Arab Reform Initiative

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Tunisia in the wake of the referendum: A new divisive Constitution

Zied Boussen & Malek Lakhal.



Farouk Bouasker (R), president of Tunisian Independent High Authority for Elections, holds a press conference to announce the official results of the 25 July referendum on the new constitution in Tunis, Tunisia on August 16, 2022. ©AA/Yassine Gaidi

On 25 July 2022, Tunisian President Kais Saied organized a referendum for the adoption of a new constitution, clearly carrying his signature. This referendum polled the population about the constitution and the president himself. It is one of the steps undertaken by Saied in his process to "correct the course of the Revolution", a journey he started in 2021 when he led a coup against his government and elected parliament.

The referendum's preliminary results[1] show a landslide victory for the yes vote (94%), with a low turnout (30%). A first look at the situation sheds light on a so-far unstable Tunisian context.

Very Low Turnout: Only a Quarter of the Electorate Mobilized

According to the preliminary results released by the Independent High Authority for Elections (ISIE), only 30% of voters turned out on 25 July. "Yes" carried the vote by 94%, with 5% for the "No", blank and cancelled ballots accounted for the remaining 1%. The ISIE had already expected a low turnout because it announced on the eve of the polls that there would be no minimum threshold for the turnout to validate the results.

The turnout may not be negligible, yet it is well below the levels achieved during the previous polls in Tunisia (50% to 70% between 2011 and 2019), including the 2018 municipal elections (35%), where the stakes were far less important. No constitutional referendum has ever passed with such a low turnout in the region or in the world, except for the 2020 Algerian constitutional referendum (which was boycotted by the opposition).

The abstention has countless interpretations. Opposition leaders see it as a stark rejection of Saied and a victory for their calls to boycott,[2] while, for other observers, it follows the lines of ever-growing disinterest in political life since 2011. Although the opposition's attempt to transform the low turnout into active support for its cause is not entirely convincing, the theory that the low turnout is merely the product of growing disinterest is just as weak. Saied's win in the 2019 election, the last poll to date before the referendum, is evidence of that. The

second round of the 2019 presidential elections marked a significant jump in turnout compared to the first round (from 49% to 57%). True mobilization efforts were made to get Saied elected against Nabil Karoui. Boycott or not, Saied failed to galvanize the masses in favour of his project, despite the resolutely messianic rhetoric of his campaign: "*Say yes to save the State from collapse and achieve the goals of the Revolution. There will be no misery, no terrorism, no famine, no injustice, no suffering.*"

What popular legitimacy does a new constitution have with such a low turnout? The president will have a hard time defending such numbers: almost 3 out 4 Tunisians did not answer his calls, although public services were – illegally – used to campaign for the yes vote (with youth centres, public media, administrative vehicles, etc.). Nonetheless, according to SIGMA, the leading survey organization which conducted surveys by phone or outside polling stations, only 21% of voters actively boycotted the referendum, i.e. made the choice not to go to polling stations, against 54% who abstained. The survey also shows the rejection of the principle of the electoral process and the referendum as the main reason for the boycott.

The low turnout came to confirm what has been showing since the first months of the coup: beyond the populist rhetoric of Saied, the so-called voice of the people, he does not mobilize the masses and take advantage of the void left in the institutions. The president can at best announce that almost a quarter of Tunisians support his project of constitutional restructuring. However, it remains a small base.

The low turnout has been noticed internationally by the US diplomacy and the European Union. The US statement regarding the referendum was made following the support to President Saied to play the interference card, thus summoning the Chargé d'Affaire at the US Embassy. Aside from the American and EU responses, there was little international reaction, notably in the Arab region. Therefore, Tunisia seems to be more and more isolated or even ignored diplomatically.

The Yes Wins by more than 94%: the Referendum as a Poll

Even beyond the issue of the constitution, Saied is far from losing. With 2.6 million Tunisians voting "yes", it is a renewed landslide victory for the president and a resounding "yes" for the wish to "change". This number is highly significant given its proximity to the results of Saied's second round in the 2019 presidential elections. Even if not all those who voted "yes" are considered to be supporting Saied, many analysts see the number as an indicator of the consolidated constituency of the president, thus remaining the leading player in a deeply fragmented Tunisia, despite the absence of an established party.

