to MENAFATF procedures, Tunisia is subject to enhanced monitoring in November 2020.¹⁴⁶

Tunisia has taken significant steps to address the deficiencies related to recommendations. Regulators have yet to issue instructions requiring entities that are not subject to Central Bank supervision to maintain group-wide anti-money laundering and anti-terrorist financing programs that include safeguards to prevent risks. The compliance officer must share customer, account and transaction information with branch and subsidiary compliance officers where appropriate, for risk management.¹⁴⁷

Tunisia was part of the *Financial Secrecy Index*, the index that ranks jurisdictions according to their opacity and the extent of their offshore activities. Tunisia ranked 102nd in 2022.¹⁴⁸ According to the site of the Tunisian FIU, no bilateral agreements have been signed with international counterparts. Tunisia has been subject to mutual evaluation by the Intergovernmental Financial Action Task Force (FATF) in 2017, 2019, and 2020.¹⁴⁹

¹⁴⁴ Section 14 -Circular No. 2017-08, September 19, 2017.

¹⁴⁵ Official website of the private radio Shems FM, https://www.shemsfm.net/fr/actualites_tunisie-news_news-nationales/187035/ambassadeur-de-l-ue-en-tunisie-le-classement-de-la-tunisie-sur-la-liste-des-pays-exposes-au-blanchiment-d-argent-n-est-pas-une-sanction.

¹⁴⁶ <https://www.observatoire-securite.tn/fr/2020/01/09/menafatf-la-tunisie-est-notee-largement-conforme-aux-recommandations-du-gafi/>, accessed on 18.07.2022.

¹⁴⁷ 4^{ème} Improved Monitoring Report for the Republic of Tunisia 2020, <https://www.fatf-gafi.org/countries/s-t/tunisia/documents/fur-tunisia-2020.html>, accessed 18.07.2022.

¹⁴⁸ Tax Justice Network, Country detail: Tunisia (2022), <https://fsi-taxjustice-net.translate.google/country-detail/? x tr sl=auto& x tr tl=fr& x tr hl=fr& x tr pto=op#country=TN&period=22>.

¹⁴⁹ Official website of the Intergovernmental Financial Action Task Force,

4.2 Chapter V

With specific reference to Chapter V of the UNCAC, the following points were commented on and analyzed:

4.2.1 Art. 52 and 58 - Combating money laundering

As a factor for development and evolution, money can become a “destroyer” of nations because of the risks of misuse and illicit use. Indeed, the last decade has shown the instrumentalization of money for illicit acts, such as the financing of terrorism, the diversion of funds for tax avoidance, etc. Thus, it is essential to set up standards and effective mechanisms for prevention, monitoring and repression. Tunisia has not escaped the dangers of the phenomenon of money laundering. It is involved in the global action of prevention and repression by responding to the recommendations of the World Bank and the FATF in the fight against money laundering. This is in addition to an international corpus to which Tunisia has adhered, including the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) and the United Nations Convention against Transnational Organized Crime (2000).

The Tunisian legal framework has included, for years, the beginnings of both a preventive and repressive 'strategy'. Indeed, from regulations on financial institutions and establishments, to the transparency of politically exposed persons, the pillars of a real preventive policy of money laundering and illicit enrichment have been put in place through, in particular, the provisions of Law No. 2018-46 of 1 August 2018 on the declaration of assets and interests and the fight against illicit enrichment and conflicts of interest.

In addition, the CTAF showed in its 2017 activity report¹⁵⁰ that "unknown money" was being used for the financing of acts of aggression. Indeed, terrorist acts have confirmed the need to establish an "explicit" and specific legal corpus to combat terrorism and money laundering.

Good practices

In Tunisia, public authorities were aware of the dangers of money laundering, especially with Tunisian links between terrorist acts and money laundering. To this end, it was remarkable that the Tunisian legislator linked terrorism to money laundering through the promulgation of organic law No. 2015-26 of August 7, 2015 on the fight against terrorism and the suppression of money laundering.¹⁵¹ The following is considered money laundering, as defined in Article 92 of this law:

[https://www.fatfgafi.org/publications/mutualevaluations/?hf=10&b=0&r=%2Bf%2Ffatf_country_en%2Ftunisia&s=desc\(fatf_releasedate\)](https://www.fatfgafi.org/publications/mutualevaluations/?hf=10&b=0&r=%2Bf%2Ffatf_country_en%2Ftunisia&s=desc(fatf_releasedate)), accessed 22.07.2022.

¹⁵⁰ <https://ctaf.gov.tn/data/uploads/pdf/Rapport%202017.pdf>, accessed on 12.07.2022.

¹⁵¹ JORT No. 63 of August 07, 2015, p. 2163 et seq.

