



**Alliance** pour la  
**Sécurité**  
& les **Libertés**

**6 0 0 DAYS**

**AFTER ARTICLE 80**

**FROM THE STATE OF EXCEPTION TO THE ESTABLISHMENT OF AUTOCRACY**



## **GLOSSARY**

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**AMT:** Association of Tunisian Magistrates  
**ARP:** Assembly of People's Representatives  
**ATFD:** Tunisian Association of Democratic Women  
**ATIDE:** Tunisian Association for the Integrity and Democracy of Elections  
**ACHPR:** African Court on Human and Peoples' Rights  
**CERD:** Committee on the Elimination of Racial Discrimination  
**ETUC:** European Trade Union Confederation  
**CGPR:** General Committee on Prisons and Rehabilitation  
**ICJ:** International Court of Justice  
**CPR:** Permanence Centres for Repatriation  
**CSM:** High Judicial Council  
**UPR:** Universal Periodic Review  
**FIDH:** International Federation for Human Rights  
**IMF:** International Monetary Fund  
**FNSS:** National Front of Security Syndicates  
**FSN:** National Salvation Front  
**FTDES:** Tunisian Forum for Economic and Social Rights  
**GAFI:** Financial Action Task Force  
**HAICA:** Independent High Authority for Audiovisual Communication  
**HCDH:** Office of the High Commissioner for Human Rights  
**INLUCC:** National Anti-Corruption Commission  
**INPT:** National Authority for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment  
**IRIE:** Regional Electoral Body (Regional ISIE bureau)  
**ISIE:** Independent Superior Electoral Authority  
**IVD:** Truth and Dignity Commission  
**JCC:** Carthage Film Festival  
**JORT:** Official Journal of the Tunisian

Republic  
**LTDH:** Tunisian League for the Defense of Human Rights  
**NAFCC:** Association of Foreign Correspondents in North Africa  
**IOM:** International Organization for Migration  
**OMCT:** World Organization Against Torture  
**ONAT:** National Bar Association  
**OPEC:** Organization of the Petroleum Exporting Countries  
**CSOs:** Civil Society Organizations  
**PDL:** Parti Destourien Libre  
**GDP:** Gross Domestic Product  
**RSF:** Reporters Without Borders  
**SNFSI:** National Union of Internal Security Forces  
**SNJT:** National Union of Tunisian Journalists  
**TAP:** Tunis Afrique Presse  
**TICAD:** Tokyo International Conference on African Development  
**EU:** European Union  
**UGT:** Unión General de Trabajadores (Workers' Union)  
**UGTT:** Tunisian General Labour Union  
**UNHCR:** United Nations High Commissioner for Refugees  
**UNICEF:** United Nations Children's Fund  
**UTICA:** Tunisian Union of Industry, Commerce and Handicrafts

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## **INTRODUCTION**

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More than a year and a half have passed since President Saïed invoked Article 80 and dismantled the institutions resulting from the post-2011 transition (freezing and dissolution of the Parliament, dissolution of constitutional bodies, ruling by decree, ratification a new Constitution, etc.). **The bleak picture presented in this bulletin leaves little room for doubt regarding President Saïed 's authoritarian intentions and his desire to close the chapter of Tunisia's democratic transition once and for all, while unilaterally imposing his political project.**

Adoption of a new constitutional text enshrining the **hyper-concentration of powers in the hands of the President of the republic; the establishment of new dubious institutions following electoral processes at odds with international norms; the judiciary being increasingly attacked and dismantled**, all against the backdrop of a **deep socio-economic crisis**... All of these elements generate legitimate concerns about the prospects for the country (I).

**In parallel, rights and freedoms continue to be undermined** under the effects of the instrumentalization of the judiciary and the security apparatus, especially with regards to the political opponents, press and trade unions. While arbitrary administrative measures restrict freedom of movement, the period was marked with the adoption of repressive decree-laws. The period has also witnessed a massive campaign of violence and racism - endorsed by the State - against sub-Saharan community, while thousands of migrants (Tunisian or not) continue to leave the Tunisian coasts and lose their lives (II).

The noose is thus tightening day by day on an opposition that is struggling to

form a united front against the regime. **The political scene remains shifting and quite difficult to read; it includes several opposition initiatives (civil and political) to the process initiated on July 25th** while some of the process' supporters are taking an increased distance towards the president of the republic, notably with the setting up of the new legislative body. **Tunisia's international relations and activities was quite dense, with several efforts at rapprochement with (notably) Arab States, and a series of important multilateral events to which Tunisia either organized or participated to.** In parallel, the situation in Tunisia triggered many international reactions - towards the referendum and the elections first - but international condemnations particularly culminated following the waves of arrests of public figures and in reaction to the racist wave against Sub-Saharan Africans; **events that contributed to the increased isolation of the country** (III).

This fifth edition of this bulletin is a compilation the **events that have occurred since the 25<sup>th</sup> July 2022, date of the referendum on the new Constitution**, and an attempt at outlining the trends of recent months. This document is the result of a long-term quantitative and qualitative monitoring and analysis process that began on 25 July 2021. **It is the outcome of a joint effort by the Alliance for Security and Liberties**<sup>1</sup>.

## I.THE POLITICAL AND INSTITUTIONAL SCENE AFTER 600 DAYS

### A. A new constitutional text with significant implications

#### 1. From the national consultation to the vote on the Constitution: a review of a unilateral process marred by irregularities

The process that led to the promulgation of the new Tunisian Constitution was marred by multiple dysfunctions<sup>2</sup>:

- 15<sup>th</sup> of January - 20<sup>th</sup> of March 2022: National consultation ignored by the citizens (7.6% of the electorate participated to the referendum, of which 69.5% were men and 31.5% women)<sup>3</sup>, despite the state resources made available and the late inclusion of minors (from 16 years old).
- May 2022: announcement of a national "Dialogue" from which the President excludes the overwhelming majority of civil and political society, and in which many personalities and organizations that were invited refused to participate. Creation by decree-law of the "National Consultative Commission for a New Republic"<sup>4</sup>.
- 6<sup>th</sup> of June 2022: Beginning of the Commission's works and production of a draft that was ignored by the President<sup>5</sup> and thus quite different from the one actually published in the JORT on June 30, a version that was further rectified in the JORT on July 8<sup>th</sup> (46 modifications of substance and form)<sup>6</sup>.
- 25<sup>th</sup> of July 2022: the draft constitution is put to a vote after a ballot orchestrated by the Independent High Authority for the Elections (ISIE), a body

now dismantled and subjected to the executive branch. The electoral process was marred by numerous irregularities, at odds with the norms and standards for free and fair elections. The Venice Commission, an advisory body to the Council of Europe, stated in an urgent opinion issued on May 27<sup>th</sup>, 2022 that "it is not realistic to expect to hold a constitutional referendum on July 25<sup>th</sup>, 2022 in a credible and legitimate manner"<sup>7</sup>. Indeed, the 25-day deadline given to citizens to become acquainted with the text was extremely tight.

*Ultimately*, the new constitutional text was voted with **94.6% "Yes", 5.4% "No"**, and a **particularly low participation rate of 27.54%** according to the first results announced<sup>8</sup>. This participation rate was **re-evaluated at 30.5%** following calculation errors by the ISIE<sup>9</sup>; the final results were published in the JORT on the 16<sup>th</sup> of August 2022<sup>10</sup>. **On August 17<sup>th</sup>, the Constitution enters into force** after its promulgation in the JORT by President Saïed<sup>11</sup>.

#### 2.A new constitutional text that raises concern

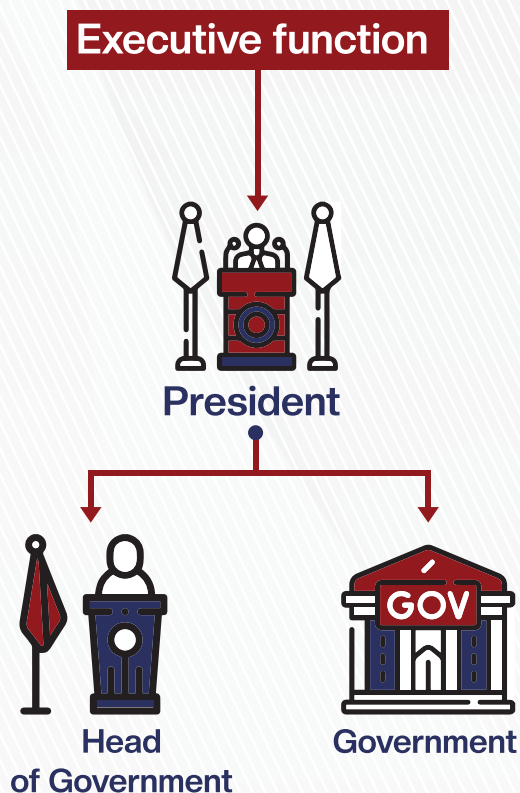
In addition to a unilateral constitutional review process marred by several irregularities, the content of the new constitution raises many concerns. The new text represents a **clear step backwards in terms of the Rule of law, the separation of powers and the civil character of the state compared to the 2014 Constitution**. For Amnesty International, the new Constitution risks "leading to a weakening of human rights and rule of law guarantees" in several aspects<sup>12</sup>.



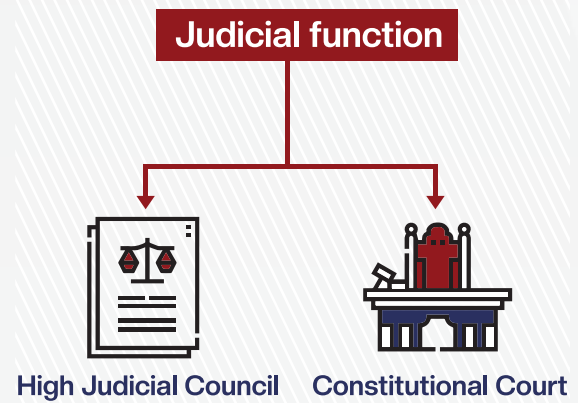
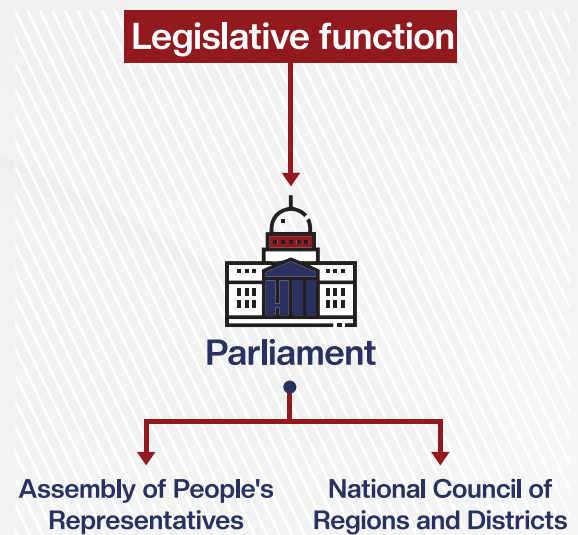
**a. Separation and balance of powers in question**

The new constitution establishes a “**presidentialist**” regime similar to the one that was in place before the 2011 Revolution. In this sense, **the constitution codifies the trend of the concentration of powers initiated by the President following the activation of Article 80 of the constitution and the ratification of Decree 117<sup>13</sup>**; in an attempt at undermining the separation of powers (which are now "functions") and at placing the President above all political or legal accountability.

In the new Constitution, the three functions are now distributed as follows<sup>14</sup> :



Source: inkyfada



Source: inkyfada

Among the major changes <sup>15</sup> :

- **The President of the Republic appoints the Head of the Government** and his/her members among candidates proposed by the Head of the Government (Article 101) with no parliamentary approval required (article 102). Since 2014, the parliamentary majority had primary responsibility for forming the Government (Article 89).
- The Government is responsible towards the President of the Republic for its management (article 112).

- The Government no longer has the prerogative to submit bills to Parliament, the legislative initiative belongs **to the President and to a group of MPs** (At least 10).
- **The President of the Republic can declare a state of exception in the event of Imminent Peril (Article 96) without deadlines or review by other organs, including the Constitutional Court.**
- **Removal of the possibility for the President to be impeached** (Article 88 of the old Constitution). He is not responsible for acts performed in the exercise of his functions (Article 110 paragraph 2).
- **The President of the Republic can submit to a referendum** any bill related to the organization of public authorities or to the ratification of a treaty likely to have an impact on the functioning of institutions (article 97).
- **Two-term presidential limit has been maintained** (Article 90) but the 2014 provision that provides that the Constitution cannot be amended to increase the number of possible terms (Article 75 of the 2014 Constitution) has been removed.
- **Creation of a second Chamber of Parliament** in addition to the Assembly of People's Representatives (ARP) called the "Council of Regions and Districts" composed of persons elected by the members of the regional and district councils, not by universal suffrage.
- **The role of the new ARP is significantly reduced because of the hegemony of the President of the Republic and**

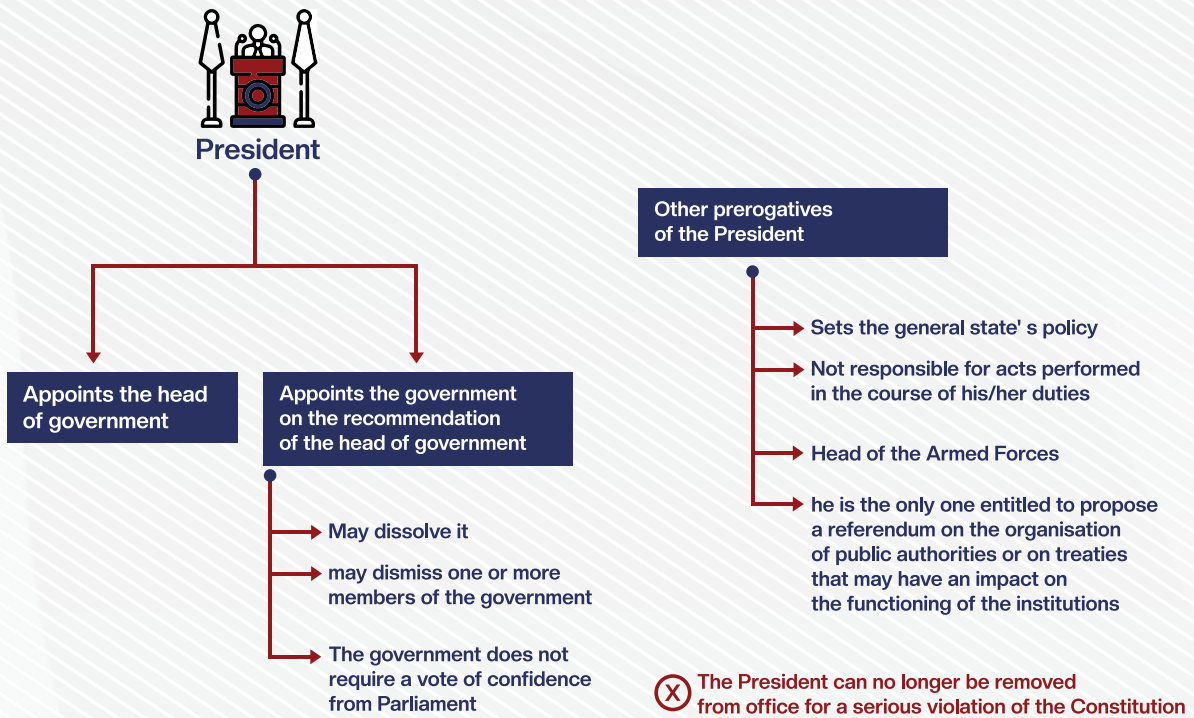
**the institutional imbalance in his favor.** While the legislature is still able to propose, amend, discuss and vote laws, as well as censure the government, the procedure for doing so became almost impossible (Article 115 of the new text). The President of the Republic is not accountable towards the parliament. The immunity of members of parliament from prosecution has been reduced (Article 66) with exceptions for offences of "insult" or "defamation".

- **Independent state institutions** such as the Independent High Commission for Audiovisual Communication (HAICA), the National Anti-Corruption Authority (INLUCC)<sup>16</sup>, the Human Rights Commission and the Commission for Sustainable Development and the Rights of Future Generations **are no longer included in the new text.**

- **Exceptional powers do not meet the dual requirement of being both exceptional and temporary.** Unlike Article 80 of the 2014 constitution (the same article that President Saïed initiated on July 25, 2021), Article 96 of the 2022 constitution no longer states that the objective of these exceptional measures must be to guarantee a return to the regular functioning of the public authorities as soon as possible. The new constitution also removes the possibility of appeal against emergency measures, no longer mentions a maximum duration for the state of emergency, and does not mention which rights would remain unaffected in such circumstances.

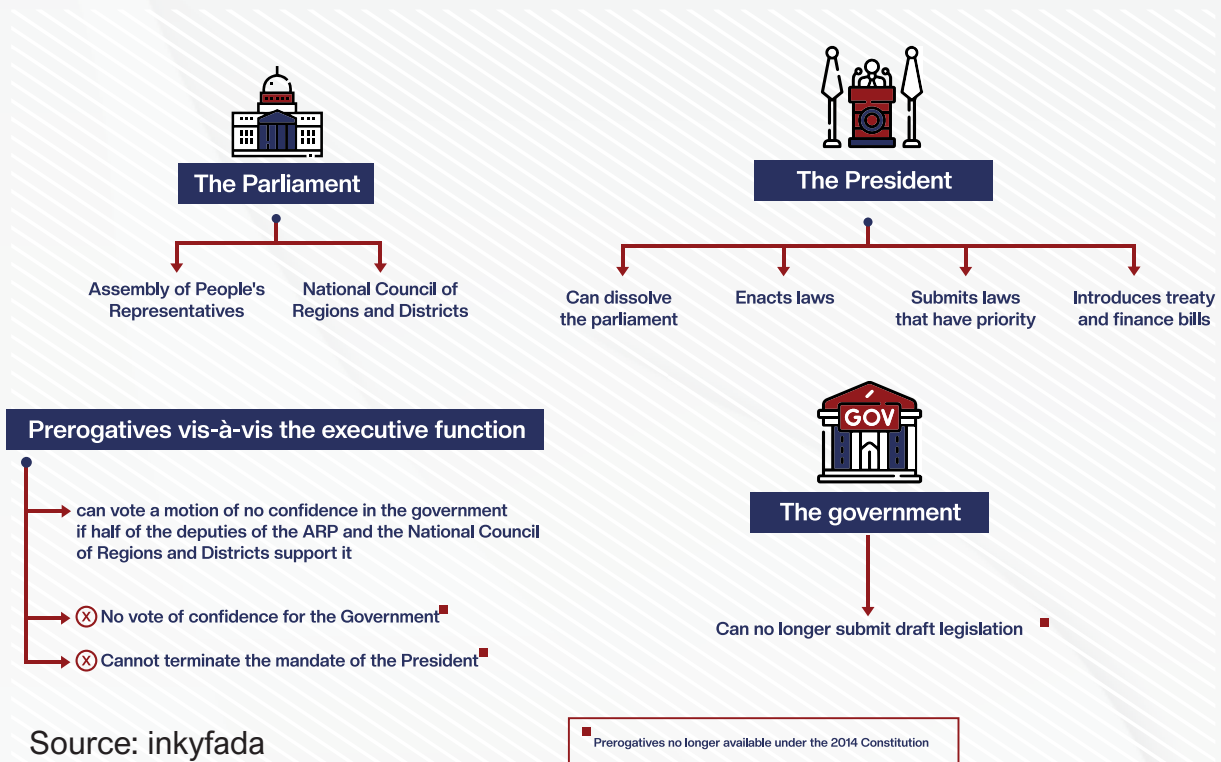


The executive function is now organized as follows:



Source: inkyfada

The legislative function is now organized as follows:



Source: inkyfada

**b. The independence of the judiciary and rights of litigants are threatened**

■ **A judiciary function stripped of its independence**

The provisions relating to the **judiciary** (downgraded from a power to a "function") in the new constitution do not comply with international standards on the independence of the judiciary:

■ **There are no provisions guaranteeing the independence of the High Judicial Council (CSM)**, whose powers are also reduced (i.e. the President is no longer required to follow the binding opinion of the CSM regarding the appointment of judges). The process for appointing members of the CSM is not specified (the current CSM, governed by decree, is considered "provisional").

■ **Removal of the guarantee that judges cannot be arbitrarily suspended or dismissed, nor they can suffer disciplinary sanctions without a "reasoned decision by the CSM"** (Article 107 of the 2014 Constitution), implying that sanctions and dismissals will now be at the discretion of the executive power.

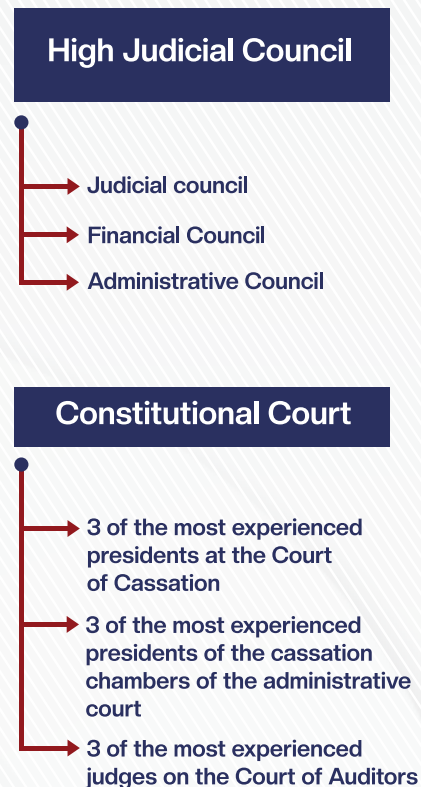
■ The reference to the role of a judiciary to ensure "the establishment of justice, the supremacy of the Constitution, the Rule of law and the protection of rights and freedoms" (Article 102 of the 2014 Constitution) has been also removed.

