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# Tunisia Facing COVID-19: To Exceptional Circumstances, Exceptional Measures?

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Tunisian public health worker disinfects an office of an administration to prevent the spread of the coronavirus COVID-19, Tunis, 17 March 2020. © EPA-EFE/MOHAMED MESSARA



Only a few days after winning a vote of confidence from legislators, the new Tunisian coalition government found itself facing an unexpected new challenge in the form of COVID-19, with the Prime Minister labelling it “a war against an invisible enemy”.<sup>1</sup> Like other countries, Tunisia is dealing with an unprecedented emergency that is testing its newly established democratic institutions and its constitutional order.<sup>2</sup> This paper explores how Tunisia’s different institutions have responded to the crisis so far and – in the process – seeks to shed light on how each of them has tried to play its part.

## The state of play of Tunisia’s health sector

Prime Minister Elyes Fakhfakh’s newly elected government “inherited” an asymmetrical and poor health infrastructure, with 13 out of 24 governorates having no reanimation beds, considered essential to face the COVID-19 pandemic.<sup>3</sup> The uneven distribution of reanimation beds illustrates the coastal-interior regional gap, which leaves interior regions most vulnerable. Furthermore, laboratories authorized to conduct COVID-19 testing are concentrated in the capital and the coast; they are located in Charles Nicole Hospital and Institut Pasteur Laboratory in Tunis, and Fatouma Bourguiba Hospital in the well-off coastal governorate of Monastir.

The current government also took office after the national budget had already been voted and assigned.<sup>4</sup> The ministry of health (MoH) was allocated 7.18% of the national budget, with only one-third of it dedicated to health infrastructures with the rest going to cover salaries.<sup>5</sup>

To respond to the pandemic, the government has pledged “a serious health sector reform... and the rebuilding of the public health system”.<sup>6</sup> It has decided on exceptional financial measures, including the allocation of an open budget line to counter COVID-19. The ministry of finance has also created a voluntary fund to contribute to fighting the coronavirus outbreak; the fund has raised so far more than 62 million Tunisian dinars.<sup>7</sup> It will serve to alleviate the impact of the pandemic on low and no-income households, small and medium businesses and export companies.<sup>8</sup> The ministries of health, higher education and scientific



research have also allocated 2.5 million dinars to fund studies and research tests on the use of "chloroquine" in treating the coronavirus. The Central Bank of Tunisia granted 50 million dinars in foreign currency to the ministry of health to import a cargo of preventive medical supplies from China.

### The executive takes “exceptional measures”

Tunisia’s 2014 Constitution transformed the political regime from a presidential system to a parliamentary democracy. Executive power is divided between the president and the head of the government. So far, both appear to be coordinating closely.

In response to the crisis, the Tunisian president relied on Article 80 of the Constitution which grants him wide powers “in the event of imminent danger threatening the nation’s institutions or the security or independence of the country in such a manner as to prevent the normal functioning of the state”. According to the Constitution, the decision is taken by the president after consultation with the prime minister and the speaker of the parliament and informing the president of the Constitutional Court.

On 18 March 2020, the president imposed a 12-hour daily curfew to counter the spread of the coronavirus. Four days later, he expanded the measures to include broader restrictions on movement and gatherings outside curfew times<sup>9</sup> and ordered the deployment of the army to enforce these measures.

Subsequently, the government issued a decree to implement the general confinement decision and clarify the requirements to ensure the functioning of vital services. Both the presidential and governmental decrees were issued and published on the same day (29 March), marking a high degree of coordination between the two heads of the executive.

The head of the government also requested from the parliament exceptional powers so that he can “issue decree-laws of a legislative character”. According to Article 70(2) of the Constitution, such a request requires the approval of three-



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fifths of the members of the parliament and is limited to a maximum period of two months and to a specific purpose. Parliament granted the authorization on 4 April.

This special power by authorization granted to the head of the government will add to the measures already exercised by the president under Article 80 of the Constitution.

