



TUNISIA
CONSTITUTION OF JANUARY 27, 2014:
FROM SUCCESS TO CRISIS

Jinan Limam

NOVEMBER 2021

***N.B.: The content of this
publication does not necessarily
reflect the official opinion
of Konrad-Adenauer-Stiftung.
Responsibility
for the information and views
expressed in this publication
lies entirely with the author.***



TUNISIA CONSTITUTION OF JANUARY 27, 2014: FROM SUCCESS TO CRISIS

Introduction

After the revolution that took place between December 17, 2010, and January 14, 2011, Tunisia embarked on a peaceful transitional path that led to the issuance of the Constitution of January 27, 2014, which included the fundamentals of democratic rule. The new Constitution, alongside the peaceful transfer of power through free elections, the public and individual rights and freedoms system, and the active role of civil society as a pro-active, leverage, and framing force, was considered one of the most crucial elements in Tunisia's pioneering experience in democratic transition in the region.

Today, the system that was produced by the 2014 Constitution is facing a serious challenge after the President of the Republic declared a state of exception on July 25, 2021, based on extensive interpretation of Article 80 of the Constitution, which enabled him to dismiss the Prime Minister and several ministers, prorogue the Parliament, and concentrate executive and legislative powers for an unspecified period. Presidential Decree no. 117 relating to the regulation of the state of exception, which was promulgated on September 22, 2021, is a new step towards breaking with the system of the 2014 Constitution. Decree no. 117 suspends the Constitution, with the exception of the preamble, the first chapter related to basic principles, the second chapter related to rights

and freedoms, and other constitutional articles that are in line with it, in clear violation of the supremacy of the Constitution and the hierarchy of the legal system. The Decree lays the foundations for an alternative political system, as it provides for provisional regulation of public authorities, with the President holding absolute power amidst a lack of mechanisms that ensure accountability. In addition, the Decree did not specify a time limit for this provisional regulation of the governance of the state of exception.

According to the presidential narrative, this step is necessary to save Tunisia from the multi-layered crisis that the country has been facing in recent months, as it reflects the people's will following the protests that preceded the declaration of the state of exception. It calls for comprehensive reform that begins with dismantling the "system of the 2014 Constitution" and establishing an alternative system that adopts grassroots democracy and that is capable of producing new political elites. However, Decree no. 117 gives way to the establishment of a presidential system that can have dangerous implications, including plunging the country into misfortune with unforeseen consequences, especially amid the ambiguity surrounding the President's alternative political project, the extension of the state of exception, and the absence of consultations with influential intermediary entities, from political parties to associations and unions, on a roadmap to get out of the current stage.

All of these developments put the 2014 Constitution and the

political system it produced at risk, as two main views were expressed in that connection:

The first view supports the process of drafting a new constitution due to the weakness of the 2014 Constitution and its contribution to creating a tense political climate and a dysfunctional and unstable political system. In fact, according to this view, the 2014 Constitution is a poor result of hybrid political consensus during the founding phase (2011-2014) that caused an imbalance in the Constitution's general structure. This makes partial amendments impossible because the Constitution needs profound reforms across most of its sections and chapters. Therefore, the first view considers that changing the Constitution is necessary and should be in line with the changing political stage in the country and its developments. It should be noted that criticism of the Constitution and the multiple calls for its amendment began before July 25, as some have blamed the 2014 Constitution for the political crisis that the country faced after the 2014 legislative elections and the accompanying governmental instability.

The second view, on the other hand, refuses to put in place a new constitution, as that would give way to manipulating one of the basic pillars of the State in extraordinary circumstances and would undermine the democratic nature of the regime. In addition, according to this view, the national group would pay the price again and the process would lead to covering up the real problems in the country, which are mainly economic and social. In both cases, revising the electoral law and the decree regarding

political parties is among the common demands for reforming the political system.

