TUNISIA: GENUINE REFORM OR FURTHER EROSION OF THE RULE OF LAW?

A Q&A ON THE FOUR DECREE-LAWS ADOPTED BY TUNISIA'S PRESIDENT IN SEPTEMBER 2026

icj International Commission of Jurists

INTRODUCTION

On 30 September 2026, Tunisia's President, Kaïs Saïed, adopted four decree-laws:

1. Decree-Law 2026-1, amending Decree-Law 2022-54 "on combating offences relating to information and communication systems";

2. Decree-Law 2026-2, amending Decree-Law 2022-13 "on penal reconciliation and the allocation of its resources;

3. Decree-Law 2026-3, amending certain provisions of Organic Law 2012-23 establishing the Independent High Authority for Elections (Instance Supérieure Indépendante pour les Élections, ISIE), including some of the amendments that Decree-Law 2022-22 had introduced to the said Organic Law 2012-23; and

4. Decree-Law 2026-4 on municipal councils, abrogating Organic Law 2018-29 on the Code of local constituencies, and replacing it by 140 new articles.

It is the first time that the President adopts decree-laws since the convening of the Parliament in March 2023 following elections held under the Constitution adopted in 2022. Following his 2021 power grab, Kaïs Saïed had suspended and then dissolved Parliament, and adopted multiple decree-laws pursuant to "the state of exception" under the 2014 Constitution, including the above-mentioned Decree-Laws 2022-54, 2022-13 and 2022-22, as well as Decree-Law 2023-9, dissolving all municipal councils.

In the past, the International Commission of Jurists (ICJ) strongly criticized the unconstitutionality of presidential decree-laws and ruling by decree, including the negative impact of Decree-Laws 2022-54 and 2022-22 on freedom of expression and free elections, respectively.

The ICJ publishes this Questions and Answers (Q&A) to analyse the changes brought about by Decree-Law 2026-1 and Decree-Law 2026-3 that directly impact on human rights. In particular, this Q&A considers whether the amendments they introduce constitute meaningful steps to improve Tunisia's compliance with its obligations under international human rights law with regard to freedom of expression and the principle of free elections. In addition, this Q&A examines the constitutionality and lawfulness under international human rights law and standards of the four decree-laws adopted on 30 September 2026 and, in turn, the implications of their adoption for the rule of law in Tunisia.

1 WHAT CHANGES DOES DECREE-LAW 2026-1 BRING TO DECREE-LAW 2022-54, AND DO THEY REALLY IMPROVE FREEDOM OF EXPRESSION IN TUNISIA?

Decree-Law 2022-54 (Decree 54) was promulgated in September 2022, without any prior consultation or public debate, and was ostensibly aimed at combatting cybercrime and "fake news." Its provisions empowered the authorities to prosecute and imprison people solely for the legitimate exercise of their right to freedom of expression, in violation of Tunisia's obligations under international human rights law and standards.

Article 24 of Decree 54, in its initial version, provided for a penalty of five years' imprisonment and a fine of 50,000 Tunisian dinars (about 16,799 USD) upon conviction in connection with the "offences" of:

- "deliberately us[ing] communication and information systems and networks to produce, spread, diffuse, send or write fake news, false information or rumours, false or forged or falsely attributed documents with the aim of infringing the rights of others or threatening public security or national defence or spreading terror among the population;" and

- "us[ing] information systems to publish or distribute fake news, false or forged documents or information containing personal data or falsely attributed data with a view to defaming others, to damaging their reputation or harming them financially or morally, to inciting assaults against them or to inciting hate speech."

The penalty incurred upon conviction was twice as long, i.e. up to ten years' imprisonment, whenever the "crime" was purportedly perpetrated against "State officials". Since its promulgation, Decree 54 has been used to legitimize arbitrary attacks on free expression, targeting journalists, radio hosts, lawyers, and political opponents.

Decree-Law 2026-1 repeals the abovementioned penalty of imprisonment under article 24 of Decree 54 for "first-time offenders" and lowers the amount of the fine to between 10,000 and 20,000 Tunisian dinars (about 3,359 and 6,719 USD). Thus, the amendment introduces more lenient penalties under Decree 54, thereby attenuating its draconian nature. However, it establishes a new approach to "repeat offenders", with a penalty of six months' imprisonment upon conviction, as well as a fine of 50,000 Tunisian dinars (about 16,799 USD), and excludes consideration of mitigating circumstances, if any. In addition, "perpetrators" remain liable to a "doubled" penalty whenever their "offending" is directed at "State officials", thereby risking being sentenced to up to one year's imprisonment under Decree 54 if they criticize a State official more than once.

