



# The NGO Handbook On Probation and Crime Prevention



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We promote alternatives to prison which support the reintegration of offenders, and promote the right of detainees to fair and humane treatment. We campaign for the prevention of torture and the abolition of the death penalty, and we work to ensure just and appropriate responses to children and women who come into contact with the law.

We currently have programmes in the Middle East and North Africa, Central and Eastern Europe, Central Asia and the South Caucasus, and work with partners in East Africa and South Asia.

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# Introduction

## Civil society organizations for fair and effective Penal system

Human rights under justice systems are no less important than those rights enjoyed by people in their natural environments. Special and immediate measures and procedures should be available to individuals in conflict with the law, to ensure their enjoyment of their rights on equal footing with other persons. These individuals, more particularly those put to custodial measures that limit their full access to fundamental rights, are in fact exposed to subsequent repercussions of incarceration, which also seems to hamper any reintegration interventions, and engender post-release difficulties related to community exclusion and rejection. With all these considerations in mind, there is urgent need for action plans and programs that seek to institute effective alternatives to imprisonment and overcome its downside, without compromising due respect to security standards, the rule of law, the international standards and modern trends of the administration of justice systems.

Modern justice systems and standards of treatment of people in conflict with the law require that before the initiation of the traditional judicial proceedings, a range of rehabilitative and educational alternative measures should be undertaken. Through the mobilization of all community resources, including civil society organizations, these measures will contribute to the protection of human rights, and will lead to reintegration interventions aiming to reconcile these people with the community and revive their positive traits and sense of responsibility.

Following their endeavors to instate alternative sanctions and probation programs, and to improve community service in Tunisia, the Penal Reform International and the Ministry of Justice, with the support of the Fight Against Drugs and the Rule of Law Office in the US Embassy in Tunisia, and in cooperation with the Court of Appeal in Sousse, have sought to lay foundation for restorative mechanisms that ensure the involvement of all stakeholders, without ignoring the indispensable contribution of civil society organizations to this process.

This handbook is in fact an outcome of a series of training workshops and debates over the importance of restorative justice and alternative sanctions for people in conflict with the law. The NGO Handbook provides deep insight into the legal and

procedural aspects, and defines the scope of intervention for civil society in the reparation for and reintegration and rehabilitation of convicts, as well as their role in restoring harmony and reconciliation in the community.

**Ms. Taghreed JABER**  
**Regional Director**  
**Penal Reform International**  
**Middle East & North Africa Office**

## Foreword

There can be no question that this outstanding work comes, in addition to the first procedural handbook for judges in Tunisia, as an important building block in boosting the effectiveness of alternative sanctions, and in the institutionalization of the probation mechanism in Tunisia. It represents a framework for the presumed contributions of nongovernmental organizations to the good performance of probation in open spaces, with respect for human rights and the dignity of defendants, on the purpose to ensure their reintegration, reduce recidivism and restore public security.

This NGO handbook comes to give an impetus to the pilot project on probation launched in Sousse, which has been developing since its inception on 23<sup>rd</sup> January 2013, on the way to conduct a more comprehensive reform of the prison system in our country.

This procedural handbook, which is the output of the hard work done by Abdelhakim Jomaa, Third Level Judge in the Court of Appeal of Sousse, is an important constituent in the consolidation of the concept, the principles, methods and objectives of restorative justice in general, and in establishing the principles of fair trial and international standards in the administration of justice.

May God bless our work

Sousse 18<sup>th</sup> May 2016

**By Abdelhamid Aabada**

**The Public Prosecutor in the Court of Appeal of Sousse**



## Introduction

Civil society in the philosophy of Montesquieu, a pioneer of Enlightenment thought, serves as a mediator that balances the state, and limits its direct impact on the individual (see *L'Esprit des Lois* de Montesquieu, 1748). Alexis de Tocqueville, a prominent jurist, has elaborated on this concept to give civil society a broader definition which suggests that it is an independent apparatus for scrutiny and monitoring, and a diverse network of civil structures based on self-arrangement to strengthen democratic pathways in isolation from the state apparatuses.

Enlightenment philosophers in Europe have diligently sought to emancipate society from the domination of the Church and the divine right, and to establish a theory in politics that proclaims sovereignty of the people. Thanks to the advancements made by Hobbes, Jean-Jacques Rousseau, Kant, Hegel, Marx, Comte, Max Weber, Adam Smith and others, the political community has markedly evolved, and at vanguard of this evolution was civil society to widen democratic participation in all aspects of life.

With regard to the intellectual and philosophical preoccupations to attain a full fledged sovereignty of the people, humanity seeks to relentlessly entrench this notion of sovereignty as closely connected to the role of society in controlling and monitoring the functioning of the state powers.

These theoretical underpinnings sought to institute civil society within the community as power that does not exert any physical coercion or serve any security functions, but rather as a new structured tendency that consciously and voluntarily works through the deployment of various cultural and intellectual tools. A new power that does not necessarily aim to establish a binary opposition with the power of the state, which had a monopoly on coercive power in various areas of legal life. The emergence of civil society was initially to respond to needs for alternatives and initiatives led by civil networks, and then a long evolutionary line of this trend in communities has made it a hallmark for the development and the maturity of civilizations.

If this is the case in most western legal systems today, the Arab-Muslim communities remained dependent on assumptions and outlooks inherited from old eruditions which prove irreconcilable and discordant with the contemporary aspirations and with the requirements of social evolution laws.

The Islamic charitable and voluntary social interventions seem to be, and have always been, mainly led by individual initiatives, despite the emergence of institutionalized civil work like Awqaf charitable endowments, or other spontaneous religious organizations like brotherhoods, Zaouias and customary restorative councils for conflict resolution.

The concept of “Hisbah” (accountability) has persisted as a religious mandate of the ruler to assign the authority to intervene and coercively enjoin good and forbid wrong in order to keep everything in order according to Sharia. And so the institution has turned into a tool in the hands of rulers rather than a regulatory institution among people as confirmed in the Qur’anic verse: “And let there be [arising] from you a nation inviting to [all that is] good, enjoining what is right and forbidding what is wrong, and those will be the successful” (verse 104 of Al Imran).

“Hisbah”, through its form changed, has remained a monitoring tool, carried out by state agencies on the community, while the promotion of virtue and prevention of vice was a mission accorded to and carried out by the society over the state, as confirmed by the Prophet (PBUH) when he says: “Whoso- ever of you sees an evil, let him change it with his hand; and if he is not able to do so, then [let him change it] with his tongue; and if he is not able to do so, then with his heart — and that is the weakest of faith” (narrated by Muslim).

Some thinkers believe that this hadith gives guidelines for the division of powers in our contemporary society as follows: the ‘hand’ is that power stemming from voluntary social pressure working on law enforcement in relation to enshrined prohibitions and the establishment of the rule of law among the people; the ‘tongue’ is more manifest in the role of media, the press, modern communication channels and the internet to boost access to right and to expose the offenders and correct their deviations; the ‘heart’ here is the community authority and its good conscience, which seeks to ensure respect for the Islamic moral background as a global framework, and respect for the charter of citizenship, international conventions, the Constitution and the rule of law.

Societies develop through assiduousness and diligence to find solutions that respond to the needs of people, and so the efforts capitalized have given birth to voluntary pressure mechanisms that promote public welfare, progress and well-being for everyone.

Far from being a rootless human experience, the peaceful but prominent civil influence in Tunisia dates back to the late nineteenth century when nascent associations were

formed as first nuclei to take responsibility in the intellectual and cultural spheres, and to invigorate trade unions. These embryonic civil collectivities had played an active role in raising awareness and in struggles for social development and the alleviation of poverty, ignorance and illiteracy, as a result of impact by a group of intellectuals who encountered reformist ideas in the East and enlightenment thought in Europe.

Prior to partisan activism which emerged only until 1920, associative work in our country has gained attention earlier with the creation of the Khaldunian Organization, Essadiqiya Association, and the Islamic Charitable Society, which was in fact the first hosted activities of political leaders who fought the battle of independence. In parallel were the trade unions as the most prominent catalyst for collective activism and the driving force of the community. These emergent initiatives were led in response to the repression and crackdown exerted on people before independence that was furthered through the enactment of the restrictive law n° 154-1959 on associations, which was the first to be revoked after the collapse of the totalitarian regime in the January 14, 2011, and replaced by a new Decree-law n° 2011-88 dated 24 September 2011. This law has contributed to the gradual increase in the number of associations, and thousands of civil organizations were established in a short period, which demonstrates how eager was the community to join organized work and grounded civil action, and to take responsibility for building a modern democratic society.

The protection of human dignity should be a priority for every community, to avoid lapses into crime and violence, which undoubtedly poses serious threats to aspirations for development and prosperity. Tunisia's openness to the international conventions should be a source of pride, noting that a considerable work has been done so far in the ratification of these conventions and in the harmonization of national legislations with its principles, which goes hand in hand with the gains achieved in the protection of rights of women, children, and people with disabilities. All these achievements are inextricably attached to the improvements in criminal matters, especially with the humanization of sanctions for offenders, and the search for better ways to correct deviations without the violation of human dignity that generates recidivism. Civil society plays a crucial part in the assessment of performance of state institutions, and in advocating for alternatives to overcome the difficulties in this area.

A working group, mainly of judges, was at the vanguard of initiatives to institute a set of sanctions as alternatives to imprisonment, to reduce overcrowding in prisons and ensure rehabilitation for offenders. This promising project was launched in

collaboration with the International Red Cross under the supervision of the Ministry of Justice since February 2010, and after nearly three years of assiduousness in the Court of Appeal of Sousse, a probation office was created in January 2013 to perform reintegration interventions and take restorative measures over defendants, on the purpose to avoid recidivism.

Civil associations are supposed to fulfill an important part of probation interventions in cooperation with the office, beside the roles they play in crime prevention in society, and in monitoring the executions of the measures taken against children in conflict with the law inside public institutions.

This handbook comes as reference for nongovernmental organizations to demarcate their scope of intervention in crime prevention, in the humanization of sanctions and in addressing the factors behind violence through the community-oriented rehabilitation and reintegration of convicts. The first part of this handbook covers the legal framework for nongovernmental organizations and the related judicial applications. The second part gives insight into the role of public institutions in crime prevention, reintegration and sentence enforcement, and the inputs for civil society to monitor and control the work of these institutions. The third part is more about the mechanisms available for civil society to play its part.



**1**

**The legal framework for civil associations and the related judicial applications**



# 1

## The legal framework for civil associations and the related judicial applications

### I. The legal framework for civil associations

The government authorities are aware, now more than ever, of the vital position of civil society being an important stakeholder that strengthens public plans and strategies, and ensures a wider participation of citizens in community building, through structured action and organized advocacy efforts.

The Constitution stipulates in Article 35 that “the freedom to establish political parties, trade unions, and associations is guaranteed. Political parties, unions and associations must abide, in their internal regulations and activities, by the provisions of the Constitution, the law, financial transparency and the rejection of violence”. It is a constitutional recognition of this right, after the long standing official unwillingness to legally enshrine it, notwithstanding the advocacies of civil society.

There is no doubt that decree-law n° 2011-88 has opened up new prospects for legislative reforms in Tunisia, being a reference law that regulates associations, and a model for similar endeavors in the Arab world. This decree law gives special attention to the requirements of international standards on the one hand, and turns to the pioneering civil experiences in the modern democratic world, like the Slovak leading ‘Fedra’ Organization in sustainable rural development and “Miqal” Association which operates for the rehabilitation of drug, smoking and alcohol addicts, and to the advanced work of consultancy bureaus in Britain especially for the free counseling they provide in several European countries.

The Constitution in Article 35 gives a vivid example of Tunisia’s willingness to push ahead the reformist process, and of the country’s commitment to freedom of association and to provisions of the international conventions.

#### 1. The constitution of associations

The provisions of decree-law n° 2011-88, which has simplified procedures for the constitution of associations, state that the association is an agreement by which two or more people work in a permanent way, to achieve objectives other than the realization of benefit, and that the right to constitute associations is governed only by a declaration regime. In this sense, any natural person, Tunisian or

foreign resident in Tunisia, has the right to form an association or to adhere to it, after agreement on its statute, which should include the address of the association's principal headquarter, its representatives, its objectives, the conditions of membership as well as the rights and obligations of the members in the cases of its extinction. The statute should also contain mention of the organizational chart of the association, the retained election method, the prerogatives of each one of its bodies, the determination of the body which holds within the association the prerogative of amendment of the internal regulation, the modes of the settlement decision-making of the disputes and decision-making concerning dissolution, fusion or the scission and the amount of the monthly or annual contribution if there are some to avoid all potential conflicts inside the association.

