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*From Hope to Disillusionment: The Decline of Tunisia's
Democratic Transition*

Writer: Dr. Soumaya Khammassi

Affiliation: Prince Sultan University, College Of Law, Riyadh, Saudi Arabia

Contact information:

Email.skhammassi@psu.edu.sa

Phone: 00 966 55 190 5536



ABSTRACT:

Tunisia's democratic transition, celebrated as a glimmer of hope in the "nondemocratic" Arab world, has experienced a depressing decline. This research paper delves into the country's inefficient transitional process's intricacies, exploring whether the crisis is embedded in its political or constitutional framework. By analyzing the reasons behind Tunisia's democratic process stagnation, such as the perpetuation of consensus politics and the growing public outrage fueled by economic deficits, it also tries to shed light on the underlying factors that have corrupted the initial optimism. It suggests that the turmoil that evolved on July 25, 2021, served the President of the republic as a pretext to implement anti-democratic emergency measures to overthrow the constitutional and institutional concurrent system. This hypothesis raises questions regarding whether these measures should be viewed as a legitimate response to the political crisis, a "coup d'état" or a "constitutional coup" against democracy.

Furthermore, the paper examines President Saied's role in the democratic backsliding, focusing on his acquisition of legislative power and strategic attacks against the judiciary. The endorsement of President Saied's controversial constitution, abandoning the principle of powers separation and its implications for rights and freedoms, further underlines the extent of Tunisia's democratic decline. Ultimately, this research paper sheds light on the journey from hope to disillusionment in Tunisia's democratic transition. It emphasizes the urgency of addressing its challenges to correct the pathway towards a sustainable democracy.

Keywords: Tunisia , democratic transition, democratic process.



CONTENT

INTRODUCTION

Part I. The inefficient transitional process leading to the stagnation of democratization process

- I. Consensus politics; a vicious deal postponing the crisis
- II. The Economic deficit and the growing public anger

Part II. July 25's turmoil jeopardized the democratization process.

- I. Emergency measures as a response to a generalized political crisis
- II. A state of emergency, a "coup d'état" or a constitutional coup against democracy?
- III. A Gradual Agenda of Reform; "Regression Towards Dictatorship"
 1. Executive and Legislative branches seizure
 2. Undermining the principle of judicial independence

PART III: President Saied's controversial constitution; is it the dead end of democratization process?

- I. The abandon of powers separation principle
- II. Rights and liberties in Saied's constitution

CONCLUSION



Introduction:

After the promulgation of the 2014 Constitution and the success in holding the first free and fair legislative and presidential elections in Tunisia, many politicians, scholars, and commentators have admired the Tunisian experience that seemed promising.¹ However, over time, and despite the success of the electoral system to a large extent,² the adoption of a progressive constitution in harmony with international democratic standards,³ the democratic transition process witnessed a dead end,⁴ especially after President Saied had declared the state of exception on July 25, 2021⁵, then kept on extending it until the present date.⁶

According to his claims, the President of the republic has invoked Article 80 of the 2014 Constitution to declare a state of emergency. This was done to safeguard the country's integrity, security, and independence and to maintain the smooth functioning of the state's institutions. However, the emergency measures declared by the President have been controversial, as they involve extreme steps such as removing the Head of the government, suspending the Parliament, revoking immunity of all parliamentary members, and granting the President of the republic control over the executive power.

There has been a lot of disagreement and division among political elites, academics, and the public regarding certain measures taken by the President. The reactions to these political decisions have been mixed, with some people welcoming them,⁷ others expressing deep concerns,⁸ and others rejecting them out of fear of democratic backsliding.⁹

¹ Pickard, Duncan. (2014). Prospects for Implementing Democracy in Tunisia. *Mediterranean Politics*, 19(2), 259-264. [Link](#).

² Belschner, J. (2022). Electoral Engineering in New Democracies: Strong Quotas and Weak Parties in Tunisia. *Government and Opposition*, 57(1), 108-125. [Link](#).

³ Mansouri, F., & Armillei, R. (2016). The democratic 'transition' in post-revolution Tunisia: conditions for successful "consolidation" and prospects. [Link](#).

⁴ Ibid.

⁵ Yerkes S., Alhomoud M., (2022) "One Year Later, Tunisia's President Has Reversed Nearly Decade of Democratic Gains.", Carnegie Endowment for Democratic International Peace. [Link](#).

⁶ Presidential decree N. 814, dated December 29th, 2023, aiming at declaring the state of emergency. [Link](#).

⁷ Steuer, C. (2022). Tunisia in 2022: Reforming the Institutions amidst Turmoil. [Link](#).

⁸ Ridge, H. M. (2022). Dismantling new democracies: the case of Tunisia. *Democratization*, 29(8), 1539-1556. [Link](#)

⁹ Ibid,



After dissolving the Parliament, the President ruled by Decrees, Decree 117 being a prominent example. It granted him extensive powers and suggested he was operating outside constitutional provisions. However, Tunisian people saw that as the endpoint of a corrupt, insufficient, and ineffective democratic process.¹⁰

The widespread support for President Saied's strategy, despite its potential threat to the democratic transition process, can be mainly attributed to the political crisis that Tunisia was facing prior to Saied's ascendancy. This crisis was marked by significant conflicts that had reached a sensitive level, causing the Tunisian people, mainly youth, to lose faith in the transitional process and the ability of the elite segments to carry out the necessary reforms on the economic and social fronts.¹¹

It seems like the country is moving away from being a promising democracy and reverting to an authoritarian regime.¹² This shift towards authoritarianism began during a deep political crisis that hindered the proper functioning of state institutions and worsened the economic sufficiency and efficiency of the state. The democratic constitution of 2014 was then replaced with the 2022 constitution, which was drafted under suspicious circumstances but still received public support.

This paper acknowledges that President Saied might have taken advantage of the current socio-economic and political crisis to implement his strategic plan to gain control over the political arena and alter the nature of the existing regime. It suggests that he might have utilized the authority granted to the President of the Republic under Article 80 of the 2014 constitution, which allows for emergency measures, as a constitutional legitimacy covering to carry out a soft coup against democratic legitimacy.

This research paper investigates how the first political leader executed a well-studied strategy to reverse the established regime type by using legal tools as a constitutional pretext to undermine democratic institutions and processes.

¹⁰ McCarthy, R. (2022). Transgressive protest after a democratic transition: The Kamour Campaign in Tunisia. *Social Movement Studies*, 21(6), 798-815. [Link](#).

¹¹ Rennick, S. A. (2021). Has Tunisia's Democracy Failed to Convince Its Youth? The Slow-Going of Democratic Socialization. [Link](#).

¹² Souilmi, H. (2023). A tale of two exceptions: everyday politics of democratic backsliding in Tunisia. *The Journal of North African Studies*, 1-19. [Link](#)



This research is essential for Understanding and analyzing the Tunisian experience. It represents a stark reminder of how the political elite can destroy the democratic process from within. It highlights the fact that a “Coup d'état” is not necessarily military; it can be deemed constitutional under the provisions of a democratic constitution itself when the political leadership is resistant to democratic changes. It serves as a cautionary tale, showcasing the need for a robust framework that safeguards democracy against internal threats.

