

# THE VIOLATION OF RIGHTS IN TUNISIA: FROM THE ARAB SPRING TO AUTOCRACY



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Worldwide Lawyers Association (WOLAS) was established in 2015 by lawyers and academics working in Türkiye, with the aim of conducting activities in the international arena. It is open to individuals who advocate for rights, and its main focus is advocating for rights. Protecting the rights of individuals against both major and minor authorities is one of the association's primary objectives. In pursuit of this goal, WOLAS adopts an approach that constantly questions the assumptions and blind spots in the understanding of human rights, renewing them with a demand for a more holistic and inclusive concept of justice.

WOLAS fundamentally adopts the notion that the fight for truth is a prerequisite for the fight for justice. Ethical principles are respected in all their endeavors, and they actively engage in monitoring and reporting activities concerning countries and regions experiencing humanitarian crises. By creating a global network of lawyers, WOLAS aims to bring together advocates of rights/lawyers from all around the world for a systematic/collective struggle. In theory, the association emphasises the performativity of rights-based politics and the struggle for rights. In practice, WOLAS also provide legal assistance to victims, attaching great importance to actively standing alongside the victims in carrying out this struggle.

The approach that a collective consciousness is crucial for a rights-based struggle is prevalent in WOLAS's work. As an Istanbul-based organisation, WOLAS is dedicated to conducting a rights-based struggle to promote justice. Their mission includes raising awareness among all relevant circles, providing necessary training to take a stance and fight against rights violations, and fostering organised mobilisation.

For more information, please visit our website: [wolas.org](https://wolas.org)

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# INTRODUCTION

Tunisia, which gained its independence in 1956 and was ruled by dictatorial regimes from 1956 to 2011, overthrew the dictatorship of Zine al-Abidine Ben Ali in 2011 by way of a civil commotion known as the Tunisian Revolution, the Revolution of Dignity – also called the Jasmine Revolution. In 2011, the first elections were held in the country after peaceful protests by the Tunisian people forced Zine al-Abidine Ben Ali to resign, having ruled the country via a dictatorship for 24 years. Then, the so-called “Arab Spring” period officially began as Tunisia initiated its own process of building freedom and democracy in a peaceful manner. In this new era, Rached Ghannouchi, who had been living in exile for many years, returned to Tunisia to help establish a “democratic” process within Tunisian politics – for the first time in its history – via his Ennahda Movement. As key actors in this new Tunisian era, the Ennahda Movement and its leader Ghannouchi adopted social-reconciliation methods to establish legal, political, economic, and social stability in Tunisia. They fought for stability in Tunisia by taking part in all the governments established from 2011 to 2019.

Kais Saied was elected President of Tunisia with the support of Ennahda in the presidential election held in 2019. However, shortly after coming into power Kais Saied dismissed the then-prime-minister Hichem Mechichi, dissolved the parliament, inhibited MPs from entering parliament by removing their immunity, and drafted a new constitution to protect his power. This clearly indicates that, contrary to the achievements of the Tunisian Revolution, Tunisia has adopted an authoritarian approach in terms of its governance. In 2022, a new constitution was approved through a referendum, although it did not receive significant support from the Tunisian people. This new constitution consolidated all powers, including the judiciary, under Saied’s control. He began prosecuting and convicting opposition politicians, media personnel, journalists, activists, and legal professionals on unfounded allegations. Saied aims to suppress opposing voices through practices that disregard fundamental human rights, yet Western democratic countries remain silent in the face of such unlawful practices.

Nevertheless, many Western research institutions known for their global research on democratisation have expressed concerns and criticisms regarding the unlawful developments that took place in Tunisia in 2021 and beyond. Serious criticisms against the practices of Saied's rule in Tunisia are highlighted in a report dated 2022 prepared by the Bureau of Democracy, Human Rights, and Labor under the U.S. Department of State. In *The Economist Intelligence Unit Index 2022*, Saied's unlawful actions in 2021 are described as a constitutional coup, indicating that Tunisia is increasingly transforming into an autocratic regime. In a 2023 report published by Freedom House, Tunisia is recorded as the third country experiencing the highest decline in democracy indexes. In the *Democracy Report 2023: Defiance in the Face of Autocratization* published by the V-Dem Institute, one of the leading democracy indexes, concerns about the current situation in Tunisia were also expressed, emphasising that Tunisian democracy is under serious threat.

Saied's most recent practice that can be described as unlawful is the arrest of Rached Ghannouchi, the leader of the country's largest political movement (Ennahda) and the dissolved speaker of the parliament – along with many other opponents – by detaining them during a night raid, using the law as a political weapon. There are serious concerns about the prison conditions and health status of Ghannouchi and other opponents who were arrested on the basis of unfounded legal claims. Tunisia is being led back to a dictatorial regime through such unlawful practices; if steps are not taken to stop such legal violations, there is a high likelihood that tensions in Tunisia will rise in the upcoming period. The international community must act, particularly against the unlawful practices targeting Ghannouchi and other opponent groups, by intervening to address these violations of the law.

This report will examine the unlawful practices and detention actions against the opposition in Tunisia during the Kais Saied era, taking past developments into account as well. The report will emphasise how Saied brought Tunisia, which had achieved some democratic gains simultaneous to the process known as the 'Arab Spring,' back under the rule of an authoritarian regime. It will also highlight how he has subjected individuals perceived as opposition figures, particularly Ennahda leader Rached Ghannouchi, to unlawful prosecution under conditions contrary to basic human rights with unfounded allegations.

This Report is based on interviews conducted with Tunisian politicians, human rights activists, journalists, and relatives of unlawfully arrested opponents, also using open sources such as statements, government documents, and reports published in the mainstream press. The interviews were conducted through online platforms between June 11 and July 25, 2023. An unstructured and in-depth interview technique was adopted.



# 1- THE TRIALS OF DEMOCRACY IN TUNISIA

After the overthrow of Ben Ali, Ennahda emerged as the first party in the parliamentary elections held on October 23, 2011, but could not reach the majority needed to form a government. Ennahda, which won 89 seats in the 217-seat parliament with a 41% vote rate, did not hesitate to form a coalition with left-wing parties in the country, and a Troika government was established with the Congress for the Republic (CPR) and Ettakatol (The Democratic Forum for Labour and Liberties) parties. The 2011 election was held to form a parliament that would establish a new constitution for post-revolution Tunisia. Ennahda, which did not nominate a candidate for the presidency during this period, expressed support for the secular candidate of the CPR, Moncef Marzouki. With Ennahda's support, Marzouki became Tunisia's first elected president through the representative will of the Constituent Assembly.

The 2014 elections, which were the first free and independent elections held in Tunisia after it gained its independence in 1956, hold significance in terms of being the first elections held after the adoption of the new constitution prepared by the house of representatives elected in 2011. In the 2014 elections, the Nidaa Tounes party (established in 2012 as a movement against Ennahda, incorporating secular and secularist segments), succeeded in becoming the first party with a 37.5% vote rate. Ennahda followed with a 27.8% vote rate, winning 69 seats, while Nidaa Tounes won 86 seats. After these elections, in which no political party won enough seats to form a government, the Ennahda movement participated in the coalition government led by Nidaa Tounes. In the presidential elections held in 2014, the first free and independent presidential election in the country, Ennahda once again chose not to nominate its own candidate. Ennahda supported the candidate of the left-wing CPR party, Moncef Marzouki, for the second time. In the first round held on November 23, 2014, where no candidate won a majority, the two candidates with the highest vote percentages – the incumbent President (Moncef Marzouki) and Nidaa Tounes's candidate, Beji Caid Essebsi – competed at a second round.

Consequently, Essebsi was selected as Tunisia's new president with a 55% vote rate, while the voter turnout was 64%.

It can be said that Ennahda's support for Marzouki is primarily because he is a candidate who promotes negotiation processes across various segments in the country, maintains committed to the principles and goals of the Revolution of Dignity, and does not identify himself with the practices of the former regimes. Meanwhile, the Ennahda Party and its leader (Ghannouchi) had worked to ensure that the structure tasked with carrying out Tunisia's constitutional process was very vocal. The new constitution prepared by the Constituent Assembly, of which Ghannouchi was one of the most significant architects, was adopted by 200 votes, equivalent to 92.16% of the parliament in 2014.

The next presidential and parliamentary elections were held in September and October of 2019, respectively. In the September presidential elections, Ennahda's candidate Abdelfattah Mourou failed to advance to the second round. As such, Ennahda supported the independent candidate, Kais Saied, who was known for his opposition stance against all parties. During the run-up to the election, Saied was considered a reasonable candidate due to his support for the spirit of the Revolution of Dignity, his profession as a law professor, and his perceived neutrality. Backed by Ennahda, Saied was elected as the new President of Tunisia with a majority. In the parliamentary elections, Ennahda once again emerged as the first party; yet no party was able to reach a majority to form a government. Ghannouchi had entered parliament for the first time as a candidate in these elections. Following the parliamentary elections in which no party could reach a majority to form a government, President Saied assigned the task of forming the government to Hichem Mechichi, who was the Minister of the Interior at the time. This new coalition government – formed after long-lasting negotiations – successfully gained a vote of confidence



from the parliament. Ennahda had worked for political stability in Tunisia and played a significant role in the smooth establishment of this new government. The leadership of the parliament in the new government formed in September 2020, which included independent technocrats, was led by Ghannouchi, Ennahda's leader – the largest party in parliament and the government coalition partner.

