



# Kaïs Saïed's National Monologue on a New Tunisian Constitution

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Aymen Bessalah

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## SNAPSHOT

### SUMMARY

- After grabbing all power on July 25, 2021, and ruling unilaterally ever since, Tunisian President Kaïs Saïed is poised to unveil his new constitution by June 30.
- Although Saïed claims that his vision responds to the “will of the people,” popular enthusiasm is difficult to measure, while elite consensus appears lacking.
- To give his project a facade of legitimacy, Saïed formed a “consultative commission” and announced a national referendum for this July 25.
- Both the commission, which convened just a few times during June, and the upcoming referendum are deeply flawed as inclusive democratic processes. Instead, Saïed created them to rubber-stamp changes that he has long sought, including a stronger presidency and weakened political parties.
- The commission was stacked with the president’s supporters. Critics, including opposition parties and the influential UGTT labor union, were excluded or refused to join, deeming it a charade. Indeed, Saïed set up the process so that he alone will determine the constitution’s final text.
- Meanwhile, there are concerns about whether the referendum will be free and fair.
- As a result, the new constitution may lack legitimacy, threatening the country’s long-term stability.

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### INTRODUCTION

For years, Tunisian President Kaïs Saïed has made no secret of his desire to overthrow the 2014 constitution to make way for his own esoteric vision for the country. After entering

office in 2019, then grabbing all power for himself last July 25 and ruling unilaterally ever since, Saïed finally is poised to unveil his constitution by June 30. Many observers expect the document to reject a separation of powers in favor of placing everything under

the president's authority. The new constitution will be put to voters in a national referendum on July 25, the first anniversary of his power grab.

Although Saïed asserts that his messianic vision to overhaul Tunisia's political structure and establish a "new republic" responds to the will of the people, popular enthusiasm is difficult to measure.<sup>1</sup> Facing a worsening economic crisis, ordinary Tunisians are focused on day-to-day survival, while much of the political class and many civic actors oppose his plan. To give his project a facade of legitimacy, and presumably in response to appeals from local civic and political actors as well as foreign donors for an "inclusive" national dialogue, Saïed announced the creation of a "National Consultative Commission for a New Republic" in May. The body convened briefly in June before its chairman delivered a draft constitution to Saïed on June 20.

There is currently much speculation among the Tunisian political class and media about what the draft—which Saïed has not made public—may include, and there are even more questions about what Saïed's final version will look like. But as crucial as the potential content of the new constitution is, it is necessary to first examine the farcical process that Saïed has created to legitimate it. As this Snapshot explains, the commission and the upcoming referendum are deeply flawed—indeed wholly insufficient—as inclusive democratic processes. There is little doubt that they have been set up to rubber-stamp the president's political project and the reforms he has long wanted to make rather than to reflect the wishes of society at large and the lessons learned since the 2014 constitution was passed.

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**THE CONSULTATIVE COMMISSION**

Presidential Decree 30, issued by Saïed on May 19, established the commission with a chairman to supervise its work; a legal advisory committee tasked with preparing the first draft of a constitution that "responds to the aspirations of the people"; an economic and social affairs committee charged with presenting reform proposals "in light of the Tunisian economic and social experience"; and a "national dialogue" committee assigned the role of "synthesizing" the two other committees' proposals "with the aim of establishing a new republic."<sup>2</sup> The decree required that the chairman then deliver a draft constitution to Saïed by June 20. A subsequent pair of decrees issued on May 25 specify that Saïed must release the final text of the proposed new constitution to the public by June 30 and officially invite voters to cast ballots in the July 25 referendum.<sup>3</sup>

1. Francesca Ebel, "Tunisian President Announces Referendum, Future Elections," Associated Press, December 13, 2021, <https://apnews.com/article/africa-elections-tunisia-referendums-aa885a8725a075565c8d834c3a19cb60>