A bailiff checks the existence of the data referred to above, and draws up of it minutes in two copies which he gives to the representative of the association. The association leaders inform the general-secretary of the Government of the formation of the association, by registered letter with acknowledgement of receipt. At the time of reception of the acknowledgement of receipt, the association representative deposits, in a deadline not exceeding seven days, an announcement in the Official Printing Office of the Republic of Tunisia, to imperatively publish it in the Official Gazette. This decree-law has repealed the pre-constitution notification which used to give the right of refusal to the government, the same as it ruled out requirements relating to members' privacy and criminal record together with the nationality condition for the founders. Also, the law has revoked the restrictions on the areas of competence for associations, leaving the door open to associations to practice activities contained in their statutes.

## **2. Obligations of associations**

The decree-law requires that the association is not allowed to include in its statute or statements or programs or activities incitement to violence, hatred, intolerance and discrimination based on religion, sex or region. Also, the association is not allowed to carry on commercial activities, or to collect funds in order to support political parties or independent candidates for national, regional, local elections, or to provide them with material aid of any nature. Any association whose annual resources exceed one hundred thousand (100.000) dinars, should designate a statutory auditor. It should be mentioned that the association founders and leaders cannot be in charge of responsibilities within the central bodies directing the political parties, and that the association is obliged to publish the

data concerning the assistances, gifts, and donations of foreign origin, and to indicate their source and their value. In case the association benefits from public financing, the members should submit an annual report to the Court of Auditors.

### **3. Rights of associations**

Associations have the right of access to information, to evaluate the role of the State institutions and to formulate proposals in order to improve their output. They are entitled to organize meetings, demonstrations, workshops and any other civil activities, and to publish reports and information, edit publications and proceed to the opinion polls. It is prohibited for the public authorities to impede the activity of associations in a direct or indirect way.

The decree-law n° 2011-88, as much as it seeks to simplify procedures for the constitution of associations, it assumes that the political and social environment within which it emerged shows positive responsiveness and enough maturity to implement its provisions, and to respect the principles of transparency, democracy and volunteer work.

### **4. Rights of Associations in relation to voluntary work**

Law n° 2010-26 dated 21 May 2010, on voluntary work is in fact a keystone in the legal foundations for the role of associations in joining the state's efforts, especially those performed by public institutions and local communities, to implement programs and projects of common interest.

### **5. Access to Information**

Associations are eligible to request access to information, pursuant to the organic Law n° 2016-22 of 24 March 2016, on the right of access to information, which states that its purpose is to guarantee the right of any natural or legal person to access information, including, beside many others, the Presidency of the Republic and its organisms, together with all publicly funded organizations and associations. This law seeks to strengthen public participation in the development and monitoring of the implementation and evaluation of public policies.

All publicly funded organizations and associations, as contained in Article 24, should not restrict access to information unless it would cause prejudice to national security or defense or to international relations or to the rights of a third party especially for the protection of their privacy, personal information or intellectual property.

These areas are not considered to be absolute exceptions to the right of access to information. They should be subjected to the injury test provided that the latter is serious, whatever may be concomitant or subsequent. They are also subject to the public interest test of accessibility or inaccessibility to information regarding each application. The proportionality between the interests of the protected persons and the reason for the request for access will be taken into account.

In case of restriction, the access requestor will be informed by a reasoned letter. The restriction effect ends with the expiry of the reasons given by the response to the access request.

Thus, it has become possible for the associations to request access to statistical data, programs, or other things that would be of benefit for their activities.

## **6. Associations in Tunisia**

On equal footing to political parties, civil society is of paramount importance in public life, which justifies the creation of a ministry with a mandate that covers human rights and relationships with the constitutional bodies and civil society.

The general secretariat of the government hosts a Center for Media, Training, Studies and Documentation on Associations, which was created in accordance with decree No. 86-2000 dated 04 May 2000. The center monitors the work of civil society, through data collection to create a database, and to conduct research and provide assistance to associations through the organization of training courses, forums and seminars.

The center will prove effective only if it facilitates the access of associations to public bodies preoccupied with early delinquency among children, sentence enforcement, rehabilitation and the reduction of recidivism.

## **7. Statistical data**

Until March 2016, the associative fabric in Tunisia has reached the estimates of 18.558 associations, of which 8.858 were formed since the issuance of the new decree-law. Out of 38 requests submitted, only one verdict has been issued on the dissolution of an association. 703 warnings were directed from the general secretariat of the government as an administrative measure to request the settlement of the situation, and activities were suspended of 49 associations out of 150.

These statistical data show that the new legal framework, despite its flexibility, has succeeded to keep abuses to the minimum, and the majority of associations have remained most committed to applying the law. This enhances the position of civil society to be most capable to follow up the judicial decisions relevant to its scope of intervention, and to cooperate with public bodies in relation to sentence enforcement.

## **II. Judicial decisions relevant to associations**

The judicial decisions in criminal matters differ according to the distribution of the variety of jurisdictions. However, in this handbook we are more concerned with decisions related to civil associations that fight early delinquency or those providing legal assistance or restorative services. The handbook derives its recommendations from the major guidelines set forth in the preamble and charter of the United Nations, and from the other normative texts, including the Universal Declaration of Human Rights (December 1948), the International Covenant on Civil and Political Rights (December 1966), the Optional Protocol to the Convention Against Torture (December 2002), and the Declaration on the Elimination of Violence against Women (December 1993), beside the most important guiding rules including United Nations Rules for the Treatment of Women Prisoners (Bangkok Rules, December 2010), and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (December 1990) and the Code of Conduct for Law Enforcement Officials (December 1979), and the Principles of Medical Ethics relevant to the Role of Health Personnel (December 1982).

The handbook makes reference to the standards and norms that govern crime prevention and criminal justice, and have been adopted or recommended by the General Assembly, like the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), pursuant to the resolution issued in the seventieth session on 17<sup>th</sup> December 2015. The Penal Reform International played an important role during this session, concomitant to its undertakings on a national level to encourage judicial decisions that reduce reoffending and restore the security and safety of the community.

### **1. Restorative criminal judicial decisions**

Restorative mechanisms have been enshrined in criminal matters under law No. 2002-93, dated 07 August 2002, which was supplemented by law no. 68/2009

promulgated on 12th August 2009. These laws authorize the prosecutor to be a restorative actor who may propose to the parties a conciliation by mediation in criminal matters, before the initiation of legal proceedings, and accordingly signs an execution decision after the parties accept the conciliation agreement, which leads to the extinction of public action against the defendant for crimes eligible to mediation. This restorative pathway stands as an alternative to prison sentences, which are always registered in the bulletin of the criminal record, and gives priority to conciliation between the parties. This mechanism has many advantages, noting that it is carried out either on the initiative of the prosecutor, when convinced that criminality is not ingrained in the defendant or when he is not recidivist, or upon request of the defendant or the victim or upon request of the lawyer.

The public prosecutor is entitled to suggest mediation in criminal matters, pursuant to the provisions of the Code of Criminal Procedure under Article 335-3.

These legal provisions provide a good platform for associations to widen the scope of action by encouraging reconciliation between the litigants, and looking for common grounds between them, on the purpose to revive the defendant's sense of remorse and ensure redress for the victim. Civil associations are most capable to help the parties reach agreement during mediation sessions, to avoid relapse into crime.

## **2. Sentence enforcement Decisions related to associations**

Although the Tunisian law does not entitle judges to conduct judicial control over the circumstances and conditions of incarceration in prisons under the current legal system, with the absence of a sentence enforcement court, the legislator has initiated many reforms at this level, mainly by providing for the mandate of the sentence enforcement judge under law no. 77-2000, which was supplemented and reinforced with law no. 92-2002. Accordingly, the sentence enforcement judge is entrusted with the responsibility of overseeing the enforcement of sentences inside prisons and informing the family court judge of the situation of children accompanying their mothers, so that they can be placed under foster care system or with a foster family. The sentence enforcement judge is also entitled to request from the prison administration to do some work as authorized by law, or to order parole for some prisoners sentenced to penalties not exceeding eight months, if they served half of the sentence period and two-thirds for recidivists. In addition to the community service orders that fall within his jurisdiction, the sentence enforcement judge is eligible to other levels of decision-making:



### a) Decisions in the form of requests

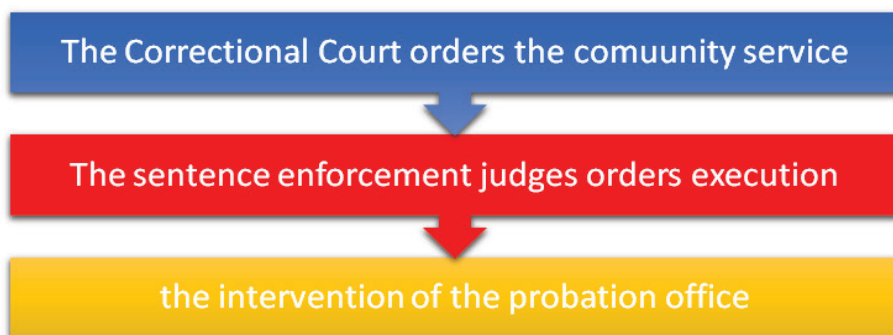
Sentence enforcement inside prisons has in most cases negative implications and repercussions on the prisoner and on his/her family. With this in mind, the sentence enforcement judge intervenes to request from the prison administration to provide some social aid services, to settle a dispute between the prisoner and his family who refuse to visit him, or to provide aid to the prisoner's children to continue schooling, or to help the defendant pay rent arrears before he is put to jail. The sentence enforcement judge has the right to oversee the execution of a release order for a prisoner, or to help this latter recover his wages from his employer, or give his minor children the sum of money recovered against a cheque deposited in his name. Pursuant to the existing legal provisions, the responsibilities of the sentence enforcement judge cover only convicted defendants, and exclude those put to preventive detention. However, the judicial applications tend to expand these responsibilities to cover all prisoners, without exception.

Associations are usually concerned with these oral or written decisions that take the form of requests submitted to the director of the prison, especially the associations that provide legal aid to inmates, which is undoubtedly of great help to the prison administration, more particularly in performing social aid services.

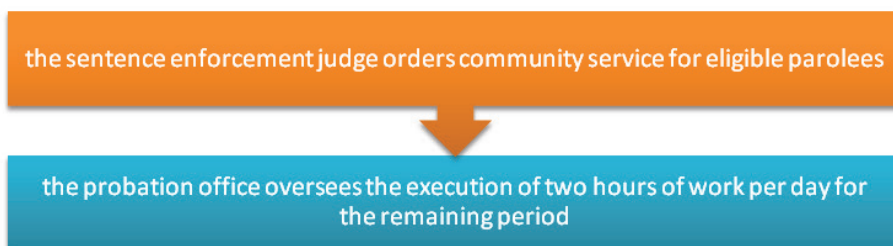
### b) Enforcement Decisions for Community Service orders:

The sentence enforcement judge undertakes to execute the community service order, which requires that the prison sentence can be replaced by an unpaid community service, on the basis of two hours for each day in jail, instead of the inhuman cruel sentences like imprisonment with hard labor, which actually is revoked since the issuance of law no. 23-1989.

Unlike the paid work performed by prison inmates which is enshrined in the Prisons Act on 14<sup>th</sup> May 2001, the community service order is in fact a new alternative sanction that replaces prison sentences, and gives prisoners the opportunity to participate in social work with other employees, without being discriminated against in an open space. Community service automatically benefits from social security coverage for occupational accidents under the law issued on 12 August 2009, and is not registered in the defendant's criminal record.



The Probation office oversees the non-custodial measure in parole ordered by the sentence enforcement judge, which is usually combined with a community service order performed in an open space.



The Probation office undertakes when authorized by the public prosecutor to replace the imprisonment for debt against people who are unable to pay a fine, by a community service order, whenever they request that and if they are eligible to benefit from this measure.



