

## **HUMAN RIGHTS IN TUNISIA: DILEMMAS FOR THE EUROPEAN UNION**

**EMMA C. MURPHY**

The European Union has repeatedly expressed its concern that the Southern Mediterranean Partner states (SMPs) should promote and protect human rights as defined by the United Nations Declaration of Human Rights and as recognised by those states in the Barcelona Declaration of 1995. Europe's concern is both normative, expressing a principled belief in the universal applicability of the human rights discourse, and pragmatic in so far as human rights and democracy are seen as necessary correlates of economic reform and development. In 1996 an Association Agreement came into effect linking Tunisia and Europe through a series of economic, security and political "baskets", or common agendas. Human rights and democratisation were seen by Europe to be a fundamental condition of economic assistance and the opening of European markets to Tunisian products. Yet, despite its own claims to have significantly advanced the human rights agenda in Tunisia, and to have introduced a level of political pluralism unseen since independence, the Tunisian regime has come under consistent attack from human rights organisations and even the EU itself for its own human rights abuses and for the increased centralisation of political power. This paper examines the accusations levelled against Tunisia, and the Tunisian regime's defence, through the lens of Tunisian political history. The case raises important questions for the EU in terms of the ambiguities and inconsistencies in its own policies and policy-making processes.

### **1. Introduction**

The European Union has shown an increasing concern since the mid-1980s with the human rights of both its own inhabitants and those of the countries with which it trades. The preamble of the Single European Act included a statement to the effect that the promotion and protection of human rights was a cornerstone to the international relations of the European Union, a reference repeated

in the Lomé IV Convention of 1989. In 1991, human rights were linked to the issue of democracy in the Declaration on Human Rights by the European Council of Luxembourg (28-29 June) and again in the Council's Resolution on human rights, democracy and development (28 November).<sup>1</sup> The Treaty of the European Union itself introduces human rights and respect for democratic norms and the rule of law as fundamental requirements for EU membership and guiding principles of collective activities. Not surprisingly then, human rights found their way into the Barcelona Declaration of 1995, with all EU members and the southern Mediterranean partner states (SMPs) committing themselves to act in accordance with the United Nations Declaration on Human Rights, the United Nations Charter and the principles of international law. Subsequent association agreements between the EU and SMPs included a political basket, part of which demanded the promotion and protection of human rights. Again, the linkage was made between the desirability of democratisation in SMPs, and the need for them to advance the human rights agenda within their own countries. The advocacy of democracy as a preferable mode of government stemmed from two sources: firstly, a normative belief in the ethical and humanist supremacy of that form of government; and secondly from the modernisationist understanding that liberal and transparent forms of governance are necessary for the efficient working of a market economy. Within this context, advocacy of human rights also assumes a dual function.

Tunisia reached such an agreement with Europe in 1995, which subsequently came into effect in 1996. At the time Tunisia was still reeling from the often violent assault by the regime on the Tunisian Islamist movement, known as *Nahda*. In rhetoric at least, however, the regime remained committed to a programme of democratisation, which included the promotion and protection of human rights. Enough reforms had been made to the political system for the EU to take the Tunisian intention seriously, and the issue of political

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<sup>1</sup> For more details see Laura Feliu, "Human Rights and the Barcelona Process", in Fulvio Attinà and Stelios Stavridis (eds), *The Barcelona Process and Euro-Mediterranean Issues From Stuttgart to Marseille*, (Milan: Università di Catania), 2001, pp.67-95.

conditionality did not hinder either European or Tunisian ratification of the agreement. Since then, however, Tunisia's human rights record has appeared to deteriorate rather than improve. The military, security and judicial services have been accused of acting for political purposes to harass, persecute, torture and illegally imprison opposition figures and human rights activists in an effort to defend the position of the present regime. Indeed, Tunisia now figures regularly in the reports of international human rights organisations such as Amnesty International and Human Rights Watch. The list of reported violations of human rights is long: from torture, beatings and illegal imprisonment, to harassment, surveillance, the criminalisation of free speech, denial of appropriate legal representation, prolonged isolation, poor prison conditions, social and economic exclusion, and even extra-judicial killings.<sup>2</sup>

Similarly, progress towards democratisation appears to have stalled. While piecemeal reforms have allowed opposition party representation within the National Assembly, improved state funding for legal political parties, and even competition for the office of president, the reality of legal and political structures obstructs any real possibility for power-sharing, let alone the transfer of power. Indeed, power has become ever more concentrated in the hands of the president himself, and his close circle of friends, family and advisers. In September 2001 he even felt sufficiently comfortable with his grasp over the system that he put forward a programme outlining his plans for a fourth, constitutionally illegal, term of office.

Critics of the regime, both within and outside Tunisia, have repeatedly questioned why, given the terms of the Association Agreement, the EU has not been more vocal in its condemnation of their clear violation by the Tunisian government. Indeed, the European Parliament has proved remarkably resilient to pressures from INGOs and Tunisian NGOs to rebuke the Tunisian regime or, preferably, to apply sanctions against it. This article attempts to provide an answer to this question by examining the regime's defence of its actions and the EU's response to that defence. It examines the issue of human rights in Tunisia within the context of Tunisia's

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<sup>2</sup> See for example, *Human Rights Watch Annual Report on Tunisia 1999*, available on the web at <http://homepage.ntlworld.com/chrtunisia/reports/hrw1999.htm>.

political development, most particularly since the constitutional coup of 1987 that led the current president, Zine el Abidine Ben Ali, to take office. The paper highlights the dilemmas which the EU faces in applying judgement against regimes of SMPs, as well as the contradictions at the heart of the EU position. The regime's defence lies in three arguments: that it has taken a proactive role itself in promoting the culture and institutions that defend human rights and that these take time to take root in developing political societies; that the definition of human rights needs to include economic and social rights that may have to take sequential priority in countries at risk of political and economic destabilisation; and that the international human rights community is either deliberately or unwittingly intervening in Tunisia's domestic politics, which remain the sovereign preserve of the Tunisian state. All these arguments, and the counter-arguments posed by human rights organisations, pose significant dilemmas for the EU which have not been addressed by the Barcelona framework.