The vote examination undertaken by SIGMA enables an interesting analysis of the reasons for the yes vote. Only 13% of yes voters endorse the constitution, the 4th most common answer in the survey. Therefore, the constitution had a marginal role in the "campaign" debates. The media discussed the constitution, putting the democratic transition on trial and presenting the return of the strong man as the solution to the political and economic crisis. This falls in line with the survey results: in the first place comes "reform the country and improve the situation" with 24%, followed by "in support of Kais Saied/ his project" with 23%. As such, the bulk of Saied's base is counting on a strong man to turn the tide, especially in the economy. They fully understand that behind the participatory façade of "bine' al qa'idi" (building the base), Kais Saied's political project is hyper-presidentialism where one providential man monopolizes national decision-making.

It is nonetheless noteworthy that under these circumstances, no one has debated the political and economic outcomes of a year of hyper-presidentialism. No one has mentioned the key deadlines, namely regarding the thorny negotiations with the International Monetary Fund. Therefore, one must believe that Saied's rhetoric, mostly focused on denouncing conspiracies and enemies, has achieved its objective: Persuade the public of the omnipresent enemies to justify one of the thinnest bottom lines, and argue in the same breath, for the need for authoritarian solutions to improve that same outcome.

A Regular Electoral Process?

Following the referendum, some challenged the results of the polls.[3] The campaign was marked by several violations, mainly perpetrated by the Yes camp.

The President himself broke electoral silence on the morning of the referendum through a public address, broadcasted by the national television channel, after exiting the polling station where he cast his ballot, urging voters to vote yes.

This call sealed a very strange campaign where the text, the subject of the referendum, was never discussed in any campaign or debate. The members of the commission that drafted the text have distanced themselves from the version published on 30 June, stating that it was very different from what they had written and that it provided for serious perils to democracy. The President had proceeded already to amend the text to officially "correct mistakes" although the campaign had been already launched.

Several analysts and observers[4] had reported irregularities in the vote count by the ISIE. After publishing the decision stating the results on the evening of 26 July on its website and social networks, the authority retracted the document, although signed by its president, on the morning of 27 July for verification. Several statistical incompatibilities were detected, showing high turnout rates in some constituencies, sometimes even higher that the number of adults according to the census of the National Statistics Institute. On the evening of 26 July, the ISIE withdrew the result documents and then republished a corrected version the next morning due to "errors which do not impact the final results", according to the ISIE president. Some ISIE officials were relieved of their duties on 28 July due to these errors.[5] Eventually, the observers concluded that the referendum complied with regulations, despite some violations which do not have a bearing on the final result.

A New Constitution Paving the Way for a New Political System

Without waiting for the announcement of the final results, Kais Saied had the constitution published in the Official Journal of the Republic of Tunisia, entering the country into a third republic. . This republic will be marked by ultra-presidentialism allowing the Head of the State to no longer share executive power with the head of government, to no longer be held accountable before parliament, to name the judges in high-level positions, and by extension select the members of

the future Constitutional Court. With a barely noticeable sleight of hand, Saied, elected thanks of the 2014 Constitution which he has abolished, will retain his mandate, which theoretically enables him to run for two more terms according to his Constitution, i.e. until 2034.

The new text paves the way for President Saied to realize his idea of "building the base" which requires the amendment of the electoral law, the change of the polling mode in favour of a two-round single-constituency mode at the smallest administrative scale, and the organization of a legislative election in December 2022. This new polling mode would directly set aside established political parties in favour of individuals and seeks to undermine the centralized influence of political parties established in the last decade in favour of local leaders. Furthermore, the local legitimacy would be blown up with a draw system to choose regional and national representatives. National legitimacy would be monopolized by a President elected by universal suffrage.

The new Constitution provides for significant variations to the 2014 system. It establishes a presidentialist system founded on the lack of accountability of the President of the Republic before other state bodies (the President may not be impeached by parliament, instead of a head of government, there is a prime minister handpicked by the President of the Republic). The judiciary has lost its power to become a mere service. The system has abolished "local power" although it was a keystone of the 2014 Constitution. In addition, the new text provides for the key fundamental rights and freedoms, but tightens its grip with possible restrictions by law and introduces a controversial Article 5 setting forth Islam as the religion of the State.

Other important decisions would include the reform of the judiciary, the establishment of a Constitutional Court, and most probably the amendment of the Code on Local Authorities, ahead of the 2023 municipal elections. However, constitutional issues are not the only matter on the table: should the president continue and finalize negotiations with the IMF and launch necessary structural reforms entailing a likely hefty cost on the country and the administration?

Where do the Opposition and "the

Country's living forces" Stand?

