

Overall Score:

45 - Very Weak

Legal Framework Score:

55 - Very Weak

Actual Implementation Score:

30 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁵³ Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

100

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES

NO

Comments:

Although, the right to form civil society organizations in the Tunisian legal system is constitutionally guaranteed, it remains, concerning its organization, assigned by the constitution to the legislative power. The executive power should not, a priori, encroach on this domain. However, the delegation made by the organic law n° 154-59 dated November 7, 1959 concerning associations to the Secretary of State near the ministry for the interior allows the executive power a rather important capacity of appreciation as for the qualifications. Thus the qualification will be incontestably the reflection of the choice of the mode of organization to which the executive wants to submit the project of association.

References:

Under Tunisian law, the right to form civil society organizations is expressly stipulated in the Constitution, article 8 provides that the right to form association is guaranteed and shall be exercised according to the law. In this respect, the organic law n 154-59 dated 07 November 1959 relating to associations, article 2, made clear that the purpose of the association shall not affect the rules, the morality, the public security, the integrity of the state territory and the republic regime of the state. It shall be noted that Tunisian law does not expressly mention the right to form civil society organizations (CSOs) focused on anti-corruption or good governance, but it recognizes three kind of associations, ordinary associations which is classified under 8 categories; women associations, sports associations, scientific associations, cultural and artistic associations, social associations, development associations, charitable association and association of public purposes, (article 1 added by the organic law n 25-92 dated 02 April 1992) the second kind is associations of national interest and this qualification is given by the secretary of the state within the interior ministry to associations created since at least 2 years,(article 12 and 13 of the law dated 07 November 1959. the third kind is foreign associations, by this kind, article 16 of the aforementioned law, means association established either abroad, or in

Tunisia and whose half administrators has a foreign nationalities. Consequently, a civil society organizations (CSOs) focused on anti-corruption or good governance can be considered, either an ordinary association of public purposes or a foreign association.

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

The Tunisian legislator is quite conscious of the delicacy of the question concerning the financing of associations. However, the legal system created something like a financial dependence, if it is not, a control on the sources of financings. Such of this dependence makes it possible the executive to subordinate associations especially those qualified as associations of general interest to its will. Concerning the foreign financing, provisions and rules of law are extremely severe and rigorous.

References:

The organic law n 154-59 dated 07 November 1959; CSOs can accept regular aids either from the state, or from regional/local collectivities and public enterprises (article 9 of the affordsaid law). Besides, article 14 of the law dated 07 November 1959, states that the acceptance of gifts and promises by an association of national interest, is submitted to the authorization of the secretary of the state within the interior ministry. This article proves that the question of funding is regulated by the law and not subject to the discretion of the organization itself. It should be noted that the Tunisian law, recognize the creation of foreign associations and given its foreign nature, these associations can accept foreign sources of funding.

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

The control of finances of associations makes certainly think about the financial dependence of these organizations to the authorities (as we saw in precede comment), but it is obvious that the legislator, by this kind of control, makes a point of ensuring a transparency for correct use of the public money intended for associations.

References:

According to article 9 new law dated 2 August 1988, CSOs who had accept regular aids from the state, regional/local collectivities

and public enterprises, shall present, yearly, to these authorities, its budget, accounts, with the relative justificative documents, these documents and information are subject to an annual control conducted by the inspection services within the Finance Ministry.

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

58

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | **50** | 25 | 0

Comments:

In Tunisia doesn't exist such organizations, but concerning creating associations on general there's no legal limits . This made Tunisia on the second score of 50 because the right of association is generally submitted to the authorization of the executive. However, we should not deny the practical difficulties, a priori or/and a posteriori, which associations with political object will encounter having.

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage.

Interview on the 25th February 2009 on the Faculty of Judicial, Political and Social Sciences of Tunis

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

Comments:

In Tunisia doesn't exist such organizations, but concerning creating associations on general there's no legal limits. However, if we consider, in practice, that anti-corruption/good governance as associations with politicking approach which pretend to operate actively on policymaking process, the government will try to exercise various sorts of pressures (legal, taxes, etc.). Also, the access to the decision makers will be limited.

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage.

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

Comments:

No CSOs have been shut down by the government. This is for 2 reasons: 1- there aren't many of these groups; 2- the ones that do exist know the boundaries of their activities.

References:

Interview with Fatima Hadj, NDI, 5/13/09

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

67

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

Comments:

In Tunisia such organizations doesn't exist. Although it's not clear whether their activities were related to combating corruption, several human rights activists have been arrested such as the lawyer Mohamed Abbou (Freedom House 2008). This might provide some indication that organizations trying to curb corruption face are likely to face harassment and imprisonment.

References:

Freedom House, Country Report on Tunisia, 2008 (<http://www.freedomhouse.org/template.cfm?page=22&year=2008&country=7507>).

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

Comments:

No CSO activists have been harmed. This is for 2 reasons: 1- there aren't many of these groups; 2- the ones that do exist know the boundaries of their activities.

References:

Interview with Fatima Hadj, NDI, 5/13/09

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

Comments:

No CSO activists have been killed.

References:

Interview with Fatima Hadj, NDI, 5/13/09

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

63

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

The Fair labor standards act authorizes the workers to form trade unions and to adhere to it. Contrary to associations, the formation of the trade unions does not require a preliminary authorization. A trade union can be dissolved by an tribunal's judgement. The trade-union rights existing and recognized in the Tunisian legal order are the right to strike, the right to collective bargaining and the right to protection for the trade-union representative. The law prohibits discrimination antisyndicale.

References:

Citizens have a right to organize into trade union. This right is guaranteed by the constitution, the general collective agreement(article 5).this right is also stipulated in International charter ratified by the Tunisian Republic such as :the Universal hommun rights declaration (10 December 1948) and International Charter of economic, social and cultural rights. Tunisia, also, ratified, in May 2007, the Convention (n°135) of ILO concerning the representatives of the workers, 1971.

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

On several occasions, the Commission of experts of the ILO for the application of conventions and recommendations announced to the Republic of Tunisia some of incompatibilities of its practices and provisions with these conventions (ex: the tender of the exercise of the right to strike to approval). According to the commission, these incompatibilities limited the rights of the basic trade unions to organize their activities and to defend in full freedom the interests of their members. The government never answered these criticisms in a satisfactory way.

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage.

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

Comments:

The press is free in Tunisia and admits like limit only the respect of the Constitution which proscribes any form of fanaticism, racism and discrimination (article 8), and of the law which prohibits the calls to hatred, and all the forms of incentive to make

terrorist acts. The incentive to commit crimes or acts of religious or ethnic fanaticism is considered by the law as being itself an act of terrorism. (Laws of 1993 and 2003). The administrative formality of registration of copyright of the bodies of press was removed in 2006.

References:

The freedom of the media is constitutionally guaranteed (article 8), and by the law n°32 of 28 april 1975 relating to the promulgation of the press code, as modified (2 august 1993, article 1). this freedom is subject to some restrictions such the respect of the constitution, of third party' s rights, the general interest, the state integrity and security (article 7 Constitution).

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

Comments:

The most recent amendments have in a more liberal direction depenalized the violations of the press laws. The offence of slandering of the law and order was thus removed. No newspaper can be suspended apart from a decision of court.

If we get faith on the rules of the right in this field, we ll see well that there is considerable evolution. However, some rather rigorous restrictions are implemented on the practical level. Indeed, the journalists of the opposition are not the subject of judgments by courts for their professional occupations but they undergo various pressures. Concerning the financing of the press, the law gives expressly access, without any discrimination, to the public or/and private subsidies. However, the government, generally, refuses the access to the public ones and makes various pressures on the alleged private donors in order to dissuade them to grant subsidies.

References:

The freedom of speech is guaranteed by the Constitution which expressly stipulates that the freedom of opinion and freedom of speech are guaranteed by the Constitution and shall be exercised in accordance to the rules, this provision means that in the eyes of the constitution the freedom of speech is not absolute and can be subject to some restrictions. however it shall be noted that these restrictions are not based on objective considerations such as the respect of public order, preventing violence and crimes, the protection of third party's rights and reputation

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

63

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | **50** | 25 | 0

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage.

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

A Yes" answer was given because the recourse for abuse of power (action of administration abuse) is a legal procedure guaranteed in front of the administrative courts. The applicant can attack any administrative act having the aim of limiting the access to his constitutional and legal rights. In the event of observation of a true abuse of power the cancellation of the act refusing the authorization is marked.

References:

Under Tunisian law and especially the article 2 of the press code as modified by the organic law n 85-93 dated 2 august 1993, the print media license is necessary to all of printed document , but there's no a special mecanism to appeal if the license is denied or revoked. However we can base our answer on the law related to the administrative tribunal dated 1 june 1972 as modified on 1996 ,which stipulate the possibility to appeal decisions taken by the administration over a special mecanism (action of administration abuse) to deny the decision in the a period of time which can't exceed two months.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Licenses are not required or licenses can be obtained within two months.

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

As UNDP POGAR notes: The Tunisia press is regulated under the Press Code of 1975. There are no legal restrictions on topics that the media may address, and on the surface there appears to be a diversity of news sources. The majority of information, however, actually originates from the Tunis Afrique Presse (TAP), a state-owned enterprise that allegedly censors stories critical of the government. President Ben Ali announced a set of new measures in the field of media on May, 2005. The most significant measure was the abolition of the "Legal Deposit" procedure of Article 13 obliging editors of newspapers to deliver to the proper authorities a copy of every publication in return for a "deposit receipt" that allows its distribution. Violators of this regulation had faced punishment that ranges from paying fines to imprisonment."

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage. His areas of expertise are constitutional law, administrative law, international law and public policy.

UNDP POGAR Democratic Profile, Tunisia <http://www.pogar.org/countries/theme.asp?th=2&cid=20>

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

69

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

From UNDP- POGAR: President Ben Ali has encouraged the media to take more risks in publishing critical stories, but reforms to the Press Law that would provide a truly free and independent press have yet to materialize. International human rights organizations have strongly criticized the restrictive environment in which the Tunisian press operates, and some question the sincerity of reforms in light of continued legal action taken against journalists who write stories about the government that are less than favorable.”

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage.

UNDP POGAR Democratic Governance Profile, Tunisia <http://www.pogar.org/countries/theme.asp?th=2&cid=20>

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

The act by which broadcast media license was denied is an administrative act, liable to a recourse for abuse of power (action of administration abuse) in front of the administrative court.

References:

Concerning the radio, the decree n 1867 dated 23 July 2007 relating to the creation of the Tunisian radio enterprise, and the determination of its administrative and financial organization, and rules allows the creation of new subsidiary stations national or regional, general or specialized, and this by decree following to the proposition of the Minister charged of communications. Consequently the license is necessary and is submitted to legal formalities and procedure. However, this decree still ambiguous regarding the revocation or denial of the license. Concerning the TV, the decree n 1868 dated 23 July 2007 relating to the creation of Tunisian TV enterprise, and the determination of its administrative and financial organization, and rules, the decree is silent regarding the license.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage. His areas of expertise are constitutional law, administrative law, international law and public policy.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage. His areas of expertise are constitutional law, administrative law, international law and public policy.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

25

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | **25** | 0

Comments:

There is widespread filtering of political opposition websites as well as websites with oppositional news and politics from groups such as the Tunisian Workers' Communist Party, journalists, and human rights organizations (OpenNet Initiative 2007).

From Freedom on the Net" report: "During the past few years the government has attempted to increase access to ICTs by rebuilding infrastructure to improve connectivity, encouraging "Free Internet" programs that allow internet access for the cost of an ordinary telephone call, and promoting competition among ISPs to lower prices."

More from "Freedom on the Net": "Furthermore, some applications like the video-sharing sites Dailymotion and YouTube have been systematically blocked by the government.[6] Systems such as Voice over Internet Protocol (VoIP) that provide PC to phone calls are prohibited, but applications like Skype and Google Talk, which also provide PC to PC calls, are accessible. The social-networking site Facebook was blocked in August 2008, and although the move was reversed in early September at the request of the president, some groups and video links within the application remain inaccessible."