■ The way in which the members of the **constitutional court** are

appointed risks placing the court - if it ends up being set up (not budgeted for 2023) - under the influence of the executive power. Indeed, the new constitution provides that the nine judges who are to make up the court are members es officio (es-qualité) and chosen by seniority<sup>17</sup>. Previously, the Court was to be composed of twelve members who were not to be exclusively magistrates and who were to be consecutively elected/appointed by the Assembly of People's Representatives (ARP) The High Judicial Council (CSM) and by the President of the Republic, at a rate of four members each<sup>18</sup>.

**The process of weakening the judiciary by the executive branch, initiated with the dissolution of the CSM in February 2022, is now confirmed by the new constitutional text<sup>19</sup>.**

The **judicial function** is organized as follows:



## The president



Source: inkyfada

Guarantees regarding the **right to a fair trial** were first greatly weakened. Articles 109 and 110 of the previous constitution prohibited any interference by the executive in the functioning of the judiciary as the creation of special courts and the promulgation of special procedures generally undermine the general principles of a fair trial. These prohibitions were not renewed in the new constitution. Similarly, the 2014 Constitution explicitly stated that military courts are "courts of jurisdiction for military offenses", while article 149 stated that "the military court shall continue to exercise the prerogatives attributed to it by the laws in force until they are amended, in accordance with the provisions of article 110"<sup>20</sup>. **The removal of these provisions relating to military justice** do not augur well in a context of substantial increase in the use of military courts for civilians since 25 July 2021<sup>21</sup> (see II, B).

### ■ **Removal of constitutional and institutional guarantees for the respect of rights and freedoms**

**The Chapter dedicated to rights and freedoms** is almost identical to the 2014 constitution with regards to civil, political, economic, and cultural rights, but:

- **The preamble** of the Constitution no longer contains any reference to the principles of universal rights and equality for all.

- **The civil character of the state is threatened since article 5 provides that Tunisia is part of the "Islamic Ummah" and that the state alone is obliged "to work, in a democratic regime, for the realization of the teachings of authentic Islam..."**. This article could justify the introduction of amendments, proposals and bills aimed at harmonizing legislation under religious principles at odds with International Human Rights law. Moreover, national courts will be affected by Article 5 in the sense that they will also work in their within the framework of the realization of the "teachings of authentic Islam".

- **More importantly, the institutions that are supposed to protect these rights and freedoms and prevent abuses of power, particularly by the executive power, have been either weakened (legislative and judicial institutions) or abolished (independent bodies).**

## B. End of the roadmap

In accordance with the roadmap that President Saïed presented in December 2021<sup>22</sup>, **the period was marked by the referendum** on the new Constitution, ratified then published in August in the JORT, followed by a **legislative election in December 2022-January 2023** resulting in the election of the first chamber of the new Parliament.

As described in the previous bulletin<sup>23</sup>, **the ISIE** has not escaped the President's grab for control of the countervailing powers. Indeed, **the INLUCC** which was closed in August 2021, has still not reopened, and neither it nor the HAICA (not budgeted for in the 2023 Finance Act) and **the HAICA** (left without a budget for feature in the

new **constitutional text**. The ISIE was reshaped by decree-law and its new members were appointed in May 2022 by the president of the Republic, just over two months before the referendum vote. **Its members are now appointed by the President of the Republic**<sup>24</sup>. In its urgent opinion issued last May, the Venice Commission<sup>25</sup> called for elections to be held with the composition of the ISIE as it was prior to the decree-law reforming it, and called for an inclusive approach in the event of reform of the electoral law ahead of the legislative elections<sup>26</sup>.

### **1.A unilaterally revised electoral law**

On the night of September 15<sup>th</sup>, 2022, the President of the Republic published in the JORT **decree-law No. 55-2022 related to the revision of the fundamental law of May 26<sup>th</sup>, 2014 on elections and referendum**. Kais Saïed did indeed send the draft amendment to the ISIE but only a few hours before the publication of the decree-law, ignoring the central role of the authority in the electoral reform process. No political party or civil society organization has, to our knowledge, participated in the development of this central decree-law in the reshaping of the Tunisian political system in Tunisia operated by Kais Saïed.

#### **■ An electoral code that excludes women, political parties and binationals**

■ The major and substantial modifications made to the electoral system<sup>27</sup>, which affect only the first chamber and not the Council of Regions and Districts are as follows:

#### **■ The transition from a list system (proportional representation) to a single-member, two-round majority**

system, based on a territorial division into electoral districts in which a deputy is elected. If there is no absolute majority in the first round, a second round is organized.

■ **The possibility of removing a deputy** in his or her constituency in case of "failure in his or her duty of integrity", "clear violation to his or her parliamentary obligations" or "lack of interest" in the realization of the program presented during the campaign"<sup>28</sup>. A petition must be presented and signed by one tenth of the registered voters in the constituency concerned.

■ **Only candidates with no dual nationality**, with a clean criminal record and residing in the constituency in which they are running may be candidates for elections.

■ Members of government, chiefs of minister cabinets, judges, imams, presidents of sports organizations and associations are not allowed to run for legislative elections **until one year after the end of their mandates**. It is also prohibited to run for legislative, presidential, municipal and regional elections if they are taking place at the same time.

■ **The new Article 21 requires a summary of the electoral program to be submitted, accompanied by a list of names of 400 referees** (legalized signatures) from the voters of the district, divided as follows: 50% women, 50% men, 25% young people under 35 years old.

■ **Elimination of public funding**: campaigns can now



only be financed by private or independent funds

■ **The number of constituencies increased from 33 including 6 abroad to 161 including 10 abroad. The number of seats was reduced from 217 to 161; i.e one seat per constituency.** This division has been described as arbitrary, opaque and problematic, among other things because it presents major demographic imbalances between the various districts<sup>29</sup>.

■ **Removal of the gender parity guarantees** due to the switching from a list system (where parity was mandatory) to a uninominal system<sup>30</sup>.

In addition to the unilateral approach taken in the revision of the electoral law, **the ratified text has generated waves of criticism even before its application in legislative elections.** In the weeks that followed, many political parties announced their boycott of the elections. For the feminist dynamic, the electoral law (the feature of the new assembly confirms it) **“will contribute to weakening the role of political parties and reducing the presence of women in elected assemblies”.** Indeed, women "will find it more difficult to obtain " referrals" because the new campaign financing system tends to favor men<sup>31</sup>. These difficulties are also likely to affect younger candidates, who are less likely to have the financial and logistical resources needed to run a campaign. For the NGO I-Watch, the new electoral law will create an "exclusionary and tribal system" and will exclude women, youth, and minorities from parliament<sup>32</sup>. The Mourakiboun monitoring network also criticized the new electoral law in the same terms<sup>33</sup>. **In fact, only 122 of the 1055 applications for the elections were women's, representing 11.6%**

**of the total number of candidates. Young people (under 39) accounted for only 14% of candidates.**

## **2.The organization of the legislative elections**

Similarly to the process leading up to the July 2022<sup>34</sup> referendum, the legislative electoral process was marked **by a lot of irregularities and contradictions.**

**Following the publication from the ISIE on September<sup>35</sup> 21<sup>st</sup>, the of a provisional calendar** for the first round of the December 17<sup>th</sup> , 2022 elections, the spokesperson for the ISIE, Mohamed Tlili Mansri clarifies that **political parties will not be allowed to carry out their campaigns** and that it would not be possible to campaign for the boycott<sup>36</sup>.

A few days later, the ISIE adds that **parties will not be allowed to fund campaigns<sup>37</sup>**, but that **candidates can use parties' logos<sup>38</sup>**. The prohibition of funding by parties (for the legislative elections and the next presidential elections) **was not officially decided by the ISIE until the 12<sup>th</sup> of November<sup>39</sup>**. On November 17<sup>th</sup>, President Saïed published a decree<sup>40</sup> in the JORT setting the ceiling for campaign expenses for electoral campaigns, based on the number of voters in the constituencies. Regarding logos, the ISIE's spokesperson announced at the end of November **that 61 legislative candidates had received authorization to use their party's logo** for their campaign, 37 of them belonging to the Echaab movement and the others belonging mainly to pro-Saïed movements<sup>41</sup>.

**Following accusations and rumors regarding alleged purchase of referees** by potential candidates, particularly from municipal councils, **the President Saïed announces on**

**October 7<sup>th</sup> this intention to amend his new electoral law**, stating that the sponsorship system had been transformed into a "market where consciences are bought and sold<sup>42</sup>." Although a new decree was logically expected, in the end **the President did not amend the legislation, without giving any explanation.**

The ISIE met in parallel with the representative of the Minister of Justice to push for greater coordination in order to "prevent electoral crimes<sup>43</sup>". All the while, ISIE vice-president **Maher Jedidi** said that nearly 40 mayors have already illegally publicly supported legislative candidates, calling on the Ministry of the Interior to act<sup>44</sup>. while acknowledging an **"oversight" in the decree-law n°55-2022, pertaining to adding mayors to the list** persons not eligible to stand for election until one year after the end of their term of office. Finally, the president of the ISIE Farouk Bouasker declared on October 20<sup>th</sup> that the electoral law would not be amended because potential candidates had begun to file their applications and that any transgressions would have to be dealt with in the courts<sup>45</sup>.

**On October 24<sup>th</sup>, the day initially planned for closing the submission of filing applications, the ISIE announced a three days' extension<sup>46</sup>** in order to allow candidates already on the roster to complete their files and other potential candidates to submit theirs. This extension sought to increase the number of candidates, **whereas on October 24<sup>th</sup> only 1068 people presented themselves, including 600 with a complete file.** Two constituencies abroad had only one candidate and the one for sub-Saharan Africa had none<sup>47</sup>. By this date, only 181 women had declared their candidacy. **At the end of the three-day extension, the ISIE announced that 1429 candidates had completed their files, including 215 women (15%)<sup>48</sup>.** In reaction to the

three-day extension, **the organizations ATIDE, Observatory Chahed and Mourakiboun denounced a change that undermines the principle of equality between candidates<sup>49</sup>,** to the detriment of the credibility of the ISIE, the process and the timetable announced on September 20<sup>th</sup> .

On November 3<sup>rd</sup>, the ISIE announced that **1058 out of a total of 1427 candidacies were admissible. Ten districts in Tunisia did not have a second candidate, and seven districts abroad remained with no candidates.**

The administrative justice has accepted four appeals out of 54 from candidates who challenged the rejection of their candidacy by the ISIE. For the Chahed observatory, this proves a "lack of knowledge by the candidates of the procedures of application for [electoral] appeals", also criticizing that only two days were granted in the electoral calendar for rejected candidates to file their appeals<sup>50</sup>.

According to the former member of the ISIE, Sami Ben Slama, **one of these appeals was deemed admissible because the ISIE did not publish in the JORT the rules for applications. The error was later corrected on November 14<sup>th</sup> with the publication of said rules in the JORT with seven weeks of delay, as well as the provisions relating to the results of the referendum, four months after the poll<sup>51</sup>.** For the President of the ISIE, Farouk Bouasker, the decisions of the ISIE are official from the moment they are published on the Facebook page of the Authority. He accuses critics of the institution of having "well-known political affiliations" and "serving agendas" <sup>52</sup>.

### ■ Unprecedented conflict between independent bodies

The HAICA, largely ignored during



**this electoral process, publicly regretted not being contacted by the ISIE to design a joint statement on the media coverage of the elections<sup>53</sup>, as it was customary for previous elections.** A meeting was organized in response at the headquarters of the ISIE<sup>54</sup> but failed to reach an agreement. On November 16<sup>th</sup>, **HAICA finally published rules of its own<sup>55</sup>**, with ISIE declaring them non-binding and announcing that it was preparing its own rules<sup>56</sup>. **On November 18<sup>th</sup>, the ISIE effectively published the rules on media coverage of the elections unilaterally<sup>57</sup>.** The HAICA consequently filed a complaint before the administrative court<sup>58</sup>, denouncing a dangerous decision of the ISIE which had monopolized its prerogatives<sup>59</sup>. A media intervention of the vice-president of the ISIE Maher Jedidi confirms that the powers of the HAICA have been transferred to the ISIE<sup>60</sup>.

The SNJT<sup>61</sup> and Article 19<sup>62</sup> rejected the rules published unilaterally by the ISIE, **both for having encroached on the prerogatives of the HAICA and for the threats they present for the freedom of the press** and the independence of the media. The HAICA announced that it reserves the right to intervene if ISIE launches cases against media or journalists<sup>63</sup>.

## ■ Start of the (non) campaign:

**Despite the HAICA-ISIE confrontation and the multitude of other aberrations, the campaign effectively started on November 25<sup>th</sup> with 1055 candidates<sup>64</sup>.** In the run-up to the election, the Mourakiboun network reported an "almost non-existent campaign in the early days"<sup>65</sup>, while **HAICA denounced the media coverage of the elections as "below expectations"**, calling for equality between candidates to be respected in

the media<sup>66</sup>. Although almost all political parties are calling for a boycott of the election (the UGTT has not given any clear instructions), the ISIE denounced "immoral efforts" to subvert the elections<sup>67</sup>, while reminding candidates that they are **forbidden to use foreign media for their campaigns<sup>68</sup>.**

In a context of major citizen apathy<sup>69</sup>, the boycotts of political parties and election observers (Al Bawsala, a member of ASL, has announced that it will boycott the new Parliament<sup>70</sup>), **the European Parliament also announced three days before the election that it "will not observe the electoral process, and consequently will not comment on the process or the results<sup>71</sup>"**, citing in particular the recent decision of the African Court and the opinion of the Venice Commission (see Part III, B). Mourakiboun, one of the only groups observing the election, denounced again an electoral **law that undermines the "transparency and integrity" of the electoral process<sup>72</sup>.** **The SNJT denounced the harassment and threats of the ISIE towards journalists** who criticized the lack of independence of the authority<sup>73</sup>. Finally, **the administrative court finally dismissed the HAICA's case** the day before the election, forcing it to follow the media rules issued by the ISIE<sup>74</sup>.

## 3. Results of the first round and organization of the second

The ISIE announced, at the close of polling stations, **a historically low turnout of 8.8%<sup>75</sup>.** Two days later, the President of the Authority Farouk Bouasker finally announced **a participation rate of 11.2%, revised upwards due to several counting errors<sup>76</sup>.** President Saïed criticized those who commented on the participation in the first round, saying that doing so is like "announcing the

result of a game at the end of the first half”<sup>77</sup>. For his part, the President of the ISIE justified the low turnout by the change of the voting system and the absence of "political money" in this election<sup>78</sup>, describing these elections as the "first clean elections in the country"<sup>79</sup>. It is important to note that Farouk Bouasker has participated directly or indirectly in all the elections held in the country since 2011 as he was a member of regional ISIE offices since 2011, then trainer for the ISIE in 2014 and finally a member of the ISIE board since 2017<sup>80</sup>.

**The Mourakiboun Network reported pre- and on the day of elections the violations** that undermined "several fundamental principles in the conduct of elections, such as equality, transparency and independence<sup>81</sup>". The Carter Center declared that "while the elections were technically well administered, the process underlying the election framework lacked legitimacy and fell short of international and regional standards and obligations.<sup>82</sup>"

*In the end, the ISIE announced the election of 23 candidates -including 3 women-* of the 161 seats **for the first round**, announcing a second round on January 20<sup>th</sup>. 10 out of these 23 districts where a candidate came out as the sole candidates, while 7 other districts remained without candidates. New by-elections should be held to fill the empty seats in the ARP.

In early January, the ISIE announced that the second round would probably take place on January 29<sup>th</sup>, if the appeals before the administrative court are settled in time for the official announcement of the first round results on January 15<sup>th</sup><sup>83</sup>. **The January 29<sup>th</sup> date was confirmed on January 15<sup>th</sup>**<sup>84</sup>, with President Farouk Bouasker announcing that **262 candidates would participate in the second round, 13% of whom**

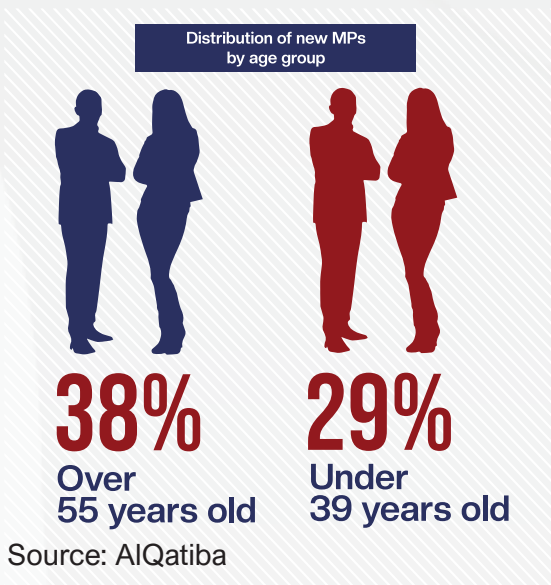
**were women**<sup>85</sup>. Referring to the low turnout rate, Bouasker explained that it was due to the fact that candidates were unknown, that in order to remedy this, the candidates would take parts in debates and individual appearances on national television<sup>86</sup>. He also explained at a press conference in Sousse that the turnout rate would be calculated on a different electoral basis, not taking into account automatically registered citizens, an error that he deems has "falsely inflated the electoral register" in the first round<sup>87</sup>.

These efforts were in vain, since at the end of the second round, **the announced participation rate was of 11.4%**<sup>88</sup>, similar to the first round. The turnout among 18–24-year-olds was 4.2%, while the majority of voters, according to electoral observers deployed in the polling stations, were men<sup>89</sup>. The ISIE says it will announce the final results of the election on 4<sup>th</sup> March.

#### **4.The new Assembly**

On Saturday, February 25<sup>th</sup>, the ISIE announced the final results of the election, along with the official list of the elected MPs<sup>90</sup>. **Only 154 seats out of 161 were filled**, without confirming the holding of by-elections in the vacant constituencies. Against a backdrop of allegations of fraud and criticism from the Mourakiboun<sup>91</sup> network in particular, the ISIE refuted all accusations and recalled that any unfounded accusation against the authority was legally punishable<sup>92</sup>. For his part, **President Saïed said that the turnout was an "indication that the Parliament no longer means anything to a large segment of the electorate,"** and that it represented a sanction against an "Anti-State institution" during the years of post-2011 transition<sup>93</sup>.

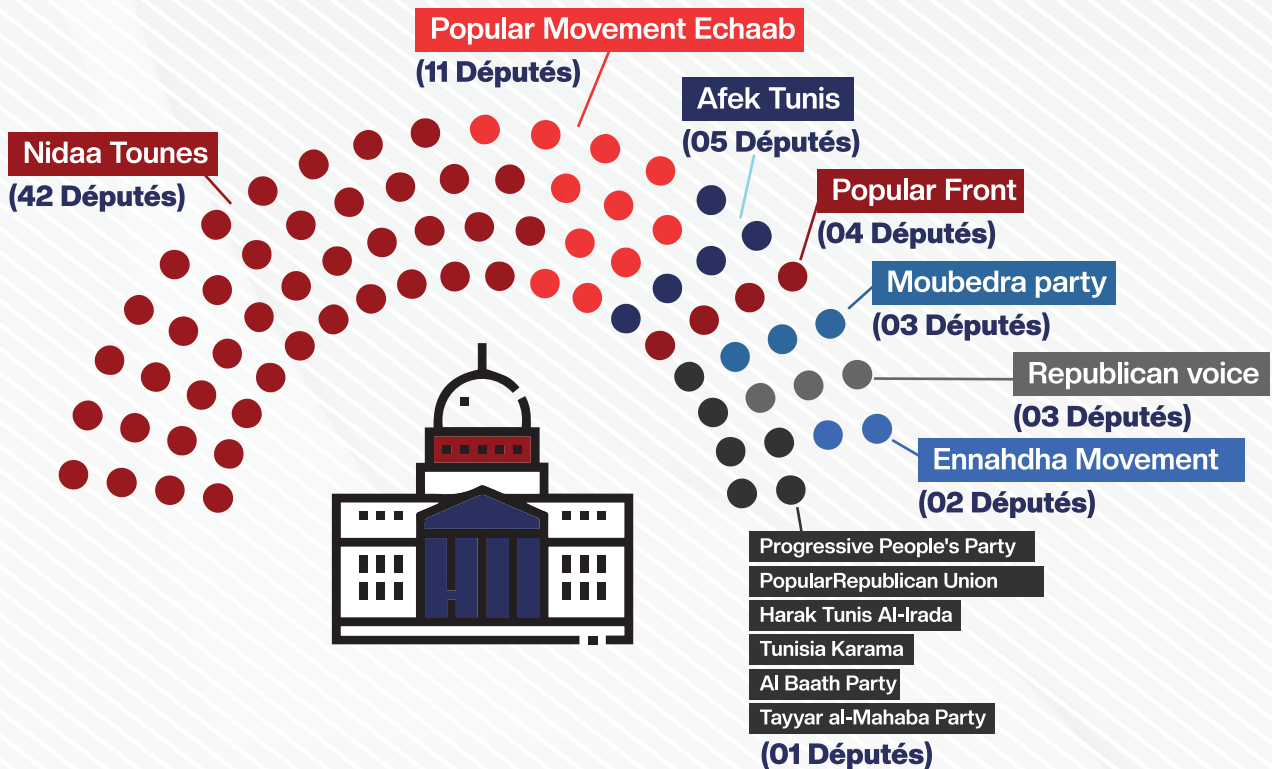
- **Sociological Composition** <sup>94</sup>



Unsurprisingly, the new ARP is predominantly male, with 25 women for 129 men; i.e. 16.2%<sup>95</sup>, whereas the previous ARP had 57 women for 160 men, i.e. 26%, while the first one (2014 - 2019) had 36%<sup>96</sup>. From a socio-professional point of view, the new assembly is dominated by professors and teachers (42 seats), as well as local authorities' officials (26 seats) including 15 mayors. Public officials are in third place with 24 seats.

