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Tunisia: towards a new confessional presidentialism? *

*Tunisia: verso un nuovo presidenzialismo confessionale? **

ABSTRACT: Since 2014, Tunisia's legal regulation of religion has undergone a profound shift: the 2014 Constitution struck a precarious balance between Islam and a civil state grounded in citizenship and the rule of law, whereas the 2022 Constitution prioritises the 'objectives of authentic Islam' (maqāṣid) and removes the express reference to a 'civil' state. This article traces that constitutional turn and situates it within Tunisia's political trajectory from the Essebsi presidency to Kaïs Saïed's concentration of powers (2019-2025), including the 2021 resort to exceptional measures, the 2022 referendum, the restructuring of the legislature and the judiciary, and the tightening of restrictions on expression. It argues that the 2022 charter establishes a hyper-presidential regime that weakens checks and balances, re-centres religion in the state's normative framework, and narrows the space for political pluralism and civil liberties. The analysis engages doctrinal, jurisprudential and policy sources and pays special attention to the constitutional design of emergency powers, the reconfiguration of electoral institutions, and the implications for freedom of conscience and gender equality. The article concludes that Tunisia's new settlement points to a form of 'confessional presidentialism' that departs from the pluralist compromise of 2014 and risks entrenching an illiberal constitutional order.

ABSTRACT: Dal 2014 la disciplina giuridica della religione in Tunisia ha conosciuto una trasformazione profonda: la Costituzione del 2014 cercava un equilibrio tra Islam e Stato 'civile' fondato sulla cittadinanza e sul primato del diritto, mentre la Costituzione del 2022 privilegia i 'fini dell'Islam autentico' (maqāṣid) ed elimina il riferimento espresso allo Stato 'civile'. L'articolo ricostruisce questa svolta costituzionale e la colloca nel percorso politico del

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Paese, dalla presidenza Essebsi alla concentrazione di poteri nelle mani di Kais Saïed (2019-2025), includendo il ricorso alle misure eccezionali nel 2021, il referendum del 2022, la ristrutturazione del potere legislativo e della magistratura e l'inasprimento delle restrizioni alla libertà di espressione. Si sostiene che la Carta del 2022 istituisca un regime iper-presidenziale che indebolisce i contrappesi, ricentra la religione nel quadro normativo statale e riduce lo spazio per il pluralismo politico e per le libertà civili. In conclusione, il nuovo assetto tunisino prefigura una forma di 'presidenzialismo confessionale' che si discosta dal compromesso pluralista del 2014, con il rischio di consolidare un ordine costituzionale illiberale.

KEYWORDS: Tunisia, 2014 Constitution, 2022 Constitution, Islam and the State, hyper-presidentialism, Kais Saïed. Tunisia, Costituzione del 2014, Costituzione del 2022, Islam e Stato, iper-presidenzialismo, Kais Saïed.

SUMMARY: 1. Introduction - 2. Implementation of the 2014 Constitution - 2.1. Religious regulation - 2.2. Political evolution - 2.2.1. Elections and the presidency of Béji Caïd Essebsi - 2.2.2. Kais Saïed as President under the 2014 Constitution - 2.2.3. The "constitutional" coup d'état of 25 July 2021 - 3. Process leading to the 2022 Constitution - 3.1. Popular consultation - 3.2. Expedited drafting of the Constitution in three months - 3.3. Referendum - 3.4. Core features of the 2022 Constitution - 4. Parliamentary elections and the politics of repression - 5. Saïed's 2024 re-election and the continuation of repression - 6. Conclusions.

1 - Introduction

Tunisia's constitutional trajectory from the 2011 Revolution to the adoption of the 2022 Constitution constitutes an exceptional laboratory for analysing the contemporary articulation between religion and political power in the Maghreb. The 2014 Constitution - the product of a plural and carefully balanced deliberative process - sought to combine the identity reference to Islam (enshrined in Article 1) with the express affirmation of the State's civil character (Art. 2) and with a robust framework guaranteeing freedom of belief, conscience and worship (Art. 6), including mechanisms unprecedented in the Arab world such as the prohibition of *takfir* (accusations of apostasy). This equilibrium, intended to reconcile religious tradition with secular guarantees, made it possible to speak of a "civil" constitutionalism that constrained the political instrumentalization of religion and circumscribed its normative function.



The 2022 Constitution departs decisively from that paradigm. The new text removes the reference to the civil State, introduces in Article 5 a state mandate to promote the maqāṣid - the “objectives of authentic Islam” - and reinforces the concentration of executive power in the hands of the president. These changes are not merely rhetorical: they signal a reconfiguration of the relationship between religion and political authority within the constitutional order.

This article advances the notion of “confessional presidentialism” as an analytical category to interpret this transformation. In contrast to the notion of hyper-presidentialism - which refers primarily to the concentration of executive power in the hands of the President at the expense of the legislative and judicial branches - and distinct from both theocratic models and religious constitutionalism, the concept of “confessional presidentialism” denotes a specific configuration in which the President becomes the central authority in defining the normative parameters of religion within the constitutional order.

In this model, religion is not autonomously interpreted by independent religious authorities, nor is it institutionalised through a clerical hierarchy. Rather, it is implicitly mediated and shaped by the executive power itself. As a result, the President assumes a de facto role in determining the content and orientation of “authentic” Islam - not through formal religious authority, but through constitutional, legislative and political mechanisms that integrate religious references into state action.

Introducing in Article 5 a state mandate to pursue the objectives of “authentic Islam” without identifying an independent interpretative authority, and by simultaneously reinforcing the concentration of executive power, the constitutional framework situates the determination of those religious objectives within the sphere of presidential authority.

Tunisia’s 2022 constitutional settlement opens a form of confessional presidentialism that departs from the pluralist compromise of 2014. By combining an expanded executive power with the renewed constitutional centrality of religion, the new framework reshapes the foundations of political legitimacy, weakens institutional checks and balances, and narrows the space for political pluralism and fundamental rights.

This new confessional presidentialism in which political legitimacy is articulated through religious categories, new elements as



the expansive deployment of “public security” as a limit on the exercise of worship (Article 28) and public liberties (art.55) open the door to discretionary restrictions.

The article is structured as follows. The second section examines the regulation of religion and the political evolution under the 2014 Constitution. The third section analyses the process leading to the adoption of the 2022 Constitution and includes the main institutional features of the new constitutional framework, with particular attention to the concentration of executive power and the role of religion. The final sections assess the political implications of this progressive abandonment of the civil model established after the Arab Spring for political pluralism, fundamental rights and the broader trajectory of constitutionalism in Tunisia.

2 - Implementation of the 2014 Constitution

2.1 - Religious regulation

Since 2014, Tunisia’s legislation on religion has undergone a significant transformation, moving from a compromise that balanced secular and Islamist positions in the 2014 Constitution to a model in the 2022 Constitution that emphasises the objectives of Islam and removes the definition of the State as “civil”.

Adopted after the 2011 elections and in force during the 2014 electoral cycle, the 2014 charter sought an equilibrium between Islamist forces (Ennahda) and secular actors¹. Article 1 established Islam as Tunisia’s religion, whereas Article 2 defined the country as a civil state based on citizenship and the primacy of law. It expressly avoided recognising the shari‘a as a source of law. Article 6, while declaring the State the “guardian of religion”, guaranteed freedom of belief, conscience and worship, as well as the neutrality of mosques and places of worship vis-à-vis any partisan use. In addition to protecting sacred places - and as a concession to secular sectors - this article prohibited takfir (accusations of apostasy) and incitement to religious hatred or violence. Article 74 further stipulated that candidates for the Presidency of the

¹ M.J. IZQUIERDO, *La constitución de Túnez de 2011. Incontestable primer efecto de la primavera árabe*, in *Instituto español de Estudios Estratégicos, ieee.es*, 23/2014, p. 1.



Republic must be of the Muslim faith.

Under the presidency of Béji Caïd Essebsi, a few measures were pursued to align legislation with the 2014 Constitution's spirit of equality. In 2017, a 1973 circular that had prevented Muslim Tunisian women from marrying non-Muslim men unless the latter converted to Islam was repealed - widely viewed in the Arab world as a pioneering step towards freedom to choose one's spouse. The same year saw the creation of the Commission on Individual Liberties and Equality (COLIBE) with a mandate to propose the dismantling of laws undermining equality, including rules on inheritance and public morality, although many proposals met strong conservative resistance. In 2018, President Essebsi advanced a bill to ensure equal inheritance between men and women, challenging the traditional interpretation based on the Qur'ān; the bill would have allowed citizens to choose between the constitutional equality regime and the shari'a-based system. The initiative stalled, however, in the face of political resistance. In December 2019, Parliament rejected a proposal by the Islamist party Ennahda and its ally al-Karama to legislate the zakāt (ritual almsgiving)².