## 2. Tunisia under Bourguiba

The Bourguibist era, from independence in 1956 until his removal from office in 1987, was one dominated by the processes and problems of state-building. For our purposes, it is important to briefly reflect back upon this earlier period for a number of reasons, one of which stands head and shoulders above the rest. Bourguiba presided over the establishment of a single-party state which, despite its rhetoric, was devoid of genuine democratic structures and which promoted a political culture in which consensus around the politics and machinery of the state was elevated to the position of *the* prime national political virtue. Challengers to that orchestrated consensus were considered to be threats to both national security and the state-building process and were subsequently eliminated by either co-optational or repressive measures. Within the ruling party different trends emerged; a leftist or socialist grouping which lost its momentum after the decline of Ahmed Ben Salah; a liberal social-democratic trend represented by disaffected individuals within the party élite; and a bureaucratic party "old guard" that defended its privileges at all costs, resisting political reforms or economic rationalisations that might have damaged its capacity for distributing patronage. Competition between these trends was limited by

Bourguiba's personal refusal to elevate any individual who might represent a particular trend to the position of appointed successor. When individuals sought to challenge Bourguiba's personal political domination or that of the ruling Neo-Destour/PSD party, they were forced to do so from exile (such as Ahmed Mestiri – founder of the *Mouvement des Démocrates Socialistes*) or to risk imprisonment and even assassination.

National organisations, such as the main trade unions, faced similar constraints. Union leaders, like Habib Achour, who confronted the regime over its economic failures, found themselves replaced, harassed and even imprisoned. When they tried to develop associational identities and agendas that placed them at odds with those of the ruling party, they were rapidly disempowered. In instances (such as the January 1978 riots) when union members took to the streets to demonstrate in favour of their leaders, they found themselves under attack from riot police and even the army. In that case, the regime went so far as to declare a state of emergency and to subsequently sentence Achour and 30 of his UGTT colleagues to harsh prison terms.

In sum, the nature of Bourguiba's rule frustrated efforts by individuals and associations to develop a fully-fledged civil society. It also established the police and military as tools by which the regime could use coercive measures to contain political challenges. Military tribunals and a state security court (established in 1968) were used by the regime to by-pass the "independent" judiciary and the list of "political crimes" became progressively longer, with the prisons being filled with Ba'thists, leftists, liberals, unionists and eventually Islamists.

The final years of Bourguiba's presidency were marked by an escalation of the tensions between state and civil society. Efforts to introduce austerity measures, including a hike in the price of bread, brought a week of rioting through much of the country. Economic crisis and political alienation combined to lend support to a growing Islamist movement that had already been fomenting disturbances throughout the early eighties. For Bourguiba, Islamism was an absolute anathema, and he proved to be ruthless in his efforts to eradicate it from the Tunisian political arena. For the third time in six years, the army was brought in to quell the riots. Opposition newspapers were closed, union leaders were arrested and Bourguiba began a near-rabid pursuit of the Islamist *Mouvement de la Tendance*

*Islamique* (MTI). The opposition began finally to coalesce around the two issues on which they all – leftists, liberals and Islamists, could agree; the need for political reforms and the defence of human rights.

In 1986 and 1987, the campaign against the Islamists intensified, with a series of mass arrests and show trials, leading to long-term imprisonments and – in some cases – to the death penalty. Bourguiba, determined to wipe out the Islamist challenge once and for all, sought to increase the number of execution orders, but his ministers – most prominent of whom was the prime minister, Zine el-Abidine Ben Ali, sought to restrain him for fear of the public response to such disproportionate measures. On 6<sup>th</sup> November 1987, Bourguiba was removed from office in a coup d'état, and Ben Ali took his place, claiming that the constitution required that Bourguiba, who had been declared mentally unfit to hold office by a group of doctors, be replaced.

### **3. Political reform under Ben Ali**

It was clear to Ben Ali that Bourguiba had gone too far in his imposition of the state upon society. The national consensus had effectively disintegrated and the state itself had become the common enemy. Ben Ali realised, therefore, that to reconstruct the national consensus he would have to promise political reforms that would restore the balance to the state-civil society relationship. He consequently immediately abolished the presidency-for-life, and committed his regime to the restoration of constitutional government and the revision of that government to accommodate political pluralism, democratic government and respect for human and political rights. Prominent political prisoners were released, exiled opposition figures were invited to return, press rules were relaxed, amnesties were granted to thousands of other prisoners and suggestions were made that the state security court would be abolished.

Political reform was to proceed along a number of paths. Firstly, the PSD itself was to be reformed to broaden its popular base and revive internal democratic structures. Secondly, a national dialogue was initiated with the still-illegal opposition parties (including the Islamists) to revive the national consensus and determine the new direction for the state. Finally electoral system

reform would introduce political pluralism and democracy into government.

Nearly fifteen years later, we can assess the results of the reforms subsequently undertaken. The results are profoundly discouraging since early optimism that Tunisia would democratise has turned into the disenchanted realisation that Ben Ali's Tunisia is becoming both more authoritarian than its predecessor and more capable of imposing that authoritarianism.