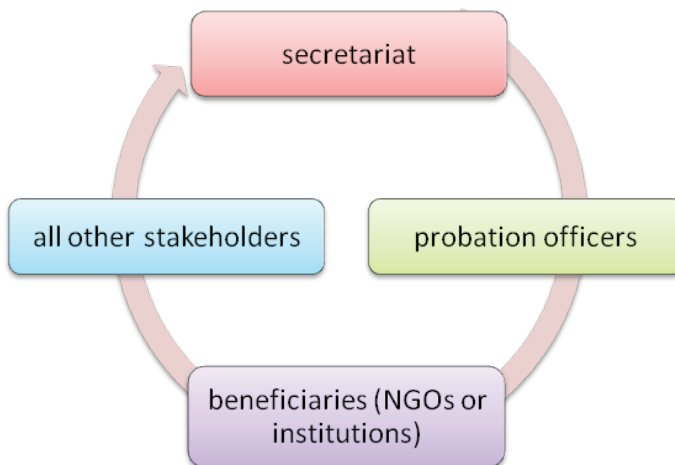
The sentence enforcement judge is entitled to carry out medical examination, to confirm his ability to perform the community service, and coordinate with the beneficiary institution on how to organize the working hours and the time required to perform the service. The judge has the right to intervene to take additional measures in case of interruption of work or of emergency. It should be noted that the sentence enforcement judge was not always able to ensure continuous follow-up owing to the burden of the other judicial responsibilities, which leads to a real reluctance of the courts to order community service. The probation office comes as an attempt to unburden judges, by taking charge of follow-up of this service.

### c) The Sentence Enforcement Judge and the Probation Office

The notion of probation entails a range of activities and psychological and social interventions, directed both to children in conflict with the law or to defendants or convicts in general, which induce their sense of guilt or regret, and ensure their reintegration into the community, and help them build resilience in an open space. These activities take aim at reducing recidivism, and ensure the security and safety of the community.

#### Organizational Chart of the Probation Office

### THE SENTENCE ENFORCEMENT JUDGE



There is a deep conviction that the adoption of alternative sanctions for cases of non-grave offenses and first time offenders, and the activation of the restorative justice approach based on conciliation by mediation mechanisms will largely serve as good tools to avoid the defects of prison sentences which seem ineffective and lack the efficiency desired as deterrence mechanisms to reduce recidivism. Alternative measures seek to overcome the deficiencies of retributive approaches which could not go beyond its punitive function to touch upon the needs of the victim, to eradicate the seeds of crime in the community.

As there is a necessity to harmonize the Tunisian domestic penal system with the relevant international standards, the Ministry of Justice has formed a working group that includes judges from the Court of Appeals of Sousse and the director of the civil prison of Messadine, in collaboration with the International Red Cross organization in accordance with the partnership contract with the ministry, after the resounding success of non-custodial alternatives in Kairouan Court of First Instance in 2008.

It was agreed to launch a pilot project under the supervision of the international expert Mr. Andre Vallotton. The kick-off was in 08<sup>th</sup> January 2010, which has already led to the creation of a probation office that provides literary, social and psychological accompaniment for the juvenile in conflict with the law or for accused or convicted individuals, who generally fulfil the conditions enlisted to benefit from psychological and social education, to induce their sense of guilt or regret, and to ensure their re-integration into the community, and help them build resilience in an open space. These measures take aim at reducing recidivism, and ensure the security and safety of the community, with the launch of this probation office on 23<sup>rd</sup> January 2013.

The Probation office consists of the sentence enforcement judge who supervises the work of four probation officers brought from the General Directorate of Prisons and the rehabilitation, and a secretariat. Equipped with the means necessary for accompaniment and mobility, the office is based in the Court of First Instance in Sousse 2.

The probation office undertakes to execute the decisions made by the sentence enforcement judge throughout the probation process, including the medical examination to ensure the good psychological and social conditions to perform work, and the adaptation of the service to the capacities of the defendant, and the follow-up during execution as well as final reporting to the judge.

As specified in Articles 87 and 93 of the Child Protection Code, the juvenile are subject to follow-up measures ordered by the juvenile court or the investigating judge for the juvenile. These measures include referring the child to educational or vocational training institutions instead of reformatories or prisons if aged more than 18 years and committed non-grave offenses, and the probation office is of course part of this process.

Also, there is still an ample room for the interim release with or without surety under Article 86 of the the Code of Criminal Procedure, and the probation office can ensure follow-up at this level as well.

<b>The Scope of intervention of Probation Office</b>
All convicts subject to community service orders
All defendants released under parole to serve the remaining period of the sentence as community service, pursuant to Article 357 of the CCP on parole measure
Juvenile subject to follow-up measures ordered by the juvenile court or the investigating judge for the juvenile

The Probation Office may cover the following measures, conforming to law
All measures imposed on convicts benefitting from interim release during trial
All juvenile in case of ordering a review mechanism for a reformatory punishment

Penal Reform International and its partners and the various stakeholders, including civil society actors, have provided much support to the probation office to fulfil its mission. For this purpose, a joint committee was formed on 16<sup>th</sup> April 2016, composed of the working group of the Pilot Project and civil society organizations and other stakeholders, who meet on a regular basis to boost the work of the probation office and enhance societal partnership between all parties.

## Statistical data on the probation office

### Community Service

The total number of cases	Performed cases	Unperformed cases	Cases referred to other courts	In-process cases
192	55	89	16	32

### Parole

The total number	Performed cases	Unperformed cases	Cases referred to other courts	In-process cases
478	63	337	32	46

### The Juvenile

The total number	Performed cases	Unperformed cases	Cases referred to other courts	In-process cases
11	4	2	0	5

The total number of cases is 681, with a 5 % of recidivism, while recidivism in prison sentences amounts to 45 %.

# 2

## **Public Institutions for Delinquency Prevention, Sentence Enforcement and Reintegration**





The role of civil society, and civic associations in particular, goes far beyond the evaluation of institutional performance, to incorporate positive interaction as suggesting alternatives and conceptualization and the implementation of solutions. To optimize the functioning of the probation office, much attention should be centered on the public institutions for delinquency prevention, sentence enforcement and reintegration.

### I. The prison and the reformatory

The prison and the reformatory are both public institutions that enjoy financial and administrative autonomy. Under law No. 2001-52 on the organization of prisons, these institutions are authorized to implement penal and correctional policies, ensure the implementation of judicial rulings issued for child offenders, and help the sentence enforcement to follow up the execution of prison sentences and community service orders.

The control mechanisms in prisons and reformatories seem not to live up to the relevant international standards, despite the serious and tremendous efforts to enhance the effectiveness of these mechanisms to improve the situation of detention centers in our country.

#### ■ Civil society target groups like:

- Women prisoners
- Children in prison
- Defendants sentenced to death
- Defendants with chronic or infectious diseases, or those suffering from mental problems, and those in need of special assistance
- Elderly
- foreigners

Although correction and rehabilitation centers are bound to categorize inmates, and separate between males and females, and between children and adults, the

work done so far keeps below the desired levels, especially in ensuring separation between recidivists and non-recidivists, and between detainees and convicts, or between inmates based on their different charges. The overall severe overcrowding exacerbates the spread of diseases among inmates, and hampers the work of prison staff. This shows urgent need to scale up efforts to face this situation, and protect the rights of prison inmates, in compliance with the international standards, especially those contained in the The Standard Minimum Rules for the Treatment of Prisoners.

## **1. Rehabilitation programs in prisons, correctional facilities and associations**

13 prison units provide rehabilitation programs for inmates, in cooperation with some ministries and public institutions concerned with vocational and agricultural training. Training periods last for 6 months, and the prisoners participating in the programs get certificates for completing the training course after professional testing. However, overcrowding in prisons renders these programs ineffective in view of the fact that only 01% of prison inmates benefit from the trainings.

It should be noted that paid work in prisons is almost not effectuated, because of circumstances of overcrowding which surpasses the capacity for rehabilitation programs. The fact that partnerships with civil society organizations seem to be still unavailing reduces reintegration and follow-up interventions for prisoners before and after release, and this is mainly due to the centralized decision-making enjoined under Article 30 of the Prisons Act. Accordingly, a prior permission from the Minister of Justice is always needed for associations who plan to visit prisons. Most of the bilateral agreements concluded by the ministry are with human rights associations, and these agreements are more concerned with rehabilitation, reintegration and prevention of recidivism, which is a shortcoming to be tackled by stakeholders.

However, many associations play an important part in addressing the effects of violence on victims and of the degrading forms of punishment on children and women. This makes evident the active participation of civil society in cooperation with public institutions in improving services. The outcome of this cooperation is the Forensic Emergency Medicine Unit (Injad) in Charles Nicolle Hospital in Tunis, with the contribution of a civil association and under the supervision of the Ministers of Justice and of Health. This pilot project was created in 08<sup>th</sup> March 2016, and will take care of the victims of sexual abuse by providing psy-

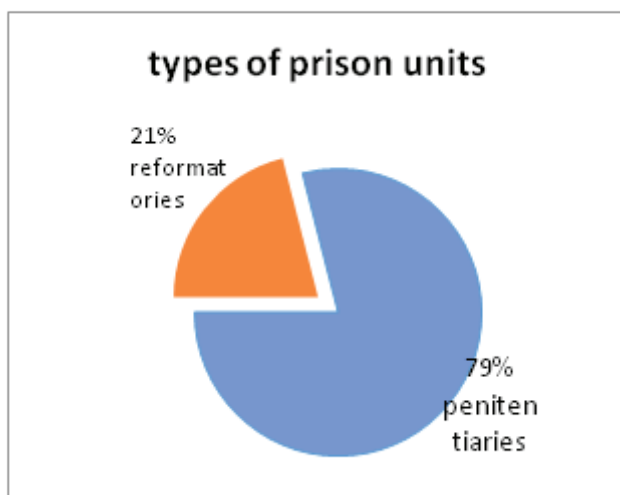
chological and social support to the victims, and direct them to the competent authorities to initiate proceedings and prove the damage. It is worth mentioning that the hospital receives 700 victims every year, which encourages the authorities to expand the scope of coverage of this medical unit.

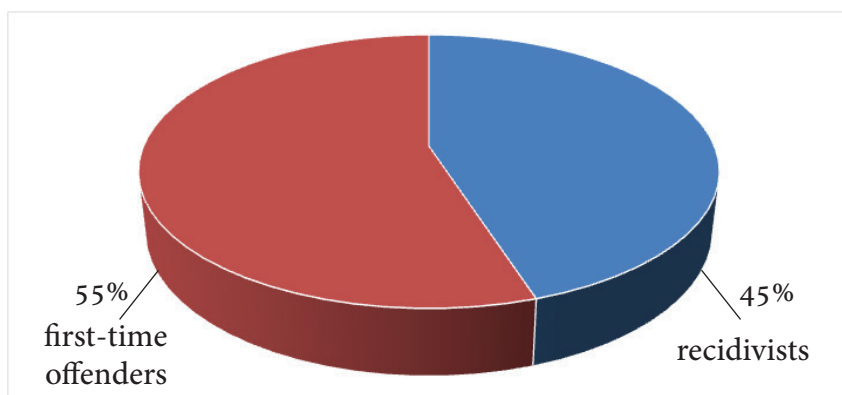
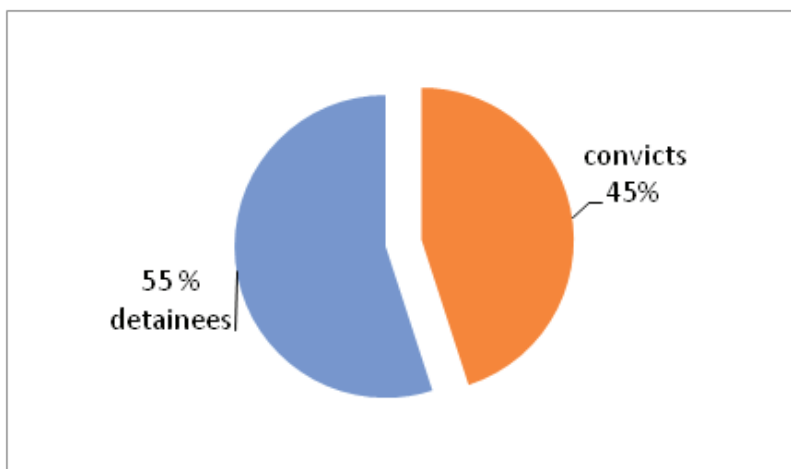
## 2. Statistical data

27 penitentiaries and 06 reformatories exist in Tunisia, and 08 of these penitentiaries are sentence enforcement prisons, while 19 prisons are reserved for detention, although overcrowding seems to undermine this classification. Reformatories amount to 21 % of the total of penitentiaries.

