

The use and misuse of legitimacy during democratic transformation

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Following the revolution of early 2011, a major transformation process started in Tunisia with the aim of embarking the country on a democracy transition process. Despite the overall agreement among most social and political forces on this process, the modus operandi which should be followed is still to be defined in order to succeed in this tremendous task. So far the country has gone through phases of transition and a preliminary evaluation could be undertaken in order to understand the situation beyond successes and failures, and to look at the root causes of such an evaluation.

Following the revolution of January 2011, and following the first short-lived two interim governments — lasting for no more than a few weeks, which were criticized and then dismissed because of their close link to the overthrown regime a third interim government was appointed and it lasted for almost eight months, until December 2011, when it was replaced by the formation of the government appointed by the elected National Constitutional Assembly of October 2011.¹ National rhetoric refers to this period as Phase I of the transition process, whose main objective has been the organization of the much anticipated elections. However, this government was faced with an almost insurmountable dichotomy; on the one hand, the government had to suspend the entire arsenal of restrictive legislation starting from the Constitution and going all the way to the laws determining the political and associative processes, and the public sphere in general. On the other hand, this government enjoyed very limited legitimacy as it had no representative authority and, most importantly, could not rely on an elected legislative body; Parliament was dissolved as one of the first measures of the revolution. Instead of Parliament, a Commission was established to oversee the legislative affairs of the transition, and it was called the ‘National Commission of Political Reform, Safeguarding the Objectives of the Revolution, and Democratic Transition’. The Commission was headed by Dr Yadh Ben Achour, a prominent legal scholar, and was made up of around 150 members representing 12 major political parties, representatives of major civil society associations, the major trade unions, prominent independent figures, revolution committee representatives² and a team of 25 legal and constitutional law experts.

The format, the content and the methodology of this Commission were the key factors of the success of Phase I of the transition. In fact, the initial idea of the Commission was one of a technical nature, a group of 25 experts in charge of drafting and proposing decrees that would ensure the reform of political life (and different legislation such as the law on association, media law, the law on the right to assembly...) leading to a healthy legal environment paving the way for the forthcoming elections. However, a strong opposition was orchestrated by political parties, some civil society groups and, most importantly, by the revolution committees, and rather than embarking on a confrontational dynamic, a consensus was reached to widen the Commission to include all of these transition-related structures and individuals, thus the long title of the Commission: the “National Commission of Political Reform, Safeguarding the objectives of the revolution and Democratic Transition”, in itself an illustration of consensus. Furthermore, throughout its life, the Commission chose to work through consensus which was far removed from any exclusivist approach and from any majority / minority rule. With this approach and with the exceptional moral values of its president, Dr. Yadh Ben Achour, valuable decrees were drafted and then signed by the interim President of the Republic. Among these achievements in the political field, one can mention the establishment of the Election Management Body (ISIE), the election law, the political party law, the law on association, the media reform law, the addressing of the old political elite ... all paving the way for free and fair elections, the highest aim of this Commission and of Phase I of the transition. Despite some dissension and resignations, the Commission established a precedent in Tunisian history: the attainment of high-level politicized decisions through consensus and through a participatory process, where they opened up to participation and consultation with political society, civil society and with different permanent and interim state structures. It also opened up the legislative process, thus far viewed as a sovereignty issue, to international support and cooperation, whereby regional and international organizations, intergovernmental agencies as well as experts and practitioners took part in the drafting process concerning new legislation introducing international norms and best practices, which meant that the Tunisian revolution and transformation process is not an exception to the world movement towards democracy witnessed by most countries in transition.

One other important factor of the success of this Phase I of the transition was the background of the people appointed to take a role in the transition period. As stated concerning Dr. Yadh Ben Achour, many of the new decision makers who

1 Following the election of October 23rd, negotiations were held until late December for the announcement of the government. In this interim period, the previous government continued to function as a caretaker government for almost two months.

2 At the start of the revolution, committees were formed in a number of towns, cities and neighbourhoods with the undefined objective of safeguarding the revolution.

were called upon were drawn from civil society and the business sector, or were technocrats. The Presidents of Commissions³, Ministers⁴ and most advisors had little partisan affiliations which improved their acceptability among the general public, eager for reform, suspicious of the political 'elite' and filled with doubt concerning the fate of the revolution. This academic and technocratic attribution of these decision makers is probably the reason behind the above-mentioned precedents for this phase, participation, consultation and the readiness to accept international support.

Following the election of the National Constituent Assembly, Phase II of the transition has started with the main objective of drafting a constitution in a year or so. The results of these elections have been the major success of the Nahdha party (gaining around 38% of the vote), a conservative party with an Islamist ideology, followed by CPR, a conservative party, the Takatol central party, and the limited success of the democratic parties whose voters may form half of the electorate but because they were scattered among more than 50 options (parties and coalitions), they lost most of their weight. As a result, and because of the coalition formed by the three victorious parties (Enahdha, CPR and Takatol) the established government, or Troika, enjoys an unquestionable electoral legitimacy of more than 60% of the vote, with Nahdha taking the leading role in this coalition. It is important to notice that because of the success of the elections in terms of organization and observation — technical and procedural support as well as training — no party dared to question the results and outcomes. The elections were observed by dozens of international missions with more than 400 observers, as well as more than 2,000 national observers.⁵