Given the ongoing dispute, it is necessary to evaluate the constitutional experience of the Second Republic and to understand the dynamics that transformed it from a pioneering experience in democratic transition to a failed one. While the 2014 Constitution enabled the realization of some of the attributes of a democratic state based on separation of powers, periodic elections, human rights, and pluralism in politics, media, associations, and trade unions, many of its provisions remained unimplemented. Some of the main institutions that are supposed to guarantee balance in the political system and respect for human rights, such as the Constitutional Court and all independent constitutional bodies, are yet to be established. The entry into force of the Constitution and the beginning of the establishment of permanent constitutional institutions coincided with the emergence of several crises in the political system, the deterioration of the economic situation, and the citizens' undermined confidence in the political class and the democratic process as a whole. The economic and social crisis in Tunisia revealed the depth of the state's inability to provide basic services, especially health services during Covid-19. It also proved its inability to achieve development and equitable distribution of wealth due to financial and administrative corruption, weak rule of law, and increased impunity. This led to decreased trust in State institutions and in representative democracy mechanisms and traditional political participation, which greatly contributed to the July 25, 2021, decision

This research paper represents an opportunity to analyze and evaluate the constitutional experience in Tunisia. Thus, we will identify, in part 1, the reasons that made it a pioneering experience and then tackle, in part two, the shortcomings and crises that led to its failure.

Part I: 2014 Constitution and Laying the Foundations for a Pioneering Constitutional Experience

Constitutions play a pivotal role in the legal system, as all state institutions and laws are based on them. In addition, they are the guarantor of individuals' rights and freedoms. In transitional stages, when countries are newly emerging from authoritarian rule, the process of drafting a new constitution for the country has a special symbolism and is required to achieve many entitlements. Within the "New Constitutional School" framework, the 2014 Constitution enshrined courses of actions that reflected development in constitutionalism. The new Constitution included the components of the rule of law and democracy, which has led to an increase in constitutional articles, while multiple constitutional issues therein were addressed (Part 2).

In order to ensure the success of the constitution-making process in a transitional context that aims to put a stop to unilateral opinions and monopoly of power, it was important to draft the constitution based on broad negotiations and participation, which the Constituent Assembly worked to achieve during the founding phase - Part 1.

1. Methodology

The ratification of the Constitution was an important moment in a complex and challenging path that began with free and peaceful elections for the 217 members of the National Constituent Assembly on October 23, 2011, which were supervised by the Independent High Authority for Elections and ended with the publication of the ratified Constitution on January 26, 2014, in the Official Gazette of the Republic of Tunisia on February 10, 2014. Throughout its existence, the National Constituent Assembly carried out its primary task of drafting the Constitution of the Second Republic, in addition to assuming legislative and oversight powers over government work, called for after the transitional period and the legal and institutional vacuum that resulted from the dissolution of previous political institutions and the suspension and then cancellation of the Constitution of June 1, 1959. However, the Constituent Assembly was unable to respect the one-year deadline set for the constitution-making process, as the process took twice as long as expected.

The Constituent Assembly had to build on a white paper during the constitution-drafting process. However, when writing the constitutional content, the Assembly sought dialogue, discussion, and consensus and adopted a participatory approach. Consequently, the constitution-making process was not limited to members of the National Constituent Assembly. In fact, the discussions also included citizens, experts in Law, various components of civil society, national figures, and international

organizations. During the founding phase (2011-2014), the National Constituent Assembly tried to adopt the components of the representative system, which provides for the delegation of the decision-making authority to the elected council and combine it with a participatory approach that seeks openness to civil society, national figures, and experts. As such, there were many cases of engagement between the inside and the outside. In this context, many proposals were made by civil society and political parties and were referred to the constituent committees. The constituent committees thus held several meetings to allow various actors to make observations and proposals. The Assembly also initiated an open dialogue with civil society on September 14 and September 15, 2012, for observations and proposals regarding the draft of August 8, 2012, all of which were taken into account in the draft of December 14, 2012. In addition, open dialogues about the Constitution were also organized outside the Constituent Assembly headquarters, as members of the Assembly traveled to regions and outside the country between December 2012 and March 2013 to seek the opinion of citizens on the draft constitution. The aim of adopting a participatory approach was to give more legitimacy to the Constitution and to avoid a constitution that is in favor of only one or some parties. In fact, the purpose was to create a constitution for all Tunisians, a constitution that reflects the true image of the Tunisian society with all its movements and components, which would lead to new traditions of consultation with various actors and components of society and make the constitution a tool for uniting Tunisians

around the basic principles regulating the rules of coexistence in a new social contract.

However, the founding path was not free of conflicts and crises, as the dispute escalated during the founding process, with contradictory and conflicting visions and opinions arising, especially regarding the role of Islam in the political system, the legal system, the form of governance system – whether parliamentary or presidential - and rights and freedoms and ways to guarantee them.