Until December 2015, prisons in Tunisia accommodate more than 26,000 inmates, with about 10,000 inmates beyond its real capacity (16,000 inmates). It should be noted that the number of adjudications for arrest in 2015 amounted to 53.300, and the pre-trial detentions are at more than 55 % of the total number of prisoners, which necessitates the mobilization of nearly 80 % of the human and material resources, presumed to be directed to the rehabilitation programs.

Since the Child Protection Code came into force, the number of children put to Sidi El Hani reformatory has markedly decreased, noting that it has hosted more than 350 children, and now it accommodates nearly 50 children and a maximum of 80 children in the winter period. It also provides several vocational training workshops specialized in aluminum, agriculture, rabbits breeding, music.





## II. The Child Protection Officer

The mandate of the Child Protection Officer is legislated under the law No.92-1995, and his work is organized by decree No. 1134-1996 which supplements decree No. 3287-2005, and he is subject to the administrative supervision of the Ministry of Women, Family, Children and the Elderly.

The most important tasks of the Child Protection Officer comprise receiving notifications about children at risk, and determining their needs, beside initiating conciliation between the child in conflict with the law and the victim in non-grave offenses. He is also entrusted with the responsibilities of the Judiciary Police Commissioner, including gathering evidence and investigation. Equally important, the Child Protection Officer ensures interventions for children without a guardian, or homeless children or those subject to abuse and neglect, and also in cases of exploitation of children in organized crime or sexual abuse.

The role of the Child Protection Officer looms large, thanks to the preventive interventions he undertakes to prevent delinquency among children. Civil society organizations can boost their activity by establishing partnerships with the Child Protection Officer, so as to implement proactive measures to protect children from committing serious criminal acts, and pave the way for more effective civil networks and bilateral agreements to optimize the work of juvenile courts, and defend rights of children in conflict with the law.

### **III. The defense and social inclusion center:**

Many public institutions work under the command of the Ministry of Social Affairs, and have close relationships with the civil associations active in this area. The defense and social inclusion centers are subject to law No. 109-1993 dated November 8, 1993 which defines the mandate of defense and social inclusion centers, followed by decree No. 1449-2000 issued on 27<sup>th</sup> June 2000, fixing the financial and administrative management of the centers and its advisory councils, and decree No. 1450-2000 dated 27<sup>th</sup> June 2000, on the creation of the center of defense and social inclusion of Sousse.

The defense and social inclusion center offers utilitarian services for children who have dropped out of school at early age, and are under difficult living conditions or are at risk.

The creation of center of guidance and social orientation in Sousse can be considered a quantum leap in reinforcing institutional mechanisms for social inclusion. Its sphere of work is to admit and welcome people without a guardian, shelter, material or moral support, the children at risk or abandoned, and all other social cases that require specific care, in coordination with the competent administrative and judicial services, after examining their social and psychological situations. It also provides

temporary accommodation to these persons, with basic protection, medical assistance and psychological support. The center is in fact one of the important gains that the civil associations should spare no effort to consolidate its endeavors, noting that members of the advisory council are appointed based on propositions from ministries and civil society organizations.

This center covers released prisoners, broken families and people without a guardian, by providing guidance and assistance to overcome their difficulties. Beside the defense and reintegration center, it plays a preponderant role for the reintegration of vulnerable social groups, always on cooperation with civil society.

#### **IV. National Authority for the Prevention of Torture**

The National Authority for the Prevention of Torture was established in October 2013 by the Organic Law No. 43 as an administratively independent body, after the ratification of the Optional Protocol to the Convention against Torture, and the 16 members were elected by the House of Representatives on March 30, 2016.

The main tasks of the body are to conduct periodic and regular visits and other unannounced visits at any time to the places of detention where people are or may be found deprived of their liberty, and ensure the existence of the specific protection for persons with disabilities in the reception centers. The reports of the authority are open to the public, which gives associations the opportunity to highlight the recommendations and observations that require their intervention.

**3**

**Assistance and access  
mechanisms available for  
Associations**





# 3

## Assistance and access mechanisms available for Associations

Law gives a leading position to civil society organizations in general, and to those operating in areas related to delinquency and crime prevention, criminal sentence enforcement, rehabilitation and reintegration in particular. Various legal mechanisms are enshrined to facilitate its interaction with public institutions having the same sphere of action as these associations, which may improve the performance of public institutions, and boost its efficiency.

### I. The legal statute of civil associations in public institutions

Law has made way for associations to establish direct relationships with public institutions in three main areas:

#### 1. Civil Associations and the Child Protection Officer

The Code of Child Protection stipulates that the best interests of the child should be a major consideration in all measures taken with respect to the child by the courts, administrative authorities, or public institutions or private social protection institutions. The same code provides for the principle of conciliation with the child in conflict with the law, and stipulates that associations working in this field may contribute to the mediation process, by cooperating with the Child Protection Officer to reach conciliation.

Article 59 of the Code of Child Protection states that the family judge may take a series of measures to protect children at risk, either by keeping the child with his family, by placing the child under guardianship or entrusting the child to a foster family or to a specialized social or educational institution.

Worth to mention that the ‘foster family’ is a legally recognized service. It is gaining more attention from associations of child protection and crime prevention, mainly because it promotes community-led voluntary work, as it is willingly performed by people far from any state intervention.

However, ‘foster family’ as a protection mechanism is seldom available to children at risk, owing to families’ reluctance to voluntarily host children in conflict

with law, and due to the existing ignorance of the law and its advancements, in addition to the fact that the public opinion and civil society seem to turn a blind eye to the increasing need to such mechanisms in our society. Civil society organizations should assume their responsibility to revitalize this mechanism through consciousness raising campaigns and sensitization activities.

There is ample room for civil associations to cooperate with the Child Protection Officer, either by establishing civil networks of foster families or by working with every foster family, and pave the way for bilateral agreement between them and the Child Protection Officer. This agreement should be submitted to the family judge, to verify the family's compliance with the legal conditions for foster parents.

Foster family is widely recognized in some countries, and has become the ideal choice for students and scholars, to consider tax concessions offered by the state for foster families and the role of civil society in its promotion.

## **2. Civil associations and the defense and social inclusion center**

Law puts at the vanguard civil society organizations leading initiatives for delinquency and crime prevention, criminal sentence enforcement, rehabilitation and reintegration. These organizations form an important component of the advisory council of the regional center of defense and social inclusion, with regard to Article 09 of Decree No. 2000-1449 of 27 June 2000 on the administrative and financial organization and modalities for the operation of the defense and social inclusion centers and their advisory councils, which states that the advisory council is composed of five civil organization working on defense and social inclusion, designated by decisions of the Minister of Social Affairs, based on propositions from the relevant ministries and concerned organizations, for a period of three years.

Pursuant to decree No. 2906-2001, the center of guidance and social orientation in Sousse is in fact a breakthrough in strengthening institutional capacities for social inclusion. Its field of intervention is to admit and welcome people without a guardian, shelter, material or moral support, the children at risk or abandoned, and all other social cases that require specific care, in coordination with the competent administrative and judicial services. It also provides temporary accommodation to these persons, with basic protection, medical assistance and psychological support. There can be no question that the center is one of the

important improvements that the civil associations should diligently work to consolidate its endeavors, noting that members of the advisory council are appointed based on propositions from ministries and civil society organizations. This center covers released prisoners, broken families and people without a guardian, by providing guidance and assistance to overcome their difficulties. Beside the defense and social inclusion center, it plays a preponderant role for the reintegration of vulnerable social groups, always in cooperation with civil society.

The fact that civil associations, especially those associations concerned with childhood, are directly involved in these public institutions, as members of the Advisory Councils, will actually help these associations gain more insight into the circumstances surrounding the cases referred to this center, and will inspire them to develop assistance and rehabilitation tools that look to the needs of individual cases, and seek solutions to them. The role of associations is inextricably important to alleviate the sufferings of vulnerable groups and victims of violence or of those subject to neglect and abuse.

### 3. Civil associations as host institutions for community service orders

Pursuant to Article 336-3 of the Code of Criminal Procedure, the sentence enforcement judge determines the institution in which the community service will be carried out by referring to the list drawn up in accordance with the provisions of Article 17 of the Criminal Code, which stipulates that community service is carried out in public establishments or in local authorities or in charitable or relief associations or associations of national interest, and in associations for the protection of the environment.

The legislator had initially singled out some particular associations as host institutions for community service, by restricting the classification contained in law No. 154-1959, and was amended by law No. 25-1992 dated 02<sup>nd</sup> April 1992, to women's associations, sports associations, scientific associations, cultural and artistic associations, charitable, relief and social associations, development associations, friendly associations and associations of a general nature. This classification has been revoked later, with decree-law n° 2011-88 dated 24 September 2011, which repealed the classification contained in Article 17. Thus, the law has cancelled the restrictions put on the areas of competence for associations, since every association has the right to practice all legal activities, among them to host community service like many other public institutions, as far as it has the capacities to ensure reintegration and rehabilitation for defendants. The

sentence enforcement judge has all discretionary powers to accord access to community services to institutions he deems most capable.

Civil organizations, in conformity with legal provisions, have the right to use the privileges of the community service, which makes them more qualified to effectively contribute to optimizing these mechanisms and procedures, hand in hand with the probation office, to achieve its goals.

## II. Incentives for civil associations for rehabilitation and prevention from delinquency and recidivism

Access to public financing was one of the major concerns of civil society organizations, and has triggered rallies for the enactment of a law guaranteeing transparency and equality in volunteering and access to financial incentives. Decree n° 2013-5183 dated 18 November 2013, fixing the criteria, the procedures and the conditions of granting public financing for associations, came as a response to these calls, by providing for general and special terms and conditions that govern access to financing.

And the door was open to the partnership agreements with public institutions and bodies to assess and put forward alternatives and contractual conventional partnerships.

### 1. Public funding for Associations

Partnerships between nongovernmental organizations and public bodies concerned with sentence enforcement, rehabilitation and fight against recidivism, seem to increasingly gain more attention, on the purpose to join efforts all stakeholders to fulfill these functions. Decree n° 2013-5183 lays down the terms and conditions for these partnerships, and the procedures and requirements for access to financial incentives, presumed to push forward cooperation between governmental and nongovernmental institutions.

Penitentiaries, reformatories, defense and social inclusion centers, the child protection officer, social funds and the probation office are all public bodies concerned with partnership with associations of common interest, and that these bodies are invited to allocate part of their budgets for civil associations as required by the law mentioned.

Financial incentives will encourage civil associations to consolidate the state

efforts by making a stand against recidivism, delinquency and the negative repercussions of custodial sanctions.

### **a) General public funding conditions**

Aiming to simplify the conditions and procedures, access to public funding is either to promote activities and develop means of work following direct requests from associations, or to carry out public utility projects within the framework of the activity of the public body, following a call for applications launched by the public body concerned, or following a partnership agreement at the initiative of the association.

In all these three cases, public funding should be granted by decision of the head of the public body concerned, with the assent of the technical committee established to examine applications for public funding, including direct applications, to evaluate and decide on such applications and to determine the amount of public funding that may be awarded.

The public body concerned must transmit to the supervisory ministry, the Secretariat-General of the Government, the Ministry of Finance and the Court of Auditors an annual report containing the volume and aspects of the public funding granted to each association and a list of beneficiary associations.

**Any association wishing to obtain public funding in the framework of one of the aforementioned cases is obliged to accompany its request by the following documents:**

- the statute of the association, a copy of the announcement of its legal constitution, a list of its managers and documents proving their qualifications,
- the list of its subsidiaries and regional offices, if any, and the names of its heads,
- the report referred to by the auditor for the year preceding the date of submission of the application concerning associations whose annual resources exceed one hundred thousand (100,000) dinars,
- a copy of the last report sent to the Court of Auditors concerning the associations benefiting from previous public financing pursuant to the provisions of Article 44 of Decree No 2011-88,

- the latest moral and financial report approved by the General Assembly,
- a copy of the register of activities and projects and register of aids, gifts, donations and legacies provided for in Article 40 of Decree No. 2011-88,
- a copy of the last minutes of the elective assembly of the governing bodies of the association,
- documents proving the regularity of the situation of the association with regard to the tax administration and the social funds,
- documents proving the association's observance of the provisions of Article 41 Decree-Law No 2011-88 in the event of receipt of donations or foreign aid,
- an act of commitment withdrawn from the administration of the public body concerned whose signature is legalized, including an undertaking to return the amounts of public funding obtained in the event of obtaining similar funding from another public body under the same project or activity.