The 25 July referendum has highlighted the opposition's inability to actively organize and unite. Beyond those disinterested in politics, even the anti-referendum camp was divided between boycotting the referendum and voting no, with diverging opinions on the process, judging it anti-democratic (which would justify the boycott) and democratic but proposing a constitution which should be rejected (which would justify the no vote). SIGMA projections showed that 21% of voters actively boycotted the referendum.

In the wake of the results, very few have talked about the role of political stakeholders non-affiliated with Kais Saied. Ennahdha issued a communiqué on 28 July denigrating the referendum, declaring the victory of the boycott, the failure of the referendum and the upholding of the 2014 Constitution.[6] This position begs the question around the fate of the National Salvation Front whose existence remains uncertain. This alliance of convenience gathers Ennahdha (weakened since last year by a series of high-level resignations), and other conservative parties, historically allied to Ennahda such as "Amal", "Al Irada", "Al Karama", "Qalb Tounes", as well as activist movements such as "Citizens against the coup" along with public figures such as Ahmed Nejib Chebbi and Slaheddine Jourchi. It is not yet clear in what capacity the Front will continue, and whether it would be able to adopt common actions and joint political agendas.

On the other side, social partners, namely the Tunisian Union for Industry, Commerce and Agriculture (UTICA), and the Tunisian General Labour Union (UGTT), largely absent from the political scene these past months, will retain a central role in the reform agenda which should be launched by the President.

Be it political or social stakeholders, the main challenge lies in the capacity to mobilize the undecided and disinterested half of the electorate.

Beyond the Constitution: Divisions and Challenges for the coming months

The referendum reflects a divided country where political and economic prospects

alike are bleak. Politically, Kais Saied's inability to create traction around his project and the opposition's inability to unify their ranks have created two blocs of seemingly equal weight (around a quarter of the electorate for each bloc), with a large majority disinterested by both rhetorics. This so-called silent majority prioritises the country's increasingly precarious economic situation due to the inflation and gradual removal of subsidies (for electricity, water, and fuel). Saied seems to be repeating the democratic transition's exact mistake: prioritising institutional changes without offering any economic agenda.

Despite multiple deadlines for old loans, namely IMF loans, growth is still minimal and investments have been on a downward trend since COVID-19, not to mention the impact of the food crisis on the country's commercial balance. While most indicators are in the red, Tunisia is negotiating a new loan with the IMF which intends to check the compliance with the conditions imposed on its debtors. If only 2011 Tunisia could have relied on some kind of donor vigilance to avoid painful economic reforms (unpopular in the polls), Tunisia of 2022 would be up against the wall and Saied would find it difficult to procrastinate as would have been the case of his predecessors. Moreover, the international community's indifference to some extent regarding the political process in Tunisia foreshadows the same indifference once the country reaches economic collapse.

The authoritarian institutional framework of Saied lends itself to the implementation of unpopular reforms because the executive power is wielded by one person against a legislative "service" fragmented into local legitimacies. However, these reforms, particularly painful for the lower and middle classes, risk the "People's President" his popularity. Saied is well aware of this: If he finds himself forced to implement the reforms, he would blame them on the government, as he did with the 2022 Law on Finances which he signed while publicly voicing his opposition to certain provisions.

The bottom line is that Kais Saied is focused on amassing more powers now more than ever, with shaky legitimacy and a sole economic agenda of implementing the conditions imposed by the IMF. In a situation where Saied was voted to turn the economic tide, implementing these reforms could lead to popular protests, which will most likely be dealt with by force.

Endnotes

1. The final results will be published on 26 August, one month after the referendum

2. Ahmed Nejib Chebbi from the National Salvation Front and Rached Ghannouchi stated that the abstention is indeed a victory for the boycott.

3. Namely the Afek Tounes party which appealed the rejection of its complaint at the Administrative Tribunal

4. Official communiqué of the Mourakiboun Network, 26 July 2022, Facebook

5. Tunisie : Des responsables démis de leurs fonctions au sein de l'ISIE, (Tunisia: Officials Relieved of their duties at the ISIE), 28 July 2022, Gnet

6. Ennahdha : «Le référendum a échoué et la constitution de 2014 reste donc en vigueur» (Ennahdha : the Referendum has Failed and the 2014 Constitution Remains in Force), Kapitalis

Arab Reform Initiative

About the authors



Zied Boussen
Research Fellow - Tunis



Malek Lakhal
Research Fellow - Tunis

About Arab Reform Initiative

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contact@arab-reform.net

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