

March 8th decrees: destroying the last democratically elected authority for the sake of Kais Said's populist project

Following the council of ministers meeting held on 8 March 2023, three decree-laws were published in the Official Gazette¹ dissolving municipal councils, amending the electoral law for Municipal elections, and setting out the voting method and candidacy requirements for the National Assembly for Regions and Districts, the second chamber of the new legislative body.

Dissolving municipal councils

The context in which these decrees were published shows the intention of the president to use the "exceptional" legislative power until the end. In fact, the elected municipal councils had only two or three months left in their mandate and municipal elections could have been called in time, as announced by the representatives of the Electoral Commission before changing their discourse once the political signal came from Carthage. On the other hand, the decree was issued 3 days before the inaugural session of the Assembly of the Representatives of the People elected on December 17th- January 20th which theoretically puts an end to the application of the ordinance 117 and legislation by decrees according to the article 139 of Kais Said's constitution.

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Amendments to the electoral law²

While it may appear pointless to talk about the rule of law and international standards under Kais Saied's absolute rule, it is worth reminding that amending the electoral law shortly before elections is contrary to the democratic best practices, and that Kais Saied's constitution itself excludes electoral matters from legislation by decree (Article 80). This decree is therefore unconstitutional and illegal.

¹ Decree-laws 8, 9, 10, issued in the Official Gazette on 9 March 2023

² Decree No. 8

Candidacy requirements

The decree-laws issued to amend the Electoral Law have excluded Tunisians of other nationalities from standing as candidates for municipal councils, which is unjustified and unconstitutional. In addition to the stigma attached to this exclusion, which casts doubts over the loyalty of dual nationals, we would note that democratic societies seek to broaden representation, particularly for local councils, where even foreigners residing in the locality are allowed to stand and vote. The new conditions have also prevented several professions and jobs from standing without any justification, such as judges, municipal accountants, municipal officials, and municipal employees, excluding more people from political participation. As a reminder, the law in its previous form prevented several regional and municipal officials from standing in the electoral districts in which they held office but allowed them to stand in other districts.

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The decree-law also raised the minimum age for standing as a candidate from 18 to 20 years while decree no. 10 excluded people under the age of 23 from standing for municipal elections, as is the case for the Assembly of People's Representatives.

The amendments also reduced the number of members per municipal council depending on the number of inhabitants³. As for the voting method, it will be by choosing from a list a set of candidates not exceeding the number of seats on the municipal council.

Municipal councils are supposed to expand political participation to as many groups and citizens as possible, which runs counter to the very philosophy behind these decrees if we add the discriminatory candidacy requirements to the reduction in the number of members of the municipal council.

The decree-law also introduced the distribution of tasks within the municipal council according to the number of votes, which negates the political character of the distribution

³ Eight members for less than 50k inhabitant, 16 members for 50-150k and 24 members more than 150k

of tasks within the council and undermines equality between elected members of the municipal council.

- Municipal councils

Despite the problems caused by the endorsements required in the legislative elections, the President insisted on putting them as conditions for candidacy for local and municipal councils. The decree made it mandatory for prospective candidates to have 50 endorsements equally split between men and women, including at least 15 endorsements from young people under the age of thirty-five.

The number (50) appears to be arbitrary and not based on any objective criteria such as the great differences in the number of voters across electoral districts and the technical problems that it will pose, especially as these are one-off endorsements (each citizen is not allowed to endorse more than one candidate). Simple math shows the irrelevance of this condition. For instance, with a 16-member municipal council as average spread over 350 municipalities, 280,000 endorsing electors are required, without considering the hypothesis of multiple candidacies.

This option illustrates the President's insistence on including the requirement for endorsements in his electoral law, despite all the problems posed by the 400 endorsements required in the legislative elections. This condition sparked suspicions of endorsement rigging and led to the automatic victory of candidates for the absence of competitors in addition to the fact that seven seats were left vacant as people wishing to stand could not collect the required number of endorsements.

- Local councils

When Kais Saied's constitution was promulgated, Al-Bawsala⁴ and several other observers and researchers observed that the President aborted the decentralization process as he withdrew from local collectivities the quality of authority. The constitution devoted for these collectivities a single article that is almost a replication of Article 71 of the 1959 Constitution.

Likewise, the constitution ditched all the principles of decentralization, such as free management, financial and administrative independence, and subsequent control, confirming Kais Saied's opposition to decentralization, which he voiced on several occasions before and after 25 July 2021.

Observers further pointed at the terminological contradiction between "municipal councils" in Article 133 and "local councils" in Article 75, which raised the question of whether this equivocality was intentional or one of the many errors that "seeped" into the constitution.

