

اصوات نساء
ASWAT NISSA

KAIS SAIED'S CONSTITUTIONAL PROJECT:

A THREAT TO WOMEN'S
RIGHTS AND INDIVIDUAL
FREEDOMS

STATEMENT BY ASWAT NISSA

On June 30, 2022, President Kais Saeid published his proposed constitution presenting major concerns for democracy, political stability, and the rights of women and minorities in Tunisia. As an active feminist organization of the Tunisian civil society, Aswat Nissa has a duty to declare its position and to express its concerns and worries about the constitutional project. Kais Saied's proposed changes will undermine decades-long advances in women's rights and protection of minorities which were arduously defended by generations of Tunisians.

The drafting process of Kais Saied's proposed constitution was far from inclusive. In fact, the President of the Republic excluded all civil society and political parties, a clear departure from the 2014 Constitution, which involved extensive consultation and participation over many years. Furthermore, the head of the committee mandated with drafting the new constitution has publicly declared that the proposed constitution submitted to the Tunisian people on June 30th was "completely different" than the one drafted by the committee¹. The unilaterally drafted constitution is an offence to the democratic gains of the Tunisian people.

The proposed constitution advances exhaustive changes to the political system in Tunisia. Indeed, there is a shift away from the parliamentary system established by the 2014 Constitution towards a hyper-presidential system which excludes checks and balances and undermines democracy. Contrary to a presidential system, this model eliminates the balance between the three branches of government and only the president can control or dissolve the other powers². These changes will facilitate a return to authoritarianism and present a danger to women's rights. The president would have ultimate authority on the three powers: executive, legislative, and even the judiciary by virtue of the power to unilaterally appoint judges.

Moreover, this individualistic constitutional project threatens women's rights and freedoms as many constitutional gains are modified, removed, or rendered meaningless.

¹ <https://www.al-monitor.com/originals/2022/07/author-proposed-new-tunisia-constitution-disavows-project>

² <https://www.washingtonpost.com/world/2022/06/28/tunisia-democracy-saied-protest-constitution/>

Key threats to women's rights include:

- The preamble claims that Tunisians expressed their will through a national consultation that saw the participation of hundreds of thousands of citizens. However, the participation rate was under 4%, clearly indicating a weak participation which cannot be representative of all Tunisians. Furthermore, only 36% of participants expressed their desire for a new constitution.³
- The proposed constitution does not introduce any progress on issues relating to women and minority rights.
- Article 2 removes the mention that Tunisia is a civil state. This opens the door to interpretations that can undermine women and minority rights and freedoms.
- Article 5 introduces Tunisia as a state that is part of the Islamic "Ummah" in which laws must respect the "principles" of Islam within a democratic regime. This creates ambiguity and opens the door for broad interpretations that may pose a danger for women's rights and minorities.
- Article 30 protects the right to choose a domicile and freedom of movement. However, it mentions only male Tunisian citizens as the feminization of the Arabic word "citizen" is not included. This can also open the door to the institutionalisation of the "Mahram" system for women.
- Article 120 mandates that judges are to be appointed by the President and other changes that undermine the independence of the judiciary. The independence of the judiciary is crucial for upholding women's rights in a patriarchal society.
- The Proposed Constitution also puts forward a series of articles that implement a hyper-presidential system in the country, including Article 101 through which the President appoints the Head of Government and other members of the government; Article 102 which allows the President to unilaterally terminate the functions of a member of government; Article 112 which establishes that the government be accountable to the President, in lieu of the parliament; and Article 116 through which the President can unilaterally dissolve parliament;
- The proposed constitution also removes many of the safeguard measures included in the 2014 Constitution to protect against abuses of powers by the President and prevent a return to authoritarianism, such as art. 88 of the Constitution.

³ <https://www.leaders.com.tn/article/33190-consultation-nationale-ce-que-nous-disent-les-tunisiens>

- Finally, the proposed constitution fails to concretize the participation of women in politics and in civil society. For instance, it replaces the electoral system of 'lists' which favoured gender parity in Parliament for an electoral system based on individuals, which will instead favour privileged individuals to access positions of power. This will threaten the successes of the Tunisian Parliament in reaching high levels of gender parity in politics.

The passage of the proposed constitution will consolidate the return to authoritarianism and jeopardise advances in human rights. The general philosophy of the proposal is detrimental to individual freedoms and threatens the progress of civil society in the democratisation of Tunisia.

As an active feminist organisation in Tunisian civil society, Aswat Nissa can only denounce this unilateral constitutional project while reminding the Tunisian state of the international commitments in which it is a member and the agreements which it ratified. Indeed, Tunisia is an important member of various organisations under the United Nations and in the African continent whose overall mission is to guarantee an environment of freedom and democracy in its membership. As a member of these organisations, the Tunisian state has a moral obligation to respect their charters which are based on the principles of freedom, democracy, and the rule of law.

Moreover, Tunisia has already ratified a panoply of international and regional conventions which it has committed to respect. For example, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which Tunisia signed without reservation, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and the Universal Declaration on Democracy which was adopted without a vote by the Inter-Parliamentary Council of which Tunisia is a member state. The international positioning of the Tunisian state underlines the importance that must be given to these commitments by the national executive, legislative, and judicial institutions.

By this statement, Aswat Nissa expresses again its concerns and worries about the constitutional project and hopes that the democratically drafted Constitution of 2014 be upheld, and later amended in a participatory approach that brings together the various stakeholders of the political and civil sphere of Tunisia.

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