



Yea or Stay Away: Kaïs Saïed's Autocratic Referendum

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SNAPSHOT

SUMMARY

- On July 25, exactly a year after President Kaïs Saïed's coup, Tunisians are scheduled to vote in a national referendum on his proposed new constitution.
- The referendum represents a key milestone in Saïed's plan for filling the institutional vacuum he created over the past year after freezing parliament, suspending the 2014 constitution, and amassing all executive and legislative powers for himself.
- Saïed has described his constitution and referendum as products of an inclusive political process. In reality, he is aiming single-handedly to push through his desired political system—despite intense opposition to the extraordinary powers that his new constitution would grant him, along with other controversial elements.
- With opposition groups and civil society failing to unite around a “no” campaign and Saïed having tilted the playing field heavily in his favor, his constitution looks likely to pass.
- But the lack of consensus around the drafting process and Saïed's refusal to submit to any real constraints on his power make the vote unlikely to resolve the conflict over how Tunisia should be governed.
- Far from being the panacea that Saïed has promised, the new constitution will only worsen Tunisia's political—and economic—crises.

INTRODUCTION

On July 25, Tunisians are scheduled to vote in a national referendum on whether to adopt the new constitution recently proposed by President Kaïs Saïed. The referendum

constitutes a key milestone in Saïed's plan for filling the institutional vacuum he created when he seized all power last July 25 and proceeded to rule by decree. With opposition and civil society groups failing to unite around a “no” campaign and Saïed having

tilted the playing field heavily in his favor, his constitution looks likely to pass. But even if the referendum restores Tunisia to some form of constitutional order, the lack of consensus around the drafting process and Saïed's refusal to submit to any real constraints on his power make the vote unlikely to resolve the conflict over who should govern Tunisia, and how. Far from being the panacea that Saïed promises, the new constitution will only worsen Tunisia's political—and economic—crises.¹

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Saïed has scheduled the referendum to happen exactly one year after he struck a blow to the 2014 constitution that ultimately proved fatal. On July 25, 2021, Saïed froze the parliament (later dissolving it) and fired the prime minister. At the time, he claimed on dubious grounds that his move adhered to the emergency clause of the constitution, but in September he dispensed with the pretense and suspended the constitution

altogether. Saïed announced the referendum last December as part of a roadmap that is supposed to culminate in the election of a new parliament in December 2022. Between January and March of this year, he convened an online national consultation, purportedly affording Tunisians the chance to have their say on a new constitution.² In May, he appointed a national dialogue commission to develop a draft constitution, supposedly building off of the results of the online consultation. On the evening of June 30, just hours before the deadline imposed in his own decree-law forming the commission, Saïed published his new constitution.³ The official campaign period began shortly thereafter.

CONSTITUTING PERSONALIST RULE

Saïed has taken pains to describe his constitution and referendum as the products of an inclusive political process based on dialogue. He depicted the online consultation as a novel institution for expanding the conversation regarding Tunisia's future beyond the coterie of elites who have participated in prior moments of national deliberation since the 2010–11 revolution. In fact, the process more closely resembled a public opinion poll than an instrument of deliberative democracy. Asked to participate in a non-confidential survey with unknown stakes, only about 535,000 Tunisians (out of a population of 11.8 million) reportedly took part, less than a third of them women.⁴ Saïed nonetheless proclaimed the exercise “a success despite all attempts to thwart it” and later, in the preamble of his constitution, trumpeted the “hundreds of thousands” who participated.⁵

1. “Tunisia: Kais Saïed urges voters to support controversial constitution,” Middle East Eye, July 5, 2022, <https://www.middleeasteye.net/news/tunisia-kais-saïed-urges-voters-support-controversial-constitution>

2. Chaima Bouhlel, “Kais Saïed's Exclusionary National Consultation,” Tahrir Institute for Middle East Policy, May 16, 2022, <https://timep.org/commentary/analysis/kais-saïeds-exclusionary-national-consultation/>

