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Tunisia's Legitimacy and Constitutional Crisis

The Troika Has Failed

Anna Antonakis-Nashif

In early July 2013 it looked as if Tunisia might be about to conclude an important first phase in the political transition, with its constituent assembly (Assemblée Nationale Constituante or ANC) preparing to vote on each of the articles in the latest draft of the constitution. Instead, the entire process is now threatened with failure. Since the Egyptian public mobilised against President Mohammed Morsi, leading opposition forces in Tunisia have been questioning the legitimacy of the constituent process. They say the current draft of the constitution is unacceptable, as the ANC's one-year mandate has long since expired. The assassination of opposition politician Mohamed Brahmi has not only caused the government, accused of being complicit in his death, to lose further credibility, it has also escalated the constitutional crisis. Since 25 July, 60 members of parliament have suspended their activity in the ANC. The government's efforts to remedy the situation have proved unsuccessful thus far: For now, the work of the ANC is suspended.

The decision to elect a constituent assembly following the removal from power and flight of President Zine el-Abidine Ben Ali in January 2011 was an important step towards restructuring the country's political system. However, the Tunisian roadmap put in place to achieve this was not put forward by the provisional government but rather pushed through by the protesters from around the country who joined the Kasbah I and Kasbah II movements in January and February 2011 and held sit-ins to demand a new constitution. In March 2011 provisional President Fouad Mebazza bowed to pressure and announced direct elections to an assembly that was to draft a new constitution for Tunisia within one year and serve as its legislative body during the transition phase.

Distribution of power in the ANC

The Islamist Ennahda party emerged as the clear winner in the constituent assembly elections in October 2011, although it failed to gain an absolute majority. The party was therefore forced to enter into a coalition with two smaller, more secular

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and social-democratic partners – the Congrès pour la République (CPR) and the Forum démocratique pour le travail et les libertés (FDTL, also known as Ettakatol) – to form an interim "troika" government. This allowed Ennahda to build on the 89 of a potential 217 ANC seats. Its coalition partners won 29 (CPR) 20 (Ettatol, FDTL) seats respectively.

By entering into a coalition, the minority partners have been forced to make compromises that many of their representatives view as unacceptable. This has affected the composition of the ANC. There have since been numerous reshuffles, which have mainly been to the detriment of the two smaller coalition partners. Representatives who have switched their political allegiance three times are no rarity. This seeming capriciousness can be explained in part by disappointment with the coalition government. Many ANC representatives belonging to the two smaller coalition partners have felt betrayed by their parties. They say they have made too many concessions to Ennahda and have surrendered important political positions in order to share power. By July 2013, only 12 CPR and 13 FDTL representatives remained in the ANC.

Another reason behind the reshuffles is the founding of a new party: Nidaa Tounes entered the political arena in July 2012 and has proved a controversial addition. Led by Béji Caid Essebsi, Minister of the Interior under President Habib Bourguiba and Prime Minister in the first provisional government of 2011, the party sees itself as a secular alternative to Ennahda and the guardian of "modern Tunisia". It brings together trade union activists and Destourians (members of former President Habib Bourguiba's party) as well as former members of Ben Ali's unity party, the Rassemblement Constitutionnel Démocratique (RCD). Nidaa Tounes obtained 11 representatives, who, for the most part, had defected from the CPR and FDTL. Surveys carried out in July 2013 showed that if an election were to be held the next day, Nidaa Tounes would beat Ennahda, gaining 20.3 percent of the vote while Ennahda would gain just 13 percent.

Three major blocks formed within the ANC. Only the Ennahda block generally voted according to official party policy; it also made its presence felt more strongly than the other blocks. The second-largest block, commonly referred to as the "independent block", had 53 representatives and was mainly comprised of members of splinter parties as well as 20 independent politicians. Among them was Mohamed Brahmi, the member of the Mouvement du Peuple party assassinated in July 2013. The third block, called the "democratic block", had 36 members belonging to al-Massar (7), al-Jomhouri (8), Alliance Démocratique (10) and other smaller groupings (11).

The constituent process

In November 2011, while taking their oaths, ANC representatives pledged to draft the constitution within one year. Work on this constitution was divided among six commissions, each focusing on a different theme. The outcomes of their work were summarised and revised by a coordination committee. The debates and feedback between this committee and the commissions subsequently produced four drafts for a new Tunisian constitution.