- Any intentional act aiming, by any means, at the false justification of the illicit origin of movable or immovable property or of income directly or indirectly derived from any crime or misdemeanor punishable by a prison sentence of three years or more, as well as any misdemeanor punishable under the Customs Code;
- Any intentional act aimed at placing, acquiring, possessing, using, depositing, concealing, disguising, administering, integrating or conserving the proceeds of the above-mentioned offenses, directly or indirectly, as well as attempting, aiding, abetting, facilitating or assisting in their commission.

For the purposes of preventing and combating money laundering, the Tunisian legislator has made a number of institutions/entities responsible for ensuring compliance with regulatory and supervisory provisions. Indeed, Article 107, for example, obliges banks and financial institutions,¹⁵² microfinance institutions, stock exchange intermediaries, and insurance companies to take the necessary due diligence measures towards their clients. These measures involve:

- Refraining from opening/maintaining anonymous accounts or accounts under obviously fictitious names;
- Verifying the identity of their regular or occasional customers and recording all necessary data in order to do so;
- Verifying the identity of the beneficiary of the operation/transaction and the capacity of any person acting on his behalf;
- Identifying the beneficial owner,¹⁵³ and taking reasonable steps to ascertain his or her identity.

The entities in charge of implementing these measures are also responsible for updating the data relating to the identity of their clients, for examining their operations and transactions and for exercising permanent vigilance throughout the business relationship. Thus, all records, books of account and other documents saved with these entities must be kept, in physical or electronic form, for at least 10 years from the date of the transaction or the closing of the account, in case of traceability needs. In addition to the aforementioned entities, the legislator has broadened the scope of application of Law No. 2015-26 to include any legal

¹⁵² The law n° 2016-48 of July 11, 2016 relating to banks and financial establishments (JORT n° 58 of July 15, 2016, p. 2195) establishes the conditions of exercise and the methods of supervision of banks and financial establishments in order to preserve their stability and to protect depositors and users. This law contributes through the preventive measures it contains to the prevention and fight against money laundering, thanks to the duties incumbent on banks and financial institutions in terms of diligence.

¹⁵³ Government Decree No. 2019-54 of January 21, 2019, setting the criteria and modalities for identifying the beneficial owner/ Decision of the Tunisian Financial Analysis Commission No. 2018-10 of June 8, 2018, amending Decision No. 2017-03 of March 2, 2017, on beneficial owners.

entity¹⁵⁴ required, from now on, to adopt prudential management rules.¹⁵⁵

Although they are not explicitly covered by the provisions of Law 2015-26, politically exposed persons (Head of State, Head of Government, ministers, deputies, etc.) are affected by anti-money laundering vigilance measures. Indeed, the obligation to declare assets and interests is a means of verifying and examining the situation of these persons. The latter are required to disclose their assets and to update them whenever there are changes. The INLUCC is responsible for ensuring the authenticity of the data declared and the "honesty" of the persons concerned, as well as imposing the sanctions provided for by Law No. 2018-46 if necessary.

In addition, and in order to ensure a better application of international standards in this area, such as the provisions of the UNCAC, the Tunisian legislator has established the Tunisian Commission for Financial Analysis (CTAF) within the central bank of Tunisia, which is responsible for:

- Collecting and analyzing reports of suspicious operations and transactions and notifying the follow-up,
- Receiving reports from monitoring bodies and administrative authorities or others in case of discovery of suspicious operations during inspection on the aforementioned legal entities.

To ensure an effective response, the CTAF can call upon the assistance of its foreign counterparts and accelerate the exchange of financial information with them. Regarding sanctions that could be imposed, the Tunisian legal framework provides for several dissuasive sanctions including, for example, the imprisonment of the perpetrator of money laundering from one year to six years and the payment of a fine ranging from five thousand dinars to fifty

¹⁵⁴ It is "any entity with autonomous assets, distinct from those of its members or associates, even if it has not been granted legal personality by virtue of a special text of the law" (Article 3 of Law No. 2015-26).

¹⁵⁵ These rules are:

- Refrain from receiving any donations or subsidies whose origin is unknown or which come from illegal acts that the law qualifies as a misdemeanor or felony, or which come from natural or legal persons or organizations or bodies involved, inside or outside the territory of the Republic, in activities related to terrorist offenses. The list of organizations, natural or legal persons and bodies referred to above is established in accordance with the legislation in force,
- Forbearance from receiving any contributions in excess of the statutory limit,
- To refrain from receiving any donations or other forms of financial assistance, regardless of the amount, except as provided by special law,
- Refrain from receiving any goods coming from abroad without the assistance of a licensed intermediary residing in Tunisia, provided that the legislation in force does not prevent it,
- Refrain from receiving any cash of a value greater than or equal to five hundred dinars, even by means of several payments that may be linked.

thousand dinars¹⁵⁶ (between €1600 and €16000). The application of these sanctions is verifiable through the decisions of the National Anti-Corruption Commission.¹⁵⁷ In addition, any failure to comply with the duties of diligence and declaration of assets and interests will be sanctioned according to the regulations in force.