- **Political Composition**

**Distribution of MPs according to their previous political affiliations (76 seats)**



Source: AIQatiba

Despite the fact that these elections were intended to be "non-partisan" (and that the majority of parties boycotted them), it appears from the investigative work carried out by the media outlet Al Qatiba, **that 50% of the new assembly is composed of individuals affiliated within political parties.**

In a context marked by a discourse of breaking with the past, we note the presence of 8 MPs who have already been members of previous assemblies **and the very strong presence of the Nidaa Tounes party, which won nearly 50 seats. The defeat of almost all parties supporting the President is especially noteworthy.** The Echaab party, one of the main supporters of President Saïed and the process of July 25, has obtained only 11 seats while the movement "**May the people triumph**", initiated by political figures close to the president including Ridha Lenine (Chiheb Mekki) has won only 5 seats. The "Movement of July 25" which announced in great fanfare its intention to be the first parliamentary bloc in the assembly has won only 6 seats. A similar failure was noted for the former minister Abid Briki and his party "Tunisia Forward" which did not win any seats.

### ■ **Opening Plenary session**

**On March 9<sup>th</sup>, the President of the Republic issued a decree convening the new Parliament<sup>97</sup> for March 13<sup>th</sup>. Two female MPs have since been convicted<sup>98</sup>, bringing the number of MPs to 152, including 23 women.** On the day of the plenary session, MP Majdi Ghaoui was escorted by the police out of the ARP. He is prosecuted for forgery in relation to his referees<sup>99</sup>.

The day of the opening plenary was **marked by the banning of private national media and international**

**media to cover the plenary** - only TAP and the National Television were allowed - without any official explanation provided for this decision<sup>100</sup>.

### **C. Local power: the dissolution of municipal councils, decree-law on local and regional councils and the removal of mayors**

While municipal elections were to be held in May 2023, President Saïed issued a decree-law on March 9<sup>th</sup> related to the **dissolving municipal councils<sup>101</sup>. Municipal elections are still scheduled to be held within three months of the end of the municipal councils' mandates, but there will also be elections for local councils** (the second decree-law was issued on the same day), although the date is not yet known. **The election of these local councils should then allow for the establishment, by indirect suffrage, of the Council of Regions and Districts, making it the second parliamentary chamber** of the bicameral system resulting from the new Constitution of 2022<sup>102</sup>, in accordance to the following modalities :

- The local councils are composed of elected officials registered and residing in the areas ("Imeda") in which they stood for elections. Their election is based on a uninominal ballot with two rounds (similar to the legislative elections). The local councils also include representatives (directors) of the local administrations of each "imeda", appointed by the competent minister, who are not allowed to vote. In addition, the chair of the local council may convene representatives of civil society and local political parties, who will also be barred from voting. An additional seat is given to a person with a disability,



chosen by lot.

■ The regional councils are composed of elected members of the local councils, drawn by lot, as well as non-voting members: directors of the ministries' external services (regional directors of public administrations and public enterprises) at the level of each governorate (appointed by the competent minister). The presidency of the regional council is ensured by a system of rotation among the members of the local councils, each mandate lasting three months, without possibility of renewal, and is based on the drawing of lots.

■ The members of each regional council shall elect one member among themselves to represent them in the District council. They shall also elect three members to represent them in the National council of regions and districts.

**The distribution of powers and prerogatives between municipalities and local councils is not clear at this stage**, all while the requirement for parity in municipalities, which was enshrined in the previous electoral law, has disappeared<sup>103</sup>. A third decree-law on the revision of the electoral law for the election of municipal councils was issued simultaneously.

According to some observers, the publication of these decrees by President Saïed before the ARP was convened allowed him to bypass the fact that once the ARP was in place, he would no longer be able to govern by decree. The ground for his "inverted power pyramid" project before he could no longer govern by decree. In addition,

the establishment of this new "inverted pyramid" system **puts an end to the decentralization process**, a process that has been halted since the abolition of the Ministry of Local Affairs and the transfer of its powers to the Ministry of the Interior in November 2021<sup>104</sup>.

**Mayors have also been removed over the past period:**

■ In August, the mayor of Tabarka, Amel Aloui, was placed in custody for alleged corruption. The UGTT and LTDH called for her release, recalling the integrity of this elected official<sup>105</sup>. Amel Aloui was released a few days later and is awaiting trial.

■ In early December, a decree published in the JORT dismissing the mayor of Bizerte, Kamel Ben Amara for "undermining the public interest"<sup>106</sup>. This dismissal follows a conflict between the mayor and the governor of Bizerte (appointed by President Saïed in August 2021) when the former refused the request of the latter to decorate the city for the passage of President Saïed during the Evacuation day (October 15th). The mayor had responded to the demands of his constituents, who had petitioned him to let the president see the "true state" of the city. The governor threatened to take action against the mayor following this refusal<sup>107</sup>.

#### **D. Dismissals, appointments, and vacancies**

As indicated in previous bulletins, President Saïed continues to operate numerous dismissals and appointments in the various ministries, authorities as well as governorates. **Two governors,**









who were not affected by the 18 replacements undertaken since July 25, 2021 of the 24 governorates, have also been removed in the period covered by this bulletin: the governor of Beja in August 2022<sup>108</sup> and that of El Kef in October 2022<sup>109</sup>. In total, 20 governors out of 24 have been replaced since July 25, 2021. The governor of Sfax, Fakhher Fakhfakh, appointed by Saïed in June 2022, was also removed, and replaced by Wissem Kraiem in mid-February<sup>110</sup>. In mid-March, Tunis governor Kamel Feki was appointed Minister of the Interior. The posts of Beja, Kef and Tunis remain vacant to this day.

The Minister of Trade and Export Development, Fadhila Rebhi, was the first minister to leave the Bouden government<sup>111</sup> in early January. She was replaced by Kalthoum Ben Rejeb<sup>112</sup>. At the end of January, the Ministers of Education and Agriculture were also dismissed and replaced by President Saïed<sup>113</sup>. In early February, Minister of Foreign Affairs Othman Jerandi was also dismissed and replaced by Nabil Ammar, Tunisia's former ambassador to the European Union<sup>114</sup>, a few days after the Amira Bouraoui affair (see Migration section, II, E). It should be noted that a complaint has been filed against Mr Ammar in Belgium by his former colleague for harassment<sup>115</sup>. At the end of February, the Minister of Employment and Vocational Training Nasreddine Nsibi was also dismissed without being replaced<sup>116</sup>.

As for the Interior Minister Taoufik Charfeddine (who has not appeared for weeks in presidential meetings) it is still unclear whether he resigned or whether he has been dismissed. Although he announced on March 17<sup>th</sup>, 2023 his resignation for family reasons, the JORT published the same evening states that "The President of the Republic issued a decree ending the functions of Taoufik Charfeddine." He was quickly replaced

by the governor of Tunis, Kamel Feki, who is known to be in the President's inner circle and more particularly for his virulent media outbursts against opponents of President Saïed<sup>117</sup>.

In mid-February, the director of the national library, Raja Ben Slama, was also dismissed, probably following her statements criticizing the wave of arrests in the same month, including that of Noureddine Boutar, head of radio Mosaïque FM<sup>118</sup>.

 Presidency of the Republic	Appointments <b>26</b>	Dismissals <b>9</b>
 Presidency of the Government	Appointments <b>141</b>	Dismissals <b>7</b>
 Ministry of the Interior	Appointments <b>272</b>	Dismissals <b>58</b>
 Ministry of Justice	Appointments <b>127</b>	Dismissals <b>15</b>
 Ministry of National Defence	Appointments <b>68</b>	Dismissals <b>2</b>
 ISIE	Appointments <b>0</b>	Dismissals <b>1</b>
 Governors	Appointments <b>1</b>	Dismissals <b>4</b>
 Other	Appointments <b>1321</b>	Dismissals <b>146</b>

Counting covering the period July 25<sup>th</sup>, 2022 – March 31<sup>st</sup>, 2023. Source: JORT

At the same time, the NGO I-Watch<sup>119</sup> pointed out that many positions remain vacant: the absence of a director of the President's cabinet for a year (after the resignation of Nadia Akacha); more than 30 consulate and ambassadorial positions (China, Turkey, Qatar, Italy...); the position of permanent ambassador to UNESCO (his term expired in June); the post



of CEO of the Tunisian Oil Company (dismissed in August); the post of CEO of the National Radio has been vacant for a year, while the post of CEO of the National Television has been occupied on an interim basis by Awatef Dali since July 28<sup>th</sup> 2021.

Concerning the diplomatic and consular representations, these vacancies are explained by the fact that the **diplomatic movement (like the judicial movement) has not been conducted neither in 2021, nor in 2022**<sup>120</sup>, knowing that the positions could be filled independently of said movement.

### E. Judicial Power

#### ■ **Dismissal of magistrates and harassment of activist judges:**

Since July 25<sup>th</sup>, 2021, and as described in previous bulletins<sup>121</sup>, President Saïed has **targeted the judiciary**. In addition to the persistent discourse calling the magistracy into question, the judicial power **has been truly dismantled:**

- January 19th, 2022: Suspension of the benefits and remuneration of the members of the CSM.
- February 13th, 2022: Dissolution of the CSM and replacement by a Provisional High Judicial Council (CSM-P).
- June 1st, 2022: Announcement of the dismissal of 57 judges on various charges ranging from "obstruction of investigations into terrorism cases," "financial corruption," but also accusations of "corruption of morals" (adultery, participation in alcoholic meetings).
- June 1st, 2022:

Publication on the same day of the list of the 57 magistrates in question and simultaneously of the decree-law 2022-35 granting the prerogative of dismissal to the President of the Republic at will<sup>122</sup>.

- June - July 2022: General strike of magistrates, renewed for three weeks in a row, in June 2022. Several magistrates also went on hunger strike suspended in August<sup>123</sup>.
- Early August 2022: The Ministry of Justice announced that the procedures for disbursing the dismissal indemnities of the judges in question had been completed<sup>124</sup>.
- August 17th, 2022: The new constitution was promulgated, transforming the judiciary into a "function" and prohibiting judges from going on strike.

On August 9<sup>th</sup>, 2022, **the administrative justice, seized by 54 of the dismissed magistrates**<sup>125</sup>, **puts a halt to 49 dismissals on account of the lack of "legal and factual elements"**<sup>126</sup>, including that of the former President of the CSM Youssef Bouzakher<sup>127</sup>. The former prosecutor Bechir Akreimi (arrested and committed to a psychiatric ward, see section on arrests, II, B) and former first president of the Court of Cassation, Taieb Rached, are not among the rehabilitated magistrates.

**However, the Ministry of Justice, through its minister Leïla Jaffel, refused to respect the decisions of suspension of the dismissals taken by the Administrative Court.** In addition to sealing the offices<sup>128</sup> and changing the locks of the magistrates who legally had to be rehabilitated, the

Ministry of Justice, in a press release published on August 14<sup>th</sup>, 2022, announced that by virtue of Decree-Law 2022-35 of June 1<sup>st</sup>, 2022, **the dismissed magistrates were subject to criminal prosecution**<sup>129</sup>, without any distinction between the rehabilitated magistrates and those still dismissed. The Ministry has thus simply ignored, in complete illegality, the decision of the administrative court<sup>130</sup>.

On August 20<sup>th</sup>, the Ministry announced in a new press release that **109 investigations had been opened against the dismissed magistrates**, most of which had already been transferred to specialized courts for terrorism and corruption<sup>131</sup>. Authorities said the magistrates were being investigated for financial crimes, including embezzlement, money laundering and corruption, as well as terrorist crimes, abuse of power, sexual harassment and violations of laws governing arms and ammunition.

In addition, it should be noted that the harassment by the authorities of Judge **Anas Hmedi, President of the Association of Tunisian Magistrates (AMT)**, which has been very active since Saïed's first attacks on magistrates, has triggered many reactions. **The Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán**<sup>132</sup>, and **the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletossi Voule, have expressed their serious concerns**. In a joint statement issued on September 14<sup>th</sup>, 2022, they recalled that several groups on social media, reputedly close to the President, published a number of accusations against the judge and announced the opening of an investigation by the General Inspection Authority of the Ministry of Justice against Judge Hmedi - the same groups that, according to

the rapporteurs, harassed judges for months (including Judge Kheira Ben Khalifa, dismissed for "adultery")<sup>133</sup>.

Anas Hmedi was also heard four times between July and August 2022 by the same General Inspection Authority. On August 17<sup>th</sup>, he was informed of the intention of the prosecutor's office to accuse him of interference and obstruction of justice, after he allegedly "incited" other judges working at the court of Monastir (where he sits at the Court of Appeal) to join the strike. At the same time, following a complaint by a lawyer (who was not present at the time of the alleged acts) for obstruction of justice, the prosecutor's office requested **the lifting of Anas Hmedi's immunity, a request that was granted by the CSM on the 22<sup>nd</sup> of September**. The AMT denounced in a statement<sup>134</sup> that the measure was "unjustified" and in line with "harassment practices" targeting the president of the association.

For the special rapporteurs, these actions could constitute **"retaliation against Judge Hmedi for exercising his rights of peaceful assembly and association"**. **Diego García-Sayán** already denounced the dismissals of the 57 judges in early July, pointing out that "according to international standards, all disciplinary, suspension or dismissal procedures against judges must be determined by **an independent judicial body, a feature that the current CSM cannot claim**. Concerns about Saïed's interference in the judiciary were also raised by Nada Al-Nashif, the Deputy High Commissioner for Human Rights<sup>135</sup>.

### ■ **Opaque deadlock of the annual rotation of magistrates**

In parallel with these developments, it should also be recalled that in mid-August 2022, as is the case every

year, **the rotation of judges** by virtue of direct presidential decree on the recommendation of the CSM (a regression with regards to the 2014 Constitution, which required the President to follow a binding opinion of the CSM in this matter)<sup>136</sup>. The CSM allegedly submit its recommendation on September 7<sup>th</sup> to the President<sup>137</sup>. However, at the time of publication of this bulletin, **the rotation did not take place** which for the AMT has "slowed down the filling of vacancies in some courts," and delayed transfers and promotions and is "likely to disrupt the processing of legal cases"<sup>138</sup>.

**Two hypotheses were put forward to explain this obstruction** by the Presidency:

■ The rotation would ratify the reinstatement of the dismissed judges for whom the administrative court has issued a suspension of the dismissal decision (the provisional CSM could be in favor of their reinstatement);

■ The Constitutional Court provided for in the Constitution of 2022 must be composed of 9 magistrates ex officio (es-qualités): "the first third of the members is comprised of the most senior presidents of chambers at the Court of Cassation, the second third is comprised of the most senior presidents of chambers of cassation or advisory chambers of the Administrative Court and the last third is comprised of the most senior members of the Court of Audit"<sup>139</sup>. Allowing the rotation of judges would mechanically trigger the creation of the Constitutional Court, an institution that seems to be unwelcome for the moment: no budget is allocated to it in the

2023 budget law.

■ **Lawyers, Civil society and Human Rights Defenders are taking action:**

**Several dynamics were consequently created to defend the independence of the judiciary and to face the arbitrary dismissals of judges.** A civil committee composed of Bochra Belhaj Hmida, Sana Ben Achour and Kamel Jendoubi, among others, was created on June 18<sup>th</sup>, 2022 "to defend the independence of justice and to support the movements of judges in defense of their independence"<sup>140</sup>. The committee was very active, especially at the beginning of the crisis, organizing several meetings and solidarity visits to the revoked judges. Its members, in particular Bochra Belhaj Hamida, made several media appearances to denounce the attacks on the independence of justice and its dangers.

In light of the Ministry of Justice's persistent refusal to reinstate the 49 illegally dismissed judges<sup>141</sup>, **a defense committee was created** at the beginning of December; it is constituted of prominent lawyers and former presidents of the Bar, with the exception of Ibrahim Bourderbala<sup>142</sup>, a fierce supporter of President Saïed. The defense committee also intends to take over the defense of all judges who are subject to harassment or prosecution, or who may be dismissed in the future.

**The coordinator of the support committee, Maître Ayachi Hammami**, following an interview on the radio station Shems FM at the end of December 2022, **is now being prosecuted by the Minister of Justice under Decree-Law 54 and faces 10 years of imprisonment**<sup>143</sup> (decree-law on "fake-news", see below). In the interview, he described the criminal

proceedings against the judges as "politically motivated" and declared that 13 judges were allegedly prosecuted in bogus terrorism cases<sup>144</sup>, and added that the Minister of Justice was in violation of the law in refusing to abide by the decision of the administrative court. He remained free<sup>145</sup> after his hearing on January 10<sup>th</sup>, 2023 before the investigation judge of the Court of First Instance as these prosecutions have been widely condemned<sup>146</sup>.

On January 23<sup>rd</sup>, Mr. Hammami announced **that 37 dismissed magistrates filed an individual complaint against the Minister of Justice** under Article 315 of the Penal Code. This article makes it compulsory for the Minister to enforce judiciary decisions, in this case by the administrative court and based on Article 2 of the Organic Law No. 2017-10 related to the reporting of corruption and the protection of whistleblowers<sup>147</sup>.

**All these developments continue to increase fears about the independence of the judiciary in Tunisia**; on one hand it is subordinated under the Constitution and Decree-Law No. 11-2022<sup>148</sup> to the executive and on the other hand, it is the subject of intense pressure, threats of dismissal and prosecution. **The return of a judiciary at the behest of the executive seems to be in the offing.** Moreover, **this climate of terror in the ranks of magistrates is amplified by campaigns of denigration and defamation** frequently orchestrated on social media by pages supporting the regime against the vocal magistrates or judges who refused to abide to the directives of the executive - several lists of soon-to-be-dismissed magistrates have circulated on these pages.

The suspension of the judge who refused to issue a detention warrant and to release the president of the National

Union of Agents and Executives of the Judiciary, Hattab Ben Othmen<sup>149</sup>, effectively denounced by the AMT in a press release at the beginning of March<sup>150</sup>, could become emblematic of the regime's new practices. **Several observers point to the direct causal link between the executive's control of the judiciary and the wave of arrests of political figures that took place in February 2022** (see section, II, B).

## F. Transitional Justice

**Transitional justice continues to suffer from a multitude of obstacles** due to the lack of political commitment to the process. The President of the Republic does not seem to want to follow up on the work of the Truth and Dignity Commission and the recommendations of its report, nor does he want to remove the obstacles that hamper the work of the specialized criminal chambers.

In fact, defense lawyers before the specialized chambers have begun to call for their abolition<sup>151</sup>, in the face of **the lack of constitutional guarantees.** Indeed, **the Constitution of 2022 has removed transitional justice from the text**, while in the Constitution of 2014, Article 148 was an important guarantee, providing that "The state is committed to applying the system of transitional justice in all its areas and within the period set by the legislation relating to it."

**The overall situation of justice in Tunisia**, described above, **also harms the transitional justice process.** While some cases were expedited under President Saïed's greatly expanded powers, they were not related to victims of human rights violations or transitional justice<sup>152</sup>. Moreover, **the blockage of the judges' rotation also impacts the specialized chambers<sup>153</sup>**, which nevertheless continue to work and to



nourish the hopes of civil society and the families of victims.

The period was also characterized by **public attacks on the transitional justice process** in state media, whose subordination to the executive seems to be increasingly prevalent. For certain observers and supporters of the process, efforts seem to be made at the top of the state to undermine the process. Mustapha Baazaoui, a dismissed member of the Commission, has appeared several times in the media with a strongly anti-transitional justice discourse and numerous false allegations about the work of the Truth and Dignity Commission<sup>154</sup>. **These media attacks have recently been accompanied by legal action.** In February, members of the IVD, including its former chairwoman **Sihem Ben Sedrine**, were summoned by a criminal brigade under a rogatory commission issued by an investigation judge at the financial and economic judicial pole for "obtaining unjustified advantages", "causing damage to the state" and "falsification"<sup>155</sup>. **Sihem Ben Sedrine, charged with these three counts, also explained that she is now banned from traveling**<sup>156</sup>, for "falsifying" of the report of the IVD.

### ■ Predicted failure of the criminal reconciliation commission

In contradiction with the spirit of transitional justice, and in a context of major economic difficulties, President Saïed proposed and ratified by decree-law in March 2022 the **establishment of a system of "criminal reconciliation"** whose aim is to recover "the money stolen from the people"<sup>157</sup>.

The President believes that the money recovered in this way can solve Tunisia's economic difficulties. This approach has been considered inapplicable (and

therefore doomed to failure) but above all dangerous because it may encourage the Commission to look for "potentially ill-gotten money" where it doesn't exist. In a long and critical legal analysis, the lawyer and former magistrate Ahmed Souab concludes that the text "which constitutes a new version of transitional justice, but distorted at birth and lacking the guarantees of the original version (transparency, participation, control...)" contains "the seeds of its failure" because "of poor formal quality and low substantive quality" and adds that its author "is alien to reality and administration". For the organizations of the coalition for Transitional Justice, **the penal reconciliation system is contrary to the principles of Truth revelation and accountability – which are *sine qua non* conditions for the non-repetition of violations reducing them in reality to their pecuniary aspect.** The signatory organizations called on the president to withdraw this decree-law that confines violations to their pecuniary aspect. They reminded the authorities of their legal obligations and international commitments towards transitional justice, including its economic component<sup>158</sup>.

**These announcements of failure were confirmed by a number of disruptions and delays a few months after the decree-law was adopted.** Although the National Penal Conciliation Commission was established and its members appointed by decree in **November 2022**<sup>159</sup>, they were not sworn in by the President of the Republic until **December 7<sup>th</sup>, 2022**<sup>160</sup>. **That means that the commission was established 238 days after the adoption of Decree-Law 13-2022**, following a visit where the President of the Republic was surprised by the absence of the members. President Saïed said on that occasion that **460 people** were involved by the penal reconciliation and that the sum to be collected was **13 500 million**

**dinars** "which belong to the Tunisian people". These figures that seem to come from October 2011's report made by Mr. Abdelfattah Amor raised a lot of skepticism. Indeed, many of the people targeted by the compensation procedures mentioned by the President of the Republic are dead, have been acquitted, sanctioned or already initiated a reconciliation procedure with the IVD commission whose work the president seems to ignore<sup>161</sup>.