## **2- UNLAWFUL PRACTICES DURING THE KAIS SAIED ERA AND THE END OF DEMOCRATIC TRANSITION**

Turbulence in Tunisian politics continued even after these elections. After assuming the top position of the country, Saied, who holds the presidential seat and is himself a Professor of Constitutional Law, became engaged in unlawful actions that undermined the country's political and social stability.

Prime Minister Mechichi presented a cabinet reshuffle, which had been approved by the parliament in January 2021, to President Saied. However, Saied rejected the proposal by not accepting some of these changes. Saied cited the reasons for not approving the cabinet presented by Prime Minister Mechichi as Mechichi's failure to consult with the Council of Ministers before deciding to make changes to the cabinet, the association of some names in the cabinet with various corruption cases, and dissatisfaction with the absence of female ministers in the cabinet. Among the ministers Saied proposed to replace were the ministers of health, energy, employment, and sports.

In this context, it can be said that the new cabinet proposal was rejected by Saied in a manner contrary to Article 89 of the Constitution. Indeed, in this Article of the Constitution it is stated that the person vested with the authority to form the government (the Prime Minister) will make decisions, and the President will be consulted only about the Minister of Defense and the Minister of Foreign Affairs. However, Saied rejected the cabinet proposal on grounds beyond his remit of authority by objecting to various ministerial names in the new cabinet. Additionally, instead of seeking a vote of confidence from the parliament to dismiss the government, as stipulated in Article 99 of the Constitution, Saied bypassed the parliament and the will of the represented people, demanding the resignation of Prime Minister Mechichi. Mechichi, however, announced that he would not resign. Arguably, these such requests by Saied reflect a desire to restrict the powers of the parliament, which is the legislative body, and to increase his influence over the government. Moreover, public dissatisfaction with the government's inadequate response to the COVID-19 pandemic and the escalating economic difficulties that emerged during this period led to public protests. These protests turned into larger demonstrations in which protesters demanded the government's resignation.

Such conditions in the country warped into a "political opportunity" for President Saied. On July 25, 2021, he announced the dismissal of the government, the dissolution of the parliament, the removal of immunity for MPs, and the appointment of a new prime minister to continue the executive branch. Additionally, Saied declared himself as the chief prosecutor, thus carrying his influence on the country's judicial system to a peak. Following Saied's announcement, barricades were placed around the parliament building, preventing Speaker of the Parliament Ghannouchi and other members of parliament from entering the building. While Article 80 of the Tunisian Constitution grants the President the authority to take extraordinary remedies in the face of a danger targeting the country's institutions, security, and independence, it mandates consultation with the Prime Minister, Speaker of the Parliament, and President of the Constitutional Court to determine these remedies. Moreover, it explicitly prohibits the President from dissolving the parliament and dismissing the government. Therefore, Saied's actions

do not express the emergency powers stated in the Constitution but declare instead not a de jure but a de facto state of emergency – in turn, suspending the Constitution and positioning himself as the sole authority in the process. With these actions, it is possible to say that the Tunisian Constitution was effectively suspended and practically abolished by Saied on July 25. Hence, it would be inaccurate to label these actions as a constitutional coup. Saied's actions go beyond the abuse of constitutional powers; although not done with military force, they resemble an ordinary coup conducted through power relations and force. Because Saied has started to rule the country not by the constitution but through decrees.

According to Adel al-Majri, a Tunisian human rights activist and vice-president of the Geneva-based Association for the Victims of Torture, in his interview with WOLAS (11.06.2023), the Tunisian Parliament has been subjected to a systematic smear campaign since Saied took over as President in 2019. al-Majri alleges that Saied used Abir Moussi's anti-revolutionary group in parliament as a means to disrupt parliamentary proceedings and create a negative image of the parliament among the Tunisian public. al-Majri suggests that Saied aimed to avoid public backlash by dissolving the parliament, even though it was unlawful, due to the parliament's negative image among the public. These smear campaigns also manipulated the media. Abir Moussi, the leader of the Free Destourian Party, and her group in the parliament made attempts to prevent the functioning of the Tunisian Parliament. For instance, creating disorder in parliament to project an image of ineffectiveness on television screens was a part of these efforts.

Preventing security forces that were responsible for maintaining order in the parliament from intervening in such incidents contributed to shaping a public opinion associating the Tunisian Parliament with conflict and disorder.

Al-Majri states that this systematic smear campaign and the subsequent coup could not have been achieved by Saied alone, alleging that anti-revolutionary bureaucrats and soldiers leftover from the Ben Ali era also played a role. As a basis for this claim, al-Majri points to Saied's close relationships with the country's high-ranking officials after becoming President and certain institutional visits that were not protocol/required by the President.

Saied's decisions garnered support from the bureaucracy and the military along with his established high-level relationships. His supporters took to the streets while Ennahda and other political parties called on their supporters to oppose this coup attempt via protests. In reaction to this move, President Saied announced that such protests would be met with violence. Following Saied's decisions, tensions arose between his supporters, protesters, and the police. This chaotic atmosphere increased concerns that Tunisia's already fragile democracy was under threat. As a response to the conflict, Saied declared a curfew on July 26, 2021, which lasted for one month.

In October 2021, Saied announced his appointment of Najla Bouden as the Prime Minister. With this decision, Najla Bouden became the first female prime minister of both Tunisia and the Arab world. However, the legitimacy of Bouden's premiership has been the subject of debate since her appointment – given that Bouden was appointed by Saied through a presidential decree, considered to be unconstitutional according to Article 100 of the Constitution. Additionally, thanks to Saied's consolidation of most executive powers, Bouden assumed the role of Prime Minister with significantly fewer powers than her predecessors. It is speculated that Saied's trust in Bouden's loyalty and her anti-Ennahda stance were influential factors in his appointment of the position to Bouden, who previously served in the Ministry of Education in 2011.

President Saied has attempted to legitimise his dismissal of the parliament and other unlawful decisions by relying on Article 80 of the Constitution. However, upon examination of the relevant article, it is

evident that in such “emergency” cases as cited by Saied, the Constitution requires the parliament to remain in “permanent session.” In this context, the Constitution clearly prohibits the suspension or dissolution of parliament. In addition, it is stated in the Constitution that the president should consult with the prime minister and the speaker of the parliament during the process of making such decisions; thus, decisions should be made only after such consultations. However, Saied prevented the entry of Mechichi and Ghannouchi into the parliament instead of consulting with them.

The only body that can determine whether Article 80 of the Constitution has been applied in accordance with the law as claimed by President Saied, or can invalidate Saied’s decisions and claims, is the Constitutional Court. However, the Constitutional Court, mandated by the 2014 Constitution, has not been established yet due to political turmoil in the country and disagreements over the appointment of its members. The lack of such a legal solution has further complicated the political situation in the country.

In the wake of decisions that disrupted Tunisia’s political stability, Saied announced a roadmap that included a constitutional referendum on July 25, 2022, and general elections on December 17, 2022. In addition, Saied dissolved the High Judicial Council (HJC) with Decree No. 2022-11 on February 12, 2022, thereby deactivating the highest judicial body. Instead of HJC, Saied established a Temporary Supreme Judicial Council under his control, allowing him to intervene in the appointment of members. In this way, he was able to solidify executive dominance over the judiciary. On June 1, 2022, with decree number 2022-35, Saied granted himself the authority to dismiss judges if their actions were deemed to undermine the independence or integrity of the judiciary. Saied has removed 57 judges since illegitimately empowering himself to directly dismiss them in this manner. Mu’adh Ghannouchi, the son of Rached Ghannouchi, asserts that the primary reason for Saied’s control over the judiciary is to arrest and convict all politicians, journalists, activists, and similar individuals and institutions opposing the coup through fabricated cases.

*As of 2021, the number of individuals who have been detained and are currently in custody as a result of Kais Saied’s unlawful practices is over 60.*

*Among the detainees are 3 journalists, 1 social media blogger, 5 former ministers, and 7 members of parliament.*

*24 individuals detained for their political activities are members of various professions such as lawyers, doctors, engineers.*

Saied was unable to successfully carry out the arrests he desired from July 25, 2021 (when he dismissed Mechichi), to May 2022. Recalling that these arrests were overturned by judicial decisions, Mu’adh Ghannouchi states that Saied consequently dismissed many judges who refused to issue arrest warrants for opposition politicians on the basis of groundless accusations. Those judges and prosecutors that were not dismissed went on to conduct investigations and prosecutions against the opposition (on the very basis of such groundless accusations), doing so thanks to the campaign of pressure and intimidation levied at them by Saied’s rule. By erasing the traces of the dismissed judges in the records of lawyer associations/bar associations, Saied even deprived them of the right to practice law after their dismissal. Thus, Saied established dominance over the judiciary, using it as a tool for mounting pressure against those who oppose him.