⁴ Al-Bawsala (July 2022): First analysis of the President's Constitution: A new foundation for an old authoritarianism (in Arabic).

The President's recent decrees⁵ proved that the discrepancy was deliberate, and the fact the term "local councils" was mentioned in a chapter that has nothing to do with local authority was a prelude to the subsequent rollout of the "bottom-up" project. This was a part of the few concessions included in the constitution (such as the direct election of the Assembly of the Representatives of the People which wasn't mentioned in the first version of the draft constitution). The constitution may not have specified how regional councils making up the National Assembly for Regions and Provinces would be elected, but observers familiar with Kais Saied's project know that his obsession with grassroots democracy and determination to see his project executed to the letter will make him have members of the local councils that "seeped" into Article 75 "elevated" to the regional council. All this was imposed by decree, without putting Tunisians in the picture or present them clearly with this political project.

- Territorial division and unbalanced representation

As was the case for the legislative elections -with delegation⁶-based division-, the electoral division based on "imada" will automatically lead to imbalanced seat representation due to the large demographic difference across electoral districts. In the governorate of Tunis, for example, the imada of "Sabkha" has a population of less than 400 inhabitants, while "Taieb Mhiri" has a population of around 30,000 inhabitants, leading to a difference in "vote value" of 85 times⁷.

The amendments will also drastically reduce the representation of women and youth - by dropping gender parity and mandatory youth representation on lists - which will weaken the representation of the elected councils since two key groups representing more than half of Tunisian society are excluded.

Moreover, this law will give rise to tribalism and cronyism^{8 9}, especially in the absence of public funding. We also expect that this law will not reflect the true diversity of Tunisian society, in fact, besides excluding entire categories of candidates, excessive localism and the adoption of the smallest possible constituencies will lead to greater concentration of the professional backgrounds of parliamentary deputies. This was evidenced by analyses of the results of the legislative elections^{10 11}, which showed an

⁵ Mahdi Elleuch - Legal Agenda (July 2022): Saied's draft constitution: presidentialism at one go, bottom-up construction piece-meal (in Arabic).

⁶ Delegations represent second-order administrative districts; for example, the Governorate of Tunis consists of 21 delegations and the Governorate of Zaghuan consists of six delegations.

⁷ Mahdi Elleuch - Legal Agenda (March 2023): Saied Completes "Bottom-Up Construction" on the Rubble of Democracy and Decentralization.

⁸ Al-Bawsala (September 2022): The Electoral Law: Amendments to set up a male council dominated by clientelist and tribal ties

⁹ Mahdi Elleuch, Muhammad Sahbi Khalafawi (July 2022): "Voting over Individuals: Priority for Clientelist and Tribal ties" in Legal Agenda Research Paper "The President Wants".

¹⁰ Al-Bawsala (3 February 2023): Illustrations of the composition of The Assembly of the People's Representatives

¹¹ Conference held by the Tunisian Observatory for Democratic Transition (9 February 2023): An analysis at the results of the legislative elections: populism without people.

unbalanced representation in favor of local professions, i.e. employees of regional administrations.

Contrary to what some might claim, these results do not reflect any greater political participation but are the outcome of the voting mechanism and territorial division. They further highlight a poorly diverse economic fabric at local level, as shown by studies on the spatial economy in Tunisia¹². This can only further undermine ties of citizenship in favor of local affinities.

A multitude of councils with no coordination or arbitration mechanisms

With the Decree-law No. 10 on the organization of local elections and the composition of regional councils, the institutional architecture of President Kais Saied's project was completed.

The decree-law set out the legislative embodiment of the bottom-up democracy project, as local council members are elected at the "imada" level - the smallest districts in Tunisia's administrative division – in two-round plurinominal majority elections and, as mentioned above, 50 endorsements are required¹³. These are the only direct elections in the bottom-up construction of the National Assembly for Regions and Districts. The elected members form a local council at delegation level (a group of "imada") and one member is chosen by lot from each local council to represent the delegation in a regional council at governorate level and their composition rotates again every three months by lot.

The Regional Council elects a representative of the delegation to the District Council - a territorial division not yet determined - and three members to the Assembly for Regions and Districts, and the District Council in turn elects a representative to the National Assembly of Regions and Districts to complete the line-up of the second legislative chamber.

Here we notice one of the contradictions in the decree-law, where a candidate for the Assembly for Regions and Districts is required to be a member of the Regional Council, whilst this status is temporary and alternates every three months. Will the first draw be adopted to determine the membership of the Regional Council? If so, on what basis is the first draw given a particular value and what would be the alternative to this option?