3. For the official text of the document issued on June 30, see <https://drive.google.com/file/d/1abGHk0Hkp-ANlxQWYjVgaF56yTH0N234/view>. For the decree, see “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], Geneva Centre for Security Sector Governance, accessed July 12, 2022, <https://legislation-securite.tn/law/105265>

4. Bouhlel, “Kais Saïed's Exclusionary National Consultation.” The population estimate for January 2022 comes from the homepage of the National Institute of Statistics, accessed July 14, 2022, <http://www.ins.tn>

5. “Saïed: al-istishaara al-watani najiha wa al-istiftaa' sa yabqaa fil'mawadihi” [Saïed: the national consultation was successful and the referendum will remain on time], Mosaïque FM, March 21, 2022, <https://bit.ly/3ANVVIr>



Sadok Belaïd (left), 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

The national dialogue also failed to live up to its name. As chronicled by analyst Aymen Bessalah, the commission was designed to exclude the president's detractors and was, moreover, boycotted by many of those offered admission to it.⁶ Since the publication of the constitution on June 30, the head of the commission, Sadok Belaïd, has complained that Saïed's version bears little resemblance to the one drafted by the body and has even urged Tunisians to reject it.⁷

Indeed, Saïed's constitution garnered widespread criticism upon its release, sparking the president to publish an amended version on July 8.⁸ Criticism of the initial document focused primarily on three sets of issues. First, it establishes a super-presidential system in which

the president not only controls the executive branch but also enjoys extraordinary leverage over the parliament and judiciary. Although many observers expected Saïed to create a presidential system, the powers accorded the president in his constitution far exceed those of presidential systems in democracies. Political scientist Mohamed Sahbi Khalfaoui even compared the document to the constitution of Napoleon Bonaparte.⁹ Saïed's amendments did little to address the absence of constraints on the presidency.

Second, the document initially released by Saïed not only omits assurance regarding the civic (meaning non-religious) nature of the Tunisian state but also includes provisions that suggest

6. Aymen Bessalah, "Snapshot – Kais Saïed's National Monologue on a New Tunisian Constitution," Project on Middle East Democracy (POMED), June 28, 2022, <https://pomed.org/snapshot-kais-saieds-national-monologue-on-a-new-tunisian-constitution/>

7. Tarek Amara, "Tunisian constitution panel head blasts president's draft," Reuters, July 3, 2022, <https://www.reuters.com/world/africa/tunisian-constitution-panel-head-blasts-presidents-draft-2022-07-03/>

8. "Tunisia's President Publishes Amended Draft of Constitution with Minor Changes," Reuters, July 8, 2022, <https://www.reuters.com/world/africa/tunisia-president-publishes-amended-draft-constitution-with-minor-changes-2022-07-08/>; for the official text, see https://www.alchourouk.com/JournalArabe0772022_220709_215916.pdf

9. "Khabiran al-qanun: mashru' dustur al-raïs...fusuul muhima wa salahiyat mutlaqa" [Two legal experts: president's draft constitution...vague chapters and absolute powers], Mosaique FM, July 4, 2022, <https://www.youtube.com/watch?v=kjTdQuPVYn8>

that the state alone should work to achieve the purposes of Islam and that rights and freedoms should be balanced with the requirements of “public morals.” Prominent jurist Slim Laghmani claims that Saïed’s initial version would establish a religious state.¹⁰ In his July 8 revision, Saïed aimed to address this concern. He removed the reference to public morals as an acceptable justification for limiting rights and freedoms and stipulated that the state should operate “within a democratic system” in achieving the goals of Islam. But Saïed’s constitution remains a significant departure from the compromises fashioned over decades regarding the role of Islam in the Tunisian state.