Questions of identity and a culture of consensus

In the debates, the significance of different legal sources was one of the main issues of contention. In particular, the question as to which values should guide policy in the future remained unresolved. This was closely linked to the controversy surrounding the relationship between religion and the state.

In the ANC committee responsible for formulating the preamble and the basic principles underlying the constitution, Ennahda made the most concessions. The first draft of the constitution simply stated

that "moderate" Islamic values would form the basis of the constitution. The second draft added that the constitution should uphold the "principles of human rights", but only – as detailed in Article 15 – when these principles are consistent with so-called specific aspects of the Tunisian identity. This wording has particularly alarmed liberals as it creates the option of curbing human rights to safeguard specific traits of Tunisian identity.

Plenary sessions have shown that opinion on this issue is sharply divided between the different camps. While Ennahda representatives regard universal human rights as "left-wing ideology" and consider Sharia law a sufficient guarantee of fundamental freedoms, representatives of the independent and democratic blocks view human rights as a vital, core part of the constitution.

Lobna Jeribi (Ettakatol), Vice President of the Committee for the Preamble, called for the Universal Declaration of Human Rights to be anchored in the preamble as one of the constitution's legal bases. In the current draft, the principles of "universal human rights" are recognised without restriction – although they are stated as being secondary to "Islamic values". This was the compromise agreed on by representatives of civil society organisations and political parties during a national dialogue forum. This was also the conclusion reached by the legal experts commissioned by the coordination committee in their report on the second constitutional draft.

This solution does not, however, resolve the core conflict between Islamic values and the Universal Declaration of Human Rights. Instead it mirrors the culture of consensus, which the troika government is propagating – willingly or unwillingly – because of the difficulty of reconciling the coalition partners' differing ideological leanings.

The influence of civil society

The controversies have not been limited to the ANC; they have also taken place within society and the media. In this context, the internet and new social media have played a significant role. Web-based initiatives like al-Bawsala have tried to create transparency by documenting representatives' voting behaviour online and by screening live debates. Representatives, too, have given insight into their work and triggered debates via their Facebook pages and Twitter accounts.

The liberal camp and well-established civil-society organisations like Association Tunisienne des Femmes Démocrates (ATFD) and Ligue Tunisienne des Droits de l'Homme (LTDH) have expressed concern that if they have to spend all their time defending existing rights, they will not be able to demand any additional ones – especially given the distribution of power in parliament and the underperformance of secular parties. They have therefore carried the wrangling over the precise formulation of the constitutional draft into the streets. For example, a broad alliance called a demonstration on 13 August 2012 when the first draft of the constitution described the role of women as "complementary" to men. Selma Mabrouk, a member of the ANC committee for rights and freedoms who left Ettakatol to join al-Massar, posted the controversial Article 28 on her Facebook page even before it was officially published. This civil society action had an effect: in the second draft of the constitution the clause, which would have placed constraints on gender equality, was gone.

Thanks to this kind of civil society intervention, we can draw a positive balance on the existing version of the constitution, at least with regard to human and women's rights – an opinion shared even by human rights' lawyers critical of the government.

National dialogues

The ANC was not able to proceed with its work as quickly as planned, and so national dialogues were launched to speed up the process and to avoid a legitimacy crisis when the ANC's mandate expired in

October 2012. The talks were intended to represent a broad spectrum of political and civil society actors. Two rival initiatives emerged, one launched by the politically influential trade union Union Générale Tunisienne du Travail (UGTT) and one by the government.

In October 2012 the UGTT organised talks to discuss what steps should be taken after the ANC's mandate expired. Although numerous parties and associations accepted their invitation, Ennahda and CPR declined due the attendance of Nidaa Tounes, which they wished to boycott. In February 2013 the assassination of opposition politician Chokri Belaid triggered a political crisis that threatened to bring the entire transition process to a halt. President Moncef Marzouki therefore initiated another national dialogue on 15 April involving all government and most opposition parties represented in the ANC, including Nidaa Tounes. This time around, it was parties from the socialist and social-democratic side of the political spectrum and the UGTT that declined to join the talks.