Tunisia – a country that is edging back towards dictatorial rule – nonetheless held parliamentary electi-

ons in December 2022 and January 2023. These saw very low participation, mainly due to the majority population boycotting them. After the first round on December 17, 2022, the second round was held on January 29, 2023. As with the constitutional referendum (July 25, 2022), these elections were boycotted by most opposition parties, including Ennahda, resulting in a very low turnout of only 8.8% in the first round. In the second round, turnout remained very low at only 11%. In addition to the political parties' boycott, the public's limited interest in voting for a parliament with significantly restricted powers – owing to the last constitutional amendment – also contributed to a mood of general indifference towards the elections. This remarkably low level of electoral participation passed into the Tunisian history books as the least-participated-in election and, furthermore, into world history as the election with the second-lowest participation rate. Referred to as the “non-partisan election,” many constituencies did not even have candidates. The participating parties in the elections were the 25th of July Movement, People's Movement, the People's Win Initiative, and the People's Establishment Initiative – all of which are known for their proximity to Saied.

## 2.1 FROM THE PEOPLE'S CONSTITUTION TO THE PRESIDENT'S CONSTITUTION

On April 21, 2022, Saied issued a decree granting himself the authority to appoint members to the election board. With another decree issued on June 1, 2022, he also assumed the authority to dismiss judges. Having revealed his plans for the new constitution on December 10, 2021, he publicly disclosed the draft on June 30, 2022. Saied appointed all members of the commission that prepared the constitution, and he personally wrote some parts of it.

Moncef Marzouki, Tunisia's former president and legal professional, stated in an interview with WOLAS (14.06.2023) that Saied's actions, including dissolving the parliament, abolishing the 2014 Constitution that was prepared with broad consensus, and imposing a constitution he personally wrote, are inconsistent with the rule of law. Saied imposed a constitution prepared by a council he appointed, passing the constitution referendum through an election committee he formed after cancelling the results of the Supreme Election Council. He dissolved the High Judicial Council and established a new judiciary council composed of individuals close to him, pressured judges, and intervened in judicial processes. These are among the main developments in Tunisia that demonstrate the absence of judicial independence.

Marzouki also indicates that Tunisia is currently going through one of the most challenging periods in its history. Having been active in pre-revolution Tunisia, Marzouki acknowledges that even during the periods of Habib Bourguiba and Zine al-Abidine Ben Ali, there was a minimal level of respect for the constitution and laws, and there were at least some formal standards. Accordingly, he emphasises that the situation brought about by Saied is in fact worse.

On July 25, 2022, the Tunisian people participated in a referendum to vote on a new constitution that drastically altered the country's political structure, undermining fundamental principles such as the separation of powers and judicial independence that had been outlined in the 2014 constitution. A new constitution that expanded the powers of the president was adopted through a referendum that was largely boycotted by the Tunisian people, resulting in very low participation. In this referendum, voters were asked a single question on the ballot: “Do you support the draft of the new constitution for Tunisia?” Saied, who had the first draft of the new constitution prepared by a team led by constitutional professor

Sadok Belaïd, personally gave the final shape to the draft. Since the referendum was largely boycotted, with around 30% turnout, questions were raised about its legitimacy. Yet, Saïed announced that the referendum passed with a 94.60% "Yes" vote.

Saïed presented a top-down constitution, prepared by a committee he appointed, to the approval of the Tunisian people under the conditions of a state of emergency. It would not be incorrect to state that the referendum, which the Tunisian people expressed their reaction to via boycott, essentially turned into a plebiscite due to the lack of public participation and the reduction of the options to a simple "approval or rejection." In this regard, the legitimacy of this constitution imposed by Saïed is highly questionable.

*A plebiscite is when those in power during a specific period present, for example, a draft constitution for a referendum without creating a debate environment, resulting in a simple "yes" or "no" vote.*

The new constitution further strengthens the president's power, seriously undermining the principles of judicial independence and the separation of powers. Article 100 of the new constitution grants the president the authority to determine the country's general policies, specify necessary elections, and report these elections to the cabinet. Article 102 allows the dissolution of the cabinet and the direct removal of any of its members, either at the president's discretion or upon the PM's recommendation, thereby eliminating the principle of the separation of powers. In addition, the provision of immunity in the 2014 Constitution is maintained with Article 110 of the new one, which grants immunity to the president, stating that presidents cannot be questioned or prosecuted for measures taken during their presidential term. The authority given to the president in Article 55 to restrict the rights and freedoms of Tunisian citizens in exceptional circumstances is notably susceptible to abuse. In the 2014 Constitution, there was a similar provision, specifying that such restrictions could only be imposed by law for reasons found necessary by a civil and democratic state that aims to protect the rights of others, or based on the requirements of public order, national defence, public health, and to uphold public moral norms – provided that there was proportionality between the limitations and the intended purpose.

Even though the Constitutional Court, which was abolished by the new constitution, has since been re-established, it has lost the legal authority it once had under the 2014 Constitution to resolve any legal disputes related to the president's powers. Furthermore, the president gained more authority in the appointment of judges. Article 120 allows the president to interpret the recommendations proposed by the High Judicial Council, granting the final decision-making power to the president. Thus, the independence of the judiciary is severely undermined. The new constitutional architecture constructed by Saïed in Tunisia presents a landscape that demonstrates an asymmetric concentration of power towards president, with a considerable weakness in the rule of law, judicial independence, and constitutional justice.

Unlike the 2014 Constitution, which allowed a vote of confidence in parliament for the dismissal of the president, the new constitution does not contain provisions that would allow the president to be unseated. According to the constitution, which states a presidential term of 5 years, the president is allowed to be elected for two terms. However, certain statements could pave the way for a longer (dictatorial) regime – e.g., statements indicating that in the event of war or imminent danger, the presidential term would be extended until the elimination of such danger. Indeed, Article 90 of the new constitution states that in situations such as war/imminent danger the presidential term will continue until the danger is eliminated. Article 90 thus uses the concept of "imminent danger" to allow the president to extend their term indefinitely. Likewise, according to Article 96 the president, who also has

the authority to declare a state of emergency, can extend the state of emergency at their discretion, and no other individual can terminate this state of emergency except them. In other words, according to the new Tunisian Constitution, the president is free to establish an absolute dictatorship without any time limits and without the need for parliamentary approval.

The new constitution, far from being a social contract that would unite the country and provide comprehensive representation, has failed to garner support even from the largest and most powerful civil society organisation in Tunisia, the Tunisian General Labour Union (UGTT), which supported Saied's decisions in 2021. Indeed, with the new constitution, it is observed that the president's authority and influence over the executive and judicial branches increases to the detriment of the parliament's power and the legislative branch's impact. According to this constitution, which grants the president the authority to appoint high judicial members, determine the budget, and appoint top officials and ministers, the government is held accountable not to the parliament but to the president. Another change implemented by the new constitution is the replacement of the phrase "Islam is the official religion of Tunisia" with "Tunisia is a part of the Islamic nation."

When examined in the context of Tunisia, this constitutional change is significant. The change, along with public statements made by Saied, indicate his efforts to legitimise the constitutional coup he orchestrated as an initiative against "political Islam" – particularly in the eyes of the international community. However, it is difficult to claim that Ennahda, which bases its political actions and statements on principles such as pluralism, the possibility of the coexistence of Islam and democracy, compromise, and respect for all segments of the population, aims to Islamize the country. Whether Saied's attempts to legitimise his constitutional coup, especially in the eyes of the Western world, will achieve the intended benefit depends upon whether Western countries consider Saied as an ally in the upcoming period.

While many political figures have expressed concern that this constitution grants the president even more powers, legal expert Sadok Belaïd, who prepared the constitution draft, has even stated that the article allowing the extension of the president's term in case of imminent danger carries the risk of an "infinite dictatorship." Ghannouchi, meanwhile, has described Saied's actions as the "coup against the revolution and the constitution."

In order to legitimise the authoritarian regime he wants to establish and institutionalise the status quo in his favor following the constitutional coup, Saied has not hesitated to carry out many unlawful actions, showcasing that instrumentalising the law for political agendas is one of the most common methods used by autocratic regimes.

### **3- KAIS SAIED'S ILLEGAL MEASURES AND VICTIMS**

President Kais Saied has engaged in various unlawful initiatives to sideline all opposition and rivals, aiming to expand his power domain since his election as president in 2021 until today. One of Saied's recent moves to establish his autocratic rule was to arrest Rached Ghannouchi, the leader of the Ennahda Movement and the Speaker of the Tunisian Parliament, during the detention and arrest process he initiated against many politicians, journalists and activists in the country in April 2023.

#### **3.1. UNLAWFUL DETENTIONS AND ARRESTS**

The arrest of Ghannouchi was the most sensational of Saied's ongoing arrests for some time. Before Ghannouchi's arrest, many opposition activists, politicians, and media members had already been

arrested in the country. Some of the arrested individuals include activist Khayam Turki, businessman Kemal Latif, former MP Walid Jalled, and Noureddine Boutar, the director of Mosaïque FM, one of the country's most popular radio stations and known for its criticism of Saied. Former Prime Minister Ali Laarayedh, an important figure in Ennahda, has also been in custody since December 20, 2022. The clearest commonality among these detained individuals is their opposition to Saied.

The reasons given for the arrest/detention of opposition figures tend to be quite general, such as attempting to overthrow the government and endangering national security. Individuals that were detained stated that the police conducting the raids did not show them any warrants – nor was concrete evidence regarding the accusations presented. Saied described the detained individuals as “terrorists threatening the internal and external security of the state” and “traitors attempting to create a social crisis,” blaming them for the country's economic, political, and social instability.