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Finally, the document seemed to have been hastily written. In addition to linguistic mistakes and unnecessary repetition, the June 30 version included puzzling omissions, such as whether the parliament would be directly elected or what the newly established second body of the legislative branch would do. Saïed himself later acknowledged that “errors” had

leaked into the document and that certain passages required clarification.¹¹ His July 8 revision clarified some questions; for instance, it specified the direct election of the parliament, addressing speculation that Saïed planned to have legislators indirectly elected by local representatives. But other elements of the constitution continue to raise questions. And amending the document well after the June 30 legal deadline imposed by his own decree gives the impression that Saïed has little intention to adhere to the law, even if he was the one who wrote it.

**A PLEBISCITE ON SAÏED'S
JULY 25 COUP**

For years, Saïed has excoriated the political institutions established during Tunisia’s democratic transition. According to Saïed, the system of pluralism and checks and balances established by the 2014 constitution—an executive branch divided between a strong government and a president, an empowered parliament with a highly proportional electoral system allowing many parties to enter, and independent judicial and constitutional institutions—was designed to blunt popular accountability and allow elites to share the spoils of the Tunisian state. Dispensing with this system, Saïed maintains, will restore the integrity of the Tunisian state and cure a plethora of social and economic ills. Summarizing the dividends his constitution would supposedly pay, on July 5 Saïed published a letter on official presidential letterhead urging Tunisians to “say yes, so that the state does not fall into old age, so that the goals of the revolution are achieved, so there is no misery, no terrorism, no starvation, no injustice, no pain.”¹²

Supporters of his constitution seem less focused on defending the substance of the

10. “Slim Laghmani : le projet de constitution de Saïed met en place un Etat religieux” [Slim Laghmani: Saïed’s draft constitution sets up a religious state], Business News, July 4, 2022, <https://www.businessnews.com.tn/slim-laghmani--le-projet-de-constitution-de-Sa%C3%AFed-met-en-place-un-etat-religieux,520,120660,3>

11. “Kaïs Saïed: le projet de constitution sera corrigé et republié au Jort” [Kaïs Saïed: The draft constitution will be corrected and republished in the Jort (Official Journal of the Republic of Tunisia)], Business News, July 8, 2022, <https://www.businessnews.com.tn/kais-saied--le-projet-de-constitution-sera-corrige-et-republie-au-jort,520,120837,3>

12. “Tunisia: Kais Saied urges voters to support controversial constitution,” Middle East Eye.



Haykel Mekki of Echaab party discusses his support for Saïed's constitution in an interview with Shems FM, June 30, 2022. Source: Shems FM YouTube account

document than on threatening that a rejection would either restore Ennahda to power or plunge the country into “chaos.”¹³ As Haykel Mekki of Echaab party put it in a recent interview, “A vote of ‘yes’ on this constitution does not just mean yes on the constitution but it is a referendum on [Saïed’s] entire path.”¹⁴ Mekki then referred multiple times to Ennahda and its unpopular president and speaker of the dissolved parliament, Rached Ghannouchi. “There aren’t many choices in reality,” Saïed supporter and Echaab party Secretary-General Zouhair Maghzaoui argued, equating voters’ rejection of the constitution with returning to the status quo prior to July 25, 2021, an option that even most opponents of Saïed’s constitution do not want.¹⁵ Even Ennahda seems willing to remove Ghannouchi from the leadership of the parliament should the body dissolved by Saïed be

restored (as Ennahda and others in the opposition have demanded). Whereas supporters of Saïed depict the choice as a new constitution or a return to the old system, much of the opposition is pushing for a compromise determined through a genuine national dialogue.