For these purposes, this paper starts by exposing the background of the inefficient transitional process characterized by deep and generalized problems within the State's institutions (part I), paving the way to July 25's turmoil (Part II), when President Saied declared the state of exception as a response to the political crisis, a situation that triggered fear from Saied's democratic backsliding strategy, evidenced by the endorsement of the new constitution embracing a presidentialist regime (**Part III**).

Part I. The inefficient transitional process leading to the stagnation of democratization process:

The experience of Tunisia's democratic transition is often regarded as a successful "model" of the "Arab Spring". The country achieved a relatively peaceful transition from the Ben Ali regime, drafted a democratic constitution with the help of an elected constituent authority, and transferred power to the first elected governing body through free, independent, and universal elections. However, after the promulgation of the 2014 constitution, the tale of a democratic emerging Arab country started to fade. The democratic consolidation process was blocked due to a political crisis caused by the lack of experience and excessive dependence on consensus politics,¹³ Additionally, the economic situation worsened, leading to people's complete loss of confidence in the State's leaders and the abandonment of the democratic transition process (II).

I. Consensus politics; a vicious deal postponing the crisis:

¹³ Huber, D., & Pisciotta, B. (2023). From democracy to hybrid regime. Democratic backsliding and populism Hungary and Tunisia. *Contemporary Politics*, 29(3), 357-378. [Link](#).



Consensus policy was one of the distinguishing features that characterized the political life in Tunisia post-2011, making it possible for the first phase of the transition (from 2011 to 2014) to succeed.¹⁴ Still, its continuation became later a real dilemma revealing some "dark sides".¹⁵ Indeed, the extension of the consensus for almost nine years has negatively impacted the democratic transition in Tunisia. The decision to create a unity government by Nida Tounes and Ennahda Mouvement's coalition in 2015 hampered the formation of a stable government and an influential opposition¹⁶ In this case, the participation of all parties in the government means there would be no real chances to develop a firm resistance to block specific policies from passing. Furthermore, it also led to disillusionment with the whole process.¹⁷

What happened in the Tunisian political life in the post-revolution decade fell into what *Thomas Carothers* calls "feckless pluralism," a political pluralism situation that is associated with a corrupt, self-interested, and ineffective political elite; politics is widely perceived as an elite-dominated domain that delivers little good to the people of the country and commands equally little respect. The state remains persistently weak and poorly conceived and executed economic policy.¹⁸ Among the reasons that explain that situation is the reliance of legislators and decision-makers on a policy of consensus, which was, in the Tunisian scenario, a negative agreement based on postponing the resolution of outstanding issues to preserve personal political gains and narrow interests rather than being a tool for overcoming ideological differences to bring viewpoints closer and serve the public interest.

Theoretically, the consensus is "an agreement or collective unanimous opinion among several persons." When exported to the world of politics, it aims to achieve agreements in return for political concessions that are supposed to have a long-term impact on the transition

¹⁴ Ibid.

¹⁵ Grewal, S. & Hamid, S. (2020). The Dark Side of Consensus in Tunisia: Lessons from 2015-2019. Foreign Policy at Brookings. [Link](#).

¹⁶ Ibid

¹⁷ ibid.

¹⁸ Carothers Thomas, (2002) "The End of the Transition Paradigm," Journal of Democracy 13:1. Page: 10. The Johns Hopkins University Press and the National Endowment for Democracy.



towards democracy.¹⁹ It is essential to consent to set the game's rules through the guiding principles in the constitution. Still, once the constitution drafting process is finished, the transition should have ended, giving place to the normal functioning of a democracy.²⁰ However, that kind of consensus could not happen in Tunisia post-revolution. the Tunisian experience showed that combining consensus politics to a proportional representation system is tricky. Mainly, Tunisia comprises conflicting geographical, ideological, and political lines reflected through the balanced approach in a divided political landscape.²¹ The difficulty of having one party that can capture the majority led to obstruction. It was surprising and unexpected to discover that Tunisia is, in many ways, a divided society gathering different tendencies: modernists, Islamists, and secularists, carrying the struggle over these issues of identity, reflecting in the electoral map that it has become more challenging to have a majoritarian system because those who are outside the powerful circle will fear exclusion, while those in the inner circle will fear accountability.²²

However, as maintained by *Heffernan Richard*, political consensus “should embrace notions of stability, continuity and most particularly a concept of change. It can offer insight into governing across election cycles and the alternation of office parties. It can demonstrate how policy development results from agreement on procedures and broad policy goals with disagreements about methods and means. The transition from one consensus to another can evoke an appreciation of political opinion shifts across time”²³. On the contrary, the consensus system in the Tunisian context resulted in an agreement to post-point conflicts with no real engagement towards the fundamental problems that the country has been facing.²⁴ Consequently, problematic issues such as the economic situation, the constitutional court

¹⁹ Olanipekun B, (2020) Democracy and Consensus in Traditional Africa: a critique of Kwasi Wiredu, *Inkanyiso, Jnl Hum & Soc SCI*. 12 (1). [Link](#).

²⁰ Ibid,

²¹ Reilly, B. (2001). Democracy, Ethnic Fragmentation, and Internal Conflict, *International Security*, vol. 25, No. 3, 162-185. [Link](#).

²² Ahmed, B. (2023). Determinants of Democratic Regression: The Case of Tunisia. AUC Knowledge Fountain. [Link](#).

²³ Richard H., (2001) *A Theory of Consensus Politics*. In: *New Labour and Thatcherism*”. Palgrave Macmillan, London.

²⁴ Yerkes S & Ben Yahmed Z., (2019) Tunisia's Political System: From Stagnation to Competition, Carnegie Endowment for International Peace, p: 2-6, [Link](#).



establishment, the security apparatus, and the transitional justice have remained pending until the current President of the Republic, launched a crackdown on the existing scheme on 25 July 2021, claiming that the only possible way to override this hurdle and solve the pending problematic issues is that Tunisia moves beyond the pluralistic system to a majoritarian one, from representative to a more direct form of democracy, and from semi-parliamentarian to a presidential regime.

In the same line, *Grewal & Hamid* proclaim that the extended prevalence of consensus politics in Tunisia was not a sign of democratic success since it had not resolved the existing problems; instead, it worsened them it even contributed to the rise of new ones.²⁵ They concluded that the presence of a long-standing consensus policy during the transitional phase might not be a sign of democratic success but rather an indication of more profound weakness in the transition.²⁶ Indeed, from 2015 until 2019, the consensus government had an uneven result in dealing with the country's problems and democratic consolidation. It failed to solve the economic crisis; it could not agree on establishing the constitutional court and postponed rather than resolved secular-Islamist tensions. Though, the consensus remains vital for establishing the constitutional court and making it possible to resolve its political, economic, and social problems.