It is important, however, to highlight the ambiguity and constitutional contradictions surrounding the current state of play at the level of the executive authority. Without openly declaring the “state of exception”, the president based the two decrees<sup>10</sup> he issued on Article 80 of the Constitution. This article grants him wide powers and its application leads to the concentration of both executive and legislative powers in the hands of the presidency. On the other hand, the head of the government used Article 70 of the Constitution to request, and was granted, an authorization to issue decree-laws of a legislative character. While “the Constitution’s provisions shall be understood and interpreted in harmony, as an indissoluble whole”,<sup>11</sup> using both articles of the Constitution has triggered debates over the specific roles of the president and the head of the government concerning the exercise of exceptional powers during the ongoing health crisis. This situation has pushed some MPs to call for further clarity, not least because Tunisia’s president is a former constitutional law professor.

## Central government coordination efforts

To centralize prevention and control measures, the head of the government announced on 25 March the creation of the National Coronavirus Response Authority.<sup>12</sup> Placed under his direct supervision, it is tasked with coordinating the actions of the various governorates as well as those of the Regional Committees of Disaster Prevention, Response and Rescue Organization. This new ad hoc authority coordinates monitoring and follow-up efforts with the pre-existing Permanent National Committee for Disaster Prevention and Response and Relief Organization, under the ministry of interior,<sup>13</sup> which has been in permanent session since 21 March.

In addition, the National Security Council (NSC), headed by the president, is also granted a permanent role in the event of imminent danger threatening the



national integrity, the security or the independence of the country or at times of crisis. Composed of the head of government, the speaker of parliament, the ministers of justice, defence, interior, foreign affairs and finance and the head of the national intelligence centre, it will remain, as required under Tunisian law, “in session until the causes that have justified it are over”.<sup>14</sup> The NSC is empowered, if needed, to form “permanent or ad hoc commissions in areas relating to national security”,<sup>15</sup> but it has not yet created such a commission in response to the current health emergency.

All the above structures appear to be functioning at the same time, on the same issue. Without further clarification and communication from the authorities about their role, there is a potential risk of duplication of efforts and resources, but also inconsistencies in the outcomes of the work of each of them.

## Increased communication but limited information

The government’s early communication about the crisis lacked clarity with speeches and press conferences by the president and the head of the government often delayed, rescheduled, or cancelled.<sup>16</sup> However, briefings related to the pandemic became more regular from 24 March onwards. Technical health updates were limited to announcements on the ministry of health’s social media page and press conferences when considered necessary by the health authorities.

Public communication campaigns included traditional TV and radio awareness messages and official online platforms on the pandemic.<sup>17</sup> However, communication remained vague on the status of health establishments, especially with the recurrent cases of closure of health institutions because of suspicious contamination of their medical staff (for instance, in Sousse, Tunis (Al Amen), Sfax Hospital, Tunis Military Polyclinic),<sup>18</sup> and the subsequent decrease of available bed numbers and admission rates.

Along with the minister of health, the crisis communication team included medical experts from the ministry of health, such as the director of Hygiene and Basic Health and the Director-General of the National Observatory of New and Emerging



Diseases.

Government measures related to transportation and logistics, commerce and trade, as well as security were announced separately by the relevant ministries in different press conferences.

## The legislative authority reluctant to concede its prerogatives

As early as February, and since the beginning of the pandemic, the Tunisian parliament has been reluctant to concede its legislative powers. Even before the COVID-19 crisis, Parliament Speaker Rached Ghannouchi stated on February 22 that “the era of the central authority is over, and that does not mean the fragmentation of the state since the Constitution distributes powers between Carthage Palace, the Kasbah (the Government Palace), and Bardo Palace (the parliament).”<sup>19</sup>

With the pandemic, the parliament’s bureau submitted a draft decision on the adoption of exceptional measures to “ensure the continuity of the legislative work, rather than its delegation”.<sup>20</sup> One hundred and twenty-two MPs (out of 217) voted in favour of this draft decision. Consequently, the parliament is able “to convene the plenary sessions remotely (via video-conference) and to vote remotely through electronic applications”.<sup>21</sup> This allows the parliament to “approve exceptional minimum deadlines that require quick consideration in committees or in the plenary” when it comes to legislative initiatives related to the pandemic.<sup>22</sup> Indeed, the parliament was able to convene sessions, and on 4 April, voted in favour of authorizing the prime minister to issue decree-laws of a legislative character, for a period of two months to counter the spread of the coronavirus and to ensure the normal functioning of vital facilities.<sup>23</sup>

## The limited role of the judiciary

The judicial authority is tasked with ensuring the supremacy of the Constitution, the sovereignty of the law, and the protection of rights and freedoms. However,



under the current circumstances, the judicial authority appears to be side-lined in certain areas.