Another attempt of Saied's to legitimise the arbitrary arrests and detentions targeting his opponents is Decree No. 54, which he issued during his autocratic rule. This decree covers offenses such as spreading false and misleading news, producing unfounded news, and publishing false or forged documents. However, this decree has been criticised by various sectors in the country, with many suggesting that it has been used as a pretext to suppress voices opposing Saied.

*Decree Law No. 54, published on September 13, 2022, is also known as the Cyber Crimes Law. The decree consists of 5 sections and 38 articles. The purpose of the decree has been stated to combat cybercrimes and telecommunications offenses.*

The actions taken after Saied was elected president, including arbitrary arrests and detentions, have been widely criticised by the opposition in the country. Opponents accuse Saied of turning Tunisia, which was considered the “Arab Spring” popular uprising's most successful example of democratic transition, back into an autocratic regime. Given the actions President Saied has taken since his election, it can be observed that such accusations against him are not unfounded. The strongest basis for criticism against President Saied is his unconstitutional dismissal of then-PM Mechichi and dissolution of the Tunisian Parliament on July 25, 2021, followed by a series of unlawful actions. In addition, Saied has imprisoned many politicians, journalists, and human rights activists whom he views as opposition figures by having them tried and convicted in kangaroo courts with appointed judges based on immaterial accusations.

Under the rule of Saied, the state of exception/state of emergency has become the norm in Tunisia, confirming the famous philosophers Carl Schmitt and Giorgio Agamben's forecasts. By suspending an existing political order, Saied has become the constitutive power and legislator in a state of exception of his own making, determining the rules of this exceptional state. With a series of unlawful powers thus granted unto himself, Saied initiated his series of arrests on July 21, 2021. While a house-arrest policy was implemented for many political figures, state officials, judges, and party leaders, some politicians were directly detained and sent to relevant centers. In what can be deemed the first wave of these arrests, among the detained were: the former Minister of Justice and Ennahda member, lawyer Noureddine Bhiri; lawyer and MP Seifeddin Makhoulouf; journalist Amer Ayed; and security official Fathi Belaid. In the second wave of arrests, 12 lawyers, including Abderrazak Kilani, the chairman of the National



Bar of Lawyers, were arrested. The arrests continued with political figures such as Mehdi Zekrouba and Khayam Turki, along with various other individuals involved in politics. During this ongoing period of arrests, some individuals who had been previously arrested and released were again taken into custody/rearrested. According to information obtained from Adel al-Majri, these rearrested individuals include: Nouredine Bhiri; former Regional Development Minister, lawyer Ahmed Najib Chebbi, and former Chief Judge of the Court of Appeal, Ayachi Hammami.

One of the waves of arrests initiated by Saied took place in April 2023, coinciding with the month of Ramadan. During this period, 21 people were detained, and the arrests are still ongoing. Among those unlawfully detained under false allegations and held in extremely poor conditions is Rached Ghannouchi, Ennahda leader and the former Speaker of the Parliament (of the dissolved parliament). Along with Ghannouchi, others detained during this period include former Minister of Fisheries and Maritime Affairs Mohammed bin Salim, MP Ahmed Ammar, and journalist Mokdad al-Majeri, who worked for the Zaytouna channel. During and after these arrests, various human rights violations have been observed. The main human rights violations during this period can be listed as follows:

- Former Minister of Justice, Nouredine Bhiri, experienced a shoulder fracture due to an attack while in custody that was compounded by a lack of necessary medical care. He was also forcibly “disappeared” for a week at an unknown location, with no explanation provided on this matter.
- Nouredine Bhiri, having a shoulder fracture and requiring medical care, was placed in a cramped cell with 60 inmates held for criminal offenses, subjected to psychological mistreatment, and exposed to harsh conditions.
- Politicians have been detained as if their verdicts were finalised, despite their rights not being conclusively determined.
- Detained individuals have been deprived of the right to communicate with their families and see their lawyers. They have also been prevented from attending hearings.
- Saied-rule-appointed judges have allowed individuals appointed by the executive branch to operate in the courts affiliated with the judiciary, thereby compromising the principle of judicial independence and hindering the legal protection of prisoners' rights.

## 3.2. VIOLATIONS AGAINST POLITICIANS

These cases, which were filed in the first place via unlawful detentions and unfounded allegations, and which are obviously of political concern, are based on reasons such as conspiring against the country's security, disseminating misleading information, inciting rebellion, and sending Tunisian youth to conflict- and war-torn countries (usually referring to Syria). Ghannouchi, who is currently still in detention, was also accused for similar reasons and is being prosecuted under anti-terrorism laws within this context.

In this regard, Moncef Marzouki, Tunisia's former president and a lawyer currently residing in France, who is facing a case entirely driven by political motives, summarised the case against him in an interview we conducted as follows:

*“The fact that I was targeted by Kais Saied as the first President of Tunisia after the revolution is related to the targeting of the revolution of the Tunisian people. Initially, as a former president in the country, my diplomatic passport was revoked to hinder my activities aimed at exposing the coup and the current regime's disregard for the rule of law, and how an autho-*

*ritarian and dictatorial rule was established in the country. Additionally, I was sentenced to 4 years in prison in a case of which I was unaware in Tunisia, and I did not know the content of the charges. I learned about the court decision from the media and immediately contacted my lawyer in Tunisia to inquire about this case and its content, but he had no information about it. He himself had also learned about the decision from the media. This situation indicates that issues such as fair trial guarantees, informing citizens about their rights, or calling them to testify regarding the charges were never addressed. If this has been done to me as a former president of Tunisia, it undoubtedly shows that other citizens have also been subjected to human rights violations, persecution, and the violation of their fundamental rights."*

Rabab al-Latif, a member of the parliament that was unlawfully dissolved by Saied in 2019, regarding the complaints against parliamentarians, mentions that authorities respond very swiftly to these complaints. Likewise, he states that they apply procedures that normally take a long time exceptionally fast and within a short period. al-Latif also adds the following about the issue in his interview with WOLAS (19.06.2023):

*"In the case of a complaint against a member of parliament, no matter how unfounded and baseless it may be, an investigation is opened on the same day, and the member of parliament is interrogated. This situation is exploited negatively by the international media with the aim of tarnishing the reputation of these members of parliament."*

Furthermore, there are allegations that those members of parliament who served in the parliament dissolved by Saied are being pressured and targeted in their state affairs. MPs who prefer not to disclose their names have shared the pressures they faced with us as noted in the following paragraph.

A member of parliament working in customs, who previously held a significant position, stated that their powers are currently frozen, and they spend their time only in the office without active duties. Another member of parliament, who is a professor at a university, mentioned that the university administration does not allow them to teach, and they spend their shifts in the office. A member of parliament working in a state bank reported that, despite colleagues in the banking sector having been assigned vehicles, the vehicle allocated to him was taken away after Saied's coup.

Many MPs have decided to suspend their political activities and return to their normal lives to distance themselves from danger. Thus, the Saied regime has created an atmosphere of self-censorship, even for individuals working in top positions within the state. On the other hand, members of parliament who oppose Saied's measures and participate in political actions are subjected to oppression and harassment, facing fabricated charges. Among these members of parliament are figures like lawyer Seifeddine Makhoul, lawyer Samir Dilou, who has served in human rights roles and ministries, as well as Ennahda MPs Yamin Zoghalmi and Nadal Souissi.

### **3.3. VIOLATIONS OF THE 17S CODE AND RESTRICTIONS ON FREEDOM OF MOVEMENT**

Another violation, in addition to unlawful detentions and arrests, is related to freedom of movement. The practices carried out to prevent protests within the country and restrict the movement of opposition groups not only impede the freedom of movement for Tunisians on a domestic basis, subjecting them to frequent security checks by security forces, but also include various restrictions for those wanting to

travel abroad, preventing Tunisians from travelling outside the country. Since the first day of the coup, it is evident that the freedom of movement of many politicians, human rights advocates, journalists, and activists rejecting the coup has been blatantly violated. These violations often occur in relation to a code called "17S," which suddenly appears when the person is at the airport. In such cases, individuals labeled with the "17S" code are detained at the airport for hours and are notified by security forces that they cannot travel, thus resulting in missing their flights. However, these methods and practices used to prevent individuals from travelling have no legal basis

*"17S" or "S17" measures refer to a set of measures implemented in 2013 as part of the national plan to combat terrorism. These measures were created with the aim of preventing Tunisian citizens from leaving the country to join armed groups abroad. However, at the current stage, these measures have evolved into arbitrary restrictions that deprive individuals of their right to freedom of movement.*

Rabab al-Latif, a former Ennahda MP and member of the dissolved 2019 parliament, states that MPs started to face violations such as travel bans as of July 25, 2021. al-Latif mentions that the "17S" code was assigned to all MPs in the dissolved parliament by Saied. This code is known not only to be applied to MPs but also to judges, bureaucrats, journalists, and businessmen, thus restricting their freedom of movement. Over time, it has been observed that authorities started limiting the travel ban only to MPs wanted for investigation. Considering that investigations are carried out for political purposes, it can be ascertained that the "17S" code and travel restrictions are likewise implemented for political purposes.