**In mid-January 2023**, during a visit to the commission's headquarters, the President of the Republic questioned the president and members of the commission about the progress of the work of the newly established institution and the means at its disposal to begin its mission of restitution of ill-gotten gains<sup>162</sup>. **On February 21<sup>st</sup>, the magistrate Akram Ben Mna was received** at the Palace of Carthage where he assured Kaïs Saïed that the commission received dozens of requests for criminal conciliation and that "the sums of money to be recovered could reach hundreds of billions". **Akram Ben Mna was however dismissed on March 21<sup>st</sup>, 2023**, a few days after another surprise visit by the head of state in the premises of the commission during which he expressed his annoyance with the accumulated delays. Akram Ben Mna blamed these failures on administrative delays and a "mafia" agenda that hampered its work<sup>163</sup>.

### ■ **Uncertainty around the Fidaa Foundation**

President Saïed took new steps with relation to **the Fidaa Foundation** created by decree in April 2022. Then came the Decree 957 of December 22<sup>nd</sup>, 2022 provided for the administrative and financial organisation of the Foundation and its management procedures<sup>164</sup>. Pursuant to these texts,

the General Instance of Resistance Fighters and Martyrs and Wounded of the Revolution and Terrorist Operations, as well as all the bodies and committees concerned with the files of the martyrs and wounded of the revolution, are responsible for forwarding their files to the Fidaa Foundation Committee.

Initially thought and designed by President Saïed for **the benefit** of the wounded and families of martyrs of security and military institutions **victims of terrorist attacks, the inclusion of the martyrs and wounded of the revolution among the beneficiaries, while excluding the victims prior to the revolution**, was categorically refused by the latter and the defense associations<sup>165</sup>. Indeed, this decision is seen as yet **another attack aimed at undermining the transitional justice process**, at a time when the Fidaa Foundation is trying to replace the Karama Fund (Dignity Fund), an integral part of the process. The inclusion of the martyrs and wounded of the revolution, but not those who were there before the revolution, is seen as an attempt to separate the victims and will only be able to provide reparation to some of them.

### **G. Security apparatus**

**With regards to security, the past period was deeply marked by strong tensions between the executive power and police syndicates.** On August 7<sup>th</sup>, 2022, police officers and representatives of certain police syndicates **interrupted the play of Lotfi Abdelli** in Sfax under the pretext of violations of morality, **after comments made by the comedian that were deemed insulting to the police**<sup>166</sup>. This case marked the starting point of an unprecedented rise in tensions between the Ministry of the Interior and police syndicates.



During a press conference held on September 1<sup>st</sup>, 2022 (one of the few since he took office), Taoufik Charfeddine, the Minister of Interior, stated that **"the levies on salaries of police syndicates [...] amount to 40 million dinars/year"**, levies deemed illegal in the absence of any text governing these entities<sup>167</sup>. President Saïed reiterated his proposal to **unify the security syndicates under a single union called the "Tunisian General Union of Internal Security Forces"**, which would limit its intervention to the social concerns of its members<sup>168</sup>.

Some trade unionists expressed their refusal of this proposal, to give up what they consider freedom of association and to stick to social demands. A sit-in was organized in Sfax in early September, leading to the first confrontation between police and syndicate's members<sup>169</sup> in the wake of the Minister's press conference. Other syndicates members recognized the "good intention" of the President following his proposal to unify the unions but expressed reservations about freedom of assembly.

The escalation continued at the end of September with the adoption of a memo **putting an end to automatic salary deductions** for the benefit of syndicates while submitting these deductions to strict procedures<sup>170</sup>. **Eight detention warrants** were also issued against syndicates' members following the sit-in in Sfax<sup>171</sup>. On September 28<sup>th</sup>, a branch of the National Union of Internal Security Forces (SNFSI) was closed by court order. The Ministry also announced that a sum of 600 000 dinars was seized following a police raid on the headquarters of the syndicate. The raid was filmed and widely distributed on social media<sup>172</sup>.

At the same time, **the syndicates continued to mobilize**, notably through the National Front of Security Unions

(FNSS)<sup>173</sup>, **asserting their unity** in the face of attempts to stifle them by reforming their status. A demonstration was organized in Sfax at the end of September to defend trade union rights and call for the release of the arrested police colleagues<sup>174</sup>.

The dynamics underlying these tensions are not clear at this stage. It is difficult to determine whether these power struggles **reflect a desire to reform the security sector by putting an end to impunity and introducing greater accountability, or a desire to extend its control over state institutions**. These tensions are also likely to have an impact beyond the security sector and could lead to reprisals by syndicates against human rights defenders and activists known for their struggles against police violence and impunity.

Other developments relating to the security sector are to be noted over the past period. In addition to the publication in the JORT of the code of conduct for the internal security forces under the authority of the Ministry of the Interior<sup>175</sup>, the President of the Republic has extended **the state of emergency** throughout the country **by 11 months** (until the 31<sup>st</sup> December 2023). For the record, **the state of emergency gives extremely broad prerogatives to the security forces**, allowing them to conduct searches, ban meetings or cultural events and impose curfews without judicial control or authorization. The state of emergency (in the form of the current decree-law) was, however, deemed unconstitutional by President Saïed himself on numerous occasions during and after his electoral campaign<sup>176</sup>.

The period was marked above all **the resignation/dismissal of the Minister of the Interior, Taoufik Charfeddine**. A few weeks before his dismissal, on March 7<sup>th</sup>, 2023, Charfeddine made a

statement that shocked the opposition, the media, civil society and trade unions by calling them "traitors" who had "sold out the nation [and] ganged up on the people." More than 40 civil society organizations, including the UGTT, were outraged by these "sectarian and divisive" statements and called on the minister to apologize for this "dangerous populist speech that heralds a police state"<sup>177</sup>. This speech, however, echoes a trend, described in previous bulletins of **a security tilting** that followed July 25, 2021, and the transformation of the Ministry of Interior into a political tool at the service of the President of the Republic. In an article assessing the performance of Taoufik Charfeddine following his resignation/dismissal, journalist and president of the National Union of Tunisian Journalists (SNJT), Mehdi Jelassi, recalls that Charfeddine's mandate was made up of repression of social movements, wiretapping and political arrests without respect for procedures<sup>178</sup>.

## H. A shrinking civic space

**The civic space continues to shrink in Tunisia** but without any progress on the reform of the decree-law 88 on the organization of associations<sup>179</sup>. Previous bulletins have reported unpunished attacks against activists, such as those of Badr Baabou and Arroï Baraket. Also noteworthy are isolated attempts by state representatives to restrict the associative space. These include intrusive visits to the activities of CSOs or additional administrative complications related to the creation of associations. However, these situations remain isolated<sup>180</sup>.

**The period was characterized by several prosecutions against activists for their activism.** This was the case, for example, for **Seif Ayadi**, who was arrested by plainclothes police officers in an

unmarked car after he participated in a press conference for the "Taalem Oum" campaign against police violence. According to the defense committee, Seif Ayadi was placed in custody for "criminal association with the intention of harming property and people" following the support he provided to the relatives of Malek Sellimi, a young man from cite Ettadhamon whose death in October 2022 after being assaulted by security officers, had set the popular neighborhoods ablaze. Seif Ayadi was kept free but banned from traveling. On Tuesday 21<sup>st</sup> February 2023, **Mahdi Jelassi, Wael Naouar, Nawres Douzi, Asrar Ben Jouira, Seif Ayadi and Khalil Zeghidi** were prosecuted for "inciting disobedience and insulting a public official" following a protest they organized on the 18<sup>th</sup> of July 2022<sup>181</sup> against the constitutional referendum. Activists **Boutheina Khelifi, Wissem Sghaïer and Oussema Ghoulem**, members of the national campaign in support of political prisoners, were arrested for 48 hours and charged with trespassing and insulting a public official for a graffiti in solidarity with arrested political opponents<sup>182</sup>.

On several occasions, the Tunisian League for the Defense of Human Rights (LTDH) denounced **the trials against civil society activists** who defend socio-economic rights and the right to demonstrate and freedom of expression, and have become **increasing targets of repressive and liberticidal measures**. In a press release<sup>183</sup> of October 10<sup>th</sup>, 2022, the League mentions the example of lawyers Hayet Jazzar, member of the Tunisian Association of Democratic Women (ATFD) and Ayoub Ghedamsi member of the LTDH, who were brought before the investigation judge for "contempt of a public official of the judicial sector" (Article 126 of the Penal Code).

In addition, the regime equipped itself with major new repressive tools, which further increases the applicable penalties: the decree-law known as "decree 54" of September 13<sup>th</sup>, 2022<sup>184</sup> on "combating offences relating to information and communication systems" and the propagation of "false news" (see in-depth analysis in Annex 1). This decree, which the authorities claim protects individuals from false information being spread online, is in fact a means for the authorities to suppress dissenting voices<sup>185</sup>. The appearance before the courts of the lawyer Ayachi Hammami, mentioned above, is a perfect illustration<sup>186</sup>. **According to ASL's monitoring work, at least 15 people have been prosecuted or summoned based on Decree-law 54. To date, no convictions have been handed down.**

On December 9<sup>th</sup>, 2022, OMCT, a member of ASL, and FIDH published an open letter to the Minister of the Interior requesting urgent action to protect human rights defenders, expressing their "deep concern at the recurrent threats against human rights defenders, who are most often prosecuted for **"offences against public morality" based on articles 226 and 226 bis of the Tunisian penal code** respectively, but also and above all on the basis of **article 125 of the penal code** punishing contempt towards a public official, which is abusively used by security forces. **This extended use of repressive articles of the penal code (...) is reinforced by the constant attempts to change the legal framework for freedom of association as well as the entry into force of the new decree law n° 2022-54 of September 13<sup>th</sup>, 2022 (...)** which represents a sword of Damocles to silence defenders and journalists who denounce police violence in particular. (...)"<sup>187</sup>.

**The lawyer and supporter of President Saïed, Wafa Chedli**, announced in a Facebook post that legal proceedings have been initiated against the organization I-Watch and that its president has been banned from traveling. The information was denied by the representatives and lawyers of the organization who announced to file a complaint for defamation against Wafa Chedli<sup>188</sup>. **Civil society organizations and activists continue to be subjected to violent campaigns of defamation and slander on social networks and in the media with total impunity.** Coupled with Decree-Law 54, these developments fuel a **climate of fear and self-censorship that is increasingly prevalent in the ranks of civil society.**

**Although there has been no (public) progress on the reform of Decree-law 88 since the leak of a draft reform in 2022 that caused national and national outcry<sup>189</sup>,** the announcements of the government on the occasion of the Universal Periodic Review of Tunisia, at the 41<sup>st</sup> session of the UN Human Rights Council, leave little doubt as to the directions that the Tunisian state intends to take in its reform of the framework governing associations. The representative of Tunisia has indeed recalled once again the need for reform to **fight the financing of terrorism, money laundering and to put an end to the collusion between political parties and associations<sup>190</sup>.** Civil society believes that these arguments are a pretext to reduce civic space under the guise of fighting terrorism and money laundering, while the existing Tunisian legislation is sufficient in these regards according to the Special Rapporteur on the rights to freedom of peaceful assembly and freedom of association and the Financial Action Task Force (GAFI)<sup>191</sup>.

The shrinking of civic space can also



be witnessed by **the suppression of all platforms for interaction between public authorities and civil society as well as the suppression of all participatory approaches in the elaboration of public policies.** Already mentioned in the previous bulletins, this trend that accompanied the July 25, 2021 has been reinforced during the previous months. For example, **OMCT**, a member of **ASL**, **was forbidden to participate** in the event "JCC in prisons", an event that the organization has been organizing with the General Committee for Prisons and Rehabilitation (CGPR) for the past 8 years. The authorities backed down a few days later following a press release signed by some thirty national and international organizations<sup>192</sup>.

**The inauguration of the new parliament, previously the main forum for exchange between the state and civil society, has also sent some worrying signals.** After initially refusing access to private and international journalists and media for its opening plenary session, the Parliament seems to be moving towards greater openness according to the draft internal regulations<sup>193</sup>. The latter recognizes the role of civil society by appointing **a member of the ARP bureau responsible for relations with civil society**, who may attend plenary sessions and submit proposed amendments to the committees via a dedicated online platform. **It is not clear whether civil society will be allowed to observe the work of the committees, as has been the case in previous assemblies.** As a reminder, the Al Bawsala association, a historic observer of the legislative power and member of the **ASL Alliance**, announced its intention to boycott the parliamentary institution ahead of the legislative elections, due to the restricted powers granted to it by the new Constitution, and the unilateral and irregular process

from which this parliament was derived.

## **I. Economic and social situation**

### **■ Deteriorating Macroeconomic indicators**

The Tunisian economy continued its freefall, weakened by the two consecutive external shocks of the COVID-19 pandemic and the outbreak of the war in Ukraine. **Widespread shortages of food (sugar, flour, coffee, butter, etc.) and their rationing, as well as shortages of medicines and fuel, have been commonplace in recent months. The situation continues to be marked by a sharp increase in the value of imports of commodities (oil, wheat ...) <sup>194</sup>, while the Tunisian state is in tight flow in terms of cash and foreign currency and struggles to honor the payment of its imports (now required in cash).**

**Inflation is also reaching record levels and has now exceeded double digits:** in January 2023, it reached an average of 10.2% for all prices<sup>195</sup>, and **14.1% for food** and non-alcoholic beverages<sup>196</sup>. **Other macroeconomic indicators are not promising** either: low growth (2.4% for the year, compared with 4.3% in 2021<sup>197</sup>), an unemployment rate that is stagnating at around 15% (12.9% for men, 20.1% for women in the last quarter of 2022, and an unemployment rate of 38.8%<sup>198</sup> for young people aged 15 to 24). The trade deficit has also increased by 40% in 2022, and the public debt peaks at 35 billion euros or nearly 89% of GDP<sup>199</sup>. Tunisian bonds fell from 4.1 cents to 51.38 cents per dollar on Thursday, April 6<sup>th</sup>, the lowest level ever recorded, according to Bloomberg. This decline speech of president Kaïs Saïed refusing international "diktats" and interpreted as a willingness to break the discussions with the IMF<sup>200</sup>.

## ■ **Negotiations with the IMF perpetually inconclusive**

The Tunisian economy is facing a real risk of "collapse". This is the same term used respectively by Anthony Blinken (United States), Giorgia Meloni (Italy) and Josep Borell (EU) within a few days of each other in March 2023 while **the rating agency Moody's has downgraded once more Tunisia's sovereign rating at the end of January to the rank of "high risk"**<sup>201</sup> **with a negative outlook** and mentions a "risk of debt default" if certain financing is not provided <sup>202</sup>. The measure envisaged and under discussion for several months of **an agreement with the IMF in the amount of 1.9 billion dollars** (1.8 billion euros), seems to be the only prospect able to bring a "breath of fresh air" to the country's finances. While a staff level agreement<sup>203</sup> was reached between the IMF and the Tunisian government in mid-October 2022, after more than two and a half years of discussion and should have been adopted by the Fund's Executive Board in mid-December, the loan review has been postponed indefinitely. After several weeks of silence, IMF Managing Director Kristalina Georgieva expressed confidence in mid-February that the planned agreement could be ratified within "a few weeks"<sup>204</sup>. **The conclusion of such a loan would also open the possibility for the Tunisian state to obtain financing from other donors and countries**<sup>205</sup>. So far, Tunisia has not managed to borrow from other countries (discussions for a loan of 1.3 billion dollars with Saudi Arabia and the United Arab Emirates have not been successful) <sup>206</sup>.

**The stop-and-go on the IMF fund can be explained by national tensions over the structural reforms that this loan will impose.** Indeed, the loan is conditional on controlling the civil service wage bill, gradually

lifting subsidies on food but more importantly on hydrocarbons (to be replaced by direct social transfers to the most vulnerable households), and the likely privatization of some public enterprises. Additionally, the reluctance of the powerful UGTT trade union, in a context of an escalating conflict with the executive, but also the fact that President Saïed has still not officially recognized the need for this loan and continues to blame "speculators" and "the corrupt" for price levels and shortages, have most likely slowed down the conclusion of the planned agreement.

**However, despite his reluctance, President Saïed ratified the 2023 budget law at the end of December, which includes several austerity measures consistent with the IMF's demands:** the partial lifting of food subsidies, a total lifting of fuel subsidies at the end of 2023, and an adjustment of electricity and gas tariffs over the next three years until the "real" price is reached by the end of 2026. The Ministry of Finance hopes to reduce the share of subsidies in government spending from 16.4 percent in 2023 (5.4 percent of GDP) to 5.7 percent in 2025 (1.7 percent of GDP)<sup>207</sup>. According to the Ministry's projections, the state budget deficit should be 5.5% of GDP, compared with 7.7% in 2022<sup>208</sup>.

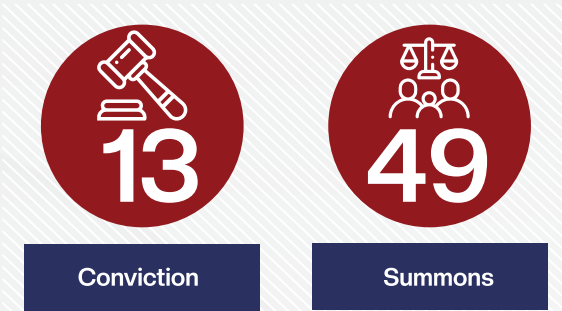
**The lifting of subsidies is in fact a social ticking time-bomb**<sup>209</sup> : Tunisians are already struggling to cover their daily needs, poverty is increasing (16.6% in 2021, compared to 15.2% in 2015, with significant increases particularly in the Centre-West and South-East)<sup>210</sup>, social movements and strikes are multiplying<sup>211</sup> and emigration continues to be very high (see migration section below).

**The political and social acceptability of additional austerity measure is therefore very low and will be very delicate,** especially since the

identification of the "most vulnerable households" eligible for direct social transfers is technically complex and gives rise to fears that many households that need social transfers will not benefit from them.

Moreover, the failure to conclude an agreement with the IMF at this stage could cost Tunisia even more: for Standard & Poor's agency, the absence of an agreement could cost the Tunisian banking system<sup>212</sup> between 4.1 and 7.6 billion dollars, while for Fitch, the delays and even the prospect of a failure to reach an agreement with the Fund further increase the risk of default on the debt in the face of the growing lack of bank<sup>213</sup>. Several banks have also seen their ratings downgraded at the end of January 2023 due, among other things, to their exposure to bills and bonds of the Tunisian Treasury<sup>214</sup>.

**II. RIGHTS AND FREEDOMS**



All measures taken against public figures, senior and former senior officials between July 25<sup>th</sup> 2022 and March 31<sup>st</sup> 2023.

**A. Social protests that resist despite a hostile context**

In its February 2023 report, the social observatory of the FTDES, a member of the ASL, noted a decrease of over 18% in social movements and demonstrations. This drop is explained in the report of the observatory by **political and security developments**, marked by the arrests of political, trade union and media leaders as well as the hate and accusatory speech against human rights organizations and activists from the regime and its supporters<sup>215</sup>.

However, faced with the worsening of the social, economic and political situation, several sectors of the population have continued to demonstrate in recent months. The most striking demonstration of the past period was undoubtedly **during the 14th of January**, the date of the 12<sup>th</sup> anniversary of the Revolution, where several thousand (1000 according to the Ministry of the Interior, nearly 10000 according to some media) people from all political backgrounds demonstrated in the Habib Bourguiba Avenue. On the same day, the Free Destourian Party, whose demonstration had been banned in Carthage demonstrated at the Avenue Kheireddine Bacha.



On the 4<sup>th</sup> of March 2023, the UGTT organized a very important demonstration to which several thousand people, including associations and political figures participated. Protestors called for an end to political arrests and demanded that the President accepts the dialogue initiative<sup>216</sup>

Other demonstrations, more specific in terms of demands, but no less important, took place during the past period. These included, for example, **the journalists' "day of rage" organized by the SNJT on the 16<sup>th</sup> February 2023** in front of the government premises at the Kasbah, **or the anti-racist demonstration organized on the 25<sup>th</sup> February 2023** by civil society - notably the newly created Antifascist Front - to confront the racist speech and practices of the Tunisian state. **The city of Zarzis was the scene of several social movements following the Zarzis tragedy** (see II,E,) and above all **a general strike on 18 October called by the UGTT**, a strike which mobilized nearly 7000 people (including the families of the victims) demanding justice and truth for the shipwrecked<sup>217</sup>. A march from Zarzis to Djerba was then organized on the 19<sup>th</sup> of November following the last-minute cancellation of the visit of the Minister of Interior<sup>218</sup> to Zarzis. The police that was heavily present to secure the 18th Francophonie summit, prevented the people from Zarzis from going to the island by dispersing them with tear gas in a "repressive security operation" according to 28 NGOs<sup>219</sup>.

### **B. Instrumentalization of justice against activism**

The period covered by this bulletin was characterized **by the increasing instrumentalization of justice (civil and military) to prosecute activists, trade unionists, opposition figures**

**and journalists.** Several tools, both existing (the penal code, the code of military justice) and new ones (Decree-Law 54) were frequently against dissident voices.

### **1. An unprecedented wave of arrests since 25 July 2021**

#### **The case of conspiracy against state security:**

The most important affair in terms of numbers and profiles of detainees over the past period is unquestionably the case of the so-called "conspiracy against state security", **which involved 17 people. Twelve people were arrested** in relation with this case during the month of February 2023, mainly in the ranks of the political opposition.

The indictments against these figures include **extremely serious charges:** on the one hand, they are accused based on the law on the fight against terrorism and the repression of money laundering for "conspiracy in connection with terrorist crimes" and "money laundering destined to finance terrorist acts". On the other hand, they face heavy charges with relation to the penal code, such as "conspiracy against the internal and external security of the state", "attempt to change the the form of the government" and "offence against the Head of State". **The persons prosecuted are thus threatened with very heavy sentences, including death penalty.** It should be noted that the anti-terrorist legislation that serves as a basis for most of these arrests allows the authorities to keep the suspects in detention without a lawyer for 48 hours.

