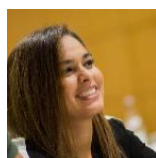


COVID-19 has radically changed our lives. Hence, it is crucial to analyze the ways in which the responses of the Tunisian authorities' to the pandemic and the implementation of effective and proportionate security measures have affected the civil rights and individual freedoms of citizens. In this interview, [Mahassen Segni](#), our Democracy Program Coordinator, speaks to Professor [Wahid Ferchichi](#), Professor at the Faculty of Legal, Political and Social Sciences of Carthage University and founder of the Tunisian Association for the Defense of Individual Liberties, about the challenges of having effective COVID-19 measures while staying committed to the protection of individual rights and liberties for the whole period of the crisis.

For more information, please see a follow-up [report](#) covering the period from March to July 2020.



How do you assess the capacity of the health sector in Tunisia, as well as the efforts made by the two respective governments, to contain the health crisis caused by COVID-19?



The COVID-19 crisis has revealed the flaws in the Tunisian health sector. Such inadequacies, especially the material and technical limitations of caring for people affected by COVID-19, have been acknowledged by the public authorities themselves. However, the preventive measures and the strategy to combat the spread of the virus (already in place since January 2020) initially allowed us to overcome the said limitations. Thus, the first lesson we learned from the health crisis was that good crisis management policies, such as those adopted by the Fakhfakh government, could remedy the material and technical failures of our healthcare system. However, with the second wave and the opening of the borders from June 26, 2020, the measures taken to fight the pandemic are failing to achieve the main objectives of controlling the spread of the virus, reducing the number of deaths and sparing the healthcare system from saturation.

Therefore, the preventive and monitoring strategy adopted from January 2020 showed that the State (the public services) is capable of dealing with an unknown virus in the absence of any proper treatment or vaccine. This policy, which we consider successful from a healthcare point of view, was less successful from an economic and social perspective. Tunisia's record in the fight against COVID-19 remains mixed: on the one hand, it was initially successful in controlling the spread of the virus. On the other hand, the economic and social policies to combat the effects of COVID-19 were not able to minimize the enormous damage to a large number of sectors. In this respect, since the beginning of this crisis, a little more than two hundred thousand new unemployed people have been added to the existing seven hundred thousand. Moreover, the Tunisian economy is expected to contract by 6.5% in 2020!

In contrast, starting from September 2, 2020 and the formation of the Mechichi Government, we have noticed a policy shift in the fight against COVID19. The new government has opted for a more progressive approach that aims to "live with the virus while limiting its effects on healthcare

and, above all, on the economic and social spheres." The aim is to avoid the economic and social deadlock experienced during the first wave. However, due to the rapid spread of the virus and the growing number of deaths per day (as of November 26<sup>th</sup>, 2020: 91.307 cases of infection (=12% of Tunisians), and 2.983 deaths ), the Mechichi Government implemented more radical measures on Friday, October 29, 2020: a curfew was gradually imposed on all governorates from 20:00 to 05:00, classes were suspended throughout the education system (primary, secondary and higher education), movement between the governorates was prohibited, masks were made obligatory, etc.; all arguably late measures the effects of which will hopefully be felt only by the end of November.

This delicate and very uncertain situation is complicated by a rather worrying economic and especially financial situation. The two recent finance bills (complementary finance law for 2020 and finance law for 2021) point to an alarming reality: the budget deficit exceeds 14.5% !

This poses a serious challenge to the State even for covering ordinary expenses, let alone the special measures needed to fight against COVID19 !



In July, you published a [report](#) on the situation of individual liberties during confinement. In light of Tunisia's success in taking proactive measures to limit the spread of the virus, to what extent do you think these measures (have) violated certain individual liberties?



It is true that exceptional times call for exceptional measures. However, even in times of crisis some rules must be respected and liberties must be protected. Concerning this, the Tunisian Constitution and the 1966 International Covenant on Civil and Political Rights (ICCPR) (ratified by Tunisia) have established safeguards to respect and protect fundamental rights and freedoms. Indeed, Article 4 of ICCPR states that "1 . In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision..."