*In our interview (11.06.2023) with Rabab Atik, the daughter of Suphi Atik (one of the Ennahda leaders; MP of the dissolved 2019 parliament), she describes her father's arrest process and the prison conditions he is currently experiencing as follows:*

*"My father was detained on May 6, 2023, at the airport while completing travel procedures; he learned about the presence of the '17S' code and the accusations against him, which prevented his travel and resulted in his arrest. Since May 12, 2023, he has been on a hunger strike, refusing baseless charges such as money laundering and possession of foreign currency. Additionally, he has faced mistreatment since his arrest on May 6, and he was not provided with food until he appeared before the investigating magistrate on May 12, 2023. At that time, despite the security forces preventing him from giving it to my father, a lawyer with great difficulty gave my father a sandwich.*

*Before his arrest, my father had no health issues, but now his health is deteriorating. Without anyone notifying us or even his lawyer, my father has been hospitalised more than seven times due to shortness of breath and loss of consciousness. We attempted to obtain medical reports from the hospital regarding his condition but were surprised to find no records, and the police had registered him under a false name to prevent his lawyer from accessing his health status report.*

*The respiratory crisis may be attributed to the conditions during the first 6 days of detention and being placed in a room at the Busousha detention center in the capital, which lacks adequate sunlight and ventilation, with 6 detainees who smoke continuously throughout the day. We are particularly concerned about the further deterioration of his health due to the*

medical neglect he has faced in prison. My father needs to be hospitalised; yet, whenever his condition worsens, he merely gets transferred to the hospital for simple tests and is returned to the detention center on the same day. Additionally, he was blackmailed by a doctor at Charles Nicolle State Hospital. The doctor demanded that he end his hunger strike for the doctor to examine and treat him, but my father refused; thus, the doctor did not examine him. Tests have indicated a dysfunction of the heart muscles and a significant decrease in blood values, and there had been some days when my father fainted. Moreover, my father has become incapable of moving properly. During weekly visits, either security guards carry him, or he struggles to walk by himself. My father has lost a significant amount of weight.”

Suphi Atik’s wife, Zeynep Marayhi, explained the process of her husband’s arrest and his current situation in an interview conducted by WOLAS on June 11 2023, as follows:

“As of today, my husband Suphi Atik has been on hunger strike for 41 days. Due to health issues, he has been transferred to hospital multiple times during this period and was admitted to intensive care due to dysfunctional heart muscles. He has lost 20 kilograms during this time. There have been instances during many of our visits when he could not walk or speak, and sometimes he could only come to the meeting with the help of two other people. As a result of his hunger strike, he is experiencing pain in his right kidney and problems with his heart muscles. Additionally, the room where he is held as a detainee accommodates 12 people, 5 of whom smoke.

Due to this unjust and inexplicable detention that threatens my husband’s life, I hold the investigating magistrate responsible for the entire situation. Suphi Atik was arrested at the last minute while he was about to travel to attend an international scientific conference. Despite learning today that there is a search warrant related to his arrest, he did not receive any prior information on this matter. Today, we find ourselves in a situation where Suphi Atik’s name is deliberately dragged into a political case.”

### 3.4. VIOLATIONS OF FREEDOM OF SPEECH

Politicians are not the only ones affected by Saied’s unlawful practices. Journalists are also victims of Saied’s policy to suppress all dissenting voices in order to establish an authoritarian regime. Amer Ayad, a Tunisian journalist and presenter on the channel Zaytouna, stated in our interview (11.06.2023) that he was prevented from performing the programme Harvest 24, in which he opposed the coup of Saied. Thinking that it was become difficult for him to continue his broadcasting from Tunisia, he decided to go abroad to continue his broadcasts. Stating that he received many threats from people close to Saied during this period, Ayad says that on October 1, 2021, his vehicle was stopped and his way was blocked, and he was threatened to change his political stance in his programmes and halt discussions of the coup and rights violations. Ayad went on to describe the events that followed as noted below:

“On October 3, 2021, in the early hours of the morning, I was taken from my home in the city of Monastir by security forces and brought to a security unit in the capital of Tunisia. I was accused of conspiring against state security, attacking the head of state, and inciting civil disobedience – all because I am a journalist committed to reporting the truth. As a result of these baseless charges, I was referred to a military court. It is very unique for a journalist to be tried in a military court. Abdul Latif al-Alawi, a member of the ‘Honor Coalition’ whom I hosted on a segment of the programme discussing the deteriorating state of law and human rights in

*Tunisia, is being tried in the same case.*

*During the first hearing, Abdul Latif was released, and a decision was made to continue my detention. My detention ended on November 25, 2021, but I am still prohibited from travelling abroad. In December 2021, a preliminary decision was made by the military court to sentence me to 4 months in prison. However, the case against me was initially filed with demands for death and heavy imprisonment. This situation is evidence of the brutality of the authorities (Saied's rule) and the use of military justice solely to harass a media professional for revenge. Following my appeal in April 2022, the military court reduced the 4-month prison sentence to 2 months. However, I later appealed to the highest military judiciary to challenge the military court's decision, and the appeal process is still ongoing."*

In the case known as Instalingo involving a Tunisian media company, numerous employees have been unlawfully detained on charges of "engaging in dangerous actions against the head of state." This constitutes a blatant attack on journalists and media professionals who report the truth against the backdrop of Saied's repressive measures. In the Instalingo case, where these unlawful practices were initiated, journalists such as Shahrazad Akasha, Latifi al-Hedouri, Shedde al-Haq Mubarek, and blogger Besheer al-Yusufi have been unjustly accused due to exercising their freedom of expression on the international stage.

Furthermore, journalist Khalifa Guesmi, working for Mosaique FM, was sentenced to three years in prison under anti-terrorism laws. Journalist Salah Attia was also sentenced to three months in prison for his international statements. The director of Mosaique FM radio, Noureddine Boutar, was arrested and released on bail for \$350,000. Journalist Mounia Arfaoui faced false accusations related to Decree No. 54, but the charges were later dropped. However, she still faces the risk of unjust convictions under unfair trial processes. The reporting by journalists Mohammed Bouguelb and Mounia Arfaoui exposed corruption involving the current Minister of Religious Affairs, leading to authorities targeting the journalists and making baseless accusations against them. Additionally, journalists Ilyes Gharbi and Haythem El Mekki were sent to the anti-crime unit to have their statements taken following discussions they had on international platforms.

Chaima Issa – an academic, human rights activist, and poet that played a significant role in the establishment of the National Liberation Front against Saied's coup and unlawful practices – was arrested on February 21, 2023, due to opposition of Saied. Issa was summoned to the Organized Crime Unit in Ben Arous on January 19, 2023, following her radio programme on December 22, 2022. She was accused of "inciting the armed forces to disobedience and rebellion against the president, misleading news and rumors endangering public safety and national defense, and inciting military personnel by provoking them." Based on these charges, Issa appeared in court on January 27, 2023, under Decree No. 54.

On February 22, 2023, while accompanied by her sister, Issa's car was stopped by three to four black vehicles belonging to security forces, and she was taken to her home for a search. When her car was stopped, Issa managed to contact her lawyer, and her sister succeeded in reaching her father. It was reported that a security officer forcibly attempted to take their phones during this incident.

During the search conducted without any permission, Issa's father also came to the house, but the security forces did not allow him to enter the house. Issa, who was detained following this incident, reported that she had recently been verbally and physically attacked by a prisoner identified as an "ISIS member." Issa stated that the relevant authorities did not intervene despite the verbal abuse and attacks by this woman. Although Issa was released on July 13, 2023, by the decision of the Court of Appeal in the Tunis province, the events she experienced during this process and the authorities' indifference to the unlaw-

ful practices she was subjected to are crucial in highlighting the clear danger to her life and illustrating the extent of human rights violations in Tunisia.

## 4. THE ARREST OF RACHED GHANNOUCHI

Rached Ghannouchi, the leader of Ennahda and one of the country's most prominent political figures, was detained in a raid on his home with no explanation provided regarding his whereabouts on April 17, 2023 (Monday). On Tuesday, the police closed the offices of many opposition parties, particularly Ennahda, and stopped their activities. This move by President Saied, aimed at eliminating all opposition and rivals over the past two years in order to expand his power, is interpreted as Saied's final effort to establish an autocracy.

Indeed, Ghannouchi's arrest is the most sensational among the ongoing arrest processes led by Saied. As mentioned in previous sections, many opposition activists, politicians, and media figures were arrested in the country before the arrest of Ghannouchi. The most prominent characteristic among the arrested, particularly in Ghannouchi's case, is that they are known opposing figures to Saied.

This latest detention and arrest of Ghannouchi also has a history. Ghannouchi was detained before the 2022 elections and kept waiting for hours outside the prosecutor's office. Subsequently, he was interrogated for more than twelve hours.

The arrest of Ghannouchi, who was Tunisia's Speaker of the Parliament before Saied's coup on July 25, 2021, is particularly significant as it occurred after his statement at the meeting of the National Salvation Front, a coalition of opposition parties against Saied. In this statement, Ghannouchi expressed that "A Tunisia without Ennahda, without political Islam, without the left, or without any other component is a project of civil war." Ghannouchi and Ennahda more broadly continue to argue that Tunisia's stability will be achieved through a consensus that includes all segments. As such, they are seen as the biggest threat to Saied, who wants to rule the country as a one-man regime.

82-year-old Ghannouchi was arrested by plain-clothes police, who raided his home around 18:30 local time (half an hour prior to iftar), on April 17, 2023. This coincided with the 27th night of Ramadan (2023). Since then, he has been held in Monastir Prison.

