

50 DAYS AFTER SECTION 80

A BREAK IN CONTINUITY

On July 25, following a day of nationwide protests, President of the Republic Kais Saïed triggered Article 80 of the 2014 Tunisian Constitution and, in a highly controversial interpretation of the said article, froze the Parliament and dismissed the government of Hichem Mechichi against the backdrop of economic, social, health and institutional confidence crises. The President's decision was greeted with great enthusiasm that same evening and the next day, particularly in front of the Parliament at the Bardo. The frustration and anger at work against the Ennahda party, as well as other political parties deemed responsible for the country's current stagnation contributed to making this unilateral seizure of power popular. The fact remains that 50 days after the activation of this article, in a constitutionally questionable way (notably the absence of a Constitutional Court, which is supposed to rule on the maintenance of the state of emergency after 30 days¹), the President has still not presented a roadmap or formed a government. On the evening of the 23d of August 2021, Kais Saïed

announced via the Facebook page of the presidency² the extension of the period of exception for an undetermined period of time and assured that he would make a statement to the Tunisian people in the coming days. He has since made several televised statements but without presenting a roadmap.

The introduction of the state of emergency coincided with an intensification of the security dynamic, marked by a number of measures taken against several personalities, including politicians, former senior officials, lawyers, businessmen/women and others accused of corruption. Although these 'tough' measures have been welcomed by a large part of the population, just as Kais Saïed's tour de force continues to be supported³, they are nonetheless problematic. Firstly, because they do not constitute anything new as thousands of people have been victims of arbitrary measures affecting their freedom of movement before and after the revolution, in particular through the arsenal of 'fiches S', which have been repeatedly decried by

1. Article 80 of the Constitution stipulates that the Constitutional Court may be seized at the request of the President of the Assembly of People's Representatives or thirty of its members to rule on the maintenance of the state of emergency

2. <https://www.facebook.com/Presidence.tn/photos/a.281368748587856/4555046604553361/>. The decree was published in the JORT the following day, August 24: http://www.iort.gov.tn/WD120AWP/WD120Awp.exe/CTX_3892-66-IWtPztetkx/AfficheJORT/SYNC_1297783985

3. According to a survey dated September 1, 81% of Tunisians support the extension of the state of emergency. <https://www.mosaïquefm.net/fr/actualite-politique-tunisie/952187/81-des-tunisiens-pour-la-prolongation-des-mesures-exceptionnelles>

civil society. Secondly, because these measures are illegal and unconstitutional under the Constitution and international human rights law applicable to Tunisia, as has already been confirmed by the administrative jurisprudence. It should be recalled that these measures restricting freedoms are administrative measures taken outside of any judicial procedure. Behind the use of these measures is therefore the 'continuity' of this phase of rupture: that of the persistence of recourse to this type of arbitrary restrictions on freedom, although the scope of their targets seems to be widening and the Presidency, via the Ministry of the Interior, now seems to orchestrate them directly. Nevertheless, these deductions remain speculative given the absence of judicial decisions and the use of 'directives'. People are not informed in advance when these measures are taken against them, they usually learn about it in a fortuitous way during a trip, and have no information about the end date of these measures or their motive, exactly as was the case before the 25th of July.

The first 50 days of this exceptional period, marked by a series of decrees, incidents of all kinds, and judicial and administrative measures, have given rise to many concerns about the respect of the rule of law and individual and collective freedoms, especially in a context of institutional safeguards completely absent. The result is a roadmap that does not exist at the moment coupled with a serious risk of abuses and an infinite monopolization of power by a single man.