Despite intense criticism surrounding the constitution’s drafting process and content, Saïed is treating its passage as a *fait accompli*—an expectation that seems shared by both his supporters and opponents. Saïed structured the referendum in a way that forces Tunisians to choose between a new constitution subject to little review and some sort of unspecified version of the status quo. By omitting a minimum threshold for turnout in his June 1 amendment to the electoral law, he increased the likelihood that the constitution would

13. “Bouderbala: kan yafshal al-istiftaa’ al-Ghannouchi sayusbah ra’is al-jumhuriyya!” [Bouderbala: If the referendum fails, Ghannouchi would become president!], Mosaïque FM, June 30, 2022, <https://www.facebook.com/mosaïquefm/videos/1044221586457879/>

14. “Hiwar Haykel al-Mekki al-qiyadi fi harakat ecch’ab fi studio Shems” [Conversation with Haykel al-Mekki leader of Echaab movement, in the Shems studio], Shems FM, July 5, 2022, https://www.youtube.com/watch?v=pwan7FQ-_rg

15. Walid al-Tlili, “Dustour qais saïed: atsa’ muqaata’a mashrou’ al-hukm al-fard” [The Constitution of Kais Saïed: The widening of the boycott of the project of personalist rule], al-‘Arabi al-Jadid, July 6, 2022, <https://www.alaraby.co.uk/politics/>

pass, even if many voters stayed home.¹⁶ The timeline leaves Tunisians only a few weeks to learn about their options and form preferences. And Saïed's revision of the document 17 days before the referendum shortened that timeline further. Other conditions favor Saïed, including a public media that seems increasingly unwilling to air opposition voices and state authorities that seem eager to punish opposition.

**IN A VIDEO RECORDED
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Saïed has long been aware of the ways in which political leaders often use referendums to legitimate their decisions, rather than to sincerely reveal the popular will. In a video recorded prior to becoming president in 2019, Saïed joked that referendums in the Arab world are a tool dictators use as a rubber

stamp.¹⁷ Saïed is wrong to describe this as a uniquely Arab phenomenon, but there is otherwise some truth in his statement. Indeed, according to a dataset of all national referendums on new constitutions between 1789 and 2016, 94 percent were approved by voters, usually by a supermajority of the vote.¹⁸ There are notable exceptions, such as Zimbabwe in 2000 or Kenya in 2005, where a majority of voters rejected proposed constitutions. But in this case, as has happened elsewhere, Saïed has set up the process so there is little time for the public to deliberate and figure out what they want in a constitution, making it instead effectively a referendum on himself.

If Saïed's constitution indeed triumphs on July 25, few are expecting it will be through a high turnout. Observers have suggested that the paltry participation in his online consultation indicates that Saïed, who lacks a traditional political party or organization, may struggle to mobilize supporters for the referendum.¹⁹ Political scientist Mohamed-Dhia Hammami recently predicted a turnout of less than 10 percent.²⁰ With the referendum's higher stakes and a secret ballot, some who sat out the online consultation may take part on July 25. But some of Saïed's supporters seem concerned with lowering expectations regarding turnout. For example, in a recent interview, Haykel Mekki of Echaab pointed to factors that might depress voter enthusiasm, such as the fact that the referendum will be held on a hot day at the end of a three-day holiday weekend.²¹

16. "Décret-loi n° 2022-34 du 1er juin 2022, modifiant et complétant la loi organique n° 2014-16 du 26 mai 2014 relative aux élections et référendums" [Decree-law no. 2022-34 of June 1, 2022, modifying and completing the organic law no. 2014-16 of May 26, 2014 relating to elections and referendums], <https://legislation-securite.tn/ar/law/105297>

17. "Al-Istiftaa'at min adawaat al-diktaaturiyya..sukhria min tasjil al-Saied" [Referendums are Tools of the Dictatorship...A Mockery of Saïed's Recording], *Arabi 21*, December 15, 2021, <https://arabi21.com/story/1404459/>

18. Zachary Elkins and Alexander Hudson, "The constitutional referendum in historical perspective," in *Comparative Constitution Making*, eds. David Landau and Hanna Lerner (Cheltenham, UK: Edward Elgar Publishing, 2019), 142–164, <https://doi.org/10.4337/9781785365263.00013>

