

مركز دعم التحول الديمقراطي وحقوق الانسان
Democratic Transition and Human Rights Support Center



Dialectic of law and crisis

When crises are exploited to
violate and subjugate laws



ASPECTS

TUNISIA → Page 5

- A) The legal and constitutional framework crisis → Page 5
- B) Crisis of practice and application → Page 7

LIBYA → Page 11

- A) The legal and constitutional framework crisis → Page 11
- B) Crisis of practice and application → Page 11

EGYPT → Page 13

- A) The legal and constitutional framework crisis → Page 13
- B) Crisis of practice and application → Page 16

Prepared by the research and studies Unit

Reviewing And Editing By



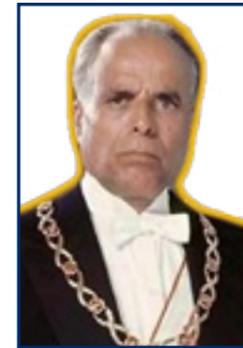
**Walid
Mejri**



**Mohamed
Omran**



**Khalil
Arbi**



Crisis is a change in the ordinary course of matters, whether in a form of a problem or a disorder that goes out of control, or an emergency, which imposes an unexpected state of uncertainty and lack of clarity.

Based on the aforementioned, we can say that any crisis has its own laws according to the area that it messes with. The economic crisis of 2007-2008 represented a clear evidence on how far the global economic structure is interconnected, as it began in the United States but quickly spread to the rest of the world, until it was a part of the agenda of General Assembly of the United Nations in 2008.

Since last year, and with the emergence of the pandemic crisis (Covid-19) which threatens the most legally assured protected basic right, the right to life, the true face of political changes resultants which is a consequence of new liberal policies and growing populist currents that are based on nationalism, patriotism and seclusion appeared clearly. These currents grew up in the fold of global capital, which in turn found its way to achieve huge profits through the markets of the most dictatorial and totalitarian countries, by taking advantage of the booming fields of corruption that are being nurtured and enriched through sucking up the rights and insurances of employees, workers and farmers for the benefit of business tycoons in exchange for good rates that are being cut and given to seats of power there. China is the most prominent model for that global capitalist system deviation.

In the same context, there were Italian politicians and parliamentarians who belittled the danger of the virus and even described its existence as a conspiracy! The United States president as well declared there is no problem to lose the lives of some people to guarantee the continuation of the United States economic power, while in Europe, European governments in a delinquent move resorted to herd immunity policies until they backed up from applying them when it was too late. Citizens' feelings in Egypt, Tunisia and Libya have been manipulated through media outlets or social media.

Before the emergence of the epidemic in Libya, some of the Libyan political well-known faces that are affiliated to the overthrown regime stated that the non-spread of the virus there was due to the compulsory vaccinations that the health system in Gaddafi's era imposed on the Libyan people. The same happened in Tunisia, as there were voices before the spread of the epidemic that were praising Habib Bourguiba's vision in structuring the Tunisian health system. From its part, the Egyptian media continue to exaggerate in praising the role of the Egyptian political leadership in dealing with the crisis wisely, responsibly and transparently, while in fact, the data released by the Egyptian Ministry of Health and Population block the number of samples taken and the areas where new injuries appear.

Not only did the crisis reveal the three countries' health systems weakness, but it also revealed the weakness of businessmen and ruling classes which is a normal result of their engrossment in corruption that control the overall climate in nearly all fields, and transforming everything into a saleable commodity. While other rational governments have taken a set of social and economic measures as an attempt to solve part of the problems that are affecting vulnerable groups and day-to-day workers.

In conjunction with the proliferation of civil initiatives that attempt to contribute seriously in confronting the epidemic, the private sector has registered a terrible retreat since the beginning of the crisis so far, and even some of them have already terminated employment or reduced the salaries of workers and employees. In addition to that, businessmen call publicly to end the compulsory quarantine and call for the return of normal routine life, as if they are saying that there is no problem that some would die if it is made in order to keep production going on and hinder the collapse of national economy!

This crisis also revealed the necessity of answering new questions posed by reality about the type and pattern of production and consumption in the future. It also revealed the imperative of developing new human rights conventions, agreements and treaties amid the collapse of human values for the favor of survival of the world capitalist system requirements, where the right to life is determined by his/her future productive value in society. It is not concerned about what the individual has given in his past to the benefit of the community itself, who decided to judge him to end his life for a better future!