Deficiencies

Despite the novelties introduced in the Tunisian legal corpus relating to the prevention and fight against money laundering, some deficiencies have been recorded by the CTAF in its annual report of 2020.¹⁵⁸ These deficiencies are intertwined with the threats and vulnerabilities detected by the FATF, including the misuse of online financial services and virtual assets to hide illicit funds, which is, among other things, the non-recognition by Tunisian regulations (including Law No. 2016-48 on banks and financial institutions) of shell banks.

In addition, "the existing regulations do not cover all bribery offences and others among the underlying offences. Influence peddling is also partially covered by the scope of the money laundering offense."¹⁵⁹

4.2.2 Art. 53 and 56 - Measures for direct recovery of property

With respect to the recovery of property, Article 53 of the UNCAC ensures that States have a legal framework that allows other States Parties to come before their courts to seek recovery of property through judicial or extrajudicial proceedings. Furthermore, these provisions are reinforced by Article 56 of the Convention, which requires the sharing of information between the different States Parties beforehand and afterwards and without prior request.

In Tunisia, since the 2010-2011 revolution, the Tunisian judiciary has frozen assets suspected of being linked to fraud or abuse of power by former President Zine El Abidine Ben Ali, his wife and a list of names of people who have acquired property where fraud or abuse of power has been proven.¹⁶⁰

A legal framework for the confiscation and management of confiscated property was established with the creation of a commission called the 'Confiscation Commission', under

¹⁵⁶ Article 93 of Law No. 2015-26.

¹⁵⁷ <http://www.cnlct.tn/?cat=25>, accessed on 18.07.2022.

¹⁵⁸ https://www.ctaf.gov.tn/data/uploads/pdf/617bbbd172d0e4.61278362.pdf#page=65&zoom=100_92,389.

¹⁵⁹ Council of Europe, Diagnostic Report on Tunisia's Anti-Corruption Framework (adopted Jan. 31, 2017), pp. 190 and <https://rm.coe.int/snac-ii-publication-diagnostic-anti-corruption-programme-sud/1680792c0f>, accessed 18.07.2022.

¹⁶⁰ <https://www.webmanagercenter.com/2011/03/24/103663/tunisie-jort-decret-loi-confiscation-des-avoirs-des-ben-ali-trabelsi-liste-des-personnes-concernees/>, accessed on 22.07.2022.

Decree-Law No. 2011-13 of March 14, 2011 as amended and supplemented by Decree-Law No. 2011-47 of May 31, 2011 at the Ministry in charge of state domains and land affairs.

A second body was created by Decree-Law No. 2011-15 of March 26, 2011, which established the "National Committee for the Recovery of Assets Abroad" at the Central Bank of Tunisia. Four years later, the files that the Committee was in charge of were transferred to the head of the State's legal department.

With the decree-law n°2011-68 of July 14, 2011, a third commission was created, named the "National Commission for the Management of Assets and Funds subject to Confiscation or Recovery in favor of the State," in charge of managing the portfolio of securities and related rights, as well as taking any measures related to rights linked to securities, shares and titles subject to confiscation or recovery. This is done in accordance with the provisions of the texts in force and Decree n° 2013-4420 of October 10, 2013, which stipulates the attributions and organization of the permanent secretariat of the National Commission for the management of assets and property subject to confiscation or recovery in favor of the State.

Recently, in 2020, Presidential Decree No. 2020-112 of October 22, 2020 on the establishment of a special committee within the Presidency of the Republic for the recovery of ill-gotten gains abroad was enacted. This committee is chaired by the Minister of Foreign Affairs, Migration and Tunisians Abroad or his deputy, and is responsible for evaluating measures taken for the recovery of ill-gotten gains abroad, as well as taking any action leading to the recovery of these assets.

Good practices

Since June 2011, 28 million dollars (27 million Euro) have been recovered from Lebanon, 3.5 million Swiss francs (almost 3.5 million Euro) have been deposited in the Tunisian treasury, as well as a check for 250,000 euros.¹⁶¹ In addition, Tunisia has retained a plane in which Sakhr El Matri, son-in-law of former President Zine El Abidine Ben Ali, holds 50% of the capital.¹⁶²

In order to facilitate the implementation of international standards of asset recovery, Tunisia is a member of the EGMONT group, an information sharing forum, represented by the Tunisian Commission for Financial Analysis (CTAF).¹⁶³

Deficiencies

¹⁶¹ Ill-gotten Tunisian assets abroad: Kais Saied takes over the case, <https://nawaat.org/2020/11/13/biens-tunisiens-mal-acquis-a-letranger-kais-saied-sempare-du-dossier/>, accessed on 27.07.2022.

¹⁶² Ibid.

¹⁶³ Council of Europe, Diagnostic Report on Tunisia's Anti-Corruption Framework (adopted Jan. 31, 2017), p.37, <https://rm.coe.int/snac-ii-publication-diagnostic-anti-corruption-programme-sud/1680792c0f>, accessed on 27.07.2022.