The political assassinations of leftist leader Chokri Belaid in February 2013 and of MP Mohamed Brahmi on July 25 of the same year also affected the working environment of the Assembly, as it caused disruption. The Assembly only resumed its work through the mediation of the National Dialogue Quartet: The Tunisian General Labour Union, the Tunisian Confederation of Industry, Trade and Handicrafts, Tunisian Order of Lawyers, and the Tunisian Human Rights League. In the fall of 2013, various political parties participated in the national dialogue and played a significant role in resolving the political crisis. The points of contention were addressed in the draft constitution, which enabled the ratification of the constitution in January 2014 by a nearly unanimous vote (200 out of 217 votes). The political context in which the 2014 Constitution was drafted necessitated the adoption of a consensus-based approach. However, even though the consensus was necessary to address contentious issues and crises faced in the founding path, the stage of implementing the

constitution revealed the limitations of this approach.

The experience of the Constituent Assembly led to the establishment of a new institutional culture based on open and participatory governance at the level of the parliament. In fact, the bylaws of the Council include several articles that authorize communication between the Council and its surroundings, including civil society, constituencies, and the media. Article 5 of Decree no. 88 dated September 24, 2011, relating to the regulation of associations, guarantees the associations' right to obtain information, evaluate the role of state institutions, submit proposals to improve their performance, publish reports and information, publish publications, and conduct opinion polls. Article 6, on the other hand, prohibits public authorities from directly or indirectly obstructing or disrupting the activities of associations. Article 32 of the Constitution and Organic Law no. 22 of 2016 also guarantee the right of citizens to have access to information, which are basic rights for following up on parliamentary work and the possibility to influence it.

2. Constitutional Content

The comparative study on constitutions shows that all countries that carried out constitutional reforms within the framework of democratic transition have developed and strengthened the constitutional subjects included in their old constitutions, in order to break with tyranny and strengthen safeguards against its reinstatement. The 2014 Constitution enshrined courses of action according to the "New Constitutional School", as it addressed




issues and subjects that were not mentioned in the previous constitution. The content of the Constitution reflects today more than ever the requirements for the establishment of rule of law, which has increased to constitutional articles, while multiple constitutional issues were addressed in more detail and accuracy.

The political system provided for in the 2014 Constitution is republican (Article 1) and is built on the sovereignty of the people (Article 3), and the civil state (Article 2).

In order to eliminate the centralized presidential system, another system that is not based on centralization was adopted. The system focuses instead on the separation and balance of powers through the horizontal distribution of competencies between the legislative, executive, and judicial authorities, and the vertical distribution of competencies between the central authority and local groups as part of decentralization.

The political system can be described as a mixed political system that combines the components of the parliamentary system with some of the characteristics of the presidential system. It is based on a government that is approved by the Parliament and that handles the major areas of responsibility of the executive authority. The powers of the Prime Minister were also strengthened in the 2014 Constitution, making him a major component of the executive authority. In fact, according to Article 71 of the Constitution, “Executive authority is exercised by the President of the Republic and by a government presided over by the head of the government.” The Prime Minister is responsible



for controlling the State's general policy. He ensures its implementation in accordance with Article 91 of the Constitution and makes sure to take into account the requirements of Article 77 of the Constitution. It should be noted that Article 77 requires the President of the Republic to formulate, after consulting the Prime Minister, public policies relating to defense, foreign relations, and national security, including protecting the State and national territories from internal and external threats. The distribution of competencies within the executive authority raises questions about ensuring consistency and homogeneity thereof. Thus, the efficiency of work will depend on the ability of the two heads of the executive authority to cooperate and avoid conflicts. There are also reciprocal oversight mechanisms in place between the parliament and the government that may lead to the dismissal of the government by the Parliament and the dissolution of the Parliament by the President of the Republic. And although the President is still directly elected, his role as a political and administrative authority diminished. According to Article 72 of the Constitution, the President is the Head of State and the symbol of its unity. He guarantees its independence and continuity and ensures respect for the Constitution. In addition, pursuant to the provisions of Article 77 of the Constitution, the President represents the State and is responsible for formulating, after consulting the Prime Minister, public policies related to defense, foreign relations, and national security, including protecting the State and national territories from internal and external threats.

Having an effective and directly elected parliament is a key element of democratic governance, where the parliament assumes three main functions: the legislative function, oversight over the executive authority, and the representative function. In Article 60, the Constitution recognizes the key role of the parliamentary opposition as an essential component of the parliament. In fact, the opposition was given the rights that would enable it to carry out its parliamentary duties and guarantee its adequate and effective representation in all bodies of the parliament and in all its internal and external activities.