**Several families and lawyers of those arrested described police raids early in the morning or late in the evening, by large police forces.** The lawyers

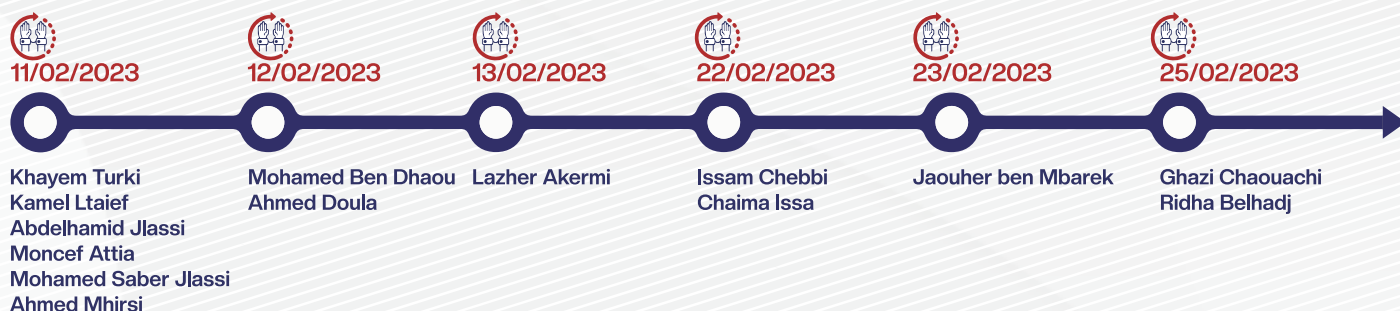
denounced at several occasions the deterioration of their conditions of detention, the use of surveillance cameras 24/7 to record them as well as the conditions of their transport (with vehicles used for persons accused of terrorism), which were considered as a form of torture according to the lawyer Islem Hamza. The CGPR, through its spokesperson Ramzi Kouki, denied "rumors" and warned of filing a lawsuit for spreading false information<sup>220</sup>.

**While the authorities have so far presented no evidence in at least five cases as reported by Amnesty International**, the presumption of innocence has been widely flouted by the President of the Republic who accused those arrested of "terrorists" and "conspiring to weaken the state and manipulate food prices" <sup>221</sup>on February 14<sup>th</sup> and then of "criminals with blood on their hands" on Thursday March 6<sup>th</sup> 2023<sup>222</sup>. On February 22<sup>nd</sup>, he further threatened that whoever "dared to acquit" what he described as a criminal network would be considered as "their accomplice". **The public prosecutor's office has been particularly silent in this case**, giving no statement and providing no explanation. The spokeswoman of the anti-terrorist judicial pole reassured however the diplomatic delegations present in Tunisia denying any involvement in the plot <sup>223</sup>. In a letter reportedly sent to embassies, the anti-terrorist pole states that those who published elements of the case were seeking to mislead public opinion and damage Tunisia's diplomatic relations and face prosecution. This letter casts further suspicion on the real motives of the authorities behind these arrests. Amnesty International denounces the fact that six detainees are reportedly being charged for talking to diplomats and calls on the President of the Republic to "immediately stop his politically motivated witch-hunt"<sup>224</sup>.

There has been no **statement from the authorities on the progress of the cases to date**. The only known information on these cases comes from leaked reports. This silence is all the more worrying **given that the President declared on February 22<sup>nd</sup> that anyone who dared to acquit those he described as criminal networks was "their accomplice"**<sup>225</sup>.

Many politicians and jurists have condemned this speech as an attack on the presumption of innocence, especially as the procedure is still at the preliminary investigation phase. Amnesty International said in a statement<sup>226</sup> on the 31<sup>st</sup> of March that "This statement [from the President of the Republic], coupled with the arbitrary dismissal of 57 judges ordered by the President in 2022, **contributes to a climate of intimidation for the judiciary**".

## List of persons arrested and detained in the case of the "plot against State security":



On March 30th the indictment chamber of the Tunis Court of Appeal approved the decision of the investigating judge to reject the request for release filed by the lawyers of eight detainees.

### Arrest of Nouredine Boutar :

In a separate investigation, but potentially linked to the conspiracy investigation, **the executive director of Mosaïque FM was arrested on the 13<sup>th</sup> of February and questioned about the radio's finances, its editorial line and the choice of columnists.** The public prosecutor placed Nouredine Boutar in custody without charge, according to Boutar's lawyer<sup>227</sup>. On the 20<sup>th</sup> of February, the investigating judge at the financial and economic judicial pole issued a detention order against him. **Mosaïque FM is the country's leading radio station, with particularly popular political programs hosted by critical columnists since the 2011 Revolution.** Additionally, during the Francophonie Summit<sup>228</sup> in November 2022, President Saïed who almost never speaks to national media, singled out one of the station's journalists and complained about the station's editorial line.

### Arrest of Ali Laarayedh :

After being arrested and then released for 3 days in September 2022, **the former head of government, minister, and leader of the Ennahdha movement was arrested again on the December 20<sup>th</sup> 2022** in the context of the investigation into the alleged responsibilities of former Tunisian leaders in the sending of **young jihadists to Iraq and Syria**<sup>229</sup>. Despite numerous demonstrations from Ennahdha and its supporters, Ali Laarayedh remains in detention<sup>230</sup>. Operated a few days after the fiasco of the first round of legislative elections, Ennahdha Movement qualified the arrest as a "desperate attempt by the coup authority and its president Kaïs Saïed to cover the farce of the legislative elections boycotted by 90% of voters"<sup>231</sup>.

### Arrest of Nouredine Bhiri :

Detained without being charged for more than two months in 2022, then released, **the former minister and senior leader of Ennahdha was arrested again on the February 13<sup>th</sup> 2023** during a raid in which Bhiri's wife and children were injured, according to the lawyer Ines Harrath<sup>232</sup>. Still according to the lawyers, Nouredine Bhiri was arrested following **"public comments calling for resistance against the dictatorship"**<sup>233</sup>. Bhiri is allegedly also mentioned in one of the anonymous testimonies, a central piece

of evidence in the conspiracy case<sup>234</sup>.

#### **Arrest of trade unionist Anis Kaabi :**

**Arrested in the context of the strike led by his union on the January 30 and 31<sup>st</sup> 2023**, and accused of having "exploited, as a public official, his status in order to prejudice the administration and to obstruct the exercise of a public service by collective resignation", Anis Kaabi, **Secretary General of the Syndicate of Agents of the Tunisian Highways Company**, is being prosecuted following two complaints filed by the Tunisian Highways Company.

**The trade unionist was supported by the UGTT, which considered that his arrest was part of the targeting of trade union rights and freedoms**, stressing that it was also a "blow to trade union work, a violation of trade union rights and international conventions signed by Tunisia for the respect of trade union freedoms and the right to strike". Anis Kaabi was kept in detention following his hearing.

#### **Arrest of Bechir Akremi :**

**Akremi who is one of the 57 judges** arbitrarily dismissed by President Saïed in June 2022 (but not benefiting from the suspension of execution pronounced by the administrative court) and the former prosecutor of the Tunis Court was arrested on the February 12<sup>th</sup> 2023. **According to sources close to the case, he is prosecuted for "falsifying evidence" in the context of the assassination of the martyr Chokri Belaid.**

The conditions of Bechir Akremi's arrest and detention are of concern in several respects. **Interned in a psychiatric ward on the 17<sup>th</sup> of February 2023, where he was initially forbidden to receive visits from his family and from the INPT<sup>235</sup>**, Akremi

was released by doctors on the 24<sup>th</sup> of February **and then arrested again by police officers who surrounded the hospital** to prevent his family from accompanying him to his house. He was again taken to the anti-terrorist unit of El Gorjani, then kept in custody in the context of another complaint filed by the Watad party on the February 7<sup>th</sup> 2023. According to the defense committee of Mr. Akremi, the security agents who filed the complaint for "whitewashing terrorism" are the same agents that Bechir Akremi previously prosecuted for forgery and torture in the context of the investigation of the Bardo terrorist attacks. They are also part of the unit in charge of the investigations against the judge<sup>236</sup>. For human rights defender and president of the IVD (2014-2019) Sihem Ben Sedrine, Judge Akremi is a victim of reprisals aimed at subjugating magistrates and ensuring impunity for security officials<sup>237</sup>. Abdennaceur Laouini, a member of the defense committee of martyrs Chokri Belaid and Mohamed Brahmi, said: "Our battle with Bechir Akremi was for the respect of the procedure and the law. His rights must be respected as for all citizens, including his right to a fair trial and to allow his family to visit him"<sup>238</sup>.

#### **Arrest of Taieb Rached :**

The former first president of the Court of Cassation, Taieb Rached, who was one of **the 57 judges arbitrarily dismissed** by President Saïed in June 2022<sup>239</sup>, was arrested on the February 12<sup>th</sup> 2023.

He was brought before an investigating judge at the economic and financial judicial pole in connection with a corruption case. He was released after his hearing. His lawyer<sup>240</sup> said that when he left the pole, he was forcibly taken away by police officers and that following this alleged heavy-handed intervention, he fell ill and was taken to Habib Thameur Hospital. He will then be



placed in police custody in the context of another case<sup>241</sup>.

On February 20<sup>th</sup>, the investigating judge at the Tunis court of first instance issued a detention order against him in a case where he is accused of having forced a person to give a false testimony.

#### Other cases :

On November 25<sup>th</sup> 2022, an **investigation was opened against 25 people**, including radio hosts, politicians, trade unionists, and former security officials. Nadia Akacha, the former chief of staff of President Saïed, is also mentioned<sup>242</sup>. They are prosecuted for plotting against state security, offending the head of state and forgery<sup>243</sup>. The case is still under investigation.

#### Arrest of Rached Ghannouchi :

On April 17<sup>th</sup> 2023, the former president of the Parliament and president of Ennahda, **Rached Ghannouchi, was arrested and placed in police custody**. An investigation was opened against 12 defendants<sup>244</sup>. After a hearing, the investigating judge at the Court of First Instance of Tunis issued a detention warrant against Ghannouchi who is apparently being prosecuted, following statements he made at a meeting of the National Salvation Front (FSN), for “plotting against the internal security of the state” and intending “to change the form of government” and “inciting inhabitants to arm themselves against each other”. On April 18<sup>th</sup>, the Minister of the Interior sent a note<sup>245</sup> to security officials and governors to prohibit the holding of any meeting in the premises of the Ennahdha movement throughout the territory and in the premises of the FSN in application of Decree No. 78-50 of 26 January 1978<sup>246</sup>, regulating the state of emergency<sup>247</sup>.

It should be recalled that **Rached Ghannouchi is also prosecuted**

**alongside 34 defendants** including politicians, businessmen and security officials in the context of the **"Instalingo" affair**<sup>248</sup> for undermining the President of the Republic, conspiracy against state security and espionage.

#### 2. Updates regarding the military justice

In addition to the actions before the civil courts, and as already mentioned in previous bulletins, **military justice continues to be increasingly used against civilians**<sup>249</sup>. In a press release published on January 24<sup>th</sup> 2023, the LTDH reiterated **its objection to the trial of civilians before military courts**, insofar as this practice is a flagrant violation of the standards of a fair trial and of international human rights conventions<sup>250</sup>.

Several developments regarding **ongoing cases** took place during the period:

■ Rached Khiari, former Al-Karama deputy, was sentenced in August 2022 to three months in prison for his comments regarding the funding of the campaign of Kaïs Saïed. He was accused of undermining the morals of the national army, plotting against the internal security of the state, and having contacts with foreign parties to harm the interests of the state. He appealed the decision and remained in detention. In early March, the court of appeal sentenced him to six months in prison<sup>251</sup>.

■ In the "airport affair" the **Military court of appeal also sentenced four politicians** (Seifeddine Makhoulouf, Maher Zid, Nidhal Saoudi and Mohammed Affes - former



MPs of the Al-Karama party) as well as **the lawyer Mehdi Zagrouba to prison sentences ranging from 5 years to 14 months for "contempt towards public official", disturbing public order, and for N. Saoudi "threatening a public official"**. The court also banned Mehdi Zagrouba from practicing law for five years. Lotfi Mejri was given a three-month suspended sentence for filming the altercation with the police<sup>252</sup>. As Amnesty International points out, **"Civilian courts also investigated these six men in relation to the same events, and tried and convicted three of them - Seifeddine Makhlouf, Mehdi Zagrouba and Maher Zid - for "contempt towards a public official"<sup>253</sup>**. This double prosecution - in civil and military courts - is a violation of the International Covenant on Civil and Political Rights (ICCPR), which prohibits the prosecution of anyone for an offence for which that person has already been convicted or acquitted in a trial<sup>254</sup>.

■ Sentenced in April

to four- and three-months imprisonment respectively by military justice for "undermining the army's morals", **journalist Ameer Ayed and MP Abdellatif Aloui** were sentenced on appeal to two months and one month's imprisonment. They have filed a cassation appeal and remain free pending the new judgement<sup>255</sup>.

#### **New prosecutions before the military courts have also been launched:**

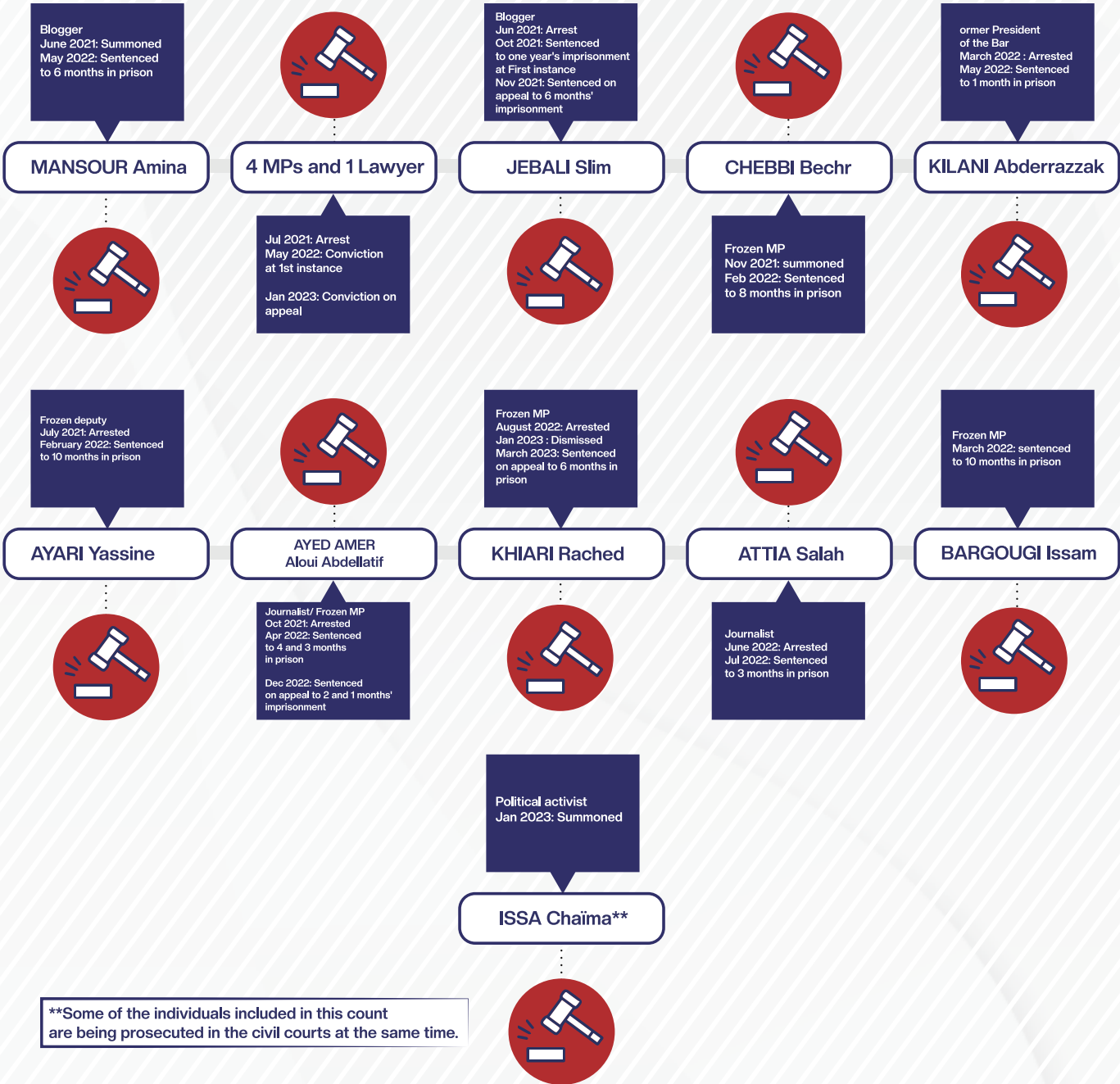
■ **Chaïma Issa**, a member of the National Salvation Front (an opposition movement to Kaïs Saïed) was summoned by military justice based on decree-law 54<sup>256</sup> following a media appearance on IFM radio<sup>257</sup>.

**Decree-Law 54, military trials, excessive use of the provisions of the Penal Code<sup>258</sup>, in particular articles 125, 126, 226 and others, embody for some observers the transition to autocracy by giving a legal basis to the repression of rights and freedoms, and especially freedom of expression and demonstration.**

# MILITARY JUSTICE UNDER THE SAIED REGIME

**11**   
trials

**17**   
individuals



\*\*Some of the individuals included in this count are being prosecuted in the civil courts at the same time.

### C. Restrictions on Freedom of Press and Expression

Often portrayed as the main achievements of the Tunisian Revolution, freedom of press and expression witnessed a sharp decline since July 25<sup>th</sup> 2021; the situation has worsened during the period covered by this report (July 2022 - March 2023). From a legal point of view, the new Constitution, while proclaiming freedom of press and information, includes a provision allowing this right to be restricted for certain purposes, notably "for the purposes of public security" (Article 55<sup>259</sup>). The constitutional text also abolishes the HAICA. Additionally, **decree-law 54, presented as a tool to fight against misinformation but that in reality permits the censorship of the regime's opponents, accelerates the deep regression in terms of freedom of expression in Tunisia.** In a context where the President arrogated himself very broad powers by weakening counterpowers, risks of seeing these freedoms drastically reduce is multiplied.

**Indeed, the executive has displayed an increasing tendency to prosecute journalists over the last period,** in an attempt to put more efforts to silence journalists and the media. **The cases of journalists Nizar Bahloul, Monia Arfaoui and Mohamed Boughalleb are emblematic in this sense** <sup>260</sup>: ministers who file a complaint (mainly on the basis of Decree Law 54) following critical articles or opinions. Giving almost no interviews to national media, the Head of State gave a glimpse of his opinion on the state of freedom of expression in the country on November 18<sup>th</sup> 2022. Questioned by Mosaique FM journalist Cheker Besbes during the Francophonie summit about the potential investments following the summit, President Saïed took the

opportunity to attack Mosaique FM and accuse the media of defamation, exhorting them to acquire the "freedom to think" <sup>261</sup> before chasing freedom of expression.

ASL also noted an **increase in the number of attacks and assaults on journalists over the period, fueled by hate campaigns by supporters or opponents of President Saïed.**

In its report covering the period October 2021-October 2022, **the SNJT, a member of ASL, recorded numerous incidents, with a peak at the time of the July 2022 referendum** (35 assaults, mostly related to withholding of information):

- in most of the recorded cases, journalists and photojournalists who were assaulted were working on **subjects related to political affairs** (78 victims), social rights (42 victims), **elections** (39 victims) and **security-related subjects** (11 victims);

- As per **media exclusion** <sup>262</sup>, the SNJT recorded **42 cases** where journalists were not allowed to cover events, most of them by heads of polling stations during the organization of the referendum (13 cases), by police officers (8 cases) and by government representatives (6 cases) ;

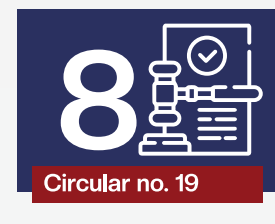
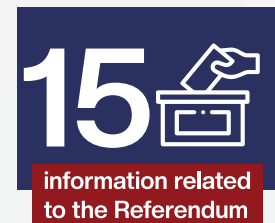
- Journalists continue to be victims of **campaigns of incitement to hatred and violence**<sup>263</sup>. The SNJT recorded **30 cases of incitement** by government officials, politicians, the Presidency of the Republic, and supporters of the President. **29 physical attacks against journalists were recorded**, including 14 committed by the security forces.

During the two rounds of the legislative elections, the SNJT monitoring unit reported **28 cases of aggression for the first round of elections and 29 cases<sup>264</sup> for the second round, an increase compared to the 2019 elections** during which the unit reported 18 cases of aggression <sup>265</sup> in total. Most of these cases in both rounds were related to withholding information and media exclusion (**21 cases of withholding information, 26 cases of media exclusion/blackouts and 10 cases of harassment**). These violations were mostly committed by members of the ISIE, the IRIE (regional branch of the ISIE) and the security forces

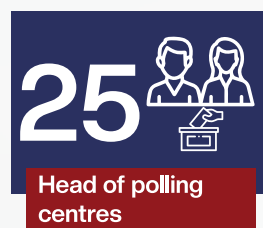
As mentioned in the previous bulletin<sup>266</sup>, the publication of Circulars No. 19 <sup>267</sup> and No. 20 <sup>268</sup> by the Presidency of the Government **was accompanied by an increasing trend of prior censorship of journalists:** judicial censorship (5 cases), institutional censorship (3 cases), destruction of content (2 cases) and interference with content (2 cases). It should be noted that most of the actors behind prior censorship are official entities.



