

# A Critical Analysis of Executive Authority in Tunisia's 2014 Constitution

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## **Abstract**

*This paper examines the language used in the distribution of executive powers in Tunisia's 2014 Constitution and its impact on political stability in the first presidential term between 2014 and 2019. It relies on a critical comparative study of the linguistic choices used in explaining the mandates of both heads of the executive branch to highlight potential areas of overlap between them and to analyze the impact of this overlap on the daily jobs of the president and the head of government. The analysis of the chapter on Executive Authority confirms that (1) the boundaries between the two mandates were not clearly defined; (2) these blurred boundaries have created a rivalry between the heads of the executive branch after the Constitution went into effect; and (3) they have created a constantly dynamic party landscape inside the Parliament, which prevented the government from sustaining some degree of stability because of the constant change in the parties/blocks that supported or opposed it. These issues, stemming from a weak conception of the mandates of both heads of the executive branch as described in the chapter in focus, have hurt the relationship between the president and the head of government, and subsequently, the daily politics of Tunisia between 2014 and 2019.*

**Keywords:** *Constitution, Language of the Constitution, Critical Analysis, Executive Authority, Political Stability.*

## Introduction

Tunisia witnessed two major political events in 2011: a popular uprising that removed former president Zine El Abidine Ben Ali from power and the election of a National Constituent Assembly (NCA) that drafted a new constitution for the country. The NCA was initially elected for a one-year term, but it spent more than three years working on the new constitution, which was officially adopted on 26 January 2014.

One of the major modifications introduced to Tunisia's political system in the 2014 Constitution was related to executive authority. After a six-decade-old system that gathered most executive powers in the hands of the president, the 2014 constitution stipulated that the executive authority be shared between the president and the head of government. The chapter on executive authority included 31 articles on the powers of both heads of the executive branch and established a new relationship between the presidency and the government. This paper aims to:

- a. Assess the clarity of the boundaries between the powers of both heads of the executive branch as stipulated in the Constitution of 2014, and
- b. Analyze the effect of the new division of powers on Tunisian politics between 2014 and 2019.

## The language of constitutions

A constitution can be defined as the rule book for a state (Albert, 2019; McGinnis and Rappaport, 2018). It sets out the fundamental principles through which a state is governed and includes detailed descriptions of the political system chosen by legislators, usually the parliament. In most countries, the constitution is the supreme law that describes the nature of the state, the roles and mandates of the executive, legislative and judicial branches, the structures of government, the fundamental rights of citizens, the elements guaranteeing the rule of law, the relationships with other states, the conditions governing constitutional amendments, etc. (Faingold, 2004; Turanin, 2010).

As a supreme law, the language of the constitution should be carefully drafted to avoid ambiguity in the interpretation of its terms and conditions. The clarity in the language of constitutions should display a high degree of (1) precision and formality, (2) complexity and verbosity, and (3) precision in punctuation and syntax (Asgeirsson, 2020; Carston, 2013; Endicote, 2000; Isakov, 2000).

- **Precision and Formality:** the lexicon and jargon used in constitutions are expected to be clear and free from vagueness. Every word must be used correctly to convey the meaning intended by legislators. As a supreme law of the state, the constitution usually serves as a main reference for legislators to enact other laws, which highlights the risks associated with vaguely worded terms on the quality of future legislation (Asgeirsson, 2020; Endicote, 2000; Lanius, 2019). The language of constitutions should also be formal and conventional. Formality also ensures clarity and facilitates interpreting constitutional provisions consistently and coherently.
- **Complexity and verbosity:** the language of constitutions is inherently complex. This complexity arises from constitutional terms that usually include condensed meanings and highly specialized jargon (Faingold, 2004; Ekins, 2012). The legal lexicon and the structural patterns associated with it are almost unique to legal texts and the explanation of legal language is usually guided by a set of interpretive rules to avoid broad or narrow interpretations that may facilitate power abuse. Verbosity, a second feature of constitutional language, refers to wordiness and repetitions of the same lexical item within the same term or article. It excludes abusive interpretations that may arise from omissions, deletions, etc.
- **Precision in punctuation and syntax:** the phrases, clauses, and structures used in constitutions should also display a high level of accuracy and clarity (Carston, 2013; Davydova, 2011; Ekins, 2012). Precise lexicon and jargon do not guarantee the easy interpretation of constitutional terms and articles when the syntactic structures are unclear or badly punctuated. To avoid potential abusive and arbitrary interpretations of the constitution, legislators usually pay attention to the slightest details in the formulated idea, the structure used for its formulation, and the punctuation that makes it straightforward and unambiguous.