Ghannouchi faced various charges during the periods of Habib Bourguiba and Zine al-Abidine Ben Ali and was sentenced to death during the Bourguiba era. (His sentence was not executed due to the coup that took place during that time.) In the era of Saied, Ghannouchi has had ten separate cases against him, undergoing thirteen interrogations within a year before his arrest, totalling 150 hours of interrogation. According to his son in his interview with WOLAS (06.07.2023), authorities conducted such an intensive interrogation project built upon baseless and fabricated accusations with a view to exhausting the 82-year-old Ghannouchi, who has various health problems.

The cases filed against Ghannouchi can be divided into two categories: politically motivated cases and cases filed regarding allegations of money laundering, corruption, and sending Tunisian youth to war and conflict zones. However, in none of these cases has any conclusive evidence been presented regarding the accusations against Ghannouchi. The chronology of the cases for which Ghannouchi has been accused since 2022 is as follows:

**March 31, 2022:** Following Saied's unconstitutional dissolution of the Tunisian Parliament, Speaker of the Parliament Rached Ghannouchi held an online session to convene the Parliament digitally. During this online session, Ghannouchi conducted a vote to annul President Saied's decision and halt the implementation of Article 80, which Saied used as a pretext for the dissolution.

**July 19, 2022:** The trial session regarding accusations of Ghannouchi's money laundering, also known as the Nema Association Case, took place.

**August 3, 2022:** The session for investigation into statements likening Saied's rule to an authoritarian regime, also known as the Tyrants (Taghout) Case, without making any accusations against the security forces, took place. In this case, Ghannouchi faced a potential one-year prison sentence.

**September 19, 2022:** The trial session for allegations of sending Tunisian youth to war and conflict zones took place.

**September 20, 2022:** The second trial session for allegations of sending Tunisian youth to war and conflict zones took place.

**November 11, 2022:** Known as the Instalingo Case, in the trial against media channels and journalists opposing Saied, Ghannouchi was accused of managing this opposition media. A session for this case took place on this date.

**November 28, 2022:** The third trial session for allegations of sending Tunisian youth to war and conflict zones took place.

**February 21, 2023:** Also known as the Tyrant Case, the second session for the investigation into likening Saied's rule to an authoritarian regime without making any accusations against the security forces took place.

**February 23, 2023:** In the trial whereby Ghannouchi was accused of sending young people to conflict zones, it was claimed that he advised Tunisian youth to go to conflict zones such as Syria in a video. In the third trial session, it was revealed that there was no such video, and the case was baseless.

**April 17, 2023:** Ghannouchi, who was kept in an unknown place after his detention, appeared before the judge after he "disappeared" for 48 hours without any notification given to his family and/or lawyer.

**April 18, 2023:** Ghannouchi was kept waiting for three hours for this trial under the Tyrant Case; the trial could not be held because his lawyers were not allowed to attend. No evidence was presented regarding the allegations that Ghannouchi called police officers authoritarian in this case.

**April 19, 2023:** After waiting for seven hours for the Tyrant Case trial, Ghannouchi was subjected to a nine-hour interrogation. On the back of this case, he has been held in Mornaguia Prison since this date.

**April 24, 2023:** A case was filed against Ghannouchi based on a video recording that allegedly showed him with a terrorist group. The case was filed after a police officer claimed to have seen Ghannouchi in a video with members of a terrorist organisation. In the seven-hour trial,



the video in question was not shown – and, in any case, the police officer only claimed to have seen such a video.

- All these cases filed against Ghannouchi are attempts by Saied to hinder those who oppose him and are therefore entirely politically motivated. No consistent evidence has been presented regarding the accusations; attempts to arrest Ghannouchi and other dissidents have been based on false evidence. In this regard, due to the violation of the right to a fair trial in these cases where the necessary conditions for a fair trial are not met, Ghannouchi has decided not to attend the court sessions.

**May 8, 2023:** Ghannouchi, stating that his right to a fair trial has been violated and the charges against him are baseless, decided not to attend the court hearing on May 8 and refused to participate in the hearings of the Tyrant Case and other cases.

**May 9, 2023:** The second session of the Instalingo Case took place. Ghannouchi refused to participate in this court session, citing a violation of the right to a fair trial. The judge decided to continue Ghannouchi's detention for not attending this session.

**May 15, 2023:** Regarding the Tyrant Case, Ghannouchi refused to attend the session held at the Court of First Instance, Tunis. For not attending the session, Ghannouchi was sentenced in absentia to one year in prison and a fine of 1000 Tunisian Dinars on charges of attempting to declare a civil war. A video recording of Ghannouchi was shown as evidence for the accusation in question. However, the video was manipulated, using various effects to dramatise it. Despite Ghannouchi's lawyers presenting the original and complete version of the video to the court, the mentioned verdicts were issued against Ghannouchi.

In addition to the above accusations and cases, Ghannouchi is also accused in a case referred to as the Secret Operation Case by Saied. This case alleges that he established a covert organisation with the aim of taking control of state institutions and orchestrating assassinations against state officials. Ghannouchi refused to attend both sessions held in the context of this case.

In the month of Ramadan 2023, while preparing for iftar at home with his wife, Ghannouchi's house was raided by a large group of plain-clothes officers at around 18:30 local time. During the unlawful search conducted at his home, Ghannouchi was detained without any explanation given to either himself or his family and lawyers.

According to statements from his family, half of the security forces who conducted the raid in plain clothes entered Ghannouchi's house, while the others remained outside to prevent his son, daughter, assistants, and lawyers from entering during the search. Ghannouchi's family and lawyers were illegally prevented from entering the house during the raid and had initially thought it was a search. They stated that the security forces stayed at the house until 20:30.

During this time, as the incident turned into a protest with the gathering of neighbourhood residents in front of Ghannouchi's house, the security forces detailed Ghannouchi and left the house in fear of escalation. It was stated that Ghannouchi, along with his daughter, wife, and assistant, was detained with the explanation that they would be taken to the el-Aouina Barracks. However, when lawyers went to the mentioned barracks, they found that Ghannouchi was not there. Upon questioning by his lawyers, it was said that Ghannouchi was at the Bouchoucha Barracks. When the lawyers went to those barracks instead, they yet again could not find Ghannouchi. Taking a detained politician to a military barracks is considered a form of unlawful detention. Following this incident, the location where Ghannouchi was

held was finally determined around 21:00 on April 18 (Tuesday). Ghannouchi was able to see his family and lawyers when he was brought to court on April 19 (Wednesday).

The investigations into Ghannouchi, his son-in-law, assistant, and two MPs began at 18:00 on April 19, but owing to the scope of one-on-one interrogations with the defendants, Ghannouchi's interrogation only started at 22:00. The interrogation, which thus started on the night of April 19, lasted until the morning of April 20.

Following the conclusion of the interrogation, the investigating judge issued an arrest warrant. This decision to arrest Ghannouchi, who was not inclined to destroy the evidence of the accusations against him, whose chances of escape were very low considering his age and health problems, and who has no security concerns because he is under official protection as a member of parliament, is evidently a political decision. The appointment of the judge that ordered Ghannouchi's arrest as the chief judge of the 33rd Investigation Department following this decision was interpreted as a form of "reward." Many previous judges had summoned Ghannouchi to testify and tried him in court but had not issued an arrest warrant. Therefore, the appointment of this judge in particular as the chief judge indicates the political nature of the cases and legal decisions against Ghannouchi.

In our interview (06.07.2023) with Ghannouchi's son, Mu'adh Ghannouchi, he expressed his concerns about his father's condition as follows:

*"My father is over 80 years old, and he has health issues such as high blood pressure and diabetes. Therefore, he needs healthcare in an appropriate environment. My father stays in a cell with three people, one of whom is a businessman and the other is a doctor. He is under medical observation, and necessary check-ups are being conducted. As there has not been a definitive judgement regarding him yet, lawyers should have the opportunity to see him between 09:00 in the morning and 16:00 in the evening."*

According to Tunisian laws, detainees under investigation are allowed one visitor per week. Ghannouchi's weekly visits are scheduled within this framework on Wednesdays. Information obtained from his visiting lawyers and family members indicates that during visits, there is a glass barrier between Ghannouchi and the visitors. Ghannouchi, with the efforts of his lawyer, managed to have the glass barrier removed and could see his wife without any barriers. Ghannouchi's daughter also wanted to visit her father, but she was not granted permission due to being one of the defendants in the same case as Ghannouchi.

Ghannouchi announced on September 28, 2023, through prominent Ennahda figure Riyad Shuaybi, that he would begin a hunger strike as of September 29. In a Facebook post, Shuaybi stated that Ghannouchi's hunger strike would continue "until all the injustices and restrictions faced by him and other political detainees are lifted." Saied, on the other hand, condemned the support given by opposition political parties to Ghannouchi.

## **5. LEGAL PROCESSES AGAINST UNLAWFUL PRACTICES**

In Tunisia, where Saied is attempting to build an authoritarian regime, various legal measures can be taken at different levels to combat human rights violations and unlawful actions. Measures and actions can be taken at the local, continental, and international levels to put an end to unlawful practices in Tunisia. Various individuals and institutions – especially Tunisian legal experts and human rights activists – have started legal initiatives against the Saied rule. In addition to the precise measures to be taken, general support for such legal processes is essential. At the local level, it can be said that legal

initiatives against human rights violations have stalled. The dominance of Saied over the judiciary, which he further strengthened with the 2022 Constitution, has weakened the judicial independence in Tunisia and blocked the path to fair trials. This situation leads to local-level legal processes in Tunisia that favour those responsible for human rights violations.