The PSD was renamed the *Rassemblement Constitutionnel Démocratique* (RCD), reflecting an abandonment of previous socialist commitments and a supposed new affinity to democratic practices. The sidelining of the older generation of party die-hards opened new career paths for an ambitious younger generation that held no emotional attachment to the Bourguibist legacy and could adapt itself to the modern economic outlook of the Ben Ali regime. A massive recruitment drive based on promises of internal reform did succeed in enlarging and reviving the party, but manipulation of the party structures also subordinated it to the presidency. The introduction of multi-party politics has served to contain the political hegemony of the party, transferring that attribute to the president and his immediate circle.

The national dialogue resulted in the 1988 National Pact, a document which committed all the agents of government and civil society to a common vision of a democratic, constitutional political system. It served to prevent the opposition from taking advantage of the economic crisis or the initial vulnerability of the new regime, co-opting them into a common vision that was then entrusted to the state for implementation. Those parties that pursued a vision in any way different from the one claimed by Ben Ali, notably the Islamists, were deemed to have fallen outside the consensus and to be dangerously divisive. Thus the MTI did not join the list of political parties legalised in 1988. Since it was the only organisation that could genuinely claim any mass popular support, the National Pact had effectively served to legitimise an order in which the only opposition allowed was that which presented no opposition.

Electoral reform has been equally disappointing, although the government can justifiably claim that Ben Ali's regime has seen the first introduction of multi-party politics into Tunisian political life post-independence. The legalised opposition parties are weak and largely ineffective due to a number of factors. Firstly, they either

have their roots in the now largely debunked ideologies of communism and socialism or in the personal power-bases of individuals who withdrew from the Neo-Destour/PSD at some time during the Bourguiba era. They can often draw on only regionalised support, and their credibility had been seriously damaged by a tendency on the part of their leading figures to accept posts within the RCD government in order to advance their personal ambitions. They present no real ideological or practical alternatives to the government and are so financially weak that they could not communicate any such platforms to the mass of the population even if they did have. The government has introduced an element of state funding for legal opposition parties that does help them to gain access to the media and to develop their (weak) organisational structures, but equally makes them indebted to, and dependent on, the government for their survival. At times, the opposition parties have even appeared ridiculous, tearing themselves apart over internal divisions that amount to little more than competition for places on party electoral lists. In the 1999 national elections, two parties offered candidates for the presidential elections (Mohamed Bel-Haj Amor of the *Parti de l'Unité Populaire* and Abderrahmane Tlili of the *Union des Démocrates Unionistes*) but neither offered a political agenda that differed from Ben Ali's. Their claim that standing for the presidency when they clearly couldn't win was part of the strategy of putting pressure on the regime to reform rather collapsed when Tlili suggested that he couldn't do the job any better than Ben Ali.

Piece-meal reforms to the electoral system have failed to challenge RCD dominance, although they have allowed for a minority opposition voice in the legislature. The effect of this is marginal since power rests principally with the presidency, and opposition representation in parliament has been reduced to a co-opted and rubber-stamping role. The fact that the regime has "reserved" a minority proportion of seats for the opposition is indicative of these weaknesses although the regime would like to portray it as evidence of a commitment to plurality. In municipal elections the opposition parties have only been able to field candidates for a small percentage of seats, due to both financial and organisation constraints as well as a lack of a national support base. Thus the RCD continues to be the distributor of state patronage around the country and beyond the confines of urban centres like Tunis.

The Islamists, meanwhile, who were the only political grouping



able to mobilise a mass popular base, were refused legal status on the basis that their Islamic platform was potentially divisive through its mixing of religion with politics. Despite repeated proclamations that an Islamic party would be committed to democracy, the government decided that this represented mere opportunism on the part of the Islamists. Islamist candidates nonetheless stood as independent candidates in the 1989 elections, winning at least 13 per cent<sup>3</sup> of the votes. Frustrations over their failure to have a clear electoral success translated into any official recognition fuelled a militant wing of the Islamist movement, just as events in neighbouring Algeria were serving to strengthen regime (and popular) opposition to allowing Islamists a political role. The Iraqi invasion of Kuwait and subsequent American-led war against Iraq led Islamist leaders like Rachid Ghannouchi to fiercely defend Iraq while bitterly railing against the Saudi and Kuwaiti regimes for consorting with infidel armies against a Muslim brother state. The Tunisian regime, aware that it might too become a target for such criticism and conscious also that Gulf investment finances were at risk, used the occasion to turn against the Islamists, arresting and imprisoning both leading figures and suspected members of the Islamist movement, now renamed *Nahda*, by the hundreds. The regime claimed that the Islamists were responsible for a number of violent attacks and demonstrations and that they planned a violent coup that would install an Islamic government. The Islamists and their supporters responded by accusing the government of taking the opportunity to demolish the only real opposition in Tunisia. They claimed that Islamist prisoners were tortured, that trials were held in secret, that prisoners had no access to appropriate legal support, that verdicts were politically motivated, and that the regime abused the legal system in order to secure convictions. By 1993 Amnesty International claimed that there were around 8,000 political detainees in Tunisia, while Islamists put the figure closer to 30,000.

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<sup>3</sup> The Islamist party, which had by then renamed itself as *Nahda* has claimed that it actually won closer to 20 per cent of the votes but that this was disguised by electoral fraud on the part of the regime. The regime meanwhile won all 141 seats, while the legal opposition managed to win less than 5 per cent of the total votes.