Aware of this unquestionable legitimacy and confident concerning public support, Nahdha formed a pure partisan large government based on party affiliation which lacked much needed expertise in most cases. Aware of its weight in the Constituent Assembly (largely alone or supported by its coalition members), it has opted for a vote whenever there is disagreement with other forces, which has been quite often. It has used the basic means of democracy, the majority/minority rule, thereby guaranteeing the passing of its option.⁶

Furthermore, aware of the mass popularity it enjoys, the Nahdha party has been pushing for reforms and political agendas that are based on pure partisan approaches, thereby alienating large segments of society. Moreover, Nahdha and its allies started to become confrontational, sometimes even bullying many of the established structures of society who have played and are still playing a major role in the transition process, such as the Labour Union⁷, lawyers, judges, the media, academic institutions... Incidents involving violence believed to be orchestrated by Nahdha sympathizers are common in this confrontation especially concerning the fact that these structures, known for their opposition to any religious conservatism, are perceived as being close to the opposition parties, called the democratic coalition(s).

As a result of this fractious environment at the top of the political sphere, state affairs are witnessing an adverse impact, which is visible in social unrest (according to the media, an average of 40 strikes of different magnitudes are organized each day; episodes of violence are frequently recorded in different regions), the slow recovery of the economy (increased inflation, a slow-down in the investment rate...), and increased unemployment (the inability of the government to address unemployment, the most urgent claim of the revolution, despite its electoral promises...).

These first elements of the assessment of this Phase II of the transition show that the government and the National Assembly — being the main institutions — headed by Nahdha and its allies, are having a hard time in advancing the goals of this phase, an acceptable constitution, a minimal reform of the economy according to the objectives of the revolution

3 Special transition commissions have been established to address specific and urgent issues, such as the National Commission to Investigate Corruption and Embezzlement, headed by the late Dr Abdelfateh Amor; the National Commission to Investigate Human Rights abuses, headed by the human rights defender Taoufik Bouderbala; the Independent High Election Body ISIE, headed by the human rights defender Kamel Jendoubi; the High Body to Reform the Media, headed by the human rights defender Mr Abidi.

4 Ministers are drawn either from civil society such as Dr Taieb Baccouch, the former president of the Arab Institute of Human Rights, or Mr Lazhar Akermi, a lawyer and human rights activist, or from the business sector, represented by Mr Aydi, a successful businessman.

5 International missions included the EU, the Carter Center, the OSCE, the Kawakibi Center, the African Union ... and national observers included ATID, Murakiboun, ATED, Marsad Shahed.

6 In most cases the Assembly has faced disagreement leading to a vote and a specific voting pattern has been noticed, a block vote of 60 to 70% (made up of representatives of the Troika) against the around 30% vote by the opposition parties in the Organisation Provisoire des Pouvoirs or in the budget negotiation or in other laws and regulations.

7 Union Générale des Travailleurs Tunisiens UGTT has been a major player on the political scene throughout its 70-year history.


(employment, some form of equilibrium between the different regions, social justice...) and reforming the old corrupt and repressive state apparatus...

Analyzing this limited success (some people call it a failure, or even an attempt to deviate from the democratic path) leads us to scrutinize the logic of the decision-making process within Nahdha. Reinforced by electoral legitimacy (a repeated argument in all speeches and declarations by Nahdha representatives, ministers, and supporters) and encouraged by some popular support (the opposition, the media and civil society accuse Nahdha of orchestrating such high visibility 'spontaneous' shows and demonstrations of support), the Troika has shown no interest in consulting with the other side of the spectrum (political parties, civil society, the intellectual elite, trade unions, professional groups...). It has no intention of either trying to reach a consensus with them or to voluntarily give away any ground on its political agenda. Nahdha currently determines the entire national political agenda, the constitutional process, government action, economic reform, the transitional justice process, institutional reform... based on a partisan approach, further alienating whoever does not adhere to their ideology (some cracks are widening within the Troika), thereby impeding the transformation process in the country.

Observers may think that Nahdha is using its legitimate rights as the winning party in a free and fair election, and opponents have to wait for the next elections to seek any alternations and to impose their approach to reform, the basic logic of democracy. However, current evidence shows that this logic may apply to countries with a democratic tradition going through normal times and electoral terms. In Tunisia (and probably in many other Arab countries experiencing similar democracy transition periods), the country is experiencing a constitutional phase, characterized by an enormous national will to rebuild a nation on a solid, commonly agreed ground. The governing party should establish a national project that includes larger segments of its citizens, be it the masses or the elite. To succeed in this task, the winning party should soften its partisan approach and spare no effort in reaching out to the other parties in order to establish a national project agreed upon by all. It should also continue to listen to and to benefit from the international expertise provided by the international community, which in the opinion of democracy advocates should step up their lobbying for human rights and democracy values.⁸

In analyzing the successes of Phase I of the transition (characterized by low political legitimacy) and investigating the reasons for the failure of Phase II (characterized by unquestionable electoral legitimacy), it seems that the key word during the transformation is consensus. In order to advance in the uncertain environment of transition, consensual legitimacy is more important than electoral legitimacy. Rulers genuinely interested in anchoring the country in a democratic transformation process have more to gain from building a consensus on a national project rather than from short-sighted volatile partisan gains.

8 The assessment of national experts is that the international community (governments and international NGOs and intergovernmental organisations) is lessening its active lobbying with national decision makers because of the reluctance of the latter and because of the ever-lasting argument of 'national peculiarity' put forward whenever the focus is on human rights and democratisation.



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