19. Mohamed Dhia Hammami and Sharan Grewal, "How much popular support does Tunisia's president really have?" April 26, 2022, *Washington Post*, <https://www.washingtonpost.com/politics/2022/04/26/tunisia-saied-coup-backsliding-democracy/>

20. Thomas M. Hill, "Tunisia's Twin Democracy and Economic Crises Push it to the Brink," United States Institute of Peace, July 5, 2022, <https://www.usip.org/publications/2022/07/tunisia-twin-democracy-and-economic-crises-push-it-brink>

21. "Al-Mekki: 'adam al-mushaarika fil istiftaa' huwa al-difaa' 'an al-kharab wa al-ijraam wa al-fasaad" [Al-Mekki: not participating in the referendum is a defense of ruin, crime and corruption], *Mosaïque FM*, June 29, 2022, <https://www.youtube.com/watch?v=TFedVboqe2U&t=225s>



Then-Speaker of Parliament Rached Ghannouchi of Ennahda and then-Deputy Speaker Samira Chaouachi of Qalb Tounes in front of the parliament, July 25, 2021. Source: Assembly of the People's Representatives Facebook page

A low-turnout referendum theoretically creates an opportunity for the opposition because it reduces the number of voters that it must mobilize to constitute a majority. But so far, the groups that have the greatest potential to mobilize are not encouraging voters to defeat the constitution at the ballot box. Ennahda and the Free Destourian Party (PDL), the two most formidable parties in the dissolved parliament, are each boycotting, with the latter organizing protests pushing for the cancellation of the referendum altogether.²² The national leadership of the influential Tunisian General Labor Union (UGTT) has voiced serious concern over Saïed's constitution but has declined to take a position on the referendum, allowing its members to vote according to their conscience.²³ Each of these groups has some combination of a large base and recent

experience mobilizing against Saïed. If there are doubts about Saïed's ability to bring out a large number of supporters to vote "yes," then why does the opposition not try to defeat the constitution at the ballot box?

THE PERILS OF A "NO" CAMPAIGN

For Ennahda, the largest and most polarizing party in the dissolved parliament, participation in the referendum poses several risks. First, the party is experiencing a creeping crack-down on top leaders that has already led to the arrest and subsequent release of former Justice Minister Nouredine Bhiri and ex-Prime Minister Hamadi Jebali. Ghannouchi has received a judicial summons for his alleged role in a money laundering scheme that the party

22. "Abir Moussi interdite de manifester devant l'Isie par les forces de l'ordre" [Abir Moussi banned from demonstrating in front of ISIE by the police], Business News, July 7, 2022, <https://www.businessnews.com.tn/abir-moussi-interdite-de-manifester-devant-lisie-par-les-forces-de-lordre,520,120800,3>

23. "Tunisian union sees possible threat to democracy from proposed constitution," Reuters, July 2, 2022, <https://www.reuters.com/world/africa/tunisian-union-says-new-constitution-with-broad-powers-president-could-threaten-2022-07-02/>; "UGTT gives freedom to its members to participate or not in Referendum," Agence Tunis Afrique Presse, July 2, 2022, <https://www.tap.info.tn/en/Portal-Society/15345108-ugtt-gives-freedom>

claims is trumped up.²⁴ According to his associates, Ghannouchi claims he will be arrested when he appears in court on July 19.²⁵ Saïed's recent removal of 57 judges put pressure on the judiciary to target his opposition, which members of the opposition claim is imminent.²⁶ Taking on Saïed now might be deemed a costly provocation at a very vulnerable time.

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Moreover, the public divisions that emerged within Ennahda in the wake of Saïed's power grab have raised questions about exactly how many members the party can still mobilize.²⁷ In the 2019 presidential election that brought him to power, Saïed enjoyed the support of many socially conservative Tunisians. Now, the religiously conservative nature of his constitution may further undermine the party's confidence in turning out its base to vote "no" because some of the base might appreciate the document's socially conservative features, including a declaration of belonging to the Muslim *Umma* (community) and a vague requirement that the state achieve the aims of Islam. Finally, Ennahda publicly campaigning for a "no" vote could galvanize its opponents—even those

who are not excited about Saïed or convinced by his constitution—to vote "yes" simply to block the Islamist party's return to power.

