

# The 2022 Constitutional Referendum in Tunisia: Reviving the Democratic Transition or a Severe Democratic Setback?

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## ABSTRACT

Tunisia is undergoing a renewed period of transition that has seismically broken with the political system that resulted from the previous Constitution of January 27, 2014, laying the foundations for a third republic whose features gradually emerged in the new constitution following the referendum on July 25, 2022. A constitutional referendum can allow for the direct expression of the democratic popular will, conditional upon several democratic guarantees at various stages of the referendum to prevent politicization, whilst ensuring a pluralistic public debate on the contents of the constitution. The constitutional referendum in Tunisia took place under extraordinary circumstances, which raises questions about its democratic character. The two stages of the constituent process, namely the preparation of the draft constitution and then its ratification, were both implemented during a ‘state of exception’ declared by presidential decree on July 25, 2021. The state of exception granted the President extensive discretion and expanded powers, with brief and limited consultation with a select group of experts whose advice was purely advisory.

The content of the new constitution reflected this lack of deliberation and independent political oversight, with the institutional design revealing a clear emphasis on the centralization of power. The horizontal distribution of powers between the executive and legislative branches consecrated a form of hyper-presidentialism, whereas the vertical distribution of power between the central and local authorities forcefully renounced the powers of the latter, breaking from the 2014 Constitution’s efforts towards decentralization. At the same time, the official political discourse and the new electoral law are designed to curtail the role of intermediary civic and political bodies, especially political parties, which inevitably weakens the institutions that promote an active political life and further deepens the imbalance of power.

These choices are sorely reminiscent of Tunisia’s constitutional experiences prior to the 2011 revolution. Similar to the pre-2011 period, the adoption of Presidential Decree No. 117 of September 22, 2021, on exceptional measures, placed the President of the Republic at the epicenter of the political system, removed effective oversight and accountability mechanisms, and failed to limit the duration of the “state of exception” to a specific time period.

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Although this move towards centralization was initially temporary, the constituent process was implemented during this state of exception, which meant that it was non-participatory. This led to several irreversible repercussions and severely tested the resilience and experience of democratic transition in Tunisia.

Keywords: *Democratic transition, state of exception, constitution, constitutional referendum, Independent High Authority for Elections, hyper-presidentialism, President of the Republic, political parties, Constitutional Court, legislative authority, local authorities, decentralization.*

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## INTRODUCTION

Tunisia is experiencing a renewed period of transition.<sup>1</sup> As it breaks with the system established by the January 27, 2014 Constitution, it lays the foundations for a third republic,<sup>2</sup> gradually taking shape following the ratification of a new constitution adopted as a result of the July 25, 2022 referendum.<sup>3</sup> It is important to understand the general context in which this new 2022 Constitution was drafted, following the declaration of the “state of exception” by the President of the Republic on July 25, 2021, pursuant to a broad interpretation of Article 80 of the 2014 Constitution.<sup>4</sup> In the 2014 Constitution, the state of exception is a specific legal regime that can be invoked in extraordinary circumstances, “in the event of imminent danger threatening the nation’s institutions or the security or independence of the country, and hampering the normal functioning of the state.”<sup>5</sup> Under the state of exception, powers are concentrated in the hands of the President of the Republic, who can take measures to address the danger and restore the situation to normalcy. In other words, the ordinary distribution of powers set out in the constitution is subject to an exception. The balance of power tilts in favor of the President of the Republic, placing the President at the epicenter of the decision-making process and enabling them to exercise the absolute powers conferred upon them, at their own discretion. As such, it deviates from the ordinary constitutional system organized according to the principle of separation of powers, mutual control, and guarantees related to rights and freedoms.

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<sup>1</sup> There are many definitions that have attempted to encompass the concept of democratic transition, which can be defined as the phase between one political system and another, during which the new system is consolidated, and which ends with the completion of its establishment. This means that the transitional period is a period of time that is defined at each end by the existence of a supposed stable political system, and a process during which the new rules of the political game are produced and accepted before they can establish a new political system. For more see: Nicolas Guilhot and Philippe C. Schmitter, “De la transition à la consolidation. Une lecture rétrospective des *democratization studies*,” *Revue française de Science politique* 50, no. 4-5 (2000).

<sup>2</sup> The first republic was established according to the proclamation of the Republic on July 25, 1957, and the Constitution of June 1, 1959, and it continued until the constitution was abolished by virtue of Constituent Law No. 6 of December 16, 2011, on the temporary organization of public authorities. In turn, the second republic began with the Constitution of January 27, 2014, and ended with its replacement in 2022.

<sup>3</sup> Presidential Decree No. 691 of August 17, 2022, on the sealing and promulgation of the Constitution of the Republic of Tunisia, available in French at <https://legislation-securite.tn/law/105339>.

<sup>4</sup> Article 80: “In the event of imminent danger threatening the nation’s institutions or the security or independence of the country, and hampering the normal functioning of the state, the President of the Republic may take any measures necessitated by the exceptional circumstances, after consultation with the Head of Government and the Speaker of the Assembly of the Representatives of the People and informing the President of the Constitutional Court. The President shall announce the measures in a statement to the people. The measures shall guarantee, as soon as possible, a return to the normal functioning of state institutions and services. The Assembly of the Representatives of the People shall be deemed to be in a state of continuous session throughout such a period. In this situation, the President of the Republic cannot dissolve the Assembly of the Representatives of the People and a motion of censure against the government cannot be presented. Thirty days after the entry into force of these measures, and at any time thereafter, the Speaker of the Assembly of the Representatives of the People or thirty of the members thereof shall be entitled to apply to the Constitutional Court with a view to verifying whether or not the circumstances remain exceptional. The Court shall rule upon and publicly issue its decision within a period not exceeding fifteen days. These measures cease to be in force as soon as the circumstances justifying their implementation no longer apply. The President of the Republic shall address a message to the people to this effect.”

<sup>5</sup> Constitution of Tunisia (2014), Article 80.

However, the choice between an ordinary system and a state of exception should not necessarily lead to a collision between effective crisis-management and the rule of law, nor should it lead to a conflict between the duty to maintain security on the one hand and the obligation to protect fundamental rights and freedoms on the other. Due to the seriousness of declaring a state of exception and its legal consequences related to the resulting imbalance of power and the restriction or suspension of fundamental rights and freedoms, democratic constitutions provide several conditions to mitigate the potential for abuse.

In Tunisia, the President's declaration of the state of exception constituted a breach in both form and substance.<sup>6</sup> Furthermore, in contradiction with express safeguards stipulated in the text of the constitution, the President dismissed the government<sup>7</sup> and unilaterally appointed a new one in its place.<sup>8</sup> After having dismissed the government, he suspended the work of the Assembly of the Representatives of the People<sup>9</sup> and then dissolved it completely on March 30, 2022, announcing that early legislative elections would be held on December 17, 2022, based on a new electoral law to be issued by presidential decree.