Today's global epidemic crisis is yet another sign of a "biological/medical" crisis according to globalized standards, as the interdependence of the world has contributed to its spread to most countries. The scale of this crisis gives a macro-crisis character to the state and society. Several countries have made several decisions and issued laws to control it and avoid the worst-case scenarios. While legal defects in the United States, financial domain is an essential reason for worsening it, as banks and financial firms have used it to increase their profits. On the other hand, in the face of the global epidemic crisis, the stronger countries have the advantage of obtaining medicines and developing medical equipment at the expense of other countries, while international law has no rules that can impose solidarity, joint liability, and equality when facing an epidemic that challenges humanity and its existence.

Law as everything else, could fall within the frame of providing a solution or be an amplification element for the crisis. As law -in its mere logic- is based on the idea of ensuring order and stability. At its lowest level of functioning, it deals with micro-crisis, which can occur whether in individual and collective daily life, as laws usually include concepts of force majeure, imminent danger and exceptions, which are concepts that touch individual mutual relationships and until it reach national levels, and these concepts usually aim to restoring matters previous normal form. Law also deal with macro-crisis at the international level. This presupposes a comprehensive multilateral approach so that we can guarantee that laws can be viable.

On this basis, dialectic between law and crisis can be easily noticed, and its implications can be changed according to context, whether domain or opportunity. This calls for more serious reflection on the challenges it poses to legal systems. This paper does not seek to scale up ambition in its limited pages, but this concept, crisis, imposes itself, in the Tunisian, Libyan and Egyptian contexts, because of its constant use through legal texts to violate the very idea of law, which is based on

the meaning of order and stability for the benefit of citizens and human beings. Because of this, these countries have become more incapable of confronting a world in which crises are generated by a globalized capitalist system, affecting both the interior and the exterior domains. Their approaches to the situation are limited and they have not been developed since their inception. This can be easily observed through reflecting on the different aspects of crisis management.

If the relationship between law and crisis is interactive, in the sense that the latter can be assimilated and controlled, so what leads to law's failure in performing its ordinary functions? This can be explained by reflecting on State's approaches to consecrating the idea of law. In fact, authoritarian practice empties the argument in question, as law gets robbed of its ability to react to reality, because the logic of power dominance that exploits both sides of the relationship.

If we are basing our conclusion on the examples of Tunisia, Libya and Egypt (despite the clear differences between them) to understand tools of managing the health crisis, we will inevitably find that political systems that dominated these countries for decades have been a major reason for violating laws, exploiting and employing crises politically, and postponing their solution so that they accumulate to burden the peoples till today. The continued and often unjustified sticking to the state of emergency and customary and exceptional laws represent a clear evidence for the aforementioned.

United Nations human rights experts pointed out this aspect when it was mentioned in the press conference held on 17 March 2020 that the emergency or any exceptional measure should not exceed human rights limits, but as human rights should be considered the line not to be exceeded by applied measures as a whole. In addition, measures must be comprehensive at the economic and social level to ensure justice and equality among citizens.

In the same context, however, it should be noted that such an approach is linked to the full development of the state and society within democratic systems that allows promoting comprehensive approaches in such a sensitive domain. Clearly, similar systems can, at least, provide conditions for responding to crises in a sound and humane way.

Emergency:

Egypt lives a continuous state of emergency in which exceptional crisis justifies extensive powers provided for the executive authority and its branches. The Tunisian context differs from the Egyptian one, where emergency law was not used before. The number of emergency days during President Habib Bourguiba's reign reached 56 days, and there were no emergency state declared at all during Ben Ali's reign, while the emergency became a «permanent» post-revolutionary state due to security disturbances and the growing threat of terrorism. In Libya, Qaddafi's regime had to announce it only a few times.

State of emergency is defined as an exceptional case in which additional powers are given to the executive power to deal with unusual circumstances. A state of emergency is established through a legal provision, the legal nature of



[UN warns against human rights violations as a pretext for fighting Corona](#)



this provision varies from State to State, according to conditions and terms of its declaration. That also includes those who have the authority to declare such a situation and justifications for taking that action. Most of the world's constitutions include emergency laws, and provisions that include situations which a state needs to declare a state of emergency. Some law scholars believe that a state of emergency is an exceptional system that has its own reasons which are related to the idea of imminent threat that allows certain measures to be used to confront dangers.