The attack on the Islamists was accompanied by a new wave of media repression. The press had enjoyed a honeymoon with Ben Ali until this time, with an easing of press restrictions and an apparent rejection of the sycophancy that had marked media coverage of the presidency under Bourguiba. In 1991, however, newspapers were once again seized, journalists harassed (or in the case of foreign journalists expelled), newspaper offices were attacked, searched and closed, and accreditation and passports were withdrawn from those who dared criticise the government. This feature of the country has remained true until this day. Although the regime has made a particular effort in recent years to stress its desire to see a more professional and less acquiescent press in Tunisia, amending the press code to that effect (at least to some extent), the reality of its actions has led to stringent self-censorship on the part of the media. International journalist's organisations such as the Committee to Protect Journalists have "named and shamed" the regime, which nonetheless continues to argue that the sheer number of publications available in Tunis, and the international origin of many of those publications, demonstrates a greater openness to the press than the government is credited with. The issue has become more sensitive still since the attempted assassination of the journalist, Riad ben Fahdel, in May 2000, just days after he published an article critical of the president. A still more recent example is the harassment by the regime of the human rights activist, Sihem Bensedrine, who took part in an al-Jazeera television programme in which she highlighted human rights abuses by the Tunisian regime. She subsequently had her telephone tampered with, received threatening and obscene calls, and was detained by the police for a number of days. She still faces trial on defamation charges. The regime subsequently organised a televised discussion on issues of democracy, human rights, press freedom and the role of the judiciary. This was presented as a watershed in how the state television will cover political issues, but the fact remains that genuinely independent journalists are easy prey for the regime.

Once the Islamists had been forced into deep cover by the brutal wave of repression, the regime appeared to turn on the secular opposition. Given the relative docility of that group, many observers have been hard pushed to explain this feature of the regime. It may lie partly in the fact that a number of the more prominent liberal opposition figures have played significant roles in the development

of the human rights discourse in Tunisia. Some, like Ahmed Mestiri, Moncef Marzouki, Khemais Ksila and Mohamed Moadda of the MDS have played leading roles in the *Ligue Tunisienne des Droits de l'Homme* and more lately in the Tunisian National Council for Liberty. Individuals like these have become the vanguard of struggles to get the regime to honour its commitments to democracy. Like many others, they have all been repeatedly arrested, detained, tried and imprisoned on charges such as belonging to an illegal organisation, defamation, working for a foreign (Libyan) government etc. Their crimes have been to publicise the human rights abuses within Tunisia and to publicly criticise the regime for them, and to call upon it to implement the genuine political reforms that were promised in 1987 that would lead to democratisation and the rule of law. Given the weakness of established political opposition parties, and their inability to make any significant dent in the regime's control over the political arena, such individuals have challenged the regime through human rights and civil liberties organisations. These have the benefit of drawing support from across the political spectrum, putting Islamists, liberals and communists into common cause. Moreover, they draw greater international attention and support. Finally, they engage in a discourse which the regime is hard-pushed to de-legitimise. Indeed, the regime claims that it too stands for democratisation, pluralism and human rights so its efforts to discredit or undermine these organisations are that much harder to sustain. That has not, however, meant that it has given up trying!

In 1992 the regime tried to use the then-new Law of Associations to control the membership of the LTDH. Among other things, this would have prevented members of political parties from joining the organisation, depriving it of its political leadership. Although the government was in that instance forced to back down, the LTDH leadership was eventually replaced by a more moderate group which felt that they could only continue their work defending human rights if they lowered the level of confrontation with the regime. The more political personalities refocused their attention on the *Comité National pour la Défense des Prisonniers d'Opinion* (CNDPO) formed by Moncef Marzouki and later the National Council for Liberty in Tunisia (CNLT), formed in 1998. The organisation nonetheless soon found itself once more at odds with the regime. The Fifth Congress of the LTDH, held in October 2000, resulted in the election of a more independent leadership. In December, four LTDH members

with links to the government challenged the validity of the Congress election results, a challenge that was upheld in February 2001 by the second chamber of the Court of first instance. The court declared that a new Congress should be held at which a new executive committee should be elected and that the LTDH was to be placed under judicial administration. The offices of the League have been closed down. Simultaneously the members of the now-dissolved LTDH leadership have been harassed, beaten, threatened, arrested and detained. Likewise, members of the unrecognised CNLT have been arrested, tried and sentenced for membership of an illegal organisation. Its spokesman, Moncef Marzouki, has for example been sentenced to one year imprisonment for allegedly "spreading false information" and "maintaining an unauthorised association". The CNLT offices and the homes of its members have been surrounded by police a number of times. Meetings have been banned, and individuals have been physically prevented from attending them.

Under particular attack from the regime have been lawyers who have defended what they consider to be political prisoners. Some, like Najib Hosni, have been imprisoned under charges of unauthorised legal practices (read, defending Islamists). Others, like Naziha Boudhib, claim they have been physically assaulted by security agents. Nejib Hosni was banned by the courts from practising law and, when he ignored the ruling, was imprisoned. Anouar Kousri, a vice-president of the LTDH, found himself under surveillance when he defended a young man who subsequently died in police custody.

Not surprisingly the Tunisian regime is drawing ever-stronger criticism for its performance in the human rights domain. Amnesty International still claims that there are over a thousand political prisoners in Tunisia, subject to "cruel, inhuman and degrading conditions"<sup>4</sup> that regularly include torture. Even when released, they are subjected to routine and arbitrary measures that prevent them from working or earning a living, from moving freely within or out of the country. The courts clearly fail to protect the human rights of

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<sup>4</sup> Amnesty International, *The Authorities Must Put an End to Widespread Human Rights Violations*, Statement issued on the occasion of the opening of the Mediterranean Games in Tunis on 2<sup>nd</sup> September 2001.

individuals and the security apparatus appears to be beyond the law and subject to no public accountability whatsoever.<sup>5</sup>

#### 4. The case for the regime

The Tunisian government does not recognise the dismal picture drawn by the international human rights organisations. Instead, it organises its defence along four lines. Firstly, it has itself acknowledged that defending the human rights of its citizens is one of the primary obligations of the state. To this end, it has introduced a number of measures and institutions designed to advance the observance of human rights by the state. Secondly, the regime has been at pains to advance a broad definition of human rights that includes economic and social rights. When their attainment for the majority of citizens has been at the expense of the political rights of a few “troublesome” or “subversive” individuals, then the regime has claimed that this is a legitimate, even necessary, price to pay. Thirdly, the regime has argued that the international human rights organisations have fallen victim to the political machinations of the opposition in Tunisia, not least the Islamist opposition, who seek to pull down the regime and who make false accusations that draw international criticism as part of their strategy. Finally, the regime has argued that its own domestic politics are really none of anyone else’s business. When the EU in particular has been drawn into the debate, the Tunisian government has strongly rejected its claim to a right to intervene.