Presidential Decree No. 117 of September 22, 2021, on exceptional measures, was an important step in breaking with the 2014 Constitution. It expressly stated that the constitution was suspended, except for the Preamble, Chapter I on General Principles, and Chapter II on Rights and Freedoms. It also provided a blanket clause to the effect that other constitutional articles consistent with Decree No. 117 would remain unaffected, leaving it unclear which ones were being referred to. The decree not only violated the supremacy of the constitution and the hierarchy of legal norms, but it also enacted a temporary organization of powers under the state of exception, where the President of the Republic aggregated all powers to himself without any mechanisms for accountability or scrutiny.

Importantly, while the choice to centralize power was initially justified by the temporary measures allowed under the state of exception, its permanent adoption in the new constitution following the constitutional referendum on July 25, 2022, shows that this was the original intent behind the temporary measures. This usurpation and centralization of power and the absence of scrutiny and accountability is the nucleus of Tunisia's democratic transition being put to the test.

According to official narratives, these moves were necessary to save the Tunisian state and its political system from a multi-level crisis affecting most sectors. Not only were these claimed to be entirely lawful — using the cover of the state of exception for legitimacy — this was an incarnation of the popular will expressed in the protest movements

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<sup>6</sup> Wahid Ferchichi, "[The Declaration of July 25, 2021: Has the Constitution of January 27, 2014 Been Buried?](#)" *Legal Agenda*, August 3, 2021.

<sup>7</sup> Presidential Decree No. 69-2021 of July 26, 2021, ending the duties of the Prime Minister and the members of the Government, available in French at <https://legislation-securite.tn/law/105034>.

<sup>8</sup> Presidential Decree No. 138-2021 of October 11, 2021, naming members of the government, available in Arabic at <https://legislation-securite.tn/ar/law/105070>.

<sup>9</sup> Presidential Decree No. 80-2021 of July 29, 2021, suspending the competences of the Assembly of the Representatives of the People, available in Arabic at <https://legislation-securite.tn/ar/law/105038>.

Presidential Decree No. 109-2021 of August 24, 2021, on the extension of exceptional measures relating to the suspension of the competences of the Assembly of the Representatives of the People, available in Arabic at <https://legislation-securite.tn/ar/law/105043>.

against the government, parliament, and Ennahda Party, which preceded the state of exception. Comprehensive reform required dismantling the “2014 Constitution” and drafting a new constitution establishing an alternative political system able to respond to the people’s demands and to rule the country efficiently.

According to this narrative, the 2014 Constitution was responsible for creating a tense, dysfunctional, and deadlocked political system tailored to benefit the Ennahda movement, which held a majority in the National Constituent Assembly. The constitution was considered an ineffective outcome of a hybrid political consensus formed during the transitional period (2011-2014). As such, partial amendments to the constitution were deemed insufficient given the extensive reforms required for large section of its chapters and articles. Drafting a new constitution was thus necessary to adapt to changes in the political environment. Notably, criticism of the constitution and calls for amending it did not emerge at the July 25, 2021, juncture, but rather preceded it. Many believed that the 2014 Constitution was responsible for the political crisis that followed the 2014 parliamentary elections, the inefficacy of the parliamentary majority, and governmental instability.

Opponents of the President had conflicting positions. Some radically opposed the entire course of political maneuvers, from the declaration of the state of exception to the referendum, on grounds that the steps taken lacked democratic legitimacy and threatened to uproot the democratic gains achieved during the last decade. Others initially supported the declaration of the state of exception, but then opposed the subsequent steps, its extension without consultation with the relevant bodies (including parties, associations, and trade unions), the roadmap to end the state of exception, and the preparation of new legal texts that fundamentally and unilaterally changed the constitutional structure. For the President’s opponents, this reflected a clear will to return to the pre-2011 era, recreating authoritarian hyper-presidentialism. Some also expressed their fears about the end goals of the President’s political project and the danger of turning the country into a testing ground for establishing a ‘grassroots democracy’. This was largely a result of the ambiguity surrounding the President’s project and its similarities with the grassroots-government adopted in Libya under the rule of the late President Muammar al-Gaddafi.

The political and legal consequences of the positions held at the July 25, 2021, juncture cannot be analyzed in isolation from the factors that led to that critical point. While the constitutional and legislative reforms adopted between 2011 and 2021 enabled some elements of a democratic system to take root, including the peaceful transfer of power through free elections and room for expanded political expression, many of these reforms were only reflected in the text of the constitution and remained unfulfilled in actuality. It is therefore paradoxical that the constitution was held responsible for the political crisis, while its implementation and enforcement through constitutional institutions were neglected and incomplete. Indeed, several crucial institutions for strengthening the balance of power and respect for human rights were not established, including the Constitutional Court and several independent constitutional bodies, such as the Elections Commission<sup>10</sup> or the Good Governance and Anti-Corruption Commission.<sup>11</sup>

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<sup>10</sup> Constitution of Tunisia (2014), Article 126.

<sup>11</sup> Constitution of Tunisia (2014), Article 130.

Moreover, these reforms did not lead to stability nor efficiency. Concurrent political crises and severe economic deterioration shook people's trust in the political class and, in turn, the democratic project as a whole. In fact, the demands that drove the popular uprising between December 17, 2010, and January 14, 2011, largely concerned the management and fair distribution of resources and the fight against corruption. The economic and social crisis in Tunisia revealed the extent of the state's inability to provide basic services such as healthcare — especially during the Covid-19 pandemic. Moreover, the crisis also exposed the state's inability to achieve development and a fair distribution of wealth, with diminishing opportunities for broad sectors of the population, rampant financial and administrative corruption, weak rule of law, and widespread increase in impunity.

All these factors shook public trust in political institutions and elites, contributing greatly to the July 25, 2021, impasse, and conferring a degree of legitimacy to the state of exception declared by the President.

In this context, the relationship between democracy on the one hand and development on the other requires some discussion. Some contemporary economists, notably Amartya Sen,<sup>12</sup> have asserted that democracy does not hinder development given that it leads to a rational management of public resources, which constitutes the most important driver. By establishing a legitimate government and encouraging the people to participate in decisions related to their own destiny, democracy increases the effectiveness of development policies and strategies.

But this suggestion remains debatable. Some countries labeled as undemocratic have been able to achieve high indicators of development, while not all democratic countries are economically developed. At the same time, statistical and scientific studies have shown that the more economically advanced a country is, the higher the chances for democracy to survive and continue; it is development that leads to democracy, not the other way around.<sup>13</sup> Countries experiencing democratic transition, including Tunisia, face additional challenges in this regard: political instability, weak public law enforcement agencies, and the fear of new, radical economic reforms led by the nascent authority, all aggravate the economic situation.