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage. His areas of expertise are constitutional law, administrative law, international law and public policy.

OpenNet Initiative (May 2007) (<http://opennet.net/sites/opennet.net/files/tunisia.pdf>).

Freedom on the Net" Freedom House 2009. <http://www.freedomhouse.org/template.cfm?page=384&key=211&parent=19&report=79>

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically

sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | **25** | 0

Comments:

Mokhtar Yahyaoui, a former judge who was dismissed in December 2001 for his advocacy on behalf of an independent judiciary, has used the internet to bring to light the government's malfeasance. His website is inaccessible in Tunisia without the aid of a proxy and has been hacked into several times (Reporters Without Borders, pp. 4-5).

From Freedom on the Net: "the private internet connections of some journalists and political bloggers are often cut due to "technical problems," or their speed is reduced to hamper their ability to view sites and post information... Tunisia's filtering and censorship apparatus is multilayered and extensive. The government employs three main techniques as part of its internet control strategy: technical filtering, postpublication censorship, and proactive manipulation. The government also issues directives to ISPs concerning four types of material that are deemed undesirable and targeted by the authorities: pornography or sexually explicit material, expressions of political opposition to the government, discussions of human rights in Tunisia (including on the websites of many nongovernmental organizations), and tools or technology that enable users to circumvent the government's controls."

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage. His areas of expertise are constitutional law, administrative law, international law and public policy.

Tunisia: The Courage to Inform the Public," Reporters Without Borders, November 2008/Feb. 2009 (http://www.rsf.org/IMG/pdf/Rapport_Mission_Nov_08_GB_PDF_.pdf),

"Freedom on the Net" Freedom House 2009. <http://www.freedomhouse.org/template.cfm?page=384&key=211&parent=19&report=79>

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | **NO**

Comments:

According to the Press Code any news against the President (art 48), the courts judges, the armies and the administration (art.51) ; are considered defamation even though they are accurate and justified.

References:

The Press Code

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | **25** | 0

Comments:

The private broadcast media (TV and radio) do air the occasional story on nepotism in business, but for the most part they must be line with the official government (Tunisia," Reporters Without Borders, p. 2).

According to the report made by the Tunisian Association of Journalists (AJT) about press freedom in Tunisia (AJT, Etat de la liberté de la presse en Tunisie; 6ème rapport; Tunis le 3 mai 2007; p.29), national radios, television and newspapers as La Presse and Assahafa are censored and journalists are obliged to deal only with news given by the official news agency TAP. Owners of private media should follow guidelines to avoid problems with the authorities. Encouraging self-censorship according to AJT reports is the best way to avoid such problems.

Journalists are not allowed to write about corruption.

References:

Interview with Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage. His areas of expertise are constitutional law, administrative law, international law and public policy.

Tunisia: The Courage to Inform the Public," Reporters Without Borders, November 2008/February 2009 (http://www.rsf.org/IMG/pdf/Rapport_Mission_Nov_08_GB_PDF_.pdf).

AJT, Etat de la liberté de la presse en Tunisie; 6ème rapport; Tunis le 3 mai 2007; p.29

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | **50** | 25 | 0

Comments:

Prior government restraint (pre-publication censoring) on publishing corruption-related stories doesn't exist.

The government restraint is made from the very beginning. Restrictions exist on the creation of any media outlet. Authorizations of publishing newspapers or launching radios and televisions, are carefully filtered. The Tunisian Association of Journalists (AJT) mentioned in several annual reports that the Ministry of Interior refuse generally to give the receipts allowing people to have their own newspapers and magazines (AJT, Etat de la liberté de la presse en Tunisie; 6ème rapport; Tunis le 3 mai 2007; p.11).

According to the report made by the Tunisian Association of Journalists (AJT) about press freedom in Tunisia (AJT, Etat de la liberté de la presse en Tunisie; 6ème rapport; Tunis le 3 mai 2007; p.29), national radios, television and newspapers as La Presse and Assahafa are censored and journalists are obliged to deal only with news given by the official news agency TAP.

References:

Interview with Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage. His areas of expertise are constitutional law, administrative law, international law and public policy.

AJT, Etat de la liberté de la presse en Tunisie; 6ème rapport; Tunis le 3 mai 2007; p.1

AJT, Etat de la liberté de la presse en Tunisie; 6ème rapport; Tunis le 3 mai 2007; p.29

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

40

10a. In law, print media companies are required to publicly disclose their ownership.

YES | NO

References:

The press code expressly stipulates that print media companies are obliged to disclose the names of their directors (article 18 of press code as modified on 2 august 1988). Consequently, when the owner is not at the same time the director, the company can hide its ownership.

YES: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | NO

References:

There s no a specific answer to that, but under the article 1 of the law n 33-2007 dated 4 June 2007, these companies are considered as commercial persons and for that they must disclose their ownership on the contract of the company which will be published on the official journal of the republic of Tunisia.

YES: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

Comments:

In all their reports the Tunisian Association of Journalists (AJT) and National Syndicate of Tunisian Journalists (SNJT), complained about the lack of respecting professional practices in reporting .

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage. His areas of expertise are constitutional law, administrative law, international law and public policy.

AJT, Etat de la liberté de la presse en Tunisie; 6ème rapport; Tunis le 3 mai 2007; p.33

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell” favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

Comments:

During the last elections in 2004 political parties and independent candidates didn t receive fair media coverage, according to the report made by the independent elections observatory led by the Tunisian League of Human Rights (LTDH) and the Tunisian Democrat Women Association (ATFD). The ruling party Rassemblement constitutionnel démocratique (RCD) get 70% of the coverage in the radio and television, and 74% in the daily newspapers, said the report.

The LTDH published in Sep25, 2004 a statement about the elections denouncing this unfair media coverage.

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage. His areas of expertise are constitutional law, administrative law, international law and public policy.

LTDH statement 2004. <http://anhri.net/tunisia/ltmh/index2004.shtml>

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | **25** | 0

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage.

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

33

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | **NO**

Comments:

There has been an increase in police harassment of journalists who criticize the government. In March 2009, for example, Abdallah Zouari was arrested by security agents and interrogated for several hours because he had signed a letter pushing the

Palestinian President to release political prisoners held in Ramallah. Mohamed Abou, a human rights lawyer and writer, was spied upon and prevented from traveling to a human rights conference in London, also in March (Reporters Without Borders 2009).

References:

Letter to Interior minister about increased police harassment of journalists" Reporters Without Borders, March 18, 2009 (http://www.rsf.org/article.php3?id_article=30619).

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | **NO**

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage.

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:

According to national and international reports (SNJT, IFJ, CPJ, RSF) there was no journalists killed in Tunisia for any reason.

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage. His areas of expertise are constitutional law, administrative law, international law and public policy.

http://www.snjt.org/index.php?option=com_content&task=view&id=117&Itemid=1
<http://www.ifj.org/assets/docs/051/091/eb26233-523985b.pdf>
<http://www.cpj.org/deadly/>
http://www.rsf.org/rubrique.php3?id_rubrique=113

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

51
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

67

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

However, it would be naive to think that the access to its information is of an absolute transparency. Indeed, information to which one has access they are information with the profit of the good image of the economic and political system.

The government publishes texts of law orders and ordinances in an official gazette (Journal officiel). This gazette is published and accessible on line (<http://www.iort.gov.tn>).

The government creates also a National Center for documentation (CDN) allowing people to have general information about economic, social, cultural and politic affairs (economic, social, cultural and politic affairs).

The National Archives of Tunisia in order to acquaint people with its activities and funds, conceived a web site accessible to the large public (<http://www.archives.nat.tn/eng/default.asp>).

But journalists usually complained about the closure of information sources in front of them (AJT, Etat de la liberté de la presse en Tunisie; 6ème rapport; Tunis le 3 mai 2007; p.30).

References:

There's a formal right for citizens to access to government information , but there's some restrictions relating to national security reasons or individual privacy.

Official Gazette: <http://www.iort.gov.tn>

AJT, Etat de la liberté de la presse en Tunisie; 6ème rapport; Tunis le 3 mai 2007; p.30

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | **NO**

Comments:

The action of administration abuse can be implemented.

References:

There's no specific right of appeal if access to a basic government record is denied, but it's possible to claim that before the ombudsman of the republic established by the decree n 2143-92 dated 10 december 1992 relating to the creation of the ombudsman office, who can oblige the administration to provide documents to him.

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

In every ministry there is an office for relationship with citizen. This office gives information to citizens and takes their complaints. There are desks in the ministries at the regional level, in which citizens give their complaints, or ask for administrative information. They transmit the complaints to the concerned departments. But generally with no results for serious problems.

The relationship with citizens departments are monitored in the national level by the Central Department for relationship with citizens.

References:

Presidential Decree n° 1549-1993

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

5

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In practice the time raises of the discrétionnaire capacity of the authorities having entitled to give these answers, it is necessary to be acknowledged that concerning information of certain importance all requests will be exhausted. However, if it is considered that the proper authority is an authority which established as an administration and which these acts are administrative decisions the principle applicable is the reasonable time of two months.

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage.

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage.

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage.

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ³⁹Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

References:

Yes universal and equal adult suffrage is guaranteed to all citizens. In this respect, it is important to mention that under Tunisian law universal suffrage is recognized only to Tunisian citizen, aged at least 18, (the political age), or person granted with Tunisian nationality since five years, at least. Besides, in order to participate in the suffrage, citizen shall enjoy all civil and political rights, and shall be free of any kind of disability determined by the law. (article 2 of the Law 69-25 of April 8, 1969 related to the Electoral Code). Finally, it is necessary to note that Tunisian law does not establish any discrimination based on the sex (man/woman).

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

References:

Yes, there is legal framework requiring that elections shall be held at regular intervals according to article 5 of Law n 69-25 dated April 8, 1969 related to the Electoral Code as modified by law 58-2003 on 4 august 2003.

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

75

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage.

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage.

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

65

16a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

The limit created by the law concerning prohibitions with some people to adhere to political parts because of their quality is completely reasonable. Indeed, the intention of the law is clear: it is to draw aside any person already having a capacity because of its quality to use it for other ends that those which this capacity was allotted.

References:

According to article 8 of the organic law n32-88 dated 3 May 1988 relating to the organization of political parties:« a political party can only set itself up and carry out its activities after having obtained a permit granted by order of the minister of the Interior publishable in the official gazette of the republic of Tunisia» it derives from this provision that the right to form political party is submitted to specific procedure, among others, a prior authorization of the minister of Interior, so not all citizen have a right to form political parties. with this respect article 4 of the aforesaid law, stipulates that: the following are excluded from membership of a political party; active members of the armed forces, magistrates, personnel of the Interior Security Forces (as defined in article 4 of law n ° 82-70 dated 6 August 1982 relating to the general status of the Interior Security Forces), active members of Customs department. And generally, people under the age of eighteen. Consequently, its forbidden for these persons to form political parties.

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

References:

According to article 7 of the law n°32 dated 3 May 1988 relating to the organization of political parties: the founders and leaders of a political party shall be, exclusively, person having the Tunisian nationality for at least ten years. They must not have been sentenced to more than three months imprisonment for crimes or offences, nor to a suspensive sentence of more than six months unless they have obtained a discharge...members of political parties must have had Tunisian nationality for at least five years.) .

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

Although according to the law no official obstacle is presented vis-a-vis of the creation of a political party in order to contribute actively to the democratic life, the practice shows us that there are intrigues on behalf of the government in order to limit the access to this right. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage.

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage.

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | **25** | 0

Comments:

The opposition is certainly present to take part in the parliamentary debates but it is either a formal opposition or it is an opposition which does not have the sufficient number to influence truly the debate. It is advisable to announce that the most active opposition does not have any seat in the Parliament.

References:

Ghazi GHERAIRI is a lecturer-researcher in public law and political science at the Faculty of Judicial, Political and Social Sciences of Tunis, University of Carthage.

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

18. Is the election monitoring agency effective?

5

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | **NO**

Comments:

Such institution does not exist under Tunisian law.

References:

Such institution does not exist under Tunisian law.