For those reasons, and when voices were calling for establishing a national salvation government to overcome the stifling crisis and to reconcile between differing parties, who are President *Kais Saied*, former Prime Minister *Hisham Elmeshichi*, and the ruling bloc in Parliament, the President of the Republic announced on July 25, 2021, the state of exception and a war against corruption and all parties involved in it²⁷, considering that they spoiled the country's wealth and aggravated the economic crisis.

II. The Economic deficit and the growing public anger:

²⁵ Grewal, S. & Hamid, S. (2020).

²⁶ Ibid.

²⁷ Boussen, Z., & Lakhal, M. The Political Usage of Anti-Corruption in Tunisia. Euromesco, policy brief, N. 133. [Link](#).



The Tunisian revolution had social motives and prospects.²⁸ It was not primarily a freedom-seeking movement. The social movement was launched in marginalized interior regions calling for socio-economic reforms to minimize territorial disparities and end the rentier character of the Tunisian economy.²⁹ However, none of those social demands has seen the light; the country's economic situation even worsened, devastatingly affecting people's financial situation that will be further exacerbated by the coronavirus pandemic.³⁰

Between 2010 and 2019, external debt in Tunisia has already more than doubled, from 49 to 85 percent of GDP, and debt-servicing payments thus displace public expenditures.³¹ The world bank affirmed that the economy of Tunisia had a significant contraction during the crisis of Covid-19. The most severe economic recession was in 2020 and was marked by a fall in the GDP of 9.2 percent. However, the economic recovery was relatively slow in 2021. the growth reached 3 percent, which is well below expectations. Therefore, the slow recovery has increased the already high unemployment rate by 3.3 points to 18.4% in the 3rd quarter of 2021. This rate is exceptionally high for young people, women, and the people of the country's west.³²

The worsening territorial disparities between coastal and internal regions of the hinterland subalterns are the most flagrant manifestation of the Tunisian economic model. Coastal Tunisia concentrates on almost all medium and large companies and the centers of economic power, such as banks, insurance companies, or corporate headquarters. Interior regions depend mainly on the parallel economy generated by influential economic operators.³³ Moreover, the financial crisis in Tunisia is primarily due to the generalized rentier economy; systematic cooperation between political power holders, and a lobby of families controlling economic activities to the detriment of social progress, which, on the one hand, increases social

²⁸ Khammassi, S, (2022) The Charter of Rights and Freedoms in the Tunisian Constitution of 2014, the Arab Association of Constitutional Law. [Link](#).

²⁹ Ibid.

³⁰ The world Bank. Tunisia. [link](#).

³¹ Chomiak, L. (2021). Tunisia Democracy 10 Years after the Revolution: A Tale of Two Experience. Deutches Institute fur Entwicklungspolitik & German Development Institute. Briefing Paper 6/2021. [Link](#).

³² Banque Internationale. (2021). Reforme Economiques pour Sortir de la Crise. [Economic Reform: Towards Reconstruction and Development.] Pages : 1-3. [Link](#).

³³ Jaldi, A. (2021). Tunisie. La démocratie à l'épreuve de la transition économique. Policy Center For the New South. [Link](#).



inequalities and, on the other hand, hinders the establishment of a balanced and supportive economic infrastructure.³⁴

Among the necessary strategies to solve the financial crisis were, according to the International Crisis Group, to open the economic competition to all Tunisians and make it fairer and to put in place accurate measures to fight against corruption to protect the public authorities from the capture of rentier economy patrons.³⁵ However, President Saied ignored economic problems like his predecessors did. Instead, he focused all his attention on alienating his political rivals,³⁶ and extending his powers under the guise of an anti-corruption campaign that he launched on July 25, 2021, and the cover of Article 80 of the 2014 constitution, which further complicated the socio-economic and political crisis and jeopardized the democratization process.

Part II. July 25's turmoil jeopardized the democratization process

The President of Tunisia has stated that the declaration of an emergency state was the only viable solution to the worsening political crisis and the decline in economic and political conditions. However, the nature of these measures has sparked heated debates between supporters and opponents. Some believe that these actions are the only way to address the crisis, while others argue that they violate the constitution and democratic process and should be considered a coup.³⁷

I. Emergency measures as a response to a generalized political crisis

On July 25, 2021, President Kais Saied declared a state of emergency in Tunisia as per Article 80 of the 2014 Constitution. The declaration was made to safeguard the country's integrity, ensure the safety of its people, maintain its independence, and ensure the smooth functioning of the state.³⁸

³⁴ La Transition Bloquée : Corruption et Régionalisme. (2021). International Crisis Group. Rapport moyen orient et Afrique du nord. N. 177. Page: 10-14. [Link](#). f

³⁵ Ibid.

³⁶ Freedom house. (2023). Freedom in the world 2023. [Link](#).

³⁷ Ibid.

³⁸ Tekin, A., & Tenel, Ö. (2019). Political and Constitutional Development in Tunisia and Egypt in the Aftermath of The Arab Spring. *Law & Justice Review*, 10(19). [Link](#).



The declared state of emergency included many exceptional measures such as relieving the Head of the government, Freezing the work and powers of the elected Parliament for 30 days, Waiver of immunity of all parliamentary members, The President of the Republic assuming the executive power with a government headed by a Prime Minister. These exceptional measures have sparked great controversy and division among the political elites, academics, and the people; some were welcoming, others expressed deep concerns, and others rejected these measures.³⁹

The Article 80 of the 2014 constitution grants to the President of the Republic a broad discretionary power allowing him the estimation of the emergency state and the declaration of any necessary measures dealing with the event of any imminent danger threatening the nation's institutions or the security or independence of the country and impeding the normal functioning of the state.⁴⁰ However, he is bound to consult priory with the Heads of Government and the Parliament and inform the President of the Constitutional Court.

The primary paradox raised by the procedures announced by the President of the Republic is that they don't meet the substantial and formal requirement provided by Article 80 to declare the state of exception. In addition, they contradict the provisions of the second paragraph of the article mentioned above stipulating that the parliament shall be in continuous convening, that the President cannot dissolve the parliament; likewise, he cannot pass a motion of censure against the government; while the President decided to freeze the parliament and to dismiss the head of the government. Moreover, it was impossible to inform the President of the Constitutional Court to oversee the legitimate application of the Constitution simply because by that time the court had not yet been established.

³⁹ Ibid.

⁴⁰ The Article 80 of the 2014 Constitution provided for two sets of conditions that shall be met concomitantly to declare the state of emergency:

- The substantial requirement: the occurrence of a situation of imminent danger that prevents the normal functioning of the state's institutions.
- The formal requirements: the president of the republic shall consul priori the heads of parliament and government.