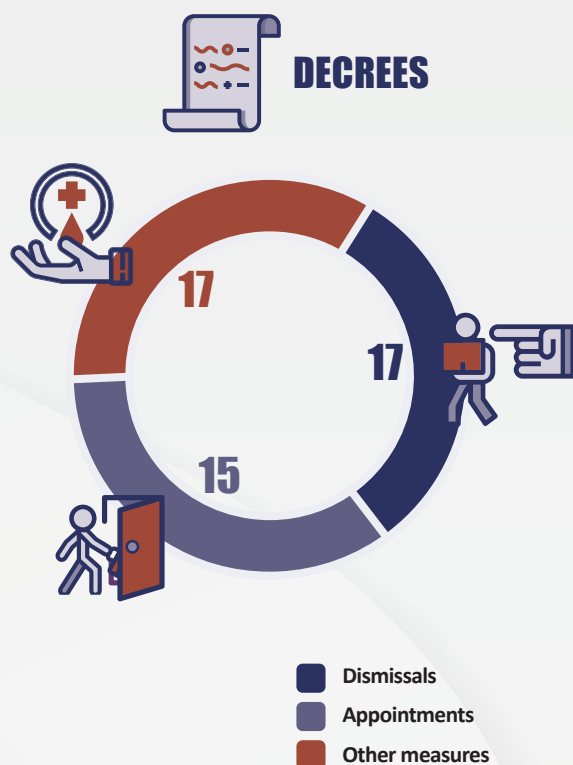
Through a quantitative and qualitative analysis, this bulletin aims at presenting a global and reliable vision of the events that have occurred since July 25, 2021, while putting into perspective the permanence of a set of dynamics long denounced by civil society. Indeed, the members of the Alliance for Security and Liberties (ASL) have repeatedly pointed out to the violations of human rights that have taken place over the past decade, including arbitrary detention, torture and ill-treatment, police harassment and other violations of freedom of movement and the right to privacy, which threaten both human and national security. In addition, there is a lack of political will to end impunity, which has led to the breakdown of the rule of law through widespread corruption, paralysis of the legislative and executive branches of government that are

plagued by political squabbles, and the increasingly unrestrained use of police violence against victims of various profiles, both in detention and in the public space, with the participation or encouragements of police unions.

The bulletin will be updated regularly and published periodically. It is the result of a monitoring work carried out by the Alliance for Security and Liberties (ASL) in collaboration with numerous civil society partners. The raw data used for this report card is available upon request.

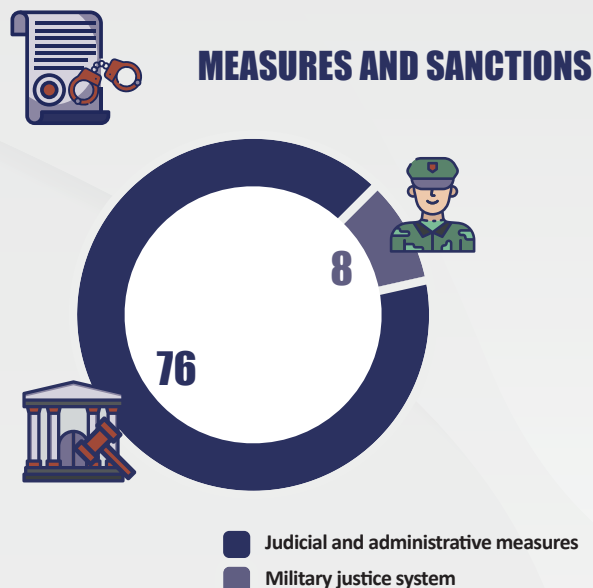
I. 50 DAYS LATER, IN FIGURES

Since July 25, the Presidency has published 49 decrees in the Official Gazette (JORT). The decrees were mainly related to the state of emergency, to the health measures and to dismissals/appointments. Of the 49 decrees mentioned above, 32 concerned dismissal and appointment decisions; seventeen decrees removed persons from office and 15 appointed new ones.



• Measures and sanctions :

According to the information that we have gathered, at least 84 judicial and administrative measures (house arrests and travel bans) have been taken since July 25. In addition, 7 MPs and 1 lawyer are being prosecuted before the Permanent Military Court of Tunis. The basis for these measures, taken either by the civil economic and financial division, the administrative justice system or the military justice system, is often problematic (see II).



| Travel ban | Arrests/ Detention warrants | Pre-trial detention | Opening of an investigation | House arrest | Custody | Arrest warrants |
|-------------------------------------|---|---|-----------------------------|-------------------------------------|---------|---|
| 52 | 7 | 3 | 4 | 12 | 2 | 4 |
| ↓ | ↓ | ↓ | | ↓ | | ↓ |
| Of which 52 procedures not followed | Of which 2 military justice proceedings | Of which 2 military justice proceedings | | Of which 12 procedures not followed | | Of which 4 military justice proceedings |
| | <ul style="list-style-type: none"> Yassine Ayari Mehdi Zagrouba | <ul style="list-style-type: none"> Mohammed Affes Maher Zid | | | | <ul style="list-style-type: none"> Seif Eddine Makhoulf Rached Khiari Nidhal Saoudi Abdellatif Aloui* |

*Abdellatif Aloui was finally simply heard by the military justice.