On the continental level, the most effective judicial mechanism is the African Court on Human and Peoples' Rights. Ibrahim Bilgith, a lawyer working on human rights, filed a case against the Saied rule by applying to this highest judicial mechanism on the continent. In the court, a decision was made on September 22, 2022, to annul Saied's decisions harming judicial independence. However, the Saied rule has not taken any steps to implement this decision, nor has it even made any statements regarding the court's decision.

The African Court on Human and Peoples' Rights has stated that the decision may not be considered or discussed by the Tunisian government. In this case – i.e., if the decision is not implemented – Tunisia's membership in the African Union may be suspended, and it could face sanctions. One of the cases brought before the African Court on Human and Peoples' Rights is related to the killing of Reda Bouziane, a Tunisian citizen, by security forces during a protest against Saied's coup.

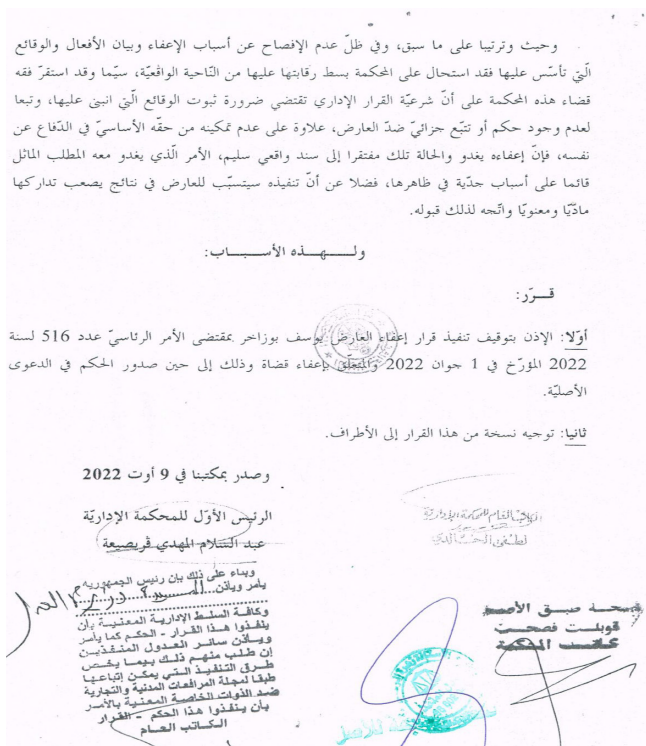


Image 1: A decision was issued on September 22, 2022, to annul Kais Saied's decisions that harm judicial independence.

Various initiatives have been undertaken internationally against Saied's violations of the law. For example, Adel al-Majri (Vice President of the Association of Victims of Torture in Geneva) stated in our interview that – with Prof. Dr. Nuri al-Buhairi – petitions were submitted to the Human Rights Council regarding individuals that were arbitrarily detained in Tunisia and disappeared under police supervision during the detention process.

Additionally, the former chairman of the National Bar of Lawyers, Abderrazak Kilani, who also served as a minister, was not allowed to visit the hospital where former Minister of Justice Nouredine Bhiri was detained. He appealed to the security forces to enforce the law and allow him to visit his client. Following this incident, Kilani and 14 accompanying lawyers were deliberately charged with baseless allegations. Tunisian lawyers and human rights activists in the diaspora have held discussions on human rights violations in Tunisia with deputy commissioners of the High Commissioner for Human Rights; they have also been in contact with the Inter-Parliamentary Union. Roughly 60 petitions of complaint were submitted to advocate for Tunisian MPs subjected to rights violations and unlawful practices.

Al-Majri mentioned that discussions were held with the Swiss Parliament regarding the developments in Tunisia and highlighted a meeting was organised to convey human rights violations in Tunisia. He mentioned that Tunisian human rights associations and activists have been reaching out to civil society organisations, research centers, and advocacy groups in the United States to provide information about human rights violations in Tunisia, explain the reality of the coup, and emphasise situations in which democratic values are under threat. Additionally, it is known that various lawsuits have been filed in the United Kingdom against Saied and other officials believed to be involved in human rights abuses due to their unlawful practices.

## 6. CONCLUSION: CONCERNS AND PROPOSALS

Developments such as Saied's efforts to neutralise all opposition movements, especially Ennahda, by dictating a constitution under his complete control to undermine judicial independence in the country and enable politically motivated trials through unlawful and arbitrary detentions and baseless allegations indicate that Saied is building a one-man regime akin to previous dictators like Habib Bourguiba and Zine al-Abidine Ben Ali. Moreover, the unlawful actions and arrests directed at Ennahda its leader Ghannouchi, perceived as a key threat by the Saied rule, are also a major concern. If there is no international response to Saied's undemocratic and anti-democratic actions, and if he continues these actions, Tunisia is clearly at risk of turning back into an authoritarian state ruled by a dictator.

Indeed, as per the data published by the Lexical Index of Electoral Democracy (2021), Tunisian democracy has been characterised as an autocracy that does not allow for alternative options<sup>1</sup>. Considering that the current situation in terms of freedoms and the rule of law in Tunisia is now much worse than it was in 2021, it can be understood that the country is increasingly leaning towards an authoritarian regime. The Index again characterised Tunisia as an autocracy in 2022. Yet, the same index had in fact classified Tunisia as an electoral democracy (score 6) in 2020.

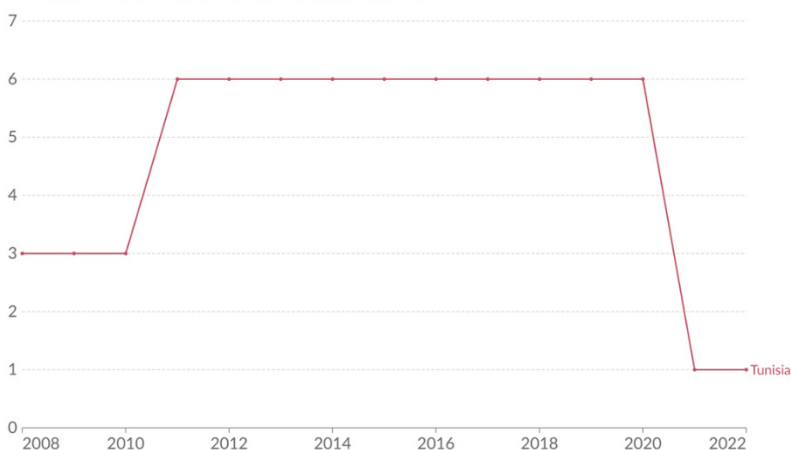
According to data from the Lexical Index of Electoral Democracy, Tunisia's democracy, which reached its highest level in history after the revolution in 2011, has fallen below even the era of the dictatorship of Zine al-Abidine Ben Ali. (See the table below.) This follows Saied's coup in 2021 and the "deconstitutionalisation" move.

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<sup>1</sup>2021 Political Regimes Map prepared using the classification by Skaaning et al. (2015). The Lexical Index of Electoral Democracy is an index developed by political scientists such as Svend-Erik Skaaning, John Gerring, and Henrikas Bartusevičius to define a country's political regime based on data from various datasets. According to this index, score 0 represents non-electoral autocracy/dictatorship, score 1 represents exclusive autocracy, score 2 represents one-party autocracy, score 3 represents multi-party autocracy, score 4 represents ordinary democracies in terms of majority rule, score 5 represents male democracy, score 6 represents electoral democracies, and score 7 represents advanced democracies/polyarchies in terms of rule of pluralism. Tunisia is shown as a country with score 1 in this index.

## Political regime

Based on the classification and assessment by Skaaning et al. (2015).



Data source: Skaaning et al. (2015)

[OurWorldInData.org/democracy](https://OurWorldInData.org/democracy) | CC BY

Note: The Chart tab uses numeric values, with 7 for polyarchies, 2 for multi-party autocracies without elected executive, and 0 for non-electoral autocracies

**Image 2:** A graph depicting the political regime dynamics in Tunisia from 2008 to 2022. While score 7 represents a pluralistic democracy, score 0 signifies authoritarian regimes with no elections. Tunisia's score during the Saied era is determined as score 1. **Source:** [Our World in Data, 2022, *The Lexical Index of Electoral Democracy* by Skaaning et al. (2015).]

It is evident that whatever was achieved by the Tunisian people through the revolution in 2011 has been lost due to Saied's unlawful practices. The actions taken by Saied indicate a resurgence of practices reminiscent of past dictatorships. Therefore, the risks of losing all the acquisitions related to fundamental freedoms and democracy are more serious than ever.

## 6.1. CONCERNS

Saied's unlawful and repressive policies are causing significant unrest among the public. The oppressive measures, coupled with serious economic hardships (high inflation and a cost-of-living crisis), lead to reactivity and accumulating anger among the Tunisian people. It is likely that protest movements against the Saied rule will be observed in Tunisia in the coming period. Saied's choice to suppress these protest movements through violence could lead to nationwide conflicts and incidents of violence. There is no reason to believe that the Tunisian people, who have experienced and participated in the Revolution of Dignity, will submit to Saied's domination, which is evolving into dictatorship. In addition to more general public discontent, protests by members of Ennahda could serve as a catalyst for mobilising the people.