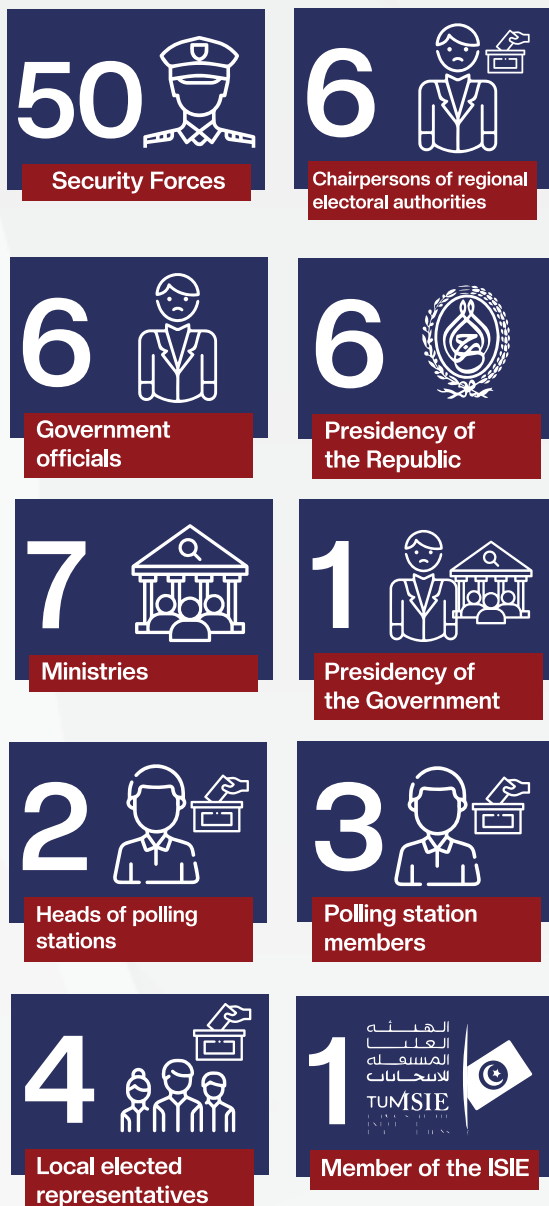
Heads of polling stations, members of the IRIEs as well as the Presidency and other officials also refused to disclose information that is not subject to the exceptions provided for in the access to information law <sup>269</sup>. **The SNJT recorded 27 cases of withholding of information :**



**Statistics in the past months confirm the massive and systemic pattern of attacks against journalists: 232 cases of attacks were recorded in one year, 151 of them by official entities:**







Following the trend outlined in the previous bulletin <sup>270</sup>, the Presidency continues to adopt a violent attitude towards journalists. The institution was responsible for 6 violations:

The North Africa Foreign Correspondents' Club (NAFCC) also deplored, in a press release, the "difficulties encountered in the media coverage of the legislative election campaign", being "prevented from carrying out [their] work", despite their "compliance with the requirements of the ISIE and the new electoral law", and calling on the ISIE to clarify the rule according to which "candidates for the

legislative elections who are present on Tunisian soil are forbidden to give statements to the foreign press<sup>271</sup>".

In parallel to the above-mentioned patterns, the attacks on press freedom are also visible in the multitude of lawsuits brought against journalists, not based on decree 115 related to press freedom. Notably :

- 14 journalists prosecuted on the basis of the Penal Code, including SNJT President Mehdi Jelassi, who has been prosecuted since the end of February - alongside several activists - for a demonstration organized on July 18<sup>th</sup> 2022, for inciting disobedience and insulting a public official <sup>272</sup>.
- 3 journalists before military justice (including Ameer Ayed, see part II, B).
- 2 journalists based on the Telecommunications Code
- 5 journalists based on the anti-terrorism law, including:
  - Ghassen Ben Khelifa, a journalist and editor of the alternative media Inhiyez, was arrested by police on September 6 at his home after his house was searched <sup>273</sup>. No explanation was given to his family or lawyers, while his case was referred to the anti-terrorist judicial pole<sup>274</sup>. His lawyer later said that he was suspected of being the administrator of a Facebook page inciting terrorism<sup>275</sup>. He went on a hunger strike to protest against his arrest and detention <sup>276</sup>. A support march took place in the city center demanding his release. After 5 days in detention, he was released on September 11<sup>th</sup>.

- **Khalifa Guesmi, a journalist with Mosaïque FM**, was taken into custody for refusing to divulge his sources in the case of a terrorist network dismantled in Kairouan<sup>277</sup>. On November 29<sup>th</sup> 2022, the criminal chamber specializing in terrorism cases at the Tunis 1 Court of First Instance sentenced him to one year in prison for disclosing confidential security information about an anti-terrorist operation. The authorities charged him based on Article 62 of the 2015 counter-terrorism law<sup>278</sup>. The SNJT and several other national organizations denounced his conviction and called for an end to prosecutions against journalists' freedom in the exercise of their professions<sup>279</sup>.

- **1 for money laundering and "unlawful enrichment"<sup>280</sup>:**

- **As mentioned above (part B) Nouredine Boutar, director of the privately-owned, high-profile radio station Mosaïque FM**, was arrested on February<sup>281</sup> 13<sup>th</sup>. **For Reporters Without Borders, " Nouredine Boutar's arrest is a forceful message to the media from the authorities"**. Its goal is to terrorise and subjugate journalists, and to send them back to the era of the Ben Ali dictatorship. This growing authoritarianism, previously signaled and now amply confirmed, must be strongly condemned, and Nouredine Boutar must be released at once. <sup>282"</sup>

- **3 based on Decree-Law 54 :**

- **Nizar Bahloul:** the journalist and director of the news website Business News is summoned on November 14<sup>th</sup> 2022 before the criminal brigade following a complaint filed by Justice Minister Leila Jaffel on November 11<sup>th</sup> for "defamation, publication of false information, false allegations against a public official and insults against the head of government" for an opinion article on Najla Bouden's performance titled "Najla Bouden, a *gentille* woman". The Minister of Justice, for whom the article has "consequences affecting the security of the country and seeks to affect the institutions of the state", invited the prosecutor to pursue the author of the article and the person responsible for the site in accordance with the provisions of Decree-Law 54 of September 13<sup>th</sup> 2022 on crimes related to information and communication systems<sup>283</sup>. Nizar Bahloul was kept free after his hearing.

- **Monia Arfaoui :** On March 17<sup>th</sup> 2023, Assabah News journalist Monia Arfaoui announced that she had been summoned by the El Gorjani judicial police force. Kept free following her hearing, Monia Arfaoui confirmed that she had been questioned following two complaints lodged by the Minister of Religious Affairs. One concerns an article raising suspicions of corruption related to the Mecca pilgrimage and a second complaint on the basis of decree-law 54 for a

○

post on her Facebook page<sup>284</sup>. Monia Arfaoui denounced the harassment she had been subjected to by the Minister of Religious Affairs<sup>285</sup>.

- **Mohamed Boughalleb:** On April 5<sup>th</sup> 2023 Cap FM columnist and journalist Mohamed Boughalleb appears before the criminal brigade of El Gorjani, still on the basis of Decree-Law 54, and still on the basis of a complaint filed by the Minister of Religious Affairs. Mohamed Boughalleb had declared on the radio that the minister was driving a luxury car in an irregular situation because it had been temporarily seized by the Tunisian customs from a citizen, while the citizen clarifies his situation<sup>286</sup>. Boughalleb was kept free, but the SNJT denounced the treatment and harassment of the journalist during his hearing as was denied access to medication by officials even though he declared he was diabetic <sup>287</sup>.

**The increasing tendency to criminalize freedom of expression is obvious and it is already bearing results.** In recent months, several radio stations and programs seem to have lowered their tone, changed their editorial line and practiced self-censorship for fear of reprisals. **The ban on foreign media and private national media to cover the opening session of the new parliament on March 13<sup>th</sup> , is an additional worrying indicator<sup>288</sup>, although the committee responsible for drafting the bylaws of the new ARP seem to have subsequently backpedaled**

## **D.Arbitrary restrictions on freedom of movement**

**Restrictions on freedom of movement imposed by the Ministry of the Interior** on individuals presumed to represent a threat to public order or national security **continue to be applied in an arbitrary manner.** These administrative control measures<sup>289</sup>, which concern individuals that are flagged “S” (fichés S) by the police, still constitute a tool of first choice for harassment used by the Ministry of Interior against thousands of Tunisians.

As written in the previous bulletin<sup>290</sup>, while these administrative control measures were already widespread before 25 July 2021, they are since then **increasingly used against politicians, including former ministers and MPs.** Over the past period we have observed the following cases:

- **The former Minister of Religious Affairs between 2011 and 2014, Nouredine Khadmi** who carried out a sit-in at Tunis-Carthage airport on August 18<sup>th</sup> 2022<sup>291</sup> due to an administrative ban on leaving the territory presumably issued by the Ministry of Interior. Two days after the sit-in, the travel ban was lifted.

- **Former MP Ayachi Zammel** was also reportedly prevented from travelling in late September. The latter explained that the border police told him that he could travel only after presenting a court document proving that he was not subject to any travel ban<sup>292</sup>.

- On November 16<sup>th</sup> 2022, while at Tunis Carthage airport, **the president of the**

**Afek Tounes party, Fadhel Abdelkefi,** announced in Facebook post that he had been banned from travelling without being presented with any court order to justify this decision<sup>293</sup>.

■ **The former President of the ISIE, Nabil Baffoun,** announced on Saturday February 4<sup>th</sup> that he had discovered while trying to travel that he was on the S17 list<sup>294</sup>.

**The Ministry of Interior communicated around some of these cases to deny the administrative nature of the bans,** indicating that these could be lifted by a judicial decision since the judiciary has initiated several investigations against former personalities who have been in power for the past ten years<sup>295</sup>.

However, **most people tagged “S” and who are victims of arbitrary restrictions of freedom remain 'ordinary' individuals, unknown to the public, often vulnerable and without resources.** In recent months, police harassment against them has intensified. SANAD, the OMCT's (ASL member) center for victims of torture and ill-treatment, continues to document new cases of harassment of tagged individuals (fichés S).

**The people targeted by such measures, that can be assimilated to police harassment, have hardly any effective means of appeal.** The main solution is to go to the administrative court to have the administrative control measures suspended and then cancelled. But **the decisions of the administrative court are not always respected by the Ministry of the Interior.** SANAD has witnessed an upsurge in harassment against people on file who have obtained suspensive decisions from the administrative court.

**In addition, since July 25<sup>th</sup> 2021, the**

**jurisprudence of the administrative court is considerably shifting.** Appeals for the suspension of arbitrary restrictions of liberty are more and more systematically rejected on the grounds that the victims do not establish that these measures cause them significant harm. For example, in recent months, the administrative court has rejected a request for suspending a house arrest decision, which seriously impairs freedom of movement. The latter considered that the house arrest did not cause irreparable harm, even though the applicants had established the impact of the measure on their right to work, health and family life. **These judiciary decisions raise serious concerns about the ability of the administrative courts to act as a safeguard against abuses of the executive, in a context where the entire judiciary is increasingly under the control of the executive.**

#### **E. A multifaceted migration crisis**

In terms of migration, the period was marked **by the mobilizations that followed the death of migrants off the coast of Zarzis;** but also by **the risk of deportation to Algeria of two activists** who had taken refuge in Tunisia and, above all, by **the xenophobic turn taken by the country and its institutions.** This hardening has led to numerous acts of violence against black people, especially by Tunisian citizens, mass arrests (sometimes arbitrary), evictions from their homes and dismissals. This shift has led to strong national and international condemnations and the departure of many sub-Saharan, **all against a backdrop of continuing mass departures** from the Tunisian coast and **growing closeness to the far-right government of Italy's Giorgia Meloni.**



## 1. Drama of Zarzis and mobilizations

**The period was first marked by a tragedy in Zarzis which led to strong mobilizations.** Indeed, on September 21<sup>st</sup> 2022, 15 people, including two women and a baby, embarked on Zarzis. With no news from them, the families alerted the Tunisian, Italian and Maltese authorities and the civilian search and rescue boats two days later <sup>296</sup>. Faced with the passivity of the national authorities, the Association of Fishermen undertook four autonomous search operations at sea. The shipwreck was confirmed on October 5<sup>th</sup> when the body of a woman was found on the beaches of Djerba and identified by her family<sup>297</sup>. **On October 13<sup>th</sup>, four other missing persons were found in the Jardin d'Afrique cemetery (the cemetery of the unknown dead at the borders): they had been buried without the competent authorities have carried out a DNA analysis,** a procedure that is necessary for all unidentified deceased buried in this cemetery.

This episode highlighted the opacity and negligence of the municipality, the hospitals, the cemetery and the National Maritime Guard regarding the handling of the recovered bodies at sea. **To date, only 7 of the 17 bodies have been recovered from the shipwreck on September 21<sup>st</sup>.**

Since the beginning of October, **several mobilizations have taken place in Zarzis** by families, high school students and associations demanding the truth about the disappearance of the bodies of their fellow citizens and pointing the finger at the practice in force for decades (not only in Tunisia) of **burying bodies found at sea without DNA testing.** At dawn on Friday November 18<sup>th</sup> 2022

and on the eve of the Francophonie Summit, a large security force, stationed at the intersections between Zarzis and Djerba, repressed the peaceful demonstration organised by the inhabitants of Zarzis<sup>298</sup>. The families continue to demand that all those involved in the case be prosecuted<sup>299</sup>, considering that the dismissal of the security officials involved is a positive but insufficient signal.

**The authorities, for a long time unresponsive to the demands** of the people of Zarzis (the demonstration of November 18<sup>th</sup> was a reaction to the absence of any dialogue with the state and the last-minute cancellation of the visit of the Minister of the Interior), **favored the conspiracy theory.** On December 28<sup>th</sup> 2022, in a long diatribe against his opponents and in the presence of military and security officials, President Saïed said that the "martyrs" of the Zarzis tragedy "were drowned" and that their bodies were buried without autopsy and then dug up in order to "exacerbate the situation" and that "one hundred million had been sent from France" implying that the opposition, with foreign support, was behind this tragedy<sup>300</sup>.

The tragedy that cost the lives of these 17 people is not an isolated case: **the number of victims and missing persons on the Tunisian coast from January to October 2022 is 544.** For many organizations, **these shipwrecks are "consciously provoked"** off the Tunisian coast: "While the European Union<sup>301</sup> keeps giving more means to Tunisia to guard its coasts and try to avoid these tragedies, **there is more and more evidence that the Tunisian coastguards are directly involved in dangerous manoeuvres that have cost the lives of many migrants**"<sup>302</sup>. In October 2022, for example, a boat was violently rammed by the Tunisian National Guard, according to survivors,

resulting in the drowning of three children<sup>303</sup>.

## **2.Scandal of drugged Tunisian migrants in Italy and Tunisia's silence**

In January 2023, the fifth Italian channel revealed in a report the inhuman detention conditions of Tunisian migrants in southern Italy<sup>304</sup>. The documentary shows extremely shocking images of individuals locked up in cages, with no common spaces, with sanitary facilities without doors, and above all reveals the use of powerful sedatives to facilitate the expulsion of migrants who are forced to ingest these products. Wissem Abdellatif <sup>305</sup>, who died in a detention centre in 2021<sup>306</sup>, as well as many other migrants (notably Moroccans), are said to have passed away as a result of this practice. **No public reaction on the part of the Tunisian state has been noted to date following these revelations.**

## **3.Xenophobic and racist turn of the regime and outbreak of violence**

At a National Defence Council meeting held on February 21<sup>st</sup> 2023, **President Saïed made a speech with extremely shocking remarks** about the arrival of "hordes of illegal migrants" whose presence in Tunisia would be a source of "violence, crime and intolerable acts", adding that this immigration was part of a "criminal enterprise hatched at the dawn of this century to change the demographic composition of Tunisia" in order to transform it into an "African-only" country and to blur its "Arab-Muslim" character <sup>307</sup>. The President's speech in fact takes up the theory of the "great replacement" - promoted by part of the European far right - but which above all permeates the "report" of the Tunisian Nationalist Party that was transmitted to the President of the Republic <sup>308</sup>.

These statements, which caused an unprecedented uproar, were made a few days after the publication of a **communiqué signed by 25 NGOs, which reported waves of mass arrests of migrants (more than 300 migrants were counted)** and denounced the inaction of the state in the face of "the rise of hateful and racist speeches on social networks and in certain media, specifically targeting migrants from sub-Saharan Africa"<sup>309</sup>. The state's response was worse than what organizations (including members of the ASL alliance) denounced and feared, as the Tunisian Nationalist Party has recently gained an audience on the Internet, conducting hate campaigns<sup>310</sup> and calling for the expulsion of sub-Saharan migrants via an online petition<sup>311</sup>. Tunisia seems to be tightening its grip on the migration issue, with a perceptible rise in racism, controls and arbitrary arrests identified over the last few months<sup>312</sup>. In December, **the Tunisian authorities expressed their intention to expel 25 migrants who arrived in 2011** and had been refused asylum (from Egypt, Sudan, Niger and Nigeria). The latter have been accommodated for more than five years in a youth centre in La Marsa (a northern suburb of Tunis) after the definitive closure of the Choucha camp in southern Tunisia, opened by the UN High Commissioner for Refugees (UNHCR) in 2011<sup>313</sup>.

President Saïed comments triggered **a wave of hatred, aggression and violence against many sub-Saharan migrants - regardless of their status - and black Tunisians<sup>314</sup>, as well as waves of evictions from their homes and dismissals from their jobs. At least 840<sup>315</sup> victims were counted and an increase in cases of arbitrary detention at the Ouardia centre was also noted<sup>316</sup>.** Several sub-Saharan countries such as Mali, Guinea and Côte d'Ivoire have decided to repatriate

their citizens<sup>317</sup>. **The African Union has strongly rejected Saïed 's "shocking statements"**, calling on its member states to "refrain from any racist hate speech that could harm people"<sup>318</sup>.

**Nabil Ammar**, the newly appointed Minister of Foreign Affairs, declared, three days after the President's speech, that these were "**baseless accusations**", that Tunisia was above all fighting against "illegal migration [which] poses problems in all countries", adding that "the admission that there is a problem is by no means a hate speech"<sup>319</sup>, and that "there is no question of excuses"<sup>320</sup>. However, **the distinction between legal and illegal migrants is complex** in Tunisia, as indicated by a researcher interviewed by the independent media Inkyfada: "The Tunisian state has never put in place the legal, technical and administrative conditions to provide residence permits to people from sub-Saharan African countries. [...] **We are not dealing with people who are in an irregular situation, we are dealing with a state that is irregularising**"<sup>321</sup>.

Faced with the reactions in the country and abroad, and the first consequences in particular for private Tunisian companies (boycott campaigns, blocking of goods in certain African ports, etc.), **the Presidency and the Minister of Foreign Affairs tried to redress the situation** - while rejecting accusations of racism - in a communiqué of March 5<sup>th</sup> 2023 containing a long series of measures aimed at reassuring. These measures concern in particular the obtaining of residence permits, the duration of stay, the organization of departures for those who want to leave Tunisia, the exoneration of penalties for delay (which could go up to 3000 TND), psychological and health support as well as the setting up of a hotline to denounce abuses<sup>322</sup>.

**Despite this attempt at appeasement,**

**the attacks<sup>323</sup> continued and racism seemed to have become commonplace and uninhibited<sup>324</sup>**, with the thesis of the "great replacement" relayed by Saïed gaining an audience. A camp with dozens of migrants has been set up in the vicinity of the UNHCR and the IOM, some of whom are demanding repatriation and international protection following their loss of work and home. The daily demonstrations are taking place under high tension and police surveillance. On April 4<sup>th</sup>, the United Nations Committee on the Elimination of Racial Discrimination (CERD) issued **a solemn warning to Tunisia to stop "any speech that contributes to racially motivated hatred and racial discrimination** against migrants from sub-Saharan African countries"<sup>325</sup>.

#### **4. Tunisia continues to be a transit and departure country**

**Departures from Tunisia continue to remain very high, in the context of a continuous decay of socio-economic conditions. As of October 26<sup>th</sup> 2022, 29 129 migrants were intercepted by the Tunisian coastguard during the year<sup>326</sup>**. Faced with these numerous departures, including via the Balkan route, the European Union put pressure on Serbia (the only European country that previously granted entry to Tunisians without a visa) to introduce an entry visa, threatening to lift privileges Serbia of access to the Schengen area and to interrupt EU<sup>327</sup> accession negotiations. Since November 20<sup>th</sup>, a visa is henceforth required.

**Italy remains the first destination for Tunisians.** As of the 31<sup>st</sup> of December 2022, 18<sup>th</sup> 148 Tunisians have reached the country, out of a total of 10 5140 migrants, i.e., 17% of arrivals (second most represented nationality)<sup>328</sup>. Between January and August 2022, 1 789 Tunisians were detained in the Repatriation Permanence Centres

(CPR)<sup>329</sup> out of a total of 3 699 migrants, i.e., 48% of the total and the first nationality represented. Over the same period, of the 1480 people forcibly deported from Italy, 1222 (or 82%, and the first nationality) were Tunisians<sup>330</sup>.

In a meeting with President Saïed in mid-January, Italian Minister of Foreign Affairs Antonio Tajani and Minister of the Interior Matteo Piantedosi assured that Italy was ready to grant more visas to Tunisians to work in industry and agriculture in exchange for more efforts on the Tunisian side to curb departures from its shores<sup>331</sup>. **Despite President Saïed 's remarks and the massive violence wave against migrants that followed, Italy has publicly displayed its support for Tunisia<sup>332</sup> and continues to advocate for financial support for Tunisia, including with the IMF and the United Arab Emirates<sup>333,334</sup>.**

#### **5. Risks of deportation of human rights activists to Algeria**

In the context of a rapprochement with neighboring Algeria (see III, B), **civil society has expressed its deep concern about the risk of expulsion of an Algerian asylum seeker** who has been in Tunisia since August 2022, Zakaria Hannache. The latter is a human rights defender prosecuted in Algeria on charges of "apology for terrorism" and "endangering national unity". He is facing 35 years in prison for having, according to the signatories of the statement, "exercised his freedom of expression through his work, for publishing information and documenting the arrests of prisoners of conscience"<sup>335</sup>. The 55 signatories also recall that "as an asylum seeker, **Mr Hannache is protected by the 1951 Geneva Convention, its 1967 Protocol and the 1984 Convention against Torture, ratified by Tunisia,** which require the authorities to protect him and not to turn him back under

any conditions, particularly in view of the risk of arbitrary imprisonment and ill-treatment to which he is exposed to in Algeria". They recall in this sense that "the Tunisian authorities must not under any circumstances replicate **the dangerous precedent of the abduction and expulsion of the Algerian refugee Slimane Bouhafs** on August 25<sup>th</sup> 2021, without any investigation having been opened to date in Tunisia<sup>336</sup>", despite the announcements made by President Saïed <sup>337</sup>.

