

IS CIVIL SOCIETY IN TUNISIA UNDER THREAT? FACT-CHECKING THE ARGUMENTS FOR A NEW NGO LAW IN TUNISIA



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Since the 2011 revolution, Tunisia has enjoyed the most progressive and democratic legal framework for civil society in the Arab world. **Decree 88**, the 2011 law that governs civil society organizations in the country, properly regulates—rather than restricts—NGO activities. The International Center for Not-for-Profit Law (ICNL) **notes** that Decree 88 “provides broad protections for the exercise of freedom of association and support for a free and independent civil society sector, including provisions for public funding and prohibitions on state interference in organizations’ operations.” As a result, civil society has flourished.

The government, however, is preparing a new law to replace this decree. A draft is not yet publicly available, but based on their dialogue with the government Tunisian civil society activists worry that the legislation will roll back associational freedoms. The Tunisian government has presented various arguments for why it must issue a new NGO law, while many Tunisian activists question the need for such a change and view the replacement of Decree 88 as a pretext for curbing hard-won rights. A new law would also disrupt the work of the many international organizations operating in Tunisia since 2011, particularly if there are new restrictions on foreign funding. POMED’s analysis concludes that several of the Tunisian government’s claims are questionable, while others represent legitimate concerns that can be best addressed through measures outside of amending Decree 88.

The Government Says...

The current registration process is excessively bureaucratic; creating a digital platform would simplify the process, but would require amending Decree 88.



We want to increase public funding for NGOs, but this would require a new law enhancing the government’s ability to monitor such grants.

The concerns of civil society about a new NGO law are baseless; any new legislation will fully respect associational freedoms.

Decree 88 does not have the same force as a law because it was issued by the transitional government. Therefore, a new organic law—a law directly supplementary to the constitution that organizes the powers of the state—is required.

We do not have the appropriate legal tools to combat terrorist financing and money laundering.



In Reality...

Decree 88 does not mandate a specific process for registering an association, but simply indicates what documents are required and to whom they must be addressed. While the current process is heavily bureaucratic, involving at least three different government institutions, a digital platform could be created without making any alterations to Decree 88.

Tunisian law already provides mechanisms to improve the oversight of public grants to civil society organizations, but the government has yet to implement them. For example, Articles 6-13 of **Decree 5183**, which governs the public funding of associations, establish a transparent and competitive system for awarding government funding to civil society organizations. Separately, the government could develop more rigorous accounting standards for NGOs, which would strengthen fiscal monitoring without infringing on their ability to operate.

As it prepares a new NGO law, the Tunisian government has already put forward separate **legislation** that would require associations to re-submit their registration paperwork online and authorize prison sentences of up to five years for errors during the registration process. The imposition of jail time for administrative mistakes related to NGO activities obviously is antithetical to the principles of a democratic transition.

According to Tunisian constitutional experts and a 2016 administrative court ruling, Decree 88 has full standing in the Tunisian legal system; that the decree was issued by the post-revolution transitional government does not diminish its validity. The Independent High Authority on Elections (ISIE), for example, was established in 2011 under the same procedure as Decree 88, but the government has not questioned ISIE’s constitutionality. Even if Decree 88 did not possess full legal standing, the parliament could rectify its status simply by passing a bill converting the decree into an organic law. In other words, there is no need to reopen the decree’s text in order to change its status.



Tunisian law already gives the state a plethora of mechanisms to fight terrorist financing and money laundering, but **better enforcement** is needed. Article 4 of Decree 88 prohibits NGOs from “incitement for violence, hatred, fanaticism, or discrimination on religious, racial or regional grounds,” as well as “distributing monies to their members for personal benefit or exploitation of the association for tax evasion purposes.” Article 45 provides for the suspension or dissolution of any NGO that violates these prohibitions.

Outside of Decree 88, Tunisia has a comprehensive legal framework to address terrorism and money laundering, including the 2015 **anti-terrorism law**. If additional legal authorities are needed, the government could amend this law, something already under discussion in parliament. It also could strengthen the Tunisian Financial Analysis Commission (CTAF), the financial intelligence unit headed by the governor of the Central Bank.

* POMED has an office in Tunis and is registered under Decree 88.