All these councils aim to have representatives elected to the National Assembly and have no influence on local policies which, according to the constitution, remain the prerogatives of the municipal council, despite their limitations. To elect representatives to the National Assembly, four types of councils will be formed, starting with direct elections at the level of the country's 2085 delegations to the National Assembly of

¹² Hamadi Tizaoui (2015): The metropolisation of Tunisian industry and the industrial decline of inland regions, *The Geographical review of Mediterranean countries* (No. 124, 2015, in french).

¹³ It requires endorsements to be split equally between men and women and that 15 of them be given from youth

Regions and Districts, and a draw will have to be held every three months throughout the year in an electoral marathon, pointlessly draining financial and logistical resources.

According to the President's philosophy, the proposals of these councils will be pooled to draw up national development policies. In practice, this decree-law does not provide any mechanism for coordinating and distributing powers between the local and municipal councils, and between the rest of the councils and the corresponding deconcentrated bodies at each level. These indicators make us expect major competition and conflicts of competences, and we do not know how the authorities are planning to solve or prevent them.

Moreover, the decree-law stipulates that representatives of the regional administrations will sit in each council. They will be permanent members without voting rights but, in practice, they are closely familiar with the inner workings of the public administration and finance, which will significantly reinforce their authority vis-a-vis the elected representatives.

In his speeches, the President reiterated the idea of compulsory mandate and the right of citizens to closely monitor their elected representatives with the possibility of revoking the mandates of elected representatives in all bodies introduced by his constitution and decrees (except for the President, although included in the original project of the "construction from below"). Whilst this mechanism has sparked a lot of debate and cannot be easily applied in its current form¹⁴, throwing in the lot drawing system denies a deputy any sense of security and any notion of political mandate, since a citizen cannot know to which chamber the candidate has been elected, and it might statistically give a unicolored council. Furthermore, lot drawing was introduced in a form that takes away its essence, as it was theorized to represent any citizen who has no political ambition, whilst it was introduced in the decree as a mechanism of selection among candidates and winners of the elections, stripping it from any theoretical relevance.

Conclusion

These decrees bring to light some of the recurring patterns in Kais Saied's political practice. Without any proper assessment of situation, the President set to bulldoze any institutional achievement in sight as he pursues the utopian dream he had been nurturing since 2012. Sound institutional and democratic construction presupposes the principle of accumulation, reform, and participation. Instead of objectively assessing the decentralization process and discussing how to bring it to a successful conclusion, the President used legislation by decree to destroy it completely without explicitly announcing it, which embarrassed even his supporters.

Since 2011, it has taken great efforts and wide participation to lay the foundations of the decentralization process in Tunisia. After devoting Chapter Seven of the 2014

¹⁴ Withdrawing the mandate as stipulated in the electoral law is an almost impossible mechanism to implement, but the president's obsession with mandatory mandate suggest he might prosecute non obedient deputies. This happened during the opening session of the Assembly of the Representatives of the People.

Constitution to the local authority, the country was able to issue the Local Communities Code and organize the first free elections of the members of municipal councils in May 2018. Citizens have since gained a significant experience in political participation at the local level, in terms of practice, observation and candidacy, and the country could have expanded and built on this experience.

Having cast aside all that experience, it will be very difficult to rebuild the institutions brought about by Kais Saied's constitution and decrees, because they overlook the political feasibility and technical capacity to implement them and turn a blind eye to public acceptability of the new institutions and elections at all levels. In addition to being arbitrary and full of internal contradictions, Kais Saied's project demeans Tunisian citizens, as it confiscates their will and delegitimizes the votes they cast in all previous democratic elections -except for the presidential elections-. Besides, since July 25th 2021, the President has not said a word about his true and unchanging project, which he sees as the road to salvation for Tunisia and humanity.

As explained, after trashing the principles of the rule of law, seizing all powers, attacking head-on the independence of the judiciary, arresting, and prosecuting political opponents, civil and trade union activists, and abusing freedom of the press and expression, Kais Saied's regime is destroying any form of civic engagement and political agency. While decentralization is based on delegating part of the central powers to an elected local authority under the umbrella of a unified State, the bottom-up construction project, as it now stands, is based on absolute centralization of the decision-making process and the negation of any sense of engagement in the nation's political affairs, as it confines citizens' involvement to narrow local issues without any influence on them or national policies. Citizens are only called upon to elect their representatives to a powerless National Assembly while all the power lies in the hands of the President.