Tunisia's record in asset recovery is still below expectations as the Tunisian state has not always managed to recover existing assets abroad, except for some negligible amounts and possessions.

In part, the failure can be attributed to the transitional justice process, considered by several stakeholders as a "parallel" process that has not succeeded due to scattered legal texts and a lack of political will. In addition, the lack of coordination between various institutions involved and the lack of expertise of judges in the area of asset recovery have prevented several attempts to resort to the courts.

Even when the President of the Republic decided to tackle the field of recovering ill-gotten assets abroad, he simply added a committee to evaluate the measures taken for the recovery of assets, without having a clear vision in the absence of a national strategy to accelerate the process, which has been pending since 2011.

4.2.3 Art. 55 - International cooperation for purposes of confiscation

The UNCAC is "the world's leading legal instrument in the fight against corruption and clearly states that the return of misappropriated assets is a fundamental principle of international law. However, under Article 55 on international cooperation for the purpose of confiscation, the means of recovery are solely at the disposal of the victim State." ¹⁶⁴

In Tunisia, Presidential Decree No. 2020-112 of October 22, 2020, on the creation of a special committee under the Presidency of the Republic for the recovery of ill-gotten gains abroad explicitly refers to the idea of international cooperation. In fact, the committee has a broad scope of intervention in the recovery of ill-gotten assets abroad under Article 3: "The Committee may propose to take any measure that would lead to the recovery of these assets." ¹⁶⁵

On March 23, 2021, the Ministry of Foreign Affairs, Immigration and Tunisians Abroad announced that the Human Rights Council, at the end of its 46th ordinary session adopted a draft resolution on the recovery of property confiscated from their countries of origin, submitted by Tunisia, Libya and Egypt and adopted by the African Group as an African project. It was created within the framework of mobilizing national, regional and international efforts to sensitize the international community on the importance of cooperation to recover these assets and the right of our peoples to self-determination in their wealth, in order to help them

¹⁶⁴ Lebègue, Daniel, and Marina Yung, "Restitution of misappropriated assets: the role of non-governmental organizations," *International and Strategic Review*, vol. 85, no. 1, 2012, pp. 81-88, accessed 26.02.2022.

¹⁶⁵ Presidential Decree No. 2020-112 of October 22, 2020, on the creation of a special committee at the Presidency of the Republic for the recovery of ill-gotten gains existing abroad.

implement economic and social rights which are an integral part of the human rights system and a key factor in the fight against corruption and the establishment of good governance.

Good practices

Since 2011, 47 bank accounts belonging to Tunisian businessmen have been frozen by the European Union: 8 accounts were blocked in Canada, 5 in Lebanon and 48 in Switzerland.¹⁶⁶ In addition, information on cooperation in asset recovery is published on the World Bank's STAR initiative website, to ensure better implementation of UNCAC provisions.¹⁶⁷

Deficiencies

It is worth noting that despite attempts to establish a culture of cooperation, Tunisia has repeatedly found itself unable to convince states parties to deport criminals because of the dilapidated state of prisons in Tunisia.¹⁶⁸

On the other hand, looking back at the 46th regular session of the Human Rights Council, France, Australia, Azerbaijan, Bulgaria, Denmark, the Czech Republic, Italy, Japan, the Marshall Islands, the Netherlands, Poland, Korea, Ukraine, Great Britain, Ireland and Hungary voted against the resolution, indicating resistance to cooperation on the recovery of ill-gotten gains.

4.2.4 Art. 57 - Return and disposal of assets

In Tunisia, embezzlement and the laundering of public funds were behind the confiscation of assets and funds looted by Ben Ali and his family and diverted abroad in countries including Switzerland, Canada, Italy, Lebanon and Luxembourg.¹⁶⁹ Indeed, the government has put in place a number of legal texts to facilitate the return of illicit assets located abroad:

- Decree-Law No. 2011-13 of March 14, 2011 on the confiscation of assets of movable and immovable property as amended by Decree-Law No. 2011-47 of May 31, 2011;
- Decree-Law No. 2011-68 of July 14, 2011 on the creation of a national commission for the management of assets and funds subject to confiscation or recovery in favor of the

¹⁶⁶ Recovery of Tunisian ill-gotten gains: an assessment after 3 years of work, <https://blogs.worldbank.org/fr/arabvoices/recouvrement-des-biens-mal-acquis-tunisiens-un-bilan-apr-s-3-ans-de-travail>, accessed on 27.07.2022.

¹⁶⁷ Tracking Tunisia's stolen assets: the balance sheet three years on, Jean-Pierre Brun, <https://star.worldbank.org/blog/tracking-tunisia-stolen-assets-balance-sheet-three-years>, accessed on 27.07.2022.