2.2 - Political evolution

2.2.1 - Elections and the presidency of Béji Caïd Essebsi

The January 2014 Constitution - born of the 2011 Revolution that toppled the dictator Zine el-Abidine Ben Ali (the "Arab Spring") - generated considerable democratic expectation. It established a semi-presidential system in which executive power was shared between a directly elected President and a Prime Minister accountable to Parliament. It also entrenched political pluralism and guaranteed fundamental rights, with reinforcement of those previously violated by the authoritarian regime, such as freedom of expression and equality between men and women.

In the first elections held under this Fundamental Law - the October 2014 legislative elections - the secular party Nidaa Tounes, led by Béji Caïd Essebsi, won 86 of 217 seats (37.56%), falling short of the absolute majority of 109. The Islamist party Ennahda, under Rached Ghannouchi, obtained 69 seats, twenty fewer than in the previous 2011

² B. LÓPEZ, M. HERNANDO, *Crisis económica y desafección política en Túnez: Los desafíos de la post-pandemia*, in *ARI Real Instituto Elcano*, 85/2020, p. 10.



legislative elections³.

One month later, on 23 November, the first round of the presidential election was held. Of the 27 approved candidates (Ennahda did not field a candidate and five withdrew before the first round), only two advanced to the run-off: Béji Caïd Essebsi, aged 88 (39.46% of the vote), and Moncef Marzouki (33.43%)⁴. In the second round, held on 21 December, the gap between the two widened: Béji Caïd Essebsi obtained 55.68% of the vote and prevailed by more than eleven points over Marzouki (44.32%), who enjoyed Ennahda's unofficial support.

On 5 January 2015, the new President of the Republic appointed Habib Essid as Prime Minister, who had served as Minister of the Interior in 2011 in the transitional government led by Essebsi himself. Despite his initial reluctance to include Islamists, the need to form a stable government forced Essid to bring Ennahda into the cabinet, entrusting it with the Ministry of Employment and Vocational Training. Among the 26 remaining ministers (only three were women) and the 17 secretaries of state (seven women) were members of Nidaa Tounes, the liberals of Afek Tounes, and the Free Patriotic Union (UPL) led by Slim Riahi. Together, those four parties held 179 seats, comfortably exceeding the 109 required for an absolute majority.

Nevertheless, despite the provisions of the 2014 Constitution, relations between the President, the Government and Parliament were not smooth⁵. Moreover, for eight years the political class proved unable to appoint the judges of the Constitutional Court, despite the speed with which Parliament adopted Organic Law No. 2015-50 of 3 December 2015

³ The third force was the Free Patriotic Union (UPL), a populist formation led by businessman Slim Riahi, also chairman of Club Africain; it moved from one seat in 2011 to sixteen in these elections (4.12%). The Popular Front - a coalition bringing together Arab-socialist, Marxist, Nasserist, Trotskyist and Pan-Arab currents, led by Hamma Hammami, and which had included the two politicians assassinated in 2013, Chokri Belaïd and Mohamed Brahmi - won fifteen seats (3.64%). For its part, Afek Tounes ("Aspiration of Tunisia"), a centre-right formation led by Yassine Brahim, secured eight seats (3.02%). Finally, the Congress for the Republic (CPR), the party of acting President Moncef Marzouki, obtained only four seats (2.05%), far from the 29 won in 2011.

⁴ The remaining candidates were Hamma Hammami (7.82%), followed by Hechmi Hamdi (5.75%), Slim Riahi (5.55%), Kamel Morjane (1.27%), and Ahmed Nejib Chebi (1.04%). The outgoing Speaker, Mustapha Ben Jaâfar, obtained only 0.67% of the vote.

⁵ **M. ROMDHANI**, *Tunisia's new Constitution: From averting an "imminent threat" to regime change*, in *Rowaq Arabi*, 27 (II), 2022, p. 53.



to implement it⁶. This left the country without the arbitral body responsible for resolving conflicts of competence among the higher magistracies⁷.

During 2015, Tunisia suffered a wave of violence by ISIS (Islamic State of Iraq and Siria). On 18 March, terrorists from this organisation attacked the Bardo Museum, killing several tourists. Three months later, on 27 June, a gunman opened fire on tourists on a beach in Sousse, killing 38 people. Four months after that, on 25 November, a suicide bomber detonated an explosive belt on a Presidential Guard bus, killing 12 people. In response to this spate of attacks, the President declared a nationwide state of emergency for 30 days, under art.77 of the Constitution and invoking a 1978 decree⁸. The measure, which granted exceptional powers to the Ministry of the Interior, was extended without interruption throughout Essebsi's presidency. In addition to eroding public security, terrorism gravely affected tourism - one of the main drivers of the Tunisian economy - and foreign investment.

The fragile security situation further exacerbated the delicate economic context. People perceived that their living conditions were not improving, even though the first democratic government, led by Ennahda, had increased the number of public servants - allocating approximately 16% of GDP to wages. With high inflation, an informal economy representing around 40% of GDP, high youth unemployment and significant tax evasion, fiscal balance proved unattainable and the country approached bankruptcy.

During the 2015-2019 five-year period, successive governments were unable to offer solutions to these problems, resorting to foreign borrowing to cover current expenditure and public-sector salaries⁹. This generated sustained debt growth and a growing popular disaffection with traditional parties.

⁶ **J. DIMASSI**, *La qualité du droit en Tunisie post 2011*, in *La Quête du savoir: Mélanges en l'honneur du doyen Ben Hammed*, Centre de publication universitaire. Manouba, Sfax, 2023, pp. 120-122.

⁷ **R. BEN ACHOUR**, *L'instance provisoire de contrôle de la constitutionnalité des projets de loi et les instances constitutionnelles indépendantes*, in *La Quête du savoir*, cit., p. 67.

⁸ **N. BACCOUCHE**, *Le régime juridique de l'État d'urgence en Tunisie: Le devoir de vigilance*, in *La Quête du savoir*, cit., p. 62.

⁹ **Y. CHERIF**, *El desmantelamiento de una democracia, Análisis del Real Instituto Elcano (ARI)*, 57/2022, p. 5.



On 25 July 2019, President Béji Caïd Essebsi died¹⁰, marking the third instance in Tunisia's history as an independent republic of a presidential vacancy¹¹. It then triggered the mechanism laid down in Article 84 of the 2014 Constitution, whereby the Speaker of Parliament - at that time Mohamed Ennaceur - became interim Head of State and was required to call a presidential election within 45-90 days.

Since the presidential election had been scheduled for November, the acting president, on a proposal from the Independent High Authority for Elections (ISIE) - the body responsible for ensuring the transparency of electoral processes¹² - brought the vote forward to 15 September.

Under Article 75 and Organic Law No. 16-2014 (electoral law), if no candidate obtained an absolute majority in the first round, a second round had to be held within two weeks of the official proclamation of results. Consequently, the legislative elections set for 6 October would precede the possible presidential run-off on 13 October.

2.2.2 - Kaïs Saïed as President under the 2014 Constitution

Of the 26 candidates who passed the ISIE's screening, opinion polls identified two outsiders as frontrunners - an outcome coherent with the growing public disaffection with traditional parties already evident in the 2018 municipal elections¹³. The first was Kaïs Saïed (1958), a virtually unknown assistant professor of constitutional law at the Faculty of Legal and Political Sciences, University of Carthage, unaffiliated to any party and without campaign financing¹⁴, with no prior political experience and

¹⁰ The first episode occurred in 1987, when Tunisia's first President, Habib Bourguiba (25 July 1957-7 November 1987), was declared permanently incapacitated in what became known as a "medical coup" engineered by Zine el-Abidine Ben Ali. The second took place in 2011, when President Ben Ali fled the country following the outbreak of the Revolution that began on 17 December 2010.

¹¹ **R. BEN ACHOUR**, *La vacance définitive de la présidence de la République: Processus constitutionnel et conséquences politiques*, in *Les nouveaux équilibres constitutionnels et politiques consécutifs aux élections de 2019 en Tunisie*, Université De Carthage, Tunis, 2021, pp. 22-23.

¹² **L. NEJI**, *Transparence et démocratie représentative*, in *Transparence et droit: Ouvrage collectif en l'honneur du doyen Néji Baccouche*, CEF, Sfax, 2020, pp. 80-81.

¹³ **A. BOSCO**, *Túnez. Elecciones legislativas y presidenciales 2019: El abismo de la incertidumbre política* (openman.org/node/11290), 28 octubre 2019.