2. "Décret-loi n° 2022-30 du 19 mai 2022, relatif à la création de l'Instance nationale consultative pour une nouvelle République» [Decree-law no. 2022-30 of 19 May 2022, related to the creation of the 'national consultative commission on a new Republic,'] <https://legislation-securite.tn/law/105267>; Décret Présidentiel n° 2022-506 du 25 mai 2022, relatif à la convocation des électeurs pour le référendum sur un projet d'une nouvelle Constitution de la République tunisienne le 25 juillet 2022 [Presidential Decree No. 2022-506 of May 25, 2022, relating to the convocation of voters for the referendum on a draft of a new Constitution of the Republic of Tunisia on July 25, 2022], <https://legislation-securite.tn/law/105266>

3. "Décret-loi n° 2022-32 du 25 mai 2022, portant dispositions dérogatoires pour le référendum du 25 juillet 2022 [Decree-law no. 2022-32 of 25 May 2022, laying down exceptional provisions for the referendum of 25 July 2022], <https://legislation-securite.tn/law/105265>



Sadok Belaïd (right), chairman of President Saïed's "Consultative Commission for a New Republic," presents a draft of the new constitution to Saïed at Carthage Palace, June 20, 2022. Source: Tunisian Presidency Facebook page

## SIMULACRUM OF A DIALOGUE

### *Confusing Structure, Rushed Process*

There are several reasons why the commission was nothing but a simulacrum of a genuine dialogue. For one thing, the complicated setup, with different groups assigned to discuss broad mandates and overlapping topics in an extremely compressed timeline, was designed to limit accountability and meaningful participation. Those invited to join the commission did not even begin meeting until June 4, giving them just over two weeks to both discuss a new constitution and hold a national dialogue before the June 20 deadline. In contrast, the 2014 constitution process involved more than two years of intensive discussion, debate, and ultimately difficult compromise among political actors, concurrent with widespread mobilization by civil society and activists, to finalize a consensus-based document.

### *Lack of Transparency*

For another thing, the process took place entirely behind closed doors. The commission never released a full official list of participants; the public was only able to glean some of their identities from media coverage. Furthermore, according to the text of Decree 30, "The results of the commission's work are published with the permission of the president."<sup>4</sup> This means that the first draft of the constitution will be seen by the Tunisian people only if Saïed chooses to release it, which seems unlikely.

### *Lack of Independence*

On top of this, the commission lacked independent powers, since crucial features of the new constitution have been foreordained by Saïed. As indicated by its very name, the commission was formed as a "consultative," not a decision-making, body. Several analysts and political actors have argued that Saïed set it

4. Decree-law no. 2022-30 of 19 May 2022, Chapter V, Art. 22.

up to provide him cover to enact the political project that he has promoted and defended for years.<sup>5</sup> Indeed, Decree 30 stipulates that the commission's recommendations must respect the results of Saïed's digital "national consultation" held earlier this year, an exercise in which Tunisians were invited to share online their preferences for political, economic, and social reforms—and in which an unrepresentative sample of some 7 percent of Tunisians even bothered to take part.<sup>6</sup> Nevertheless, Saïed later defined the electronic survey's "results" as granting a clear popular mandate for his plans, including a dominant presidency; replacing party lists with individual candidate lists for elections in order to sideline parties, which he has claimed are "doomed to disappear"; and allowing voters to recall individual MPs.<sup>7</sup> Thus, even before the commission met, Saïed used his own interpretation of the results of an online poll with minimal participation to predetermine crucial elements of the constitution and to set boundaries around the commission's work.

### *Non-Inclusive Participation*

Another serious flaw is that many key organizations and actors were excluded from the commission, while some invitees refused to participate in what they deemed a charade. Before issuing Decree 30, the president stated that only those who support "the July

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25, 2021 process"—his power grab—would be included.<sup>8</sup> Saïed also hand-picked as the chairman Sadok Belaïd, one of the legal scholars with whom he has met repeatedly since last July 25, and empowered Belaïd to invite any additional participants as he saw fit.<sup>9</sup>

In forming the legal committee, Saïed completely sidelined politicians, instead appointing only the deans of law faculties from

5. On analysts' and political actors' claims, see Hanen Jebli, "Tunisia's President to Establish 'New Republic' Amid Fear of New Dictatorship," *Al-Monitor*, May 13, 2022, <https://www.al-monitor.com/originals/2022/05/tunisia-president-establish-new-republic-amid-fear-new-dictatorship>; on Saïed's promotion of his political project, see Mohamed-Dhia Hammami, "Past as Prologue: Kais Saïed's Prior Statements Point To Upcoming Political Moves," *Project on Middle East Democracy*, August 10, 2021, <https://pomed.org/past-as-prologue-kais-saied-prior-statements-political-moves/>