Democracy takes many forms that reflect the diversity of historical and cultural experiences, and it is impossible to apply a one-size-fits-all model to every country in the world.<sup>14</sup> But whatever form democracy takes, it must always be based on the will of the people. Originally a term of Greek origin, democracy means the rule of the people, and the word has multiple definitions generally related to a political system based on the people's participation in affairs of governance. This naturally begs the question as to how a political system can best respect and represent the will of the people.

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<sup>12</sup> Amartya Sen, "Development as Freedom: An India Perspective," *Indian Journal of Industrial Relations* 42, no. 2 (2006): 157-169.

<sup>13</sup> Massimo Tommasoli (ed.), *Democracy and Development: The Role of the UN*, Discussion Paper (United Nations — International IDEA, 2013).

<sup>14</sup> Mansour Abu Hamoud El-Chibani, *Democracy in International Law between Legitimacy and Power* (Beirut: The Centre for Arab Unity Studies, 2017), 64-71.

In this context, there are two types of democracy that do not always cohere: formal democracy and substantive democracy. A country is formally democratic when it allows citizens to choose their government through free and fair elections based on universal suffrage. In this context, democracy is measured by the occurrence of elections, regardless of the ballot results. According to this formalized notion, elected governments can be ineffective, corrupt, irresponsible, and incapable of making the necessary political decisions in the public interest, but as long as they are formally elected, though they may be unpopular, they are considered democratic.<sup>15</sup>

The democratic experience in many countries has proven that formal democracy cannot bring general prosperity unless it is combined with substantive democracy. Substantive democracy guarantees the establishment of the rule of law, the separation of powers, the independence of the judiciary, and respect for the rights and freedoms of individuals, including respect for pluralism and diversity, thus ensuring the rights of minorities.<sup>16</sup> It is therefore objectives-based, determined by the outcomes of the process, rather than focused on formal and procedural aspects.

This article provides some observations about the constitutional referendum and analyzes the extent to which it complied with the requirements of democracy, both formal and substantive. It also assesses whether drafting a new constitution is a step to correcting the path towards democratic transition, or a setback for the democratic process in Tunisia.

Generally, the new Constitution of 2022 is replete with weak legal and political guarantees for democracy. Legal guarantees protect rights and freedoms and respect the principle of the separation of powers, that is, distributing state functions among different structures to limit abuse and ensure independence and moderation. Political guarantees relate to intellectual and political pluralism, fair and peaceful competition, the alternation of power, the need to respect freedoms, and guaranteeing the rights of minorities.

This article will focus on assessing these elements in the process of drafting the new constitution (I), as well as in its substantive content (II).

## I. THE CONSTITUTIONAL REFERENDUM: BETWEEN THE HAMMER OF LEGALITY AND THE ANVIL OF EXCEPTION

The “referendum” is a mechanism for direct democracy whereby citizens express their voice through rejection or acceptance of a draft legal text (such as a new or amended law or constitution) or of a specific question of importance. A referendum can be optional or compulsory and can take place at the national or sub-national (regional or local) level.

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<sup>15</sup> Samuel Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Oklahoma: University of Oklahoma Press, 1991), 9-10.

<sup>16</sup> Jean Rivero, “Etat de droit, Etat du droit,” *L’État de droit: mélanges en l’honneur de Guy Braibant*, ed. Jacques Chevallier (Paris: Dalloz, 1996).



Referendums also differ according to their consequences, such as a mandatory referendum whose results are legally binding on public authorities, or an advisory referendum whose results are purely indicative or advisory.

Despite the President of the Republic opting for a referendum on the new constitution — overtly indicating that democratic legitimacy is important — the democratic nature of the process is questionable for many reasons. The most important of these is the fact that the referendum was held during the state of exception, characterized by the centralization of powers in the President's hands and the total absence of a balance of powers and institutional accountability and oversight mechanisms. This cast serious doubts since the President of the Republic controlled the entire constitution-making process, from the decision to hold a referendum until the constitution was drafted and ratified, rendering the process akin to a *plebiscite* (political referendum), which has negative connotations [in the French legal tradition] in terms of the personalization of power, as discussed below. At no point did any other institution participate in the process.

### A. THE CONSTITUTIONAL REFERENDUM: A PRESIDENTIAL CHOICE

The constitution holds a pivotal place in the legal system, as the legal basis for the existence of state institutions and laws, and the guarantor of the rights and freedoms of individuals. During transitional periods when countries emerge from authoritarian rule, the process of drafting a new constitution carries special symbolism and is expected to address many philosophical, historical, and practical concerns. In order to ensure the success of constitution-making in a transitional context that breaks with the monopoly of opinion and power, it is important that the constitution emanate from broad negotiations and participation. This can help establish a new tradition in engaging with different social and political actors and turn the constitution into a tool that unites citizens around the basic governing principles of coexistence.

During the first transitional phase preceding the elections to the National Constituent Assembly in 2011, Tunisia adopted participatory formulas to deliberate on the most important texts regulating the democratic transition. This occurred within the framework and supervision of the Higher Authority for the Realization of the Objectives of the Revolution, Political Reform and Democratic Transition,<sup>17</sup> a body entrusted with preparing and examining decrees on political organization and proposing reforms for implementing the democratic transition.

During the first constituent process (2011-2014), the National Constituent Assembly attempted<sup>18</sup> to reconcile its decision-making power on the one hand, and the participation of civil society, national figures, and

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<sup>17</sup> See Decree No. 2011-6 of February 18, 2011, establishing the Higher Authority for the Realization of the Objectives of the Revolution, Political Reform and Democratic Transition. The authority consists of a committee of experts and a council composed of 155 members representing the political parties of the “historic” opposition, civil society actors, independent national figures, representatives of the authorities and families of the martyrs.

<sup>18</sup> The 217 members of the National Constituent Assembly were elected on October 23, 2011. The constituent process was completed with the publication of the text of the constitution ratified on January 26, 2014, in the Official Gazette of the Republic of Tunisia on February 10, 2014. During its existence, the National Constituent Assembly worked to carry out its primary mission represented in drafting the constitution of the Second Republic, in addition to assuming legislative and oversight powers over government action, which was required by the transitional period and the legal and institutional vacuum that resulted from the dissolution of the previous political institutions and the suspension and ensuing abolition of the Constitution of June 1, 1959. The National Constituent Assembly was unable to respect the deadline in completing the process of drafting the constitution in one year, and the process lasted twice as long as expected.

experts on the other.<sup>19</sup> However, this path was strewn with conflicts and crises as debates intensified between conflicting visions, especially in relation to the role of Islam in the political and legal systems; the system of government — parliamentary or presidential; and the constitutional guarantees of rights and freedoms.