**A similar scenario took place in the deportation case to Algeria of the Franco-Algerian activist and journalist Amira Bouraoui.** She was arrested in Tunisia on February 3<sup>rd</sup> 2023 and placed in police custody as she sought to board a plane to France after having entered Tunisia clandestinely because she was subject to a travel ban in Algeria. On February 6<sup>th</sup>, the Tunis cantonal judge ordered her release pending her trial scheduled for February 23<sup>rd</sup> but when she left the court, she was "kidnapped" by plainclothes police officers and taken to the General Directorate of Borders and Foreigners with the objective of expelling her. The French authorities allegedly intervened with the Presidency, and President Saïed reportedly authorized her departure for France. She remained under the protection of the French consulate in Tunis before managing to take a flight to France. Algeria condemned a "clandestine and illegal exfiltration" and recalled its ambassador to Paris on the 8<sup>th</sup> of February<sup>338</sup>.



### III. RÉACTIONS IN TUNISIA AND ABROAD

#### A. Reactions in Tunisia

As outlined above and in the previous bulletin, the constitutional referendum of July 2022 was the first real electoral test of the so-called 25 July process. This test ended in failure because of the low turnout; it further stiffened the position of the opposition vis-à-vis Kaïs Saïed (and vice versa) but also proved "the inability of the opposition to organize and unite<sup>339</sup>". **This triptych - difficulty for the President to mobilize his electorate, the polarization of the opposition vs. Kaïs Saïed and the inability of the opposition to unite - continues to define the Tunisian political scene**; the tendencies that characterize it have even intensified in the light of and after the December-January legislative elections.

#### 1. Opposition forces to President Saïed

Despite the fragmented nature of the opposition, the oppositions across the political spectrum agree on one point: the rejection of the process initiated by President Saïed in its entirety, considering it undemocratic and dangerous for the country.

#### ■ The National Salvation Front :

It is an extension of the Alliance "Citizens against the coup d'Etat"; the Ennahdha movement, the Dignity Coalition and some members of the Qalb Tounes party, then expanded with the integration of the Hope Party. It is led by the political activist **Ahmed Nejib Chebbi**.

This movement, that is considered one of the most important, is calling for a boycott of the referendum and

the legislative elections and a return to constitutional legitimacy before the triggering of Article 80. Their proposal is to initiate a national dialogue, to be followed by presidential and legislative elections.

For the Front, **such an objective can only be reached through the union of the oppositions in favor of the «departure» and the overthrow of the Saïed's political system**. "Citizens against the Coup d'Etat" that has the largest number of political detainees (see section on arrests, II, B), has not stopped demanding their release, notably through the voice of Ahmed Nejib Chebbi, president of the front.

The National Salvation Front has been very active in the streets by organizing several demonstrations during the past period; the number of demonstrators present, notably on January 14<sup>th</sup> and March 5<sup>th</sup> (unauthorized), indicates a growing mobilization capacity for.

#### ■ National campaign against the referendum

**Composed of social democratic and leftist parties (Attayar, Ettakatol, Al Joumhouri, the Workers' Party and Al-Qotb), the positioning of this initiative differs from that of the Front because it also opposes the Ennahdha movement to whom it attributes the responsibility for the failure of the last ten years and therefore the responsibility in the return of authoritarianism**. It thus categorically refuses the return "to the system of before 25 July" but also proposes to organize a national dialogue and early elections<sup>340</sup>.

**This refusal of any rapprochement with the Front dominated by Ennahdha seems to have created divergences within the national**

**campaign against the referendum as well as within the parties that compose it.**

Following the legislative elections, the coalition held the Presidency legally and politically responsible for what it considered to be a **"waste of time and public money", considering that the new parliament is a sham parliament that lacks legitimacy**, which has been stripped of its powers, stating in the title of its statement that "the people abandoned Saïed", referring to the historic abstention during the election. **This statement**, dated late January, is **the last signed by the Al Joumhourî Party** led by Issam Chebbi, who has since left the national campaign against the referendum and is now in prison. Within the Ettayar party, Mohamed Hamdi, Majdi Karbai, Mohamed Larbi Jelassi and Ghazi Chouachi, former secretary general of the party, now in prison, left the party at the end of December 2022<sup>341</sup>.

Despite the absence of statements from the resigning members and the Ettayar leaders, the reason behind the resignation (refusal to ally with Ennahdha) leaves little room for doubt. On January 7<sup>th</sup> 2023, Nabil Hajji was elected secretary general of the party while waiting for the organization of the party congress.

### ■ **Parti Destourien Libre (PDL)**

The PDL called for the cancellation of the referendum due to the lack of any legal basis for it to be held. The party threatened to prosecute the representative of the ISIE, demanding him to stop the referendum process and not publish the text submitted to the referendum in the JORT. Abir Moussi, the president of the party, also called on all parties to prevent what she referred to as a "catastrophe"<sup>342</sup>.

**The PDL is using two ways to try to counter President Saïed: the penal path and the protest path.** Legally, Abir Moussi filed an appeal for "excess of power" against the electoral decree-law n°55 before the administrative court<sup>343</sup>. For Moussi, the electoral process is a "crime of denial of justice" while indicating that she intends to take the matter to international justice<sup>344</sup> during a press conference organized on September 21<sup>st</sup> 2022. On the protest side, the party held a series of demonstrations to oppose President Saïed's project: that of the 15<sup>th</sup> of October 2022, and in January 14<sup>th</sup> 2023 (banned in Carthage and then moved to Kheireddine Pacha) and in the 23<sup>rd</sup> of January in front of the HCDH.

### ■ **Civil society initiative: a "new Quartet"?**

Faced with the political deadlock that the failure of the first round of legislative elections suggests, and while the above-mentioned oppositions have not managed to propose a concrete alternative, three member organizations of the 2015 Nobel Peace Quartet - **ONAT, UGTT and LTDH** - organized a meeting in order **to launch a joint initiative**<sup>345</sup>.

The statements of the stakeholders of this initiative have underlined that the initiative aims at elaborating a program of economic, social and political reforms. On January 21<sup>st</sup> 2023, the tripartite initiative became a "new quartet", this time without UTICA **but with the integration of FTDES**<sup>346</sup>. Several scenarios could emerge from this joint initiative, while the Secretary General of the UGTT kept insisting that "the objective is to steer clear of political tensions in order to lead the country towards safer shores"<sup>347</sup>.

Few details have so far been publicly shared about the initiative, except that **three sub-committees (on political,**

**economic, and social reforms) will formulate a comprehensive program presenting solutions to the crisis and that it will be submitted to the President of the Republic.** The next steps remain however unclear: Will the program be presented to the President of the Republic? What if he ignores it? What would be the role of political parties in this initiative and in the coming roadmap? What about the rest of civil society Will the 2022 Constitution and the institutions that flow from it be recognized or will the quartet ask for a return to the 2014 Constitution? At the same time, the President of the Republic has on more than one occasion refused any idea of dialogue and has even directly attacked the members of the initiative, especially the UGTT.

**President Saïed indeed declared *persona non grata* and expelled Esther Lynch, General Secretary of the European Trade Union Confederation (CES),** who took part in a demonstration in the city of Sfax in support of the UGTT<sup>348</sup>. Similarly, **Marco Peraz Molina, General Secretary for Africa and Asia of the Spanish trade union CEC UGT SPAIN, was prevented from entering Tunisia** and was expelled on arrival at the airport<sup>349</sup>. Members of the International Trade Union Confederation, who were coming to support the UGTT's national march planned for March 4<sup>th</sup>, were also denied entry. These deportations were described as **hostile**<sup>350</sup> to the UGTT by its General Secretary Nouredine Taboubi, who considered the decisions taken to be unjustified and an attack on trade union work<sup>351</sup>. Tensions between the president and the UGTT seem however to have diminished since then.

## ■ **Soumoud Collective**

**Considered one of the main supporters** of the process initiated by the President of the Republic on the

25<sup>th</sup> July 2021, the Soumoud Collective radically changed their position during the referendum of July 2022. The turnaround by Dean Sadok Belaïd and Professor Amine Mahfoudh, who were key figures in the collective and spearheads of the constitutional reform process (and their media faces), illustrates the violent fracture between the President of the Republic and the collective.

Although this coalition called for a referendum on the Constitution and a "better distribution of powers" via a presidential<sup>352</sup> regime, and although the members of the initiative were the most fervent supporters of the 25 July project, the collective made a radical shift before the referendum. This was essentially due to the fact that the Constitution submitted to referendum by the President was very different from the one imagined by the Soumoud Collective as well as from the one prepared by the Instance of Dialogue chaired by Dean Belaïd. The coalition first called for a **"no" vote in the referendum**<sup>353</sup>, then called for a **boycott of the legislative elections**<sup>354</sup>, explaining in a press release its **definitive renunciation of any form of support for the process launched by President Saïed**, considering that his "unilateral" approach aimed at implementing his political project by means of a "parliament submissive and obedient the executive authority<sup>355</sup>".

## **2. Development of the positioning of supporters of 25 July 2021**

The support for President Saïed's decisions ranges from absolute support, such as that of the "Echaab Movement" and "Tunisia Forward", to support that can be qualified as critical or conditional. Although these parties were excluded from the process of drafting the Constitution, **they can be considered allies of the President's**

power grab, even if the relations between the President and his allies remain unclear and continue to be marked by a certain distance<sup>356</sup>.

### ■ The People's Movement (Echaab)

The national council of this party decided **unanimously to participate in the referendum and to vote "Yes"**<sup>357</sup>. For the legislative elections of December 17<sup>th</sup> 2022, **the party presented candidates in many constituencies**, believing that the path of 25 of July was the only way to protect the institutions, the sovereignty of the country, to reform the socio-economic conditions and to fight corruption<sup>358</sup>. When the ISIE announced the (low) participation rate at the end of the first round, the movement's position changed, **expressing "its deep understanding of the message of the people" who, by their non-participation in the ballot box, showed their reluctance to participate in a political process that has not yet met their expectations and concerns**<sup>359</sup>.

The movement thus called on the **President of the Republic to draw conclusions from the popular reluctance**, not only regarding the elections, but to the entire political process. It also held the current government responsible for the failures in the management of issues related to the daily lives of Tunisians. Finally, the movement underlined the confusion in the organization of the electoral process, due to the poor performance of the ISIE<sup>360</sup>. In view of these criticisms and the sanction of the ballot box, the movement called on President Saïed to **"hold early presidential elections"**<sup>361</sup>.

### ■ The "May the people triumph" initiative

The initiative was launched on October, 9<sup>th</sup> 2022 by a group of **Kaïs Saïed's most fervent supporters**, including Ridha Mekki (known as Ridha Lénine), a fellow campaigner and *the eminence grise* behind the President's campaign, the former president of the Bar association, Ibrahim Bouderbala, journalists and members of parties such as the People's Current (Ettayar Chaabi). The initiative highlights that it aims to "embody the rights of young people and women, social and economic equality and to resist the causes of injustice, deprivation, violence, poverty, unemployment and school dropout". In their initial statement<sup>362</sup>, members consider themselves to be part of a **"national, popular, activist, horizontal framework, open to all Tunisian people and to all diverse forces that deeply believe in the 17 December-25 July route and completely boycott the pre-2011 and pre-2021 system"**. They aim "to achieve profound political, social and economic changes, and to continue building the new Republic and to support, unify and bring together all the supporters and activists of this sovereign national line".

Although pro-25 of July process, the statements of some members such as Youssef Tarchoun tend towards a more democratic approach in favor of rights and freedoms: the initiative, which has become a parliamentary bloc, **"will work to review the issue of the balance of power through a proposal for amending the Constitution"**<sup>363</sup>, adding that "some laws and legislations must be revised so that they do not become excuses for infringing on freedoms.

### B. Reactions abroad

Tunisia's foreign relations and the position of foreign counterparts vis-à-vis the country's developments have probably never been so present in the



national public debate nor a source of such intense internal polarization.

The past period has been marked by **important multilateral events** (in Tunisia, TICAD and the Francophonie Summit; abroad, Tunisia's Universal Periodic Review, Davos, the Arab League Summit, and the US-Africa Leaders' Summit). In terms of reactions and foreign relations, **the European Union and the United States continued to express their concerns (not always in the same way and sometimes in a timorous manner)** about developments in Tunisia (referendum, legislative elections, wave of arrests of public figures and violence against migrants). At the same time, **Kaïs Saïed continues to look for other support on the Algerian and Italian sides and in the East, Libya, Saudi Arabia, Qatar and China.** The wave of arrests in February and the speech by the President of the Republic regarding sub-Saharan Africans have also had significant consequences in terms of diplomatic relations; support from some (Italy) and distance from others (African Union, World Bank, etc.).

### ■ **US reactions after the referendum and to the electoral law**

**Reacting to the referendum results, Ned Price, spokesperson for the US State Department,** told the press on July 27<sup>th</sup> 2022: "We note the outcome that has been reported by the Independent High Authority for Elections (ISIE) and civil society election observers. The referendum has been marked by low turnout. [...]we note the widespread concerns among many Tunisians regarding the lack of an inclusive and transparent process and limited scope for genuine public debate during the drafting of the new constitution. We also note concerns that the new constitution includes weakened checks

and balances that could compromise the protection of human rights and fundamental freedoms<sup>364</sup>". A few days earlier, **members of Congress had called on Secretary of State Antony Blinken, calling on the United States to use "all the tools at its disposal" to prevent the continuation of "democratic collapse",** underlining in this sense the relative ambiguity<sup>365</sup> of the American authorities on the issue since 25 of July 2021<sup>366</sup>.

**Indeed, the American executive (especially the embassy in Tunis) made diplomatic moves that remained misunderstood by the opposition and civil society,** such as the celebration of the rescue of a sea turtle two days before the referendum<sup>367</sup> or more recently the statements of the new ambassador Joey Hood on "the professionalism of the security units in the application of the law while respecting rights and freedoms, as well as their professionalism in the management of rallies", in the midst of a wave of arrests against dissidents<sup>368</sup>. The House Democracy Partnership, a bipartisan committee of the U.S. House of Representatives, called for "a change in U.S. government statements to openly emphasize President Saïed's autocratic tactics"<sup>369</sup>.

Two days after Ned Price's statements, **Antony Blinken takes a firmer stance.** In a press release, he states that voter turnout was low and assured that he "shares" (not "notes") concerns about the democratic implications of the new constitutional text; recalling that "**Tunisia has experienced an alarming erosion of democratic norms** over the past year and reversed many of the Tunisian people's hard-won gains since 2011" and that "**the U.S.-Tunisian partnership is strengthened when there is a shared commitment to democracy and human rights**"<sup>370</sup>". These comments were echoed by

the newly appointed US ambassador to Tunisia during a hearing before the US Senate<sup>371</sup>. On April, 14<sup>th</sup> the State Department cited the concerns expressed by the Secretary of State on the human rights situation in its appalling annual report for Tunisia<sup>372</sup>.

**Blinken's statement caused an uproar in Tunisia, both from civil society and the authorities.** 13 NGOs, including LTDH, SNJT, FTDES and ATFD denounced "interference in the country's internal affairs" and a "violation of its sovereignty", adding that the statement constituted an "attack on the right of Tunisians to oppose the dictatorial project of the President of the Republic<sup>373</sup>". The Chargé d'Affaires of the US Embassy in Tunisia, Natasha Franceschi, was summoned by the Ministry of Foreign Affairs<sup>374</sup> on July 29<sup>th</sup>. Minister Jerandi expressed his "great astonishment" at these statements which "in no way reflect the reality of the situation in Tunisia", denouncing an "inadmissible interference in national affairs". A position reiterated by President Saïed at the end of August during a meeting with a delegation of the American Congress<sup>375</sup> and then with Barbara Leaf, Under Secretary of State for Near Eastern Affairs<sup>376</sup>. The United States announced however in mid-October that it would allocate 60 million dollars to Tunisia via UNICEF to support vulnerable Tunisian families<sup>377</sup>.

At the end of October, **US senators again called on the Biden administration to "coordinate with [...] G7 partners to condition assistance on unambiguous democratic reform benchmarks"**, calling for a reduction in "economic and security assistance in response to Tunisia's democratic erosion while continuing to help Tunisians confront [...] economic shocks". Referring to the new electoral law promulgated by President Saïed in mid-September (see Part I) b), the senators further

stated that it represented a "further degradation of Tunisia's democratic norms", "drastically diminished the role of political parties", and created "unreasonable barriers for potential opposition candidates<sup>378</sup>".

### ■ Reactions of the European Union and France after the referendum and in the run-up to the legislative elections

**The EU assured in July to take "note of the preliminary results of the constitutional referendum", without elaborating further on the content of the text while referring to the upcoming elections:** "The preparations and arrangements for the parliamentary elections scheduled for December should therefore be seen as an opportunity to foster a genuine exchange within the framework of an inclusive national dialogue [...] The election of the parliament will be the cornerstone of the return to normal functioning of the country's institutions, with full respect for democratic principles<sup>379</sup>, in particular the separation of powers, consolidation of the rule of law, pluralism and respect for human rights and fundamental freedoms". Still on the European side, **in a phone conversation between President Saïed and French President Macron**, the latter indicated that "the holding of the referendum on the draft constitution on 25<sup>th</sup> of July was an important step in the ongoing political transition process" and "recalled the need, while respecting the sovereignty of Tunisia, to finalize the reform of the institutions underway within the framework of an inclusive dialogue" as well as the support of France to Tunisia in its discussions with the IMF<sup>380</sup>. On this last point, the members of the G7 continued to show some support to Tunisia: Prime Minister Najla Bouden met at the end of September with the ambassadors

of Germany, Great Britain, France and Japan who assured their support in the negotiations with the financial institution<sup>381</sup>.

**France seems to be more interested on security and migration issues in its relations with Tunisia.** Indeed, following a meeting between the two Ministers of the Interior, Taoufik Charfeddine and Gérard Darmanin, during which they "took stock of cooperation in migration and mobility and welcomed the good dynamics underway", Darmanin announced the **"normalization by France, with immediate effect, of the modalities for issuing visas in Tunisia"**<sup>382</sup>. France had in fact reduced by 30%, in September 2021, the number of visas issued to Tunisians in retaliation for the refusal to issue the consular passes necessary to implement the expulsions of irregular migrants in France.

Also at the European level, the Commissioner for Enlargement and Neighborhood, Oliver Várhelyi reiterated on October 19<sup>th</sup> on behalf of the EU High Representative Josep Borell the support of the European Union to Tunisia in the run-up to the legislative elections while stressing that the EU **"has not hidden its apprehensions** regarding some of the measures taken in the past few months in Tunisia [...] and that the respect of democratic acquis, the rule of law, the separation of powers and the respect of fundamental rights and freedoms are paramount<sup>383</sup>". The Commissioner also stressed that the EU is aware of the economic difficulties that Tunisia has been suffering since the pandemic crisis and the war in Ukraine and **welcomed the agreement at the level of services**<sup>384</sup> **concluded between Tunisia and the IMF in mid-October**<sup>385</sup>. The EU is "ready to contribute to this programme and the overall stability of Tunisia, including through a rapid disbursement of the

next tranche of our budget support of €40 million and consideration of a new macro-financial assistance<sup>386</sup>". In mid-November, the EU announced that it would release 40 million in immediate grants, with a further 60 million with a further 60 million contingents on the implementation of reforms agreed with the IMF<sup>387</sup>.

On November 11<sup>th</sup>, **the European Commissioner for Justice, Didier Reynders, visited Tunisia** to meet with President Saïed and the Ministers of Foreign Affairs, Justice and Interior. In his declaration following the meeting with the President, the Commissioner stated that he stressed on "freedom of expression, freedom of the press, freedom of demonstration and other fundamental freedoms are essential values of democratic states and of the EU. It is the greatness of Tunisia to have been able to develop such a dynamic civil society and a resolutely free press" but expressed worries that **"the EU and the Member States are concerned about their viability"** and called for an inclusive process between "all social and economic actors<sup>388</sup>".

#### ■ EU and US reactions to the legislative elections

**Regarding parliamentary elections, and as previously elaborated, the European Parliament announced three days before prior to the polling that it would not observe the elections and would therefore not comment on the process or the results**<sup>389</sup>. The statement cited notably the recent order of the African Court on Human and Peoples' Rights (ACHPR) and the urgent opinion of the Venice Commission<sup>390</sup> issued in May 2022. **Russia has however observed the elections for the first time** in Tunisia<sup>391</sup> but expressed its astonishment at the low turnout<sup>392</sup>.

The day after the results of the first round, **the US Department of State** stated that the elections "represent an **essential initial step** toward restoring the country's democratic trajectory" but that "**the low voter turnout reinforces the need to further expand political participation over the coming months**"<sup>393</sup>. Criticized for the Secretary of State Antony Blinken's position, spokesman Ned Price clarified the next day that the US position was not that the elections "have the potential to put the country back on the democratic path" and that election alone "does not make a democracy"<sup>394</sup>. **France for its part announced that it "takes note of the preliminary results and the low level of participation"**, calling for a resumption of discussions "as inclusive as possible" between the IMF and the Tunisian authorities<sup>395</sup>.

After the second tour of elections, **the U.S. State Department seems to soften its stance**. Asked about the massive abstention in the elections, Vedant Patel, deputy spokesman, said in a press conference on February 1<sup>st</sup> **that the second round is "is another step in the important and essential process of restoring the country's democratic checks and balances"** while adding that "low voter turnout reflects the need for government to engage in a more inclusive process going forward to further expand political participation"<sup>396</sup>.

### ■ Reactions after the waves of arrests

**Following a series of arrest in February 2023** affecting around twenty politicians, judges, businessmen, radio directors and public figures critical of Kaïs Saïed<sup>397</sup>, **the EU indicated that it was "following the latest arrests attentively and with concern"**<sup>398</sup>. Germany also relayed the EU's concerns<sup>399</sup>, as did

the United Kingdom<sup>400</sup>. European parliamentarians, on the other hand, took a stronger stance<sup>401</sup>. On March 16<sup>th</sup> the European Parliament adopted, **with 496 votes in favour, 28 against and 13 abstentions, a severe resolution against Tunisia**, calling in particular for "the immediate release of Nouredine Boutar and all other persons arbitrarily detained, including journalists, judges, lawyers, political activists and trade unionists"<sup>402</sup>.