A party-list proportional representation voting system that uses the largest remainder method with no specific threshold was adopted in Decree no. 6 of 2011 regulating the National Constituent Assembly elections and in Electoral Law no. 16 of 2014 dated May 26, 2014, related to legislative elections. This reflects the will to abandon the voting system by majority adopted by Tunisia since independence, which enabled the ruling party to win the majority of seats in the elected councils and contributed to the national¹ and local² marginalization of opposition parties in terms of political representation. As for local elections, Organic Law no. 7 dated February 14, 2017, which was issued to amend Electoral Law no.16 dated May 26, 2014, and which is related to municipal and regional elections, maintained the proportional

1 Opposition parties were unable to participate in the Parliament until 1994 after the electoral law was revised to add proportionality to the majority voting system.

2 With regard to the municipal elections, the electoral law issued on 08-04-1969 was revised several times, the last of which was in 2009, in order to decrease voting by majority by adopting the proportional representation method that gives an advantage to the list that obtained the most votes, with a 75% threshold that this list cannot exceed.

representation voting system that uses the largest remainder method but added a 3% threshold, which aims to ensure reasonable pluralism in elected councils to ensure cohesion and stability. On the other hand, party-list voting has been one of the constants in the voting system in Tunisia since independence, as voting for individuals was ruled out for fear of tribalism. This also reflected the will of the political elite to structure political life and create modern political participation frameworks through parties - or rather through a single, dominant party. The voting is done on closed lists without the option to omit or change the order of candidates. It is also required that the number of candidates for each list is equal to the number of seats allocated to a certain constituency.

In addition, the Constitution strengthened the constitutionally enshrined rights and freedoms in line with the development of the international human rights system to include, in addition to civil and political rights, several economic, social, cultural, and environmental rights. It also identified the limitations that can be imposed on the exercise of the rights and freedoms and the conditions for amending the new constitution (Article 49). As such, the process of defining rights and freedoms is subject to a set of controls and guarantees, including verifying that a legislative text exists, ensuring that the essence of these rights is not compromised, and ensuring proportionality.

In addition, a constitutional judge must control amendments on the provisions of the Constitution to ensure that the rights and

freedoms guaranteed therein are not undermined.

On the other hand, the 2014 Constitution and Decree no. 87 dated September 24, 2011, guarantee the freedom to form political parties. Since 2011, there has been a sharp rise in political parties, whose number is currently 228. This phenomenon is a natural reaction to years of denial of democratic participation in political activity.

The Constitution also includes provisions in Chapter Five and Chapter Six that provide for the creation of a constitutional court and constitutional bodies. This is a major step towards rule of law, as the Constitutional Court oversees the constitutionality of draft laws³, which is a preventive step that precedes the entry into force of these laws. It also undertakes subsequent oversight by invoking unconstitutionality action. All other judicial, administrative, and financial courts are not authorized to oversee the constitutionality of laws.

The Constitutional Court, in its capacity as a supreme constitutional oversight body, is also responsible for other tasks in relation to the work of public authorities. In fact, it has several competencies related to regulating and monitoring the relationship between State authorities and ensuring their proper functioning. The aim is to protect the democratic-republican system by taking legal measures in exceptional circumstances⁴, approving temporary or permanent presidential vacancy⁵, deciding on the request to

³ According to Article 120 of the Constitution.

⁴ According to Article 80 of the Constitution.

⁵ According to Articles 84 and 85 of the Constitution.

relieve the President of the Republic of their post⁶, and settling disputes related to the competencies of the President and the Prime Minister at the request of one of them⁷.

During the first parliamentary term (2014–2019), the government and parliament worked to ratify the 2014 Constitution. The government submitted several draft laws related to important reforms that aimed at strengthening human rights and freedoms, enhancing good governance, and embarking on the path to decentralization, which were all approved. Among these draft laws: the Constitutional Court Law of 2015, the Supreme Judicial Council Law, the Access to Information Law, the Trafficking in Persons Act (2016), the Law on the Elimination of Violence against Women, the Anti-Corruption Law (2017), the Prevention of Racial Discrimination Act (2018), the Law on Common Provisions for Constitutional Bodies, the Human Rights Commission Law (2018), the Local Authorities Code (2018), the Law on Declaration of Property and Assets (2018), the Law on Establishing an Independent Anti-Corruption Authority, and Organic Law on Budget (2019), etc.