In 1966, the International Covenant on Civil and Political Freedoms highlighted the state of emergency and the underlying condition for its imposition, namely imminent danger that imposes exceptional and general threat to the existence of a nation, provided that a state of emergency should be declared officially to avoid affecting or restricting freedoms in non-exceptional circumstances.

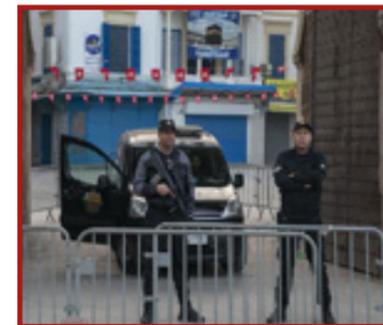
Egypt, Tunisia and Libya have ratified the Covenant. It is worth mentioning that the state of emergency raises many fears related to tyranny and putting pressures on freedoms. This is due to the wide authorities granted to the state security sectors, which their security grip may justify committing violations to freedom and democracy, and therefore the state of emergency should be subject to permanent evaluation, consultation and provisions that are specifically designed to face any excesses or violations.

Adopting an approach to the aforementioned requires an analysis of legal and constitutional frameworks to be able to understand and assess the crisis of practice and application, through which the three countries' approach, whether in Egypt, Tunisia or Libya, can be clear.

The idea of a constitution is based on managing the relationship between rulers and those who are governed, which is the core meaning of order and stability, but this idea does not ignore the concept of crisis as an exception to the constitutionally required balance in the aforementioned relationship. The aim of this is to activate the tools and procedures of authority to face the crisis and restore stability to the system. This also assumes exceptional solutions by giving the authority extraordinary powers to ensure survival and effectiveness. At first sight, it may seem that extraordinary procedures move according to the power logic, but in fact that aims to preserve the socio-political entity which is threatened by crisis and thus power and state are also threatened. This exceptional approach is supposed to be comprehensive, and not to focus on only the legal and political aspects (in their authoritarian significance), but rather to prepare for a daily, economic, social, even cultural and moral standard of living through all possible actions. A law on exceptional cases, as well as it requires efficiency and effectiveness; must not go beyond the idea of rule of law, as a socio-political entity.

Overall, the crisis approach in Tunisia, Libya, and Egypt is characterized by the dominance of an authoritarian approach based on legal and political tools. Even at this level, confusion and lack of clarity exist, leading to legal and constitutional problems, as well as neglecting sociological and economic approaches in favor of improvisation and spontaneous crisis management.

Amid the frequent crises in Tunisia, Egypt and Libya, whether economic, social, political or security, the need to review the legal framework for all that



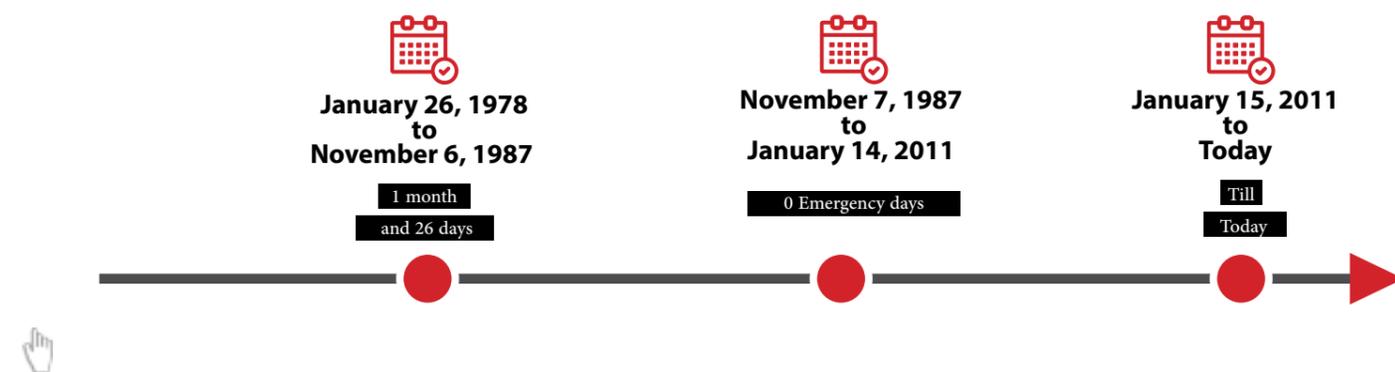
can happen in the normal course of life in society and the State arises, i.e. the situations that can be solved by adding exceptional measures and powers to the executive authority as one of the effective and quick solutions to face them. However, reviewing practice also showed the possibility of a significant deviation of authority and encroachment on individual and public rights and freedoms, especially since the executive institutions, particularly security, are still far from achieving the reform shift needed to ensure their adherence to law. In addition to bureaucracy, there is a lack of consistency of work within the framework of decentralization between the center and the interior, and the presence of the political and the authoritarian dimensions.