A first tendency that emerged, led by the majority Islamist Ennahda movement and its allies, attempted to monopolize political choices and opinions through a logic of majoritarian dominance. The opposition blocs within the Assembly challenged this by demanding that the latter adopt a participatory approach to bestow greater legitimacy on the constitution, so that it would not be restricted to one or a handful of parties, but rather belong to all Tunisian men and women and truly reflect the diverse currents and sensitivities within Tunisian society.

The political assassination of the leftist leader, Chokri Belaid, in February 2013, and of the member of the National Constituent Assembly, Mohamed Brahmi, on July 25, 2013, greatly affected the atmosphere in the Assembly, causing it to suspend its work. It resumed only after the mediation of the quartet sponsoring the national dialogue — the Tunisian General Labor Union, the Federation of Industry, Trade and Traditional Industries, the National Association of Lawyers, and the Tunisian League for the Defense of Human Rights. In the fall of 2013, various political parties participated in the national dialogue and played an important role in resolving the political crisis. Controversial points in the draft constitution were also settled, largely due to the work of the Consensus Committee. The Assembly subsequently ratified the constitution in January 2014 by a near-unanimous vote (200 out of 217 votes).

The political context required the adoption of a consensual approach. While consensus was necessary to overcome the controversial issues and crises surrounding the constituent process, the implementation of the constitution soon unmasked the limits of this approach, as the contradictions and shortcomings inherent in the text, complicated by the necessity of finding consensus, quickly surfaced. These complications had wide-ranging and long-lasting effects, creating deadlocks in parliament.

As such, the President's decision in 2021 to opt for a referendum to adopt a new constitution is overwhelmingly considered an attempt to break with previous constituent experiences based on widespread consensus and consultation, by going directly to the sovereign people.

Constitutional referendums are one of several democratic means of constitution-making. In theory, they are no less democratic than the drafting and adoption of a draft constitution by an elected constituent assembly, as they enable citizens to participate directly in political life without delegation. Referendums also help resolve deadlocks in representative democracy, as well as other controversial issues, by giving the final word to the people.

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<sup>19</sup> The constituent committees held several hearing sessions to enable the various actors, including local and international law experts and representatives of political parties, associations and trade unions, to express their opinions and present their proposals. The Constituent Assembly also organized an open dialogue with civil society at its headquarters on September 14 and 15, 2012, to present observations and proposals on the draft of August 8, 2012. The December 14, 2012 draft took into account suggestions made during the open dialogue. Open dialogues on the constitution were also organized in the regions and abroad between December 2012 and March 2013. All these operations were carried out with the support of the United Nations.

Notably, several democratic countries have used this method to adopt their constitutions, including France, where an unelected team of experts developed the draft constitution of the Fifth Republic of 1958, which was approved by referendum, lending both the process and its outcome the required legitimacy.

However, referendums are not devoid of shortcomings. The main argument against them is the risk of weakening representative democracy by undermining the role and importance of elected bodies. Similarly, voters do not always have the ability or information to make informed decisions. The process can therefore lead to hasty and emotional decisions based on partial or basic knowledge of the subject, or unrelated factors such as the status of the authority that launched the referendum. This tendency worsens when the referendum addresses complex issues such as the adoption of a new constitution or constitutional amendments. Moreover, the executive authority can use the referendum to serve its own narrow political interests rather than the interests of democracy. Finally, the simplicity of a binary “yes” or “no” vote does not always reflect the true will of the voters, as it obviates nuances.

In Tunisia, the referendum occupies marginal significance in constitutional history, as the Constitution of January 27, 2014 did not substantively differ from the Constitution of June 1, 1959, since it prioritized the mechanisms of representative democracy over direct democracy, while making it possible to resort to the referendum to amend the constitution or to ratify some important laws in limited cases, subject to several procedural restrictions.<sup>20</sup> In practice, Tunisia held a single referendum in 2002 upon the initiative of the President to amend 39 articles of the 1959 Constitution, introducing fundamental yet contradictory amendments. On one hand, the amendments sought to reinforce the presidential grip on power (easing the restrictions on renewing the presidential term and reinforcing presidential immunity). On the other, they sought to strengthen the rule of law (guaranteeing rights and freedoms “in their universality, comprehensiveness, complementarity and interdependence”<sup>21</sup>). This process left a negative impression of the utility of the referendum and consequently of the manipulation of the popular will to consolidate presidential power.

The constitutional referendum held on July 25, 2022, fueled a strong debate about its democratic character, particularly in the context of deep division between supporters and opponents. The division was due to the fact that both the preparation and ratification of the draft constitution took place under the state of exception, where the President had wide discretion by decree, where consultations were limited to a short period, and where the role of a narrow group of experts was purely advisory.

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<sup>20</sup> The referendum was included for the first time in the Constitution of June 1, 1959, following the constitutional amendment of 1976, in both Article 2 related to treaties concluded within the framework of the Maghreb unity, and Article 47 related to laws of national importance or important issues related to the supreme interest of the country, provided that these provisions do not contradict the constitution. Following the constitutional revision of 1997, the scope was broadened to include a third type of referendum, which is the constitutional referendum (Article 76). The 2014 Constitution, in turn, included the legislative referendum in Articles 50 and 82, and the constitutional referendum in Article 144, which is related to the amendment of the constitution and requires that the draft amendment be approved by two-thirds of the members of the Assembly of the Representatives of the People before submitting it to the people.

<sup>21</sup> Constitution of Tunisia (1959), Article 5.

The referendum was based on Article 5 of Presidential Decree No. 117 of September 22, 2021, on exceptional measures, which defines the parameters for future presidential decrees, including the “election law” and “the organization of constitutional bodies,” as well as Article 22, which entrusts the President of the Republic with “preparing draft amendments related to political reforms” aimed at “establishing a true democratic system in which the people are truly sovereign and the source of powers ... and the President of the Republic submits them to a referendum for approval.” This loose wording raised many questions about the scope and implementation of these amendments. It was not clear from the text whether they were related to drafting a new constitution or limited to amending the 2014 Constitution.