Part II: The 2014 Constitution and the Enforcement Dilemma

The crisis in the constitutional experience in Tunisia was due to several factors, the most important of which was stalling approval of constitutional provisions (Part 1) and the weak role of political actors, which negatively affected their performance (Part 2).

⁶ According to Article 88 of the Constitution.

⁷ According to Article 101 of the Constitution.

1- Disrupting the Approval of Constitutional Provisions

The Constitution is being blamed for the political crisis that hit the country. However, the process of enforcing the Constitution and establishing the constitutional institutions has yet to be completed, which exacerbates the differences over the evaluation of this Constitution and over the entity to blame for not implementing its provisions or establishing its institutions.

With regard to the judiciary, and according to Article 102 of the Constitution, it is not possible to achieve rule of law without an independent judiciary. In the chapter on transitional provisions, the Constitution approved the gradual enforcement of rules related to the judicial system. In this context, the Constitution set forth three judicial deadlines related to the creation of a provisional authority that will oversee the constitutionality of laws⁸, a Supreme Judicial Council and a Constitutional Court. Although all the laws related to these various bodies have been issued and most of them promulgated, the Constitutional

⁸ Article 148/7 of the transitional provisions stipulated that the National Constituent Assembly creates, by an organic law, a provisional authority in charge of determining the constitutionality of laws in the first three months following the promulgation of the Constitution and that the mandate of this authority ends after the creation of the Constitutional Court. It is regulated pursuant to Law no. 14 dated April 18, 2014, and consists of:

- The first President of the Court of Cassation, president.
- The first President of the Administrative Court, member.
- The first President of the Audit Court, member.
- Three members, experts in law, each appointed on an equal basis by the President of the National Constituent Assembly, the President of the Republic, and the Head of Government.

However, until the establishment of the constitutional court, a provisional authority was created to be in charge of determining the constitutionality of draft laws, which relatively guarantees the supremacy of the constitution due to the authority's limited powers and temporary status.


Court is yet to be established due to differences between the parliamentary blocs within the parliament over the appointment of the four members. It is clear that the main obstacle to the establishment of the constitutional judiciary was not legal, but rather political, as the aim was to form a constitutional court that answers to the parliamentary majority.

It is worth noting that the failure to establish an oversight mechanism to preserve the supremacy of the Constitution and guarantee constitutional rights and freedoms in Tunisia in the last decades was one of the main factors that led to an authoritarian regime that violated human rights through laws⁹ and practices that suppress freedoms. In addition, it led to an imbalance in powers, which were in favor of the President of the Republic as a result of consecutive constitutional amendments¹⁰.

It should be noted that the failure to establish the Constitutional Court despite the existence of constitutional deadlines (Article 148 of the Constitution, Paragraph 5 in the transitional provisions) and to ratify Organic Law no. 2015-50 dated December 3, 2015, that regulates the process, has significantly undermined the enforcement of the Constitution and its protection from violations,


⁹ For example, Law no. 154 dated November 7, 1959, relating to associations, and Law no. 4 dated January 24, 1969, on public meetings, convoys, parades, demonstrations, and gatherings.

¹⁰ For example, the amendment of Article 40 of the Constitution on March 21, 1975, which assigned the presidency to President Habib Bourguiba for life, and the amendment of Article 39 on June 1, 2002, which abolished the provision related to the non-renewal of candidacy for the presidency more than twice in a row. Said provision was added upon a revision of the Constitution on July 25, 1988, immediately after the regime change on November 7, 1987, as a symbol of moving past the previous period. However, this provision was soon dismissed.



given the importance of the Court's functions. The absence of the Constitutional Court raised real problems regarding the declaration and extension of the state of emergency in Tunisia in the summer of 2021, especially since the chapter on transitional provisions did not include provisional alternatives to address this situation. In addition, the law regulating the provisional authority that oversees the constitutionality of laws was not granted any authority in this regard.