6. "Tunisia: Mass anti-Saïed protests take place in capital Tunis," *Al Jazeera*, March 20, 2022, <https://www.aljazeera.com/news/2022/3/20/tunisia-mass-anti-saied-protests-take-place-in-capital-tunis>

7. On Saïed defining the results, see "Ra'is al-Jumhuriyya yaltaqa taqirir hawla nataa'ij al-Ishtihara al-wataniyya al-elaktroniyya" [The President of the Republic delivers the results of the National Electronic Consultation], *Tunisian Presidency Facebook*, March 31, 2022, <https://www.facebook.com/watch/?v=1045284813059864>; on his claim about political parties, see Kawthar Zantour, "Al-Shari'a al-Maghribi' tunashir hiwar Kais Saïed kaamilan [The 'Maghreb Street' publishes the full interview with Kais Saïed]," *Acchaari'a AlMaghrebi*, June 12, 2019, <https://bit.ly/acharaa>

8. "President Saïed Meets with Legal Expert Sadok Belaïd," *Tunis Afrique Presse*, April 5, 2022, <https://www.tap.info.tn/en/Portal-Politics/15160494-president-saied>

9. Frida Dahmani, "Tunisie: ce qu'il faut savoir sur Sadok Belaïd, président de la commission pour la nouvelle République [Tunisia: what you need to know about Sadok Belaïd, president of the commission for the new Republic]," *Jeune Afrique*, June 22, 2022, <https://www.jeuneafrique.com/1356238/politique/tunisie-ce-quil-faut-savoir-sur-sadok-belaïd-president-de-la-commission-pour-la-nouvelle-republique/>



Tunisian General Labor Union (UGTT) members protest in front of the Ministry of Industry and Small and Medium-Sized Enterprises, March 24, 2022. The influential UGTT refused to participate in Saïed's constitutional commission. Source: UGTT Facebook page

universities across the country. His decision was unsurprising given the level of antipathy toward the political class among society, most of all from Saïed himself, who has frequently verbally attacked his critics. Limiting the initial drafting process to such legal minds undoubtedly restricts the debates to purely legalistic hypotheticals at the expense of important political considerations. Yet some of the biggest shortcomings in Tunisia's transition over the past decade, such as the failure to implement the constitutionally mandated requirements of establishing a Constitutional Court and undertaking decentralization, were the result of politicians' choices, not constitutional deficiencies. Focusing on the text of the constitution without addressing the post-2011 political failures risks reproducing the same dysfunctions that plague the current system.

The law faculty deans issued a joint statement on May 24 declining their invitation, citing

the need to maintain universities' neutrality.<sup>10</sup> Despite their refusal, the president went ahead and issued another decree the next day appointing the deans by name, underscoring the impression that not all of the invitees were consulted ahead of time about their participation.<sup>11</sup>

As for the economic and social committee, the president restricted his invitations to one representative from each "national organization," a term used to describe key unions and civil society organizations that have long played an important role in building and supporting Tunisia's institutions. These include the members of the "National Dialogue Quartet"—the country's powerful labor union (the Tunisian General Labor Union, or UGTT), the employers' union (the Tunisian Confederation of Industry, Trade, and Handicrafts, or UTICA), the Tunisian League for Human Rights (LTDH), and the Tunisian Bar Association (ONAT)—that won the Nobel

10. M.B.Z., "Les doyens des Facultés de Droit refusent de faire partie de la commission consultative de Saïed [Deans of Faculties of Law Refuse to Take Part in Saïed's Consultative Commission]," Business News, May 24, 2022, <https://www.businessnews.com.tn/les-doyens-des-facultes-de-droit-refusent-de-faire-partie-de-la-commission-consultative-de-saied,520,119438,3>

11. S.H., "Composition nominative de la commission nationale consultative [Nominative Composition of the National Advisory Commission]," Business News, May 26, 2022, <https://www.businessnews.com.tn/composition-nominative-de-la-commission-nationale-consultative,544,119477,3>

Peace Prize in 2015 for helping to lead the country out of an earlier constitutional crisis.