For instance, mandatory hospitalization decisions issued against persons suspected of being infected with COVID-19 violated the legal condition that they must be issued by a judicial authority. Furthermore, the ministry of interior's confiscation of vehicles circulating in violation of the curfew was not legally grounded. These acts can only be carried out by an investigative judge and can only be exercised by security forces in their capacity as judicial police officers working under the supervision of the public prosecutor, and not in their capacity as security officers.<sup>24</sup> There were also accounts that Tunisian citizens who had returned from abroad were transferred into mandatory quarantines in state-provided facilities without being tested, which violates the second condition of a "proven infection" for a mandatory hospitalization to be legal. Challenging the illegality of such procedures before the prosecution was vain as the assistant prosecutor insisted that his office is "complying with orders rather than applying the law".<sup>25</sup>

Following the suspension of judicial activities due to confinement measures,<sup>26</sup> judicial activity has been limited to the prosecution, the investigating chamber, the criminal courts, and secretariats.

To guarantee the rights of citizens and equality before the law, the Supreme Judicial Council<sup>27</sup> has proposed a bill on exceptional provisions to ensure that procedural time limits do not harm citizens unable to meet them.<sup>28</sup> While the current pandemic may provide convincing grounds for such limitations, the Council seems to have ignored the constitutional provisions which limit – under Article 62 – legislative initiatives to 10 members of the parliament, or to draft laws submitted by the president of the republic, or by the head of the government.

The COVID-19 has also halted the procedures for the establishment of a Constitutional Court.<sup>29</sup> Although the law establishing the court was adopted in December 2015, the court is still not operational, and its members have not yet been elected. For the moment, Tunisians have no judicial recourse against exceptional measures taken by the executive authority if conflicts of interpretation arise. This is particularly important given that the absence of the Constitution



Court denies the speaker of the parliament or 30 MPs their right to apply to the Court to verify that the circumstances requiring exceptional measures are still applicable.

## Competition between the central and local authorities

Decentralization in Tunisia was conceived as a tool for better local governance, including for more effective crisis management. The Constitution specified that decentralization is achieved through local authorities in the form of municipalities, districts, and regions.<sup>30</sup> Currently, Tunisia has a total of 350 municipalities. Local authorities enjoy legal personality, financial and administrative independence as well as the freedom to manage public affairs. However, with a budget of around 2.46% of the national budget for most municipalities, the effectiveness and efficiency of local actions remain limited.

The law grants the governor, a representative of the central authority, power over matters of public order and a posteriori control over the legality of the actions of local authorities by judicial means, if found to have issued unfounded decisions. The 2018 Code of Local Government<sup>31</sup> gives wide powers to local authorities. On the one hand, municipal councils are mandated to create and manage municipal public services, in particular with regards to health, hygiene, protection of the environment and the regulations governing these sectors.<sup>32</sup> On the other hand, the president of the local council, elected by council members, may also enact regulations relating to public services within the entire territory of the municipality.<sup>33</sup> These provisions are ambiguous and may create a conflict over prerogatives between the municipal council and the president of local council.

