



المركز العربي للأبحاث ودراسة السياسات
Arab Center for Research & Policy Studies

Situation Assessment | 28 April 2021

The Political/Constitutional crisis in Tunisia: Context and Prospects

Unit for Political Studies

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Series: **Situation Assessment**

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Introduction

During the celebration of the Internal Security Forces Day on 18 April, Tunisian President Kais Saied declared himself Supreme Commander of the Civilian Armed Forces (police, national guard and customs) in addition to his constitutional role as Commander-in-Chief of the Armed Forces. Saied's announcement comes in the context of disputes that began about a year ago over the powers between the President on the one hand and the Prime Minister and Speaker of Parliament on the other. As a result, the President suspended the swearing in of the new cabinet and the formation of the Constitutional Court was postponed, provoking concerns of a step towards autocracy in the fashion of some other Arab countries.

The President's Interpretations

Tensions erupted between the President and the Prime Minister following the 2019 elections. In May 2020 the Speaker of Parliament, Rashid Ghannouchi, congratulated the Libyan Prime Minister Fayez al-Sarraj on the retrieval of Al-Watiya Air Base from General Haftar's forces. Saied responded to Ghannouchi by stating that "Tunisia has one president," which was followed by a failed attempt by the parliamentary blocs supporting Saied to secure a no confidence vote for Ghannouchi.

The tensions escalated further with the dissolution of the government of Elias Fakhfakh, who had been nominated by the head of state to head the government, after he was accused of being involved in corruption and conflicts of interest. President Saied pre-empted the vote of no confidence for the prime minister and announced the acceptance of Fakhfakh's resignation. This ensured that he would maintain the mandate to name a new prime minister and avoid handing the responsibility to *Ennahda* as the party with the largest bloc in Parliament, as stipulated in the constitution,⁽¹⁾ enabling Saied to appoint Hichem Mechichi as the new Prime Minister. However, soon after the President demanded a session be held to secure a vote of no confidence in Mechichi's cabinet when the new Prime Minister proved rebellious in clinging to his constitutional powers and choosing his own cabinet. The president seems to have been seeking to install an executive system in Tunisia, in which the Prime Minister answers to the president, not parliament. Despite this conflict, Mechichi appointed a list of ministers affiliated with President Saeed, including the Ministers of the Interior, Defence, Foreign Affairs and Culture.⁽²⁾

Three months into his government, Mechichi decided to reshuffle the cabinet, sacking interior minister, Taoufik Charfeddine, who oversaw Saied's election campaign in Sousse, and other ministers affiliated with the president. A few days earlier, President Saeed made a night visit to the headquarters of the Ministry of Interior, without the prime minister, and dozens of senior security officials were

1 "The Resignation of the Fakhfakh Government: What Does this Mean for Tunisian Politics," Situation Assessment, ACRPS, 20/7/2020, accessed on 23/4/2021 at: <https://bit.ly/3xl6i22>.

2 "Mechichi in Power: Can the New Government Deal with the Challenges" Situation Assessment, ACRPS, 7/9/2020, accessed on 23/4/2021 at: <https://bit.ly/3algl0e>.



dismissed and replaced with Saied's affiliates. The Prime Minister considered this an infringement of his authority and responded by nullifying the appointments and returning the former officials to their duties.

With the cabinet reshuffle, a new dimension was added to the conflict between the President and both the Prime Minister and the Speaker. The parliament approved the new cabinet, but the President refused to invite the new ministers to be sworn in, claiming that some of them were suspected of corruption. Although Mechichi asked Saied for the names of the ministers suspected of corruption, the President refused to specify, and addressed the Prime Minister with a strongly worded censure letter in which he affirmed that parliamentary approval is a non-binding domestic law, while being sworn in is not a formality but an act that will "hold one accountable on the day of reckoning when he stands under the Almighty."⁽³⁾ He accused the government and its parliamentary belt of seeking to cheat their way through the oath to pass their cabinet, alluding to Abu al-*Ala* al-*Ma'arri's Resalat Al-Ghufran*.⁽⁴⁾