According to the principle of the retroactive effect of a lighter penalty pursuant to article 15(1) of the International Covenant on Civil and Political Rights (ICCPR), any person currently imprisoned under Decree 54 should be immediately released, except for imprisoned



"repeat offenders", who should be released upon having served six months of their sentence. However, to date, it is unclear whether anyone has been released following the entry into force of Decree-Law 2026-1.

While the removal of imprisonment as a penalty and the monetary fine decrease upon conviction under article 24 are positive steps, nonetheless, Decree 54, as amended by Decree-Law 2026-1, continues to constitute a serious threat to the legitimate exercise of the right to freedom of expression, particularly for "repeat offenders", who continue to be liable to imprisonment.



Indeed, according to Decree-Law 2026-1, the definition of the "offence" proscribed in article 24 is the same. Therefore, it remains overbroad and vague, failing to define what constitutes "fake news" and "rumours", in breach the principle of legality enshrined in article 15(1) ICCPR, which requires that criminal offences be defined by law with precision and unambiguously, narrowly defining the punishable offence with a clear definition of the criminalized conduct, establishing its elements and the factors that distinguish it from conduct that is not criminally proscribed.



Moreover, considering the multiplicity of prosecutions under Decree 54, sometimes initiated in practice against the same person, conviction and sentencing as a "repeat offender" is anything but hypothetical. For example, lawyer and columnist Sonia Dahmani has been convicted and sentenced to imprisonment in four cases under Decree 54 in relation to statements she has made, with one additional case still pending. Two of the cases against her concerned the same statement she made, on two separate occasions, about the treatment of migrants in Tunisia: once on a radio programme and once on a television programme. After serving her first sentence, she was released from prison in November 2025, and remains at risk of being re-detained. In a similar vein, prominent opposition figure Abir Moussi was convicted and sentenced to imprisonment under Decree 54 twice, in 2024 and 2025, in connection with public statements she had made criticizing the legislative electoral process, following complaints by the ISIE. She is currently detained, including in relation to other criminal proceedings.

In addition, the ICJ has raised other concerns regarding Decree 54, namely, the wide surveillance powers granted to the authorities pursuant to articles 8 to 10 to access, seize and inspect digital devices and data, as well as intercept communications during investigations. The lack of clear limits on when and against whom these surveillance measures may be used continues to give rise to concern about the right to privacy.

In light of the above, the ICJ recommends that Decree 54 be repealed in its entirety.

Furthermore, pursuant to other legislative provisions that remain in force, the exercise of the right to freedom of expression in Tunisia continues to carry a risk of imprisonment for those choosing to exercise it. Indeed, beyond Decree 54, which has been less and less relied upon over the past year, the ICJ notes with concern that the authorities have concurrently and increasingly relied on other legal provisions to investigate, prosecute, try, convict and imprison people solely for the legitimate use of their freedom of expression, including article 86 of the Telecommunications Code, Organic Law 2015-26 on

"combating terrorism and money laundering", and State security-related and slander offences in the Penal Code.

For example, journalist Zied El Heni is currently serving a one-year prison sentence for "the intentional use of public telecommunications networks to disturb or harm others", under article 86 of the Telecommunications Code, based on statements he had made. As another example, the Tunisian authorities arbitrarily arrested, detained, prosecuted, convicted and sentenced lawyer Ahmed Souab on "terrorism"-related charges under Organic Law 2015-26 based solely on public statements he had legitimately made in his professional capacity as a defence lawyer in the so-called Conspiracy Case.

Thus, while, as mentioned above, removing imprisonment as a penalty and the monetary fine decrease are positive steps introduced by Decree-Law 2026-1, the ICJ considers that, what could ultimately have been a sign of openness on the part of the authorities regarding freedom of expression is actually just a smokescreen. This is well reflected by the fact that, on 4 September 2026, only a few weeks before the adoption of Decree-Law 2026-1, journalist and editor-in-chief of the Al-Qatiba platform, Mohamed al-Yousfi, was arrested and remanded in pre-trial detention on charges of money laundering, illicit enrichment and criminal conspiracy under Organic Law 2015-26 on "combating terrorism and money laundering", Law 2018-46 on illicit enrichment and the Penal Code, despite the lack of credible evidence and ostensibly based on his journalistic work.