The opponents of President Saïd's exceptional measures, claimed that Tunisia witnessed a "coup d'état"⁴¹ and warned of the danger of slipping into a totalitarian presidency, considering that those exceptional measures were viciously planned and reflected the President's ambition to return to the "presidentialist" regime.⁴²

The President's declaration of a state of emergency created a precarious situation that had the potential to lead to various abuses of power;⁴³ He continued to issue additional emergency measures, such as the suspension of all parliamentary functions, the dissolution of all constitutional institutions, and eventually the reversal of the 2014 constitution,⁴⁴ On July 25, 2021, a state of exception was declared by Presidential decree, and since then, the state of emergency has been in effect without any clear timeline for when it will be lifted.⁴⁵

The President of the Republic and his supporters are defending the actions that took place on July 25 and all the subsequent measures by claiming that there was no other solution but to abandon the post-revolutionary system. They argue that the post-revolutionary system posed an imminent threat as per Article 80 of the former 2014 Constitution threatening the integrity, security, and stability of the Tunisian State. And they advance the principle of "people's sovereignty" as a pretext to act beside the constitutional framework. Thus, President Saïed relied on three arguments to justify the deliberate violation of the constitution: 1) the impossibility for the people to exercise their sovereignty, 2) people repeated the rejection of the mechanisms enshrined by 2014 constitution to exercise their sovereignty, 3) and the primacy of the popular will over any constitution.

The Tunisian President's intention to end the democratic transition process started to become apparent over time through several measures he took. This became even more evident when he announced his campaign for organizing a constitutional referendum on July 26, 2022. The draft constitution lacks deliberation and independent political oversight, its institutional

⁴¹ Gobe, É. (2022). La Tunisie en 2021: un coup politique peut masquer un coup d'État. *L'Année du Maghreb*, (28), 225-260. [Link](#).

⁴² Ibid.

⁴³ Bjørnskov, C., & Voigt, S. (2022). Emergencies: on the misuse of government powers. *Public choice*, 190(1-2), 1-32. [Link](#).

⁴⁴ Gobe, É. (2022),

⁴⁵ Ghannouchi, S. (2023). Emergency provisions and exceptional measures in Tunisia: establishment of a new constitutional order. *The Journal of North African Studies*, 28(3), 477-487.



design emphasizes centralization of power, weakens local authorities, curtails the role of intermediary political bodies, and further deepens the power imbalance.⁴⁶

Despite their potential danger, the recent emergency measures have raised several questions regarding their nature and purpose. Are they a justifiable response to the risks posed by the worsening political crisis? Or are they an unconstitutional coup d'état? Is it reasonable to argue that these measures were necessitated by factual realities and public demand, thus granting them the constitutional legitimacy to initiate reforms to the established system?

II. A state of emergency, a “coup d’état” or a constitutional coup against democracy?

What occurred in Tunisia cannot be defined as a "coup d'état" in the traditional sense of the term because it does not fit the agreed-upon definition. A "coup d'état" is a chaotic and intense event that is well-documented and is aimed at overthrowing the previous regime. It usually targets the state's primary leader and is carried out by an elite group of individuals who are part of the state apparatus, including non-civilian members of the military and security services or civilian members of the government.⁴⁷ A "coup d'état" is typically led by political enemies, military leaders, or insiders who are distressed and opposed to the first leader of that regime.⁴⁸ For that reason, what happened in Tunisia, led by the Republic's President against other parties in power, could not be qualified as a coup per se in the conventional sense.

Contrary to the established concept of “coup d’état,” many constitutionalists who are against Saïed's plan talk about a "coup against the constitutional and electoral legitimacy,” which is a prelude to a return to tyranny and oppression.⁴⁹

Indeed, the "constitutional coup" phenomenon is common, especially in African and Arab countries, where heads of state refuse to relinquish power at the end of their presidential term and prefer to change the laws and constitutions that stand in their way.⁵⁰ Too often, their

⁴⁶ Limam, J. (2022). The 2022 Constitutional Referendum in Tunisia: Reviving the Democratic Transition or a Severe Democratic Setback? [Link](#).

⁴⁷ John Mukum Mbacu, (2020) “Threats to Democracy in Africa: The Rise of the Constitutional Coup,” Brookings. [Link](#).

⁴⁸ Britannica, T. Editors of Encyclopedia, (2024,). Coup d'état. Encyclopedia Britannica. [Link](#).

⁴⁹ Experts react: What's next after Tunisian president's parliamentary freeze? [Link](#)

⁵⁰ J M. Mbacu, (2020).



legal maneuvers are accompanied by severe human rights violations and brutal repressions against those who oppose them. Many African and Arab rulers have changed their countries' constitutions to eliminate the term and or age limits for presidents to allow the incumbent president to extend their mandate limits unconstitutionally;⁵¹ the best examples of this trend are the late Tunisian President Ben Ali, the Egyptian President El-Sisi, the President Museveni of Uganda, and President Gnassingbé of Togo.⁵²

Yet, a “constitutional coup” may take another form, which is democratic indeed, on July 15, 1975, the formation of the “Sabah People's United Front” in Malaysia, and its subsequent victory over the ruling Sabah Alliance party in the 1976’ State election was widely qualified as a constitutional "coup d'état."⁵³

A “constitutional coup d'état” is distinguished from armed seizures of power by the absence of violence and the apparent legality of the process.⁵⁴ While coups against constitutions are usually given a cover of legitimacy;⁵⁵ their tutors employ legal tools such as the extension of the number of presidential terms, the exclusion of specific candidates from elections, or the maneuver to transfer a growing executive power to the sole hands of the head of state.⁵⁶ It is difficult to condemn it once in place because it plays in the name of state sovereignty and the common good of the population.

Ozan O. Varo suggests that it is possible to categorize “coup d'état” into two groups based on whether the coup produces democracy or not. A democratic coup would overthrow the former non-democratic regime. It would facilitate free and fair elections quickly, and the coup ends with the transfer of power to democratically elected leaders.⁵⁷ Contrarily a non-democratic coup will not lead to a systematic change in the government regime. It will be

⁵¹ Albrecht, H. (2015). The myth of coup-proofing: Risk and instances of military coups d'état in the Middle East and North Africa, 1950–2013. *Armed Forces & Society*, 41(4), 659-687. [Link](#).

⁵² Ida Sawyer, “Africa Softer, Gentler Coups d'Etat”, Human Rights Watch, November 3, 2015. [Link](#).

⁵³ The success of Berjaya was achieved not by guns but by persuading dissident members of the ruling Sabah Alliance to break away from their autocratic leader, *Tun Mustapha Bin Datum Harun*.

⁵⁴ Varol, O. O. (2017). *The Democratic Coup d'État*. Oxford University Press. Pages:10-11. [Link](#).

⁵⁵ *Ibid*.

⁵⁶ Han, Sin Fong. (1979) “A Constitutional Coup d'Etat: An Analysis of the Birth and Victory of the Berjaya Party in Sabah, Malaysia.” *Asian Survey*, vol. 19, no. 4, pp. 379–389. *JSTOR*, page: 379. [Link](#).