On December 13, 2021, the President announced a roadmap, which envisioned legislative elections on December 17, 2022, and the submission of a draft amendment to the constitution (based on a national consultation and the proposals of a committee) to a referendum on July 25, 2022. Presidential Decree No. 506, of May 25, 2022 (on calling voters to a referendum) clarified that the objective of the referendum was to draft a new constitution. On April 21, 2022, the President issued a decree regarding the Independent High Authority for Elections (ISIE).<sup>22</sup> The decree introduced radical changes to the legal system governing ISIE, which diminished its independence vis-à-vis the President. The matter relates, in particular, to Article 5 of the decree, which regulates the new composition of the ISIE Council, consisting of seven members appointed by presidential order.<sup>23</sup> It thus shifts the authority to elect the members of ISIE,<sup>24</sup> including its head, from the Assembly of the Representatives to the President of the Republic. Moreover, according to Article 15 as amended by the decree, the President may dismiss members of the Council upon a proposal from the head of ISIE or at least five members based on a justified opinion and after respecting the rights to defense of the relevant member, which gives the President of the Republic a new power previously held by the Assembly of the Representatives of the People.<sup>25</sup>

The law governing the immunity of the head of ISIE and its members in conducting their tasks was also amended. The responsibility for lifting immunity used to be with the Assembly of the Representatives of the People but now belongs to the ISIE Council. In addition, all references to the Assembly in the law were replaced with a reference to the President of the Republic. Annual reports on the activities and workplan of ISIE are no longer submitted to the Assembly,

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<sup>22</sup> Decree Law No. 2022-22 of April 21, 2022, available in French at <https://legislation-securite.tn/law/105252>.

<sup>23</sup> They are chosen as follows:

- Three members chosen by the President of the Republic from among the members of the previous independent high authorities for the elections.
- A judicial judge with at least ten years of service among the three judges proposed by the Judiciary Judicial Council.
- An administrative judge with at least ten years of service among the three judges proposed by the Administrative Judicial Council.
- A financial judge with at least ten years of service among the three judges proposed by the Financial Judicial Council.
- An engineer specialized in the field of information systems and safety, with at least ten years of service, among three specialized engineers proposed by the National Media Center.

<sup>24</sup> Organic Law 2012-23 on the Independent High Authority for Elections, Article 6.

<sup>25</sup> According to Article 15 of Organic Law 2012-23, the request for exemption is submitted by at least half of the members of the Council. It must be presented to the plenary of the Assembly of the Representatives of the People for approval by the absolute majority of its members.

but to the President (new Article 18.3). The President approves the annual budget (new Article 20) and the annual financial account of ISIE (new Article 30). The powers of the head of ISIE were also expanded, as they now select the deputy head without seeking the Council's opinion. They also control the executive management of ISIE, as they appoint its Executive Director, who plays a decisive role in organizing the elections. This digression was not a circumstantial choice dictated by the state of exception, but rather a permanent one; the transitional provisions section of the decree did not define those provisions as temporary.

## B. A CONSTITUENT PROCESS UNDER THE GRIP OF THE PRESIDENT OF THE REPUBLIC

The constituent process in Tunisia and the inflated powers of the President under the state of exception raise serious procedural and substantive questions about the democratic nature of the July 25, 2022, referendum. A referendum's effectiveness as an expression of popular will depends on several conditions. If these conditions are not adhered to, the popular will is open to manipulation by political actors. The referendum thus becomes a personality contest and an exercise in personality politics, as opposed to being about ideas and principles. Accordingly, the text at the core of the referendum is neglected since no substantive democratic discussion ensues.

Article 22 of Presidential Decree No. 117 of September 22, 2021, on exceptional measures, stipulates that the President of the Republic shall form a committee to assist him in drafting legal and constitutional amendments to pursue any political reforms, which shall be submitted to a referendum for approval. The President assigned Brigadier General Sadiq Belaid as the head of the advisory committee tasked with preparing the draft constitution, aided by the results of the national electronic consultation held between January 15 and March 20, 2022. The draft text was intended to focus on the future political, electoral, social, economic, and cultural sections of the constitution.<sup>26</sup> This was considered the preparatory stage, which set the basic principles and political context that would guide the constitution-making process.

However, adopting this consultation as a basis for preparing the draft constitution raised several problems. Despite the innovative and creative nature of electronic consultation to solicit the direct participation of citizens in public affairs, the process suffered from low participation rates. According to official statistics, 534,915 citizens participated in the consultation.<sup>27</sup> More importantly, the majority of the participants in the consultation clearly opted to amend the 2014 Constitution rather than replace it with a new constitution. This in itself undermines the credibility of the consultation as a framework of reference for the new constitution.

In addition to these serious factors, the work of the committee also lacked transparency and inclusiveness to such an extent that a key component of the committee — the deans of the faculties of law and business — boycotted it entirely. Moreover, the President had a hierarchical relationship with the committee and the exclusive power to make final decisions. In contrast, the committee only had an advisory role, leaving it to the final discretion of the President to amend the draft constitution presented to him by Brigadier General Sadiq Belaid.

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<sup>26</sup> See the link to the online results of the national consultation at [www.e-istichara.tn/home](http://www.e-istichara.tn/home).

<sup>27</sup> With a clear gender imbalance at the participants' level, with 366,210 men compared to 168,705 women.

Organic Law No. 16 of May 26, 2014, deals with the various procedural stages related to referendums. These include, in particular, voter registration, the call for a referendum, the referendum campaign, and polling. In accordance with this law, voters were informed and called within the minimum period of two months prior to the date of the referendum, which was itself set by Presidential Decree No. 506. However, contrary to Organic Law No. 16, the Presidential Decree did not include the draft text that would be submitted to the referendum as it should have done. The publication of the draft text was postponed to the end of June, when it was published in the Official Gazette pursuant to Decree No. 34 of June 1, 2022, amending Organic Law No. 16 of May 26, 2014, on elections and referendums.

The controversy over the draft constitution, which was finally published in the Official Gazette on June 30, revolved around its substantive and formal deficiencies and the fundamental differences with the draft that was finalized and proposed by the advisory committee. This clearly indicated the President's adoption of a top-down and non-participatory approach to drafting the constitution. The mistakes in the draft were corrected and a new amended text was published a week later.<sup>28</sup> While the amendment corrected some formal and linguistic errors, it was evident that the amendments also responded to criticisms about its content. However, the changes to the draft constitution, the lack of time allotted to absorb the stakes of the new text, and the strong political polarization that prevailed during that stage, all had a profound impact on the referendum campaign.

The amendment of Organic Law No. 16 was considered necessary because some of its articles posed problems in light of the political developments since 2021. Primary amongst these were the dissolution of the Assembly of the Representatives of the People and the removal of any role whatsoever for parliamentary political parties, especially those at the forefront of political activity before July 25, 2021. According to the Electoral Law of 2014, participation in the referendum campaign was limited to parliamentary parties. Decree No. 34 of 2022 removed this condition, as a result of which new Article 116 of the electoral law merely requires that a declaration of intent be lodged with ISIE by the requesting party in accordance with the ISIE's procedures to participate in the referendum campaign. Considering the wording of Article 116, the ISIE Council approved an expanded list of actors for participation in the referendum campaign to include political parties and civil society actors. Participation was also opened to the opposing political and civil currents, in order to ensure equal and real competition. However, the statistical data of ISIE shows a clear imbalance among the respondents, as most of those registered supported the draft constitution, with many political parties and other eligible actors boycotting the entire process on grounds of a lack of procedural and substantive legitimacy.<sup>29</sup> They also criticized the extremely short notice between the publication of the draft constitution and

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<sup>28</sup> Presidential Order No. 2022-607 of July 8, 2022, on the correction of errors that leaked into the draft constitution published pursuant to Presidential Decree No. 2022-578 of June 30, 2022, on the publication of the new draft constitution for the Republic of Tunisia, object of the referendum scheduled for Monday, July 25, 2022.