Furthermore, if the president of the local council fails in these duties, the governors – as representative of the central authorities – shall intervene in person or through one of his/her designates for this purpose.<sup>34</sup> As such, the governor may, when exceptional circumstances so require, and after authorization by the government, resort to the army,<sup>35</sup> given his/her wide powers under the state of emergency.<sup>36</sup>



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Faced with one their first major tests since Tunisia enacted decentralization in 2018, the local and central authorities are engaged in a fragile balance and fine-tuning of their mandates in practice. This was implicit in the head of the government's declaration<sup>37</sup> on 26 March stating that “in times of crisis, decisions must be centralized”. This was clearly stipulated in the governmental Circular n°2020-9 requiring ministers, state secretaries, mayors and heads of public institutions and establishments to “mandatorily coordinate with the Supervisory Authority before taking measures and procedures to prevent the risk of an outbreak of the Novel Coronavirus.”<sup>38</sup> It was later reiterated in a joint ministerial act from the ministers of interior and of local affairs to governors, mayors, and special representatives of regional councils,<sup>39</sup> highlighting the need to “avoid all manifestations of inconsistency and dispersal of decisions between public authorities” and calling for “the tightening of appropriate coordination and consultation mechanisms with the Supervisory Authority to preserve regional and local unity of decision in order to preserve the supreme interest of the country”.

Such statements may inhibit the important and growing role municipalities have played and ought to play in the future. Some municipalities were remarkably proactive in managing the possible spread of the coronavirus and have acted before decisions were taken at the central level. For instance, as early as 11 March, the Kairouan municipality issued a public notice to improve coronavirus preparedness in coffee shops and restaurants by reminding everyone of hygiene regulations. Following the nationwide decision to prohibit weekly markets,<sup>40</sup> the closure of wedding halls, family and entertainment spaces,<sup>41</sup> bars, hairdressing centres, zawyas (Islamic religious school or place of religious retreat), the Kairouan municipality also gave an example of transparency by publishing the list of donors who contributed to improving the status of health establishments and personnel of Kairouan.<sup>42</sup>

To bolster the independence of local authorities, the authorization given to the head of the government to issue decree-laws can be an opportunity, for instance, to issue decrees that support the actions of the local authorities by increasing the funds allocated to them in the National Budget Law to allow them to better counter the spread of the virus.



## Conclusion

For Tunisia's nascent democracy to be consolidated, upholding the rule of law and the separation of powers is as critical in times of peace as it is in times of crisis.

Since the outbreak of the COVID-19, different actors and institutions are trying to assert their roles under the testing circumstances of the pandemic, each defending their prerogatives. The Constitution sets the principles of constitutionality and legality based on a “democratic and participatory system, in the framework of a civil state founded on... the principle of the separation and balance of powers” and in light of the fundamental principle of “the unity of the state.”<sup>43</sup> These are critical times to refrain from competing over mandates in order to avoid falling into the trap of excessive centralization of all powers with the central authorities. Emergency measures must be limited to emergency circumstances.

The next period will be a key test for the Tunisian institutional set up. Will the different institutions function properly, or will the pandemic reveal major deficiencies that will feed the growing calls to amend the newly adopted Constitution?



## Endnotes

1. Tunisia Head of the Government speech of 25 March 2020. Available at <https://www.youtube.com/watch?v=dViOAlSpuP0>
2. For initial government priorities, see the reference document for the government program, which was the basis for consultation and negotiation (available at <https://www.facebook.com/ElyesFakhfakhOfficiel/posts/2642111695904915/>). For the updated priorities, see the first periodic symposium of Tunisian governors of the year 2020. Available at <https://bit.ly/2ViazB5>
3. Amin Hammas, Structure et organisation des services de réanimation adulte de la Tunisie: État des lieux. Doctoral thesis defended at the Faculty of Medicine of Tunis, January 2020.
4. On 10 December 2019.
5. Annexes 5 to 26 of the Tunisian State national budget document. Available at: <https://bit.ly/2wAEGQ2>
6. Thursday 26 March 2020 A dialogue session with the government on the country's health status - the COVID-19 crisis.
7. As of 07/04/20202. Retrieved from <https://covid-19.tn/>
8. Espace Manager "Les véritables coûts de la crise du coronavirus en Tunisie", 30 March 2020, <https://www.espacemanager.com/les-veritables-couts-de-la-crise-du-coronavirus-en-tunisie.html>
9. Presidential Decree No. 2020-28 of 22 March 2020.
10. Decree No. 2020-24, proclaiming a curfew on the entire territory of the Republic and the Decree No. 2020-28, limiting the movement of people and gatherings outside of curfew hours.
11. Article 146.
12. The National Coronavirus Response Authority is composed of the ministers of defence, interior, justice, health, finance, trade, local affairs, social affairs, communication and transportation technologies, as well as higher senior officials from various ministries and other relevant government structures.
13. By virtue of the Decree No. 942 of 1993 of 26 April 1993, the Permanent Committee is presided by the Minister of Interior or his representative, a representative of the Prime Ministry, four representatives from the Ministry of the Interior, a representative of the Ministry of Finance, a representative the Ministry of Planning and Regional Development, a representative of the Ministry of Agriculture, a representative of the Ministry of Equipment and Housing, a representative of the Ministry of Environment and Territorial Development, a representative of the Ministry of Transport, a representative of the Ministry of Communications, a representative of the Ministry of Public Health.
14. Article 4. Paragraph 2. Of the Governmental decree n ° 2017-70 of 19 January 2017, regarding the national security council.
15. Article 6 of the above-mentioned decree.
16. It is worth noting that it was not until 13 March that the communication strategy started to include audience with hearing loss, which posed a problem of access to information and services for people with special needs in the midst of the COVID-19 crisis.
17. <http://coronavirus.rns.tn/>
18. Following a presumed contamination of the medical staff.