## Tunisia's 2014 Constitution

Tunisia's 2014 Constitution was adopted by the NCA on 26 January 2014. It included a Preamble and 149 articles organized into ten chapters focused on:

- General Principles (Articles 1-20);
- Rights and Freedoms (Articles 21-49);
- Legislative Authority (Articles 50-70);
- Executive Authority (Articles 71-101);
- Judicial Authority (Articles 102-124);
- Independent Constitutional Bodies (Articles 125-130);
- Local Government (Articles 131-142);
- Amending the Constitution (Articles 143-144);
- Final Provisions (Articles 145-147); and
- Transitional Provisions (Articles 148-149).

The focus of this paper is limited to the chapter on Executive Authority.

### *The distribution of executive powers in Tunisia's 2014 Constitution*

The chapter on Executive Authority in Tunisia's 2014 Constitution is subdivided into two sections: one listing the powers of the president and one detailing the powers of the head of government. The legislators seemed very concerned with creating a balanced division of powers which can be seen in the equal number of functions given to both heads of executive authority, as illustrated in Table 1 (Constitute Project, 2014).

**Table 1: Distribution of executive powers in Tunisia's 2014 constitution**

	<b>Powers of the President of the Republic</b>	<b>Powers of the Head of Government</b>
1	Head of State and symbol of its unity	Determines the State's general policy, taking into account Article 77
2	Represents the state	Leads the public administration
3	Determines the general orientations in the domains of defence, foreign relations, and	Creates, modifies and dissolves ministries

	national security... (after consultation with the head of government)	
4	Dissolves the Assembly of the Representatives of the People	Dismisses and accepts resignations of members of the government
5	Chairs the National Security Council	Chairs the Council of Ministers (except on issues relating to defence, foreign policy, and national security)
6	Ratifies treaties	Concludes international agreements of a technical nature
7	Awards decorations, issue special pardons...	Exercises general regulatory powers, issues decrees...
8	Appoints and dismisses General Mufti, individuals in senior positions in the presidency, military/diplomatic positions, and the governor of the Central Bank.	Nominates and dismisses individuals in senior civil positions.

A comparison between the powers of both heads of the executive branch can be made at the horizontal level (line by line). The legislators' intention to achieve an equal distribution of these powers is most visible in the similar nature of verbs employed to describe the different mandates of the president and the head of government (chairs/chairs; ratifies/concludes; appoints and dismisses/nominates and dismisses...). However, a closer look at the nature of powers as described in the parts following the verbs may reveal that the intended equal distribution of powers remains purely linguistic and cannot be applied in day-to-day politics. The wording employed by legislators seems problematic as it fails to draw clear demarking lines between powers in at least four types of matters.

First, matters related to the citizen's daily life shall be within the exclusive mandate of the head of government as s/he is the one who "determines the State's general policy" (Article 91). However, this seemingly exclusive mandate is contradicted by the president's involvement in setting "the general orientations in the domains of defence, foreign relations, and national security" (Article 77). In the daily practice of power, it is not easy to separate the

domains of defence, foreign relations, and national security from the State's general policy, hence the blurred line between powers.

Second, the decisions about nominations and dismissals in senior positions are distributed in a way that does not prevent an overlap of powers. While the president has the power to appoint and dismiss "senior military and diplomatic positions...[and] the governor of the Central Bank" (Article 78), the head of government "creates, modifies and dissolves ministries and secretariats of state" and nominates and dismisses "individuals in senior civil positions" (Article 92). The separation of powers in this example gives the impression that appointments and dismissals in the Ministries of Defence and Foreign Affairs can be completely separate from the government and seems to ignore the potential subsequent disturbance that may affect the functioning of these two important ministries when the decisions about appointments and dismissals taken by the president are opposed by the head of government.

Third, the ratification of "treaties" and "international agreements" is being presented as two separate mandates for both heads of the executive authority. The adjective "international" in "international agreements" ignores the fact that treaties are also necessarily international. It is difficult to classify conventions and agreements solely based on being "international" or having "a technical nature". In the case of treaties related to human rights, social issues, trade, peace, economic cooperation, etc., it is evident to find articles serving general purposes and articles focusing on issues with a technical nature, such as the measures of applicability, responsibility and accountability.