II. GOVERNANCE AND THE RULE OF LAW: A DISTURBING TOUR DE FORCE

The spectra of the erosion of democratic institutions; dialogue and compromise resulting from the 2014 Constitution is very real. Despite reassuring speeches, both before and after July 25, about the President's commitment to respect the rule of law and safeguard fundamental freedoms, a number of elements tend to tarnish/contradict these statements.

A. No safeguards or checks and balances

The Assembly of People's Representatives was suspended and its deputies had their immunity lifted. This measure was extended by a second decree on 24 August 2021⁴ for an indefinite period and 'until further notice'. This measure has been strongly criticized by many observers and legal experts because of its clear contradiction with Article 80 of the Constitution, which stipulates that parliament is considered to be in 'permanent session'. Moreover, it calls into question the principle of the separation of powers, which is an essential condition for democracy. While the Assembly of People's Representatives (ARP) was certainly very dysfunctional before July 25 due to political wrangling, its freezing led to a dangerous concentration of power in the hands of a single man. The absence of a Constitutional Court, which should have exercised a control mechanism in the event of the triggering of Article 80⁵, makes the end of the current state of necessity hypothetical.

In sum, Article 80 was activated while the necessity for the instauration of a state of exception was not established. This activation is therefore unconstitutional and contrary to international law⁶. Moreover, Article 80 cannot be valid in its activation and maintenance in the absence of a Constitutional Court, of a permanent session of Parliament and of the

former head of government kept in office.

• Police raid on INLUCC :

On 20 August, all employees of the National Anti-Corruption Authority (INLUCC) were asked to leave the premises as the Authority remains under sequestration and police control. Its secretary general Anouar Ben Hsan was also dismissed by decree. The closure was not motivated and raises the risk of violation/disclosure of sensitive information and other personal data held by the INLUCC, as well as endangering whistleblowers who have filed cases with the Authority, as denounced by the NGO I-Watch in a statement⁷.

This attack on a (transitional) constitutional body raises the question of the future of independent constitutional authorities. They are five in number in the Constitution and have various mandates such as the regulation of the audiovisual landscape (HAICA), the organization of elections (ISIE), the fight against corruption (INLUCC), the respect of human rights and the guarantee of the rights of future generations. Only the ISIE has been set up and is operational since 2012. The others, including INLUCC and HAICA, are either in their transitional form or non-existent. Like the Constitutional Court, the President of the Republic has still not expressed his intentions regarding these constitutional authorities, nor regarding other regulatory authorities (INDP, INPT).

B. Dismissals and appointments: all-out decrees

Over the period, a total of 32 of the 49 decrees mentioned above concerned dismissal and appointment decisions. Seventeen decrees removed people from their office, and fifteen appointed new ones. In addition to the Head of Government and interim Interior Minister Hichem Mechichi, who was dismissed on July 25, governors, ministers, advisers and other senior

4. http://www.iort.gov.tn/WD120AWP/WD120Awp.exe/CTX_4712-23-lnzYEvjWgy/PageDernierParu/SYNC_18463813

5. Article 80: "[...] At any time, thirty days after the entry into force of these measures, and at the request of the President of the Assembly of People's Representatives or of thirty members of the said Assembly, the Constitutional Court shall be seized with a view to ascertaining whether the exceptional situation persists. The Court's decision shall be pronounced publicly within a period not exceeding fifteen days."

6. See in particular, Article 4 of the International Covenant on Civil and Political Rights (ICCPR) <https://www.ohchr.org/fr/professionalinterest/pages/ccpr.aspx>

7. <https://www.facebook.com/I.WATCH.Organization/photos/a.166083570112880/4174613009259896/>

officials were dismissed and others were appointed⁸.

The dismissal of the Head of Government, Hichem Mechichi has not resulted in the appointment of a new person to the post and a new government, despite calls from civil society organizations (AMT, SNJT, ATJA, ATFD, LTDH, FTDES, AFTURD ...), political parties (Ennahda, Attayar, Afek Tounes) and the labour union UGTT. However, the Presidency seems to remain deaf to these calls and/or in difficulty to find or to designate a head of government/prime minister.

The questioning of the constitutionality of the activation of Article 80 and the freezing of the ARP decided on this basis also raises the question of the constitutionality of measures taken on the basis of this article, such as dismissals and appointments. Even if the activation of Article 80 were in conformity with the Constitution, this article does not confer on the President the power of dismissal and designation that he has arrogated to himself, since his decision-making power is limited to 'measures [that] shall guarantee, as soon as possible, a return to the normal functioning of state institutions and services'. These decisions are therefore neither necessary nor proportional.