While such a composition might at first glance appear highly representative, it is not. No civil society organizations established since the 2011 revolution were included, reflecting the president's animosity toward such organizations, which he views as a fifth column for foreign intervention.<sup>12</sup> The UGTT, probably the country's most influential organizational player, turned down its invitation, declaring that it will only participate in a "real dialogue," meaning one without outcomes predetermined by Saïed.<sup>13</sup> Saïed chose to sideline the Tunisian Association for Democratic Women (ATFD), an important feminist organization that has been vocal in its opposition to his power grab. In contrast, ONAT President Brahim Bouderbala was rewarded for his support of Saïed with an invitation to head the economic and social committee, although many lawyers in the bar association oppose Saïed's plans and have accused Bouderbala of hijacking the group to serve his own ends. As for the LTDH, a number of past board members criticized the organization's decision to accept Saïed's invitation, and several regional chapters also denounced it.<sup>14</sup> This all showcases the continued divides within many organizations, and among civil society in general, about whether to support the dialogue and try to influence the new constitution, or to boycott the process altogether.

Belaïd later invited several "independent national figures" to join the committee's discussions, including a former minister of interior who is facing charges over the killing of civilians in the last days of the dictatorship and a past minister from Ennahda.<sup>15</sup> These choices call into question Saïed's and his supporters' past statements denouncing such members of the pre-July 25 and pre-2011 political establishments as symbols of failure and corruption.<sup>16</sup> Others invited by Belaïd refused to attend, such as Afek Tounes (Horizons of Tunisia) party President Fadhel Abdelkefi, former member of parliament Hatem Mliki, and activist and former ATFD President Yosra Frawes. Regardless of all these exclusions and absences, Saïed and Belaïd simply pushed ahead with the commission, seemingly undeterred by the lack of diverse viewpoints.

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12. See for example LM, "Tunisie – Saïed : Il faut un texte interdisant le financement étranger des associations [Tunisia – Saïed: We need a text prohibiting the foreign financing of associations]," Tunisie Numérique, February 24, 2022, <https://www.tunisienumerique.com/tunisie-saied-il-faut-un-texte-interdisant-le-financement-etranger-des-associations/>

13. "Tunisia Union Says Will Boycott Saïed's National Dialogue," France 24, May 23, 2022, <https://www.france24.com/en/live-news/20220523-tunisia-union-says-will-boycott-saied-s-national-dialogue>

14. S.G., "LTDH : d'anciens dirigeants appellent à ne pas participer au dialogue national dans sa forme actuelle [LTDH: Former Leaders Call for Not Participating in the National Dialogue in Its Current Form]," Business News, May 25, 2022, <https://www.businessnews.com.tn/ltdh--danciens-dirigeants-appellent-a-ne-pas-participer-au-dialogue-national-dans-sa-forme-actuelle,520,119448,3>

15. The former Ennahda minister, Imed Hammami, had seen his party membership frozen last September after he made critical statements about Ennahda leader Rached Ghannouchi; on June 13, Ennahda announced that it was expelling Hammami from the party. See S.G., "Ennahdha : Imed Hammami ne nous représente en rien ! [Ennahdha: Imed Hammami does not represent us in any way!]" Business News, June 13, 2022, <https://www.businessnews.com.tn/ennahdha--imed-hammami-ne-nous-represente-en-rien,520,120054,3>

16. On Belaïd's invitations see "Dialogue national: Les participants invités à présenter leurs visions de l'avenir du pays [National Dialogue: Participants Invited to Present Their Visions of the Country's Future]," La Presse, June 4, 2022, <https://lapresse.tn/132224/dialogue-national-les-participants-invites-a-presenter-leurs-visions-de-lavenir-du-pays/>



Participants in the legal and economic committees of the consultative commission meet at Carthage Palace on June 18, 2022. Source: *Tunis Afrique Press*

## THE DISCUSSIONS

The commission's discussions seem to have been disjointed and rushed. One attendee told the media that participants had agreed on all of the major aspects of the draft constitution, underscoring the rubber-stamp nature of the exercise.<sup>17</sup>