⁵⁷ *Ozan O. O.* (2017).



limited to changing the existing regime leaders by military officers.⁵⁸ While a military coup is by nature an undemocratic event that puts in danger the democratic process, there are cases where a coup led by the domestic military turns its arms against an established dictatorship and facilitate a peaceful transition to democracy. For instance, Portugal witnessed a “democratic coup” when the army temporarily took control of the government and ran a transition to democracy in 1974. The transitional phase ended with free and fair elections of civilians⁵⁹.

The characterization of President Saied's exceptional actions as anti-democratic was not evident from the beginning because no other alternatives could be more appropriate under the circumstances in which he intervened. By the time he arrived as the head of the State, the political scene was chaotic. The parliament, the leading political player, failed to manage the critical issues facing the State and was strongly suspected of corruption, so it was not reasonable to cooperate with it as part of the solution. That fact could have justified Saied's constitutional violations if he had not insisted on attacking democratic process and constitutional institutions and unilaterally acting to establish an inclusive government. Regardless, he kept his pro-democracy rhetoric, declaring his attachment to human rights protection, the rule of law, and democratic values until he submitted the draft constitution to the referendum on July 25, 2022. After being approved by an absolute majority. The constitutional text, apparently drafted solely by President Saied, became the new Tunisian constitution, which carries the tools necessary for restoring authoritarianism under a legitimate guise that culminates in a retrograde constitutional strategy, as a part of President Saied's gradual agenda of regression towards the one-person rule.

III. A Gradual Agenda of Reform; “Regression Towards Dictatorship”

Since he had announced the state of exception, the President took consecutive decisions against numerous institutions created by the 2014 constitution, whose existence is necessary for the survival of a democratic State. The President dissolved many vital constitutional institutions, such as the Interim Authority for Constitutionality Review and the National Anti-Corruption Authority, and dissolved the elected Supreme Council of Magistracy, replacing it

⁵⁸ Ibid.

⁵⁹ Ozan Varol, “Love Ballads, Carnations, and Coups”, the Professional Journal of the U.S. Army, 2019, [Link](#).



with another composed of hand-picked members, in addition to modifying the legal regime and the composition of the Independent High Authority for Elections (ISIE). All these measures served the President's political agenda aimed at seizing the executive and legislative branches, weakening the judicial branch, and paving the way for a constitutional reform project that could not be further from democracy.

1. Executive and Legislative branches seizure:

On September 22, 2021, President Saied announced the dissolution of the Interim Body for Constitutional Review as provided by Decree-law N. 117⁶⁰, and assumed the task of drafting amendments related to political reforms through a hand-picked committee. Decree 117 granted the President of the Republic complete control over the legislative and executive powers.⁶¹ This meant that in almost all domains, legislation would be made by presidential decree-laws or decrees, which were immune from any judicial review.⁶² Decree 117 provided a veil to the reformist agenda of the President, by declaring that the Tunisian people could not express their will under the 2014 constitutional provisions. Hence, in such a situation, sovereignty shall prevail over constitutional requirements. This requires overcoming procedures and formalities that contradict it, even if they are included in the Constitution.

Decree 117 was enacted in a specific context, that of the exception provided for by article 80 of the 2014 constitution, which provides that the State of exception demands observance of certain conditions, such as the prohibition of Parliament dissolution and government dismissal, to guarantee a safe return to the normal functioning of the State's apparatuses. However, Decree 117 was vitiated by violations of the provisions of Article 80, which provides for maintaining the institutional status quo; it unveiled the President's intention to introduce political reforms and amendments to the laws governing political life in Tunisia, which goes against Article 80 of 2014 constitution itself.⁶³

⁶⁰ Art. 21 of Presidential Decree No. 117 states that "the Interim Body for Constitutional Review is dissolved". (Unofficial translation). Moreover, Art. 22 of the same Decree provides that: "the President of the Republic draws up the draft laws relating to political reforms with the assistance of a commission whose organization is determined by a Presidential Decree." (Unofficial translation)

⁶¹ Limam, J. (2022). [Link](#).

⁶² Steuer, C. (2022). Tunisia in 2022: Reforming the Institutions amidst Turmoil. [Link](#).

⁶³ Ferchichi, W (2021). The Declaration of July 25, 2021: Has the Constitution of January 27, 2014, Been Buried? [Link](#).



Even though the President had, under article 80 mentioned above, a broad discretionary power to protect the State and the Constitution, he had no right to modify laws governing political life rules; that's why decree 117 was widely condemned, deemed unconstitutional, and considered as threatening the separation of powers⁶⁴.

2. Undermining the principle of judicial independence:

The 2014 constitution included a conception of the judiciary utterly different from what prevailed before the revolution. It adopted many principles guaranteeing the independence of the judiciary and judges, including structural and functional guarantees. The constitution restricted the executive authority to intervene and assigned the task of ensuring the proper functioning and judiciary independence to the Supreme Council of Magistracy (SCM) to ensure its good functioning, the SCM was granted administrative and financial autonomy and self-management. It includes impartial, mostly elected members.⁶⁵ The 2014 constitution also stipulates that judges must be independent, with no authority over them in their judgment other than the law, that they shall enjoy penal immunity, and shall not be transferred without their consent. Judges shall not be dismissed, nor can they be suspended from work or be subject to a disciplinary penalty except in cases provided by the law and in respect of defense guarantees and according to a reasoned decision made by the Supreme Judicial Council.⁶⁶

However, the establishment of the SCM in 2016 witnessed a significant crisis due to the prevailing differences between its main actors. The SCM's achievements toward the judiciary's autonomy and proper functioning were limited compared to the role assigned by the constitution, mainly due to his members' internal divisions and the failure of his leadership to fulfill his constitutional mandate. Nonetheless, it remains a substantial gain for the independence of the judiciary.

But the President of the Republic saw otherwise; dissolving the Council was one of his priorities. He worked to distort the image of the judiciary, accusing judges of cooperating with

⁶⁴ Limam, J. (2022). [Link](#).

⁶⁵ Ajroud, J. (2011). L'indépendance de la justice en Tunisie [The independence of the judiciary in Tunisia]. *Revue Française de Droit Constitutionnel*, (2), 427-438. [Link](#).

⁶⁶ Constitution of Tunisia, (2014), Chapter V: Judicial authority, Articles 102, 104, 107, 109, 112, 114. [The official version available in French language can be accessed at [link](#)].



the corrupt political system, and repeatedly directing defamatory speeches against judges to the people until he transformed the decision to dissolve the SCM into a widespread demand that has popular legitimacy.⁶⁷

By Decree-Law No. 11 dated February 12, 2022, the President dissolved the elected SCM and established a temporary replacing council, whose members are appointed by the President himself, ensuring the abandonment of the foremost constitutional guarantees for the judiciary's independence and giving himself broad oversight over judges' careers; he either directly appoints or otherwise influences the appointment of all members of the new body,⁶⁸ The Decree No. 11 further permits the President to influence all aspects of judges' career management, including their selection, appointment, transfer, promotion, allocation of responsibilities, and judges' discipline.⁶⁹ In addition, it empowers the President to demand judges' removal and even to act instead of the SCM as the body in charge of disciplinary processes by ordering such deductions.