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- Maghaaribi. Available at <http://acharaa.com/ar/480644>
19. During the symposium of heads of the regional offices of the Ennahdha movement in Sousse. Relayed by Acharaa Al
  20. Declaration of Oussama Khelifi (MP of Qalb Tounes) during the General Assembly of 26 March 2020.
  21. Draft decision of The Assembly of People's Representatives on the adoption of exceptional measures to guarantee the continuity of work in the plenary. Available at <https://majles.marsad.tn/2019/docs/5e7c818d4f24d0106fc84ed8>
  22. Plenary of 26 March 2020.
  23. The first draft included 14 legislative areas. The amendments limited these areas to four: financial and fiscal area; freedoms and liberty; health, environment, education and culture; and the management of public facilities and basic guarantees for employees). It also limited the period of the authorization to one month (the prime minister proposal requested a two-month authorization) but retracted later and granted him two months. The draft also added a deadline for the submission for ratification to the parliament (5 days after the end of the period of authorization) and the possibility to challenge the constitutionality of the decree-laws issued during this period.
  24. As regulated by the provisions of articles 97 to 100 of the Criminal Procedure Code.
  25. Author's interview.
  26. Extended by two weeks from 5 April 2020.
  27. Tasked with ensuring the sound functioning of the justice system and respect for its independence.
  28. The bill is not available, but possible provisions could include: the suspension of limitation period/ appeals and requests made to magistrates, as well as the filing of conclusions and briefs, may exceptionally be made, by registered mail with acknowledgment of receipt and / or by emails/ possibility of using videoconferencing in criminal proceedings and criminal courts.
  29. The call for application of membership of the Constitutional Court was launched, with a submission time between 1-19 March and with voting to start on 8 April. With Covid-19, there were no developments in this regard. <https://bit.ly/2VopBW6>
  30. The law may provide for the creation of specific types of local authorities.
  31. By virtue of the Organic law n° 2018-29 of 9 May 2018.
  32. Article 240 of the Local government code.
  33. Article 266 of the Local government code.
  34. Article 268 of the Local government code.
  35. Decree No. 56-150 of June 21, 1956, on the administrative organization of the territory of the Republic
  36. Including declaring curfews, banning strikes or lockouts even if decided before the declaration of a state of emergency; mobilizing people and properties required to the proper functioning of public services and activities of vital interest to the nation...
  37. He declared that "in times of crisis, decisions must be centralized", "There is no room for dilution today".
  38. Circular N°9 of 25 March 2020.
  39. Joint Act No. 4 of 2020 dated April 4, 2020
  40. 13 March 2020.



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41. 15 March 2020.
42. Available on the municipality's official Facebook page, at <https://www.facebook.com/municipalite.kairouan/photos/a.758734540963921/1195967850573919/?type=3&theater>
43. Consecrated by Article 14 of the Constitution.



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