The tug of war between the President and the government and its parliamentary bloc continued with the Parliament's approval of an amendment of the law on electing members of the Constitutional Court that stipulated a majority as three fifths instead of three quarters. Saied, once again, refused to ratify the amendment, and sent a lengthy message to the Speaker of Parliament, Rached Ghannouchi, loaded with linguistic, poetic and jurisprudential references, arguing that the amendment was "not scientific and not innocent."⁽⁵⁾ A few days later, the President gave a surprise speech during celebrations for the national day of the Internal Security Forces, attended by the Prime Minister and the Speaker of Parliament. He revealed his new constitutional interpretation, according to which, he declared himself Commander-in-Chief of the Civilian Armed Forces (the police, the National Guard, and customs) in addition to his constitutional status as Commander-in-Chief of the Armed Forces. He argued that the constitution did not specify the subordination of the internal security forces and that the description of "armed forces" is a general one that applies to the Internal Security Forces in addition to the army and is led by the President. This represents an unprecedented interpretation of the meaning of the term armed forces.

Reactions

The President's declaration of himself as Supreme Commander of the Internal Security Forces has exacerbated the political crisis. Although the recent declaration was not the only constitutional interpretation involved in Saied's dispute with the Prime Minister and Speaker of Parliament, the intensity of the response foreshadows a tipping point. For the first time, both Ghannouchi and

³ The Tunisian President Page, Facebook, 15/2/2021, accessed on 23/4/2021, at: <https://bit.ly/32Jp7Ok>.

⁴ Ibid.

⁵ The Tunisian President Page, Facebook, 4/4/2021, accessed on 23/4/2021, at: <https://bit.ly/3xmk58l>.

Mechichi are directly responding to Saied, accusing him of violating the constitution and seeking to monopolize power. They are also holding him responsible for the state of political and institutional paralysis in Tunisia, after months of polite petitioning emphasized the unifying role of the president.

Mechichi described Saied's statements regarding the supreme leadership of the Internal Security Forces as "out of context," and said that they were "an individual and anomalous unnecessary reading of the constitutional text," while Ennahda expressed its surprise at the "return of the head of state to violating the constitution and considering it a document to justify his move towards autocracy," and believing his announcement of himself to be supreme commander of the civilian armed forces as "trampling on the constitution and an encroachment on the political system and the powers of the prime minister." The party stated that the involvement of the security establishment in conflicts represents a threat to democracy, civil peace and the achievements of the revolution" and expressed its "rejection of authoritarian rule," calling on the president to "seriously adhere to the constitution and stop all efforts to disrupt and dismantle the wheels of the state."⁽⁶⁾ The Heart of Tunisia party, one of the components of the parliamentary belt of government, demanded that the prime minister "use all his powers, rule, and address the people."⁽⁷⁾

Saied, who does not belong to a party represented in Parliament, had gambled on the parliamentary opposition's tendency to oppose the government coalition regardless of the president's motives and goals. In some cases, some have even taken an opposing stance based on the responsibility to preserve democracy. The Democratic Current Party adopted a centrist stance; Its Secretary-General Ghazi Chaouachi confirmed that his party "does not share President's view that he is the commander of the army and armed security forces," adding that "internal security is one of the prerogatives of the prime minister." At the same time, he disagreed with Ennahda's accusation that the president is orchestrating a coup, and that the solution lies "in the replacement of the current cabinet and with a national salvation government, and the removal of the speaker of Parliament, who is part of the problem."⁽⁸⁾ The people's movement supported President Saied's statements, and his role "to implement the constitution and preserve the unity of the state and its institutions and his right to read the constitution even in the presence of the Constitutional Court," and that he is "the commander-in-chief of the military and civilian armed forces and he is the head of the National Security Council". It also stated that "the Mechichi government is impotent and a failure."⁽⁹⁾

A Constitutional or Political Crisis?

Since the beginning of his dispute with the Speaker of Parliament and then the Prime Minister, President Saied has been searching for constitutional and legal interpretations to support his position, resembling a teacher who shrouds their political lessons in poetry to avoid political discourse.

6 Ennahda Statement, Ennahda website, 20/4/2021, accessed on 22/4/2021, at: <https://bit.ly/3vc9pHU>.

7 The page of the Parliamentary Bloc of the Heart of Tunisia party, Facebook, 19/4/2021, accessed on 22/4/2021, at: <https://bit.ly/3ng3Rcm>.

8 "Chaouachi: Saied ne peut pas être le chef de toutes les forces armées," Mosaïque FM, 22/4/2021, accessed on 22/4/2021, at: <https://bit.ly/3xhLWa1>.