2 WHAT CHANGES DOES DECREE-LAW 2026-3 BRING TO ORGANIC LAW 2012-23 ESTABLISHING THE INDEPENDENT HIGH AUTHORITY FOR ELECTIONS AND DOES IT GUARANTEE ITS INDEPENDENCE?

Organic Law 2012-23 established the Independent High Authority for Elections (ISIE), a permanent, independent constitutional authority entrusted with oversight powers to guarantee the conduct of fair and transparent elections and referenda and provided for its members to be elected by the Assembly of the Representatives of the People (ARP), the Tunisian Parliament. The 2014 Constitution upheld the ISIE's independence.

In April 2022, however, President Kaïs Saïed issued Decree-Law 2022-22 (Decree 22), amending Organic Law 2012-23. Decree 22 reduced the number of ISIE members from nine to seven, reduced the duration of their term from six to four years, and conferred the power of appointment of ISIE members, including its Chair, to the President, thereby ending ISIE's independence.

Even though the Constitution promulgated in August 2022 provided for ISIE to comprise nine members for a term of six years, Decree 22 remained in force as it was. Further to these changes, the ISIE disbarred all but two candidates from running in the 2024 presidential elections against incumbent Kaïs Saïed, and became a tool of oppression by filing criminal complaints against critics and contenders.

Decree-Law 2026-3 maintains and even consolidates the centralization of power in the hands of the President introduced by Decree 22. The main changes Decree-Law 2026-3 introduces include:

i. increasing the number of ISIE members from seven to nine and extending their term from four to six years, with a third of all members being renewed every two years, bringing Organic Law 2012-23, as amended by Decree 22, in line with the 2022 Constitution;

ii. providing that the two additional members comprise a retired diplomat – chosen by the President among three candidates proposed by the Ministry of Foreign Affairs – and an engineer specialized in statistics, also chosen by the President among three candidates proposed by the National Institute of Statistics;

iii. expanding the category of people among whom the President may choose three ISIE members to experts in the management, organization and oversight of elections rather than former ISIE members only;



iv. expanding the category of members among whom the President may appoint the Chair of ISIE to all ISIE members, instead of exclusively the three former ISIE members freely chosen by the President;

v. mandating the Chair to alert the President to the expiry of the terms of members; and

vi. providing that special reports on each election and annual activity reports be submitted to the President alone and no longer to the Head of Government as well.

Article 4 of Decree-Law 2026-3 stipulates that the terms of current ISIE members – who were appointed in May 2022 pursuant to Decree 22, and whose four-year terms had expired in May 2026 – are extended until new ISIE members can be appointed in accordance with the above-mentioned changes introduced.



None of these amendments is designed to enhance the ISIE's independence. Rather, these technical amendments bring Organic Law 2012-23, as amended by Decree 22, in line with the 2022 Constitution while maintaining the President's control over ISIE and expanding the scope of his choice in ISIE appointments. As such, the fairness and transparency of any upcoming referenda and elections in the country remains compromised, in particular in light of the ISIE's unlawful exclusion of candidates during the last presidential elections.



In addition, Decree-Law 2026-3 appears designed to unlawfully extend already expired terms of ISIE members for upcoming elections' purposes. Indeed, on 13 October this year, just two weeks after the adoption of Decree-Law 2026-3, the ISIE announced that municipal and legislative elections would be scheduled in March and November 2027, respectively. At the time of writing, the President had still not appointed the additional two ISIE members.

3 WAS THE PRESIDENT EMPOWERED TO ISSUE THE FOUR RECENT DECREE-LAWS?

The absence of any purported legal basis invoked

The decree-laws adopted by the President between 2022 and 2023, in the wake of his 2021 power grab, were based on Presidential Decree 2021-117 of 22 September 2021 (Decree 117), issued under the "state of exception" pursuant to article 80 of the 2014 Constitution in force at the time. Decree 117 had suspended the 2014 Constitution almost in its entirety; also, it had empowered the President with full legislative prerogatives through decree-laws. The ICJ considers Decree 117 – and the decree-laws purporting to rely on it and adopted in its wake – as unconstitutional and in violation of the principles of the rule of law and separation of powers, as well as of the right of the Tunisian people to take part in the conduct of public affairs (see, ICJ's Q&A on Decree-Law 2022-11, pp. 4-5).