##### 4.1 *The regime defends human rights*

The Tunisian regime can certainly point to the long list of measures that it has introduced to advance the status of human rights in its list of priorities. On the official Tunisian web site,<sup>6</sup> human rights are listed at the top of the agenda, with a statement

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<sup>5</sup> For more information on human rights abuses in Tunisia see <http://web.amnesty.org/ai.nst>; (Amnesty International webpage); <http://homepage.ntlworld.com/chrtunisia/reports> (Human Rights Watch webpage); [http://www.state.gov/www/global/human\\_rights](http://www.state.gov/www/global/human_rights) (State Department Country reports on Human Rights).

<sup>6</sup> [www.Tunisiaonline.com](http://www.Tunisiaonline.com)

to that effect on the very first page, next to the commitment to democratic forms of government. A dedicated page on human rights lists twelve realms in which the state has taken action to promote human rights, ranging from civil and political rights, through the spectrum of economic and social rights, to its relations with human rights organisations and international conventions. In terms of civil and political rights, one of the first actions taken by Ben Ali as president in 1987 was to abolish the State Security and Emergency Courts, as well as the State Prosecutor's Office. He also created a Constitutional Council to review constitutional matters and make recommendations. A 1998 amendment to the relevant act made the decisions of this body binding on powers and authorities. In 1989, and in line with the ratification of the United Nations Convention Against Torture, forced labour was abolished, as were rehabilitative and civil labour in 1995. The system of administrative justice was reformed in 1995 and in 1987 and 1993 amendments were made to the penal procedures to improve the system of penal custody and preventive detention. The period for which a detainee could be held was reduced to three days, renewable once. In 2000 the President announced that the administration of penitentiary and re-education centres would move to the Ministry of Justice, together with the establishment of a new judicial framework relating to custody and preventive custody ensuring the detainee judicial protection

More proactive activities have included the creation of a new post, that of Minister-Delegate to the Prime Minister in Charge of Human Rights, Communications and Relations with the Chamber of Deputies. Ben Ali also established a Higher Committee for Human Rights and Fundamental Liberties in 1991, which makes suggestions for the improvement of human rights observance in the country.<sup>7</sup> The president of this committee presents an annual report to Ben Ali on the situation in the country, with recommendations. Human Rights Units have been established in the Ministries of Justice, Interior and Foreign Affairs (in 1992), and a National Committee

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<sup>7</sup> Human rights activists have claimed that the Higher Committee is little more than a mouthpiece for the regime, constantly portraying a rosy picture of the situation in Tunisia and only intervening in individual cases to negotiate between the authorities and prisoners.

for Education in Human Rights was established (in 1996) to disseminate information about human rights, the idea being that the culture of human rights has to be established throughout the country before the fact. In 1992 a new Center for Juridical and Judicial Studies was created, and in 1996 a National School for the Prison and Rehabilitation Services was set up to provide training in human rights. In 1997, the government went as far as to create a designated Chair in Human Rights at the University of Tunis. Finally, it has authorised the publication of a number of books by the Higher Committee and National Committee to help in the education process.

The regime has furthermore repeatedly committed itself to international treaties and agreements that stipulate the protection of human rights, such as the Constitutive Act of the African Union (adopted by African states on July 11<sup>th</sup> 2000). It has participated fully in the international human rights debate, hosting major conferences such as the 1992 UNESCO First International Forum on "Education for Democracy", the 1992 United Nations World Conference on Human Rights, and the 1993 Arab Conference on "Education in the Field of Human Rights".

Since Ben Ali's accession to power, the Press Code has been amended three times, most recently in May 2001, with a reduction in the number of possible press offences, new press registration procedures, and protection from defamation by the press. It has also been stipulated that suspension of publication can only occur subject to proper judicial procedures. The government has also introduced other measures, which it claims have improved the legislative, structural and technical aspects of media communication in Tunisia. Ben Ali himself has repeatedly called on the press to be less servile and to promote genuine debate within the country.

The regime has further pointed out that opposition parties were only legalised under the current president, and that their representation in parliament now amount to a guaranteed twenty per cent of the seats despite their poor showing in the polls. Sixty electoral districts now have plural representation at the municipal level, with 243 opposition council members serving across the country. Women account for 12 per cent of the total members of the national parliament and twenty per cent of the slates of the RCD in the last election were allocated to women. The current regime introduced a special ministerial post devoted to women's needs and introduced

women to the council for the first time. In the last national elections, the opposition fielded candidates for the presidency for the first time, and Ben Ali has limited the presidential office to three consecutive terms. Opposition members of parliament have been invited to serve in cabinet and political parties receive a state subsidy to help them overcome the handicaps of their small size and organisational weaknesses.

In sum, the regime is clearly heavily engaged in the human rights discourse, (to the extent that critics have said that the country has a human rights discourse, but no human rights). Critics might point out that the state has tried to establish a monopoly over that discourse, appropriating for itself the right to define what constitute human rights, to educate the population in that definition, and then to determine the pace and scope of the implementation of its commitments. If all of these tasks fall to the state, then what role is left for independent human rights organisations or even wider civil society organisations?