¹⁴ **R. ALLAHOU**, *Tunisia's Kaïs Saïed: "He's just not interested in power"* ([aljazeera.com](https://www.aljazeera.com)), 2019.



no particularly notable academic or research record¹⁵. In his media appearances - where he spoke in classical Arabic, avoiding the Tunisian dialect - he presented himself as an independent, conservative figure (contrary to homosexual relations, to equality between men and women, and in favour of the death penalty), lacking political or financial backing. He showed a determination to combat corruption by strengthening - without specifying the mechanisms - direct democracy and promoting a general reform of the representative system, articulated around the slogan “the people want”.

Without public funding, he rejected traditional rallies and based his campaign on social media and a broad network of volunteers. His recurring promise was to return to the people - whom he considered marginalised by political parties - the central role in public life, albeit without presenting a detailed programme of government.

The other candidate who stood out in the polls was Nabil Karoui, a telecommunications magnate and founder of the party Qalb Tounes, who had been in pre-trial detention for a month on suspicion of money-laundering. The death of Essebsi prevented the promulgation of a bill that sought to bar individuals indicted for illegal campaign financing from running for office¹⁶. Karoui’s campaign was run by his team which, through his television channel Nessma, broadcast the candidate’s message as a “victim of the system”.

In the first round, 62% of the electorate confirmed the opinion polls: traditional party candidates were eliminated and the two “outsiders” advanced to the run-off - Kais Saied (18.4% of the votes) and Nabil Karoui: (15.6%).

Twenty-one days later, on 6 October, the legislative elections were held. Turnout was 42%, markedly lower than in 2014 (67 %). The result was a fragmented parliament. Ennahda won the largest number of seats (52 of 217), still far from the absolute majority of 109. New parties

¹⁵ He did not hold a doctorate - he told journalists he had never defended his thesis because the manuscript had been stolen - and his political experience was limited to participation in various civil-society bodies: he served as legal adviser to the Secretariat-General of the Arab League (1989-1990) and to the Arab Institute for Human Rights (1993-1995), and as Secretary-General of the Tunisian Association of Constitutional Law (1990-1995). After the Jasmine Revolution, he joined a consultative body known as the Council of “Elders” (*Majlis al-Hukama*), appointed by then Prime Minister Hamadi Jabali.

¹⁶ B. LÓPEZ, M. HERNANDO, *Crisis económica*, cit., p. 2.



emerged, such as Qalb Tounes, founded in June that year from prison by Nabil Karoui (38 deputies), Etilaf al-Karama (21), and Abir Moussi's Free Destourian Party (PDL) (17). By contrast, older parties such as Nidaa Tounes, the formation of the deceased president, collapsed, retaining only 3 of the 85 seats it had won in 2014, when it had been the most-voted party.

The second round of the presidential election, held on 13 October, recorded even higher abstention than the first, at 55%. Karoui was released only four days before the vote. Saïed won with over 72% of the vote, drawing significant support from the youth electorate¹⁷.

As provided by the 2014 Constitution, the President had to entrust the formation of the government, within one month, to the candidate of the party or coalition with the most deputies in the Assembly of the Representatives of the People. The candidate, together with his programme and cabinet, was required to obtain the confidence of the chamber by an absolute majority (109 of 217 votes). If successful, the President would promulgate by decree the appointment of the Prime Minister and ministers. Ennahda's nominee, Habib Jemli, whose party had won the most seats (52), failed to secure Parliament's confidence: he received only the votes of his 52 deputies and the 21 of Al-Karama, also of Islamist orientation. Curiously, Qalb Tounes (Nabil Karoui), which had supported the election of Rachid Ghannouchi as Speaker of the Assembly, voted against Jemli's candidacy as Prime Minister.

After this rejection, and following the mandatory consultations with parliamentary groups (art. 87), the President tasked Elyes Fakhfakh with forming a government, despite his being the least favoured by both parties and the public: he had recently stood in the presidential election obtaining only 0.22% of the vote, and his party, Ettakatol, had failed to gain parliamentary representation. A politically weak candidate likely represented the best option for the President to advance his project of reforming the system¹⁸.

On 15 February, Elyes Fakhfakh was initially rejected by Parliament after failing to secure Ennahda's votes. However, after intense negotiations, Ennahda relented and joined an agreement with ideologically diverse formations: Ennahda, Attayar (social-democratic),

¹⁷ S. SAHLOUL, *La motivation du vote des jeunes en faveur de Kaïs Saïed: Une approche de sciences politiques*, in *Les nouveaux équilibres*, cit., pp. 104-105.

¹⁸ B. LÓPEZ, M. HERNANDO, *Crisis económica*, cit., p. 6.



Echaâb (nationalist) and Tahia Tounes (former Nidaa Tounes members led by Youssef Chahed). In such a hostile context - without the firm support of any party - his government lasted barely five months. Accused of a conflict of interest for holding shares in companies contracting with the State, Ennahda rushed to demand his dismissal and threatened a motion of censure. Pressured by the President of the Republic, Fakhfakh resigned on 15 July 2020, not without first dismissing several ministers linked to Ennahda.

Fifteen days after his resignation, part of Parliament - angered by Speaker Rached Ghannouchi's trip to Istanbul to meet Turkish President Recep Tayyip Erdoğan without coordination with the Head of State (constitutionally responsible for foreign policy under Article 77 of the 2014 Constitution) and by his alleged alignment with Fayeze al-Sarraj's Libyan government - tabled a motion of censure against him. The initiative was put to a vote that same 30 July, but failed, garnering only 97 of the 109 votes required.

On the third attempt, the President asked Interior Minister Hichem Mechichi to form a government. Also lacking political backing, Mechichi presented on 2 September 2020 a technocratic cabinet that was ratified by the Assembly. President Saïed, openly averse to the parties represented in Parliament, appeared comfortable with a government that, owing to its apolitical character, seemed more manageable. Mechichi's Executive prioritised addressing the severe economic and public-health crisis, aggravated by the COVID-19 pandemic and its impact on the tourism sector, on which Tunisia's economy heavily depended.

The President's discomfort intensified when the Prime Minister - aware he needed parliamentary support to reshuffle his cabinet - began negotiating with parties in the Assembly (Ennahda, Qalb Tounes and Al Karama). On 5 January 2021, after dismissing the Interior Minister, Taoufik Charfeddine - very close to President Kaïs Saïed - Mechichi seized the opportunity to reshape 11 of the 25 ministries (excepting Foreign Affairs and Defence, whose holders, under Article 93 of the Constitution, had to be ratified by the President). Parliament granted its confidence by absolute majority (144 deputies) to the eleven new ministers. The President, however - angered by what he considered a betrayal by the Prime Minister for striking deals with parliamentary parties - blocked the ministerial appointments. Alleging, without evidence, that four nominees were implicated in corruption cases, he



refused to sign the presidential decrees of appointment, justifying his inaction by reference to his duty to safeguard observance of the Constitution (art. 72). Even though his suspicions concerned only four nominees, Saïed declined to convene the oath-taking ceremony, thereby blocking the entire reshuffle proposed by the Prime Minister and approved by Parliament. This episode highlighted the explicit institutional conflict between the President of the Republic, the Prime Minister and the Assembly.

Institutional tension deepened and spilled over into the Assembly itself, where regrettable scenes of physical and verbal violence occurred, widely broadcast on television to a public already weighed down by the persistent economic crisis and the second wave of COVID-19¹⁹. The President intensified his criticisms of the Government and the Chamber, branding them “traitors”, “corrupt” and “thieves”²⁰, and blaming them for the dire management of both the pandemic and the economy. Institutional paralysis hampered the management of a worsening health crisis: overburdened hospitals and sustained excess mortality generated in the population a profound sense of abandonment that fuelled social discontent²¹. Nevertheless, the President continued to place responsibility on the Government and Parliament.

2.2.3 - The 25 July 2021 “constitutional” coup d’état

The immediate catalyst for the social outburst occurred on the so-called “vaccination day” (20 July), when thousands of people were unable to receive a jab owing to a shortage of doses and the Mechichi government’s poor planning²². Five days later, on 25 July 2021 - the anniversary of the Republic - Tunisians, galvanised by the so-called “25 July movement”, took to the streets in masse to protest against the government’s handling of the pandemic, the deteriorating economy, unemployment and a widespread sense of abandonment in a political context marked by

¹⁹ K. MOHSEN-FINAN, *Túnez: El giro autoritario*, AFKAR/IDEAS, otoño-invierno 2021, p. 14.

²⁰ E. GOBE, *Le populisme de Kaïs Saïed comme cristallisation de la crise du régime parlementaire tunisien* (halshs-03613984), 2022, pp. 3 and 13.