III. THREATS TO FUNDAMENTAL RIGHTS AND FREEDOMS

A. Incidents affecting freedom of expression, information, publication, press and assembly

The closure of Al Jazeera's offices by the police, some of them in civilian clothes, the very day after the announcement that Article 80 had been triggered, was the first very worrying sign that press freedom and media pluralism might be

under threat. The incident was denounced by the Tunisian journalists' union (SNJT)⁹ and by Reporters Without Borders.¹⁰

Attacks on freedom of expression of several personalities from civil society as well as MPs are also to be noted. MP Yassine Ayari, the first MP to have been arrested in the wake of the lifting of immunity for Facebook posts dating back to 2014, seems to be prosecuted again by the military justice system following publications describing the events of July 25 as a 'coup d'état'¹¹, in parallel with other prosecutions for which he is currently imprisoned. Indeed, because of the lifting of his parliamentary immunity, the judgment of the Military Court of Appeal dating from 2018 and sentencing him to 2 months in prison for 'having participated in an action aimed at destroying the morale of the army with the aim of damaging the national defense' on the basis of Article 91 of the Code of Military Justice has been implemented¹². The use of military justice against the MP for positions relating to the exercise of his freedom of expression -constitutionally enshrined¹³- is a very serious overstepping; a mode of censorship already used and denounced under Ben-Ali and after 2011¹⁴, and whose legal basis should be amended by the Parliament. Yassine Ayari also went on hunger strike on Tuesday 7 September, after his request for conditional release was rejected¹⁵.

Although we have not recorded any other cases of people being arrested or prosecuted for exercising their freedom of expression, there have been many violent smear campaigns on social networks. Several activists, politicians and lawyers have been targeted by attacks simply for expressing doubts or for criticizing one or all of the measures taken by the President of the Republic. It is difficult to say at this stage whether these campaigns are orchestrated by people close to the President of the Republic or whether

9. <https://www.aa.com.tr/fr/politique/tunisie-le-syndicat-des-journalistes-condamne-la-prise-dassaut-du-bureau-dal-jazeera/2314877>

10. <https://rsf.org/fr/actualites/rsf-denonce-la-fermeture-du-bureau-dal-jazeera-tunis>

11. <https://www.tunisienumerique.com/de-nouvelles-accusations-contre-yassine-ayari/>

12. <https://www.aa.com.tr/fr/afrique/tunisie-le-d%C3%A9put%C3%A9-yassine-ayari-condamn%C3%A9-%C3%A0-deux-mois-de-prison-et-%C3%A9crou%C3%A9-/2319798>

13. Article 31 of the Tunisian Constitution of 2014: "Freedom of opinion, thought, expression, information and publication are guaranteed."

14. <https://www.jeuneafrique.com/451990/politique/tunisie-justice-militaire-quoi/>

15. <https://lapresse.tn/108274/yassine-ayari-entame-une-greve-de-la-faim-en-prison/>

there is any coordination. However, they often have the same *modus operandi* (slander, photo editing, revelations about the personal lives of individuals, stigmatization based on gender or physical appearance etc.). These attacks have notably targeted Sana Ben Achour (lawyer and activist), Bassem Trifi (LTDH), Rami Salhi (Euromed), Yadh Ben Achour (academic), Sabrine Goubantini (former deputy) or Leith Ben Becher (Synagri).

Finally, in violation of collective rights and freedom of assembly, Abir Moussi, the leader of the Free Destourian Party (PDL) was prevented from holding a meeting on September 5 in Sousse¹⁶.

B. Arbitrary restrictions of liberty¹⁷

• Travel bans :

At least 50 people have been prevented from travelling since July 25, according to Amnesty International¹⁸. These violations of freedom of movement are based on administrative decisions taken without any judicial procedure. Such measures are neither notified in writing nor justified, which makes it even more difficult to appeal to the administrative court. These illegal and arbitrary¹⁹ travel bans have mainly concerned businessmen and women, company directors, as well as former senior officials and a member of parliament. Although the President has specified that these exceptional measures will be limited in terms of time and targets, the very nature of the state of emergency and the measures that flow from it does not mean that these decisions (such as travel bans and other measures restrictive of liberties) can be taken without judicial decisions as this harm the principle of legality.

• Internal travel bans :

Several citizens have reported on social networks that they have been prevented from accessing the island of Kerkennah, under the pretext that they were not residents of the island²⁰. This measure, applied arbitrarily and in a discriminatory manner by the security forces, seems to be applied in order to limit illegal migration. There may also be a link between the tightening of this measure -already randomly applied before- and the concerns of the authorities who are trying not to alarm the European Union with irregular migration, which is on the rise according to the latest FTDES figures²¹.