## b) Special Public Funding Conditions

### i. Direct Access

To promote their activities and develop their means of work pursuant to Article 3 of decree n° 2013-5183, associations, seeking to obtain public funding under direct applications, are required to submit a detailed report on the resources of the association and to specify the aspects of use of the public funding requested. Public funding granted in direct applications should not exceed a threshold set by the public body in accordance with the opinion of the committee provided for in Article 10 of the Decree.

Associations are therefore entitled to directly apply for funding from public bodies like penitentiaries, reformatories, the Ministry of Justice, if they meet the requirements enshrined in law.

### ii. Non-direct Access

Any association wishing to obtain public funding for participation in the call for applications, almost similar to public procurement regulations, or in the framework of a partnership agreement for the implementation of specific projects, must adopt the principles of transparency and democracy in its administrative and financial management, and ensure that its

financial situation is regular with regard to the tax administration and the social funds. In addition to the documents referred to in Article 7 of this Decree, this association should submit to the public body important data, as contained in Article 9. These data comprise the implementation schedule and the cost of each step, the financing scheme of the project including the amount of the aid requested and the percentage of self-financing of the association, the proposed approach for carrying out the project and the expected quantitative and qualitative results, the curriculum vitae of the members of the team who will oversee the implementation of the project, noting that priority should be given to applications made within a network of associations.

With regard to public funding awarded under the call for applications or partnership agreements, the decision to grant public funding should be attached to a contract concluded between the head of the public body concerned and the president of the selected association, making mention necessarily of the rights and obligations of each party, the stages of implementation of the project and the timetable for the payment of the financing, the methods of monitoring the execution of the terms of the contract and the conditions for the termination and restitution of public funding where appropriate.

Access to public funding will certainly enable associations to effectively join the efforts of the probation office in crime prevention and in overseeing the circumstances of sentence enforcement, and the shortcomings generated under the current law are under revision to include new provisions for the creation of a website that displays a centralized electronic database for public funding and budgets allocated for civil associations within each public body, with respect to principles of transparency and competition. These draft amendments will bring to public bodies more requirements to consider based on the nature of every project eligible to funding, to comply with the terms of the contract. In the case of non fulfillment of the contractual obligations, or if the public body modifies or cancels terms of the contract, they should inform the associations by any available legal means, justified with due reasons, and the association has right to claim reparation when necessary.

### iii. Special Conditions for Non-direct Access

- **Conditions for Call for applications:**

The call for applications launched by the public body in the framework of a specific project is subject to the principles of equality, competition and transparency, and the technical committee should decide on applications for public funding submitted within fifteen days of the closing date of the candidatures.

- **Conditions for the partnership agreement**

Law defines the partnership agreement as a contract that links one or more public bodies to one or more associations on the initiative of one or more associations for a maximum duration of three years in order to carry out projects of general interest, and as priorities of the public body.

These are three methods of access to public funding available for associations, which work as incentives to ensure the involvement of civil society in the restorative endeavors undertaken by public bodies, and improve volunteering as an important component of civil action.

#### c) A model of contract between a public body and civil association on public financing

First Party: public body

Second Party: association

Introductory Chapter: it includes the nature of the contract, following a call for applications launched by the public body concerned, or following a partnership agreement to carry out a public utility project led by the association.

Chapter I: The rights and obligations of the first party

Chapter II: The rights and obligations of the second party

Chapter III: financing terms, and its nature: financial, in-kind or as services

Chapter IV: objectives and expected results

Chapter V: follow-up indicators, and performance measurement

Chapter VI: Methods of monitoring the implementation of the terms of the contract, and mechanisms for evaluation and follow-up.



Chapter VII: Conditions for termination of the contract

Chapter VIII: the restitution of public funding in case of non-fulfillment

Chapter IX: the right of the association to claim compensation at non-fulfillment

Signature of both parties

## 2. Bilateral agreements associations outside financing incentives

### a) The legal basis of the contract with the public bodies

As enshrined in the decree-law n° 2011-88 dated 24 September 2011, every association has the right to obtain information, and to evaluate the role of the State institutions and to formulate proposals in order to improve their output. Civil associations should accordingly assume their responsibilities in reinforcing the state undertakings through effective contributions to decision-making and the crafting of strategies and plans of common interest. They should go beyond the unproductive criticism or the gloomy picturing of reality, to play a more dynamic role hand in hand with public institutions, through the mobilization of all available resources for the well-being of all the community.

There is no doubt that this approach has become a reality today, after the considerable development and diversification of areas of bilateral agreements between associations, as well as reform-oriented non-governmental organizations and international organizations.

The Ministry of Justice is always part of this cooperation framework, with regard to the several bilateral agreements concluded so far, which cover different areas, including visits to prisons, sentence enforcement, reintegration for delinquent children and for those in conflict with the law, providing care for women prisoners and their children, in addition to other agreements with associations or organizations working on penal reform as required by international standards.

It is worth noting that there are more than sixty bilateral partnership agreements on prisons, concluded between the General Directorate for Prisons and Rehabilitation and many associations and organizations. There are also several memorandums of understanding (MoU) concluded between the General Directorate for Prisons and associations to carry out temporary utilitarian activities. The probation office, though still waiting to be legally regulated, is supposed to establish cooperation platforms with civil society.

## b) An example of a memorandum of understanding between a public body and an association

Prior to the conclusion of the memorandum of understanding, the parties convene to exchange their views, suggestions and offers on the subject of understanding. The public body decides, within its competence, to sign a memorandum of understanding with the civil association to provide a voluntary service:

### **Elements in the MoU include the following:**

- The parties
- The objectives
- Description of the free voluntary work, which should not entail any degrading treatment or violation of privacy or of private life
- Commitment to request clarification before any press statement
- The agreed deadlines for the completion of service

Every party has the right to diffuse information about the agreed terms, and to join other initiatives of public interest.

To best achieve its goals, the probation office, represented in the sentence enforcement judge, should cooperate with civil society organizations and benefit from the utilitarian services they offer, which will unquestionably improve its work in crime prevention, rehabilitation and sentence enforcement.

Bringing into play restorative mechanisms in criminal matters will respond to the institutional needs, and will provide remedy to children at risk, the prisoners and to those subject to parole or those executing sentences. These mechanisms help to overcome the prevailing punitive approach, by reducing preventive detentions, by ordering pre-trial interim release or by ordering community service when appropriate. They are also alternatives, mostly led by civil society, that will reduce the institutional burden and promote community-based initiatives for reconciliation and solidarity, and that restore national responsibility and meet the aspirations for a democratic society, wherein human dignity is a priority.



## Annexes



# Annexes

## **Decree-law n° 2011-88 dated 24 September 2011, organizing the associations.**

The President of the Republic by interim,

On proposal from the higher authority for the achievement of the revolution objectives, political reform and democratic transition,

Having regard to the organic law n° 93-80 dated 26 July 1993, relating to the installation of non governmental organizations in Tunisia,

Having regard to law n° 59-154 dated 7 November 1959, relating to the associations,

Having regard to law n° 68-8 dated 8 March 1968, organizing the court of auditors, all amending and completing texts,

Having regard to decree-law n° 2011-6 dated 18 February 2011, establishing the high authority for the achievement of the revolution objectives, political reform and democratic transition,

Having regard to decree-law n° 2011-14 dated 23 March 2011, relating to the temporary organization of public authorities,

Having regard to decree n° 70-118 dated 11 April 1970, organizing the departments of the Prime Ministry, all amending and completing texts,

Having regard to the deliberation of the Council of Ministers,

Enacts the following decree-law:

## Chapter One

### General Principles

**Article one** - The decree-law herein guarantees the freedom to form associations, to adhere to it, to exercise activities and strengthening the role of the organizations of civil society as well as their development and the respect of their independence.

**Article 2** - The association is an agreement by which two or more people work in a permanent way, to achieve objectives other than the realization of benefit.

**Article 3** – Within the framework of their statutes, activities and financing, the associations respect the principles of the State of law, democracy, plurality, the transparency, equality and the human rights as defined by the International conventions ratified by the Republic of Tunisia.

**Article 4** - It is prohibited to the association:

First: to make mention in its statute or statements or programs or activities expressions that incite violence, hatred, intolerance and discrimination based on the religion, sex or region.

Second: to carry on commercial activities in order to distribute funds to the benefit of its members in their personal interest or to be used with the aim of tax avoidance,

Third: to collect funds in order to support political parties or independent candidates for national, regional, local elections or to provide them a material aid. This prohibition does not include the right of the association to express its political opinions and its positions relative to public opinion affairs.

**Article 5** – The association has the right:

First: to obtain information,

Second: to evaluate the role of the State institutions and to formulate proposals in order to improve their output,

Third: to organize meetings, demonstrations, congress, workshops and any other civil activity,

Fourth: to publish reports and information, edit publications and proceed to the opinion polls.

**Article 6** - It is prohibited for the public authorities to impede or slow down the activity of associations in a direct or indirect way.

**Article 7** –The State takes all necessary measures guaranteeing to any individual his protection by the relevant authorities against any violence, threats, revenge, prejudicial discrimination of fact or law, pressure or any other abusive measure following the legitimate exercise of his rights provided for by the decree-law herein.

## Chapter II

### The constitution of associations and their management

#### **Article 8 –**

First: Any natural person, Tunisian or foreign resident in Tunisia, has the right to form an association or to adhere to it or to withdraw from it in accordance with the provisions of the decree-law herein.

Second: The founder natural person should not have less than sixteen (16) years.

**Article 9** - The association founders and leaders cannot be in charge of responsibilities within the central bodies directing the political parties.

**Article 10** - Firstly: the formation of associations is governed by the declaration regime.

Secondly: the persons wishing to form an association shall address to the general secretary of the government a registered letter with acknowledgement of receipt including:

- a) A declaration indicating the name of the association, its object, its objectives, its headquarters and the headquarters of its subsidiaries if they exist.
- b) A copy of the national identity card of the Tunisian natural persons founders of the association and if necessary, a copy of the identity card of the tutor.

A copy of the residence permits for foreigners.

- c) The statute in two copies signed by the founders or their representatives. The statute shall include the following mentions:
1. The official name of the association in Arabic and if necessary, in foreign language.
  2. The address of the association principal headquarter.
  3. A presentation of the association objectives as well as the means of their realization.
  4. The conditions of membership, the cases of its extinction, as well as the rights and obligations of the members.
  5. The presentation of the organization chart of the association, the retained election method and the prerogatives of each one of its bodies.
  6. The determination of the body which holds within the association, the prerogative of amendment of the internal regulation and decision-making concerning dissolution, fusion or the scission.
  7. The determination of the modes of the settlement decision-making of the disputes.
  8. The amount of the monthly or annual contribution if there are some.

Thirdly: A bailiff checks, at the time of the letter sending, the existence of the data referred to above, and draws up of it minutes in two copies which he gives to the representative of the association.

**Article 11** - Firstly: At the time of reception of the acknowledgement of receipt, the association representative deposits in a deadline not exceeding seven (7) days, an announcement in The Official Printing Office of the Republic of Tunisia indicating the name of the association, its object, its objectives, and its headquarter, accompanied with a copy of the above-mentioned minutes.

The Official Printing Office of the Republic of Tunisia imperatively publishes the announcement in the Official Gazette within a deadline of fifteen (15) days as from the day of its deposit.

Secondly: The non return of the acknowledgement of receipt in the thirty (30) days following the letter sending referred to above is worth reception.

**Article 12** - The association is deemed legally formed as from the day of sending of the letter mentioned in article ten (10) and acquires the legal entity starting from the date of publication of the announcement in the Official Gazette of the Republic of Tunisia<sup>1</sup>.

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<sup>1</sup> Error Correction - stated in the Official Gazette n° 80 dated October 21, 2011



**Article 13** – The legally formed associations have the right to institute legal proceedings, acquire, and manage their resources and assets. The association may also accept the assistances, gifts, donations and legacies.