<sup>29</sup> According to the data provided by ISIE, the number of parties participating in the campaign that expressed opposition to the draft constitution was seven, distributed as follows: 6 parties and one association network. As for the parties whose files were accepted by ISIE, and who announced their support for the constitution presented during the campaign, they numbered 141, distributed among parties, associations, natural persons, and a coalition of parties and natural persons.

registration in the referendum campaign, alleging that this deprived the electorate of the opportunity to form deep and enlightened positions on the various constitutional issues.

According to the decision of ISIE No. 22 of August 16, 2022, on the announcement of the final results of the referendum on the new draft constitution,<sup>30</sup> the “yes” answer swiped the majority with 2,607,884 votes, equivalent to 94.6% of the votes cast, while the “no” answer obtained 148,723 votes, equivalent to 5.4% of votes cast, resulting in the approval of the new draft constitution. As for the participation rate, the final figures announced by ISIE amounted to 2,830,094, which represents 30.5% of the total number of registered persons, evidencing an extremely low rate of participation.<sup>31</sup>

The majority required to approve referendum results varies between countries. Some require a simple majority of voters (i.e., 51%). In other countries, the results of the referendum are binding only when there is a minimum level of participation in the vote. Some referendums require an absolute or qualified majority to approve the text, or a supermajority, based on a series of complex calculations taking into account the percentage of the registered voters out of the total eligible voters. In Tunisia, the electoral law fails to specify a minimum level of participation in the referendum or an enhanced majority for the results to be considered valid. This directly affects the legitimacy of fundamental reforms, especially in light of the low participation rate in the referendum and the lack of public debate during the constitution-making process. As a result, since these changes were not the outcome of the decision of the majority of the eligible population, they weaken the level of identification with, and national ownership of, those reforms.

The new constitution came into force after ISIE announced the final referendum results and the President authorized their publication in a special issue of the Official Gazette. Upon closer examination of the section on transitional provisions in the new constitution, one exception stands out: that relating to legislative authority, which remains subject to the provisions of Presidential Decree No. 117 on exceptional measures. This will continue to be the case until the Assembly of the Representatives of the People assumes its functions following the election of its members (Article 141 of the Constitution). Effectively, this ends the state of exception for all remaining constitutional matters, except for the exercise of the powers of the legislative authority.

## II. THE CENTRALIZATION OF POWER: FROM A SPECIFICITY OF THE STATE OF EXCEPTION TO A PERMANENT CHOICE UNDER THE NEW CONSTITUTION

The Constitution of July 25, 2022, foresees an intention to restructure the political system and to centralize power in the hands of the President,<sup>32</sup> breaking with the hybrid system that was introduced by the 2014 Constitution.

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<sup>30</sup> Decision No. 2022-22 of 12 August 2022, available in French at: <https://legislation-securite.tn/law/105337>.

<sup>31</sup> Wahid Ferchichi, “The Referendum Results: The Numbers are Irrelevant, because I am the People and the People are I... *A historic event in the absence of more than two-thirds of male and female voters*,” *Legal Agenda*, July 27, 2022.

<sup>32</sup> See the results of the electronic national consultation, where 86.4% of the participants chose the presidential system: <https://www.e-istichara.tn/home>.

It should be recalled that the choice expressed in the 2014 Constitution to adopt a more decentralized system intended primarily to diverge from the pre-2011 hyper-presidential system.

The 2014 Constitution had established a political system based on the separation of powers by distributing competencies horizontally among the legislative, executive, and judicial authorities, and vertically between the central and local authorities within the framework of advanced decentralization.

In contrast, the new constitution is weak in terms of the legal and political guarantees for democratic processes, especially those related to respecting the principle of separation of powers in order to limit the monopoly and abuse of power, by ensuring that it is exercised with adequate checks and balances. The institutional design in the new constitution opts for a political system based on a hyper-presidential model, recalling pre-2011 constitutional experiences, and reproducing the experience of governing under the state of exception based on Presidential Decree No. 117 as a permanent model of governance. This tendency towards an imbalance in the distribution of power, both horizontally between the executive and legislature and vertically between central and local authorities, and its centralization in the executive is evident in the weak guarantees for institutional independence. All of this severely disables the development of a robust political system and represents a real challenge to the establishment of a democratic system in Tunisia.

## A. THE HORIZONTAL CENTRALIZATION OF POWER

The establishment of a presidential system emerges as a clear choice in the new constitution. It is a type of democratic system based on a strict separation of powers between the executive and legislative branches. The executive and legislative powers are elected separately by universal suffrage; hence, their origin and survival remain separate.

The presidential system is also characterized by the individualized nature of executive authority, entirely vested in the head of state. The president appoints and dismisses ministers. The president is neither politically accountable to the legislature, nor dependent on the support of their party to stay in office. Article 110 grants the President judicial immunity throughout their tenure, and a functional immunity for the actions they carry out when performing their duties. Moreover, the provisions related to the state of exception contained in Article 96, compared to Article 80 of the 2014 Constitution, strengthen the powers of the President, while concurrently removing essential guarantees aimed at preventing exceptional measures from detachment from their original objectives. Thus, the July 25, 2022 Constitution is bound to result in a hyper-presidential system characterized by an imbalance of powers in favor of the head of state who monopolizes executive authority.

Notably, the President must consult with the Head of Government, the Speaker of the Assembly, and the President of the National Assembly of Regions and Districts before declaring exceptional measures, and there are prohibitions against dissolving the Assembly of the Representatives of the People and the National Assembly of Regions and Districts, or submitting a motion of censure against the government during the state of exception.



Notwithstanding these safeguards, the Constitutional Court has been excluded from any independent oversight regarding the duration of exceptional measures. This disproportionately strengthens the President's authority and exercise of power, removing any possibility of challenging the President's decisions.

Additionally, while the government (cabinet of ministers) appointed by the President undertakes to implement their general policy, it finds itself accountable to two different authorities: first, to the President of the Republic in accordance with Article 112 of the 2022 Constitution and, second, to the Assembly of the Representatives of the People and the National Assembly of Regions and Districts, which may submit a motion of censure if they consider the government to be in violation of the general policy of the state and the fundamental objectives expressed in Article 115 of the Constitution. This paradox embodies a utilitarian perception of the government's function, characteristic of hyper-presidential systems, where the government both assists the head of state and is also responsible for bearing ultimate political responsibility in lieu of the president.