²¹ K. MOHSEN-FINAN, *Túnez en regresión*, in *Afkar/Ideas, Revista trimestral para el diálogo entre el Magreb, España y Europa*, 69, 2023, p. 46.

²² A. ELIA, *Túnez en la era de Kaïs Saïed: ¿Crisis democrática o nuevo régimen autoritario?*, in *Cuadernos de Política Exterior Argentina*, 138, 2023, p. 65.



constant conflict among the three pillars of power: the Head of State, the Head of Government and the Speaker of Parliament. Although they did not reach the scale of the 2010-2011 demonstrations, the protests spread across the country and received extensive coverage both on local social media and on Gulf television networks.

It was the moment President Kaïs Saïed had been awaiting. He needed to set himself apart from the other two branches of the State and did so by invoking the populist mantra of the primacy of “the people”. At the end of that day, after summoning military and police chiefs to an urgent meeting of the National Security Council, Saïed appeared on state television and, invoking Article 80 of the Constitution - on exceptional measures in the event of imminent danger to state institutions - announced a series of extraordinary decisions: the dismissal of the Prime Minister, the suspension of Parliament’s activities for thirty days, the lifting of the immunity of all deputies, and the assumption of full executive and legislative powers.

Flanked by his generals, he added that the Army would crush any armed reaction. That same night, following the televised address, large numbers of citizens poured into the streets, celebrating Saïed’s announcements with the kind of enthusiasm of football supporters marking a major victory²³.

Except for Al-Chab, a pan-Arabist formation, all parties represented in Parliament condemned the measures announced by Saïed. The Bureau of the Assembly of the Representatives of the People issued a statement declaring them null on constitutional grounds. Several scholars characterised the presidential action as a “constitutional coup”²⁴, noting the paradox of invoking an article which, paradoxically, was violated by ignoring several of the requirements it laid down. Article 80 began as follows:

“In the event of imminent danger to the institutions of the nation, its security or its independence, of such a nature as to prevent the normal functioning of the public powers, the President of the Republic may adopt the measures required by that exceptional

²³ The celebration was allowed by the police despite a curfew being in force between 20:00 and 05:00 hours to contain the surge in COVID-19 infections (<https://elpais.com/internacional/2021-07-25/el-presidente-de-tunez-assume-plenos-poderes-en-medio-de-las-protestas-y-abre-una-crisis-constitucional.html>).

²⁴ Y. BEN ACHOUR, *La crise de l’État en Tunisie*, Centre arabe de recherches et d’études politiques, 2024, p. 3.



situation”.

In his televised address, however, the President did not identify any specific imminent danger, instead resorting to vague accusations - “deceit”, “treason”, “theft suffered by the people” - that did not describe a concrete threat to the institutions. Article 80 also required that exceptional measures, “announced by a communication to the people”, be adopted “after consultation with the Head of Government and the Speaker of the Assembly of the Representatives of the People and after informing the President of the Constitutional Court”. Only the formal aspect of public communication was fulfilled: both the Head of Government and the Speaker stated they had neither been consulted nor informed²⁵.

As for the President of the Constitutional Court - the sole body constitutionally competent to arbitrate inter-institutional conflicts - he could not be informed because, although the Court’s creation was regulated by the 2015 Organic Law, political actors (including the President, who had a decisive role in appointments²⁶ had failed or declined to designate its members. Although Saïed later attributed this situation to the Government and the Assembly, barely three months earlier, on 3 April, he had refused to promulgate a reform of Organic Law No. 2015-50 intended to lower the parliamentary majorities needed to unlock the appointments, arguing that the legal deadlines for establishing the Court had already expired²⁷.

Moreover, while Article 80 states that the purpose of the exceptional regime is to “restore the normal functioning of public institutions as soon as possible” and that, during its operation, Parliament must remain in continuous session and may not be dissolved by the President, the only prompt action taken was to close Parliament for thirty days. Article 80 sets no fixed duration; it simply provides that, after thirty days, the Speaker or at least thirty deputies may refer the matter to the Constitutional Court to determine whether the circumstances justifying the measures persist. That guarantee was purely theoretical, given the Court’s non-existence.

²⁵ K. MOHSEN-FINAN, *Túnez: El giro autoritario*, cit., p. 14.

²⁶ A. JENAYAH, *L’avenir en clair-obscur de la Cour constitutionnelle*, in *Mélanges en l’honneur du professeur Ridha Jenayah*, Fondation Hanns Seidel, Tunis, 2021, p. 78.

²⁷ A. SAAD JALDI, Y. AKRIMI, *La Tunisie sous la III^{ème} République*, Policy Center for the New South, 2023, p. 6.



The only available body was the Provisional Instance envisaged in Article 148.7 of the Constitution and regulated by Organic Law No. 2014-14, whose mandate was limited to a priori review of bills until the Constitutional Court was established²⁸. The absence of the Court - after years of political deadlock - thus neutralised the sole constitutional mechanism designed to supervise and limit the use of exceptional measures.

Saïed justified the measures by asserting the primacy of “popular legitimacy” over “formal legality”, which, having become dysfunctional, would have lost its purpose and thus its own legitimacy. On that logic, changing the system through an extraordinary procedure - even if not compliant with the existing legal order - was nonetheless legitimate because it rested on the “will of the people”²⁹.

The Armed Forces aligned with the President. On 26 July, the Army blocked deputies’ access to Parliament and some were arrested. With police support, Saïed decreed a nationwide curfew for thirty days³⁰. Although his televised address had spoken of a one-month suspension of parliamentary activity, the Official Gazette clarified that the measure was extendable. Facing difficulties in appointing a Prime Minister - his circle of trust was very limited, as he lacked a party and business ties - Saïed first designated Ridha Gharsallaoui, a trusted police officer, to run the Ministry of the Interior, and days later replaced the heads of Economy, Technology and Defence. These were not, strictly speaking, ministers but “interim appointees”, since under the 2014 Constitution only the Prime Minister could select cabinet members.

Some organisations, notably the union UGTT - the most powerful in the Arab world, with over a million members in a country of 11.6 million - initially accepted the state of exception, while expressing concern about respect for the Constitution. Its secretary-general, Nouredine Taboubi, advocated a referendum to redefine the political system and overcome the paralysis derived from the 2014 Constitution³¹.

Within a month, on 23 August 2021, Kaïs Saïed announced on

²⁸ **W. MASMOUDI-HARRAR**, *De l'organisation de l'instance provisoire de contrôle de constitutionnalité des projets de loi*, in *Mélanges en l'honneur du professeur Ridha Jenayah*, cit., p. 91.

²⁹ **M. ROMDHANI**, *Tunisia's new Constitution*, cit. p. 53.

³⁰ **S. GREWAL, Z. WHITE**, *Executing Orders or Eroding Democracy? The role of Tunisia's military in Kaïs Saïed's power grab*, Project on Middle East Democracy, 2021.

³¹ **B. LÓPEZ, M. HERNANDO**, *Crisis económica*, cit., p. 9.



Facebook the indefinite extension of the exceptional measures and his intent to reform the 2014 Constitution³². A month later, Decree-Law No. 2021-117 of 22 September considerably expanded his powers. Its 23 articles marked a genuine turning point: the decree suspended large parts of the 2014 Constitution - save for the first two titles and any provisions not contradicting the decree - and allowed the President to exercise the full executive function and legislate by decree-laws not subject to annulment, even in areas traditionally reserved to Parliament, such as liberties and human rights. In doing so, Saïed usurped the functions of the very legislature he had closed³³. Although the decree proclaimed the aim of “establishing a truly democratic regime in which the people are the bearer of sovereignty” (Art. 22), it looked less like a set of exceptional measures than a unilaterally imposed “small constitution” for the transitional period³⁴.

The following week, on 29 September, Saïed appointed a largely unknown figure, Najla Bouden Romdhane, as Head of Government - the first female prime minister in the Arab world. After the first demonstration against the President’s measures - around 5,000 people, on Sunday 10 October - the new prime minister moved quickly to form her cabinet: 24 portfolios, held by 18 men and 8 women, confirming in office those officials whom Saïed had previously designated on an interim basis.

The economic situation was pressing. GDP had fallen by 8.6% in 2020, and public debt had risen over the decade from 40.7% to 87.6% of GDP. Public servants accounted for 25% of total employment - well above the OECD average (18%). In this context, Saïed vacillated between meeting IMF conditions - reducing the fiscal deficit and public spending - and satisfying UGTT demands for a higher minimum wage and pay rises for 700,000 public employees. Both the UGTT and the IMF had the capacity to destabilise the President - through a general strike or by withholding a fourth major loan in ten years. On 15 November, a week after opening talks with the IMF to request a US\$ 4 billion credit before

³² This announcement was formally enacted the following day by Presidential Decree No. 2021-109 of 24 August 2021.