For the UGTT, the calculus is different. The UGTT recently organized a national strike that enjoyed a high rate of participation, demonstrating that it retains the ability to confront Saïed. The union has much at stake in figuring out how to challenge a president who has accorded it little role in decision-making and who this past December even curtailed its ability to negotiate with government ministers.²⁸ But despite the union's strength in advocating for public sector workers, it has historically shied away from taking political stands that could divide its membership, part of which supports Saïed. For this reason, the union would prefer to frame the contest with Saïed as a struggle over economic policy, in which its members have a strongly shared interest, rather than over political institutions. And it may prefer to wait to face Saïed until after his popularity has further eroded in the face of Tunisia's deteriorating economic conditions.

Beyond the concerns particular to each group, there are serious questions about whether Saïed would even allow a "no" vote to prevail. In April, Saïed restructured the previously independent election commission (ISIE) and appointed handpicked new members, always a bad sign for the fairness of an election.²⁹ Unsurprisingly, the new ISIE appears responsive to the president. ISIE has adopted measures that aim to satisfy Saïed's desire for robust turnout, including the automatic registration of voters and the expansion of voting

24. "Tunisian opposition leader faces money laundering allegations," Reuters, July 6, 2022, <https://www.reuters.com/world/africa/tunisian-opposition-leader-faces-money-laundering-allegations-2022-07-06/>

25. "Tunisia opposition alliance says Ghannouchi at risk of being detained," Middle East Eye, July 11, 2022, <https://www.middleeasteye.net/news/tunisia-ghannouchi-risk-detained-opposition-alliance>

26. "Tunisia's president fires 57 judges accused of corruption, critics outraged," Deutsche Welle, June 2, 2022, <https://p.dw.com/p/4CCrQ>

27. Tarek Amara, "More than 100 officials from Tunisia's Islamist Ennahda Party resign amid crisis," Reuters, September 25, 2021, <https://www.reuters.com/world/africa/more-than-100-officials-tunisias-islamist-annahda-party-resign-amid-crisis-2021-09-25/>

28. "UGTT calls PM to withdraw Circular No. 20," Agence Tunis Afrique Presse, January 4, 2022, <https://www.tap.info.tn/en/Portal-Society/14740452-ugtt-calls-pm-to>

29. "Tunisian president seizes control of electoral commission," Reuters, April 22, 2022, <https://www.reuters.com/world/africa/tunisia-pres-appoints-electoral-commission-members-by-decree-latest-power-grab-2022-04-22/>



Tunisia's election commission, ISIE, meets to discuss the July 25 referendum, July 1, 2022. In April, President Saïed changed ISIE's membership, raising concerns about its independence. Source: ISIE Facebook page

hours on election day. When the president amended his constitution after the legal deadline, ISIE accommodated the changes and offered those who had registered in the official campaign the chance to revise their position if desired. Saïed met with ISIE head Farouk Bouasker on July 11 and directed him to be vigilant against efforts to “sabotage” the poll.³⁰ Once an important post-revolution independent institution, ISIE now lacks credibility, and opposition groups attribute political motives to its every act.