#### 4.2 *Defining human rights*

A key aspect of this defence is the definition of democracy, political pluralism and human rights, which refers first and foremost to the notion of respect by the opposition for the rule of law. In an interview in June 2001 Ben Ali said:

*“It should be recalled that democracy is a system which encompasses rules and mechanisms aimed at organising public life with all its components in order to prevent anarchy. Equally no democracy is possible without the rule of law which applies to all without exception...I wish to recall in the same context, that the right to be different and to set up parties and organisations is guaranteed but it could not be consecrated if it is in anyway violated.”<sup>8</sup>*

For Ben Ali, the political rights of individuals and organisations only exist as long as they acknowledge their obligations to the rule of law *as determined by the state (re: his own regime)*. He claims that the government is making steady progress towards democratisation.

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<sup>8</sup> *Tunisia News*, 9 June 2001, p.1.



Political activity is only legitimate if it contributes towards this steady progress, the pace of which is determined by the regime with an eye towards preserving stability throughout the period of political and economic transition. Any political activity that challenges this stability, by undermining the regime or its interpretation of the law, is considered to be illegitimate and threatening to society. Of particular concern are those activities which have the potential or actual capacity for violence, a trait that the regime has consistently attributed to the Islamist movement. Violence and subversion are threatening to all of society and are therefore not considered to be political crimes. For example, in an interview with *Middle East Policy*<sup>9</sup>, Ben Ali stated the following:

*“Let us be clear about the fact that there are no political prisoners in Tunisia. All those in prison are there for common law crimes. They have been judged by the ordinary courts in accordance with ordinary procedures and in application of the law, and have been found guilty of established actions involving in most cases terrorism or aggravated violence, or related to the preparation of acts of violence directed at overthrowing the republican regime”.*

This interpretation of democracy and political pluralism is enshrined in the National Pact itself, to which the legal opposition are themselves bound. The pact says:

*“It is the responsibility of the state to guarantee other fundamental liberties such as the freedom of assembly and freedom to set up associations and political parties; provided that these freedoms are exercised within the law, they may be limited only by the requirements of democratic society and public order, and by the rights and freedoms of others and the requirement of non-allegiance to any foreign party.”<sup>10</sup>*

The pact goes on to assert that protecting these freedoms entails the prohibition of all forms of extremism, of any efforts to entwine

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<sup>9</sup> *Middle East Policy*, Vol. VI, No.2, October 1998, p.186.

<sup>10</sup> *The National Pact: November 7<sup>th</sup>, 1988*, Tunisian External Communications Agency, Tunis, October 1994, pp.14-15.

religion and politics, and of any efforts on the part of political parties, associations or other organisations to interfere with or replace the activities of the state institutions. Since the state itself is supposedly the product of periodic and free elections, its own actions are an expression of the will of the majority (although protecting the rights of minorities) and are therefore not subject to challenges.

The second aspect of the definition of human rights relates to what the regime states is the major task of the government, to ensure the economic and social development of the country. On the official web site mentioned earlier, the list of activities undertaken by the government to improve the human rights situation included actions in spheres not normally associated with human rights; education, health, social welfare, and better provision for women, the elderly, children and the handicapped. When Ben Ali took over from Bourguiba the country was clearly in an economic shambles, with the gains of early independence having been eroded through wasteful state management, interest on excessive borrowing, the decline in oil prices and the consequent drop in demand for Tunisian migrant labour. Since then a succession of development plans have been implemented that seek to balance the necessary restructuring of the economy with adequate and targeted social provision to protect the interests of the most vulnerable sections of the population. This has not been an easy juggling act but by and large the regime has successfully reformed the economy to enhance its international trade profile, restore fiscal balance, contain inflation and reduce the role and size of the public sector. There have of course been costs for society – such as unemployment, rising income taxes, demands for private contributions to educational and health costs, and a squeeze on the housing market. For the most part these have been borne by the relatively large middle classes, with targeted social provision protecting the poor from the effects of subsidy reductions. The reforms are not therefore universally popular, although there is a widespread recognition that things could not have continued as they were and that there are few real alternatives to the present strategy. This emphasis on the long-term developmental benefits of economic restructuring has been the cornerstone of the present regime's appeals for legitimacy. However, development has been more widely defined to include social development, such as the advancement of the rights of, and provision for, vulnerable groups in society – women, children, the elderly and the handicapped. Ben Ali's government

has repeatedly stressed that genuine economic development is only possible if it takes place in tandem with progressive commitments to advance the conditions of ALL the country's citizens, with the ultimate goal being a modern, secular, democratic society. There is a political message here – that democracy is only possible when society has been sufficiently (re)educated to cast off “regressive”, traditional, conservative, or religious attitudes and norms that serve only to perpetuate divisions, intolerance and inequalities. Thus the regime defends itself from Islamist challenges!

Those who challenge the state, as it tries to move society and economy forward in this way, are considered to be challenging the economic and social interests of society as a whole, threatening to hold back or even reverse the progress made under the current regime. Thus, it can be argued, while they stamp and stomp about their political and human rights being abused, they are in effect opposing the advancement of a much broader set of “rights” for a whole society in an effort to improve their individual rights. Moreover, they challenge the notion of a sequential ordering of rights. For Ben Ali, full political rights are a luxury which can only be enjoyed once society is sufficiently advanced (economically and socially) as to be able to absorb the potentially disruptive effects of political competition without destabilisation. His interpretation has found some sympathy with Tunisians and Europeans who look nervously at the Algerian experience in which democratisation moves that empowered Islamists were suddenly reversed by a much-threatened secular army, resulting in prolonged and bloody civil war.