• House arrests :

At least 12 measures of house arrests have been issued since July 25 on the basis of a presidential decree dating from 1978 and regulating the state of emergency²² -a decree that has already been ruled unconstitutional by the administrative court²³ and whose application is illegal. These arrests on the basis of a simple administrative decision have been issued against several personalities (judges, MPs, former members of the government and high ranking civil servants). Although three of these persons have pending judicial affairs, no link can be established between their cases and the house arrests as these were not issued by a judicial authority but by the Ministry of the Interior.

The set of personalities concerned by the house arrest are the following :

- Taieb Rached- Former President of the Court of Cassation
- Bechir Akrimi- Former public prosecutor of the Tunis Court of First Instance

16. <https://www.tunisienumerique.com/abir-moussi-portera-plainte-contre-kais-saied-le-ministre-de-linterieur-et-la-gouverneure-de-sousse/>

17. Article 24 of the 2014 Constitution: "[...]Every citizen has the right to choose his place of residence, to move freely within the country, as well as the right to leave it." These rights are also guaranteed by the International Covenant on Civil and Political Rights as well as the African Charter on Human and Peoples' Rights.

18. <https://www.amnesty.org/en/latest/news/2021/08/tunisia-president-must-lift-arbitrary-travel-bans/> et <https://www.facebook.com/AlTunisia/photos/a.10154071942855012/10165867561250012/>

19. See in particular the analyses of OMCT, <https://omct-tunisie.org/wp-content/uploads/2020/06/Rapport-SANAD-%C3%8Atre-S-VF.pdf> and <https://omct-tunisie.org/wp-content/uploads/2021/09/Lettre-de-positionnement.pdf>

20. <https://www.webdo.tn/2021/08/23/quand-les-tunisiens-sont-interdits-dacces-a-kerkennah/#.YTCMTI5KjiU> , <https://www.facebook.com/maryoouma.bribri/posts/4427802080636549>

21. <https://www.webmanagercenter.com/2021/09/07/472356/migration-irreguliere-pres-de-4-000-personnes-ont-atteint-les-cotes-italiennes-en-aout/>

22. <https://inkyfada.com/wp-content/uploads/2021/03/De%CC%81cret-n%C2%B0-78-50-du-26-Janvier-1978-Fr.pdf>

23. <https://omct-tunisie.org/2021/09/03/detats-durgence-en-etats-dexception-la-democratie-tunisienne-croule-sous-les-regimes-derogatoires/>

- Chawki Tabib- Former president of the INLUCC
- Lazhar Lounbou- Former Director General of Special Services
- Anouar Maarouf - Former Minister of Communication Technologies, Transport and Logistics
- Riadh Mouakher- Former Minister of Local Affairs and Environment
- MPs Zouhair Makhoulf (Qalb Tounes), Mohammed Salah Ltfi (Qalb Tounes), Yousri Daly (El Karama Coalition)
- The former advisors Lotfi Ben Sassi (Economic advisor Chahed government), Mofdi Mseddi (Media advisor Mechichi government), Belhassen Ben Amor (Legal advisor and in charge of relations with constitutional bodies and civil society- Mechichi government).

The spokesman for the Administrative Court, Imed Ghabri, said on the 9 of September that ten appeals had been lodged against these house arrest decisions, adding that ‘fifty people are currently subject to restrictions on their right to freedom of movement’²⁴. He also insisted that the Ministry of the Interior has the necessary powers to take these measures, in accordance with Decree No. 78-50 of January 26 1978, which is legally obsolete.

However, this type of measure (travel ban and house arrests) is not new. They were regularly used during the Ben Ali dictatorship and they continued to be used after the revolution.

They have already been challenged on many occasions by civil society²⁵, before the courts (proceedings for excess of power before the administrative court) and with decision-makers (numerous hearings of civil society at the Assembly of People's Representatives (ARP) for

example). Furthermore, according to Amnesty International, at least 30,000 people have been affected by measures to ban them from leaving the country (so-called ‘S17’ file²⁶) between 2013 and 2018²⁷.

These arbitrary and discriminatory measures, which mainly targeted so-called religious people or suspected terrorists (and LGBTQ in lesser proportions), have now diversified their target ‘portfolio’ as they now also target ‘corrupt elites’. But this does not mean that people suspected of terrorism are spared.