These articles deal with issues such as the right to life, the prohibition of torture, of slavery and of all forms of human trafficking, the prohibition of retroactivity of criminal offences, freedom of thought, conscience, religion, worship, etc. Thus, what we noticed during the confinement period (March 18 to June 4) were the following infringements:

- Absence of clarity and transparency regarding exceptions to traffic restrictions within cities and between regions: charging the security apparatus with the task of dealing with this was highly

contested and an arguably failed strategy, leading to continued lack of clarity and causing congestion at police and national guard stations;

- Clear breaches of the said rights by law enforcement officers in the process of implementing measures to combat COVID-19: although the crisis requires firmness in the application of the law, this should not lead to mistreatment of citizens (insults, beatings, etc.);

- Institutional contraventions (government and judiciary) of the freedom of thought and expression: journalists have been harassed for their critical comments about COVID-19 measures, and internet users (especially bloggers) have been arrested by the judiciary and at times brought before the courts and tried because of their opinions.

- Failures of public bodies to protect some of the most vulnerable groups: the measures put in place by the public authorities were not effective in protecting women and children against violence, particularly domestic violence, during this crisis (COVID-19).



In the context of the socio-economic impact, which categories of people are primarily affected by this crisis?



The COVID-19 crisis has only reinforced an already existing problem. In other words, the groups most affected are those who are already suffering from precariousness and discrimination. In this regard, people who had "odd/casual jobs" have found themselves without any income. Young people and women seem to be badly affected. The same is true for migrants, particularly those from Sub-Saharan African countries, who have suffered during the confinement from lack of income, making many of them unable to pay rent and hence forcing them to leave their homes;

Many of the women who were forced to stay home during the crisis were victims of domestic and family violence. Reports from the Ministry of Women and Family Affairs, point to a 5-7 fold increase in the number of cases of violence during confinement. In addition, sexual and reproductive health services provided only a minimum and emergency-only service during the crisis period, hence depriving many of their right to access sexual and reproductive healthcare, including voluntary interruption of pregnancy (abortion) and contraceptive services.

Children have also been a target of violence and abuse during confinement. Increased overcrowding of the domestic spaces during confinement have caused cases of violence to multiply by 3.

Those suffering from chronic illnesses were forced to stop treatment and had to endure all the negative impacts associated with this cessation. Last but not least, a large part of the LGBTQI++ community, who were already subject to discrimination, stigmatization, and a possible 3-year prison sentence under the penal code, were deprived of any income and were forced to return to their families who often subjected them to violence, harassment, humiliation and mistreatment.



We are currently going through a second wave of Covid-19. What would you recommend the relevant government institutions to do in order to protect citizens without disproportionately affecting their individual rights and freedoms?



Managing a second wave of COVID-19 requires us to ensure the protection of public health without violating fundamental rights and freedoms. This requires:

- More transparency in terms of freedom of movement and the granting of authorizations, which in turn must be done by local authorities, according to clearer and more precise criteria.
- Granting travel permits for associative reasons as well;
- Raising awareness about violence against women and children, and insisting on the obligation to report cases of violence;
- Protecting freedom of thought and expression. In practice this would mean establishing a penal policy prohibiting the arrest of persons on the basis of their thought or expression;
- Guaranteeing the right to healthcare and access to treatments (other than for COVID-19 cases), including protecting the right to travel for people with chronic illnesses and guaranteeing women's right to sexual and reproductive health services.



In your opinion, what are the most effective communication tools and channels to use in order to convey the message/recommendations to the relevant public bodies?



Since the management of the crisis is done at a national level, it is pertinent to directly contact the national actors in this field to present them with observations regarding the implementation of the COVID-19 measures and to make recommendations for a better management of the crisis, including:

- Submitting the report to the Ministry in charge of Human Rights, and to request that it presents the recommendations of civil society before the Council of Ministers;
- Asking the Ministry of Justice to continue its policy, which began during confinement, of reducing the prison population and to reduce the number of trials that require the arrest of accused persons;
- Demanding that the Ministry of Women and Family Affairs to translate the various recommendations into action by the government and the National Scientific Committee for the Fight Against COVID-19;
- Presenting the results and the recommendations of [the report](#) on liberties during COVID-19 period to the Ministry of Health and more specifically to the COVID-19 Committee;
- Requesting the Ministry of Local Affairs to harmonize local government policies in this area;

- Organising a large conference or gathering of the civil society actors to determine a shared working strategy;
- Finally, it would be relevant to work with the city councils of at least the cities most affected by COVID-19 to raise their awareness (or even train them) on crisis management in general and in the context of COVID-19 in particular.