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | **0**

References:

This agency does not exist in law.

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

This agency does not exist.

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

The reports about the election cycle is made by the National Observatory for the presidential and parliamentary elections, and given to the president.

A summary of these reports is published in national newspapers.

References:

No agency.

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

No agency. For any offenses, it s the right of the victim to make a law pursuit

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

33

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

The system of voter registration is not clearly being administered by the local collectives totally under control of the ruling party RCD. Some candidates complained that their names had been omitted from the registration to prevent them from participating in the elections. The Constitutional Council ordered to re-register them, and allowed them to participate to the elections.

References:

<http://www.essahafa.info.tn/archives/090417/watania/article12.html>

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | **NO**

Comments:

In law election results can be contested only through the Constitutional Council. The Constitutional Council is not part of the judicial branch. It s a consultative department . According to Law n° 52-2004; the president and 3 members are nominated by the President, 2 members nominated by the president of the deputies chamber (parliament); the 3 other members are the presidents of the Cassation Court (High Court), the Administrative Court and the Courts of Auditors. The Constitutional Council decides whether the laws project are conform to Constitution or not. All the opposition parties in Tunisia are calling for the set up of a Constitutional Court that can accept complaints from citizens about the laws they consider unconstitutional.

According to the electoral law (art.106), the decisions of the council are final.

References:

Law n° 52-2004; and Electoral Law Art. 106

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | **0**

Comments:

Election results cannot be appealed through the judicial system as the Constitutional Court is not part of the judicial system. The decisions of the Constitutional Court are final.

References:

electoral law (art.106).

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

References:

Military and security forces are not allowed to participate to the elections according to the electoral law (art.11).

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

References:

International election monitors have not been allowed in the past.

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | **50** | 25 | 0

Comments:

President Ben-Ali has signaled his willingness to allow outside observers to monitor the October 2009 elections, when Ben-Ali will be running for his fifth term in office (Magharebia 2009). Whether he is true to his word remains to be seen. This must be placed in the context, however, of tightly managed elections over the past five election cycles in Tunisia.

In reaction to a proposal made by an opposition party leader who called to invite international observers to monitor elections; Tunisian minister Zouhayr Moudhaffar insisted in a press conference in April 16, 2009; on the fact that Tunisia welcomes foreign guests and observers from friendly countries, but is not allowed to international observers to monitor elections to monitor national elections. Tunisia is not an emerging country in democracy” he said.

References:

Ben Ali to Permit Observers for Tunisia Elections,” Magharebia, March 22, 2009

(http://www.magharebia.com/cocoon/awi/xhtml1/en_GB/features/awi/newsbriefs/general/2009/03/22/newsbrief-02).

<http://ara.reuters.com/article/topNews/idARACAE53LOGA20090422>

http://www.tap.info.tn/ar/index.php?option=com_content&task=view&id=62807&Itemid=189

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers’ activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers’ movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

17. Is there an election monitoring agency or set of election monitoring agencies/entities?

0

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

Under Tunisian law, there is no monitoring agency empowered to report violations or abuses, the law does not provide the establishment of such agencies. The election process is monitored by the Ministry of Interior. But in Sep22, 2004; the President Zinelabidine Ben Ali established a National Observatory for the presidential and parliamentary elections. This observatory made a report to the President about the elections, but also intervenes several times to ask the regional authorities to respect the rules of law.

The National Observatory is a consultative tool set by the President of the Republic. All his members are nominated by the President. The Observatory works only during the period of the electoral campaign (2 weeks). The Observatory makes a report to the President. A summary of this report was published after the last presidential and parliamentary elections in 2004.

For the elections in October 2009, Tunisian journalists and human rights activists are creating an independent Media Elections Observatory.

References:

Rapport indépendant de l'AJT, Etat de la liberté de la presse en Tunisie; 4ème rapport; Tunis le 3 mai 2005; p.27

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

13 II-3. Political Financing

20. Are there regulations governing the financing of political parties?

57

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

References:

The parties law (Law dealing with organizing political parties n°32-1988), is the regulation tool regulating contributions to political parties.

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to political parties.

YES | **NO**

References:

There are no limits to individual donations to parties. Only foreign donations are forbidden (parties law n° 32-1988; art.24).

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on corporate donations to political parties.

YES | NO

Comments:

Corporations (associations, syndicates, unions...) are not allowed to make political donations. According to the associations law (Law n° 154-1959; art.24); the association can be dissolved if it have a political activity.

References:

Law n° 154-1959; art.24

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | NO

References:

There are no limits in law on total political party expenditures.

YES: A YES score is earned if there are any limits in size on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for the disclosure of donations to political parties.

YES | NO

Comments:

Pursuant to the parties Law (art.3), the responsible of the party should inform the Ministry of interior about the nature and the amount of any donation; and the donor's name.

Each party gives a statement in which they announce the name of the donor and the donation amount. So it's not an audit but simply given information. The public can't access to this form. And we didn't hear about any cases such forms were actually given to the Ministry of the Interior.

References:

The Parties Law (art.3)

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances and expenditures of political parties.

YES | NO

Comments:

There are no requirements for independent auditing of the finances and expenditures of political parties. The auditing is made by the Court of Auditors.

References:

Law of parties: Law n°32-1988 of May 3rd ; 1988 (art.16)

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures or if such requirements exist but allow for parties to self-audit.

20g. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

References:

The Court of Auditors is the administration in charge of controlling the financing of political parties. It monitors both state and private funding.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are there regulations governing the financing of individual political candidates?

33

21a. In law, there are regulations governing private contributions to individual political candidates.

YES | NO

Comments:

Pursuant to art.45 twice, each candidate has the right to a state contribution in his campaign. And it s forbidden for candidates to have any foreign support (art.62 twice)

References:

The electoral code (Law n°25-1969) regulates the contributions to individual political candidates.

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to individual political candidates, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to individual political candidates.

21b. In law, there are limits on individual donations to political candidates.

YES | **NO**

References:

There are no limits on individual donations to political candidates.

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are limits on corporate donations to individual political candidates.

YES | NO

Comments:

Corporate donations to political candidates are not allowed

References:

Law n° 27-1966 (Code of Labor), art. 243 and 256 for syndicates and trade unions.

Law n° 154-1959 (Associations law), art. 24 for the association.

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21d. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | **NO**

References:

There are no requirements for the disclosure of donations to individual political candidates.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

21e. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates.

YES | **NO**

References:

There is no auditing of the campaign finances of individual political candidates.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures or if such requirements exist but allow for candidates to self-audit.

21f. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | **NO**

Comments:

The Court of Auditors monitors only the finances of political parties, but not the individual candidates ones.

References:

There is no agency or entity that monitors the financing of individual political candidates.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

22. Are the regulations governing the political financing of parties effective?

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

References:

There are no limits on individual donations to political parties.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

The limits don't work in practice for the President and the ruling Party RCD. The powerful Trade Union UGTT supported President Ben Ali for the presidential elections; but no authority has intervened to say that this is illegal. Some of the opposition parties protested, but they were unable to do anything.

References:

Corporate donations to political parties are not allowed.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

References:

There are no limits to party expenditures.

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The asset disclosures are filed every year. But we don't have any news about these reports because they are not published to public. The investigations are made by the Court of Auditors' experts. These investigations are not made carefully to all the parties; but only for those who are not aligned to the political system.

References:

Law n° 32-1988, art.16

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The asset disclosures are filed in the Court of Auditors but they are not publicly accessible and violations would not be known unless investigations or penalties were made public. We have not heard of any cases like this.

References:

There have not been any cases relating to this.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

Audits are once a year. The reports are confidential; nothing was published dealing with this subject.

References:

The Court of Auditors audits the contributions to political parties.

100: Political party finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

15

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

References:

There are no limits on individual donations to political candidates.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

In case of individual candidates; the laws are followed. There are no recent examples of corporations supporting individual candidates.

References:

Corporate donations to individual candidates are not allowed.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

There is no agency or entity that monitors the financing of individual candidates' campaigns.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

There is no agency or entity that monitors the financing of individual candidates' campaigns.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

References:

The finances of individual candidates' are not audited.

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Pursuant to the parties law (Law n° 32-1988, art.16); each party gives an annual report to the Court of Auditors on his financing.

References:

Law n° 32-1988, art.16

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Citizen can t access to the financial records of political parties. The Court of Auditors' reports about parties finances are not published.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Citizen can't access to the financial records of political parties.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

25. Can citizens access records related to the financing of individual candidates' campaigns?

0

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Individual political candidates are not asked to disclose data relating to their financial support and expenditures.

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Individual political candidates are not asked to disclose data relating to their financial support and expenditures.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Individual political candidates are not asked to disclose data relating to their financial support and expenditures.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-1. Executive Accountability

27. Can the chief executive be held accountable for his/her actions?

19

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

A lack of checks and balances characterizes Tunisian politics, with the executive enjoying almost unfettered control over political discourse and policy making. As Freedom House characterizes the situation, Unfortunately, political conditions stand in jarring contrast to [social reform] achievements. President Zine el-Abidine Ben Ali, who replaced the aged Bourguiba in a bloodless coup in 1987, spearheaded a timid democratic opening in the late 1980s and early 1990s. However, since then the regime has systematically asserted control over all institutions that could constitute a countervailing power parliament, the judiciary, the press, political parties, universities, professional associations, and other such entities.¹ Ben Ali's legalization of multiple parties and introduction of electoral competition between them in 1989 has settled, for the moment, into a striking example of the institutionalization of the forms of democracy without any of the substance."

References:

Freedom House, Countries at the Crossroads 2007." <http://www.freedomhouse.org/template.cfm?page=140&edition=8&ccrpage=37&ccrcountry=172>

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

In law the judiciary can review legislation and the actions of ministries and other government agencies but there is no agency to oversee the chief executive. He is over all the institutions.

References:

Pursuant to Article 69 of the Constitution, the administrative court system is headed by the Council of State (Conseil d'Etat) which examines legislation. The Council of State is composed of the Administrative Tribunal (le Tribunal administratif : Law n° 67-1972) and the Court of Accounts (la Cour des comptes), which has jurisdiction over the finances of government ministries and agencies.

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

Generally the judiciary is in practice unable to review the actions of the executive. Pursuant to Article 6 of Law n°67-29 on judicial structure, the President of Tunisia heads the Superior Council of the Judiciary while the Minister of Justice serves as its Vice President. The following members of the Superior Council of the Judiciary are selected by Presidential decree: the first president of the Court of Cassation; the public prosecutor of the Court of Cassation; the public prosecutor who is director of judicial services; the Inspector General of the Ministry of Justice; the first president of the Housing Court; the first president of the Court of Appeal of Tunis; and the public prosecutor of the Court of Appeal of Tunis. It is the President, or if he so designates, the Vice President who convene meetings of the Superior Council.

The Superior Council of the Judiciary, which decides on the judicial career of judges, is not independent but rather serves as an instrument of the Executive.

References:

http://ec.europa.eu/world/enp/pdf/country/tunisia_enp_country_report_2004_en.pdf

http://www.demcoalition.org/site09-2008/pdf/32_Tunisia.pdf

<http://www.icj.org/IMG/ICJ-UPR-Tunisia.pdf>

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | **50** | 25 | 0

Comments:

The Chamber of Deputies and the Chamber of Advisors may authorize the President of the Republic, for a set period of time and for a specific purpose, to issue decrees which he submits, as the case may be, to ratification by the Chamber of Deputies or by both Chambers, upon expiration of that period. The Chamber of Deputies and the Chamber of Advisors exercise the legislative power, in accordance with the provisions of the Constitution. The power to initiate laws is shared equally by the President of the Republic and the members of the Chamber of Deputies. Priority is given to bills submitted by the President of the Republic (art.28).

These executive orders are approved later by the Parliament.

References:

Pursuant the Tunisian Constitution The President of the Republic directs the general policy of the State, defines its basic options and informs the Chamber of Deputies accordingly (art.49).

The President of the Republic sees to the enforcement of the laws and exercises the general regulatory power (art.53).