The current situation closely resembles the deteriorating relationship between the president and the prime minister in the last two years of late Beji Caid Essebsi's presidency, during Youssef Chahed's tenure as Prime Minister. However, the matter did not disrupt the state apparatus, and the two parties, in the end, committed themselves to the individual powers specified by the constitution. Although Essebsi took advantage of his lengthy experience in state affairs and the weakness of the Chahed's political and administrative experience to gain extra authority, he retreated when Chahed resisted.

President Saied does not hide his contempt for the current constitutional formula that allocates powers between the three institutions of the presidency, the government and parliament, and he does not hide his desire to establish an executive system in which the president holds all executive powers, parliament takes a backseat and the prime minister's role is limited to implementing the president's policy. Although parliamentary democracy is the soul of the 2014 constitution, this constitution left grey areas in the distribution of leadership powers, but at the same time, it prevents any party from ruling alone and the return of authoritarian rule.

The obstacles facing attempts to establish the Constitutional Court add to the confusion between President Saied and his opponents over the issue of authority. The Constitutional Court is, in principle, qualified to interpret constitutional texts and decide on such disputes, rendering its formation, in such a circumstance, an urgent priority. At the same time, Saied's steps in managing the dispute with his opponents in the government and parliament lead him to believe that the dispute goes beyond textual constitutional interpretations. For the first time, since independence, the President has made convulsive political speeches in the army barracks and the headquarters of the security teams, in which he describes his opponents with the ugliest epithets, threatening and inciting them. This indicates a desire to bully the armed forces and bring them into the political scene from which they have distanced themselves since the revolution. This approach does not contradict parliamentary democracy but rather presidentialism as well. Democracy in general precludes the inclusion of the armed forces and security services in politics.

Outlook to the Crisis

There are several indications that the political crisis is deepening. The General Labour Union's call for national dialogue similar to the 2013 initiative that saw the departure of the Troika government and the formation of a technocratic government headed by Mehdi Jomaa, no longer receives the enthusiasm that it was first greeted with.

President Saeed seems to adhere to his own interpretations of the constitution, not shared by the overwhelming majority of constitutional experts and law professors. He rejects any dialogue with those he describes as "corrupt, hypocritical, conspirators" and "those with sick souls," in reference to the parliamentary bloc that supports the government, which is mainly composed of Ennahda, The Heart of Tunisia and the Dignity Coalition. He also seems uninterested in finding a solution to

the governmental paralysis resulting from the refusal to swear in new ministers, as the number of Covid-19 infections increases, the economic conditions worsen and the government faces new and difficult negotiations with the International Monetary Fund in search of funds for the depleted budget. It seems that Saied is relying on time and the accumulation of impossible social and security challenges to increase pressure on the government and its parliamentary bloc.

On the other hand, Ennahda and the rest of the government's parliamentary belt do not seem to be willing to hand over to Saeed what he wants. The Prime Minister seems reassured about the cohesion of the parliamentary bloc that supports him and his ability to limit the president's desires to control and direct the security services. At the same time, the possibility of victory for one party over the other, i.e. the dissolution of Parliament or the dismissal of the President, remains remote and has no constitutional basis, especially in the absence of the Constitutional Court. Neither the president is able to dissolve parliament without a constitutional court, nor is parliament able to remove the president without the support of the court, which has not yet been formed.⁽¹⁰⁾

Despite the President's three-day trip to Egypt, it is unlikely that he will gamble on any changes that compromise the entire democratic experience as happened in other Arab countries. The visit failed to produce any declared economic or political agreements and the President simply praised the Egyptian experience and the army. The Tunisian army maintains a distance from political disputes and the changes that the security establishment has witnessed since the revolution, and remains neutral in the current conflict.

Conclusion

After more than a year of the President wrangling with the Prime Minister and speaker of parliament, the political scene in Tunisia has reached an unprecedented impasse. Although Saied declared his self-serving interpretations of the constitution, the essence of the crisis relates mainly to his rejection of a political system that distributes powers between the three institutions, and his desire to expand its powers to include areas that remain in the hands of the government and parliament. His recent statements went beyond the desire to expand powers. The danger of these attempts lies in their transcendence of the emerging Tunisian democracy, especially in light of the difficult economic, health and social conditions that the country is undergoing. The Tunisian political elites should place the country's interest above all considerations so that the achievements made during the past decade are not lost and find a constitutional institutional mechanism to manage their differences without obstinacy, populism, and rhetorical overtures.

¹⁰ See Article 88 and other chapters of the Constitution of the Republic of Tunisia (2014).