¹⁶⁸ LTDH reveals the dilapidated state of prisons in Tunisia, https://www.observatoire-securite.tn/fr/2016/05/08/la-ltdh-devoile-letat-delabre-des-prisons-en-tunisie/?doing_wp_cron=1658913097.9090969562530517578125, accessed 27.07.2022.

¹⁶⁹ See Mohamed Khalil Jelassi, Difficult restitution of property and assets looted by the Ben Ali clan: between procedural difficulties and lack of cooperation, published on December 18, 2020 <https://lapresse.tn/81749/difficult-restitution-of-goods-and-assets-polished-by-the-clan-ben-ali-between-procedural-difficulties-and-manque-of-cooperation/>, accessed 13.07.2022.

State;

- Decree No. 2013-4420 of October 10, 2013, establishing the powers and organization of the permanent secretariat of the National Assets Management Commission.

It should be noted that "the system established as of 2011 is not applicable to the regime of seizure and confiscation of common law."¹⁷⁰ The Tunisian legal framework contains, since August 7, 2015 - the date of promulgation of Law No. 2015-26 - the beginnings of measures for the disposal and return of confiscated assets of foreign origin and which are related to money laundering and terrorism.

However, Tunisia still suffers from the lack of a unified and updated regulation on the return of confiscated assets. Moreover, existing rules do not address either the costs of asset restitution or how victims of corruption can be compensated after the return of assets, except for organic law No. 2013-53 of December 24, 2013 on the establishment of transitional justice and its organization.¹⁷¹ Indeed, the compensation of damages and rehabilitation for the benefit of victims of dictatorship are financed, among other things, by resources from the transfer of confiscated property and assets.¹⁷²

Ten years after the revolution, Tunisia is still unable to obtain the return of funds looted and diverted abroad by the Ben Ali clan. It has not even been able to determine the exact value of these goods and assets looted throughout the years of power of Ben Ali. However, in order for the blocked assets to be returned through mutual assistance, final and enforceable judgments must be rendered in Tunisia.¹⁷³ This requirement seems logical in that it constitutes a guarantee for the accused, required by the Constitution¹⁷⁴ of 2014 in its Article 27, which states that "Every accused person is presumed innocent until proven guilty, during a fair trial that provides all the guarantees necessary for his defense during the prosecution and at trial."

In addition, Tunisia has tried, through its membership in the STAR initiative¹⁷⁵ to strengthen its negotiating skills to recover assets located abroad.

¹⁷⁰ Council of Europe, Diagnostic Report on Tunisia's Anti-Corruption Framework (adopted January 31, 2017), source cited above, p. 192.

¹⁷¹ <https://legislation-security.tn/ar/law/44087>.

¹⁷² See Government Decree No. 2018-211 of February 28, 2018, establishing the organization, management and financing of the fund for the dignity and rehabilitation of victims of tyranny <https://legislation-securite.tn/ar/law/56883>.

¹⁷³ Mohamed Khalil Jelassi, Difficult restitution of property and assets looted by the Ben Ali clan: between procedural difficulties and lack of cooperation: <https://lapresse.tn/81749/difficile-restitution-des-biens-et-avoirs-spolies-par-le-clan-ben-ali-entre-difficultes-procedurales-et-manque-de-cooperation/>, accessed on 03.03.2022.

¹⁷⁴ <https://legislation-security.tn/law/44137>.

¹⁷⁵ This is the Stolen Asset Recovery initiative launched by the World Bank and the United Nations Office on Drugs and Crime (UNODC) to support international efforts to eliminate safe havens for funds derived from corruption.

Deficiencies

After more than ten years of the launching of the process of confiscation of looted assets located abroad and their restitution, the Tunisian State has not even been able to determine the real value of the looted assets. During an interview with Mr. Mounir Chedly, general adviser tasked within the State litigation department,¹⁷⁶ I WATCH was able to observe several difficulties and obstacles that have hindered this process:

- The absence of an explicit Tunisian legal framework regulating the restitution of looted assets located abroad;
- Monitoring is scattered among at least four different bodies: the Ministry of State Property and Land Affairs, the Ministry of Justice, the Ministry of Finance and the Presidential Commission for the Monitoring and Restitution of Looted Assets Located Abroad, established by Presidential Decree No. 2020-112 of 22 October 2020. The transitional justice process¹⁷⁷ in Tunisia constitutes an obstacle to restitution procedures because it operates in parallel with the process triggered by authorities;
- The inability of representatives of the Tunisian State to convince other States to transmit the persons connected to confiscation procedures to the Tunisian authorities, because of the bad situation in Tunisian prisons;
- Lack of expertise among Tunisian judges and difficulties in applying the legal frameworks of other states.

In addition, the Tunisian political context is generally unfavorable to the implementation of a genuine asset restitution strategy. No decision-maker has been able to implement real measures to accelerate the process of recovering looted assets located abroad. Moreover, the commission created by the President of the Republic at the end of 2020 has not yet held any meetings or published any results.