The state of exception is an extreme legal case that is declared when an unusual situation puts the State in imminent danger that threatens the homeland, the country's security, or its independence. This danger results in the improper functioning of the State bodies. In this situation, the powers reside with the President of the Republic, who can take measures to address this danger and resolve the situation. In other words, an exception at the level of the original distribution of powers is made, to tilt the scales in favor of the President, thus making the latter the main decision-making authority. The President then carries out the powers vested in him, according to his discretion. This does not conform with the normal constitutional system, which is characterized by the organization of powers according to the principle of separation between them, mutual oversight among them, and guarantees related to rights and freedoms. However, the duality of ordinary and exceptional circumstances, upon which states of emergencies are based, should not lead to conflict between the requirements of an effective response to crises and the fundamentals of the rule of law. It also should not lead to



conflict between maintaining security on the one hand and the protection of freedom on the other. Considering the seriousness of the state of emergency and its legal implications on the balance of powers and on the exercise of rights and freedoms, including restriction or complete prohibition thereof, the constitutions of democratic countries pay great attention to the careful framing of the “legitimacy of exception”. In fact, they set a number of requirements for the declaration of the state of emergency in order to prevent abuse of authority and power.

As for military courts, the Constitution preserved the military judiciary, but it should be noted that until July 25, 2021, the draft law referred to in Article 120 of the Constitution had not been prepared yet. In all cases, the delay is due to the failure of political will and not to the Constitution itself.

On the other hand, despite the progress achieved in terms of rights and freedoms since 2011, including ensuring the right to form parties and associations, guaranteeing freedom of organization and demonstration, freedom of the press and the media, union freedoms, and equality in the electoral law, and the promulgation of the Law on the Elimination of Violence against Women, the Trafficking in Persons Act, and the Prevention of Racial Discrimination...etc., there are still legal inconsistencies and threats in the national context regarding individual freedoms and gender equality in the name of preserving the (supposed or imagined) harmony of the majority culture or dominant culture. This contravenes the idea of building human rights on differences



and diversity.

The constitutional text still coexists with a pre-established legislative and regulatory system renowned for its renouncement of rights and freedoms and its non-conformity with the constitutional text. This significantly undermines legal security, which is considered essential for establishing the rule of law and inspiring people's confidence in the rules of law. In fact, the rules of law must be set in a way that guarantees respect for the supremacy of the Constitution and conformity of the entire legal system accordingly.

For example, the Personal Status Law of 1956, the Law on Obligations and Contracts of 1906, Criminal Procedures Law, Law regulating the civil status of 1957, and Penal Code of 1913.

When the Republic of Tunisia submitted its comprehensive periodic report on May 2, 2017, to the Human Rights Council in Geneva, the latter made 248 recommendations, a large number of which was on the freedom of conscience, the practice of religious rites, discrimination based on belief, gender, race, sexual orientation, and gender identity, and the death penalty among many others.

There have been numerous attempts in Tunisia to make the legislative system conform with the new Constitution and international human rights conventions, including the establishment of the Individual Freedoms and Equality Committee by the President of the Republic in 2017, to prepare a report on reforms related to individual freedoms and equality in accordance




with the requirements of the January 27, 2014 Constitution, international human rights standards, and contemporary trends in the field of freedoms and equality. However, the Committee issued its report in 2018, but the recommendations were not reflected in legislative texts.

A national committee was also established to conform legal texts related to human rights with the provisions of the Constitution and ratified international conventions, and to control their contents, composition, and functioning, according to government decree No. 1196 of 2019 dated December 24, 2019, regarding human rights interests, and the relationship with constitutional bodies and civil society. The committee also studies the legal system in force to make it conform with the requirements of the Constitution and international standards.


1. Lack of Efficiency in Political Institutions

The decision regarding the type of political system proved to be a contentious issue during the drafting of the constitution. Thus, in order to resolve these issues, the Assembly adopted the primary measures of democracy for government systems, namely the nature of the existing balance between authorities, especially the legislative and executive authorities, the effectiveness of oversight mechanisms (independence of the judiciary/establishment of the constitutional court...), and opposition (independent constitutional bodies/freedom of the press and the media/civil society power...) which are all guarantees of democracy. Of all these considerations, a quasi-parliamentary system was chosen. It is a mixed or dual



system based on the principle of separation of powers and cooperation between them and the establishment of legislative authority with broad powers and an executive bipartite authority that is largely controlled by the parliament, with the competencies of the President of the Republic getting clearly restricted, within the framework of renouncing the presidential system that has been adopted in Tunisia for decades. However, some points remained ambiguous, especially those related to the competencies that are exercised jointly by the two heads of the executive authority and require coordination between them. In fact, this proved to be a great challenge at the level of implementation and led to frequent political crises amidst the absence of the Constitutional Court, to which the Constitution entrusted an arbitral role in the event of a conflict between the two heads of the executive authority.