The Decree No. 35, which followed Decree No. 11, dated June 1, 2022, has granted the President the authority to discipline and remove judges using unilateral decisions without the need for any disciplinary process. That raises concerns about the potential for the misuse of power and a lack of accountability.⁷⁰ Moreover, the President's disciplinary decisions may be based on any suspicion that the concerned judge is compromising public security or the country's supreme interest, which could be subjective and open to interpretation.⁷¹ These measures constitute a significant danger to judges' autonomy; they are incompatible with the values of the 2011 Revolution and the principles outlined in the 2014 Constitution, which align with global norms concerning judicial independence and separation of powers.⁷² The Decree No. 35 paved the way for the issuing of the Decree No. 516 on the same date to dismiss 57 magistrates without following any disciplinary procedures or guaranteeing the right of defense,

⁶⁷ Tolu-Honary, F. (2023). Judicial Off-Bench Resistance in Post-Revolution Tunisia. Independent Study Project (ISP) Collection, 3593. [Link](#).

⁶⁸ Ibid,

⁶⁹ Decree-law no. 2011-14 dated 23 March 2011, relating to the provisional organization of the public authorities. [The official version available in French language can be accessed at: [link](#)

⁷⁰ Decree No. 35 of the year 2022. (2022, June 1). (In French). Retrieved from: [Link](#)

⁷¹ Ibid.

⁷² Ibid.



violating, thus, the presumption of innocence, self-defense guarantees.⁷³ On the ground of the decree 35, the President assigned himself the authority to discipline and relieve judges by a unilateral decision without resorting to any disciplinary process; he has the authority to issue disciplinary decisions against any judge based on any emergency consideration or any suspicion that the concerned judge is compromising the public security or the country interests.

Almost all judges' representative bodies claimed those decisions to be part of the executive branch's plan to interfere in the judiciary and courts' management. For instance, the *Association des Magistrates Tunisian* (AMT) affirmed that the exemption decisions targeted prosecutors, magistrates of criminal chambers, and heads of tribunals, who had previously refused to adhere to the president's plan and rejected the minister of justice's orders.⁷⁴

Many NGO's such as Human Right Watch, warned the public of the devastating effect the executive interference in tribunal could have on the rights and freedom system. Indeed, the Decree 35 remained vague regarding the grounds on which a judge may be subject to a criminal prosecution, preventing them from knowing what behavior would constitute a criminal offense and authorizing arbitrary action by the executive.⁷⁵ That's why it is broadly said that the Decree 35 infringes the principle of legality and the right to a fair trial, which is a fundamental human right.⁷⁶ On that ground the Administrative Court of Tunisia decided stay of execution of 46 from 57 decisions on the ground that they violated the right of defense of the concerned judges.⁷⁷

PART II: President Saied's controversial constitution; is it the dead end of democratization process?

A year later, after the state of exception was declared, the President submitted a draft constitution for a general referendum organized by the Independent High Authority for Elections on July 25, 2022. The people of Tunisia were allowed to vote on a new constitution. Before the referendum, an electronic consultation was conducted to gather opinions on the

⁷³ Tolu-Honary, F. (2023). Judicial Off-Bench Resistance in Post-Revolution Tunisia. Independent Study Project (ISP) Collection, 3593. [Link](#).

⁷⁴ Tolu-Honary, F (2023).

⁷⁵ Human Rights Watch, (2022) Tunisia: Arbitrary Dismissals a Blow to Judicial Independence. [Link](#).

⁷⁶ Human Rights Watch. (2023, May 22). Tunisia: It is Essential to End Attacks on Judicial Independence. [Link](#).

⁷⁷ Mentioned on Amnesty International report, available on the official website. [Link](#)



nature of the political system and the voting method for the upcoming legislative elections; however, suspicions that the proposed draft constitution aimed at expanding the powers of the President of the Republic and establishing a "presidentialist" system instead of a semi-presidential one were not excluded.⁷⁸

The referendum's results announced on July 26, 2022, led to the endorsement of the new constitution by an absolute majority of 2,607,884 voters (94.60%) who voted "yes" compared to 148,723 voters who voted "no," (5.40%).⁷⁹ The referendum turnout was limited to 30.5 % of registered voters, indicating that almost only the President's supporters participated in the referendum. At the same time, the rest of the registered voters abstained from voting, either because they rejected the whole President's project or lost interest in the political game and confidence in the political actors.

The new constitution, published on August 18th, 2022, in the Official Gazette, confirmed with no doubt Saied's agenda of presidential powers ascendancy, state institutions control, and checks and balances system weakening. Despite his political rhetoric celebrating democratic values,⁸⁰ the new constitution represents a dangerous tool to destroy the democratization project and install the one-person rule since it doesn't embody the powers separation principle (1), nor the necessary mechanisms for human rights protection (2).⁸¹

I. The abandon of powers separation principle:

The principle of powers separation refers to the separation between the three State's branches, the judiciary, the executive, and the legislative; and the establishment of mechanisms of checks and balances between each,⁸² it is the cornerstone of any democratic regime and it is a necessary tool to counterbalance the ruler's powers.⁸³ The separation of Powers should be

⁷⁸ Limam, J. (2022).

⁷⁹ Source: Preliminary results of the constitutional available on the high independent authority for elections [Link](#)

⁸⁰ Such as when he announced in Decree 117 that his project aims at establishing a genuinely democratic regime that gives back sovereignty to the people to exercise them through elected representatives or by way of referendum.

⁸¹ Anna Lührmann & Staffan I. Lindberg (2019) A third wave of autocratization is here: what is new about it? *Democratization*, 26:7, 1095-1113. [Link](#)

⁸² Fordham University. (n.d.). *Modern History Sourcebook: Montesquieu: The Spirit of the Laws, 1748.* [Link](#).

⁸³ Baroš, J., Dufek, P., & Kosař, D. (2018) Separation of Powers in Democratic Theory: Understanding Populism and Rise of the Unelected. *The Case of Central Europe.*



associated with a Checks and Balances system, which provides each branch of government with the individual authority to check the other branches and stop any of them from having too much power.⁸⁴ The separation of the three powers stands up to a “unified authority under one single ruler empowered to make all government decisions”⁸⁵

Samuel and Shugart affirm that “The degree to which presidentialism impedes mandate representation or enhances accountability depends on the degree of balance in the separation of powers and the degree to which there is unity or separation of purpose between the two branches”,⁸⁶ which is not in line with “presidentialism” based on the appropriation to the President with extensive executive and legislative power such as package veto, partial veto, decree, the introduction of legislation, budgetary initiative, the proposal of the referendum.