C. A new security twist

• Persistent cases of police violence :

After a year particularly stained by police violence which led to the death of several Tunisian citizens²⁸, violence and all sorts of abuses from security forces against citizens continue and could be enabled and encouraged by the current climate. Several events in short span of time confirm this concern such as the beating of a young man who came to lodge a complaint against police officers²⁹ or another young man slapped in broad daylight after contesting a traffic ticket³⁰.

A sit-in organized on August 31st in Sidi Bouzid by citizens demanding access to drinking water was dispersed by the National Guard using tear gas. Four people were reportedly arrested³¹. The following day, a demonstration organized in Tunis on Habib Bourguiba Avenue by citizens of the "Manech Msalmin/Msalmel" collective demanding the truth about the political assassinations of Chokri Belaïd and Mohammed Brahmi was also violently dispersed by the

24. <https://lapresse.tn/108459/dix-recours-contre-des-decisions-d-assignation-a-residence-deposes-aupres-du-tribunal-administratif>

25. See; in particular: <https://nawaat.org/2021/03/17/fiches-s-sanction-collective-contre-des-milliers-de-tunisiens/> and http://omct-tunisie.org/wp-content/uploads/2019/12/Etre-S_Rapport_FR.pdf

26. ‘It was initially a consultation by a security officer at a border crossing. But the procedure turned into an explicit travel ban with no judicial basis.’ <https://nawaat.org/2021/03/17/fiches-s-sanction-collective-contre-des-milliers-de-tunisiens/>

27. <https://www.amnesty.org/fr/latest/press-release/2018/10/tunisia-arbitrary-and-abusive-travel-restrictions-breach-human-rights/> <https://nawaat.org/2021/03/17/fiches-s-sanction-collective-contre-des-milliers-de-tunisiens/>

28. See in particular, <https://inkyfada.com/fr/2021/03/03/arrestations-violences-manifestations-tunisie/> and the press release published by ASF and its partners on 26 June 2021 "26 June 2020-26 June 2021: A look back at a year of police violence and impunity"

29. <https://urlz.fr/gryJ>

30. <https://www.facebook.com/watch/?v=2836853976606061>

31. <https://urlz.fr/gryK>

32. <https://rsf.org/fr/actualites/tunise-neuf-journalistes-victimes-de-violences-policieres-en-marge-dune-manifestation>; estimated based on testimonies of protesters on social networks

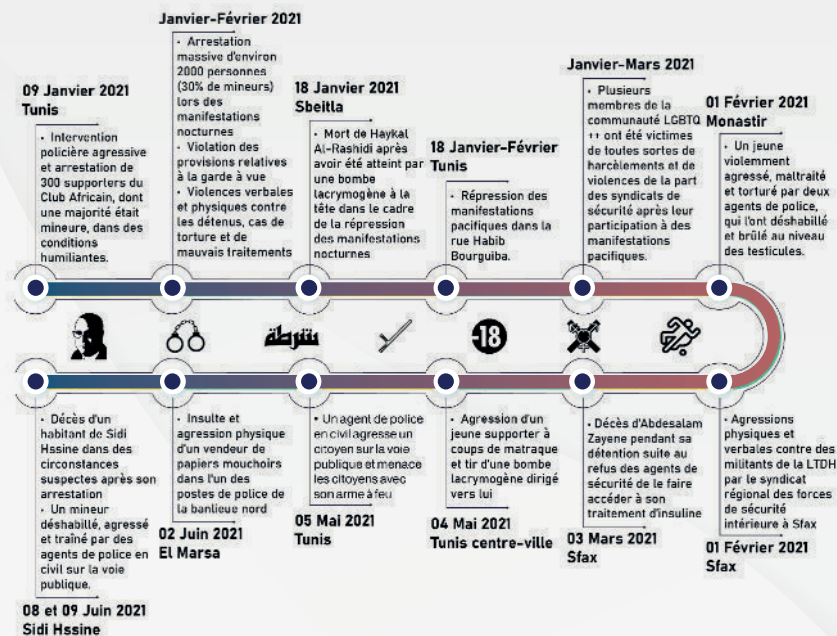
security forces. About twenty demonstrators were injured³² following violence committed by police officers in front of the municipal theatre and in the adjacent streets of Habib Bourguiba Avenue. For its part, the National Union of Tunisian Journalists denounced in a press release several cases of violence against journalists during the demonstration³³.