**The Office of the United Nations High Commissioner for Human Rights expressed "expressed his concern over the deepening crackdown against perceived political opponents and civil society in Tunisia"** while observing that "the General Prosecutor has increasingly initiated criminal proceedings against perceived opponents, charging them with "conspiracy against State security", while prosecution of civilians in military courts continues"<sup>403</sup>.

Across the Atlantic, **the State Department said in mid-February that the United States was concerned** "by the reported arrests of multiple political figures, business leaders, and journalists", adding in early March that they were "**alarmed by reports of criminal charges against individuals in Tunisia resulting from meetings or conversations with U.S. embassy staff**", citing an "**escalating pattern of arrests against perceived critics of the government**"<sup>404</sup>.

### ■ Reactions following the violence against sub-Saharan Saharans

As mentioned in the "Migration" section of this report, Kaïs Saïed's **statements towards sub-Saharan Saharans caused an international backlash**. In addition to repatriation campaigns, notably by Guinea, Mali and Côte d'Ivoire, **the**



**African Union strongly rejected "shocking statements", calling on its member states** to "refrain from racialized hate speech that could bring people to harm<sup>405</sup>" and decided to suspend until further notice the AU meeting on the fight against illicit financial transactions planned for mid-March<sup>406</sup> in Tunisia. Chad denounced a "startling speech", specifying that at this stage Chadian nationals "are spared the atrocities reported<sup>407</sup>".

Without explicitly mentioning Saïed's speech or the violence against black people in Tunisia, **the EU said it was "closely following with concern recent developments in Tunisia"** and that Tunisia would be discussed at the Foreign Affairs Council scheduled for March<sup>408</sup> 20<sup>th</sup>. The US said it was "**deeply concerned by President Saïed's remarks regarding migration from sub-Saharan Africa to Tunisia and reports of arbitrary arrests of migrants in recent weeks**", calling on the authorities to respect their obligations under international law and to coordinate with humanitarian organizations to facilitate the "safe, dignified, and voluntary" return of migrants wishing to return home<sup>409</sup>.

**The World Bank, a significant donor to the country, announced on March 6 that it was suspending its partnership agreement with Tunisia "until further notice"**, effectively freezing all new financing (projects already financed remain unaffected and ongoing projects are maintained<sup>410</sup>); a decision that risks further complicating the country's precarious financial situation and constituting a new setback in the signing of an agreement with the IMF (see "Economic and social situation" section above)<sup>411</sup>. The IMF has stated that it is "concerned about recent developments in Tunisia" but that it "remains engaged" with the country<sup>412</sup>.

Finally, as we mentioned in the section on migration, **Italy publicly voiced its support for Tunisia at multiple occasions**. During a telephone conversation between the foreign ministers of the two countries, Antonio Tajani stressed that "**the Italian government is in the front line to support Tunisia in its border control activities**<sup>413</sup>". The subsequent exchange between heads of government Giorgia Meloni and Najla Bouden<sup>414</sup> reaffirmed **Italy's commitment to continue supporting Tunisia in its dealings with potential donors** (notably the United Arab Emirates<sup>415</sup> and the IMF<sup>416</sup>). For some observers, "**the suspicion that the recent wave of repression is directly linked to Italian influence** is due to the visit to Tunisia, on January 18<sup>th</sup>, of the Vice-President of the Council, Foreign Minister Antonio Tajani and Interior Minister Matteo Piantedosi" where "first topics on the meeting agenda were the stability of Tunisia and the irregular migration movements". **Italy's support in finding new sources of funding could prove crucial** in a context of default risk.

## ■ TICAD and the diplomatic incident with Morocco

**Many important multilateral events** involving Tunisia took place during the period covered by this bulletin. Tunisia hosted the TICAD (*Tokyo International Conference on African Development*) in Tunis at the end of August. On this occasion, Japan pledged to disburse \$30 billion in development aid to Africa, including \$100 million to help Tunisia respond to the post-Covid-19 crisis. The event was, however, marked by **a major incident with Morocco** as **President Saïed reserved a head-of-state welcome for the leader of the Polisario Front, Brahim Ghali**. This welcome was considered an affront by the Moroccan authorities, who

decided to recall their ambassador to Tunisia for consultation, describing President Saïed's gesture<sup>417</sup> as "hostile" and an "unnecessary provocation". The Polisario Front is calling for the independence of Western Sahara, an area over which Morocco claims sovereignty, and whose struggle for independence is supported by Algeria. The Tunisian Foreign Minister, Othman Jerandi, expressed his surprise in response, pointing out that "Tunisia has maintained a position of total neutrality on Western Sahara, in line with international law" and that the invitation to Brahim Ghali came from the African Union<sup>418</sup>. The Tunisian ambassador to Morocco was also recalled for consultations.

The Polisario leader's invitation stirred numerous reactions in Tunisia, with some observers seeing it as a diplomatic *faux pas*<sup>419</sup> and a break with the neutrality of the Bourguiba era. **For others, the gesture is consistent with a rapprochement with Algiers<sup>420</sup>. The Algiers-Cairo axis seems to have become a diplomatic priority for Tunisia, which is multiplying signs of friendship towards both capitals.** At a meeting in early September between Egyptian Foreign Minister Sameh Shoukry and his Tunisian counterpart Othman Jerandi, the former affirmed his "support for Tunisia in its journey towards stability, development and the realization of the aspirations of the brotherly Tunisian people<sup>421</sup>".

### ■ **Strengthened ties with Arab states**

President Saïed continues to nurture friendships with **other Arab states**. At the end of July, President Saïed sent King Salman of Saudi Arabia a written message calling for the strengthening of bilateral relations (a gesture relayed by Saudi diplomacy, but not by official Tunisian sources)<sup>422</sup>. In mid-October,

through its Ministry of Foreign Affairs, Tunisia defended the position of the Kingdom and other member countries of the Organization of the Petroleum Exporting Countries (OPEC) to reduce crude oil<sup>423</sup> production, even though this reduction implies a rise in prices in Tunisia. At the end of February, Tunisia also met twice with Qatari officials in an attempt to relaunch the emirate's investment projects in the country<sup>424</sup>.

**Ties with Libya also continue to be strengthened during the last period of time, although somewhat troubled by Kaïs Saïed's statements in March 2023.** At the end of November, Prime Minister Abdel Hamid Dbeibah met President Saïed and Prime Minister Bouden and promised to repay \$250 million owed to Tunisia before the end of the year<sup>425</sup>. In January, Libya announced the delivery of food aid to Tunisia<sup>426</sup>. In mid-March, however, President Saïed triggered the anger of Libyan authorities in Tripoli by expressing his bitterness about the Bouri oil field and challenging a 1982 ruling by the International Court of Justice (ICJ) in the Tunisian-Libyan dispute over the continental shelf, which found in favor of Libya. Libya's reaction was immediate, considering it "unacceptable to touch Libya's wealth, which is the property of the Libyan people<sup>427</sup>".

At the **Arab League Summit** held in Algiers in early November, without around a third of the heads of state<sup>428</sup> (King Mohammed VI of Morocco, the Gulf states, the King of Jordan, Syrian President Bashar El-Assad - Syria has been suspended from the League since 2011), President Saïed (chairman of the previous session held in 2019) stressed that the Summit would "bring the Arab brothers together", while praising "Algeria's efforts to unify the Arab ranks<sup>429</sup>". At the end of November, President Saïed welcomed Algerian Foreign Minister Ramtane Lamamra<sup>430</sup>

to Tunis, while Najla Bouden visited Algiers and publicly thanked Algeria for its support "during this difficult period<sup>431</sup>".

Against the backdrop of the postponement of the agreement with the IMF, major financial difficulties and an urgent need for liquidity, **Tunisia received further support from Algeria** at the end of December in the form of a \$100 million grant and was also granted a low-interest loan of \$200 million<sup>432</sup>. Despite the diplomatic imbroglio surrounding the Amira Bouraoui affair (see Migration section above), Presidents Tebboune and Saïed reiterated in mid-February their commitment to maintaining strong ties between the two countries<sup>433</sup>. On March 22<sup>nd</sup>, 2023, in an interview with Al Jazeera, the Algerian President even affirmed that he had no intention of abandoning Tunisia, which is facing "a plot" following the visit of Saharan President Brahim Ghali, thus pointing an accusing finger at Morocco and its allies<sup>434</sup>.

At the same time, **Tunisia continues its efforts to normalize relations with Syria**, eleven years after diplomatic ties were severed with Bashar El-Assad's regime. President Saïed has publicly affirmed his willingness to re-open a diplomatic representation in Damascus<sup>435</sup>, a process which began in mid-February<sup>436</sup>. The foreign ministers of Tunisia and Syria also have also exchanged in early March<sup>437</sup>, reiterating their desire to re-establish normal diplomatic relations between the two countries. The Syrian Foreign Minister came to Tunisia for a three-day diplomatic visit, renewing a relationship severed since February 2012<sup>438</sup>.

### ■ **Decision of the African Court on Human and Peoples' Rights (ACHPR)**

As per international institutions, in addition **to the serious concerns expressed by the Special Rapporteurs** on the independence of judges and lawyers and on the rights to freedom of peaceful assembly and freedom of association, regarding the situation of magistrates in Tunisia<sup>439</sup>, **the ACHPR delivered a severe ruling for Tunisia at the end of September<sup>440</sup>**. Responding to a request from Tunisian lawyer Brahim Belghith, who accused the executive power of contravening several articles of the 1981 Banjul Charter (relating in particular to the self-determination of peoples and their right to participate in the affairs of the country<sup>441</sup>), the Court found a violation of articles 1 and 13 of the Charter. **The Court's order also called into question several presidential decrees issued in 2021**: in particular, those of August 26<sup>th</sup>, 29<sup>th</sup> and 24<sup>th</sup>, which put an end to parliamentary activities and lifted the immunity of MPs; the decree of September 22 (decree-law 117), which confirmed these measures and allowed the President to govern by decree; and the decree of October 11<sup>th</sup>, which appointed Najla Bouden as head of government.

**The decision orders Tunisia to repeal the aforementioned presidential decrees and "restore constitutional democracy within two years"**. Such a repeal (in particular of Presidential Decree no. 117) would effectively abrogate all the texts that emerged from this decree, including the Constitution and the electoral law. Furthermore, "the Court also reiterates that the failure to set up the Constitutional Court creates a significant legal vacuum and orders the respondent State **to set up the Constitutional Court as a judicial body to balance the institutions [...] and to remove all legal and political obstacles to this objective, within a period of two years<sup>442</sup>**". Finally, the Court ordered Tunisia to submit a report

within six months on "the implementation of the measures ordered", and every six months thereafter until "the Court considers that all its decisions have been fully implemented"<sup>443</sup>. **The fact remains that the ACHPR's decisions are not coercive**, and this order, which will most probably be ignored by the Tunisian authorities, has a symbolic dimension for the time being.

## ■ Universal Periodic Report (UPR)

The period covered by this newsletter also coincided with Tunisia's UPR at the United Nations, which took place<sup>444</sup> on November 8<sup>th</sup>. On this occasion, the United Nations<sup>445</sup>, the Tunisian State<sup>446</sup> and governmental organizations<sup>447</sup> were each able to submit their contributions to the review. Numerous contributions were made by civil society, including ASL<sup>448</sup>, in order to provide further information, **and in a context where several NGOs have denounced the Tunisian authorities' report, which in their view paints a "misleading picture of the State's poor human rights record"**<sup>449</sup>.

At this occasion, Head of Government Najla Bouden spoke, through an online intervention<sup>450</sup>, asserting that **"freedom of expression and the right to demonstrate are the cornerstone of the human rights system"**, and that "the outbursts recorded" were **"isolated cases"** which had been investigated. Regarding freedom of expression, Najla Bouden added that **"freedom of expression cannot be used to incite hatred or the dissemination of false information**, for example on the Internet<sup>451</sup>". At a meeting on November 11<sup>th</sup> with the Tunisian delegation in Geneva, the head of government **assured them that "there is no fear for human rights and freedoms in Tunisia"**, and that the country would accept all 185 recommendations

made at the end of the UPR, with the exception of the one from Israel<sup>452</sup>. *In the end*, 192 recommendations were accepted by Tunisia, while 37 are still under consideration<sup>453</sup>.

## ■ Djerba Francophonie Summit

**On November 19<sup>th</sup>, the Francophonie Summit kicked off in Djerba** after two consecutive postponements (one linked to the pandemic, the other to the uncertainty created by July 25<sup>th</sup>, 2021). Canadian Prime Minister Justin Trudeau had tried in advance to convince France (the largest contributor to the Francophonie, ahead of Canada) to postpone the summit once again, due to the political situation still deemed worrying<sup>454</sup>. Considered a success by the Tunisian authorities, the Summit was also an opportunity to secure new investments and loans. France, via the Agence Française de Développement (AFD), announced the signature of a new €200 million public policy loan to support "reforms to foster Tunisia's economic and social resilience"<sup>455</sup>.

During the event, **President Macron**, interviewed by TV5 Monde, declared that "it's not up to the French President to explain to the Tunisian President what he should do in his country". Asked about the political situation, he expressed the hope that "political change can go all the way **and that the December 17 elections will take place in a peaceful setting, that all political forces will be able to participate and that they will produce a result**", while hoping for "appeasement on the subject of political freedoms and the free expression of the media", assuring that "a great constitutionalist like him [Kaïs Saïed] will be vigilant". For some analysts, Paris's "restraint" can be explained by France's loss of influence in Africa, where "Tunisia is one of the last countries on the continent not to



have passed into Chinese or Russian hands<sup>456</sup>".

## ■ **China-Arab States and US-Africa Summit**

Other multilateral events also took place during the month of December 2022. On December 8<sup>th</sup>, President Saïed travelled to Saudi Arabia for the China-Arab States Summit <sup>457</sup>, a day after he meet with the outgoing Chinese ambassador to Tunisia, to whom he asked for more support<sup>458</sup>.

**During the Summit, President Saïed met Saudi Prince Mohammed Bin Salman<sup>459</sup>, Egyptian President Sissi<sup>460</sup> and Chinese President Xi Jinping<sup>461</sup>.** Chinese authorities stressed that **"China firmly supports Tunisia in its pursuit of a development path suited to its national conditions, opposes interference by outside forces in Tunisia's internal affairs,** and believes that Tunisia has the wisdom and ability to preserve stability and development at national level<sup>462</sup>".

President Saïed then **headed off to Washington for a four-day visit to the US-Africa Summit.** In a meeting with Secretary of State Blinken<sup>463</sup>, **President Saïed delivered a lengthy speech defending his record and decisions, recalling that Tunisia was on the brink of "civil war"** when Article 80 was triggered on July 25<sup>th</sup> , 2021. The Tunisian authorities also reported that President Saïed was able to "clarify the reality of the situation in Tunisia" and "refute the allegations and rumors spread by certain notorious parties with the aim of damaging Tunisia's image abroad<sup>464</sup>". **During a meeting with the *Washington Post* on the sidelines of the event, President Saïed reiterated** the argument, declaring that "There are so many enemies of democracy in Tunisia who want to do everything they can to torpedo the country's democratic and social life from within" and that the 2022 Constitution grants Tunisians

more rights and protections than the previous one. Following the meeting with US Secretary of State Blinken, the latter<sup>465</sup> reiterated that the bilateral relationship "is strongest when there is a shared commitment to democracy and human rights", and stressed "importance of free and fair December 17<sup>th</sup> parliamentary elections<sup>466</sup>".

## CONCLUSION

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This latest bulletin, which concludes a cycle of five publications, corroborates all the hypotheses raised by the publications of Alliance for Security and Liberties since July 25<sup>th</sup>, 2021. While observers of the Tunisian political scene were still debating how to describe President Saïed's "coup de force", **all the elements reported in this and previous bulletins confirm not only the excesses, but also the undeniable instrumentalization of the state of exception to unilaterally and authoritatively change the political regime in Tunisia.** The 49-place drop in the Reporters Without Borders press freedom index alone epitomizes the scale of the democratic retreat in (just) 600 days.

Bolstered by a new constitution approved by less than a third of the electorate in the summer of 2022, **the new regime puts an end to all checks and balances and separation of powers, while attacks on the rule of law and the rights and freedoms** acquired over the last decade have multiplied. Arbitrary dismissals of judges, press restrictions, arrests and prosecutions of opponents, shrinking freedom of expression and the right to a fair trial. **The state of exception, by its very nature transitory, has been transformed into a regime change and a return to the autocratic, authoritarianism** that characterized the pre-revolutionary period, with the novelty of state populism.

The picture is all the gloomier as **the economic and social crisis continues to worsen**, no one knows whether an agreement with the IMF will be reached despite the pleas of Giorgia Meloni's government, and the spectre of default is dangerously looming. The growing impoverishment and disillusionment of

the Tunisian population, combined with the increasing precariousness of sub-Saharan migrants, who are exposed to outright racism and state-sponsored *ir-regularization*, have led **to numerous departures from the Tunisian coast and numerous tragedies.** It is therefore difficult to foresee any positive prospects for the country, in the short term at least. It remains **to be seen how much room will be left for the opposition to resist the new regime** and whether one or more credible oppositions will emerge in the eyes of Tunisians. It also remains to be seen **whether civil society, the media and the workers' union will manage to preserve the space (civic, media and trade union) needed to document and denounce the excesses of a regime that wishes to stifle them.**

## ANNEX 1 – DECREE-LAW 54

Article 24 of this decree-law states that: **"Anyone who knowingly uses information and communication systems and networks to produce, spread, disseminate, send or write false news, data, rumors, false or falsified documents or documents falsely attributed to others, with the aim of infringing the rights of others or harming public safety or national defense, or spreading terror among the population, is liable to five years' imprisonment and a fine of fifty thousand dinars.** Any person who uses information systems to publish or disseminate false or falsified news or documents or information containing personal data, or attribution of unfounded data with the aim of defaming others, damaging their reputation, harming them financially or morally, inciting aggression against them or inciting hate speech, is liable to the same penalties as those incurred in the first paragraph. **The penalties provided for are doubled if the person targeted is a public official or similar".**

### ■ On the legal front:

**The crimes relating to information systems mentioned in the decree-law are formulated in a vague and arbitrary manner,** in contradiction with the principles of criminal law, which requires that the prohibited offence be defined, by the legislator, in a clear and exact manner. Noting that the text of the decree-law does not clearly establish the criteria to be used to determine whether false information<sup>467</sup> is involved. **It should be recalled that this decree-law was promulgated in the absence of a Constitutional Court able to rule on its constitutionality,** and of the provisional body for the control

of the constitutionality of draft laws<sup>468</sup>, thus escaping any control of constitutionality.

### ■ In terms of infringement of rights and freedoms:

**This decree introduces a repressive system of penalties by:**

- the introduction of prison sentences and additional penalties ranging from three months' imprisonment and a fine of ten thousand dinars, to ten years' imprisonment and a fine of one hundred thousand dinars (articles 16 to 24), without any precise and specific definition of the punishable acts
- the vague, ambiguous wording of the provisions allows for a broad interpretation of the penalties

**It therefore grants absolute discretionary power to the public authorities** responsible for investigating crimes and applying the requisite penalties, in particular the security and judicial apparatus, a tool that will make it all the easier to repress activists, bloggers and other civil and political activists, in violation of the principle of the legality of offenses and penalties<sup>469</sup>.

What's more, **certain sanctions and penalties**, particularly those relating to the dissemination of false information and rumors on social networks, are **excessive and disproportionate.** **Article 55 of the Constitution of 2022** stipulates that "No restriction may be placed on the rights and freedoms guaranteed by this Constitution except by virtue of a law and in order to meet the requirements of a democratic regime and to safeguard the rights of others or to meet the imperatives of public safety, national defense or public health. Such restrictions must not undermine the substance of the rights and freedoms

guaranteed by this Constitution, and must be justified by their objectives and proportionate to their justification. No revision may undermine the achievements in terms of human rights and freedoms guaranteed by this Constitution. Jurisdictional bodies ensure the protection of rights and freedoms against any infringement". **Decree-Law 54 does not respect the principle of proportionality in limiting rights and freedoms, which once again calls into question its constitutionality.**

■ **On the political front :**

At this stage, Decree-Law 54 remains a powerful tool of repression even though no judgments have yet been delivered based on its provisions - only prosecutions in the investigation phases, which, it should be remembered, are generally formulated by the Public Prosecutor's Office at the request of the Minister of Justice. **The aim of this text (at this stage at least) is indeed to dissuade, reflecting a desire for censorship to silence opposition voices and limit freedom of expression.**



## FOOTNOTES

- 1 Alliance pour la sécurité et les libertés
- 2 Extensively covered in the previous bulletin, pages 3 to 8 , bulletin-365-days-after-article-80
- 3 <https://www.e-istichara.tn/home>
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- 5 Tunisie : « Le projet présidentiel de nouvelle Constitution est dangereux »
- 6 See page 2, TUNISIE. L'ADOPTION DE LA NOUVELLE CONSTITUTION NE DOIT PAS ENTÉRINER L'ÉROSION DES DROITS HUMAINS
- 7 Page 18, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)017-f](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)017-f)
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- 19 See section I)d) " Judicial power " below.
- 20 Tunisie, Constitution de la Seconde République, 2014, Digithèque MJP
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- 28 Ibid.
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- 45 ISIE President rules out possible amendment of electoral decree-law
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- 68 Legislative election campaign: ISIE recalls ban on use of foreign media by candidates
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- 78 Change to voting system and absence of political money behind “modest” voter turnout in legislative elections (Bouaskar)
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- 87 Tunisie – Législatives 2022 : Le second tour, une occasion pour rectifier le tir
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- 93 "It is important to consider election results differently," says Saïed
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- 102 Décret portant composition du Conseil national des régions et des districts
- 103 Tunisie: les autorités annoncent la dissolution des conseils municipaux
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- 263 All cases of incitement to hatred, enmity, violence and discrimination against journalists, women and men, on the basis of an opinion or an article they have published, or simply because they are journalists.
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