Bills are discussed by the Cabinet. Decrees taking the form of regulations are countersigned by the Prime Minister and the government member concerned (art.54).

Executive order (Marsoom in Arabic) n° 1-2006 in July31st, 2006; dealing with fiscal amnesty.

Executive order n° 1-1993 in August31st, 1993; dealing with acceptance of a rent from the Japanese Bank of Exportation and Importation.

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

50

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

The President of the Republic enjoys judicial immunity in the exercise of his duties. He also enjoys such judicial immunity after the presidential term for all acts executed as part of the office.

References:

Pursuant the Constitution (art.41):

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

There are no texts in law giving the right to ministers to enjoy judicial immunity.

References:

Pursuant the Constitution (art.41):

The High Court meets in case of high treason committed by a member of the government.

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

38

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

References:

The President is required to declare income and assets (Income and Asset Disclosure Requirements for Heads of State and Governments World Bank Client Countries, June 15, 2006)

[\[http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/IncomeAssetDisclosureinWBClientsasofJune62006.pdf\]](http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/IncomeAssetDisclosureinWBClientsasofJune62006.pdf)

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

The Prime Minister is required to declare income and assets (Income and Asset Disclosure Requirements for Heads of State and Governments World Bank Client Countries, June 15, 2006)

[\[http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/IncomeAssetDisclosureinWBClientsasofJune62006.pdf\]](http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/IncomeAssetDisclosureinWBClientsasofJune62006.pdf)

Pursuant Law n° 17-1987, ministerial level officials are required to file a regular asset disclosure form.

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

References:

No such regulations exist.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

References:

Pursuant Law n° 17-1987, the forms are given to the first president of the Court of Accounts.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

References:

There are no restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

References:

There are no restrictions on heads of state and government and ministers entering the private sector after leaving the government.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

Many times these kinds of conflict of interest laws fall under the abstract law" category allowing for a flexible interpretation and little to no enforcement.

References:

No such regulations exist.

Interview with Fatima Hadj, NDI, 5/13/09

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

References:

The official documents and Court of Auditors summaries published in the Official Magazine (Journal Officiel) do not include any information on this.

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

0

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

References:

Pursuant Law n° 17-1987, citizens access to the asset disclosure records, is not allowed.

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Citizen access is not allowed.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Citizen access is not allowed.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

26. Can citizens sue the government for infringement of their civil rights?

100

26. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

Comments:

In law citizens can sue the government for infringement of their civil rights. Mainly the Administrative Court is in charge with affairs dealing with the denial of the authorization of constituting parties, associations; newspapers, radios, and televisions. The Judiciary Court intervenes in the disputes linked to the electoral process.

References:

If the administration refuses for example to register an elector; he can complain to the first degree Court (Electoral Code, Law n° 25-1969 art. 18 and 19).

If the Ministry of Interior refuses to legalize a party; the leaders of this party can complain to the Administrative Court (Parties law n° 32-1988, art. 10).

If the Ministry of Interior refuses to legalize an association; the leaders of this association can complain to the Administrative Court (Associations law n° 154-1959, art. 5).

If the Ministry of Interior decides to stop an association; the leaders of this association can complain to the 1st degree Court (Associations law n° 154-1959, art. 24 and 25).

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

31. Official government functions are kept separate and distinct from the functions of the ruling political party.

0

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

In all elections the government employees and vehicles (cars, buses, trucks&), the state owned newspapers, radios and televisions, were used to serve the ruling party and the President.

You can read the following features and reports in which opposition leaders are complaining about this abuse of power:
www.pdpinfo.org/spip.php?article50952

References:

<http://journaliste-tunisien-10.blogspot.com/2009/04/blog-post>.

http://www.swissinfo.org/ara/arabic_international/detail.html?siteSect=141&sid=10512151&cKey=1238771894000&ty=st
www.assabilonline.net/index.php?option=com_content&task=view&id=3622&Itemid=1

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

32. Can members of the legislature be held accountable for their actions?

0

32a. In law, the judiciary can review laws passed by the legislature.

YES | **NO**

Comments:

As UNDP-POGAR notes, Although Tunisia has a Constitutional Council charged with determining the constitutionality of laws, the council is not part of the judicial system, and can only review laws once, prior to their enactment.”

References:

There is no law establishing that the judiciary can review laws passed by the legislature.

UNDP-POGAR’s Democratic Governance Profile for Tunisia (<http://www.pogar.org/countries/theme.asp?th=9&cid=20#sub4>).

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

As UNDP-POGAR notes, Although Tunisia has a Constitutional Council charged with determining the constitutionality of laws, the council is not part of the judicial system, and can only review laws once, prior to their enactment.”

References:

The judiciary does not have this right.

UNDP-POGAR’s Democratic Governance Profile for Tunisia (<http://www.pogar.org/countries/theme.asp?th=9&cid=20#sub4>)

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | **NO**

Comments:

According to the Constitution (art.27), members of the national legislature can’t be subject to criminal proceedings; unless the parliament withdraws their immunity.

As UNDP-POGAR describes it, No deputy can be arrested or prosecuted for the duration of his mandate. But in the event of flagrant crime the parliament may lift his/her immunity. The detention of a deputy may be suspended if the parliament so requests.”

References:

Article 27 of the Tunisian Constitution

UNDP-POGAR’s Democratic Governance Profile for Tunisia (<http://www.pogar.org/countries/theme.asp?th=5&cid=20>)

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

0

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | **NO**

Comments:

From Disclosure by Politicians": " Law 87-17, 10 April 1987 has introduced disclosure for certain high level officials, including ministers. There are, however, no disclosure requirements for MPs. This was confirmed with the Parliament in April 2008."

References:

Andrei Shleifer and the World Bank Group Disclosure by Politicians" (2009). <http://www.economics.harvard.edu/faculty/shleifer/dataset>

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

Comments:

According to Disclosure by Politicians" MPs are prohibited from being board members and from being officers or advisors in financial institutions while in office:

Electoral Code, Law No. 69-25, 8th April 1969, art. 83.2, 84

Law 48/2004, 14th June 2004, Law dealing with relationship between the House of Representatives and the House of Counselors, amending Election Bulletin enacted in 1989, art. 38, 40, 41, 43

MPs are prohibited from holding the above positions in any credit or finance institutions, as well as in those businesses that are subsidized by the government.

These restrictions do not apply once a member of parliament leaves office.

References:

Andrei Shleifer and the World Bank Group Disclosure by Politicians"

(2009). <http://www.economics.harvard.edu/faculty/shleifer/dataset>

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | **NO**

Comments:

From the Disclosure of Politicians":

Parliamentary Rules of Procedure

Constitution

Law 87-17, 10 April 1987, on Financial Disclosure

Electoral Code, Law No. 69-25, 8th April 1969, (Chapter III)

Law 48/2004, 14th June 2004, Law dealing with relationship between the House of Representatives and the House of

Counselors, amending Election Bulletin enacted in 1989

Presidential Decree n. 87-552, 10 April 1987 and Decree n. 99-466, 27th February 1999, on Financial Disclosure Blank Form

The above quoted laws do not contain clauses mandating the receipt of gifts.

References:

Andrei Shleifer and the World Bank Group Disclosure by Politicians"

(2009). <http://www.economics.harvard.edu/faculty/shleifer/dataset>

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

Comments:

From Disclosure by Politicians: Law 87-17, 10 April 1987 has introduced disclosure for certain high level officials, including ministers. There are, however, no disclosure requirements for MPs. This was confirmed with the Parliament in April 2008."

References:

Andrei Shleifer and the World Bank Group Disclosure by Politicians"

(2009). <http://www.economics.harvard.edu/faculty/shleifer/dataset>

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

While restrictions exist for outside employment for members of parliament, these restrictions only apply to the time period when the MP is serving in office.

References:

Andrei Shleifer and the World Bank Group Disclosure by Politicians” (2009). <http://www.economics.harvard.edu/faculty/shleifer/dataset>

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

No regulations exist for gifts and hospitality for members of parliament.

References:

Andrei Shleifer and the World Bank Group Disclosure by Politicians” (2009). <http://www.economics.harvard.edu/faculty/shleifer/dataset>

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

MPs are not required to disclose assets.

References:

Andrei Shleifer and the World Bank Group Disclosure by Politicians” (2009). <http://www.economics.harvard.edu/faculty/shleifer/dataset>

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

34. Can citizens access the asset disclosure records of members of the national legislature?

0

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

Comments:

MPs are not required to disclose assets.

References:

Andrei Shleifer and the World Bank Group Disclosure by Politicians” (2009). <http://www.economics.harvard.edu/faculty/shleifer/dataset>

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

MPs are not required to disclose their assets.

References:

Andrei Shleifer and the World Bank Group Disclosure by Politicians” (2009). <http://www.economics.harvard.edu/faculty/shleifer/dataset>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

MPs are not required to disclose their assets.

References:

Andrei Shleifer and the World Bank Group Disclosure by Politicians” (2009). <http://www.economics.harvard.edu/faculty/shleifer/dataset>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

35. Can citizens access legislative processes and documents?

0

35a. In law, citizens can access records of legislative processes and documents.

YES | **NO**

Comments:

A special gazette is published by prime minister Office the (Imprimerie Officielle) to report parliament members speeches . But it s not distributed; and we can t have access to any other documents.

References:

Imprimerie Officielle

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

The gazette is not made public

References:
Imprimerie Officielle

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:
In theory, the gazette is not expensive but its contents are not made public.

References:
Imprimerie Officielle

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

0
III-3. Judicial Accountability

36. Are judges appointed fairly?

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

References:

Article 66: Judges/magistrates are nominated by decree of the president of the republic upon the recommendation of the Supreme Judicial Council. The modalities of their recruitment are determined by law.

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

The executive branch of government exercises undue influence and authority over the judiciary. President Ben Ali, for example, is the head of the Supreme Council of Judges, whose members are mainly presidential appointees (Democracy Coalition, pg. 4). There is very weak transparency in the appointment of magistrate/judges to the High Judicial Council and no objective criteria in their promotion (Euro Mediterranean Human Rights Network, p. 5).

References:

Democracy Coalition, Tunisia," http://www.demcoalition.org/pdf/32_Tunisia.pdf

Euro-Mediterranean Human Rights Network, "The Independence and Impartiality of the Judiciary – The Case of Tunisia" Seminar Report 2007 (<http://www.euromedrights.net/usr/00000019/00000070/00001892.pdf>).

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

As UNDP notes, The Superior Council of the Judiciary is charged with the appointment, promotion, transfer and dismissal of judges. Since the President is the head of this council, the executive branch exercises an indirect authority over the judiciary, despite the guarantee of an independent judiciary provided by Article 65 of the Constitution.”

References:

There is no transparent confirmation process conducted by an independent body.

UNDP-POGAR’s Democratic Governance Profile of Tunisia (<http://www.pogar.org/countries/theme.asp?th=9&cid=20>)

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

37. Can members of the judiciary be held accountable for their actions?

58

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

According to the Code of Penal Procedure (Law n°23-1968 of July 24; 1968), and the Code of Civil and Commercial Procedure (Law n°130-1959 of October 5, 1959); all the judiciary members are obliged to give reasons for their decisions.

References:

Code of Penal Procedure and Code of Civil and Commercial Procedure

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

References:

According to the Civil and Commercial Procedure Code (art.189), the Court rules after argumentation of all the raised points. The minutes should be signed by all the judges.

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

According to Judiciary System Law (Law n° 29-1967, of July 14, 1967; art.55); the Supreme Judiciary Council is the judicial disciplinary agency for judges.

According to the Carnegie Endowment: The Supreme Judicial Council appoints and dismisses judges. The members of the Council include the minister of justice and other officials from the ministry. The Council has a separate disciplinary body that is headed by the president of the Court of Cassation and is largely judicial in composition.”

References:

Judiciary System Law

Carnegie Endowment for International Peace: http://www.carnegieendowment.org/files/Tunisia_APS.doc

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | **NO**

References:

The President of the Republic is the President of the Supreme Judicial Council, and he is seconded by minister of justice who is board member of the ruling party.