The democratic regime that Saïed's rhetoric pretends to embrace, according to the Article 22 of Decree 117, shall be based on power separation and proper balance between them; it enshrines the rule of law and guarantees public and individual rights and freedoms. Moreover, it aims to achieve the revolution's objectives: equal work opportunity for all, liberty, and national dignity. However, the 2022 constitution countered all those democratic values and was far below the democratic scheme of the 2014 constitution. Even the head of the Constitution Drafting Commission, Sadok Belaïd, dissociated himself from the President's constitution draft, claiming that adopting such a constitution opens the way to the reestablishment of a dictatorial regime.⁸⁷ It is the prelude to a long-life "presidentialist" regime structure, even, more complex, and solemn than that portrayed in the Decree No. 117.⁸⁸

President Saïed’s constitution is highly destructive to the democratic process launched in 2011 and established by the 2014 constitution;⁸⁹ it ended all hopes of an active public

⁸⁴ Ibid.

⁸⁵ Kavanagh Aileen, (2016), “The Constitutional Separation of Powers.” In David Dyzenhaus and Malcolm Thorburn (eds), philosophical foundations of Constitutional Law (Oxford, 2016; online end, Oxford Academic, 21 Apr. 2016). P: 229.

⁸⁶ David J. Samuel & Matthew Soberg Shugart (2003) “Presidentialism, Election and Representation,” *Journal of theoretical politics* 15 (1): 33-60. Available online at: <http://users.polisci.umn.edu/~dsamuels/Samuels-Shugart%20JTP.PDF>

⁸⁷ Clerc, H. (2023). La Tunisie de Kaïs Saïed: Les Ressorts d’un Autoritarisme Nouveau [Tunisia of Kaïs Saïed: The Mechanisms of a New Authoritarianism]. *Moyen-Orient Politique*. [Link](#).

⁸⁸ Ibid.

⁸⁹ Tabei M.



political life marked by partisan pluralism and political participation. Nevertheless, more perilous is that it foretells the establishment of a complex oppressive dictatorship in the guise of a presidential regime, which is "presidentialist" indeed, and the extinction of liberties apparatuses, which are the primary creation of the 2011 revolution and the activism of formal and informal liberation channels. The "presidentialist" regime established by the 2022 constitution is a kind of governmental system that gives to the Republic's President a great scope of powers, primarily through decrees, vetoes, and emergency powers as substitutes for the legislative majority.⁹⁰ It is characterized by a weakened parliament and a reduced counter-balance system. The president may rule without the prime minister or with a chosen non-responsible cabinet that is usually a non-party technocratic member.⁹¹ The extensive and long-time use of these powers leads to the instauration of a durable constitutional dictatorship.

The replacement of the Supreme Council of Magistracy institution by three sectoral councils signifies a decline in judicial independence safeguards that were guaranteed in the 2014 constitution.⁹² The 2014 constitution had provided for an independent judicial branch and prohibited any interference in the functioning of the judiciary. However, the 2022 constitution aims to weaken the court system and enable legislative control over judges by assigning the task of organizing the court system to the legislature.⁹³ This intended change will further marginalize the judiciary's role and compromise its independence.

As for the relationship between the executive and the legislative branches, the 2022 constitution abandoned checks and balance requirements by concentrating most powers in the hands of the President of the Republic and establishing a hierarchy of legitimacy structurally and functionally and a concentration of powers horizontally and vertically.⁹⁴ The President of the Republic is the only one elected by universal, free, direct, and secret suffrage at the national

⁹⁰ Skach, Cindy. (2005). Constitutional Origins of Dictatorship and Democracy. *Constitutional Political Economy*. 16. 347-368. [Link](#).

⁹¹ Ibid.

⁹² Constitution of Tunisia, (2022), Chapter III: Judicial Function, Article 119. [The official version available in French language can be accessed at [link](#)].

⁹³ Constitution of Tunisia, (2022), Chapter II: Legislative Function, Article 75. [The official version available in French language can be accessed at [link](#)].

⁹⁴ Limam, J. (2022).



level,⁹⁵ which makes him monopolize the direct national legitimacy giving him extraordinary constitutional privileges: as such, the absolute immunity,⁹⁶ he will in no case face the withdrawal of the mandate such is the case of people's representatives, who, in return, enjoy only limited immunity.

President Saïed's endeavor to control all State's powers is not surprising among leaders of a newly democratic state characterized by a non-stable political atmosphere. Dominating rulers' behavior is among the main factors that explain democratic backsliding in new democracies.⁹⁷ Autocratic rulers, who seek to establish a constitutional dictatorship, strive to dislodge democratic norms, and strengthen their powers through step-by-step strategies such as frequent constitutional amendments, sideline democratic norms and oversight institutions, intimidating the opposition, compromising judicial, restriction the freedom of expression and the press, and using state institutions such as taxation and law-enforcement agencies to intimidate their rivals.⁹⁸

The problem is much deeper, because even though the new constitution maintained many rights and freedom enshrined in the 2014 constitution, it abandoned their supporting safeguards; namely the Judicial independence guarantees were undermined, and the role of the Constitutional Court has been remarkably altered. It is worth noting, that against the concentrated executive power in the hands of the President, there is a bilateral legislative structure with limited powers, a weakened parliament with a vague national council for regions and departments. The President, the supreme and sole leader, shares legislative power with the House of Representatives, he enjoys the right of legislative initiative and the right to reject bills presented to him; he may also exercise legislative competency by decrees or by direct legislative or constitutional referendum. The President also sets the State's general policy without assuming any responsibility in this regard; in the event of a confrontation with

⁹⁵ Constitution of Tunisia, (2022), Chapter III: Judicial Function, Article 90. [The official version available in French language can be accessed at [link](#)].

⁹⁶ Constitution of Tunisia, (2022), Chapter III: Judicial Function, Articles 64 & 65 [The official version available in French language can be accessed at [link](#)].

⁹⁷ Wunsch, N. & Blanchard, P. (2023) Patterns of democratic backsliding in third-wave democracies: a sequence analysis perspective, *Democratization*, Taylor & Francis Online. [Link](#).

⁹⁸ Arana, A. (2021). The Quest for Uncontested Power: Presidents' Personalities and Democratic Erosion in Latin America, 1945-2012, *The political Psychology*, Vol. 0, 202. [Link](#).



the legislative power, he shall decide either to dismiss the government or to dissolve the Assembly of People's Representatives.

Although, the President of the Republic is the first leader and the holder of the most considerable authority, he unilaterally controls the political game. He sets its rules, yet there are no rules in the new constitution that holds him responsible for his actions and choices. Even the Constitutional Court's role, which is an arbitrator between the leading political players and ensuring a balance between them, was diminished by its composition and the method of appointing its members.