Statistics

Money laundering

Reporting and Intelligence Phase	Year: 2018	Year: 2019	Year: 2020
Number of Suspicious Transaction Reports ¹⁷⁸ (STRs) filed by each category of reporting entity:	515	597	446
• Banks	459	513	387
• Leasing institutions	27	43	18
• Insurance companies	13	18	18
• Other financial institutions		16	

¹⁷⁶ Interview held on 02.03.2022.

¹⁷⁷ The organic law n° 2013-53 of December 24, 2013 relating to the establishment of transitional justice and its organization.

¹⁷⁸ <https://www.ctaf.gov.tn/data/uploads/pdf/Rapport2018-2019.pdf>, accessed on 18.07.2022.

<ul style="list-style-type: none"> National Post Office Non-financial businesses and professions (NFBPs) 	11 5 5	7 7	3 12 8
Number of postponement orders adopted on reported transactions	N/A	N/A	N/A
Number of money laundering investigations conducted independently by law enforcement agencies (without a prior STR)	N/A	1112	1075
Number of STRs sent to law enforcement and on which further analysis was made	600	654	686
Number of full-time (or full-time equivalent) FIU staff dedicated to money laundering	12	12	12

Investigation phase	Year: 2018	Year: 2019	Year: 2020
Number of cases initiated by law enforcement agencies based on STRs sent by the FIU	600	645	686
Number of full-time (or full-time equivalent) law enforcement officers dedicated to money laundering	N/A	N/A	N/A
Number of cases prosecuted: originating from STRs, CTRs and independent law enforcement investigations	N/A	N/A	N/A

Judicial phase	Year: 2018	Year: 2019	Year: 2020
Number of full-time (or full-time equivalent) money laundering staff in the judiciary	4	12	12
Number of unsuspended custodial sentences by length (as principal offense, as predicate offense)	Please refer to the annexes		

Information on asset recovery cases

Name	Parties involved	Purpose of the procedure	Origin and type of procedure	Current status	Problem encountered
Leila Trabelsi Ben Ali	Lebanon	28.8 million dinars (about 9 million euro)	Criminal	Returned to Tunisia	
Sofien Ben Ali	Switzerland	126 million dollars (about 123.6 million euro)	Criminal	Returned to Tunisia	
Belhsan Trabelsi	Switzerland	40 million dollars (about 39.22 million euro)	Administrative	Frozen	The main challenge is to provide evidence against the accused on the origin of his assets. The Tunisian authorities must prove that these assets are linked to illicit activities. In 2014, Switzerland decided to return this amount. This decision was appealed by the Swiss federal court. Their argument was that "the federal prosecutors had not ensured the necessary verifications of the defendant's arguments."
Zine Abedine Ben Ali ¹⁷⁹	Switzerland	26 million dollars (about 25.5 million euro)	Administrative	Frozen	The main challenge was to prove to the Tunisian authorities that the sources of the assets were illicit and that the fortune was created as a result of abuse of power.
2 members of the Ben Ali family (not declared) ¹⁸⁰	Germany	344 million euros	Administrative	Frozen	This amount was reported by the German Federal Bank in 2013. This amount and other assets belonging to the Ben Ali family were frozen by the German government as a result of EU sanctions mechanisms. However, they have not been returned, as the Tunisian authorities have not been able to prove the illicit origin of these assets.

¹⁷⁹ The Tunisian Heist, Francesca Ebel, <https://newlinesmag.com/reportage/the-tunisia-heist/>, accessed 22.07.2022.

¹⁸⁰ Overview of assets recovery in Germany, Transparency International; https://knowledgehub.transparency.org/assets/uploads/helpdesk/Asset_recovery_in_Germany.pdf, accessed 22.07.2022.

V. Recent developments

At the outset, it should be noted that the preparation of this parallel report for the review of the implementation of the UNCAC in Tunisia began in 2021. Since then, Tunisia has undergone multiple changes directly and indirectly related to the issues raised during the analysis of the articles of chapters II and V of the UNCAC. The following is a summary of the main recent developments:

- In terms of asset recovery and restitution, the Tunisian government's efforts remain very limited. Although international cooperation is a tool for the Tunisian authorities to return looted funds, the value of the funds which are actually returned is very modest compared to the amounts declared by the State. In October 2020, the Head of State Kais Saied decided to create a special committee within the Presidency of the Republic responsible for dealing with ill-gotten assets existing abroad.¹⁸¹ The committee, asked to produce a quarterly report on its activities and the progress of its work, has never published any results, which aligns with the fact that no meetings have been held since its establishment.
- On July 25, 2021, the President of the Republic took exceptional measures on the basis of Article 80 of the Constitution of January 27, 2014, freezing the powers of the ARP; lifting the immunity of deputies and dismissing the head of government, Hichem Mechichi. The exceptional measures were later amplified by the promulgation of Decree No. 2021-117 on exceptional measures,¹⁸² allowing the president to monopolize power and become the legislator. Decree n° 2022-309 of March 30, 2022 announced the official extinction of the ARP.¹⁸³ These exceptional measures led to the upheaval of the Tunisian political system and a profound institutional and legal change. Indeed, the monitoring bodies and constitutional authorities have come under the "tutelage" of the head of state, who has the power to plan public policies, including those on good governance and the fight against corruption, and to enact and monitor them.
- The aforementioned exceptional presidential measures had consequences for the work of the INLUCC. The central premises of the body have been closed since August 2021. This has led to a "freeze" in its activities, affecting the process of fighting corruption. Whistleblowers have been unable to apply for or benefit from the protection provided by Law No. 2017-10 since the closure of the INLUCC. The public