**Article 14** - Any association has the right to constitute civil party or bring proceedings referring to acts concerned with its object and its objectives provided for by its statute. Nevertheless, if the acts are made against determined persons, the association may bring these proceedings only if it is elected by it by the latter and this, in writing explicitly.

**Article 15** - The founders, leaders, employees and members of the association are not held personally of the legal obligations of association. The association creditors may not claim to them the repayment of the credits from their own assets.

**Article 16** - The association leaders inform the general-secretary of the Government, by registered letter with acknowledgement of receipt of any amendment made to the association statute within a maximum deadline of one month as from the decision-making of amendment. The amendment is communicated to the public through the written media and on the electronic site of association if there are some.

**Article 17** - Without prejudice to the provisions of the decree-law herein, the association fixes its own conditions of membership. The association member shall:

Firstly: be of Tunisian nationality or be resident in Tunisia.

Secondly: have thirteen (13) years old.

Thirdly: accept in writing the statute of the association.

Fourthly: pay the contribution amount to the association.

**Article 18** - The association members and its employees cannot take part in the development or the decision-making which may cause conflict between their personal or functional interests and those of the association.

**Article 19**<sup>2</sup>–

Firstly: The association statute imperatively set the methods of provisional suspension of its activity or its dissolution.

Secondly: The association statute set the rules of liquidation of its assets and the

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<sup>2</sup> Error Correction - stated in the Official Gazette n° 80 dated October 21, 2011

funds belonging to it in the event of voluntary dissolution provided for by its statute.

### **Chapter III**

#### **The foreign associations**

**Article 20** - Is deemed foreign association any subsidiary of an association formed in accordance with the legislation of another State. The subsidiary of foreign association in Tunisia is formed in accordance with the provisions of the decree-law herein.

**Article 21** - Firstly: The foreign association representative addresses to the general-secretary of the government a registered letter with acknowledgement of receipt including:

1. The name of the association.
2. The address of the principal headquarter of the subsidiary of the association in Tunisia.
3. A presentation of the activities which the subsidiary of the association wishes to exercise in Tunisia.
4. The names and addresses of the Tunisian leaders or foreign residents in Tunisia of the subsidiary of the foreign association.
5. A copy of the identity card of the Tunisian leaders and a copy of the residence permit or passport of the foreign leaders.
6. Two copies of the statute signed by the founders or their representatives.
7. An official document proving that association mother is legally formed in its country of origin.

Secondly: The information and documents mentioned in first paragraph of the article herein shall be translated in Arabic by a sworn interpreter.

Thirdly: A bailiff checks at the time of sending the letter, the existence of the data referred to above and draws up of them minutes in two copies which he transmits to the association representative.

**Article 22** - Firstly: In the event of manifest contradiction between the statute of the foreign association and the provisions of articles 3 and 4 of the decree-law herein, the general-secretary of the Government may, by justified decision, refuse to register the association, and this, within thirty (30) days as from the date of reception of the letter mentioned in first paragraph of article 21.

The leaders of the subsidiary of the foreign association in Tunisia may dispute the

legality of the decision of refusal of registration and this in accordance with the procedures in force as regards the abuse of power in accordance with law n° 72-40 dated 1st June 1972 relating to the administrative tribunal.

Secondly: At the time of reception of the acknowledgement of receipt or the notification of the final stop returned by the administrative tribunal and bearing cancellation of the refusal decision, the representative of the subsidiary of the foreign association deposits, in a deadline not exceeding seven (7) days, an announcement in The Official Printing Office of the Republic of Tunisia, indicating the name, the object, the objectives and the headquarter of the association, accompanied by a copy of the minutes mentioned in paragraph 3 of article 21 or of the above indicated decision.

The Official Printing Office of the Republic of Tunisia publishes the announcement in the Official Gazette of the Republic of Tunisia within fifteen (15) days as from the day of its deposit.

**Article 23** - Firstly: At the time of reception of the acknowledgement of receipt, the foreign association representative deposits, in a deadline not exceeding sept (7) days, an announcement in The Official Printing Office of the Republic of Tunisia, indicating the name, the object, the objectives and the headquarter of the association, accompanied by a copy of the minutes above indicated. The Official Printing Office of the Republic of Tunisia imperatively publishes the announcement in the Official Gazette of the Republic of Tunisia within fifteen (15) days as from the day of its deposit.

Secondly: The non-return of the acknowledgement of receipt in the thirty (30) days which follow the sending of the letter above mentioned is worth reception.

**Article 24** – The foreign association may form subsidiaries in Tunisia in accordance with the provisions of the decree-law herein.

**Article 25** - With the exception of the provisions of the chapter herein, the foreign associations are subjected to the same regime as the national associations.

## Chapter IV

### The network of associations

**Article 26** - Two or several associations may form a network of associations.

**Article 27** - The representative of the network addresses to the general-secretary of government a registered letter with acknowledgement of receipt including:

1. The formation declaration.
2. The network statute.
3. A copy of the announcement of formation of associations forming the network.

A bailiff checks at the time of sending the letter, the existence of the data referred to above and draws up of it minutes in two copies which he transmits to the network representative.

**Article 28** - Firstly: At the time of reception of the acknowledgement of receipt, the foreign association representative deposits, in a deadline not exceeding seven (7) days, an announcement in the Official Printing Office of the Republic of Tunisia, indicating the name, the object, the objectives and the headquarters of the network accompanied by a copy of the minutes above indicated. The Official Printing of the Republic of Tunisia imperatively publishes the announcement in the Official Gazette of the Republic of Tunisia within fifteen (15) days as from the day of its deposit.

Secondly: The non-return of the acknowledgement of receipt in the thirty days which follow the sending of the letter above mentioned is worth reception.

**Article 29** -The network acquires a legal entity distinct from those of the associations which form it.

**Article 30** - The network may accept the adhesion of the subsidiaries of foreign associations.

**Article 31** - With the exception of the provisions of the chapter herein, the network is subjected to the same regime applicable to national associations.

## Chapter IV

### Fusion and Dissolution

**Article 32** - Firstly: Associations having similar or close objectives may fuse and form only one association, and this, in accordance with the statute of each one of them.

Secondly: The procedures of fusion and formation of the new association are provided for by the provisions of the decree-law herein.

**Article 33** - Firstly: The dissolution of the association is either voluntary by decision of its members in accordance with the statute, or legal under the terms of judgement of the court.

Secondly: If the association makes the dissolution decision, it is held to inform the general-secretary of Government by registered letter with acknowledgement of receipt, and this, in the thirty (30) days which follow the decision-making date of dissolution, and designate an official liquidator.

Thirdly: In the event of legal dissolution, the court carries out the designation of a liquidator.

Fourthly: To fulfill the requirements of liquidation, the association presents a state of its movable and immovable assets which shall be retained to discharge its obligations. The remainder shall be distributed in accordance with the statute of association except if these assets come from assistances, gifts, donations and legacies. In this case, they shall be allotted to another association having similar objectives and designated by the relevant body of the association

## Chapter VI

### Financial provisions

**Article 34** - The association resources are composed of:

1. Contributions of its members,
2. Public aid,
3. Gifts, donations and legacies of national or foreign origin,
4. Receipts resulting from its assets, activities and projects.

**Article 35** - It is prohibited for associations to accept assistances, gifts or donations emanating from States having no diplomatic relations with Tunisia or from organizations defending the interests and the policies of these States.

**Article 36** - The State shall allocate the necessary funds of the budget for sustain and support of the associations and this, on the basis of the competence, projects and activities. The criteria of public financing are fixed by decree.

**Article 37** - Firstly: The association is held to devote its resources to the activities necessary to the realization of its objectives.

Secondly: The association may participate in the invitations to tender announced by the public authorities, provided that the necessary materials or services required in the invitation to tender concern its activity.

Thirdly: the association has the right to possess the necessary buildings for the establishment of its headquarters and its subsidiaries headquarters or a local intended for the meetings of its members or at the realization of its objectives in accordance with the law.

Fourthly: The association has the right to assign according to law, any building which is no longer necessary for the realization of its objectives. The product of the building transfer constitutes a resource for the association.

**Article 38** - Firstly: all financial transactions of receipt or expenditure of the association, are carried out by transfers or bank or postal checks if their value exceeds five hundred (500) dinars. The fragmentation of the receipts or expenditure with the aim of avoiding the exceeding of the above-indicated value, is not allowed.

Secondly: the bank or postal accounts of the associations may be frozen only by court order.

## **Chapter VII**

### **Registers and verification of accounts**

**Article 39** - Firstly: The association holds an accountancy in accordance with the corporate accounting system provided for by law n° 96-112 dated 30 December 1996 relating to the corporate accounting system.

Secondly: The specific accounting standards to the associations are fixed by order of the Minister of Finance.

**Article 40**– The association and its subsidiaries also hold the following registers:

Firstly: A register of the members in which are consigned the names of the association members, their addresses, their nationalities, their ages and their professions.

Secondly: A register of the deliberations of the association management bodies.

Thirdly: A register of the activities and projects, in which is consigned the nature of the activity or project.

Fourthly: A register of the assistances, gifts, donations and legacies by distinguishing those which are in kind among those in cash, those which are of public origin of those of private origin and those of national origin of those of foreign origin.

**Article 41** –The association publishes the data concerning the assistances, gifts, and donations of foreign origin and indicates their source, their value and their object in one of the written medias and on the electronic site of the association if there are some and this, within a deadline of one month as from the date of their request or reception decision. It informs of it the general-secretary of Government by registered letter with acknowledgement of receipt within the same deadline.

**Article 42** – The association preserves its financial documents and registers for a period of ten (10) years.

**Article 43** - Firstly: any association whose annual resources exceed one hundred thousand (100.000) dinars, shall designate a statutory auditor chosen among the chartered accountants registered in the table of the order of chartered accountants of Tunisia or registered in the table of the company of Tunisian accountants in the sub-section of the " accountancy technicians ".

Secondly: any association whose annual resources exceed one million (1.000.000) dinars shall designate one or more statutory auditors among those who are registered in the table of the order of chartered accountants of Tunisia.

Thirdly: The ordinary general meeting of the association appoints one or more statutory auditors for a non renewable duration of three years.

Fourthly: The mission of control of the associations accounts is carried out according to standards set by the order of chartered accountants of Tunisia.

Fifthly: The statutory auditor submits his report to the general-secretary of Government as well as to the president of the management committee of the association within a deadline of one month as from the date of presentation of the association financial statements. If we are in the presence of several statutory auditors and in the event of divergence of their opinions, they work out a joint report comprising the opinion of each one of them.

Sixthly: The fees of the statutory auditors are the responsibility of the association. They are fixed by reference to the fee stable applicable to the auditors of enterprises in Tunisia.

Seventhly: In the light of the report of the accounts control, the ordinary general meeting approves the financial statements of the association or refuses to approve them. In the event of refusal, the provisions of chapter VIII of the decree-law herein are applicable.

Eighthly: The association publishes its financial statements accompanied by the report of the accounts audit in one of the written media or on the electronic site of the association, and this, within a deadline of one month as from the date of approval of these financial statements.

**Article 44** - Any association benefiting from public financing submits to the court of auditors an annual report including a detailed description of its financing sources and its expenditure.

## **Chapter VIII**

### **Sanctions**

**Article 45** -For any infringement of the provisions of articles 3, 4, 8 secondly, 9, 10 secondly, 16, 17, 18, 19, 27, 33 secondly and fourthly, 35, 37 firstly, 38 firstly, 39 firstly, 40 fourthly, 41, 42, 43 and 44, the association incurs sanctions in accordance with the following procedures:

Firstly: The formal notice:

The general-secretary of the Government establishes the committed infringement and gives notice to the association on the need for curing it within a deadline not exceeding thirty (30) days as from the date of notification of the formal notice.

Secondly: The suspension of the activity of the association:

If the infringement has not ceased within the deadline mentioned in the first paragraph of the article herein, the president of the court of first instance of Tunis, decides by ordinance on request presented by the general-secretary of government, the suspension of the activities of the association for a duration not exceeding thirty (30) days. The association may bring proceedings against the decision of suspension of activity in accordance with the procedures of summary procedure.

Thirdly: The Dissolution:



It is pronounced by a judgment of the court of first instance of Tunis at the request of the general-secretary of Government or of whoever having interest and this, if the association has not ceased the infringement in spite of its notice, the suspension of its activity and the exhaustion of the grounds for proceedings against the decision of suspension of activity.