In their recent empirical essay about “presidentialism” ascendancy’s effect on democracy’s survival in 18 Latin American countries (Argentina, Bolivia, Brazil, Chile, Colombia, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela...) between the years 1925 and 2016, *Liñán*, *Schmidt* and *Vairo* proclaim that their experimental study shows that there will be regime instability whenever there is an extensive scope of powers in the hands of the President.⁹⁹ Too many powers in the hands of the President weaken the principle of powers separation and the balance between them, which is destructive to democracy for two considerations; first, the omnipresent president violates the opposition’s rights, second, the latter may plan to overthrow the incumbent government as a reaction.¹⁰⁰ The empirical analysis that the researchers carried out shows that greater direct control by the executive over the legislature and the judiciary increases the risk of democratic collapse.¹⁰¹ Depending on their results, they suggest that voters must strive to balance the distribution of institutional powers to protect democracy and to guarantee a sustainable protection for rights and liberties system, Afterall.

II. Rights and liberties in President Saied’s constitution:

The new constitution marks a decline in rights and liberties guarantees, despite the President's official rhetoric asserting that the gains in rights and freedoms achieved by the Tunisian revolution are untouchable. In fact, the reality of rights and liberties could not be

⁹⁹ Liñán, A., Schmidt, N. & Vairo, D, (2019) Presidential hegemony and democratic backsliding in Latin America, 1925–2016, Democratization, Taylor & Francis Online. [Link](#).

¹⁰⁰ Ibid.

¹⁰¹ Ibid.



dissociated or disconnected from the political system adopted by the new constitution, which is a system marked by a dominant executive authority that does not recognize powers separation and balance or independent judiciary assurances.

The 2022 constitution reversed the balance between the universal and the identity dimension of human rights in favor of Islamic reference to rights and liberties. It adopted retrograde concepts, cheering the past historical glories and belonging to the Islamic nation. The preamble of the Constitution refers to the human dimensions of rights and freedoms only through reference to the Islamic religion. It also adopts new concepts that might have a retrograde effect, such as rooting down the society in the Arab-Islamic identity¹⁰², instead of referring to cultural openness, integration, and cooperation with the Arab and African peoples, as provided by the 2014 Constitution's preamble.

Moreover, there is a decline in the right to political participation, with the right to free, secret, and direct elections being limited to presidential elections, the new Constitution maintained discriminatory provisions such as banning non-Muslims and be-nationals from running for presidential elections.¹⁰³

In addition, the legal guarantees of rights and freedoms enshrined in Article 49 of the 2014 Constitution have considerably diminished. Article 55 of the new Constitution relating to the limitation clause replaced the word "regulations" with the word "limits", indicating a change in the meaning and the effects of the concept.¹⁰⁴ Likewise, rights safeguards against the legislative free use of the limitation clause, such as the obligation to respect the proportionality principle and the standards of democracy and the rule of law, have been abandoned.

The Islamization of the state is indeed one of the most dangerous concepts incorporated into the new Tunisian constitution, not only because it represents a significant constitutional setback, but because of its major impact on the system of rights and freedoms. The fifth article of the constitution states that: "Tunisia is part of the Islamic nation "*Omma*," and the state alone

¹⁰² Constitution of Tunisia, (2022), Chapter III: Judicial Function, Article 5. [The official version available in French language can be accessed at [link](#)].

¹⁰³ Constitution of Tunisia, (2022), Chapter III: Judicial Function, Article 89. [The official version available in French language can be accessed at [link](#)].

¹⁰⁴ Constitution of Tunisia, (2022), Chapter III: Judicial Function, Article 55 [The official version available in French language can be accessed at [link](#)].



must endeavor to achieve the genuine objectives of Islam in preserving the soul, honor, money, religion, and liberty."¹⁰⁵ That is, for sure, an unsafe precedent in Tunisia's modern constitutional history. None of the previous constitutions, whether the one of 1959 or 2014, have included such a reference. The Islamic turnover chosen by the 2022 constituent affirms a reversal from Islam as the official religion of the State and one of the national identity determinants into a religious State that is self-proclaimed Islamic. However, an Islamic State would apply the Islamic law or the "Sharia," which means that "Sharia law" must henceforth be considered a source of legislation. This constitutional provision represents an actual legal degradation endangering the acquired rights and freedoms. Because it might lead to the exclusion of laws that do not conform with Islamic law for sake of unconstitutionality, the most important of which are those relating to women's rights incorporated in the Personal Status Code.

Undoubtedly, it is not enough to enact some constitutional provisions to protect human rights since the status of human rights depends on the ability of the state to respect the rule of law and commit to constitutional legitimacy. It is also fundamental to allow citizens to effectively access the judiciary to obtain justice, which requires control of the constitutionality of laws and recourse to an independent and impartial justice capable of ensuring a fair trial. Yet the new constitution pretends to be minimalist and straightforward insofar as it shot down some of these concepts and mechanisms necessary for protecting rights and freedoms.

CONCLUSION:

While there are considerable risks that has been surrounding the democratic transition in Tunisia, some believe there is still hope, and it would be hasty, at this stage, to assure that the President Kaiis Saied is as a new tyrant in the MENA region. However, most indicators suggest that he tends to rule solely. He has affirmed this through his unilateral leadership model endorsed by the new constitution, and his deliberate attack against the 2014 constitutional institutions as well as the former political players and public figures. Nevertheless, he still enjoys significant popular support.

¹⁰⁵ Unofficial translation of the Article 5 of the Constitution.



Although various factors contributed to the deterioration of the situation in Tunisia, the primary reason was the political process and the relationships between political actors.¹⁰⁶ These factors have a significant impact on the functioning of all constitutional institutions.¹⁰⁷ Based on this, two approaches have emerged to address the crisis that obstructed the democratic process. One approach suggests that the crisis was constitutional and caused by the provisions of the 2014 Constitution, which is not suitable for the Tunisian experience. The second approach argues that the 2014 Constitution was responsive to all democratic standards, and the real problem was the existing political framework.¹⁰⁸ This framework worsened the situation and obstructed the democratic path.

The Tunisian experience teaches us three main lessons. First, the introduction and consolidation of democratic culture and political experience within societal behavior play a significant role in preparing societies to accept and welcome the transition towards a democratic system and to participate in the consolidation of democracy. While the participation of people in historical events and the organizational contexts associated with the process of democratic transition inevitably leads to transform their conception of public and political life and their attitudes towards the adoption of democratic principles, these alone are not enough to strengthen the support of the public for the democratic system itself, especially if they are not adopted, supported, and protected by an enlightened and devoted elite.

Second, the unity of national elites and establishing a positive and healthy consensus among them is crucial in maintaining and enduring stable democratization processes. The Tunisian experience shows that disunity among political elites generates regime instability, resulting in temporary shifts in the form of unstable governments.

Finally, the economic situation is one of the determinants of a society's ability to succeed in the democratic transition process. Consequently, the deterioration of the economic situation of the countries is one of the main obstacles to the adherence of public opinion to the democratic building process.

¹⁰⁶ Souilmi, H. (2023).

¹⁰⁷ Ibid.

¹⁰⁸ Khammassi, S, (2022).



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