Fourth, the legislators' conceptualization of national security, which is presented as an exclusive power of the president (Article 77), also fails to consider that national security involves more than the work of the Ministry of Defence. Tunisia's experience in fighting terrorism in the years following the adoption of the new Constitution, for example, was characterized by close cooperation between the ministries of defence and interior. Leaving each of these two ministries under the supervision of one of the two heads of the executive authority may reduce cooperation between them and influence their effectiveness in achieving national security. Besides, national security is a broad domain that may include social stability and the good functioning of state institutions, which have nothing to do with the Ministry of Defence. In the years following the 2011 uprising, Tunisia witnessed massive

union strikes and social protests that were often considered a threat to national security, but the Ministry of Defence has never been part of the institutions treating these problems.

Limiting the meaning of "national security" to defence entailed two other separate powers for the two heads of the executive branch. While the president is responsible for chairing the National Security Council (Article 77), the head of government is responsible for chairing the Council of Ministers (except on issues relating to defence). As mentioned earlier, Tunisia has witnessed massive protests and frequent terrorist attacks that threatened its national security and the involvement of the Ministry of Defence in these protests was limited. In cases like this, a dispute on powers may arise between the heads of the executive authority: if the matter is to be treated as a social issue, the president's involvement becomes unconstitutional since his/her mandate is limited to issues of defence. However, the head of government, who should look for solutions, does not have the power to convene and chair the National Security Council.

These four examples of overlap between powers prove that legislators' language on the division of powers between the two heads of the executive branch remained vague. The following section shall review the impact of this division of powers on Tunisian political life between 2014 and 2019.

### *The effect of the distribution of executive powers on Tunisian politics between 2014 and 2019*

Articles 75 and 89 of the 2014 Constitution determine how both heads of the executive authority shall come to power. While the president of the republic is "elected for a five-year term using universal, free, direct, fair, and transparent elections, by an absolute majority of votes cast" (Article 75), the head of government should be proposed "by the party or the electoral coalition which won the largest number of seats in the Assembly of the Representatives of People" (ARP), and then asked by the President of the Republic "to form a government" (Article 89).

It is clear from these two articles that the two heads of the executive authority acquire legitimacy from two different sources. While the president's legitimacy comes from the people at large, the head of the government owes his/her legitimacy to the party or coalition that

won the legislative elections and nominated him/her for the position. Besides, the head of government is required to obtain a second layer of legitimacy from the ARP because “the government shall present a summary of its programme to the Assembly of the Representatives of the People with the objective of obtaining the confidence of an absolute majority of its members” (Article 89).

This difference in how both heads of the executive power come to power, and the subsequent types of legitimacy each of them has, may have a direct impact on the duties of their respective positions. Being elected for a five-year term, the president enjoys a relatively comfortable immunity from impeachment or removal. The ARP, the authority that can remove the president from his/her position, should “present a motion” and “the motion must be approved by two thirds of the members” (Article 88). Besides, the motion should be justified by “a grave violation of the Constitution” (Article 88).

The case is very different for the head of government. The fact that the Constitution stipulates that he/she be nominated by “the party or coalition which won the largest number of seats in the Assembly of the Representatives of the People” (Article 89) makes the legitimacy of his/her stay in power tied to the extent to which that party or coalition maintains the largest block in parliament. In a country where the electoral law allows members of Parliament to move from one block to another, the head of government may easily lose original support when the size of parliamentary blocks changes and the party or coalition that originally nominated him/her is no longer the largest in terms of number of seats.

A few months after adopting the 2014 Constitution, Tunisia organized presidential and legislative elections that created a new political landscape. President Beji Caid Essebsi came to power after fierce competition with former president Moncef Marzouki (2011-2014), and Nidaa Tounes – the party established by Essebsi in 2012 – won the largest number of seats in the ARP (85 seats), advancing Ennahda party (69 seats) which used to have the largest parliamentary block in the 2011-2014 NCA.



