

Tunisia's Constitutional Referendum: A Controversial Process

BUILDING RESILIENCE IN THE SOUTH SERIES – FIELD REPORT

By Yasmine Akrimi – BIC North Africa Analyst

On July 25th, 2022, Tunisians either voted for, against, or boycotted the constitutional referendum initiated by President Kais Saied. The referendum is part of a process initiated one year prior by President Kais Saied, who declared a state of emergency through which he froze the parliament, sacked the government, and assumed all three branches of power following a well-documented political crisis. As Tunisia enters a new political era with the victory of the “yes” vote, the referendum campaign and the commission that organized it still raise numerous controversies.

AN UNBALANCED AND QUASI-ABSENT REFERENDUM CAMPAIGN

Referendums are not part of Tunisia's young democratic culture. The only other referendum the country has experienced occurred in 2002, yet the process was vastly rigged by Zine Al-Abidine Ben Ali's regime, serving mainly to lift the two-mandate limit for the country's former authoritarian ruler (1987-2011). Back when current president Kais Saied was a constitutional law professor, he himself considered referendums as a way to consolidate power for Arab rulers:

"Referendums are disguised tools of dictatorship. Have we ever seen a referendum in an Arab country on which the people have not said yes? I dream of the day when, in an Arab country, the outcome is negative, people say no." – 2017 –

The 2022 constitutional referendum could have constituted an opportunity to lay the foundations for genuine democratic practices in a country, and region, unused to processes of direct decision-making by citizens. Yet, the campaign did not see

any large-scale public debate on the project's content and the features of the Third Republic. No explicative campaign from the party that initiated the referendum was ever conducted, i.e. President Kais Saied. There was essentially a clear will for the vote to be a plebiscite on President Saied's person, rather than a vote on the project itself. Saied's unique letter addressed to the Tunisian people in favor of "yes" particularly reveals a salutary vision of the constitution which would "*prevent the State's decline*", "*achieve the revolution's objectives*" and "*remedy despair, terrorism, hunger, injustice and pain*". The president did not address Tunisians to explain what the constitution is, but rather what the constitution can do according to his political imaginary.

Apart from an online consultation that took place between January and March 2022 and in which only 534, 915 Tunisians participated (10% of the electoral body), there was no genuine citizen involvement in the process. In the online consultation, cited in the new constitution's preamble as a legitimizing tool to organizing the referendum, most respondents opted for a constitutional amendment rather than a new text altogether.

In May 2022, a consultative committee was appointed to help draft the constitution. The proposal was presented to President Kais Saied in late June. A few days later, the text that will later be submitted to referendum was published in the Official Journal. Upon publication, the consultative committee's President declared that the final version had little to do with the committee's version and expressed his explicit opposition to it. Many perceived the late appointment of a consultative committee by a president who rarely consulted with any political counterpart since he assumed office, as a message sent to Tunisia's external partners to signal a participative process that was not actually one.

Besides, the deadlines for organizations and individuals to register for the referendum's campaign with the electoral commission (known by its French acronym ISIE) were extremely tight and parties had to choose to campaign for "yes" or "no" before the constitution's text was revealed. Additionally, boycotters were banned from the official campaign, although boycott was the majority position amongst those who opposed the project.

In parallel, the "yes" campaign benefited from State resources. Funding for posterage remains unclear and supporters of the presidential project were overrepresented in public media, specifically national television. Contrary to a

principle of neutrality for the public service, agents from certain departments mobilized in favor of “yes” and administrative cars were used for the campaign. This included high-level supporters of President Kais Saied's project, such as the governor of the *wilaya* of Ben Arous, Ezzeddine Chelbi.

A PRESSURED ELECTORAL COMMISSION

The ISIE's composition and work during the referendum's campaign knew several controversies. Its members were designated by President Kais Saied in May 2022, less than three months prior to the electoral deadline, after the former team was dismissed by Saied as he declared its work to have been partial towards certain political factions.

The new composition, having been directly appointed by the president, casted an immediate doubt on the independency of the entire referendum process. Many observers still consider the president's direct involvement in choosing the commission's members as an explanation to why the ISIE tolerated so many irregularities in the process. For instance, the constitution has been modified after its publication while the voting date was never adjusted accordingly. The revised text was not even published for the public to easily access, only the separate modifications were. Most importantly, the new commission had very little time to organize the referendum.

The ISIE also dealt with internal quarrels. Back in June 2022, its Vice-President Maher Jedidi contended the referendum's boycotters could not participate in the campaign and might even face criminal prosecution. His statement contradicted the assertions of his colleague Sami Ben Slama who affirmed that those publicly calling for a boycott will be allowed to take part in the campaign. Ben Slama also accused the commission's President, Farouk Bouaskar, of blocking the registration of remote voters. These accusations further aggravated some parties' distrust towards the transparency of the process.

When the referendum's results were published by the electoral commission, some figures contained grave errors. In the governorate of Tozeur for instance, the number of votes exceeded the number of registered voters. The commission quickly put the blame on regional bodies, allegedly responsible of reporting erroneous figures. Several executives were consequently dismissed. However, this only increased suspicions of fraud and prompted some civil society organizations

and political parties to demand an independent vote recount. Appeals were filed before the administrative tribunal by two political parties, *Afek Tounes* and *Al-Chaab Yourid*, and IWatch, a notorious civil society organization which revealed and filed numerous corruption cases in the past. The ISIE then declared its intent to sue every party that questioned the lack of transparency of the process. Yet, by accepting to organize elections within a state of exception characterized by a concentration of powers in the hands of one man, the electoral commission essentially accepted to bear the responsibility of the irregularities and criticisms that necessarily arise from a non-consensual, rushed electoral process.

As the final step of President Kais Saied's timeline approaches, the next political battle pertains to the electoral law that will shape the parliamentary elections of December 2022. As the President and several of his supporters truly believe the era of political parties is over, the law will most likely opt for a voting system on individual candidates rather than lists. Considering there will be two chambers and parliamentarians' mandate will be revocable, this will significantly weaken the role of the legislative power and reshape the face of Tunisia's political ecosystem.

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Author

Yasmine Akrimi | BIC North Africa Analyst



 @BICBrussels  @bicrhr  BIC

 www.bic-rhr.com  info@bic-rhr.com

 Avenue Louise, 89 1050, Brussels, Belgium  Tel:+32 027258466