#### 4.3 *International organisations as tools of the opposition*

This argument seeks to discredit those who use the human rights discourse as a way to challenge the legitimacy of the regime itself. They are portrayed as dangerous and dishonest, as being more concerned with their individual rights than with society's interests as a whole. In Ben Ali's own words, they are: “*professional liemongers and lovers of speeches, press communiqués and salon professionals*”.<sup>11</sup>

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<sup>11</sup> Speech given on 7 November 1995, quoted in Tunisian Information Bureau, *Focus on Tunisia*, No.11, 1995, p.2.

They are frequently accused of working for foreign powers – for example, Mohamed Mouadda was imprisoned for allegedly conspiring with the Libyan government. In May 2001, the President denounced the “use of human rights as a pretext, particularly to feed malicious smear campaigns...by some who have mortgaged their conscience to serve certain quarters outside their country”.<sup>12</sup> Thus, international organisations such as Amnesty International or Human Rights Watch, become the unwitting dupes of both internal and external political opposition. By constantly pointing out the failings of the regime, and allegedly exaggerating them on the basis of “dubious” evidence supplied by politically-motivated individuals, they are undermining the legitimate efforts of the regime to advance the human rights agenda in a sustainable way. The Islamists are considered to particularly guilty, feeding on the democratic concerns of the liberal chattering classes to win rights which they will ultimately use to seize power and deny others those same rights.

#### *4.4 International intervention in domestic affairs*

Not surprisingly then, the regime has objected strongly to the efforts of Western European governments to provide refuge for Islamist opposition figures, and their repeated “official” criticism of the government’s record on human rights. The president has complained that Britain, France and the United States have “given asylum to the enemies of freedom and democracy”<sup>13</sup> even as they have applied double standards by failing to sufficiently criticise the Israeli abuse of Palestinian human rights while over-stating the case against Tunisia:

*“As happens in any other human society, nobody could state that in Tunisia there are no excesses or cases of abuse of power. But these are fairly rare, isolated cases which we have always unhesitatingly curbed by legal means.”<sup>14</sup>*

The Tunisian Government has been particularly stung by the harsh statements that have been issued by the European Parliament.

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<sup>12</sup> *Tunisia Online News Update*, [www.tunisiaonline.com](http://www.tunisiaonline.com), 12 May 2001.

<sup>13</sup> Interview in *Le Figaro*, 2 August 1994.

<sup>14</sup> *Tunisia Online News Update*, [www.tunisiaonline.com](http://www.tunisiaonline.com), 12 May 2001.

These have been in response to repeated pleas for intervention from international and Tunisian human rights workers and are grounded in the respect for democratic principles and fundamental liberties that are supposedly enshrined in the Association Agreement between the EU and Tunisia. Organisations like Amnesty International have been eager to promote this aspect of Euro-Med relations to a level comparable with European interest in the economic and security aspects of the agreements.<sup>15</sup>

In 1996, the EU harshly reprimanded the government when opposition leader Mohamed Mouadda, was imprisoned after publishing an open letter in which he condemned the deterioration of the human rights situation and civil liberties during Ben Ali's leadership. The strength of international pressure on Tunisia, which at the time was newly embarking upon its Association Agreement with Europe, sufficed in that instance to see Mouadda released after serving fifteen months of an eleven year sentence. (Mouadda was nonetheless subjected to house arrest, harassment, a ban on participating in political activities, and denied access to foreign visitors, eventually resorting to a hunger strike that left him in hospital. His continued calls for greater political freedoms led to his re-arrest and return to jail in June 2001). Although he demurred in Mouadda's initial early release, Ben Ali made it clear to his EU partners in a major speech in 1998 that "it is necessary that all parties respect the social and cultural specificities of one another" and that they recognise the need for "gradualism and state-by-stage progression" in the transition to democracy.<sup>16</sup> Similarly, in 1995 he said:

*"We respect the nobility of activism and we are attached to constructive dialogue, within the framework of respect for states' sovereignty and their national choices, as much as we reject any form of deviation which harms the very essence of a humanitarian issue which concerns the entire mankind, that of human rights."<sup>17</sup>*

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<sup>15</sup> See, for example, the public statement issued by Amnesty International on the eve of the Euro-Mediterranean meeting in Marseille in November 2000.

<sup>16</sup> *North Africa Business Monitor*: March 1998, p.6.

<sup>17</sup> Speech given on 7 November 1995, quoted in Tunisian Information Bureau, *Focus on Tunisia*, No.11, 1995, p.2.

In December 2000, the European Parliament passed a further two resolutions alerting its member governments to abuses of human rights in Tunisia and urgently demanding a meeting of the European Union-Tunisian Association Council to discuss the situation. In that instance a satisfactory response from Tunisia was less forth-coming. If anything the opposite was the case when, in January 2001, the regime expelled Me Eric Plouvier, who had been commissioned by the Observer to the Euro-Mediterranean Human Rights Network to observe the trial of the LTDH. The expulsion was a clear message that the EU's interference in Tunisian domestic affairs was unwelcome. In September 2001 Amnesty International complained that two of its own delegates, visiting Tunisia to monitor the appeal hearings of veteran human rights activist Moncef Marzouki and trade unionist Lotfi Idoudi, had been apprehended and assaulted by plain-clothes policemen. The willingness of the security services to take active steps to impede international observers suggests that the failure of the EU to place active sanctions against the regime has been interpreted as a "green light" to resist intervention by human rights organisations.