It was only during the second round of talks initiated by the UGTT in May 2013 that all parties and numerous representatives of civil society organisations finally sat down at one table. Nidaa Tounes had already taken part in the talks initiated by the government, which had caused Ennahda to cease its stonewalling. An important outcome of the UGTT talks was a unanimous rejection of terrorism and all forms of violence.

Specifically, a broad alliance led by Nidaa Tounes called for the disbanding of the Leagues for the Protection of the Revolution (Ligues de la protection de la révolution, LPR). The LPR were established shortly after President Ben Ali stepped down on 14 January 2011. They are well organised, with 17 branches across the country. Human rights' organisations and opposition parties have attributed numerous violent attacks on journalists, artists and politicians to the leagues and these have severely hampered the transition process. They also suspect that Ennahda is secretly behind the LPR. Both the party and the LPR deny any involvement with one another. Hamma Hammami, leader of the Workers' Party and spokesman of the Front Populaire, an alliance of left-wing parties, declared that there could be no elections until the LPR had been disbanded. Ennahda party leader Rachid al-Ghannouchi said that the LPR could only be disbanded by the courts rather than by a political decision.

Other themes discussed during the national dialogues included the then-current draft of the constitution; the election law for the next parliamentary elections; and the role of independent institutions such as the proposed independent media commission and an independent legal authority for the transition period (which was successfully launched in July). During the course of the debates, representatives agreed to have a semi-presidential system in the future and that elections would take place six months after the composition of the electoral commission was announced.

The national dialogues were intended to get the deadlocked constituent process moving again following several deadline extensions and serious differences of opinion, and to lend the process more legitimacy by incorporating additional civil society actors. The forums were unelected, but they included many different groups and were able to reach concrete agreements and develop constructive proposals. However, the ANC has barely taken the forums' input into account, meaning that their positive influence has been very limited.

The constituent process' loss of legitimacy

The fact that Ennahda agreed to include freedom of opinion and thought, as well as religion, in Article 6 of the constitution was seen as an important victory for the opposition. However, the Tunisian judiciary, which has yet to be reformed, has been pursuing trials against activists critical of the government. By contrast,

crimes motivated by political ideology, including those carried out by the LPR, have been treated with relative leniency. This discrepancy is all the more obvious when we compare the trials of atheist author Jabeur Mejri, rapper Waled 15, Femen activist Amina and artists' collective Fanni Raghman Anni with the inadequate investigations into the attack on the US embassy in September 2012 and the assassination of the popular left-wing opposition politician Chokri Belaid in February 2013. The sentences passed on the activists were grounded on a conservative interpretation of existing laws and largely ignored the intended freedoms written into the draft constitution. Many members of the opposition believe Ennahda used its influence to impose harsher sentences. This would seem to confirm their suspicions that Ennahda has no democratic sympathies.

The discrepancy between declarations and actual practice in everyday life has strengthened a widespread perception that the constituent process is becoming further and further removed from the realities of life in Tunisia. This has led to its legitimacy being called into question by various sections of society. Critics have accused Ennahda of unnecessarily dragging out the transition process. Although it was making concessions in the constitution, it was still taking measures to Islamise society and state institutions, by appointing Ennahda sympathisers to administrative posts and attempting to gain greater control over the media.

Many observers also have the impression that some representatives might be drawing out the debates on the constitution to avoid tackling the country's real problems. Ahmad Khaskhoussi, secretary general of the Mouvement des Démocrates Socialistes (MDS), who left the ANC in July, gave weight to this accusation by saying that representatives were intentionally delaying the process in order to receive payment over a longer period of time. Many consider that the results of the constituent process are out of proportion with its duration and costs, which were conservatively estimated by Marsad at around €16 million. Many believe that the representatives are working inefficiently and consider the national dialogues to be little more than show performances that have brought a lot of talk but no action. The increasing dissatisfaction is added to by the perceptions of many Tunisians that the urgent issues affecting their everyday lives, such as job creation, are not being sufficiently addressed. Even during the national dialogue initiated by the trade union UGTT, other problems such as internal security quickly found their way to centre stage.

Many Tunisians would like to finally put this uncertain transition period behind them. They are demanding a swift conclusion to the constituent process to pave the way for new elections. This would, among other compromises, require an end to the disputes over the composition of the electoral commission, which are already in their sixth month.