This approach breaks with the 2014 Constitution, which established a semi-parliamentary system in which the government, emanating from parliament, assumes the most important executive functions, and where the prime minister is the locus of executive authority. The choice of political system was a contentious issue during the drafting of the 2014 Constitution. To resolve the issue, the National Constituent Assembly adopted the basic democratic model, favoring a semi-parliamentary system based on the principle of separation of, and cooperation between, powers. This features a legislative authority concentrated in one chamber that holds broad legislative and oversight powers and a dual-headed executive authority, featuring a cabinet and a president with reduced powers, accountable to the Assembly of the Representatives of the People, with a clear reduction of the powers of the President of the Republic, in an attempt to a break with the prior hyper-presidential system. However, some aspects remained ambiguous and procedurally complex, especially those related to the powers exercised jointly by the two heads of the executive authority and which require coordination between them. This fueled frequent political deadlocks, which negatively affected political stability and the implementation of governmental policies. This institutional design was frequently blamed for the failure of the political system, especially due to poor coordination and jurisdictional conflicts between the two executive heads on the one hand, and parliament's dominance over political questions on the other hand. This was further exacerbated due to the absence of the Constitutional Court, to which the constitution assigned an arbitration role in the event of a jurisdictional conflict between the two heads of the executive. The court was never established due to maneuvering of the majority political parties in parliament regarding the quotas for appointing the members of the Constitutional Court.

Moreover, the new constitution was keen on reducing the power of the legislative authority by creating a second parliamentary chamber: the National Assembly of Regions and Districts, which shares the legislative, oversight, and representative functions with the Assembly of the Representatives of the People. In terms of electoral legitimacy, the constitution tips the scales in favor of the President, since the President is directly elected as opposed to the indirect election of the second chamber representing the regions and districts, which consists of elected deputies from the regions and districts.

The members of each regional assembly elect three members from among themselves to represent their region in the National Assembly of Regions and Districts, whereas the elected members of the district councils elect one member from among themselves to represent the district in the National Assembly of Regions and Districts.

As for the electoral legitimacy of the Assembly of the Representatives of the People, the first draft of the constitution published in the Official Gazette on June 30, 2022, did not address the principle of direct voting. This omission was interpreted as a move towards approving the indirect election of the first chamber. This controversy was put to an end in the second version of the draft constitution published in the Official Gazette a week later, which clearly provided for “*the election of the members of the Assembly of the Representatives of the People in a general, free, direct, and secret ballot for a period of five years.*” The constitution sought to expand semi-direct democracy at the expense of representative democracy by introducing a mechanism for the removal of office of representatives (Article 61) and expanding the scope of the legislative referendum, whilst rendering the procedure more flexible (Article 97). Although this trend enhances citizen involvement in political affairs, it is likely that these mechanisms will be abused to tighten the pressure and oversight on the legislative authority.

The new constitution also limited the role of the Constitutional Court, confining its competence to the review of laws, treaties, and constitutional amendments.<sup>33</sup> Under the 2014 Constitution, the court had the duty to ensure the proper functioning of public authorities, in addition to overseeing the constitutionality of legislation. Consequently, the court could regulate and pronounce on exceptional measures,<sup>34</sup> acknowledge the temporary or permanent vacancy of the office of the President,<sup>35</sup> promulgate a motion to remove the President from office,<sup>36</sup> and settle disputes related to the respective powers of the President of the Republic and the Prime Minister, at the request of either.<sup>37</sup>

## B. THE VERTICAL CENTRALIZATION OF POWER

The new constitution contains a single article on local authorities. Article 133 limits itself to succinctly addressing local and regional authorities — the municipal councils, the regional councils, the district councils, and the structures that are granted by law the status of local authority — and their role in pursuing local and regional interests.

While the new constitution follows the same tripartite division of local authorities introduced by the 2014 Constitution, namely municipalities, regions, and districts, there is doubt as to its commitment to the independence of local authorities. Another uncertainty is the electoral regime that will be adopted to form these authorities, keeping in mind that their impact extends to the national level. Indeed, these authorities will be represented in the National Assembly of Regions and Districts, which gives them a political role as one of the components comprising the legislative authority.

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<sup>33</sup> Constitution of Tunisia (2022), Article 127.

<sup>34</sup> Constitution of Tunisia (2014), Article 80.

<sup>35</sup> Constitution of Tunisia (2014), Articles 84, 85.

<sup>36</sup> Constitution of Tunisia (2014), Article 88.

<sup>37</sup> Constitution of Tunisia (2014), Article 101.

Furthermore, the new constitution leaves the details to be regulated by law, which brings us back to the Constitution of June 1, 1959, in which there was no reference to decentralization nor the independence of local authorities and the election of their assemblies. This is another radical break with the decentralizing posture of the 2014 Constitution. The Local Authorities Portal and the municipal elections in 2018 constituted two important steps in implementing Chapter VII of the Constitution of January 27, 2014, on Local Government, and embarking on large-scale structural reforms related to a new, decentralization vision for managing local affairs. The distribution of power between local authorities and the central authority underwent a radical change, placing the local interest at the heart of the competencies of local authorities, including facility management, service provision, local development, and urban planning. Indeed, the principle of administrative autonomy is one of the constitutional guarantees of the independence of local authorities.

The political discourse regarding decentralization is dominated by polarization between its supporters and critics, a controversy that was not adequately addressed during the preparatory phases of the 2014 and 2022 Constitutions. In the eyes of some, decentralization represents a threat to the fragile entity of the state, or just a utopian project doomed to fail from the start, or a weakness that will enable the Islamist Ennahda movement to infiltrate and control the state and society within the framework of “soft Islamization.”

The defenders of decentralization consider that this option is a solution to the aforementioned problems and not a complication, provided the conditions for its success are met. This constitutes an essential element of democratic reform and local governance because it enhances the vertical distribution of powers between the center and the local levels. Moreover, it enables the broader participation of citizens in managing local affairs with effective accountability for elected councils, facilitating development and the improvement of local services and facilities.