³³ **M. MEZGHERI**, *El constitucionalismo tunecino a la luz de la Revolución*, in *Sistemas constitucionales comparados*, Tirant lo Blanch, Valencia, 2025, p. 243.

³⁴ **L. TARCHOUNA**, *La Constitution tunisienne du 25 juillet 2022 à l'épreuve de la performance*, in *Diversité, Dialogue et Droit Social - Mélanges à la mémoire du doyen Mongi Tarchouna*, t. II, Latrac Éditions, Tunis, 2023, pp. 194-195.



year-end, Saïed opted to placate the UGTT, which until then had neither mobilised its members nor called for his resignation.

3 - Process leading to the 2022 Constitution

On the night of 13 December 2021, President Kais Saïed, in a televised address - consistent with his marked aversion to press conferences - presented his roadmap to redesign Tunisia's constitutional order: Parliament would remain suspended for one year and a new Constitution would be drafted and submitted to referendum. He set out a fourstage- calendar: (a) a "virtual" popular consultation (January-March) to collect citizen proposals on the political system; (b) the creation of a committee to consolidate and draft the constitutional project; (c) the holding of a constitutional referendum on 25 July; and (d) legislative elections on 17 December 2022, in accordance with the new electoral laws adopted as a result³⁵.

Before the process began, Saïed applied a repressive turn to what remained of the legislative and judicial branches. On 31 December, two Ennahda members - including the party's vice-president and former Justice Minister (2011-2013) - were arrested without a warrant. The Ministry of the Interior justified the arrests as "preventive measures to preserve national security".

The second blow targeted the judiciary. On Sunday, 6 February, Saïed announced - again on television - that he would dissolve by decree the Supreme Judicial Council (CSM), created in 2016 and composed of 45 magistrates responsible for safeguarding judicial independence. He argued that the CSM was a relic of the past that had become politicised and corrupt (accusing its members of bribery). The Council, in a public statement, rejected the measure as contrary to the Constitution and to judicial independence, and stated it would continue exercising its functions. One day later, the police sealed the Council's headquarters and barred staff from entering. Six days later, Saïed dissolved the CSM through Decree-Law No. 2022-11 of 12 February, replacing it with a Provisional High Council of the Judiciary under his control, as the

³⁵ COMMISSION INTERNATIONALE DE JURISTES (CIJ), *L'élaboration d'une nouvelle constitution en Tunisie en 2022: Un processus fondamentalement défectueux, Questions et Réponses*, Juin 2022, p. 2.



President appointed nine of its 21 members and retained a veto over the remainder. As would later become clear, he tightened the situation even further by awarding himself, by decree, the exclusive power to summarily dismiss judges and prosecutors on vague grounds such as “harm to public security” or the “supreme interest of the country”³⁶.

3.1 - Popular consultation

From 15 January to 30 March, the consultation, conducted via the online platform *e-istichara*, was opened to Tunisian citizens over 16 who did not repudiate the 25 July 2021 measures. It consisted of a 32-question survey covering politics, the economy, social policy, education and culture. Despite low turnout - 534,915 participants, i.e., 7.5% of the 7.1 million registered voter - President Saïed declared it had been a success that would guide Tunisia into “a new era”³⁷.

One day before the consultation ended, on 30 March, a group of 124 deputies held a remote plenary session and approved, by 116 votes, a bill to nullify all presidential decrees promulgated since the “constitutional coup” of 25 July. Saïed reacted harshly: he described the vote as an “attempted coup d’état”, announced that deputies would be prosecuted, and that same day issued Presidential Decree No. 2022-309, formally dissolving Parliament, which had been suspended anyways for eight months (since 25 July 2021).

3.2 - “Expedited” drafting of the Constitution in three months

Before the second stage - drafting a constitutional bill - Saïed cleared the ground by reforming the Independent High Authority for Elections (ISIE) through Decree-Law No. 2022-22. Under the previous applicable framework - Organic Law No. 2012-23 and Article 27 of the Constitution - the ISIE’s independence was guaranteed: its nine members were elected by Parliament by a two-thirds majority from professional sectors (judges, lawyers, academics, journalists and civil-society representatives). Decree-Law 2022-22 stripped Parliament of that power: the President

³⁶ M. EL-ANSARY, *Consolidating power: Tunisian President Kaïs Saïed’s crackdown on the judiciary*, in *Middle East Democracy Center* (mideastdc.org), February 24, 2025, p. 1.

³⁷ COMMISSION INTERNATIONALE DE JURISTES (CIJ), *L’élaboration d’une nouvelle constitution*, cit., p. 7.



would henceforth appoint the seven members of the new ISIE, including its chair. Thus disappeared the organ's independence and autonomy - previously a pillar of electoral transparency. Saïed appointed the seven members by Presidential Decree No. 2022-459 of 9 May.

The second phase began on 19 May 2022 with the creation - via Decree-Law No. 2022-30 - of the National Consultative Instance for a New Republic (INCNR), coordinated by constitutional law professor and former ally Sadok Belaid. The instance comprised three consultative committees: one on economic and social affairs, another on legal affairs, and a national dialogue commission formed by members of the other two. The economic-social commission was to include representatives of national organisations such as the UGTT, while the legal commission would comprise law deans. The dialogue commission was tasked with collecting proposals by 13 June and distilling them into a draft constitution by 20 June, for publication by 30 June 2022.

The instance was boycotted by most political parties, trade unions (ultimately including the UGTT) and the deans of law faculties, who refused to participate. Despite the boycott, Belaid delivered the INCNR draft to the President on time (20 June); yet, as he publicly denounced, the version published ten days later in the Official Gazette was completely different from the original, as he demonstrated by releasing his draft to the media. Breaking decisively with Saïed, Belaid argued that the published text opened the door to a dictatorial regime, granting the President absolute powers with no accountability mechanisms³⁸.

The draft Constitution was published on 30 June 2022 in the Official Gazette of the Republic (Presidential Decree No. 578/2022). Eight days later, Saïed introduced 46 corrections by Presidential Decree No. 2022-607. One change affected Article 5, which initially proclaimed: "Tunisia forms part of the Muslim nation and the State shall promote the realisation of the objectives of true Islam with regard to the preservation of life, honour, property, religion and freedom". In response to criticism that this wording could open the door to a theocratic State, the phrase "within a democratic system" was added after "State". Even so, some analysts deemed the risk unabated. Although the 2022 Constitution did not reproduce Article 1 of 2014 (which expressly recognised Islam as the State religion), the final Article 5 - combined with the absence of an explicit reference to the State's civil character (Article 2 in 2014) -

³⁸ M. ROMDHANI, *Tunisia's new Constitution*, cit., p. 55.



amounted to an implicit admission of state religiosity. And although Article 28 recognised freedom of worship, it subjected it to the limit that such exercise must not endanger “public security”, a notion used so loosely by the new regime as to be far from reassuring³⁹.

3.3 - Referendum held: 25 July 2022

On 31 May, the major parties of the dissolved Parliament, now grouped in the National Salvation Front (Ennahda, Qalb Tounes, Al-Karama and various civil associations), demonstrated on Avenue Habib Bourguiba calling for a boycott of the constitutional referendum. They rejected both the content of the draft and its opaque, accelerated gestation, overseen by an ISIE they no longer trusted. Other actors, such as Afek Tounes, chose to participate in order to vote no. Only the Echaâb Movement (a pan-Arab party and Saïed’s former parliamentary ally) fully supported the presidential agenda.

One day later, on 1 June, four months after dissolving the CSM, the President, relying on Presidential Decree-Law 2022-35 (which allowed him to summarily dismiss judges and prosecutors on vague grounds), forced the retirement of 57 magistrates, accusing them - without offering proof - of corruption and of protecting “terrorists”, thereby undermining their right of defence. The Tunisian Judges Association (AMT) responded with mass strikes and sit-ins, protesting the executive’s interference and paralysing many courts⁴⁰.

For the first time since democratisation, an electoral event - and one of extraordinary importance - lacked EU and Carter Center observer missions, by Saïed’s explicit decision. The ISIE also introduced new rules favourable to the Executive’s desired outcome, notably extending polling-station hours by five hours, from 06:00 to 22:00.

Despite the boycott by most political parties and numerous civil-society organisations, the constitutional referendum was held on 25 July 2022, the first anniversary of the presidential decree that established the exceptional measures. The ballot contained a single question: “Do you support the new draft Constitution for the Republic of Tunisia?”

Many voters stated they voted more against the traditional political class - especially Ennahda, which they blamed for the decade’s

³⁹ A. SAAD JALDI, Y. AKRIMI, *La Tunisie sous la III^{ème} République*, cit., p. 8.