The economic and social committee, it appears, was the only one to hold more than one meeting. At its first gathering, on June 4, attendees were tasked with drafting a two-pager within 72 hours, detailing their vision for Tunisia for the next 40 years and how those visions could be reflected in the new constitution, to serve as a basis for the next session—an unorthodox manner of running a constitution-drafting committee, to say the least. The second session, on June 11, revolved around discussing these

“visions,” while a third, on June 12, discussed the government's economic reform plan to be submitted to the International Monetary Fund (IMF).<sup>18</sup> Strangely, this session was held without the attendance of a single minister. How such a reform plan meant for negotiations with the IMF and other international financial institutions can serve as part of constitutional drafting is unknown, yet it fits with numerous statements by Belaïd and party leaders supportive of Saïed that the new constitution would focus on social and economic rights. In fact, on June 18, Belaïd revealed that the new constitution would focus more on economic components than on political ones.<sup>19</sup>

The legal committee seems to have convened just once, participating in the commission's final session together with the economic and social committee members on June 18,

17. “Legal Affairs Committee and Economic and Social Affairs Committee Hold Joint Meeting,” *Tunis Afrique Presse*, June 18, 2022, <https://www.tap.info.tn/en/Portal-Politics/15303119-legal-affairs>

18. On the June 12 meeting, see “Discussions on Economic and Social Reforms Will Begin Next Weekend,” *Tunis Afrique Presse*, June 12, 2022, <https://www.tap.info.tn/en/Portal-Politics/15284954-discussions-on>; on the government's economic reform plan, see Jihen Laghmari and Souhail Karam, “Tunisia Plans Subsidy, Wage Cuts as Urgency for IMF Deal Mounts,” *Bloomberg*, June 7, 2022, <https://www.bloomberg.com/news/articles/2022-06-07/tunisia-plans-gradual-subsidy-cuts-in-2023-as-imf-deal-in-focus>

19. “New Constitution to Prioritise Economic Component, To Get Tunisia Out of Crisis’ (Belaïd),” *Tunis Afrique Presse*, June 18, 2022, <https://www.tap.info.tn/en/Portal-Politics/15303655--new-constitution>

two days before Belaïd presented Saïed with the draft constitution.<sup>20</sup> Authorities did not announce who ended up joining the legal committee, and it is unclear what role, if any, this group actually played in the drafting process. That same final session also may have served as the only meeting of the supposed “national dialogue” committee mentioned in Decree 30, if indeed it convened at all.

More details about the draft prepared by Belaïd emerged in the days following June 18, with sources claiming that, as had been expected, it would enshrine a more powerful president who can appoint the prime minister. Saïed himself also confirmed, as Belaïd had already previewed on June 6, that the draft constitution would not define Islam as the “religion of the state,” unlike the 2014 and 1959 constitutions, each of which does so in its very first article.<sup>21</sup> Though their motivations for doing so differ—Belaïd is a secularist who spoke of his desire to marginalize Islamist parties, while Saïed considers Islam the religion of the *Umma*, or “nation,” rather than of the state—the apparent relegation of

Islam within Belaïd’s draft was yet more evidence that the two had agreed on at least some features of the new constitution ahead of time.

Of course, regardless of what may be contained in the draft, it is Saïed who will decide the content of the final version. As mentioned, the commission is purely consultative, and Decree 30 gave Saïed 10 additional days after receiving the committee’s draft to finalize his version, with no transparency required. A June 20 presidential statement affirming “that the draft constitution is not final and that some chapters of it are subject to review and further thought” reminded the public of Saïed’s ultimate control.<sup>22</sup> This confirmed what many political and civic actors had suspected: that the draft delivered to Saïed and the one he will publish by June 30 will not be the same, with some going so far as to suggest that they may be quite different.

## THE REFERENDUM

The commission’s shortcomings, alarming as they are, are far from the only problematic aspects of Saïed’s constitutional process. There are genuine concerns about whether the referendum will be free and fair. Indeed, Saïed regularly talks about the new constitution as if its approval by voters is a foregone conclusion, which is worrisome even if it is in fact likely.<sup>23</sup>

The unreasonably rushed timeline for the vote—taking place just a few weeks after Saïed reveals his constitution—short-circuits the necessary awareness-building and public debates about what are expected to be dramatic changes to the political system. In addition, Saïed has personally reshaped the Independent High Authority for Elections

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20. “Legal Affairs Committee and Economic and Social Affairs Committee Hold Joint Meeting,” Tunis Afrique Presse.