Even if ISIE wanted to permit a fair contest, some fear that Saïed’s supporters would not allow it. Indeed, on the first day of the campaign, Afek Tounes, one of the few parties

mobilizing voters to vote “no,” revealed that Saïed supporters blocked party members from holding a campaign event in the town of Regueb near Sidi Bouzid.³¹ The party claims that its efforts to hold rallies at event spaces throughout the country have been rejected by building owners who claim the authorities will not allow it.³² The party has noted other violations of the electoral law, including unauthorized campaign posters urging a “yes” vote and illegal use of the Tunisian flag and campaigning for Saïed’s constitution by public officials, who are supposed to remain neutral.³³ ISIE belatedly issued a reminder that these sorts of infractions are illegal. But it cannot credibly threaten legal action in a context in which Saïed himself has flouted the law,

30. “Saïed calls for vigilance against attempts to sabotage voter registration,” Agence Tunis Afrique Presse, July 11, 2022, <https://www.tap.info.tn/en/Portal-Politics/15369549-saied-calls-for>

31. “Tunisie: Fadhel Abdelkefi dénonce les menaces de mort dont son parti est l’objet” [Tunisia: Fadhel Abdelkefi denounces death threats against his party], Kapitalis, July 4, 2022, <https://kapitalis.com/tunisie/2022/07/04/tunisie-fadhel-abdelkefi-denonce-les-menaces-de-mort-dont-son-parti-est-lobjet/>

32. Adam Yusef, “Tunis: tansiqiyyat al-ahzab al-muqatî’a lil’istiftaa’ taqadi al-hukuma wa hayat al-intikhabaat” [Tunisia: coordinating committee parties boycotting the referendum sues the government and the electoral commission], Al-Arabi Al-Jadid, July 12, 2022, <https://bit.ly/3z3Cc68>

33. “Afek Tounes dénonce les infractions au code électoral” [Afek Tounes denounces violations of the electoral code], Business News, July 8, 2022, <https://www.businessnews.com.tn/afek-tounes-denonce-les-infractions-au-code-electoral,520,120823,3>

including by using the office of the presidency to campaign for a “yes” vote and by revising the constitution after the legal deadline.

Should a “no” vote succeed despite the odds, there are doubts over what that would actually mean for the new constitution. Article 139 of Saïed’s constitution states that the new document will go into effect after the ISIE has announced the results of the referendum, a provision that seemingly assumes away the possibility that the majority of voters might choose “no”. The notion that Saïed would implement a constitution that was just rejected in a popular referendum is absurd, but the possibility is now garnering significant attention in the Tunisian media. It is a sign of how little trust there is in Saïed’s willingness to accept the rules of the game—even as he alone sets the rules and the game. Beyond Article 139, even if Saïed’s constitution were defeated, it is not clear what this would mean for the country’s constitutional order. Would Saïed continue to govern Tunisia by decree, as he has been doing for nearly a year?

A TURNING POINT OR MORE OF THE SAME?

If, as is more likely, the constitution passes in a low-turnout referendum, where will that leave Tunisia? Saïed would likely respond to such a scenario as he did to the anemic participation in the online consultation: both by declaring victory and by pointing to conspiracies that supposedly depressed the numbers.³⁴ Low turnout could become a pretext for establishing even greater control over ISIE before the parliamentary elections expected in December; the commission already exhibits infighting, and Saïed has warned it not to allow the “sabotage” that he claims beset the online consultation.³⁵ Nonetheless, paltry participation would deal Saïed a political blow, signaling to important

stakeholders, both at home and abroad, that Saïed’s main asset—his popularity—might not be as deep as is widely assumed.

PALTRY PARTICIPATION WOULD DEAL SAÏED A POLITICAL BLOW, SIGNALING TO IMPORTANT STAKEHOLDERS, BOTH AT HOME AND ABROAD, THAT SAÏED’S MAIN ASSET—HIS POPULARITY—MIGHT NOT BE AS DEEP AS IS WIDELY ASSUMED.

Apart from the effect on Saïed’s political capital, the country would have a new constitution whose legitimacy would be rejected by large segments of the political elite and whose content would be poorly understood by many citizens. The country would still need deliberation to understand how the document is supposed to work in practice, with Saïed of course claiming authority over its interpretation. Although a widely accepted constitution can facilitate more efficient government by channeling potential conflicts through institutions,³⁶ Saïed’s opponents would likely see no more reason to press their case through formal politics than they do today. The constitution would be closely identified with the individual and the document would be very unlikely to long outlive Saïed’s political career, generating further uncertainty over what will follow him.