⁴⁰ A. SAAD JALDI, Y. AKRIMI, *La Tunisie sous la III^{ème} République*, cit., p. 7.



economic deterioration - than for President Saïed. Turnout was surprisingly low for such a consequential vote: 30.5% according to the ISIE (2.8 million of 9 million registered voters) and 27.5% according to Sigma Conseil and Reuters. The “yes” won by a landslide with 94.6%. As no minimum turnout threshold had been set for validity, the new Fundamental Law entered into force despite the high level of abstention.

3.4 - Core features of the 2022 Constitution

Like its predecessors, the 2022 Constitution is shaped by the religious factor, deeply rooted in Tunisian society. However, its treatment of religion marks a significant doctrinal shift. The 2022 Tunisian Constitution does not formally proclaim Islam as the religion of the State, in contrast with the 1959 and 2014 constitutions. Nor defines Tunisia as “a Muslim country” but introduces a functionally stronger formula: the State is part of the “Islamic Umma” and “shall work, within a democratic regime, towards achieving the objectives of true Islam concerning the preservation of life, honour, property, religion, and freedom” (art. 5). Although less explicit as a religious State norm, by removing the reference to a “civil State,” it places Islamic identity at the centre of the political project - something that, according to some critics, effectively transforms shari‘a into a formal source of law⁴¹, in other words, opens the way to religiously based- interpretations of the law - that is, to an “Islamisation” of the legal order and the possible application of the shari‘a. Some scholars argue that this transition enshrines the religiosity of the State itself rather than just the religiosity of the nation⁴².

This confessional orientation is reinforced by the systematic reading of Article 5 together with Article 88, which maintains the requirement that the President profess Islam. While formally continuous with the previous constitutional framework, this requirement acquires a different constitutional meaning in a system where presidential power is hegemonic. The fusion between religious identity and political authority is thus not merely symbolic but structurally embedded in the institutional design. That’s why Article 5, read together with Article 88,

⁴¹ I. DRIDI, K. DABBABI, *Implications of Tunisia’s New Constitution on Religious Freedom, Associated Rights & Governance*, in *Cornerstone Forum*, No. 325. Religious Freedom Institute p. 2.

⁴² A. SAAD JALDI, Y. AKRIMI, *La Tunisie sous la III^{ème} République*, cit., p. 8.



disappointed Saïed's more secular supporters⁴³.

The implications of this confessional framework become more visible in the regime of rights and freedoms. Article 28 guarantees freedom of worship yet subjects its exercise to the condition that it must not endanger "public security." This clause introduces a significant degree of indeterminacy, as the concept of public security remains undefined and therefore open to expansive interpretation. In doctrinal terms, this flexibility risks transforming a classical limitation clause into a discretionary tool for restricting religious and public freedoms, particularly in a context of weakened institutional controls.

Article 28 formally guarantees freedom of belief and conscience, as well as the free exercise of religious practices. However, when compared to Article 6 of the 2014 Constitution, the provision appears less robust both in its formulation and in its systemic context. The earlier explicit prohibition of takfir (the act of declaring another Muslim an apostate or a non-believer) and the strong doctrinal emphasis on freedom of conscience are no longer present with the same clarity. Even though, Article 28 guarantees freedom of worship yet adds that its exercise must not endanger public security, a notion some critics view as ambiguous and potentially restrictive. This specification may appear questionably redundant given that Article 55 already establishes a general framework for restricting all constitutionally protected rights - including freedom of religion - on grounds such as public security, national defence and public health.

Regarding the legal implementation of religious freedom, although the Tunisian Penal Code does not include a specific blasphemy offence, several provisions are used to prosecute expressions deemed offensive to Islam: article 121(3), which punishes publications offending morality or public order, and article 226, which sanctions public attacks to good morals. Outside the Criminal Code, although used as a 'digital crime', article 86 of the Telecommunications Code (Law No. 1/2001) penalizes the use of networks to "insult," "disturb," or disseminate information that "may cause harm". These articles have been applied against bloggers such as Emna Chargui, sentenced in 2020 to six months for posting on Facebook a text imitating a Quranic verse⁴⁴; and Jabeur

⁴³ N. MZID, K. BAKLOUTI, *Une nouvelle Constitution tunisienne dans un contexte de crise*, in *Revue de droit comparé du travail et de la sécurité sociale*, 1, 2023, p. 18.

⁴⁴ HiVOS - PEOPLE UNLIMITED, *Legal mapping of freedom of expression in Tunisia*, Report



Mejri and Ghazi Beji, sentenced in 2012 to seven and a half years for publishing writings deemed offensive to Islam (Beji was granted asylum in France; Mejri was pardoned in 2014). There also remains a certain social hostility towards Christians, especially converts⁴⁵.

The 2022 Constitution dismantles the semi presidential system established in 2014 and installs a - hyper presidential - regime marked by a clear authoritarian drift. The balance of powers is fundamentally altered in favour of the Executive, while the Legislature and Judiciary are reduced to state functions subordinated to a President devoid of effective checks⁴⁶.

Executive power. The President exercises executive authority assisted by a government led by a Head of Government (Art. 87). The President holds a pre-eminent role, with exclusive authority to appoint and dismiss both the Head of Government and ministers without parliamentary approval (Arts. 101, 102). The Government is accountable to the President, not to Parliament (Art. 112). The President also enjoys a general regulatory power, which may be delegated to the Head of Government in whole or in part (Art. 104)⁴⁷.

The Constitution grants the President absolute immunity during the mandate and provides no mechanism allowing Parliament to remove him for serious breaches. Unlike the 2014 Constitution, whose Article 88 regulated presidential removal, the 2022 text eliminates this form of political control.

Judicial power. The new Constitution entrenches significant presidential interference in the judiciary. While judgments are rendered “in the name of the people”, they are executed “in the name of the President of the Republic” (Art. 118). The President appoints judges by decree on the proposal of the High Council of Justice (Art. 120) and appoints the members of the Constitutional Court by decree (Art. 125). These prerogatives concentrate decisive power at the apex of the Executive and weaken judicial counterbalances.

Parliament. The President may dissolve both chambers if a second motion of censure is tabled during the legislature (Art. 116), creating an additional mechanism of political pressure over Parliament.

December 2023, p. 9.

⁴⁵ **WORLD WATCH RESEARCH (WWR)**, *Tunisia: Background information*, in *Open Doors International* (reserach@od.org), p. 7.

⁴⁶ **N. MZID, K. BAKLOUTI**, *Une nouvelle Constitution*, cit., p. 18.

⁴⁷ **A. ELIA**, *Túnez en la era de Kaïs Saïed*, cit., p. 61.



Legislative powers. The President may introduce bills directly to the Assembly (Art. 68), which enjoy priority over deputies' proposals. Article 97 allows the President to submit directly to referendum any bill concerning the organisation of public powers or the ratification of treaties affecting institutional functioning, provided it does not contradict the Constitution. This mechanism enables the President to avoid parliamentary debate and seek direct popular validation.

The President is the only authority empowered to initiate laws on international treaties and finance laws (Art. 68). He may also issue decree laws with statutory force in three situations: during the recess of the Assembly, with later ratification required (Art. 73); by delegation from the Assembly, for a limited time and specific purpose, subject to later ratification (Art. 70); in the event of dissolution of the Assembly, with ratification at the first sitting of the new chamber (Art. 80).

Exceptional measures. In cases of "imminent danger" threatening the institutions, security or independence of the country or impeding the functioning of public powers (Art. 96), the President may adopt exceptional measures for as long as the emergency persists. Unlike the 2014 Constitution - which required prior review by the Constitutional Court - the 2022 text abolishes that requirement. It does, however, retain the obligation to inform in advance the Head of Government and the Speaker of the Assembly, as already provided by Article 80 (2014). The text requires informing them, but their approval is not required, nor is the mechanism to ensure effective consultation takes place. The text merely states that measures cease when the "circumstances that motivated them end". Since the president alone evaluates these circumstances, there is no legal guarantee that the exceptional regime will be temporary which can be transformed in a de facto permanent state of exception. Article 96 must be read alongside Article 110, which grants the President total immunity for acts performed in the exercise of his functions, effectively making the management of the state of exception unaccountable. The absence of a list of rights that cannot be suspended even during a state of exception within Article 96 is matter of legal concern.

The President is also Commander-in-chief of the Armed Forces and directs foreign policy and national security.

Bicameralism. In contrast to the unicameral legislature of 2014, the 2022 Constitution establishes a bicameral Parliament composed of the Assembly of the Representatives of the People and the National Council



of Regions and Districts. The latter, with 77 indirectly elected members, shifts representation toward territorial criteria, thereby diluting national party representation. Although its official purpose is regional development, in practice it weakens the party system and traditional mechanisms of representation⁴⁸. The Council has been operational since March 2024.