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | **25** | 0

Comments:

The last known case is the case of judge Mokhtar Yahyewi who was removed after a mock investigation. This is because he sent a letter to the President on July 6th, 2001 denouncing the lack of independence of the judiciary.

References:

Judiciary System Law (Law n° 29-1967, of July 14, 1967; art.56 and 57).

<http://www.fidh.org/L-affaire-Yahyaoui-Le-combat-d-un>

http://www.humanrightsfirst.org/middle_east/tunisia/hrd_tun_1.htm

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

Comments:

The last known case of this was in 2001 when a judge was removed after a mock investigation.

References:

According to the judiciary system law (Law n°29-1967 of July 14th, 1967; art.52), the penalties are:

- 1- The reprimand
- 2- The disciplinary move
- 3- The degrade class
- 4- The suspension from duty for 3 years maximum
- 5- The removal

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

0

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | **NO**

References:

There is no law requiring that members of the judiciary file asset disclosure forms.

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | **NO**

Comments:

There is no regulation governing gifts and hospitality. Only bribery is forbidden according to Article 84 of the Penal Code. According to Article 84 of the Penal Code, members of the judiciary convicted of involvement in bribery can be imprisoned for 20 years and can lose eligibility for membership in the public service.

References:

MENA-OECD Investment Program <http://www.oecd.org/dataoecd/56/63/36086689.pdf>

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | **NO**

References:

Members of the judiciary are not required to file asset disclosure forms

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

References:

There are no restrictions on post-government employment for judges.

YES: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

References:

There are no such restrictions in law.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

References:

There are no legal restrictions limiting gifts and hospitality. There is only a prohibition of bribery.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Members of the judiciary are not required to file asset disclosure forms

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

References:

Members of the judiciary are not required to file asset disclosure forms

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Members of the judiciary are not required to file asset disclosure forms

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Members of the judiciary are not required to file asset disclosure forms

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

0

40a. In law, the legislature can amend the budget.

YES | **NO**

References:

There are no laws allowing the legislature to make amendments to the budget

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | **0**

Comments:

Legislative approval is not required by law and Freedom House reports that the budget does not go through an evaluative process in the legislative branch.

References:

Freedom House: Countries at a Crossroads 2007. <http://www.freedomhouse.org/template.cfm?page=140&edition=8&cccountry=172§ion=84&ccrpage=37#ref50>

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

There are 5 permanent commissions in the Parliament:

Equipment and services

" Legislation and administration organization

" Finance planning and regional development

" Agriculture industry and commerce

" Social affairs and health

These commissions debate the general budget. In practice members of the Parliament approve without discussing and checking the details, mainly for the presidential expenditures.

References:

There is no law allowing for legislative input in the budget process.

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

33

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

Freedom House reports: The executive branch controls the budgetary process in Tunisia, and it keeps areas that it deems politically sensitive out of public view. The budget is not subject to meaningful legislative scrutiny. The state does not ensure transparency, open bidding, or effective competition in the awarding of government contracts; instead, contracts often go to government cronies.”

References:

Freedom House: Countries at a Crossroads 2007. <http://www.freedomhouse.org/template.cfm?page=140&edition=8&ccrcountry=172§ion=84&ccrpage=37#ref50>

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | **25** | 0

Comments:

They can hear only the plenary discussions, but not the legislative debate. As stated earlier, the budget discussion between the legislative commissions is only a surface discussion anyway.

References:

Interview with anonymous source

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

Comments:

Transparency of the budget process and fiscal management in Tunisia has improved since the country since it adopted the IMF's Special Data Dissemination Standard in 2001. Dissemination of the government's fiscal activities is stronger and more widespread; however, there is still room for improvement including greater transparency in reporting on the privatization process, local government budgets, social security funds and other fiscal activities. The Ministry of Finance's website with direct links to monthly and annual budget reports was still under construction as of January 2008 (E Standards Forum, January 2008).

References:

E Standards Forum, Financial Standards Foundation: Tunisia (January 2008): http://www.estandardsforum.org/servlet/PrintPDFReport?country_id=177&s3=on

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective?

0

43a. In practice, department heads regularly submit reports to this committee.

References:

No legislative committee exists for overseeing the budget.

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

References:

No legislative committee exists for overseeing the budget.

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

References:

No legislative committee exists for overseeing the budget.

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

42. Is there a separate legislative committee which provides oversight of public funds?

0

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES | **NO**

Comments:

There are 5 permanent commissions in the Parliament:
Equipment and services
" Legislation and administration organization
" Finance planning and regional development
" Agriculture industry and commerce
" Social affairs and health
These commissions debate the general budget.

References:

No legislative committee exists to oversee the budget.

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

Category IV. Administration and Civil Service

IV-1. ⁵² Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

75

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

Law n° 112-1983 of December 12, 1983; organizing the general statute of the State employees.

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

References:

according to Law n° 112-1983 of December 12, 1983; organizing the general statute of the State employees; art. 18.

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

The administrative court is specific the civil service. According Law n°40-1996 of June 3rd, 1996; modifying Administrative law 67-1972 of August 1st, 1972 (art.7); the prime minister is president of the supreme administrative court council.

References:

The Administrative Court (Law n° 67-1972 of August 1st, 1972)

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | **NO**

Comments:

According to the public (civil) service law n° 112-1983 of December 12, 1983 (art.58);

References:

according to Law n° 112-1983 of December 12, 1983; organizing the general statute of the State employees; art. 17 and 56.

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

50

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | **0**

Comments:

All administration in Tunisia are under the interference of the ruling party. This party is the only one who enjoys the right to have representatives in all the administrations.

References:

Interview with anonymous source

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

All administration in Tunisia are under the interference of the ruling party. This party is the only one which enjoys the right to have representatives in all the administrations.

References:

Interview with anonymous source

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

All administration in Tunisia are under the interference of the ruling party. This party is the only one which enjoys the right to have representatives in all the administrations.

References:

interview with anonymous source

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

Each administration has a diagram (organigram) determining the hierarchy of the administration and the role of its departments. This diagram is fixed by a Decree (an executive presidential order). For example The diagram of the Tunisian electricity and gas company:

<http://www.steg.com.tn/ar/institutionnel/organigramme.html>

References:

<http://www.steg.com.tn/ar/institutionnel/organigramme.html>

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

References:

Every 3 years an agreement about salaries is made between the government, the trade union (UGTT) and the patrons union (UTICA). This agreement is published and shows how the bonuses constitute a small fraction of total pay.

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

The official gazette never publishes announcements about number of positions filled.

References:

http://www.ior.tn/WD120AWP/WD120Awp.exe/CTX_3604-1-OTBuoQeAu/Principal/SYNC_330547843

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

References:

All civil servants can use the court. There is no restriction.

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

There have been no complaints from the Trade Union (Union générale des Travailleurs Tunisiens) about civil servants not paid in time.

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

Oftentimes, civil servants who have been convicted of corruption continue to work in government positions.

References:

Anonymous Interview with Economic Corruption Inspector

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

0

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | **NO**

References:

There is no law requiring the disclosure of assets.

YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | **NO**

References:

There is no law with this requirement.

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | **NO**

References:

There are no legal restrictions on this.

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | **NO**

References:

There are no legal restrictions on gifts and hospitality.

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | **NO**

References:

There is no law requiring the disclosure of assets for senior members of the civil service.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

There are no legal regulation of post-government employment for civil servants.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

There is no regulation of gifts and hospitality.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

References:

Civil servants are not required to remove themselves in situations that present a conflict of interest.

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

There is no law requiring the disclosure of assets for senior members of the civil service.

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | **NO**

References:

There is no law requiring the disclosure of assets for senior members of the civil service.

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

There is no law requiring the disclosure of assets for senior members of the civil service.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

References:

There is no law requiring the disclosure of assets for senior members of the civil service.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

38

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | **NO**

Comments:

According to Article 29 of the Tunisian Code of Criminal Procedure any constituted authority, any public official or employee who, in the exercise of his duties, becomes aware of an offense is required to report this fact immediately to the State prosecutor, together with all relevant information, records and documents

However, there is no specific protection for those who report cases of corruption.

Individuals who report bribery cases in which they were involved, are then exempt from penalty.

References:

Article 29 of the Tunisian Code of Criminal Procedure

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

According to the National Council for liberties in Tunisia (CNLT), a businessman Zine Riyebi was arrested in Saturday May 2nd, 2009 in the airport because he made a complain to the court against Mourad Trabelsi brother of the President s wife. This example shows what may happen to a person when he complains about sensitive affairs.

References:

<http://www.kalima-tunisie.info/kr/News-file-article-sid-96.html>

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

the Penal Code (Law of July 9; 1913; art.93)

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | **50** | 25 | 0

Comments:

Many times the consequences for whistle-blowers depends on his/her political connections. In the private sector, the size and political connections of the business play a role as well.

References:

Interview with Fatima Hadj, NDI, 5/13/09

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

0

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | **0**

References:

This mechanism does not exist.

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

References:

This mechanism does not exist.

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

This mechanism does not exist.

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

If there is a problem the victim should follow the ordinary process: making a written complain to the Court who will investigate. Or a complain to the concerned administration.

References:

There is no internal mechanism to report corruption.

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

49. Is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

0

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

References:

This does not exist in law.

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

13
IV-3. Procurement

51. Is the public procurement process effective?

65

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

Procurement officials do not have their own specific conflict of interest regulations. They fall under the general conflict of interest regulations for the civil service.

References:

according to Law n° 112-1983 of December 12, 1983; organizing the general statute of the State employees; art. 5.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:

Also the Public Procurement National Observatory makes training for the procurement officials.

References:

Before appointment to a permanent post, most of administration officials should have a professional training (Law n° 112-1983 of December 12, 1983; organizing the general statute of the State employees; art. 85 and 86).

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | **50** | 25 | 0

Comments:

In fact this question is monitored by the general texts of law. There is no special regulation.

According to article 5 of the Public Function Code (Law n° 112-1983 of December 12, 1983); it is not allowed to civil servants to have any interests in any institution under his control.

And according to article 5 of the Accounting Code (Law n° 81-1973 of December 31, 1973); the officials can't work in the same office when they are spouses.

References:

The Accounting Code (Law n° 81-1973 of December 31, 1973; art.5) deals with the conflicts of interest for public procurement officials.

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | **NO**

References:

There is no such mechanism.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | NO

Comments:

Despite those requirements, Tunisian suppliers enjoy a 10% price preferential over other bidders” (UNDP-POGAR).

References:

According to the Accounting Code (Law n° 81-1973 of December 31, 1973; art.100), procurements require competitive biddings. And according to the executive presidential order n° 3158-2002 of December 12, 2002 (art.3); procurements for more than 30.000 TD require a competitive bidding.

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

Comments:

As the World Bank’s Country Assistance Strategy Progress Report notes:

The new provisions [decree no. 3158 of December 17, 2002, regulating public procurement, through respectively the decree no. 2551 of November 2, 2004, and the decree no. 21667 of August 10, 2006] improve competitive bidding as a general rule.

However, contracts can be awarded in some exceptional cases through:

- Broad-based Procurement (Consultation dargie), in cases linked to national defense and public safety, unsuccessful bids, and acquisitions costing less than a given threshold;
- Negotiated contracts, for purchases which can only be obtained through a unique supplier or provider of a specific service.

It should be noted that this type of contracts can only be entered only after an authorization has been given through a decree by the concerned minister, for those contracts that are within the prerogatives of the Commission Supkrieure des March& or by ministerial order for other contracts that fall within the responsibilities of other Commissions.

This authorization i s granted based on a report justifying it, and after the opinion of the concerned High Commission for Markets is given. It i s to be noted here that in all cases of Direct Contracting, a written procedure must be respected by the public buyer, which insures equality, fairness, and transparency.”

References:

COUNTRY ASSISTANCE STRATEGY PROGRESS REPORT FOR REPUBLIC OF TUNISIA FOR THE PERIOD FY05-08 (Report No. 38572-TN, World Bank August 2007).