Following the 2014 legislative elections, there was a large parliamentary majority - Nidaa Tounes – that was remarkably close to the executive authority. This allowed the majority to pass any draft law presented by the government with a comfortable majority in Parliament. However, conflicts within Nidaa Tounes and the ensuing split weakened the political support for the ruling coalition. As such, each party only supported its ministers and criticized ministers from other parties. During the current parliamentary term (2019-2024), there was major political division in the parliament and continuous confrontations between the Free Destourian Party on the one hand and the Ennahda Movement and Dignity Coalition on the other hand, which went as far as verbal and physical violence within the parliament. The




conflicting parliamentary blocs prioritized their narrow political goals and scoring points over the efficiency of parliamentary work. This tense environment had a negative impact on the progress of parliamentary work and on the level of confidence in the parliament.

In addition to these situational factors, there was limited effectiveness in the parliament at the level of performing legislative, oversight, and representative functions. This was due to several reasons, including lack of human and material resources and absence of representatives during the plenary sessions and meetings of the permanent committees. Statistical data indicate that the parliament approved 53 laws in 2015, 78 laws in 2016, 66 in 2017, and 49 in 2018. During the 2019-2020 parliamentary session, the parliament approved 42 laws, most of which were related to loans and international financial agreements.

Electoral Law at Risk


Even though most agree that the Tunisian Constitution did not choose the simplest of solutions, whether with regard to the regulation of institutions or the relationship between them, the crisis of the political system can be attributed to the electoral law, specifically the adopted method of voting since 2011: proportional representation voting system that uses the largest remainder method with no specific threshold. This method guarantees the greatest degree of pluralism and the widest representation of political parties, including independent lists and small and radical parties. However, it does not create a clear majority in the



Parliament that would be able to form a stable government. In all elections organized in Tunisia after the revolution, and due to this system, none of the parties obtained an absolute majority, and consequently, none of them was able to form a government on their own, which led to the formation of unstable coalition governments that were unable to achieve the hoped-for structural reforms. This situation also contradicts some provisions of the Constitution that seem inconsistent with the rest of the components of the system, especially since they require reinforced majorities with great consensus among most of the components of the elected council. This, for example, was among the reasons that led to the success of the Legislative Council in electing the 4 members of the Constitutional Court.

Before the legislative elections in 2019, the parliament attempted to rationalize the voting method, as it approved Law No. 2019-63 to amend the Electoral Law by introducing a 3% threshold. However, the late President Beji Caid Essebsi did not sign on the project, and therefore it did not become a law in force.

In recent years, there was controversy in Tunisia among the political class and some constitutional law experts around changing the electoral system from proportional representation to majoritarian. Some also proposed replacing voting on lists by voting for individuals to restore confidence in political institutions. This controversy falls within the debate surrounding the crisis of the governance system established by the 2014 Constitution, as the electoral system has been blamed for the instability and



weakness of governments. After the events of July 25, 2021, it was confirmed that the intent was to revise the electoral system. However, this matter must not be addressed with haste and improvisation, but in a way that ensures the preservation of pluralism and the competitiveness of the elections. And any step to amend the electoral system should not be taken to benefit the current authority and its narrow electoral and circumstantial motives.

Political System

The political crisis in Tunisia is related originally to the dysfunctional political system that emerged in 2011. Most of the political parties in Tunisia are newly established and are therefore fragile on many levels, namely the limited number of their members, their concentration in the capital, their extreme vulnerability within regions, their reliance on weak organizational structures, the resurgence of their activities according to election dates, and limited financial resources. On the other hand, there are also many shortcomings in terms of party-funding, including access to private funding and absence of public funding, as the law referred to in Decree no. 87 of 2011 relating to the regulation of funding requirements was not issued. In addition, no effective system is in place for overseeing party funding outside electoral periods, as is the case for parliamentary blocs. This situation led to a clear imbalance between the components of the political system, as the ruling majority parties exploited these loopholes to pump internal and external funds despite the prohibition of

external funding for parties. In addition, they established a system built on patronage networks and clientelism, which made broad segments of people feel that political parties are not taking their interests seriously and that these parties are basically channels whose goal is to achieve individual benefit.

The influence of citizens/voters on the party's decisions is also weak due to the lack of political parties that hold internal elections to select candidates and because of the weak communication between party supporters and their leaders and representatives in the Legislative Council, which weakens the framing and representative function of the parties, as they were often unable to produce new competent and honest political elites.