¹⁸¹ <https://legislation-securite.tn/law/104911>.

¹⁸² <https://legislation-securite.tn/ar/law/105067>.

¹⁸³ Article 1 of Decree No. 2022-309 states that "By virtue of this Presidential Decree, the Assembly of People's Representatives is dissolved," <https://legislation-securite.tn/fr/law/105240>.

no longer has access to this corruption prevention body. In this context, in September 2021 I WATCH filed a request to the Administrative Court for the annulment of the decision to close the central premises of the INLUCC.

- In December 2021, the head of state announced his "political" program to carry out constitutional reforms, which began in January 2022 with the launch of the electronic consultation,¹⁸⁴ which will serve as the basis for the establishment of a new Constitution. An interdisciplinary reading of the draft constitution, put to a referendum on July 25, 2022, reveals the regression of the Tunisian state's vision to preventing and fighting corruption. Indeed, the draft constitution does not provide for any anti-corruption or prevention body or other constitutional authorities involved in the strengthening of transparency, accountability and integrity.

¹⁸⁴ www.e-istichara.tn/home.

VI. Recommendations

The executive branch is called upon to:

1. Ensure interaction with CSOs in the process of reviewing Tunisia's implementation of the UNCAC;
2. Ensure accessibility to official information;
3. Promulgate the texts of application of the laws already in force concerning the fight against corruption;
4. Further strengthen the human and financial capacity of oversight bodies;
5. Implement mechanisms for monitoring the implementation of the conventions ratified by Tunisia.
6. Ensure better coordination between the various stakeholders in the fight against corruption such as the INLUCC, the Public Prosecutor's Office, the supervisory bodies, the central bank, etc.;
7. Guarantee administrative and financial independence of the independent authorities, including the INLUCC and the INA.

The legislative branch is, in turn, called upon to:

8. Adopt the laws necessary for the fight against corruption and amend those in force to strengthen the independence of the INLUCC and the institutions involved in the fight against corruption, alongside the strengthening of transparency and accountability;
9. Strengthen the role of the parliament as the main monitoring organ of the state;
10. Take into account the conventions and treaties to which Tunisia has acceded during legislation;
11. Play a more active monitoring role through questions (written or oral) addressed to the Government;
12. Elect members of the independent constitutional authorities, including the INLUCC and the Constitutional Court;
13. Criminalize corruption in the private sector;
14. Establish a specific legal arsenal for the confiscation and recovery of assets;
15. Put in place effective legal mechanisms to ensure the involvement of civil society in the monitoring and implementation of public policies in the fight against corruption.
16. Introduce administrative and criminal sanctions for non-compliance with court decisions.

In order to ensure better implementation of the UNCAC, the Tunisian State is called to:

17. Deepen the work on awareness-raising about the rights and duties related to the fight against corruption.
18. Make the information required by Section 6 of Act No. 2016-22 available to the public online, in data formats that facilitate analysis and subsequent use of the data.

19. Establish an independent body that will be responsible for the prevention and fight against corruption, especially with the "removal" of the authority of good governance and the fight against corruption in the draft of the new Constitution and the freezing of the activities of the INLUCC.
20. Ensure compliance with whistleblower protection decisions.
21. Respect the frequency of publication of reports by monitoring bodies and the Court of Auditors.
22. Revise the rules for setting thresholds and ceilings for public spending and public procurement.
23. Respect the principle of non-regression in matters of rights and freedoms.
24. Intensify political and diplomatic efforts in relation to the recovery of ill-gotten gains and the restitution of assets abroad.