The presidency of the Republic reacted quickly by inviting the Minister of the Interior and senior security officials to remind the need to ensure respect for the rights of citizens to demonstrate peacefully³⁴. The next day, the President of the Republic received the president of the National Bar Association (Ordre National des Avocats), as well as the secretary general and the vice president of the Tunisian League for Human Rights (LTDH) to whom President Kais Saied reiterated his commitment to the protection of rights and freedoms³⁵.

In addition, political activist and volunteer during Kais Saied's presidential campaign, Faouzi Dâas, was physically and verbally assaulted by police officers at a downtown police station on

September 6. The assaults were motivated by an alleged violation of the midnight curfew, an accusation denied by Dâas, who said he had taken legal action against the officers. He spent the night at the police station and was not released until the following day³⁶.

These repressions corroborate the idea of continuity, of the persistence of state police violence and of total impunity in the ranks of security forces. Additionally, the appointment by the Ministry of Interior of Khaled Marzouki as director of the intervention units and Sami Yahiaoui as director general of special services- two high profile security staff suspected of being involved in the case of the wounded and martyrs of the Revolution of Thala and Kasserine in 2011 and in the case of the events of the mining basin (cases transferred to the specialized chambers of Transitional Justice)- raises serious concerns and corroborates this idea of continuity. It should be noted, however, that following a strong mobilization from civil society³⁷ and associations of martyrs, Khaled Marzouki was eventually removed on August 24, a week after his appointment.



33. <https://www.facebook.com/snjt.tunisie/photos/a.1501676556773034/2955054421435233/>

34. <https://twitter.com/TnPresidency/status/1433487333895118857?s=20>

35. <http://kapitalis.com/tunisie/2021/09/02/saied-recoit-le-batonnier-de-lordre-des-avocats-et-des-representants-de-la-ltdh-et-reaffirme-son-engagement-a-respecter-les-droits-et-les-libertes/>

36. <https://www.tunisienumerique.com/le-directeur-de-la-campagne-electorale-de-kais-saied-arrete/>

37. See the reaction of I-Watch: <https://www.tunisienumerique.com/tunisie-i-watch-appelle-kais-saied-a-revenir-sur-les-dernieres-nominations-au-ministere-de-linterieur/>

• Incident at the Tunis Court of First Instance

The security forces surrounded the court of first instance in Tunis in order to apprehend Mehdi Zagrouba, a lawyer who took refuge in the office of the president of the bar association³⁸, denouncing the absence of respect for legal procedures (the president of the bar association section must be notified beforehand when a legal procedure is initiated against a lawyer)³⁹. Zagrouba, who was prosecuted in the 'airport affair' involving a group of Al Karama MPs, saw his warrant cancelled by the military justice the same day. On the 2nd September, however, a detention warrant was issued against him by the military investigating judge⁴⁰ without proceeding with his hearing, which constitutes a violation of the provisions of the Code of Criminal Procedure.

• Illegal extradition of Algerian activist Slimane Bouhafs :

Algerian activist Slimane Bouhafs, who was granted international protection by the UNHCR in 2020, was arrested at his home in Tunisia on August 25 and appears to have been handed over by the Tunisian authorities to the Algerian authorities. This extradition represents a serious violation of the 1951 Geneva Convention relating to the Status of Refugees, its 1967 Protocol and Article 3 of the Convention against Torture, which Tunisia has ratified and which prohibits the extradition or return of a person to a country where he or she would be at risk of torture. This clear violation of Tunisia's obligations to protect refugees was denounced in a press release issued by the Tunisian Forum for Economic and Social Rights (FTDES) and co- signed by more than fifty Tunisian civil society organisations⁴¹. During his meeting with the LTDH, the President of the Republic declared that the presidency is investigating this matter.⁴²

• Militarization of prosecutions :

Moreover, the prism of increasing militarization of civilian prosecutions (8 to date) is also a source of concern. The issue of recourse to military justice is indeed unclear: absent from the Tunisian Constitution of 1959, military justice is mentioned for the first time in that of 2014 in Article 110: 'Military courts are competent to hear offences of a military nature'. But what 'military offences' are we talking about? 'Military courts have the sole purpose of hearing offences of a purely military nature committed by military personnel' thus recalls the Charter of the African Commission on Human and Peoples' Rights⁴³.

The MP Yassine Ayari has already been sentenced by the military justice for acts of contempt towards the army after he had published on Facebook critical posts before his election. These convictions had already been strongly criticized, including by Human Rights Watch, who considered in 2018 that '[...] allowing a civilian to be tried before a military court violates his right to a fair trial and due process guarantees.'⁴⁴ Military justice has for years been used to censor activists or to attack political opponents⁴⁵. In the current context, an upsurge of recourse to military justice is a particularly worrying sign.