Opposition boycott

The first articles of the constitution should have been ratified in the ANC plenary session on 1 July. Representatives of the democratic and independent blocks interrupted the General Rapporteur of the Constitution, Habib Khedher (Ennahda), by reading out a communiqué calling for a boycott of the current constitutional draft. The Coalition pour la Révision de la Constitution, which unites around a third of ANC representatives, announced prior to the session that it would not vote in favour of the current draft. The coalition had formed in April 2013 when the third draft was presented.

The communiqué of 1 July called the legitimacy of the current constitutional draft into question, stating that it breached Article 104 of the internal rules, which stipulate that the work of each commission must be duly considered. It also stated that the results of the national dialogues had not been sufficiently taken into account. The opposition representatives hold Ben

Jaffar, ANC President, and General Rapporteur Khedher responsible for this "fraud", and say the coordinating committee overstepped the limits of its authority when it edited the draft's content rather than just its form. This accusation refers particularly to Article 141, which establishes Islam as the "religion of the state" (while Article 1 simply states that "Tunisia's religion is Islam"). The accusation that Ennahda is tailoring the constitution to suit its own wishes ("à sa mésure") is preventing a consensus.

Demands for a boycott have become more insistent since the Egyptian military deposed President Morsi on 3 July. Nidaa Tounes and Front Populaire congratulated the Egyptian people on successfully resisting their Islamist ruler, who had acted contrary to the values of the revolution. Hammami, spokesman of the Front Populaire mentioned above, also called for the dissolution of the ANC and for elections to a new interim government that could oversee the completion of the constituent process. Ennahda, by contrast, took the side of Egypt's Muslim Brotherhood party. Ghannouchi refused to recognise the president put in place by the military and condemned the military's intervention, calling it an attack on all Islamic parties. Both camps tried to exploit the developments in Egypt to consolidate support, saying that they were a "warning signal" for Tunisia.

In the meantime, an organisation has formed in Tunisia calling itself Tamarrod Tunisia. This resistance movement (or rather movements) modelled on Egyptian examples is collecting signatures to demand the dissolution of the ANC. However, the initiatives have yet to gain much backing. So far, they are inadequately organised. Its operators still lack the necessary financial clout and personnel resources in the form of activists or politicians. It also seems that the Tunisian military, a relatively weak entity in any case, has no intention of supporting demands to overthrow the government at this time.

The Consensus Commission

The government has reacted in two different ways to accusations from the opposition and civil society. Firstly, President Marzouki filed a lawsuit against those who had called for a boycott of the ANC and the government, thus – according to the text of the lawsuit – endangering national unity. The first trial of Tahar Ben Hassine, head of TV channel Al-Hiwar al-Tunisi and member of Nidaa Tounes, has already started. Secondly, Marzouki convened a Consensus Commission chaired by Ben Jaffar at the beginning of July. The commission is charged with resolving differences of opinion and paving the way for agreement on the constitutional draft's individual articles. It took two days of meetings simply to ensure that the commission's 22 members were representative. This was to ensure that all parliamentary groups were represented and that there would be no further "surprises" during the plenary sessions. The draft constitution will have to be accepted in its entirety by a two-thirds majority of ANC members by the second ballot at the latest, if not, a referendum will have to be called to decide on adoption of the constitution.

The articles to be debated once more mainly concern questions of Tunisia's identity. This will include discussions on statements in the preamble. According to members of the opposition, the draft lacks a reference to a "Mediterranean" identity linking the country more closely to Europe, as already called for in an expert report of April 2013. The current draft preamble refers only to Arab and African identity. The left-wing parties are also calling for a greater emphasis on social issues in the text of the constitution. In this way, these ANC members are attempting to include revolutionary ideas. Further points of contention include Article 141, mentioned above, and draft legislation on the "immunisation of the revolution". If this bill is passed, leading politicians from Nidaa Tounes could be banned from running for office in the next elections because of their links to the old regime. The bill is strongly supported by

the Leagues for the Protection of the Revolution. However, the dissolution of precisely these leagues was discussed in the UGTT's national dialogue. It has not yet been realised because of Ennahda's stance, but it remains a cause of controversy that damages the entire process.