VII. Annexes

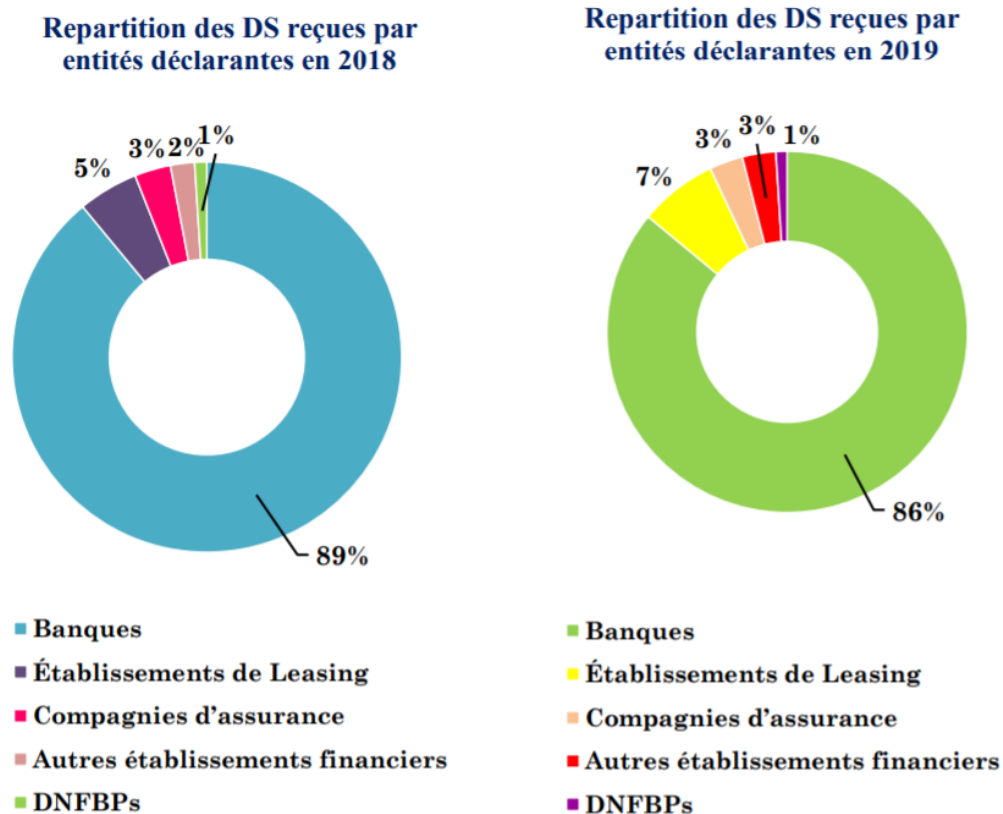


Figure 2: CTAF Activity Report, Special Edition 2018-2019. The chart on the left indicates a breakdown of STRs received by reporting entities in 2018, and the chart on the right indicates a breakdown of STRs received by reporting entities in 2019.

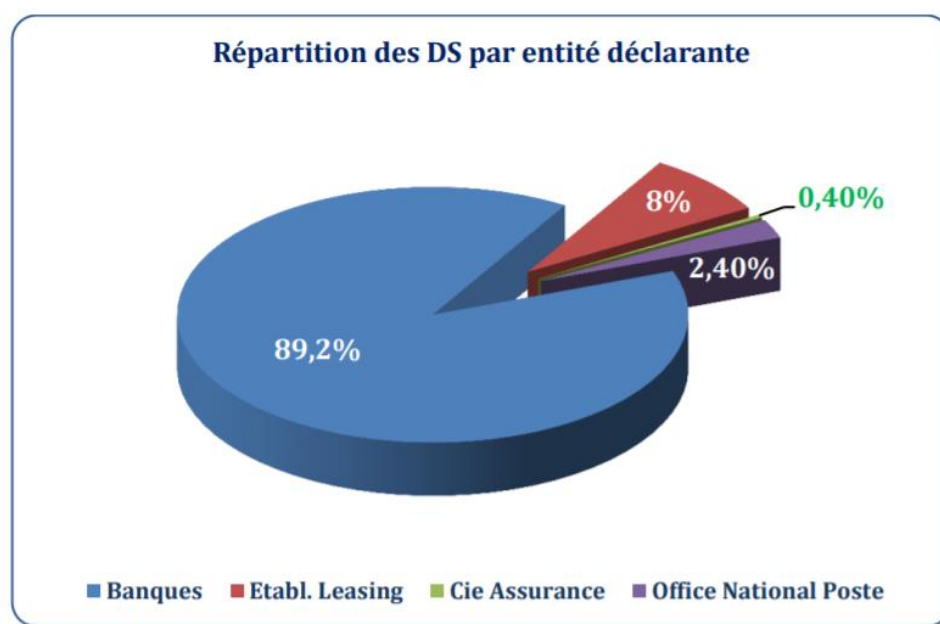


Figure 3: CTAF Activity Report, 2017. The chart indicates a breakdown of STRs received by reporting entities in 2017.

Length of prison sentenc	Jurisdictional year			
	2017-2018	2018-2019	2019-2020	2020-2021
Less than 5 years	0	4	1	4
Between 5 and 10 years	2	0	21	16
Between 10 and 15 years	1	8	8	5
Between 15 and 20 years	0	1	0	0
More than 20 years	1	1	0	0
Total	4	14	30	25

Table 4: Number of prison sentences by length between 2017 and 2021.

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