The President no longer has the possibility to rely on Decree 117. Indeed, since the entry into force of the 2022 Constitution, Decree 117, as a text based on "the state of exception" pursuant to the previous Constitution, is no longer in force to empower the President to adopt or amend decree-laws. Hence, only the ARP, the Tunisian Parliament, as the legislative branch of the State under the 2022 Constitution, may amend decree-laws in force. The ARP has in fact made use of this power when it amended Decree-Law 2022-13 on penal reconciliation in January 2024, demonstrating that the power to amend presidential decree-laws previously adopted under Decree 117 rests with the ARP.

In any event, the four decree-laws adopted by the President on 30 September 2026 provide no reference whatsoever to the purported legal basis upon which the President has relied to issue them in the first place. Their respective preambles only refer briefly to "deliberations" with the Ministerial Council, and to "informing" the General Legislation Committee of the ARP.

Relying on article 73 of the Constitution would have been unlawful

Yet, the 2022 Constitution presently in force does allow the President to adopt decree-laws in some circumstances. In particular, article 73 of the 2022 Constitution empowers the President to issue decree-laws during the recess of the ARP, which normally occurs every year between late July to late September, requiring only that the ARP be informed, and the submission of the decree-laws for approval when the ARP resumes its activities.

Indeed, the President promulgated the four decree-laws on 30 September 2026, during ARP's recess and just one day before the ARP resumed its activities, on 1 October. However, even if the decree-laws had been explicitly adopted pursuant to article 73, their legal basis would still raise serious concerns.

First, article 73 empowers the President to arrogate to himself legislative power periodically without any justification, such as demonstrated urgency to adopt legislation during ARP's recess. As such, this provision thus allows the executive to arbitrarily usurp



the legislature's powers, in breach of the separation of powers principle.

Second, the adoption of these decree-laws on the basis of article 73, on the eve of the ARP's resumption of activities following its recess, would have been abusive, as none of them has been adopted to respond to an emergency. This is particularly so regarding the 140 new articles on municipal councils featured in Decree-Law 2026-4, which must have been drafted long before the ARP's recess and which will only apply as of the next municipal elections. These decrees-laws are in fact clearly meant to bypass the ARP's legislative power and circumvent the legislative process altogether. Decree-Laws 2026-3 and 2026-4, which amend Organic Law 2012-23 and repeal and replace Organic Law 2018-29, respectively, even circumvent the specific process of adoption or amendment of Organic Laws, which requires adoption by an absolute majority of ARP members.



Lastly, article 73 provides that decree-laws are to be approved by the ARP when back in session. While it remains to be seen whether this is going to be case, the fact that none of these decree-laws designates article 73 as a legal basis for its adoption may indicate that, in fact, they will not be submitted for approval to the ARP, further breaching the Constitution and the separation of powers.



The constitutional prohibition to amend electoral laws by decree-law

Article 80 of the 2022 Constitution excludes electoral laws from the ambit of decree-laws adopted in case of dissolution of the ARP. While Decree-Laws 2026-3 and 2026-4 on ISIE and municipal councils, respectively, might not be considered as "electoral laws", strictly speaking, they have a clear bearing on the elections to come, particularly the municipal elections.

With respect to this, it is worth recalling that the President had, by Decree-Law 2023-9, dissolved all municipal councils in March 2023, and that Decree-Law 2026-4 provides that Decree-Law 2023-9 remains in force until such elections. Moreover, as stated above under question 2, Decree-Law 2026-3 conveniently extends the expired terms of ISIE members for the purpose of holding these elections.

As such, Decree-Laws 2026-3 and 2026-4 breach the spirit of article 80 of the Constitution, and attest to the President's intention to maintain control over the elections and functioning of the future municipal councils. Such presidential control further violates the separation of powers principle and Tunisians' right to participate in the conduct of public affairs through free and fair elections enshrined in article 25 ICCPR.

The absence of constitutional review

Articles 125 and 127 of the 2022 Constitution provide for the establishment of a Constitutional Court empowered to review the constitutionality of laws, including those referred to it by courts when their constitutionality is challenged in proceedings before them. However, to date, no meaningful progress has been made towards establishing a Constitutional Court.

Thus, the fact that the constitutionality of the decree-laws issued by the President on 30 September 2026 cannot be tested further undermines the rule of law.

CONCLUSION

For the abovementioned reasons, the ICJ considers that the four decree-laws adopted in September 2026 run counter to international human rights law binding on Tunisia, and further entrench the erosion of the rule of law and separation of powers in Tunisia. The fact that the President used this process not only to amend his own decree-laws, but also to amend Organic Laws, including to entirely repeal and replace the municipality law, is yet a further sign of an acute rule of law crisis in the country.

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