Rights and freedoms. The 2022 Constitution nominally retains most civil and political rights contained in the 2014 text under Title II and increases the number of rights provisions from 34 to 53. However, it avoids referring to them as “human rights” or “fundamental rights”, terms that confer universality and reinforced protection.

The text also includes several social rights, such as the right to health (Art. 43), the right to water (Art. 48) and child protection provisions - including a state duty to care for abandoned children or children of unknown parentage (Art. 52) - as well as protection for indigent elderly people (Art. 53).

Despite the formal recognition of freedom of expression (Art. 37), its exercise is severely constrained in practice by Decree Law 54, which imposes heavy prison sentences for spreading “false information” or for defamation - deliberately vague categories allowing wide discretionary enforcement. As a result, freedom of speech becomes fragile and easily restricted.

Regarding, limits on rights, Article 55 provides that rights may be restricted only by law, and solely for reasons of necessity “in a democratic system” to protect national defence, public security or public health. The Constitution removes any reference to “public morals” as a ground for limiting rights was present in the 2014 text.

Rights provisions would be ineffective without an institution to protect them. The 2014 Constitution created a Constitutional Court as an “independent judicial instance” (Art. 118) and the sole body competent to review the constitutionality of laws (Art. 120), following the Kelsenian model of concentrated review⁴⁹. Its non-establishment, due to political deadlock, contributed decisively to the institutional collapse that ended the Second Republic.

The 2022 Constitution not only omits the Transitional Provisional Instance for the Control of Constitutionality envisaged in 2014, but

⁴⁸ A. SAAD JALDI, Y. AKRIMI, *La Tunisie sous la III^{ème} République*, cit., p. 5.

⁴⁹ R. BEN ACHOUR, *La vacance définitive*, cit., p. 235.



profoundly alters its composition and functions, jeopardising both its independence and effectiveness. Its nine members (instead of twelve) are appointed by presidential decree according to automatic seniority among the presidents of the Court of Cassation, Administrative Court, and Court of Accounts, concentrating appointment power in presidential hands. Some authors criticise the fact that six of the nine judges lack expertise in constitutional law⁵⁰; others note that making them all magistrates prevents the institutional pluralism desirable in a constitutional court⁵¹.

Functionally, the Constitutional Court loses one of its most sensitive powers: review of exceptional measures adopted by the President. Article 92 no longer provides for this competence, unlike Article 80 of the 2014 text. Under Article 80 of the 2014 Constitution, the Court was the final arbiter of the "imminent danger" used to justify emergency powers. After 30 days, the ARP Speaker or 30 MPs could ask the Court to decide if the state of emergency should continue. The 2022 Article 96 completely excludes the Court from this process, making the President the sole evaluator of the emergency's duration. With no procedures to challenge exceptional measures and no deadlines to review presidential decisions, the new Constitution fails to ensure the protection of human rights in these emergencies' periods⁵².

Regarding the constitutionality review of laws, the 2014 Constitution provided for both a priori and a posteriori control. The 2022 text retains these procedures, granting the Constitutional Court exclusive competence over six essential areas (Art. 127). Yet Article 131 reveals the Court's weakness: when it declares a law unconstitutional, the law is not annulled, but merely "suspended, under the terms set out in the judgment"⁵³ - a formula that substantially reduces the effectiveness of judicial review.

Regarding constitutional amendment, the initiative lies with the President or with two thirds of the Assembly, subject to the Constitutional Court's opinion. The President may also submit constitutional revisions to referendum (Art. 136), reinforcing his ability to bypass parliamentary debate by seeking direct popular approval.

⁵⁰ A. SAAD JALDI, Y. AKRIMI, *La Tunisie sous la III^{ème} République*, cit., p. 7.

⁵¹ M. MEZGHERI, *El constitucionalismo tunecino*, cit., p. 244.

⁵² AMNISTÍA INTERNACIONAL, *Túnez: la adopción de la nueva constitución no debe ratificar la erosión de los derechos humanos (amnesty.org)*, 19 agosto 2022, p. 35.

⁵³ M. MEZGHERI, *El constitucionalismo tunecino*, cit., p. 246.



Finally, the 2022 Constitution eliminates most independent bodies created in 2014. Only the Independent High Authority for Elections (ISIE) remains (Art. 134), though it was profoundly modified by a presidential decree issued shortly before the referendum, which stripped the institution of its independence and autonomy⁵⁴. Their elimination - previously key components of the checks and- balances framework - further consolidates- presidential power and weakens institutional pluralism.

4 - Parliamentary elections and the politics of repression

According to the roadmap, five months remained before the parliamentary elections scheduled for 17 December. Obstacles soon emerged, beginning with the reaction of the judiciary. On 10 August, the Higher Administrative Court issued an interim order reinstating 49 of the 57 “pre-retired” magistrates, finding no evidence against them. On a case-by-case review it identified indications only with respect to the remaining eight. Justice Minister Leila Jaffel, acting on the President’s instructions, refused to execute the court order and did not reinstate the judges. She also opened new criminal investigations against them to justify her decision, arguing they could not be reinstated while cases were pending. The separation of power crisis in Tunisia deepened further.

Before calling the legislative elections, the President continued to clear the ground for his autocratic project through two presidential decrees, one on freedom of expression and another amending the electoral framework.

Decree Law No. 202254 of 13 December purported to prevent and punish offences related to information and communication systems. In practice, it imposed arbitrary and unlawful restrictions on freedom of expression under the pretext of combating cybercrime and “fake news”. Article 24, the most controversial, criminalised the use of communication networks to “produce, disseminate or transmit false news, false data or rumours”. By defining none of these concepts, the text granted the authorities sweeping discretion to punish dissenting opinions, facilitating the intimidation and prosecution of opponents and

⁵⁴ M. ROMDHANI, *Tunisia’s new Constitution*, cit. p. 58.



journalists⁵⁵. By early 2025, around 400 people - including citizens, journalists and political figures - had been prosecuted under this decree. Notable cases included the UGTT Secretary-general (for denouncing the deterioration of public services); opposition leader Abir Moussi (sentenced to two years for criticising the electoral commission); Chaima Issa and Ghazi Chaouachi (accused of spreading false news); and commentator Sonia Dahmani, who was imprisoned⁵⁶.

Relying on Decree Law No. 2021117 - which allowed the President to legislate unilaterally in electoral matters, previously the preserve of organic laws approved by Parliament - Saïed amended Organic Law No. 201416 of 26 May via Presidential Decree No. 202255 of 15 September. The new text introduced a majoritarian, single member district system in place of proportional party lists; reduced the total number of deputies to 161 (151 in Tunisia and 10 abroad); made candidacies individual, requiring local voter endorsements; abolished public (and party) campaign financing so that campaigns could only be self-financed or privately financed (Art. 75); removed gender parity by eliminating the 2014 zipper list requirement; and adopted a two round voting system (if no absolute majority in the first round, a second between the top two).

Decree 202255 thus dismantled the model of party based representative democracy, replacing it with a highly fragmented, individual centered system that weakened organized formations⁵⁷ - the classic expression of authoritarian distrust of associationism: better isolated individuals than organized collectives. Most parties represented in the dissolved Parliament, led by Ennahda, boycotted the legislative elections; the Tunisian General Labor Union (UGTT) joined the boycott as well.

The first round of the legislative elections took place, as planned, on 17 December 2022. There were 1,058 candidates, but turnout was very low: 11.2% of the nine million registered voters, according to the ISIE. It was the lowest figure in eleven years of democracy: in previous legislative elections turnout had exceeded 40%, and the July constitutional referendum had reached 30%. In the second round, on 29 January 2023, held in 131 constituencies where no candidate obtained an absolute majority, abstention remained at 11.3%. Of the 161 deputies

⁵⁵ A. SAAD JALDI, Y. AKRIMI, *La Tunisie sous la III^{ème} République*, cit., p. 10.

⁵⁶ M. EL-ANSARY, *Consolidating power*, cit., p. 3.

⁵⁷ A. SAAD JALDI, Y. AKRIMI, *La Tunisie sous la III^{ème} République*, cit., p. 11.



finally elected, only 25 were women (15.5%). Parliament, which held its first session on 13 March, lacked real power and became fully subordinated to the President.

The very high abstention suggested that the so called “Saïed effect” was beginning to fade. The President, however, did not acknowledge the setback, attributing it to a plot against him. He stepped up arrests of judges, politicians and journalists on the catchall charge of “conspiracy against state security”. Those detained included journalist Nuredin Boutar, director of Radio Mosaïque; political commentator Lazhar Akremi; the social democrat with a Spanish passport Jayam Turki; and Abdelhamid Jlassi, former Ennahda leader.