All of these factors deepen the crisis of confidence in parties, which is reflected in some indicators, such as the low rates of participation in party activities and the boycott of official political processes such as elections. In addition, the municipal elections that took place in 2018¹¹ and the legislative and presidential elections that took place in 2019 highlight the importance of independent candidates, especially after Mr. Kais Saied won the presidency without having a political party to back him up. These indicators reveal the need to find alternative channels for public debate and political activity emerging from citizens and components of civil society and their direct participation in


11 In the municipal elections, 2,173 lists ran for the elections, including 177 coalition lists, 897 independent lists, and 1,099 party lists. The results of the elections on May 6, 2018, highlighted the depth of the crisis for political parties, as independent lists won the most seats.

political decision-making. This has been strengthened since the events of July 25, 2021, as intermediary bodies, such as parties, associations, and unions have been neutralized, which is one of the most critical issues that President Kais Saied is relying on in his political project.

The suspension of traditional media from participating in political life gives way for the emergence of unstructured and unorganized political actors who can be drawn into violence at any moment, and pre-national state allegiances and affiliations, such as tribes, parties, and religion, may possibly fill the void.


After getting out of the state of exception, the priority is to put in place a new law regulating political parties to enhance their democratic character and transparency through oversight provisions over funding and by ensuring public funding for them based on clear criteria.

As for decentralization, issuing the Local Authorities Code and conducting the municipal elections in 2018 are considered two notable events within the framework of implementing the provisions of Chapter Seven of the Constitution of January 27, 2014, which is related to local authorities, and conducting wide structural reforms through the creation of a new vision for managing local affairs based on effective decentralization. It is clear that the process of transitioning towards local authority will not be an easy process, as it requires progression and periodicity due to the major radical changes, cost of these reforms, the need for a financial and administrative judiciary at the regional



level, the transfer of powers, and the strengthening of human and financial resources in local authorities in a way that would guarantee their independence, ensure effective actions and good governance, and strengthen the rule of law. On the other hand, the municipal councils elected on May 6, 2018, face many different challenges. In fact, they are required to solve the problems that have been accumulating over the past years, such as the major lack of confidence in governance institutions at the national and local levels, in addition to the deterioration of services, equipment, and the standard of living as a whole, the limited financial and human resources, the disparity in development between the regions, and the lack of vision regarding the implementation of the decentralization process. The situation was further exacerbated by the frequent crises within many municipal councils, which led to their dissolution and the organization of partial elections, in addition to some decisions and statements made by some mayors, which put the unity of the legal system on the line.

Political discourse on decentralization is divided between supporters and skeptics. It is a debate that has not been sufficiently addressed during constitution-making. However, it later reemerged during the municipal elections. Some consider that decentralization threatens the fragile statehood, or that it is a mere utopian project that is doomed to fail from the start or an opportunity that will enable the Islamic Ennahda Movement to infiltrate and control the State and local society's entities within the framework of the so-called "soft Islamization." On the other hand, people that are pro-decentralization consider that



this preliminary choice for the Second Republic is a solution to the accumulated problems and not a predicament that must be avoided. According to them, when the conditions for its success are met, decentralization is an essential element of democratic reform and local governance because it enhances the vertical distribution of powers between the central and the local levels. It allows wider participation of citizens in managing local affairs and effective accountability for elected councils. It also helps advance development and improve local services and facilities. This debate has greatly affected the implementation of decentralization, as many regulatory texts were not issued and regional councils were not elected, which means that the previous legal texts of the 2014 Constitution are still effective, which has led to increased confusion regarding decentralization.



Jinan Limam

Jinan Limam has a PhD in Public Law and she is an Assistant Professor in Public Law at the Faculty of Legal, Political and Social Sciences in Tunis. She has taught courses and supervised student's thesis for twenty years which gives her the mastery of the legal and political framework of the Political Institutions in Tunisia, especially during the context of the democratic transition, with a comprehensive set of benchmarks for constitution-making process.

Her main interests and research focus on constitutional Law, comparative constitutional law, constitutional litigation law, local governance, human rights law and European Union law.

She has also ten years of experience as a Senior consultant in constitutional Law and Human Rights with international organizations in Tunisia and abroad (MENA Region/Africa). She has gained extensive experience on constitution-making process as she has been called upon since 2011 to carry out expert missions in several transitional assistance projects, especially in Tunisia, Libya and the Republic of Central Africa.

She has also several published works