Tunisia

A) The legal and constitutional framework crisis

In Tunisia, the decree No. 50 of 26 January 1978 concerning the organization of state of emergency is the preliminary legal framework governing this domain. It has continued to operate until today despite the new Tunisian Constitution, the entry into force for more than six years now. However, a lack of clarity can be clearly observed within the legal framework regulating the state of emergency, as it is confusing the state of emergency with the exceptional situation stated in Article 80, which referred to by Article 77 on the powers of the President of the Republic.

Here is an inventory of the emergencies declared during different periods:



It should be noted that extending the state of emergency has continued since 24 November 2015, in the whole territory of the Republic, which is incompatible with the concept of state of emergency as an exceptional, limited in time and linked to a certain event procedure that ends when a state goes through these circumstances successfully.

The Tunisian constitution does not mention the term «state of emergency», but it mentioned exceptional situations or circumstances in Article 80 and singled it out with special conditions and procedures, as stated in the declaration of war and peace in Article 77. This makes it possible to say that there is a distinction between these concepts according to the legislator. It should be noted that some scholars emphasize that the significance of the exceptional situation is broad and includes several other situations, such as a state of war, a state of siege or a state of emergency. What is common here is the degree of danger and the special powers that are relevant to both civilian authority and military forces and their role.

The current president Kais Saied, in a previous stage, called for considering the declaration of a state of emergency during the reign of the late president Beji Kayed Essebsi as unconstitutional, as there is no need for it, as the country's ministries are still operating according to their ordinary state and roles. By analogy, it can be said that the same observation is true in the cases of declarations made since he himself took office. Saied considered that the legal text governing the state of emergency is the decree No. 50 of 1978, despite its unconstitutional status. And when referring to several presidential decrees concerning the state of emergency, we find that Article 77 is mentioned, which refers to Article 80, as in Presidential decree No. 3 of 2020 dated 30 January 2020 on the extension of the state of emergency. This is the last decree issued by the Presidency concerning the subject matter. It is noted that the preamble to the decree mentions Article 77 in addition to the emergency decree.

This matter presents a legal paradox concerning combining and confusing the state of emergency with the exceptional situation, in addition to the absence of the Constitutional Court, which is the supposedly competent authority, without having any real effect on the special procedures and their effects according to the operative part of Article 80. In fact, neither did the Presidency make any announcements on the special procedures or its termination nor did the Assembly of the Representatives of the People was in a permanent state of session. This raises the question about the feasibility of combining the emergency declaration decree with Article 80 of the Constitution, amid this legal ambiguity, which was not illustrated by the legal and constitutional interpretation of Professor Kais Saied, whether before or after his presidency.

In addition to the aforementioned, the preamble to Presidential decree No. 24 of 2020 dated 18 March 2020 concerning the curfew in the whole territory of the Republic, states Article 80, thus, it is logically and in accordance with the decree terms, considered to be as exceptional measures. However, it was not included within the procedures of the mentioned Article and its legal effects. Again, we refer here to the absence of the Constitutional Court.

It may therefore be noted that a distinction exists between emergency and exceptional measures by the authorities, but the legal framework is inaccurate

and the combination of emergency has sometimes increased this inaccuracy or ambiguity.