The UGTT openly challenged President Saïed, organising a mass protest in the capital against the wave of arrests and against the official stigmatisation of sub-Saharan migrants. In a highly controversial speech, Saïed described them as “criminal hordes”, allegedly seeking to alter Tunisia’s demographic composition to make it “a mere African country with no link to the Arab and Islamic world”.

On Monday, 17 April 2023, Islamist leader Rached Ghannouchi was arrested. After a nine-hour interrogation, a judge ordered his pretrial detention on charges of “conspiracy against the internal security of the State”, following statements in which he warned that the systematic exclusion of the left, of political Islam and of any opposition was pushing the country towards “a project of civil war”.

On 2 August 2023, Saïed replaced Prime Minister Najla Bouden with Ahmed Hachani, a largely unknown Central Bank official. Although the President offered no explanation - true to his practice of avoiding press conferences - the move was read as part of negotiations for a €1.9 billion IMF loan, a precondition for the European Union to disburse around €1 billion in assistance. The IMF’s preliminary agreement required a structural adjustment that Saïed had initially rejected. In any case, he had alternative support: Saudi Arabia had deposited US\$ 500 million in the Central Bank, and the tourism sector was beginning to recover.

To complete his project of “grassroots democracy”, Saïed needed to regulate the second legislative chamber. He did so through Decree Law No. 202310 of 8 March 2023, which established an indirect election system based on local, regional and district councils. The National Council of Regions and Districts was elected a year later, in March 2024, with very low turnout (12%), via a complex electoral procedure. First,



citizens directly elected 1,200 representatives of their *imadas* (localities) in two rounds (24.12.2023 and 05.02.2024). These representatives were then grouped into the country's 279 local councils. Each local council selected by lot its delegates to the 24 regional councils (one per governorate). The members of each regional council, in turn, elected from among themselves a representative to one of the five district councils.

The National Council of Regions and Districts thus consisted of 77 members: three representatives from each of the 24 regional councils (72) plus one representative from each of the five district councils. All serve five-year terms. This territorial, indirect system seeks to strengthen bottom-up representativeness rooted in the local level and to dilute the role of political parties, scaling legitimacy from below through internal selection mechanisms⁵⁸.

5 - Saïed's 2024 re-election and the continuation of repression

The road to Saïed's re-election in 2024 was marked by the systematic elimination of political competition through control of the judicial apparatus and the prosecution of the opposition. At least eight presidential hopefuls were disqualified from the October 2024 contest. Many were sentenced to prison or banned for life on fabricated charges, such as spreading false news⁵⁹. Although the administrative court ruled in favor of reinstating some candidates - Imed Daimi and Mondher Znaidi, among others - the Independent High Authority for Elections (ISIE) refused to execute those judgments, thereby ensuring a non-competitive landscape for Saïed⁶⁰. There were no surprises: with very low turnout (28.8%), Kaïs Saïed was re-elected President of the Third Tunisian Republic with 90.69% of the vote. The runner-up, Ayachi Zammel, obtained only 7.35%.

After his re-election, Saïed intensified in 2025 the authoritarian control of the country, further closing space for political opposition and civil society. On 4 March 2025, before the Tunis First-Instance Court (Anti-Terrorism Chamber), a mega-trial began against over forty

⁵⁸ A. SAAD JALDI, Y. AKRIMI, *La Tunisie sous la III^{ème} République*, cit., p. 12.

⁵⁹ M. EL-ANSARY, *Consolidating power*, cit., p. 2.

⁶⁰ R. KLAUBER, *Policies of the new Tunisian dictatorship*, Prague Centre for Middle East Relations (PCMR), *Policy Paper*, 5(5), 2025, pp. 3-4.



opponents - including politicians, journalists, lawyers and activists - on the now familiar charges of “conspiracy against state security”, membership of a “terrorist group”, illicit contacts with foreign powers, and threats to national integrity⁶¹. All hearings were held behind closed doors, without media or observers, and with restricted access even for parts of the defence. On 19 April 2025, the court convicted 37 defendants in custody and 15 in absentia, imposing sentences ranging from 4 to 74 years⁶².

A second case, in a separate judicial file, was opened on 25 May 2025 under the title “Conspiracy against State Security II”. It named another 22 defendants on similar charges, among them Rached Ghannouchi, former prime minister Youssef Chahed (leader of Tahya Tounes), and Nadia Akacha, Saïed’s former chief of staff, who was sentenced in absentia to 35 years.

6 - Conclusions

Whereas 2014-2019 was characterized by attempts at secularization and the implementation of individual equality rights, the present legal framework under Kaïs Saïed re-embeds religious precepts as a duty of the State, removing the checks and balances that had defined the former “Second Republic” as a civil and pluralist system⁶³.

The 2022 Constitution was vitiated ab initio, being constructed on a breach of the 2014 Constitution - the very instrument under which Kaïs Saïed had been elected President. It was conceived in violation of Article 80 (on exceptional measures) and executed while ignoring, inter alia, Articles 143 and 144, which set out the procedural requirements for any constitutional revision.

As regards Article 80, beyond an expansive and self-serving interpretation of “imminent danger”, the President announced

⁶¹ <https://apnews.com/article/tunisia-opposition-trial-protest-kais-saied-security-d39adf113ec412c936ad6084744ea2d5>

⁶² <https://elpais.com/internacional/2025-04-19/tunez-condena-a-40-opositores-a-penas-de-hasta-66-anos-de-carcel-tras-ser-senalado-como-pais-seguro-por-la-ue.html>

⁶³ **THE ARAB ASSOCIATION OF CONSTITUTIONAL LAW (TAACL)** (2024). *Groupe de travail sur la Tunisie - Le cadre juridique des droits et libertés en Tunisie: l’agenda des réformes urgentes* (<https://aaclmena.org/uploads/2024/04/23-TWG-summary-report.fr.pdf>), November 7, 2025.



ultra-exceptional measures on television without prior consultation with either the Head of Government or the Speaker of the Assembly. Nor did he inform the President of the Constitutional Court, because that body had never been established due to prior political deadlock. Moreover, although Article 80 required that “the chamber shall remain in permanent session and may not be dissolved by the President” for the duration of the exceptional period, Saïed first suspended parliamentary functions and then dissolved the Assembly by decree. As for Articles 143 and 144 of the 2014 Constitution, while they recognized presidential initiative in constitutional reform, they required a prior opinion from the Constitutional Court - to safeguard the unamendable clauses - and parliamentary approval by qualified majorities, or two-thirds if the President intended to submit the reform to referendum. Saïed ignored these steps, opting instead to impose exceptional measures unilaterally and extra-constitutionally, rather than allow either a Constitutional Court or the Assembly to check him.

To these formal and substantive defects must be added an opaque and exclusionary constituent process. The identity of the final drafters is uncertain, and the published text did not coincide with the draft produced by the technical commission appointed by the President. The process dispensed with minimum guarantees: it unfolded amid growing repression, without an independent electoral authority, and at a haste incompatible with a constituent exercise - evidenced by the very short time afforded to citizens to scrutinize the text before the referendum.

Tunisia embarked in 2011 on a democratic process following an exemplary revolution. The 2014 Constitution was the result of dialogue, broad consensus, careful drafting and a reasonable balance of powers. The process later stalled amid economic crisis, institutional deterioration and corruption across all three branches. On 25 July 2021, much of the population voiced its disenchantment in the streets. The Head of State - without acknowledging his own responsibility - seized the moment to advance not what “the people want”, as his mantra claims, but what he wanted: an autocratic regime in which to govern and legislate at will, without parties, judges or critical citizens. He only needed the Army’s backing. That very day he inaugurated an exceptional regime - what many termed a “constitutional coup”.

The objective was clear: to transform exceptional measures into constitutional normality. He succeeded in barely one year. The 2022 Constitution entrenches a plenipotentiary presidentialism, with



sweeping legislative powers, an anaemic Parliament and eroded oversight. The abstract promise of “grass-roots democracy” has not yielded economic improvements; instead, it has produced an environment in which political rivals, judges and journalists have been imprisoned on vague charges, without access to an independent judiciary.

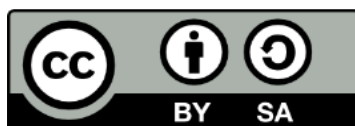
For all these reasons, far from representing the continuation of the democratization process launched in 2011, the 2022 Constitution has become the institutional gateway for a renewed authoritarian system - one that, rather than deepening incipient laïcité, appears to have shifted towards a “confessional presidentialism”, which can be understood as a hybrid configuration situated at the intersection between hyper-presidentialism and religious constitutionalism.

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