It can be anticipated that Saied will continue his arbitrary and unlawful practices against the individuals and institutions he perceives as opposition in pursuit of the authoritarian regime he aims to establish. The arrest of Ghannouchi will diminish the possibilities for political consensus in the country. President Saied made an announcement in 2022 regarding the initiation of dialogue efforts. Yet, politically motivated unlawful arrests (particularly Ghannouchi's) have adversely affected the National Dialogue Initiative – worked on for some time by the UGTT and known for its proximity to Saied – along with similar dialogue calls presented by the opposition. Thus, Saied has once again demonstrated that he is not willing to compromise on his power – not even for the sake of dialogue and reconciliation, despite his very own statements in 2022 about initiating dialogue efforts.

In brief, Tunisia's political journey over the past 12 years has been marked by the unlawful situation faced by Ghannouchi and many others. This journey exceeds a singular issue and has a regional and global impact in terms of the messages it conveys to Islamic movements; it surely has the potential to influence the future of Islamic movements.

Following Ghannouchi's arrest, there are significant concerns not only about the political and social landscape in Tunisia but also about Ghannouchi's specific situation. Firstly, there is no concrete information about the conditions in which Ghannouchi is held in prison and his health status. The memory remains fresh of the imprisonment and subsequent health problems leading to the death of Mohammed Morsi, Egypt's first elected president, after the military coup orchestrated by Abdel Fattah el-Sisi. There are concerns about Ghannouchi facing a similar situation, and it is crucial to address the possibility that he is being subjected to a systematic and gradual "assassination."

In addition, Ennahda, like the Muslim Brotherhood in Egypt, faces the threat of political elimination. Being a decisive political force in the country, with a significant base among the people, the potential elimination of such a movement and the anticipated unlawful practices that would aid this process are highly concerning. Apprehensions of biased decisions and practices leading to the designation of Ennahda as a terrorist organisation should be addressed, too.

Additionally, there are serious concerns about the new constitution imposed through a referendum in 2022, which had very low participation from the Tunisian people and was conducted unlawfully. With this constitution, many achievements of the 2014 Constitution have been lost. The principle of separation of powers has been undermined by the 2022 Constitution, which all but eliminates judicial independence and significantly restricts the powers of the parliament in international trials and the emergency powers that the Constitutional Court can declare. Moreover, pressure on institutions working on issues such as anti-corruption and press freedom has increased, compromising the independence and impartiality of these institutions.

## 6.2. PROPOSALS

The constitution enacted in Tunisia in 2022, reflecting an authoritarian regime, needs to be reverted to a constitution in line with international constitutional standards, as was the case with the 2014 Constitution. The 2022 Constitution grants undemocratic powers to the president – e.g., dissolving the parliament; appointing and dismissing judicial members – that are not in accordance with the principles of a democratic rule of law.

In this context, it is crucial for Tunisian authorities to act within the framework of legal values and uphold these values. Urgent steps that Tunisian authorities need to take include:

- Ensuring the reactivation of democratic and judicial institutions and the reversal of arbitrary closure decisions.
- Immediate release of all political detainees and the annulment of arbitrary decisions related to the dismissal and marginalisation of judges, hindering some citizens from exercising their rights to free movement and travel.
- Respecting freedom of thought and expression, and preserving journalists' freedom of work,
- Implementing the decision of the African Court on Human and Peoples' Rights regarding Tunisia, which calls for the annulment of decisions taken by Saied to dissolve the parliament, dismiss

the government, and change the constitution, as well as decisions to abolish councils working to protect the law. There should be a reconstruction of justice-providing institutions, such as the reestablishment of the dissolved Election Commission and the Judicial Inspection Council.

- Tunisian authorities urging their regional and international partners, and themselves, to comply with international legislation, the Tunisian constitution, and law at the regional and international levels. Also, ceasing the human rights violations they have been practicing for the past two years, safeguarding the newly formed democracy, and putting an end to individual-based dictatorship and its reliance on security forces in governance.
- The United Nations and the Human Rights Council, as well as the African Union, need to take measures to restore democracy in Tunisia and put an end to President Saied's one-man rule in Tunisia since July 2021.
- In the event that the Saied rule fails to take necessary legal actions or obstructs them, competent international authorities and the international community shall exert pressure to uphold internationally recognised general legal principles and ensure that individuals can benefit from the rights provided by these principles.
- Civil society organisations operating globally shall increase their monitoring and reporting activities specifically in Tunisia. Academics and intellectuals will engage in comprehensive studies addressing relevant events in all dimensions.



## CONCLUSION

Tunisia experienced various political upheavals after 2011, struggling to maintain political stability with consensus and unity governments. Under the leadership of Saied, however, Tunisia is clearly reverting to the former authoritarian regime model. Parliamentary dissolution, neutralisation of dissenting voices, disregard for the constitution, consolidation of legislative, executive, and judicial powers under one individual, and arbitrary arrests all highlight the legal violations occurring in Tunisia. Ghannouchi's arrest in the post-presidential period of Saied indicates Saied's intention to build an authoritarian regime. As such, the achievements of the 2011 Revolution of Dignity in Tunisia have been washed away.

The arbitrary arrest of Ghannouchi and many opposition figures, their detention without informing families and lawyers, their disappearances to undisclosed locations, biased trials conducted without the right to self-defense, baseless allegations leading to sentences without any evidence, the closure of political parties, censorship of media activities, and pressures on civil society raise deep concerns about Tunisia's future.

The efforts made towards democratisation, symbolised by the popular uprising in 2011 that overthrew a 56-year dictatorship regime, drew the world's attention to Tunisia. However, recent developments have dashed hopes and expectations for increased freedom and democracy – both in Tunisia and in many Arab states ruled by monarchies. Furthermore, with the constitution imposed in 2022, asymmetrical powers devoid of checks and balances were transferred to Saied, making it difficult to talk about judicial independence and an independent people's assembly in Tunisia. Saied, opting to unlawfully obstruct individuals he perceives as opponents, has implemented various restrictions and coded barriers, even hindering citizens' freedom of movement.

A few years ago, discussions were held about the creation of a democratic and liberal constitution in the

country. Today, the activities of the country's largest political party are being terminated; its leader and former Speaker of the Parliament, Ghannouchi, was arbitrarily arrested. Ghannouchi's prison conditions and health status continue to raise concerns, while the developments facilitating these are feared to evolve into a process akin to that which occurred in Egypt. That is, there is a growing concern about the possibility of Ghannouchi facing a gradual assassination by the Saied regime while in prison.

In conclusion, Tunisia, which witnessed negotiative democracy/constitutional processes following a popular revolution, paradoxically experienced the instrumentalisation of democracy for an authoritarian political agenda and social engineering by the Kais Saied regime. It observed the exception becoming the norm and the state of exception turning into a constitutional theory. Democratic procedures such as the constitution and the referendum – the very structures embodying the democratic framework – have been instrumentalised to render de facto power into de jure. When the state of exception becomes a political reality, it demonstrates the unfounded nature of the liberal-democratic hypothesis, which posits the primacy of law over power. The authoritarian practices experienced in the aftermath of a popular revolution have complicated the thoughts and feelings of the Tunisian people when it comes to democracy. This is seen, too, in the example of Egypt. In Tunisia, the fragility of the democratic checks and balances furnished by the substantive constitution in the face of power dynamics has resulted in a paradoxical form of democracy. In this context, one of the lessons to be learned from the Tunisian experience is the need for a reevaluation of the dominant liberal-democratic understanding of the relationship between law and politics.

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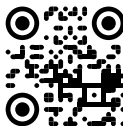
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# SUMMARY

The report meticulously delineates the erosion of democratic principles and the encroachments upon human rights within Tunisia during President Kais Saied's tenure. It sheds light on the consolidation of authority within Saied's control, the extrajudicial stifling of dissent, and the systematic weakening of democratic frameworks. Particularly scrutinized is the 2022 constitution, censured for its concentration of power within the presidential office, permitting indefinite extension of the presidential term during wartime or imminent threats and granting the president the authority to appoint the majority of judicial officials. Emphasis is placed on the imperative of international intervention to resuscitate democracy within Tunisia and redress the violations of human rights.

Additionally, the report delves into the legal measures undertaken at local, continental, and global echelons to address these transgressions, notably highlighting legal proceedings at the African Court on Human and Peoples' Rights. These proceedings culminated in the nullification of Saied's decisions that infringed upon judicial independence. Furthermore, the report implores national and international authorities to collaborate in curtailing human rights violations, urging heightened vigilance by civil society organizations and exhaustive research by scholars to holistically tackle the situation. It also proffers specific recommendations aimed at reinstating democratic principles, encompassing the alignment of the constitution with international norms, reinvigoration of democratic processes and the judiciary and the safeguarding of freedom of expression.

In summation, the report underscores the urgency of confronting the decline in democratic values and human rights violations within Tunisia under Saied's leadership. It staunchly advocates for international intervention, legal actions, and the revitalization of democratic institutions to reinstate democracy in Tunisia and uphold universally recognized legal tenets.