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

References:

The Conciliation Committee of the Prime Ministry is in charge of investigating unsuccessful bidders complaints. (Executive Presidential Order -Decree- n° 3158-2002 of December 12, 2002; art.123 and 124).

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:

The through the Courts (Executive Presidential Order Decree- n° 3158-2002 of December 12, 2002 (art.129); and the Administrative Court (Law n°67-1972 of August 1st, 1972).

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

References:

These restrictions do not exist.

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

References:

These restrictions do not exist.

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

96

52a. In law, citizens can access public procurement regulations.

YES | NO

References:

Tunisia Commission Supérieure des Marchés website: http://www.marchespublics.gov.tn/lois_fr/sommaire_loi_fr.htm

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

according to the Executive Presidential Order Decree- n° 3158-2002 of December 12, 2002 (art.69).

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Tunisia Commission Supérieure des Marchés website http://www.marchespublics.gov.tn/lois_fr/sommaire_loi_fr.htm

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Tunisia Commission Supérieure des Marchés website http://www.marchespublics.gov.tn/lois_fr/sommaire_loi_fr.htm

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

It costs 100 TD (90\$) for this service (120 Euros for foreigners outside Tunisia).

References:

Yes, anyone can subscribe to public procurement newsletter on line <http://www.marchespublics.gov.tn/abonnementar.htm>

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

References:

The results are published in this website: <http://www.marchespublics.gov.tn>

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

53. Is the privatization process effective?

75

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

Comments:

Law N° 89-9 of February 1st, 1989 relative to public sector participations, enterprises and establishments modified and completed by the law N° 94-102 of August 1st, 1994, the law N° 96-74 of July 29, 1996, the law N° 2001-33 of March 29, 2001, and the law N°36-2006 of June 12, 2006.

References:

The Prime Ministry of Tunisia website: <http://www.privatisation.gov.tn/www/en/directdoc.asp?docid=221>

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

Law N° 89-9 of February 1st, 1989 relative to public sector participation, enterprises and establishments modified and completed by the law N° 94-102 of August 1st, 1994, the law N° 96-74 of July 29, 1996, the law N° 2001-33 of March 29, 2001, and the law N°36-2006 of June 12, 2006.

References:

The Tunisia Prime Ministry website: <http://www.privatisation.gov.tn/www/en/directdoc.asp?docid=221>

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

References:

The President's families-in-law have allegedly enjoyed favor in the privatizations of state companies. For example, the President's son-in-law bought, along with three of the President's children, the national company Ennakl (Transport), in a process critics argued was illegal.

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

90

54a. In law, citizens can access privatization regulations.

YES | NO

References:

Results are published at <http://www.privatisation.gov.tn>

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

The Prime Ministry of Tunisia emphasizes transparency in the privatization process and makes a list of privatizations available on their website: <http://www.privatisation.gov.tn/www/en/doc.asp?mcat=1&mrub=52&msrub=16&dev=true>

In addition, the government has set up a website aimed at encouraging foreign investment. On this site, privatizations are listed: http://www.investintunisia.tn/site/en/article.php?id_article=711

References:

The Tunisia Prime Ministry website. <http://www.privatisation.gov.tn/www/en/directdoc.asp?docid=211>

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

References:

Generally the transactions are publishes in the State Gazette (Journal Officiel de la République Tunisienne): <http://www.iort.gov.tn>

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

A list of applicable laws and regulations is made available online on the Prime Ministry website. However, these laws are simply listed by title, not displaying the full text of the law or providing a link to that text. It is clear that there are regulations but the content of these regulations is not made available through the site.

References:

The Prime Ministry of Tunisia Website <http://www.privatisation.gov.tn/www/en/directdoc.asp?docid=211>

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

Comments:

A list of applicable laws and regulations is made available online on the Prime Ministry website. However, these laws are simply listed by title, not displaying the full text of the law or providing a link to that text. It is clear that there are regulations but the content of these regulations is not made available through the site.

References:

The Prime Ministry of Tunisia website: <http://www.privatisation.gov.tn/www/en/directdoc.asp?docid=211>

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁶⁴National Ombudsman

56. Is the national ombudsman effective?

27

56a. In law, the ombudsman is protected from political interference.

YES | **NO**

Comments:

The Ombudsman is a member of the President's Cabinet. The ombudsman administration is directly monitored and financed by the presidency.

References:

The website of the Presidency of Tunisia. http://www.carthage.tn/en/index.php?option=com_content&task=view&id=31&Itemid=49

<http://www.ombudsman.tn/HTML/fr/mediateur.html>

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The Ombudsman is a member of the President's Cabinet

References:

The website of the President of Tunisia. http://www.carthage.tn/en/index.php?option=com_content&task=view&id=31&Itemid=49

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

There is no protection of the Ombudsman from political influence, but there is no need for this because the ombudsman is very well chosen. For example, the current ombudsmen Mrs. Alifa Faruk is member of the highest cabinet of the ruling party. Political allegiance is expected.

References:

<http://www.ombudsman.tn/HTML/fr/mediateur.html>

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

according to the Executive Presidential Order n° 1126 of 1996 of June 15, 1996; art.3.

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

The current ombudsmen Mrs. Alifa Faruk is member of the highest cabinet of the ruling party. Generally responsibilities in the administrations are given only to the ruling party members.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

The agency receives regular funding.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

References:

The Ombudsman reports are made only to the President.

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The ministries are asked to answer the ombudsman's questions and make the appropriate investigations. However, the process is driven by political concerns.

References:

According to articles 6 and 7 of Decree n° 1126-1996 dated June 15, 1996; the ombudsman office make the necessary investigations.

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

The ombudsman does not impose penalties to offenders. If they don't answer to his request or answer his questions, he made a report to the President with his proposals (article 8 of Decree n° 1126-1996 dated June 15, 1996).

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | **50** | 25 | 0

Comments:

In a country where the executive dominates the political and policy landscapes, it is difficult to say how much the government responds to the ombudsman's recommendations. The ombudsman is empowered to make recommendations to resolve citizen complaints against government as well as administrative business disputes involving governmental entities, but the extent to which its recommendations are taken on board is unknown.

References:

UN COMMITTEE ON ELIMINATION OF RACIAL DISCRIMINATION CONCLUDES REVIEW OF TUNISIA'S PERIODIC REPORT (July 2003): <http://www.unog.ch/news2/documents/newsen/crd0310e.htm>

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | **25** | 0

References:

The time involved depends on the case.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

0

57a. In law, citizens can access reports of the ombudsman(s).

YES | **NO**

References:

These reports are not made publicly available.

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

These are not publicly available.

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

These reports are not publicly available.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. Is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

Comments:

From the website of the Presidency of Tunisia
(http://www.carthage.tn/en/index.php?Itemid=50&id=32&option=com_content&task=view):

The field of competence of the National Ombudsman is very large. Only conflicts arising between institutions entrusted with a public service mission and their staff regarding their administrative career fall outside the Ombudsman's field of competence. This limitation is, however, no longer applicable after termination of functions, or in case of non-enforcement of a court decision."

References:

The National Ombudsman Services was created by Law ° 51-1993 of May 3rd, 1993.

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

47

59a. In law, the supreme audit institution is protected from political interference.

YES | **NO**

Comments:

The executive's role on the board of the Audit Court compromises its independence. As UNDP-POGAR describes it, The Audit Court of the Republic of Tunisia was established by Law 8 of 8 March 1968 in accordance with the Constitution of 1959. It is administratively placed under the Council of State, whose head is the president. The prime minister, however, is the vice president of the Council of State and is administratively charged with oversight for the council. The Audit Office has broad powers to audit those organizations for which it has responsibility. A list of public enterprises and offices to be audited is issued by presidential decree."

References:

The Arab Organization of Supreme Audit Institutions. http://www.arabosai.org/en/recipient_member.asp?member_id=4

UNDP-POGAR's Democratic Governance Profile of Tunisia (<http://www.pogar.org/countries/theme.asp?th=12&cid=20>).

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

He can be removed without any justification.

References:

According to Law n° 8-1968 of Mars 8th, 1968, The President of the Court of Auditors is nominated and removed by the President.

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Law n° 8-1968 of Mars 8th, 1968.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

Comments:

The Supreme Council of the Audit Court appoints the heads of the different internal chambers. However, the Tunisian Prime Minister serves as the chairman of this board, with the First President of the Audit Court serving as vice-chairman.

References:

The Arab Organization of Supreme Audit Institutions. http://www.arabosai.org/en/recipient_member.asp?member_id=4#

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

References:

The agency receives regular state funding.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

Comments:

The Audit Court submits on an annual basis to the President of the Republic and to the Parliament three reports: a first report on the findings of the audit with respect to management; a second report on the analyses related to the financial operations of the State, the local authorities and the public enterprises; a third report on closure of the State budget.”

References:

The Arab Organization of Supreme Audit Institutions. http://www.arabosai.org/en/recipient_member.asp?member_id=4

A summary of the report is also published in the website of the Court of Auditors: <http://www.courdescomptes.nat.tn>

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

Comments:

Auditing in Tunisia is hampered by the influence the executive branch holds over the Audit Court. A biased self-selection dynamic is at play in that the executive branch can dictate which government entities are audited by the court. As UNDP-POGAR describes it, The Audit Court of the Republic of Tunisia...is administratively placed under the Council of State, whose head is the president. The prime minister, however, is the vice president of the Council of State and is administratively charged with oversight for the council. The Audit Office has broad powers to audit those organizations for which it has responsibility. A list of public enterprises and offices to be audited is issued by presidential decree.”

In addition, the Arab Organization of Supreme Audit Institutions states: “The Audit Court issues a final decision by which it pronounces the accountant as having a balanced account or as having a surplus or as having a deficit. In the first two cases, the Audit Court clears the accountant definitively from all responsibility. In the third case, however, it requires him to reimburse the amount due to the treasury. He cannot be released from such an obligation except by presidential decree. It is possible to appeal against the decisions made by the Audit Court either through review or through appeal to the plenary session of the Audit Court.”

References:

UNDP-POGAR’s Democratic Governance Profile of Tunisia (<http://www.pogar.org/countries/theme.asp?th=12&cid=20>).

The Arab Organization of Supreme Audit Institutions. http://www.arabosai.org/en/recipient_member.asp?member_id=4

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | **50** | 25 | 0

Comments:

The Audit Court has its own public prosecutor's office which is mandated to observe and reports any issues of noncompliance.

References:

The Arab Organization of Supreme Audit Institutions. http://www.arabosai.org/en/recipient_member.asp?member_id=4#

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

0

60a. In law, citizens can access reports of the audit agency.

YES | **NO**

Comments:

As the World Bank notes in its recent report, The whole area of [financial] control and audit is comprehensive and reliable, but still lacking sufficient public disclosure, notably for the annual report of the Cours des Comptes which is only partially disclosed."

References:

No, but a summary of the Court of Auditors is published once a year in the state gazette (JORT).

A PROPOSED INTEGRATION AND COMPETITIVENESS DEVELOPMENT POLICY LOAN, Report No. 47556-TN (World Bank February 26, 2009)

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

As the World Bank notes in its recent report, The whole area of [financial] control and audit is comprehensive and reliable, but still lacking sufficient public disclosure, notably for the annual report o f the Cours des Comptes which is only partially disclosed.”

References:

Reports are not publicly available.

A PROPOSED INTEGRATION AND COMPETITIVENESS DEVELOPMENT POLICY LOAN, Report No. 47556-TN (World Bank February 26, 2009)

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

As the World Bank notes in its recent report, The whole area of [financial] control and audit is comprehensive and reliable, but still lacking sufficient public disclosure, notably for the annual report o f the Cours des Comptes which is only partially disclosed.”

References:

Reports are not publicly available.

A PROPOSED INTEGRATION AND COMPETITIVENESS DEVELOPMENT POLICY LOAN, Report No. 47556-TN (World Bank February 26, 2009)

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. Is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES

NO

Comments:

The Arab Organization of Supreme Audit Institutions states:

The Audit Court (Daa'irat al-Muhaasabaat) was created by virtue of the Tunisian Constitution dated 1st of June 1959. There is no doubt that the stipulation by the country's Constitution to set up an Audit Institution under the form of a juridical body seeks to ensure commitment by the Administration -which represents the executive-, and all other public organisms, to apply the law and to subject them to the audit authority of an independent institution that examines the extent of their compliance with this commitment and sees to the protection and proper management of public funds.

