

Tunis, 15/07/2022

Statement of International Organisations in Tunisia:

After one year of authoritarian drift, Kais Saied's constitution could endanger Tunisia's democratic process

The international non-governmental organisations supporting rights and freedoms in Tunisia are **extremely alarmed by the draft constitution** issued on June 30 in the Tunisian Official Gazette and corrected in an updated version published on July 8.

Both versions contain concerning measures that **represent a significant regression from the 2014 constitution**, beginning with a preamble that disregards the **principles of universal human rights, pluralism and the supremacy of the rule of law**, thereby diluting the very foundations that secure respect for rights.

If adopted, the new constitution will transform Tunisia's political system into a **hyper-presidential structure**, granting the President of the Republic **unlimited powers and immunity from any form of liability**, whether political or criminal. The Government of Tunisia will be largely reduced to support for the executive branch in Kais Saied's project.

In addition to a **completely disempowered legislative body**, the draft constitution contains **provisions that will bury any hope for an independent justice system in Tunisia**. While the former higher judicial councils are maintained, their prerogatives are greatly diminished, with **the President of the Republic nominating judges** upon the recommendation of the councils. The **constitutional court**, established in the 2014 constitution as the highest constitutional body and the sole interpreter of the constitution, is now **reduced to a technical court**. The court will be composed exclusively of judges approaching the end of their careers, who are nominated by virtue of their seniority rather than their abilities and expertise. Moreover, the right to fair trial and to legal aid were absent in the first version released, then subsequently restored in the amended draft published on July 8. The **transitional justice process remains in limbo**, without so much as a mention in the new draft constitution.

Chapter II on rights and freedoms is nearly identical to its counterpart in the 2014 constitution. Nevertheless, **these rights and freedoms will remain a dead letter** in the absence of an independent justice system and a progressive constitutional court.,

More disturbingly, Article 5 of the draft constitution gives the state the exclusive prerogative to "achieve the purposes of Islam in preserving [people's] souls, money, religion, and liberty". Such a right could be subject to interpretations that may **jeopardize the civil state in Tunisia**.

In addition to these major potential setbacks regarding rights and freedoms and the **dismantling of the system of checks and balances** set forth in the 2014 constitution, this new text originates in a **unilateral and authoritarian process** completely disregarding the fundamental principles of separation of state powers.

Since July 25, 2021, President Kais Saied has been ruling through decree-law exempt from any form of appeal. **All political power is concentrated in the hands of the president**. Over the past year, Saied has dismantled independent constitutional bodies and heavily infringed upon the justice system, causing **an acute institutional crisis and an unprecedented erosion of the rule of law in Tunisia**.

For the presidential constitutional reform, the administration favoured **a rushed and one-sided approach** guided by an illusory roadmap for the year 2022. The constitutional change was allegedly **legitimized by an ambiguous online consultation** with a participation rate of **less than 10% among eligible voters**. The president then put in place an esoteric commission excluding civil society and any political actors that opposed or expressed criticism towards his power grab in July 2021. **We regret that there is no room for genuine dialogue**; the vast majority of credible and legitimate actors in Tunisia's socio-political sphere are either excluded from or boycott current proceedings, **in stark contrast to the participatory and transparent three-year process undertaken to draft the 2014 constitution**.

The drafting process as well as the electoral process leading to the referendum are marred by **the flouting of international standards on free and fair elections and good governance**. This disregard has manifested through the unilateral selection of the date, the conditions, the question, and the project submitted to the referendum, in addition to **the seizure of control of the electoral body in charge of the referendum's organisation**. These practices severely undermine the credibility of the referendum and its outcome, in turn weakening the legitimacy of the future constitution if it were to be adopted. The concerns detailed above herald **a dangerous precedent in Tunisia**. The draft constitution and its related processes will **thwart democracy and the rule of law**, initiating a **cycle of political and social instability** unpredictable in scope and length for both the country and the region.

Consequently, we the below signed international non-governmental organisations voice our **deep concern about the impact of recent developments on the future of Tunisia**. We express our **full solidarity with our national counterparts** and join their voices in urging the Tunisian authorities to **withdraw the draft constitution** and to open an authentic and comprehensive dialogue. A constitution must reflect societal consensus and provide a legally binding framework to bind all powers of the state with the rule of law as its cornerstone.

Signatory organisations:

- Article 19
- ASF- Avocats Sans Frontières
- DIGNITY - Danish Institute Against Torture
- EuroMed Rights
- International Alert
- OMCT - World Organisation Against Torture