34. “Qais Saied: Najahat al-istisharaa’ rughmi al-hajamaat al-alaktrouniyya al-jabana” [Kais Saied: The consultation succeeded despite the cowardly electronic attacks], Alchourouk, April 1, 2022, <https://bit.ly/3uO1SBc>

35. Agence Tunis Afrique Presse, “Saïed calls for vigilance against attempts to sabotage voter registration.”

36. *Assessing Constitutional Performance*, eds. Tom Ginsburg and Aziz Huq (Cambridge: Cambridge University Press, 2016), <https://doi.org/10.1017/CBO9781316651018>



Workers take part in UGTT's nationwide general strike to protest economic austerity measures, June 16, 2022. Source: UGTT Facebook page

In the nearer term, conflict would shift to other issues nearly as explosive as the constitution, such as upcoming parliamentary elections. Saïed's constitution says little about the electoral system through which the new parliament will be elected, but Saïed is likely to next push through a new electoral law that replaces party lists with individual candidates. A recent judicial decision may presage such a move: On July 6, a court issued an initial ruling using electoral law violations as a basis for striking down a number of Ennahda and Qalb Tounes 2019 election lists and banning their members from contesting elections for five years.³⁷ Although the ruling is subject to appeal, the question of who can contest elections will be a contentious one. Another area for conflict is the question of whether a new presidential election should be held. Since Saïed has abrogated the constitution under which he was elected in 2019, some are now pushing for a

new election for him to remain in power, a condition that he has not yet accepted.

Perhaps even more important in the near term, Saïed's referendum has only delayed the question of how Tunisia will address its deepening economic crisis without triggering a social explosion. The Central Bank now projects a budget deficit of 9.7 percent of GDP this year.³⁸ Bloomberg recently listed Tunisia among the five most likely countries in the world to default.³⁹ The government is currently negotiating with the International Monetary Fund (IMF) on a multi-billion-dollar loan agreement that would likely require widely unpopular austerity measures. The IMF appears ready to come to an agreement with the government, despite Saïed's monopolization of political power and inability to convince the UGTT to agree to the freezing of public sector salaries and abatement of

37. "Iqsaa al-nahda wa qalb tounis min al-mushaarika fil-intikhabaat li 5 sanawaat" [Exclusion of Ennahda and Qalb Tounes from elections for 5 years], *al-Sharq al-Awsat*, July 8, 2022, <https://bit.ly/3RAq8QX>

38. Tarek Amara, "Tunisia sees 2022 budget deficit expanding to 9.7% from 6.7% previously expected," Reuters, May 20, 2022, <https://www.reuters.com/world/africa/tunisia-sees-2022-budget-deficit-expanding-97-67-previously-expected-2022-05-20/>

39. Sydney Maki, "Historic Cascade of Defaults Is Coming for Emerging Markets," Bloomberg, July 7, 2022, <https://www.bloomberg.com/news/articles/2022-07-07/why-developing-countries-are-facing-a-debt-default-crisis>

subsidies that the Fund will likely require. If the government implements these measures shortly after Saïed's new constitution has been pushed through, it will cast doubt on the president's central claim: that for Tunisia to free itself of the social and economic problems experienced over the last decade, it only needed a new constitution, not real dialogue and political compromise to bring key stakeholders on board.

Saïed has invested significant political capital in his constitutional project, staking his future on the idea that a new document will deliver Tunisia from its crises. But in chipping away at the rule of law and imposing one-man rule in order to make his constitution a reality, he has also inadvertently limited what he can accomplish through it. Tunisia's crisis will not be resolved on July 25.



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Cover Photo: Tunisian President KaïS Saïed presides over a farewell procession at the al-Aouina airfield, August 21, 2021. Source: Tunisian Presidency Facebook page