The legal procedures relating to the association dissolution and the liquidation of its assets are governed by the provisions of the code of civil and commercial procedures.

## Chapter IX

### Transitional and final provisions

**Article 46** -Are repealed, the law n° 59-154 dated 7 November 1959, relating to the associations and the organic law n° 93-80 dated 26 July 1993 relating to the installation of the non governmental organizations in Tunisia.

**Article 47** - The provisions of the decree-law herein are not applicable to the associations subjected to particular legal system.

**Article 48** -The provisions of second chapter of the decree-law herein relating to the constitution are not applicable to the associations and non governmental organizations legally established in Tunisia at the date of entry into force of the decree-law herein.

However, they shall conform to the provisions of the decree-law herein, except for the provisions relating to the constitution, within a deadline of one year as from the date of entry into force of the decree-law herein.

**Article 49** - The decree-law herein shall be published in the Official Gazette of the Republic of Tunisia and enters into force as from the date of its publication.

Tunis, 24 September 2011.

The President of the Republic by interim

Fouad Mebazaâ

## **Decree No. 2013-5183 of 18 November 2013, laying down the criteria, procedures and conditions for granting public funding for associations.**

The Head of Government

Considering Constituent Act No. 2011-6 of 16 December 2011, providing for the provisional organization of public authorities,

Having regard to Law No. 68-8 of 8 March 1968 on the organization of the Court of Auditors, together with the texts which amended or supplemented it, and in particular Organic Law No. 2008-3 of 29 January 2008,

Having regard to Law No. 75-33 of 14 May 1975, promulgating the Organic Law of Municipalities together with the texts which amended or supplemented it, and in particular Organic Law No. 2008-57 of 4 August 2008,

Pursuant to Law No. 75-35 of 14 May 1975, enacting the Organic Law of the Local Government Budget, as amended by subsequent texts,

Having regard to Organic Law No. 89-11 of 4 February 1989 on Regional Councils, as supplemented by Organic Law No. 93-119 of 27 December 1993,

Having regard to Organic Law No. 95-11 of 6 February 1995 on sports structures, as amended by subsequent texts, as amended or supplemented by subsequent texts and in particular Legislative Decree No. 2011-66 of 14 July 1995 2011,

Pursuant to Act No. 89-9 of 1 February 1989, relating to shareholdings, undertakings and public institutions, together with the texts which amended or supplemented it, and in particular Law No. 2006-36 of 12 June 2006,

Having regard to Law No. 2005-83 of 15 August 2005 on the promotion and protection of persons with disabilities,

Having regard to Decree-Law No 2011-88 of 24 September 2011 on the organization of associations and in particular Article 36 thereof,

Having regard to Decree No 90-1855 of 10 November 1990 laying down the system of remuneration of heads of undertakings with a public majority, together with the texts which amended or supplemented it, and in particular Decree No 2006-2564 of 2 October 2006 ,

Having regard to Decree No. 2002-3158 of 17 December 2002 regulating public procurement, together with the texts that amended or supplemented it, and in particular Decree No. 2012-515 of 2 June 2012,

Having regard to Decree No. 2012-2369 of 16 October 2012, laying down the programs of the National Employment Fund, the terms and conditions for their benefit, as amended or supplemented by Decree No. 2013-3766 of 18 September 2013,

Having regard to Republican Decree No. 2013-43 of 14 March 2013, appointing Mr Ali Larayedh, Head of Government,

Having regard to Decree No. 2013-1372 of 15 March 2013 appointing members of the Government,

Having regard to the opinion of the Administrative Court,

Having regard to the deliberations of the Council of Ministers and after informing the President of the Republic.

Decree:

## Chapter I

### General provisions

**Article 1** - The purpose of this decree is to lay down the criteria, procedures and conditions for granting public funding to associations. It also lays down the mechanisms for monitoring and control of associations receiving public funding.

**Article 2** - Public financing granted to associations means the funds allocated in the State budget or the budgets of public authorities or establishments of an administrative nature or public establishments and enterprises or companies whose public shareholdings exceed 34% of their capital or enterprises with a public majority in order to support and assist associations to carry out projects and to develop their activities on the basis of competence and feasibility of projects and activities.

**Article 3** - Public funding is granted to associations:

- either to promote their activities and develop their means of work following direct requests from associations,

- or to carry out public utility projects within the framework of the activity of the public body, following a call for applications launched by the public body concerned or following a partnership agreement with the initiative of the association.

**Article 4** - Each public body, within the meaning of the provisions of Article 2 of this decree, shall, at the beginning of each year, determine the projects which are the subject of a call for applications.

**Article 5** - Projects carried out by associations in application of the provisions of this decree are not subject to public procurement regulations.

## Chapter II

### Conditions and procedures for obtaining public funding

**Article 6** - Any association wishing to obtain public funding must:

- respect in its constitution and activities the provisions of Decree-Law No. 2011-88 of 24 September 2011, on the organization of associations,
- adopt the principles of transparency and democracy in its administrative and financial management,
- its financial situation is regular with regard to the tax administration and the social funds.

**Article 7** - Any association wishing to obtain public funding in the framework of direct applications or in the framework of participation in the call for applications or in the framework of a partnership agreement for the realization of projects is obliged to accompany its application with the following documents:

- the statute of the association, a copy of the announcement of its legal constitution, a list of its managers and documents proving their qualifications,
- the list of its subsidiaries and regional offices, if any, and the names of its heads,
- the report referred to by the auditor (s) for the year preceding the date of submission of the application concerning associations whose annual resources exceed one hundred thousand (100,000) dinars,

- a copy of the last report sent to the Court of Auditors concerning the associations benefiting from previous public financing pursuant to the provisions of Article 44 of Legislative Decree No 2011-88 referred to above,
- the latest moral and financial report approved by the General Assembly,
- a copy of the register of activities and projects and register of aids, gifts, donations and legacies provided for in Article 40 of Legislative Decree No. 2011-88 referred to above,
- a copy of the last minutes of the elective assembly of the governing bodies of the association,
- documents proving the regularity of the situation of the association with regard to the tax administration and the social funds,
- documents proving the association's observance of the provisions of Article 41 Decree-Law No 2011-88 on the organization of associations in the event of receipt of donations or foreign aid,
- an act of commitment withdrawn from the administration of the public body concerned whose signature is legalized, including an undertaking to return the amounts of public funding obtained in the event of obtaining similar funding from another public body under the same project or activity.

**Article 8** - Associations wishing to obtain public funding in the framework of direct applications are obliged to present a detailed report on the resources of the association and to specify the aspects of use of the public financing requested.

Public funding granted in direct applications shall not exceed a threshold set by the public body in accordance with the opinion of the committee provided for in Article 10 of this Decree.

**Article 9** - In addition to the documents referred to in Article 7 of this decree, any association wishing to obtain public funding in the framework of participation in the call for applications or in the framework of a partnership agreement for the realization of projects shall be required to submit to the public body the following data:

- an economic study of the project, including the material and financial requirements for its implementation,

- the implementation schedule and the cost of each step,
- the financing scheme of the project including the amount of the aid requested and the percentage of self-financing of the association,
- the proposed approach for carrying out the project and the expected quantitative and qualitative results,
- the curriculum vitae of the members of the team who will oversee the implementation of the project.

**Article 10** - A technical committee shall be set up at the level of each public body subject to the provisions of this Decree to examine applications for public funding, including direct applications, to evaluate and decide on such applications and to determine the amount of public funding that may be awarded.

The technical committee shall be composed of the head of the public body or its representative as chairman, representatives of the administrations concerned of the public body, a representative of the supervisory authority and the Public Expenditure Supervisor as members.

Concerning the technical committee created at the level of non-administrative establishments and public enterprises, the Public Expenditure Supervisor is replaced by the State Controller.

In the case of companies whose public shareholdings exceed 34% of their capital, the technical committee shall be composed of the head of the body or its representative as chairman, a representative of the board of directors and a representative of the service in charge of social action of the company, and a representative of the parent company.

In the case of public majority companies, the technical committee shall be composed of the head of the body or its representative as chairman and a representative of the public undertaking and a representative of the social welfare department of the company.

The head of the public body shall appoint the members of the committee by decision.

The committee meets at the invitation of its chairman in case of necessity, its meetings are valid only with the presence of the majority of its members.

The committee shall take its decisions by a majority of the votes of the members present, in case of a tie, that of the chairman shall prevail.

The chairman of the Committee may invite any person whose presence is deemed useful for the work of the Committee, his opinion shall be consultative.

**Article 11-** Public funding is granted to associations, within the framework of the call for applications or within the framework of a partnership agreement by the adoption of a selection methodology based on the following criteria:

- the expected quantitative and qualitative results of the project,
  - the proposed approach to the implementation of the project and the proposed deadlines,
  - the number of its subsidiaries, affiliates and employees,
  - the competence and operational experience of the leaders of the association and of the team responsible for carrying out the project,
  - participation of the association in seminars and training sessions.
- Priority is given to applications made within the network of associations.

Public funding is granted to associations in the context of direct applications by adopting a selection methodology based on the following criteria:

- the importance of the activity, programs and interventions previously carried out by the association,
- the importance of the activity, programs and interventions to be carried out in the future.

**Article 12 -** Public funding shall be paid by decision of the head of the public body concerned with the assent of the technical committee established by Article 10 of this Decree.

As regards public funding awarded under the call for applications or partnership agreements, the decision to pay public funding shall be accompanied by a contract concluded between the head of the public body concerned and the president of the selected association with the following mandatory information:

- the rights and obligations of each party,
- the stages of implementation of the project and the schedule of payment of the financing,
- the objectives and expected results to be achieved and indicators for monitoring and measuring performance,
- the methods of monitoring the execution of the terms of the contract, the evaluation and monitoring mechanisms, and the conditions for termination and restitution of public funding where appropriate.

### Chapter III

#### Special provisions relating to public funding granted in the framework of the call for applications

**Article 13** - The call for applications launched by the public body in the framework of a specific project is subject to the principles of equality, competition and transparency.

**Article 14** - The call for applications shall be published in the written media and on the website of the public body concerned, if it exists, at least 20 days (20) from the date of the opening of applications.

The announcement includes the following:

- the purpose of the project to be carried out by the association or associations,
- the documents to be supplied in addition to those provided for in articles 7 and 9 of this decree,
- the date of opening and closing of applications,
- selection criteria.

**Article 15** - The technical committee provided for in Article 10 of this Decree shall decide on applications for public funding submitted within the framework of a call for applications within fifteen (15) days of the closing date of the applications and shall proceed the following:



- the examination of the counting report on the basis of the criteria set out in Article 11 of this Decree,
- the determination of the amount of public funding allocated to the project and the modalities of its distribution to the beneficiary associations, if any, and the payment schedule according to the progress made in carrying out the project,
- the public body concerned shall display the results of the work of the technical committee at its headquarters and its regional and local structures and at the invitation of the selected association to carry out the contractual procedures.

## Chapter IV

### Special provisions relating to public funding granted under the Partnership Agreement

**Article 16** - The partnership agreement is a contract which links one or more public bodies to one or more associations on the initiative of one or more associations for a maximum duration of three years in order to carry out projects of general interest, within the priorities of the public body.

**Article 17** - The committee shall examine and evaluate applications submitted under partnership agreements, decide on such applications and determine the amount of public funding that may be granted to associations meeting the criteria laid down in Article 11 of this Decree, within a maximum period of two months from the date of receipt of the request.

**Article 18** - The public body shall conclude the partnership agreement with the association or associations which have taken the initiative, with the assent of the technical committee provided for in the second heading of this decree.

## Chapter V

### Monitoring and control

**Article 19** - The public body concerned must transmit to the supervisory ministry, the Secretariat-General of the Government, the Ministry of Finance and the Court of Auditors an annual report containing the volume and aspects of the public funding granted to each association and a list of beneficiary associations

**Article 20** - Associations benefiting from public funding, within the framework of the call for applications or in the framework of a partnership agreement, must inform the public body concerned and the Ministry of Finance of an annual report

on the use of the public funds granted and the state of progress of the projects under which they have benefited from public funding.

**Article 21** - In addition to the obligations laid down in Decree-Law No 2011-88 referred to above, and in particular Article 44 thereof, associations receiving public funding shall be subject to on-the-spot checks by inspection officers and technical services of the supervisory ministry.