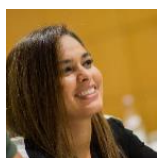


Tunisia is still in the process of decentralization. Knowing that the Mechichi government has managed things differently to the previous administration, how do you assess the relationship between the municipalities and the central government in relation to the first period of crisis management?



The adoption of the Local Government Law (April 2018) and the organization of municipal elections (May 2018), have ushered in a new era in local government in Tunisia, which until then was highly centralized. However, this experience is new and the first municipal councils are struggling to come to terms with their tasks and their relations with the central government. Some provisions of the Local Government Law are not very clear regarding the relationship between local authorities and the central government and between the local authorities themselves. This situation has caused some tension between the local authorities and the centre, for instance on topics such as individual freedoms and the management of the health crisis caused by COVID-19.

During the first wave of COVID-19 (March-June 2020) some municipalities were powerless at the crisis management level. For instance, some were unable to manage the burial services of the people who died as a result of the virus. In fact, some municipalities (such as Soukra) even suggested that specific cemeteries be set up to deal with this issue. These proposals are extremely problematic due to their lack of regard for human dignity and the feelings of the loved ones of the deceased.



The judicial authorities are responsible for ensuring the supremacy of the constitution, the rule of law and the protection of rights and freedoms. However, during the COVID-19 pandemic crisis, the judicial authority was sidelined in some cases. What is your opinion on this specific issue?



During confinement, similar to all sectors and public services, the judicial services were on standby; a situation that led to widespread criticism due to the apparent disregard for justice as a vital sector. Consequently, it was decided to resume the functioning of the courts from a distance. This was achieved by setting up specific spaces in detention centres and installing cameras and microphones to allow the detainees to be heard and to defend themselves. However, despite its noble objectives, the limitations of this

approach quickly became apparent, not only on a martial level, but also in their ability to stay committed to principles of fair trial.



Politically speaking, in response to this crisis, the Tunisian president has relied on Article 80 of the constitution, which grants him broad powers "[i]n the event of imminent danger threatening the nation's institutions or the security or independence of the country, and hampering the normal functioning of the state [...]". Similarly, the head of government, Mr. Elyess Fakhfakh, asked for exceptional powers to be granted to him so that he could "enact decree-laws of a legislative nature." All this happened without openly declaring a "state of emergency". Do you think that this crisis has led to ambiguity and constitutional contradictions at the level of the executive?



It is true that the constitutional basis used by the executive to justify and apply the COVID-19 measures was ambiguous; an ambiguity that became a major factor in the crisis. Indeed, at the beginning of the crisis, the President of the Republic relied on Article 80 to enact decree number 2020-24 (March 18, 2020), establishing a curfew from 6pm to 6am. A total confinement, restricting movement during the day, was imposed on March 22, 2020, by decree number 2020-28. This decree also relies on Article 80 of the Constitution as its basis.

However, Article 80 of the constitution has not been applied in its entirety. Even though this article recognizes the right of the President of the Republic to take the necessary measures in "[i]n the event of imminent danger threatening the nation's institutions or the security or independence of the country, and hampering the normal functioning of the state [...]", another fundamental condition must be met: the Assembly of People's Representatives shall be deemed to be in a state of permanent assembly during the period of the measures. This condition could not be met given the general confinement and rules regarding social distancing.

In the absence of the Constitutional Court, this procedure makes no sense at all.

Thus, the solution was to partially apply Article 80 or at least apply the spirit of this article, and to combine it with Article 70, which allows the Assembly by a majority of 3/5 of its members to delegate to the Head of Government the power to make decree-laws for a period of two months.

This is a pragmatic solution, even if it is not fully consistent with the text of the Constitution itself.

In other words, in our opinion, it does not contradict the supreme law. Therefore, the COVID-19 crisis also revealed some constitutional shortcomings!