## **5. Questions that need to be answered**

Herein lies the dilemma for the EU in its dealings with Tunisia. The EU is committed, for both normative and modernisationist purposes, to pushing the human rights agenda in its partner countries. Yet so far it has failed to take action against those partner countries, like Tunisia, which have not lived up to their own commitments under the Barcelona Declaration and in the terms of Association Agreements.

The reasons for this are manifold. The EU recognises, indeed sympathises with, the need to maintain political stability through the difficult period of economic transition. It is clearly a delicate time for such governments, which are after all applying the prescriptions set down by the more advanced economies. This means accepting that political democratisation may have to be delayed, or at least very gradually introduced, in order to contain resistance to economic reforms and prevent socio-economic "pain" from translating into political disruption. A sub-text is that the EU recognises full well that real democratisation may yet offer Islamists a route to

power.<sup>18</sup> This is seen as threatening to European interests, as well as offering the longer-term reversal of whatever political liberalisation gains have been made in the MENA region. The EU finds itself forced to acknowledge that full-scale democratisation may be desirable in principle but may be damaging to its own interests in the short-medium term. Thus it is all too easy to accept the argument that gradual implementation with a long-term horizon is both more practical and desirable, even if that relieves authoritarian regimes of the pressure to decentralise or share power. Equally, that some sequencing of human rights delivery is inevitable, even in the best of cases.

This concession to self-interest on the part of the EU only serves to highlight the double standards applied when it comes to human rights issues, at least in the eyes of the Arab and Islamic worlds. The argument goes something like this: Israeli human rights abuses in the Occupied West Bank, Gaza Strip and Jerusalem are far more regular and heinous than the much more infrequent abuses within countries like Tunisia. After all, the current *Intifada* saw over 700 Palestinians killed in the first year, including women and children. Yet the international community does not sanction Israel. Instead it relegates the problem to a bilateral issue for negotiation between Israel and the far weaker Palestinians. EU policy towards SMPs is equally hypocritical. They speak with a loud voice when it comes to designing Association Agreements, then fail to insist on the implementation of democratisation and human rights when their own economic interests are threatened. The EU asserts that cultural variations are irrelevant (offering ammunition for critics of cultural imperialism) and yet it supports an effective regional variation in the level of political and human rights which it is prepared to actively support. It appears that the normative aspects of EU human rights policies take a very firm second-place to practical and self-interested perceptions of how political and human rights relate to economic development, reducing the overall credibility of the EU's position.

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<sup>18</sup> Annette Jünemann has provided a very convincing argument to this effect in "Support for Democracy or Fear of Islamism. Europe and Algeria" in Kai Hafez (Ed), *The Islamic World and the West: An Introduction to Political Cultures and International Relations*, (Boston: Brill, 2000).

Political conditionality can be seen as having two facets. Negative conditionality refers to the imposing of sanctions, or punishments, on regimes that fail to meet the required standards. Clearly, the EU has been unwilling to bear the costs to itself of such negative conditionality. Positive conditionality, on the other hands, implies taking measures to encourage or reward success in meeting the standards required. This take the form of, for example, financial grants for education programmes, conferences, civil society organisations and government programmes that improve political and human rights. In countries like Tunisia, however, where the regime has tried to silence and dis-empower independent political opposition and human rights groups, this can result in the financial reinforcement of state machinery rather than in an improved dialogue between it and civil society. If the EU tries to support independent groups, it incurs the wrath and obstructive manoeuvrings of the regime. The Barcelona formula contains a basic design fault in that it relies on the willingness of non-democratic regimes to introduce new political structures that will reduce their own capacities, yet provides no real incentive for them to do so and includes no real mechanism for sanctioning them if they don't.

The EU may need to rethink some of its own basic assumptions. Is it appropriate to abandon a normative agenda if the bottom line is that your member states are unwilling to assert its supremacy over self-interest? If one accepts the argument that political stability must take priority at the present time, is it necessary to consider which rights should take priority? Are negative rights (freedom from...) more important in the immediate term than positive rights (freedom to...) and should the EU settle for good performance with regards to the former rather than pushing unsuccessfully for better performance with regards to the latter? One could argue that a more limited rights agenda would be more successful and more credible. Regimes could respond without losing their own power over society, maintaining stability and developing a phased response to domestic political demands.

If the normative agenda is considered to be paramount, then the EU needs to establish the price that it is prepared to pay in order to see that agenda successfully implemented. Economic sanctions contain an inherent bias against peoples rather than regimes, so it is hard to see how they might help in this instance. It is equally hard to see how the EU could advance its contributions to the civil



societies of SMP without the co-operation of regimes, or rather in the face of regime hostility.

Equally the EU needs to clarify its position towards political Islam and Islamist movements. Are they to be a part of the civil societies that are supported by the EU in its efforts to encourage regional democratisation? Are they to be excluded on the grounds that the EU has no faith in their commitment to democracy and fears their influence on our domestic Muslim populations? The first strategy carries risks, including the likelihood that regional regimes will be profoundly alienated, while the second strategy completely demolishes the credibility of our own commitment to democracy and pluralism.

## **6. Conclusion**

These are complex questions, but it would be a mistake to delay their serious consideration and resolution indefinitely. The Tunisian case is a clear example of a regime consolidating its authoritarian hold over society and progressively eroding the capacity of civil society to defend its political and human rights, while simultaneously enjoying the financial support of the EU through an Association Agreement. Not only is the current strategy self-defeating, it also contains the seeds of future popular resentment against the EU for its collaboration in economic and political processes that benefit the few rather than the masses. This is a harsh critique, but the EU should not under-estimate the difference between its own view of its intentions and how they are perceived by the recipient populations in SMPs. The sooner that the ambiguities and inconsistencies in EU human rights policies are recognised and resolved, the better for both sides of the Mediterranean.