They are also subject to the control and inspection of the general control bodies in accordance with the regulations in force, with regard to aspects of the management of public funding granted.

**Article 22** - An association which has not complied fully or partially with the terms of the contract to the public body concerned shall be obliged to repay the whole or the remainder of the amount of the public financing obtained unless it has regularized its situation within three months of the date of its formal notice.

**Article 23** - If the association has not complied with the terms of the contract relating to the execution of projects for which it has received public funding or which has not submitted the periodic reports referred to in Article 20 of this Decree, can not benefit from public funding until the regularization of its situation in accordance with the provisions of this Decree.

## **Chapter VI**

### **Miscellaneous**

**Article 24** - The provisions relating to the call for applications and the partnership agreements provided for in this Decree shall apply to the programs of the national employment fund, with the exception of the provisions of Articles 20 and 20bis of Decree No 2012- 2369 of 16 October 2012 referred to above.

**Article 25 (new)** - Excluded from the application of the provisions of this decree are the subsidies paid by the State and the social security funds, for rehabilitation and special education expenses, and for care at home for persons with disabilities in specialized educational institutions managed by associations for the care of disabled persons<sup>3</sup>.

"The provisions of this Decree shall also exclude grants, financing and wages granted to the Tunisian Union of Social Solidarity until 31 March 2016.

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<sup>3</sup> Decree No. 2014-3607 of 3 October 2014, amending Decree No. 2013--5183 of 18 November 2013

The procedures and conditions for the granting of such grants, financing and wages shall be laid down by an Decree of the Minister of Social Affairs"<sup>4</sup>.

**Article 25 (bis) – Government Decree No. 2016-568 of 17 May 2016, supplementing Decree No. 2013-5183 of 18 November 2013,**

The application of the provisions of this decree until 31 March 2018 shall also exclude grants, financing and salaries for associations set up before the publication of Decree-Law No. 2011-88 of 24 September 2011 on the organization of associations and which fulfill the following conditions:

- acquire a national character and a public interest,
- have an active and effective role at the regional and local level, collaborating the efforts of the State with regional and local branches, headquarters and movable and immovable property and employees of different categories,
- recipient of fixed credits inscribed in the state budget allocated mainly to run the wages of their employees,
- face financial hardship threatening the livelihood of employees,
- have the capacity and effectiveness required in the management and implementation of projects in the field of social development,
- subject to the accountability and financial control of the official control departments,
- rely on rules and basic principles in the management of public funds,
- having proved that his financial situation is regular with regard to the tax administration and the social funds,

The associations concerned by this measure are required to clean up their financial situation for the period set out above.

A list of the associations for which this measure is applicable shall be fixed annually by decree of the Head of Government.

**Article 26** - Associations which have received public funding before the entry into force of this decree are required to respect the provisions of Chapter V.

**Article 27** - The provisions of Decree No 2000-599 of 13 March 2000 fixing the list of associations and establishments receiving grants and subsidies which are fully deductible from the personal income tax base and the corporate tax.

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<sup>4</sup> Government Decree No. 2015-278 of 1 June 2015, supplementing Decree No. 2013-5183 of 18 November 2013

**Article 28** - Ministers, presidents of local authorities and heads of establishments, public enterprises and publicly-owned companies are each responsible for the implementation of this decree, which will be published in the Official Gazette of the Republic of Tunisia.

Tunis, 18 November 2013.

## A draft revision of the decree on public funding

### Minister for Relations with the Constitutional Bodies Civil Society

Government order number for the year ..... dated ..... with the revision and completion of the Order No. 5183, 2013 dated November 18, 2013 fixing the criteria and procedures and conditions for assigning public funding for associations

The head of government,

On the proposal of the Minister for Relations with the Constitutional Bodies Civil Society,

Having regard to Act No. 68-8 of 8 March 1968 on the organization of the Court of Auditors, together with the texts which amended or supplemented it, and in particular Organic Law No. 2008-3 of 29 January 2008,

Having regard to Law No. 75-33 of 14 May 1975, promulgating the Organic Law of Municipalities together the texts which amended or supplemented it, and in particular Organic Law No. 2008-57 of 4 August 2008,

Pursuant to Law No. 75-35 of 14 May 1975, enacting the Organic Law on the Budget of Local Public Authorities, as amended by subsequent texts,

Having regard to Organic Law No. 89-11 of 4 February 1989 on Regional Councils, as supplemented by Organic Law No. 93-119 of 27 December 1993,

Having regard to Organic Law No. 95-11 of 6 February 1995 on sports structures, as amended or supplemented by subsequent texts and in particular Decree-Law No. 2011-66 of 14 July 2011,

Pursuant to Law n ° 89-9 dated 1 February 1989, relating to shareholdings, undertakings and public institutions, together with the texts which amended or supplemented it, and in particular Law n ° 2006-36 dated 12 June 2006,

Pursuant to Law No. 2005-83 of 15 August 2005 on the promotion and protection of persons with disabilities,

Having regard to Decree-Law No. 2011-88 of 24 September 2011, on the organization of associations and in particular Article 36 thereof,

Having regard to Decree No. 90-1855 of 10 November 1990 laying down the system of remuneration for heads of enterprises with a public majority, together with the texts which amended or supplemented it, and in particular Decree No. 2006-2564 of 2 October 2006,

Having regard to Decree No. 2012-2369 of 16 October 2012, laying down the programs of the National Employment Fund, the terms and conditions for their benefit, as amended or supplemented by Decree No. 2013-3766 of 18 September 2013,

Having regard to Decree No. 2013-5183 of 18 November 2013, laying down the criteria, procedures and conditions for granting public funding for associations,

Having regard to Decree No. 2014-1039 of 13 March 2014, regulating public procurement,

Having regard to the opinion of the Administrative Court,

Having regard to Presidential Decree No. 2015-35 of 6 February 2015 appointing the Head of Government and its members,

Having regard to the opinion of the Minister of Finance,

Having regard to the opinion of the Administrative Court.

**Article One: The provisions of the first and eighth indents of Article 7 and paragraph 2 of Article 8 and the last indent of Article 11 shall be repealed and replaced by the following provisions:**

**Chapter 7:**

**First indent (new):** the statute of the association and a copy of the declaration constitution issued in the Official Gazette of the Republic of Tunisia,

**Eighth indent (new):** documents proving the regularity of the situation of the association with regard to the tax administration and the social funds, or, when necessary a written document proving the regularization of the situation within three months, and in case of non-fulfillment, approval of

funding shall be withdrawn, and the association shall return the amounts obtained in accordance with the legal procedures in force.

#### **Chapter 8:**

**Paragraph 2 (new):** direct applications shall be submitted three months before the date set for the completion of the planned activity benefitting from public financing (before the date of the start of the planned activity)

#### **Chapter 11:**

**Last paragraph (new):** The importance of activity, programs and interventions to be financed.

**Chapter 2: compensate the phrase "twenty days (20)" in Chapter 14 of Order No. 5183 for the year 2013 with the words "thirty days (30)."**

**Chapter 3: shall be added to the provisions of this decree, a second paragraph to Article 2, and Article 2 bis and a new first paragraph to Article 4, and new ninth paragraph to Article 10 and a second paragraph to Article 19, and a second paragraph to Article 22 and Article 25 bis as follows:**

**Article 2, paragraph 2:** Public funding can also take the form of in-kind grants, or to in the framework of the provision of services

**Article 2 bis:** provisions of this decree apply to the associations subject to the provisions of Decree 88-2011 dated September 24, 2011. Excluded from these associations professional, sports and cultural associations affiliated to public bodies, and development associations for primary schools.

**Article 4 first paragraph (new):** The public body undertakes at the beginning of each year to publish allocated public funding for associations on its website and on the central website for public funding, with the possibility to categorize assigned funds under different rubrics.

**Article 10 ninth paragraph (new):** Any member of the committee, under conflict of interest, shall not participate in the voting, and the supervisory authority shall revoke the committee's decision to approve funding for an association in case of conflict of interest.

**Article 19, second paragraph (new):** a website shall be created to display a centralized electronic database for public funding and budgets allocated for civil associations within each public body.

**Article 22, second paragraph (new):** the public body shall respect the terms of the contract. In the case of non fulfillment of the contractual

obligations, or if the public body modifies or cancels terms of the contract, they shall inform the associations by any available legal means, justified with due reasons, and the association has right to claim reparation when necessary.

**Article 25 bis:** the state continues, on an exceptional basis and until March 31, 2019, to provide grants, funds and wages to the associations constituted before the issuance of decree No. 88-2011 dated September 24, 2015, which meet conditions:

- Acquire a national character
- Carry out function in public facilities, collaborating the efforts of the State
- receive fixed credits inscribed in the state budget allocated mainly to run the wages of their employees,
- face financial hardship threatening the livelihood of employees,

The associations concerned by this measure are required to clean up their financial situation for the period set out above.



**Government Decree No. 2016-568 of 17 May 2016,  
supplementing Decree No. 2013-5183 of 18 November 2013,  
laying down the criteria, procedures and conditions for granting  
public funding for associations.**

The head of government,

Considering the constitution,

Having regard to Act No. 68-8 of 8 March 1968 on the organization of the Court of Auditors, together with the texts which amended or supplemented it, and in particular Organic Law No. 2008-3 of 29 January 2008,

Having regard to Law No. 75-33 of 14 May 1975, promulgating the Organic Law of Municipalities together the texts that amended or supplemented it, and in particular Organic Law No. 2008-57 of 4 August 2008,

Pursuant to Law No. 75-35 of 14 May 1975, enacting the Organic Law of the Local Government Budget, as amended by subsequent texts,

Having regard to Organic Law No. 89-11 of 4 February 1989 on Regional Councils, as amended by subsequent texts,

Pursuant to Act No. 89-9 of 1 February 1989, relating to shareholdings, undertakings and public institutions, together with the texts which amended or supplemented it, and in particular Law No. 2006-36 of 12 June 2006,

Having regard to Law No. 2005-83 of 15 August 2005 on the promotion and protection of persons with disabilities,

Having regard to Decree-Law No 2011-88 of 24 September 2011 on the organization of associations and in particular Article 36 thereof,

Having regard to Decree No. 2012-2369 of 16 October 2012 laying down the programs of the National Employment Fund, the terms and conditions for their benefit, as amended or supplemented, and in particular Decree No. 2013-3766 of 18 September 2013,

Having regard to Decree No. 2013-5183 of 18 November 2013, laying down the criteria, procedures and conditions for granting public funding for associations, as

amended by Decree No. 2014-3607 of 3 October 2014 and supplemented by Government Decree No. 2015-278 of 1 June 2015,

Having regard to Decree No. 2014-1039 of 13 March 2014, regulating public procurement,

Having regard to Presidential Decree No. 2015-35 of 6 February 2015 appointing the Head of Government and its members,

Having regard to Presidential Decree No. 2016-1 of 12 January 2016 appointing the Head of Government and its members,

Having regard to the opinion of the Minister of Finance,

Having regard to the opinion of the Administrative Court.

Takes the following Government Decree:

**Article 1 - Article 25 (bis) shall be added to the provisions of Decree No. 2013-5183 of 18 November 2013, as follows:**

**Article 25 (bis)** - "The application of the provisions of this decree until 31 March 2018 shall also exclude grants, financing and salaries for associations set up before the publication of Decree-Law No. 2011-88 of 24 September 2011 on the organization of associations and which fulfill the following conditions:

- acquire a national character and a public interest,
- have an active and effective role at the regional and local level, collaborating the efforts of the State with regional and local branches, headquarters and movable and immovable property and employees of different categories,
- recipient of fixed credits inscribed in the state budget allocated mainly to run the wages of their employees,
- face financial hardship threatening the livelihood of employees,
- have the capacity and effectiveness required in the management and implementation of projects in the field of social development,
- subject to the accountability and financial control of the official control departments,
- rely on rules and basic principles in the management of public funds,

- having proved that his financial situation is regular with regard to the tax administration and the social funds,

The associations concerned by this measure are required to clean up their financial situation for the period set out above.

A list of the associations for which this measure is applicable shall be fixed annually by decree of the Head of Government.

**Article 2** - Ministers, presidents of local authorities and heads of establishments, public enterprises and publicly-owned companies are each responsible for the implementation of this decree, which will be published in the Official Gazette of the Republic of Tunisia.

Tunis, 17 May 2016.  
The Head of Government  
Habib Essid