The fact that the new constitution backtracked on giving greater autonomy to local authorities is a reaction to the difficulties and obstacles that marred this path. Establishing local authorities was not an easy process; it required a gradual and progressive approach due to the extent of the radical changes, the cost of these reforms, and the transfer of powers. Municipal councils were also called upon to immediately resolve problems that had accumulated over the past decade, including the deep lack of trust in governmental institutions at the national and local levels, the inadequate local services and infrastructure, deteriorating living conditions, limited financial and human resources of municipalities, and uneven development across regions, in addition to a blurry government vision with respect to decentralization given the absence of regulatory text. At the same time, problems persisted with the inadequate implementation of municipal decisions due to the lack of cooperation of security services.<sup>38</sup>

Additionally, the regional councils were not elected, which meant that the legal provisions preceding the 2014 Constitution remained applicable. The recurrent crises complicated the situation within several municipal councils,

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<sup>38</sup> See, for example, the [statement of the Municipal Council in La Marsa issued on January 21, 2019](#), regarding the assault of a security officer against the head of the Riyadh Marina Department and his temporary suspension, in order to prevent him from performing his duties in resisting the chaotic organization of the weekly market in La Marsa.

which led to their dissolution and the organization of partial elections, in addition to the issuance of conflicting decisions by some mayors that represented a challenge to the unity of the state's legal system.<sup>39</sup>

### C. THE WEAK STRUCTURES OF POLITICAL LIFE

The political crisis in Tunisia is inextricably linked to the weakness of the political party system that emerged since 2011, as most political parties are newly established and therefore characterized by fragility, including in their limited membership and financial resources, and their extremely weak presence in the regions. Political party funding has many shortcomings, including access to private funding, the absence of public funding, and a lack of effective control over party financing outside the electoral period.

The same problems affect parliamentary blocs too. This situation has led to a clear imbalance between the components of the party system, as there are serious suspicions about some influential parties' exploitation of these loopholes, to take advantage of illegal sources of financing and establish clientelism. As a result, broad segments of society feel that their interests are not taken seriously by the parties and that these are basically channels to achieve individual benefit.

Parties are further characterized by the weak influence of citizens/voters on party decisions due to the absence of internal democracy, as they do not hold internal elections to choose their candidates for the national and local elections. The channels of communication between the parties' supporters, their leaders, and their representatives in the Assembly of the Representatives of the People are not institutionalized, weakening their representative function. Parties were often unable to produce new political elites with competence and integrity. Additionally, increasingly volatile "political tourism" between parties translated into unstable parliamentary blocs. Following the legislative elections of 2014, the Assembly of the Representatives of the People was controlled by a large parliamentary majority — the Nidaa Tounes bloc — closely linked to the Executive. The majority could easily pass any bill submitted by the government. However, the conflicts within Nidaa Tounes and the ensuing split weakened political support for the ruling coalition. Each party contented itself with supporting its ministers and criticizing ministers from other parties.

During the current parliamentary mandate (2019-2024), the Assembly of the Representatives of the People faced sharp political divisions and unremitting confrontation between the Free Constitutional Party on the one hand, and the Ennahda movement and the Dignity Coalition on the other hand, resulting in verbal and physical violence in parliament. The conflicting parliamentary blocs prioritize their narrow political objectives and scoring against their opponents over the efficiency of parliament. In addition, the effectiveness of the Assembly of the Representatives of the People is limited due to the lack of human and material resources and the absence of representatives during plenary

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<sup>39</sup> On the decision of the Mayor of Al-Karm to create a Zakat Fund, see <https://www.babnet.net/cadredetail-203605.asp>. On the municipality of Karm requiring a certificate of the husband's conversion to Islam in case of a marriage contract between a Muslim Tunisian and a non-Muslim foreign husband, despite the annulment of the circular including such requirement, see <https://www.babnet.net/cadredetail-206731.asp>.

sessions and permanent committee meetings. Statistical data indicates that the Assembly of the Representatives of the People approved 53 laws in 2015, 78 in 2016, 66 in 2017, and 49 in 2018. During the 2019-2020 parliamentary session, parliament approved 42 laws, most of which were related to loans and international financial agreements.

Taken together, the factors described above had a severe negative impact on public trust in the Assembly and deepened the crisis of confidence in political parties, as reflected the low rates of participation in partisan activities and the boycotting of elections. The 2018 municipal elections<sup>40</sup> and the 2019 legislative and presidential elections further reveal the importance of independent candidates, especially with Kais Saied elected as President without the backing of a political party to support him. These are all indications of the desire by citizens and civil society towards finding alternative channels for public debate and direct participation in political decision making. This trend has persisted since July 25, 2021, where the diminution of intermediate bodies, including parties, associations, and unions, is one of the most important points that President Kais Saied is betting on for his political project. His focus is on the deviation of parties and their threat to democracy, with an emphasis on the need to enable the people to express their demands directly. Whilst enhancing aspects of direct democracy, this is also considered a prime example of populist political discourse.

In this context, supporters of President Kais Saied formed “coordination committees” that played a key role during the 2019 presidential elections and during the 2022 referendum campaign. They are also expected to participate in the legislative elections scheduled for December 17, 2022. These entities differ from political parties in that they are not structured along political mandates. Rather, their support is for the President instead of his political project, which remains either unknown or too broad to clearly identify. However, these newly created entities raise a number of problems concerning their ability to provide a stable and permanent political base for the President on one hand, and the extent to which they respect the legal frameworks for political activity and funding on the other hand. The new electoral law, especially the approved voting system, is likely to further weaken political parties through mechanisms such as a system of voting for individuals rather than lists, the breakdown of existing electoral districts into small electoral districts, and the possibility of excluding some or all of the political parties from the electoral process. These choices will continue to marginalize existing political parties, which would further weaken the ability of political actors to participate in public debate, political competition, and the peaceful transfer of power. The disruption of these means of participation in political life foments the emergence of unstructured and unorganized political actors with the possibility of pre-national loyalties and affiliations resurfacing, based on tribal, regional, and religious affiliations.

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<sup>40</sup> For the municipal elections, 2173 lists ran, including 177 coalition lists, 897 independent lists, and 1099 party lists. The results of the elections on May 6, 2018, highlighted the depth of the crisis of the political parties, as the independent lists won the majority of seats.

## CONCLUSION

While the entry into force of the Constitution of July 25, 2022, seemed like a first step away from the logic of exception and toward resuming democratic life, the haphazard replacement of the 2014 Constitution in reality sowed the seeds of hyper-presidentialism. It is clear that drafting a new constitution under the state of exception and amidst an exacerbated economic and social crisis was not a good option, restricting the public debate necessary for a democratic constituent process and the adoption of a new social and legal contract. It would have been possible to simply introduce amendments to the 2014 Constitution, especially with regard to the legislative and executive powers, to ensure greater efficiency, or to carry out a similar process under ordinary circumstances outside the state of exception. The political focus on constitutional reforms while the country experiences a stifling economic crisis is an attempt to relegate, until further notice, the public debate on the measures necessary to confront the crisis. The performance and credibility of political actors, whether in government or opposition, will play a decisive role in the battle to defend democracy in Tunisia. Upcoming political reforms must also be based on a participatory and pluralistic dynamics aimed at enhancing the effectiveness of the political system while preserving democratic gains. Any ruling political authority must derive its legitimacy not only from the electoral process, but also from its ability to confront economic and social challenges, thereby earning substantive legitimacy. Such legitimacy is considered one of the most durable legitimacies against the backdrop of a deepening economic crisis, and one that can give solid credibility and protection to the democratic choice.

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