The assassination of Mohamed Brahmi

Mohamed Brahmi, a popular independent politician, was assassinated on 25 July. His murder provoked fury and despair, and the tensions arising from the constitutional process reached unprecedented levels. Although the suspected assassin was quickly identified, critics have said that the government and particularly Ennahda were at least partly responsible for the murder as well as for earlier crimes against opposition politicians – despite the fact that the government and Ennahda unanimously condemned the murders, which they saw as an attack on the transformation process.

The protests following Brahmi's assassination were soon concentrated in front of the ANC buildings. Initially, the protesters pursued different aims – many called for a new government, but they did not support complete dissolution of the ANC. In reaction to Brahmi's assassination and a strong mobilisation of civil society, 60 members of the ANC have suspended their activity. Among them were not only members of the independent and democratic blocks but also of the government party Ettakatol. Some of them belong to the group that already called for a boycott of the constitutional process on 1 July. They also have the support of the UGTT and a growing number of demonstrators.

On 29 July, Ettakatol spokesman Mohamed Bennour announced that his party would leave the coalition if Ennahda and CPR failed to agree to dissolve the troika and replace it with a government of national unity. This indicates a future rupture in the coalition. However, as this is not the first time that Ettakatol has threatened to leave the government this year, it is unclear how seriously we should take this announcement. What seems more important is that the national government has also increasingly been challenged in provinces such as Kef and Sidi Bouzid, where interparty alliances have set up regional administration committees.

By 6 August the ever-growing protests, which are supported by a broad social alliance and are becoming increasingly widespread, were larger than ever before. In reaction, Mustapha Ben Jaffar announced that the ANC's work would be suspended until opposition and government had reached a consensus. The opposition regards this as an initial success.

The Front de Salut National (FSN), a coalition created on 26 July and made up of Nidaa Tounes, the Front Populaire and other parties and civil society actors, is demanding the dissolution of the ANC and the establishment of a technocratic government to rapidly complete the constitutional process. Ennahda is strictly against the dissolution of the ANC and advocates instead the enlargement of the current government to a government of national unity. The UGTT could once again be a mediator between the two camps. The compromise it suggests is to keep the ANC in place but at the same time to establish a technocratic government.

Outlook and recommendations

It is unlikely that a scenario similar to that in Egypt will arise in Tunisia, partly because the Tunisian military is a comparatively weak force. Nevertheless, the process to adopt a new constitution has reached a deadlock, and the legitimacy of the transitional government has suffered greatly. Thanks to its strong civil society, Tunisia now has an opportunity to find its own way out of the legitimacy crisis.

The announcement by Prime Minister Ali Laarayedh (Ennahda) that elections would be held on 17 December 2013 does not reflect the demands of opposition

parties, civil society, and the trade unions. Surprisingly, party leaders Rachid al-Ghannouchi of Ennahda and Caid Essebsi of Nidaa Tounes had an unofficial meeting on 15 August in Paris to discuss possible solutions to the political crisis. While Nidaa Tounes affirmed that the other members of the FSN had been informed about the meeting, the secretive nature of the get-together has left a bad aftertaste. A possible agreement between Nidaa Tounes and Ennahda that does not include other political actors such as the Front Populaire harbours the risk of creating a new legitimacy problem.

As recent endeavours have shown, Europeans cannot do much to mediate between the camps embroiled in the current crisis. Given the lengthy and difficult process, Europeans should certainly not interfere in the debate on values. In particular, they should not undertake any action that might lead to a further polarisation of society. Instead, European politicians should focus their efforts on supporting economic stabilisation, not least so that new jobs can be created.

In addition, European politicians should play a role in helping to establish a critical public that can expand its influence. Independent watchdog organisations such as al-Bawsala and Nawaat prepare information on the complex and often confusing developments, thus ensuring transparency. In this way, they are supporting the establishment of a society where there is the opportunity to discuss values, policies, and external relations in a critical, reflected manner.

Germany and Tunisia agreed on a security partnership in September 2012. German and European support on restructuring the security sector should primarily aim to ensure Tunisian police officers feel obliged to uphold their citizens' rights. The role of the police should be to protect peaceful demonstrators rather than to baton-charge them. In this regard, Germany and its European partners should also support demands to quickly resolve alleged cases of police brutality.

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