21. On Saïed’s confirmation, see “Tunisia’s President Saïed Confirms No State Religion in New Charter,” Al Arabiya, June 21, 2022, <https://english.alarabiya.net/News/north-africa/2022/06/21/Tunisia-s-President-Saied-confirms-no-state-religion-in-new-charter>; on Belaïd’s preview, see “Tunisia Expert Drafting New Constitution Says No Reference to Islam,” France 24, June 6, 2022 <https://www.france24.com/en/live-news/20220606-tunisia-expert-drafting-new-constitution-says-no-reference-to-islam>

22. Statement on the Facebook page of the Presidency [in Arabic], June 20, 2022, <https://www.facebook.com/Presidence.tn/posts/pfbid0jbJQ671Ht1oauEre9xW5Wv9y22auQRMD5fuQrYFhxPmrT8YtsWAh9bSq8fKkQxScl>

23. “Kais Saïed: Laysat Intikhabaat bal Istifta’a wa 25 yulyu maw’ad al-jumhuriyya al-jadida” [Kais Saïed: there is not an election but a referendum and 25 July is the date of the new Republic], Mosaique FM, May, 12, 2022, <https://bit.ly/3A8b8Up>





*President Saïed presides over a meeting with the Council of Ministers, Carthage Palace, April 21, 2022. Source: Tunisian Presidency Facebook page*

(ISIE) that is tasked with overseeing the vote, raising questions about the body's ability to manage the referendum impartially.<sup>24</sup> Among many areas of concern is that the ISIE must pre-approve any person or entity wishing to campaign for “yes” or “no” votes, and decisions on which campaign to engage in must be communicated to ISIE by July 2, just two days after the final text of the constitution is presented to the public—very little time to formulate a position on such a complex document. Meanwhile, the ISIE has offered conflicting information on whether Tunisians will be allowed to campaign for a boycott, as some opposition parties are considering, or instead face prosecution.<sup>25</sup> Another concern is that there is no minimum participation rate or yes-vote threshold for the referendum. There is a real risk that the new constitution will be “approved” even if turnout is very low and only a tiny proportion of the electorate votes in favor of it.

## CONCLUSION

Saïed's approach to drafting and obtaining public endorsement for a new constitution does not comply with the level of flexibility and inclusivity required for such a complex and important step for the country. With the public focused on the dire economic situation and apparently apathetic about a new constitution, and the opposition still weak and divided, the president may be able to ram through his new constitution. This is especially feasible in the current political climate, in which a “yes” vote is commensurate with a vote of confidence in Saïed, who remains more popular than any other politician. But tragically for Tunisia, because of the deeply flawed process, the new constitution, even if it passes in the referendum, may lack legitimacy. Saïed is setting dangerous precedents, ones that threaten prospects for long-term stability in Tunisia.

24. Tarek Amara, “Tunisian President Names New Election Commission Members,” Reuters, May 10, 2022, <https://www.reuters.com/world/africa/tunisian-president-names-new-election-commission-members-2022-05-09/>

25. S. G., “Boycott du référendum : les membres de l'Isie se contredisent, encore! [Boycott of the Referendum: The Members of ISIE Contradict Themselves, Again!],” Business News, June 14, 2022, <https://www.businessnews.com.tn/boycott-du-referendum--les-membres-de-lisie-se-contredisent-encore,534,120086,3>



**AYMEN BESSALAH** is the Program Coordinator for Human Rights at Al Bawsala, a Tunisian watchdog NGO promoting transparency and accountability to citizens. He studied International Relations at the University of Tunis El Manar and holds an MA in European Interdisciplinary Studies from the College of Europe, where he focused on the European Union's Neighborhood Policy and the Middle East and North Africa region. He is on Twitter [@bess\\_aymen](#).

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*Cover Photo: Tunisian President Kaïs Saïed presides over a military parade at Carthage Palace, June 24, 2022. Source: Tunisian Presidency Facebook page*