**Table 2. Results of Tunisia's 2014 legislative elections**

Party/coalition	Votes (%)	Number of seats
Nidaa Tounes	37.56	86
Ennahdha	27.79	69
Free Patriotic Union	4.13	16
Popular Front	3.64	15
AfekTounes	3.02	8

Based on the results presented in Table 2, Nidaa Tounes nominated Habib Essid for the position of head of government, and his proposed team won the confidence of the ARP on February 6, 2015. The experience of Essid in this position, however, did not last for long as he was removed from power in the summer of 2016. In the twenty months that he spent in power, he had to form two governments, and the life of each of them was less than one year.

The major lesson from the short experience of executive authority in Tunisia after 2014 is that instability at the level of parliamentary blocks has entailed instability in the composition of governments. Five years after the 2014 elections, the distribution of parliamentary blocks has completely changed.

**Table 3. Size of parliamentary blocks on January 31, 2019**

Party/coalition	Number of seats
Ennahda	68
National Coalition	44
NidaaTounes	41
Machrou Tounes	16
Popular Front	15

In Table 3, the block of Nidaa Tounes lost more than half of its seats in the ARP and moved from the first to the third position while Ennahda party, which lost only one seat, became the largest block.

The change in the number of seats of the party/coalition that won the elections has direct implications on the support available to the government. In the five years following 2014, Nidaa Tounes, as a party that won the elections, has gradually become unable to support the government of the candidate it had nominated and failed to provide him with the needed immunity to apply his programme.

In the period from February 2015 to January 2019, Tunisia was governed by four different governments, two headed by Habib Essid and two by Youssef Chahed. Instability at the level of government was a direct result of the instability of parliamentary blocks. Nidaa Tounes suffered from internal divisions and new parliamentary blocks emerged in these divisions. A comparison between Table 2 and Table 3 shows that the blocks of the National Coalition and Machrouu Tounes did not exist in 2014. Most members of these two blocks won the legislative elections as members in the lists of Nidaa Tounes and then resigned from the original party and formed new blocks.

Between 2014 and 2019, the average life of each government was one year. Youssef Chahed, the last head of government in that period, won the ARP's confidence for his first government on August 26, 2016, and his second government on November 5, 2018. Between these two dates, he had to remove ministries and accept resignations multiple times.

As a result of the divisions of Nidaa Tounes block, Chahed relied on support from Ennahda block, which became the largest block in parliament. He lost the support of the president as a founder of the party that had nominated him, and the relationship between the two heads of the executive authority became characterized by tension. President Essebsi called the new government "Ennahda government" and Nidaa Tounes declared that it moved to the opposition, and did not vote for the second Chahed government in November 2018.

As a result of these changes, the political scene in Tunisia became as follows: a government headed by the person nominated by the party that had won the elections, but that party moved to the opposition while the person it had nominated left the party. The intention of legislators, when they opted for this form of government, was to ensure coordination and harmony between the two heads of the executive authority since both of them come from the party that wins the elections. But what happened stands in sharp opposition to that intention to the

extent that communication between the two heads of the executive authority became almost nonexistent, which would impact the good running of state institutions.

Tunisia's experience with executive authority as determined in the Constitution of 2014 has shown that the selected form of government cannot guarantee political stability. The frequent changes of ministers and heads of government stand in sharp opposition to what Tunisians experienced in the past and how the state used to function. Although Tunisia has adhered to a process of democratic transition and achieved noticeable advances in areas such as freedom of expression, freedom of the press, and freedom of association and assembly, the chosen form of government did not support the needed stability to achieve better economic performance. Tunisia's economic growth has been slow and never exceeded 2.9 annually after 2014 (World Bank, n.d). Besides, the country witnessed two political assassinations in 2013 and a series of terrorist attacks that affected the performance of tourism, a sector accounting for 7 percent of Tunisia's Gross Domestic Product (GDP).

## **Conclusion**

In the wave of social uprisings that hit the Arab region since 2011 and the subsequent large-scale chaos and violence that prevailed in many countries, Tunisia stood as a promising example with its relatively peaceful transition to democracy. The Constitution of 2014 was considered a progressive legal text in the region since it guaranteed unprecedented freedoms and liberties (Grote, 2014). However, Tunisian politics in the five years following its adoption showed that the legislators' choice for a two-head executive branch did not guarantee political stability, and the people's aspirations for better economic performance were never achieved. Unemployment rates, especially among university graduates, remained high and social protests have persisted in many areas of the country.

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