In accordance with the stipulations of the Constitution, Law N° 8 of the year 1968, dated 8 March 1968, bearing organisation of the Audit Court, was promulgated. "

References:

Tunisia Constitution

The Arab Organization of Supreme Audit Institutions. http://www.arabosai.org/en/recipient_member.asp?member_id=4

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

49
V-3. Taxes and Customs

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

The Tax agency has a full-time staff.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

The tax agency receives regular state funding.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The customs agency has a full-time staff.

References:

<http://www.douane.gov.tn>.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The agency receives regular funding.

References:

<http://www.douane.gov.tn>.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. Is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

Comments:

Bureau De Controle Des Impots

References:

Law n° 82-2000 of August 9th, 2000.

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

63. Are tax laws enforced uniformly and without discrimination?

50

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | **50** | 25 | 0

Comments:

In 2007, CIPE conducted a survey of Tunisian businesses and their commitment to transparency. The survey showed that 63% of respondents like the idea of increasing transparency in their businesses, but in practice they were reluctant to make necessary changes. A major reason for this stemmed from the lack of enforcement of tax regulations, which would open them up to greater risk.

In addition, the survey concluded: The principal problem of taxation for the surveyed companies is the high rate of taxation imposed by the authorities” and made a recommendation that the tax regulations and accounting standards be more “harmonized” in order to encourage greater transparency in businesses.

References:

Survey on Corporate Governance Practices in Tunisian Businesses, 2007 (IACE). <http://www.cipe.org/regional/menacg/>

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. Is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

References:

La Douane Tunisienne (Code de douane, Law n°34-2008 of June 2nd, 2008): <http://www.douane.gov.tn>

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. Are customs and excise laws enforced uniformly and without discrimination?

50

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

Comments:

From the Heritage Foundation's 2009 Index of Economic Freedom: Tunisia's weighted average tariff rate was 18.5 percent in 2006. Import restrictions, some prohibitively high tariffs, import taxes and fees, some import licensing requirements, export promotion programs, and inconsistent customs administration add to the cost of trade"

References:

Heritage Foundation's 2009 Index of Economic Freedom. <http://www.heritage.org/index/Country/Tunisia>

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

50

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | **NO**

Comments:

Members of the Guardianship are not protected from political interference because the minister and most of the officials belong to the ruling party. All they are nominated by the President. And refusing directions may cause their removal.

References:

Interview with anonymous source

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

The Guardianship Ministries are well staffed.

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

References:

The Guardianship ministries receive regular funding.

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

For example in its report 2007, the Court of Auditors made investigations in several fields, such as the Tunisian National bank (STB), La Presse, and Tunisian Internet Agency (ATI).

References:

http://www.courdescomptes.nat.tn/rapport_details.php?rapport=23

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | **0**

Comments:

There are many irregularities in the finance of the newspaper La Presse. The auditors make their report and mentioned these irregularities. But instead of being punished, the directors were transferred to the ministry of foreign affairs. They are now foreign ambassadors.

References:

The Court of Auditors doesn't impose penalties on offenders. But give a yearly report to The President.

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

25

69a. In law, citizens can access the financial records of state-owned companies.

YES | **NO**

References:

There are no laws protecting citizens' rights to access this information.

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

References:

Public companies publish every year their global financial records.

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | **25** | 0

Comments:

Auditing of State Owned Enterprises is often incomplete and does not use a standardized method.

References:

Interview with an Accountant

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

There are no laws protecting citizens' rights to access this information.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

There are no laws protecting citizens' rights to access this information.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. Is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

References:

The state owned companies are overseen by the Guardianship ministries, according to Law n° 9-1989 of February 1st, 1989.

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

58
V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

81

70a. In law, anyone may apply for a business license.

YES | NO

References:

<http://www.tunisieindustrie.nat.tn>

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

Complaints can be made to the first degree Courts and the Administrative Court.

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to the World Bank's Doing Business survey, it takes 11 days to start a business in Tunisia, compared to 23 days in the region. On the process of obtaining a business license, the Heritage Foundations says it takes much less than the world average of 225 days."

References:

Doing Business 2009" World Bank. <http://www.doingbusiness.org/ExploreEconomies/?economyid=190>

The 2008 Index of Economic Freedom. The Heritage Foundation. <http://www.heritage.org/index/Country/Tunisia>

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

From the Heritage Foundation's 2009 Index of Economic Freedom: Obtaining a business license takes much less than the world average of 225 days, but costs are fairly high. "

References:

Doing Business 2009" World Bank. <http://www.doingbusiness.org/ExploreEconomies/?economyid=190>

The 2009 Index of Economic Freedom. The Heritage Foundation. <http://www.heritage.org/index/Country/Tunisia>

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

Comments:

The World Bank's Doing Business reports: By law, the National Social Security Fund agents are entitled to visit the company premises at any time to check whether the company is complying with the laws and regulations."

References:

Doing Business 2009. The World Bank. <http://www.doingbusiness.org/ExploreTopics/StartingBusiness/Details.aspx?economyid=190#2>

Link to Tunisian National Social Security Fund legal website: <http://www.cnss.nat.tn/fr/index.asp>

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

Comments:

The World Bank's Doing Business reports: By law, the National Social Security Fund agents are entitled to visit the company premises at any time to check whether the company is complying with the laws and regulations."

References:

Doing Business 2009. The World Bank. <http://www.doingbusiness.org/ExploreTopics/StartingBusiness/Details.aspx?economyid=190#2>

Link to Tunisian National Social Security Fund legal website: <http://www.cnss.nat.tn/fr/index.asp>

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

Comments:

The World Bank's Doing Business reports: By law, the National Social Security Fund agents are entitled to visit the company premises at any time to check whether the company is complying with the laws and regulations."

References:

Doing Business 2009. The World Bank. <http://www.doingbusiness.org/ExploreTopics/StartingBusiness/Details.aspx?economyid=190#2>

Link to Tunisian National Social Security Fund legal website: <http://www.cnss.nat.tn/fr/index.asp>

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

75

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | **75** | 50 | 25 | 0

Comments:

The World Bank's Doing Business reports: By law, the National Social Security Fund agents are entitled to visit the company premises at any time to check whether the company is complying with the laws and regulations."

References:

Doing Business 2009

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

The World Bank's Doing Business reports: "By law, the National Social Security Fund agents are entitled to visit the company premises at any time to check whether the company is complying with the laws and regulations."

References:

Doing Business 2009

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

The World Bank's Doing Business reports: "By law, the National Social Security Fund agents are entitled to visit the company premises at any time to check whether the company is complying with the laws and regulations."

References:

Doing Business 2009

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁴⁸Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES | NO

References:

Tunisia Penal Code Article 85

MENA-OECD Investment Programme. <http://www.oecd.org/dataoecd/56/63/36086689.pdf>

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

Comments:

When penalizing bribery offenses, the Tunisian law also takes criminal intent into account (according to Article 37 of the Penal Code).

References:

Tunisia Penal Code Article 85

MENA-OECD Investment Programme. <http://www.oecd.org/dataoecd/56/63/36086689.pdf>

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

Comments:

When penalizing bribery offenses, the Tunisian law also takes criminal intent into account (according to Article 37 of the Penal Code).

References:

Tunisia Penal Code Article 91

MENA-OECD Investment Programme. <http://www.oecd.org/dataoecd/56/63/36086689.pdf>

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

Comments:

Article 87 outlaws influence trading, which is similar to bribery. The penalties are higher for those in public service than for ordinary citizens. When penalizing bribery offenses, the Tunisian law also takes criminal intent into account (according to Article 37 of the Penal Code).

References:

Tunisia Penal Code art. 87 as modified by Law no 98-33 of 23 May 1998

MENA-OECD Investment Programme. <http://www.oecd.org/dataoecd/56/63/36086689.pdf>

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

Comments:

In these cases, Tunisian citizens can be prosecuted through Tunisian law.

References:

Article 307bis of Tunisia s code of criminal procedure

MENA-OECD Investment Programme. <http://www.oecd.org/dataoecd/56/63/36086689.pdf>

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

References:

Tunisian Penal Code

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

This is illegal according to the Penal Code and Law n° 112-1983 of December 12, 1983; organizing the general statute of the State employees.

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | NO

References:

Lol n° 92-52 du 18 mai 1992, relative aux stupéfiants (<http://www.unodc.org/enl/showDocument.do?documentUId=706>).

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

Penal Code

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

75. Is the anti-corruption agency effective?

0

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | **NO**

References:

There are no legal protections against political interference.

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | **0**

Comments:

Freedom House reports that anti-corruption efforts in Tunisia are likely rendered ineffective by the reality of patronage-based privatization in Tunisia and the involvement of the president's family and high government officials in much of the malfeasance."

References:

Freedom House: Countries at a Crossroads 2007. <http://www.freedomhouse.org/template.cfm?page=140&edition=8&ccrcountry=172§ion=84&ccrpage=37#ref50>

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

There is no legal protection against political interference.

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

References:

Generally officials appointed to these internal anti-corruption departments have close connections within the government, just like most government positions.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

There is no real independent anti-corruption commission or entity in Tunisia.

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

There is no real independent anti-corruption commission or agency in Tunisia.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

There is no agency with a strong mandate to fight corruption and according to the U.S. State Department, the Higher Institute of Security Forces and Customs makes no reports available to the public and citizens do not have the right to request this information be made publicly accessible.

References:

2008 Country Report on Human Rights Practices: Tunisia. U.S. State Department. <http://www.state.gov/g/drl/rls/hrrpt/2008/nea/119128.htm>

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

There is no agency or department with a strong mandate to fight corruption in Tunisia.

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

There is no real independent anti-corruption commission or entity in Tunisia.

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

13

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

There is no real independent anti-corruption commission or entity in Tunisia.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

Freedom House reports: People who denounce official corruption risk persecution or imprisonment. In this environment, whistleblowers, anticorruption activists, and investigators do not feel secure about reporting cases of bribery and graft.”

A citizen blog, Tunisians against corruption (<http://tunisiens-contre-corruption.blogspot.com>) , is banned by the government and only accessible outside of Tunisia.

References:

Freedom House: Countries at a Crossroads 2007. <http://www.freedomhouse.org/template.cfm?page=140&edition=8&ccrcountry=172§ion=84&ccrpage=37#ref50>

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. Is there an agency (or group of agencies) with a legal mandate to address corruption?

0

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

In Tunisia there is not one central anti-corruption agency, but a series of mandated departments embedded in other government agencies or in the court system.

The Carnegie Endowment cites: On March 17, 2004 the Minister of Interior announced the creation of the Higher Institute of Security Forces and Customs, an oversight body for law enforcement officers in the Ministries of Interior and Customs. The organization’s stated mission was to reinforce human rights and improve law enforcement, as well as reduce corruption. There were no public reports of the organization’s subsequent activities. “

According to Freedom House, public-sector anticorruption laws are enforced by the Cour des Comptes (National Audit Office) and the Disciplinary Financial Court. The Ministry of Trade and the Ministry of the Interior also have departments that monitor

economic and financial crimes. In addition, the U.S. State Department reports: “The Higher Institute of Security Forces and Customs is tasked not only with “reinforcing human rights and improving law enforcement” but also reducing corruption.”

References:

Carnegie Endowment for International Peace: http://www.carnegieendowment.org/files/Tunisia_APS.doc

<http://www.freedomhouse.org/template.cfm?page=140&edition=8&ccrcountry=172§ion=84&ccrpage=37#ref50>

UNDP POGAR <http://www.pogar.org/countries/theme.asp?th=13&cid=20>

2008 Country Report on Human Rights Practices: Tunisia. U.S. State Department. <http://www.state.gov/g/drl/rls/hrrpt/2008/nea/119128.htm>

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

4 VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

75

77a. In law, there is a general right of appeal.