38. <https://www.tunisienumerique.com/tunisie-samir-ben-amor-les-forces-securitaires-encerclent-le-tribunal-de-premiere-instance-de-tunis-audio/>

39. See Article 46 of Decree-Law No. 2011-79 of 20 August 2011 on the organization of the legal profession: https://www.justice.gov.tn/fileadmin/medias/les_intervenants/auxiliares_de_justice/avocats/Decret-loi2011_79_1_.pdf

40. <https://www.mosaiquefm.net/fr/actualite-national-tunisie/952651/mandat-de-depot-contre-l-avocat-mehdi-zagrouba>

41. See in particular the press release of the Tunisian Forum for Economic and Social Rights (FTDES) <https://www.facebook.com/ftdes/posts/4271304656258056>

42. <https://www.facebook.com/ltdh.tn/posts/1677682005769769>

43. African Commission on Human and Peoples' Rights, Guidelines and Principles on the Right to a Fair Trial and Legal Assistance in Africa, 2003, https://www.achpr.org/fr_legalinstruments/detail?id=38

44. <https://www.hrw.org/fr/news/2018/07/03/tunisie-un-parlementaire-condamne-pour-une-publication-sur-facebook>

45. <https://www.brookings.edu/blog/order-from-chaos/2019/11/07/reforming-tunisi-as-military-courts/>

CONCLUSION/PERSPECTIVES: ILLEGIBILITY OF THE ROADMAP AND RISKS OF AUTOCRATIC DRIFT

Whether or not one agrees with the term ‘coup d'état’ to describe the exceptional measures taken by Kais Saïed by virtue of Article 80, its interpretation remains objectively extremely broad. Indeed, Article 80 of the Constitution states in its preamble that ‘In the event of imminent danger threatening the national integrity, security or independence of the country and hindering the regular functioning of the public authorities, the President of the Republic may take the measures required by a state of emergency, after consulting the head of government, the President of the Assembly of People's Representatives and after informing the President of the Constitutional Court.’⁴⁶ But what ‘imminent danger’ are we talking about? The political, social, economic and health constitute indeed a critical situation for the country but they are a structural fact- nothing, as of July 25, except for the epidemic peak of that same month, has changed it. Kais Saïed considers that the State institutions are the source of the said peril- an interpretation that was not clearly refuted during the deliberations of this article in the National Constituent Assembly.

In addition, the measures taken by the President since the 25 of July are illegible and de facto unilateral. The objectives of his initiative and his priorities, particularly in the fight against corruption and the cleaning up of political life, seem just as vague- although one cannot deny that the country is plagued by widespread corruption and that the fight against it must be a priority. The arrest of deputies for cases related to freedom of expression (defamation, propagation of false news, calls for disobedience, etc.) and the referral of some of them to the military justice

system (Y. Ayari and the Al Karama deputies), combined with the fact that practically no major corruption case (except for the case of deputy Lotfi Ali) has been initiated yet, contribute to making this operation unintelligible.

Despite calls for the President of the Republic to quickly form a government and to end the state of emergency, the extension of the period of emergency without an end date (‘until further notice’) raises serious questions about the President's plans. No clear roadmap has yet been made public, and the only possible assessment of his intentions comes from an examination of the various measures and excesses that have punctuated the past 50 days and that are described in this bulletin.

While it is undeniable that the country's situation before July 25 was blocked and that the ‘prospect of a ‘failed state’ was looming on the horizon’⁴⁷ (inoperative ARP consumed by political quarrels, a very tense social situation faced with numerous and unpunished police violence, repeated scandals in the judiciary, calamitous management of the COVID19 pandemic, increasingly outdated and inefficient public services, and public finances in dire straits), the recent events force us to raise serious questions.

How can the country be put back on track to build democracy and the rule of law through exceptional measures, hyper-concentration of powers, and measures detrimental to freedoms, all without a political roadmap? What is the possible future of the 2014 Constitution and the judiciary in this context? What role will the judiciary have in the fight against corruption that the President of the Republic is trying to lead? Kais Saïed, better than anyone else, knows how essential constitutionality is to the healthy functioning of democracy.



46. <https://mjp.univ-perp.fr/constit/tn2014.htm>

47. <https://orientxxi.info/tunisie-kais-saied-sauveur-ou-tyran,4948>