YES | NO

Comments:

There are four levels to the Tunisian Court system, one of which being the Court of Appeals.

The three Appeals Courts are located in Tunis, Sousse, Sfax. Cases that were originally heard in the District Courts and appealed to the Courts of First Instance may be further appealed to the Supreme Court... Once a judge issues an indictment based on the grand jury proceedings, the case is submitted to the criminal court division of the Appeals Court. The criminal division of the Court of Cassation serves as the final appellate court for criminal matters.”

However, the Tunisian Court of Appeals is just as highly politicized as the rest of the court system. Amnesty International reported that in December 2008, 33 union members were arrested for exercising their rights to expression and assembly. They were unfairly given long prison sentences and when their cases were appealed before the courts in early 2009, the Court of Appeals only slightly lessened their prison terms. Amnesty International claims that the appeal process was biased and did not allow the defendants lawyers to effectively present their cases.

References:

UNDP POGAR <http://www.pogar.org/countries/theme.asp?th=9&cid=20>

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Sometimes they may take several years. The political interference in the judicial branch is well documented in Tunisia.

References:

Interview with anonymous source

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

It is inexpensive.

References:

Interview with anonymous source

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorneys fees greatly discourage the use of the appeals process.

78. Do judgments in the criminal system follow written law?

25

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | **25** | 0

Comments:

According to the UNDP, one of the biggest human rights challenges facing Tunisia is the violation of fair trial provisions, especially in political and security trials. This takes the form of referring civilians to military courts which increased dramatically after the Jerba terrorist incident. Other forms include holding criminal trials for political activists that witness gross violation of criminal procedures, such as holding trials without the presence of lawyers, ignoring defendants claims of having been tortured, and passing sentences based on confessions taken by force or on statements by witnesses who never encounter the defendants in court. Since 2005, the government accused more than 200 young Tunisians of planning to join "Jihad" movements abroad or to carry out terrorists acts inside Tunisia. Most defendants claimed that the police took their confessions under torture or the threat of torture. The courts gave long jail sentences to many of those defendants based on loose charges of terrorism, however according to Human Rights Watch none of the defendants were convicted for committing a concrete act of violence or for possessing arms or explosives."

The Cairo Institute for Human Rights echos the UNDP report again citing the use of forced confessions in the courts and the broad use of the Anti-terrorism Act to silence political opponents.

References:

UNDP Arab Human Rights Index <http://www.arabhumanrights.org/en/countries/humanrights.asp?cid=20>

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. Are judicial decisions enforced by the state?

25

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

Many court decisions are not carried into effect especially when they are judgments involving government or persons close to the President family or the government.

References:

interview with anonymous source

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

56

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

Comments:

In law, the Judiciary is independent but judicial appointments are made by presidential decree based on the recommendation of the Higher Magistracy Council.

References:

Constitution of Tunisia Chapter IV Article 65- 67

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The executive and legislative branches exercise increasing power over the judiciary.

For example, in May 2006, the legislature passed a measure requiring new lawyers and judges to attend mandatory training. The UNDP reports that this program tightened government control over the training and licensing of lawyers, regardless of the lawyers syndicate's remarks or suggestions."

The International Commission of Jurists reports: "Lawyers are frequently subjected to violence as a direct consequence of criticizing the government. Intimidation of lawyers and their clients has increased over the past two years. The government interfered with international monitoring. The situation of the judiciary remains critical. The adoption in July 2005 of the Law reforming the organization of the judiciary wrecked the aspirations of judges and prosecutors for independence and transparency in their profession. Until two years ago, the judiciary acted as a tool of government oppression. Since then, lawyers and judges have gradually asserted their wish to be independent of the executive. In response, the government has hardened its policy towards judicial institutions and has openly persecuted lawyers."

Many judges are combating for the independence of the judiciary. They call to change the High Judiciary Council law to guarantee the independence of the judiciary according to the international standards.

References:

Tunisia." Freedom in the World 2008. Freedom House. <http://www.freedomhouse.org/template.cfm?page=22&country=7507&year=2008>

UNDP Arab Human Rights Index <http://www.arabhumanrights.org/en/countries/humanrights.asp?cid=20>
International Commission of Jurists. Press Release July 2008. [http://www.icj.org/news.php3?id_article=4355\)=en](http://www.icj.org/news.php3?id_article=4355)=en)
<http://tunisiawatch.rsfblog.org/archive/2007/10/20/l-association-des-magistrats-tunisiens-demande-la-levée-de-l.html>

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

Comments:

Sensitive cases are given to judges close to the government and the ruling party. Critics argue that some judges of the High Court (such as Fathi Ben Youssef) are too close to the authorities. Generally these pro-government judges are given political opponents' cases by the Court President. There is no law defining how cases should be distributed.

References:

There is no system in law.

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

Comments:

This is not the reality in practice.

References:

According to Law n° 29-1967 of July 14th, 1967 (art.55 and 58); the Supreme Council of Justice guarantees the judges' rights when their cases are viewed by the discipline commission.

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

During the last year no judges have been harmed or killed because of adjudicating corruption cases.

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

During the last year no judges have been harmed or killed because of adjudicating corruption cases.

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

61

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:

Decisions are not affected by racial bias.

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | **50** | 25 | 0

Comments:

From Freedom in the World 2008: One of the few areas in which Tunisian authorities have been more progressive is women's rights. Tunisian women enjoy many more social freedoms and legal rights than their counterparts in other Arab countries. The 1956 Personal Status Code grants women equal rights in divorce, and children born to Tunisian women are automatically granted Tunisian citizenship."

However, the International Commission of Jurists recently denounced efforts surrounding women's legal rights in Tunisia, citing a "lack of progress in ensuring women's equality, especially in relation to safeguarding their marital and family rights."

References:

Tunisia." Freedom in the World 2008. Freedom House. <http://www.freedomhouse.org/template.cfm?page=22&country=7507&year=2008>

International Commission of Jurists. Press Release April 2008. http://www.icj.org/news.php3?id_article=4286&lang=en

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

Code of Penal Procedure (Law n°23-1968 of July 24th, 1968; art.141).

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

Human Rights Watch reports: The suspect has no right to see a lawyer or anyone else during the period of garde–vue police detention, which Tunisian law limits to six days.[62]

When the police transfer the suspect from garde–vue detention to the investigating judge, the latter is obliged to immediately inform him of his right to an attorney, and a corresponding right to refuse to answer questions without a lawyer present.[63] Unless the defendant explicitly renounces this right, the investigating judge may not, according to the law, question the defendant without his lawyer present.[64] According to human rights lawyers handling terrorism-related cases, however, the investigating judges often question defendants in the absence of their lawyers[65] and without the lawyers being properly notified of the hearing. Defendants also frequently claim that they were not told of their right to a lawyer at this stage of the proceedings.

Although Tunisian law limits garde–vue detention to six days, many detainees report being held much longer.[66] This illegal prolongation of garde–vue allows the police more time to interrogate the detainee and also for visible evidence of abuse to fade before his lawyer or the investigating judge sees him.”

References:

Ill-Fated Homecomings” Human Rights Watch. September, 2007. http://www.hrw.org/en/node/10739/section/5#_ftn62

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

It is expensive.

References:

Interview with anonymous source.

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorneys fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorneys fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

It is difficult for small businesses to bring a legal suit because of the financial burden.

References:

Interview with anonymous source.

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorneys fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

Geographic distance is not a problem for citizen access to the courts.

As UNDP POGAR describes it: The civil court system is composed of a four-tiered hierarchy of courts. At the base of the structure are the 51 District Courts, in which a single judge hears each case. The jurisdiction of the District Courts extends to civil cases of lesser value, as well as cases related to issues of labor and nationality. At the next level are the Courts of First Instance, which serve as the appellate courts for the District Courts. There is a Court of First Instance located in each region of Tunisia, and these are empowered to hear all commercial and civil cases, irrespective of the monetary value of the claim.”

References:

UNDP POGAR Democratic Governance Profile- Tunisia <http://www.pogar.org/countries/theme.asp?th=9&cid=20>

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

17

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

References:

Appointments are made after investigation. Mainly candidates supported are kept. But the President family members can interfere in the appointment process.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | **50** | 25 | 0

References:

Many of the citizen complaints about police stations and police officers are due to the lack of resources allowing officers to do their work efficiently.

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | **0**

Comments:

The police forces is highly politicized. Appointments are made according to political considerations and the agency is highly influenced by the President.

References:

Police is used against the opponents and human rights activist:
http://www.fidh.org/Liberation-de-M-Dhafer-Otay-et?debut_visite_commpress=20

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

42

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | **NO**

References:

There is no independent mechanism. Citizen can complain to the Attorney General but generally without impact.

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

There is no a determined period.

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

The Ministry of the Interior oversees law enforcement.

The U.S. State Department reports: The MOI's Higher Institute of Internal Security Forces and Customs has oversight of law enforcement officers in the ministries of interior and customs. The organization's stated mission was to reinforce human rights and improve law enforcement; however, no information was available about its operations, and no information was available about any punishment of police and prison guards."

References:

Tunisia Government Website: <http://www.ministeres.tn/html/indexinsttit.html>

2008 Report on Human Rights Practices: Tunisia. U.S. State Department. <http://www.state.gov/g/drl/rls/hrrpt/2008/nea/119128.htm>

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

There have been many cases of this covered by newspapers during the last few years.

References:

There is no specific mechanism for this however the courts investigate if cases arise.

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

While there are no special rules exempting police for being prosecuted for misconduct, in practice the Tunisian police have been long criticized for human rights abuses and torture and have rarely been held to account.

References:

Tunisian Code of Criminal Procedure

AlKarama for Human Rights statement on the Council on Human Rights' April 8, 2008 meeting to carry out the Universal Periodic Review (UPR) on Tunisia (issued Nov. 20, 2007): http://en.alkarama.org/index.php?option=com_content&view=article&id=68:tunisia-the-council-on-human-rights-will-examine-the-situation-of-human-rights&catid=37:communiqu&Itemid=204

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

The U.S. State Department reports that police officers often act with impunity as dictated by their superiors in the force. An example of this from the 2008 Human Rights Practices report: There were no developments in the 2006 case of Tarek Ayari, allegedly killed by Bechir Rahali, a Tunis police chief, who hit the victim on the head with the handle of a pickaxe."

Prison security guards generally enjoy immunity surrounding the use of torture to extract confessions out of prisoners. The Cairo Institute for Human Rights Studies cited an example of this in its annual report on human rights in the Arab Region: "Human rights activist, Zakia Difawy, member of the Kairawan Branch of the Tunisian League for the Defense of Human Rights, and a member of Association for Combating Torture in Tunisia (ALTT), was subjected to sexual harassment and threatened with rape during her detention at a police station in the Gafsa governorate, in the South of Tunisia. During her trial on July 29, 2008, the judge refused to record her complaints about the threats she received. Difawy was arrested together with others as she participated in a women's protest in solidarity with the mining basin area people against security suppression."

Human Rights Watch reports: "The Tunisian judiciary is complicit in the practice of torture by ensuring impunity for its practitioners. Tunisian human rights lawyers and organizations report that, with rare exceptions, the courts admit into evidence

statements that were coerced, and fail to act on the ample evidence before them that the police tortured detainees and violated many provisions of Tunisian law that are designed to protect the rights of persons in custody. We know of no case of a Tunisian state official or agent being held accountable for torturing persons held for politically motivated offenses. According to the US State Department Country Reports on Human Rights Practices covering the year 2006, "[Tunisian] authorities did not charge any police or security force official with abuse [of detainees] during the year."

References:

Ill-Fated Homecomings." Human Rights Watch. September, 2007. <http://www.hrw.org/en/node/10739/section/5>

The Cairo Institute for Human Rights Studies. Annual report on human rights in the Arab Region. <http://www.cihrs.org/Images/ArticleFiles/Original/382.pdf>

2008 Human Rights Practices Report: Tunisia. U.S. State Department. <http://www.state.gov/g/drl/rls/hrrpt/2008/nea/119128.htm>

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.