It was, hence, necessary to review the draft emergency law submitted by the Prime Minister in 2018 under the number 2018/91 on the regulation of the state of emergency. Many criticisms were made to this draft, the most prominent of which are:

- **The Draft law was expanded when adopted by the executive branch, to allow it to ban demonstrations, place individuals under house arrest, and suspend associations and organizations, all in the absence of adequate judicial controls.**

- **This law is considered a setback for the protection of human rights in the country.**

- **The reasons for declaring a state of emergency under the draft law are broader than under international law. Article 4 of the International Covenant on Civil and political Rights states that a state of emergency is permitted only in cases that «threaten the life of a nation», and that the taken measures should be consistent with the obligations of States according to international law.**

- **The absence of democratic monitoring, because the president may declare a state of emergency for six months without the need for parliamentary approval. Although the state of emergency can only be renewed for three months, the amendment does not limit the number of times it can be renewed.**

- **The draft law expands the list of exceptional measures currently in force, and the currently applied draft law gives broad discretionary powers to the State and the Ministry of the Interior, which is not in accordance with its human rights obligations.**

B) Crisis of practice and application

1. Notes on judicial work:

The Tunisian Association of judges monitored the judicial consequences of violating the public quarantine and violating the curfew. These figures confirm the contribution of the judiciary to the public policy of the State in dealing with the crisis within existing legal frameworks.



Several judicial decisions were also handed down against those who violated the curfew and their provisions were based on the Emergency Regulations decree of 1978, although the curfew decree of 2020 was based on Article 80 of the Constitution and not on the aforementioned regulations decree. Getting back to the previously referred to legal and constitutional framework, it can be said that sanctions are carried out based on two different matters and two different situations. This raises a question about its legitimacy. Other scholars argue that illegality was also based on violation of provisions of Article 68 of the Constitution, which made controlling misdemeanors, offenses and penalties applicable to them exclusive to ordinary laws rather than decree.

Thus, the lack of clarity in the constitutional and legal framework and the focus on authoritarian approaches, and authoritarian practices, move to lower ranks, whether judicial or other.

The decline in figures can be seen gradually as monitoring and punitive work continues, as confirmed by media platforms of security institutions. Nevertheless, this does not prevent making remarks about it, as large groups of Tunisian society are economically fragile and their members are turning out to violate the procedures for daily needs. At this level, the question arises as to the meaning of the right to life and the concern to preserve it through strict health measures and stricter judicial follow-up, but the right to life at another level is being affected for economic and social reasons. With the latter absent or at least phased out through crisis-related measures, security and judicial policy in tracking those who violate the curfew and quarantine becomes more meaningful and more significant. Otherwise, this policy becomes somewhat limited and absurd.

2. Improvisation and disturbance

Based on the aforementioned we refer to the following:

- Confusion in the process of granting circulation permits:

Because of the non-recognition of their circulation licenses, several citizens were subjected to violence and humiliation by security agents earlier. The lack of accurate information about the licensors has also caused significant confusion among citizens, and part of the civil society has experienced similar difficulties, which has hampered the community solidarity efforts which these periods and its likens require. It may be noted that the last explanatory report confirms that the Security and Guard Center is authorized to activate and sign licenses on 31 March 2020.

- Traditional social policy:

This policy is based on the list of families in need who hold special items cards. The lists of these categories are not very accurate. This is a policy that should be reviewed from the ground. As the Minister for Social Affairs himself has limited reference to it, the aforementioned evidence demonstrates the need to develop the states approaches and strategies.

Issuing material grants witnessed a disturbance in determining its distribution dates, delays and unclear procedures, and it was not sufficient to cover expenses due to the high prices recently witnessed in Tunisia. The Tunisian Organization for the Defense of the Rights of Persons with Disabilities also

protested on the criteria for distributing the grants. In a statement, the organization indicated that the approved criteria are unfair. The criteria do not take into account the disabled, unemployed, and those who do not have a social coverage or a convenient income.

Even at the very minimum level, these policies could not be activated on the ground because of the absence of appropriate legal frameworks. This is the reason behind the Tunisian government's interest in getting the parliament's authorization to issue decrees according to Article 70 of the Tunisian constitution, but narrow political calculations delayed this authorization. This is where the link between failure to develop social approaches and the inability of legal and institutional frameworks to respond adequately to crises appears.

After the severe delay in the disbursement of these subsidies, a total amount of 150 million Tunisian dinars was provided for subsidies to the needy groups, along with 300 million Tunisian dinars for small-scale professionals suffering from technical unemployment. These groups, which are not registered in various programs of the Ministry of Social Affairs, were required to address local authorities in their own area (the mayor in particular) and to fill in an on-site form. For the same purpose, a calendar for distributing these subsidies has been set up since 31 March 2020.

The delay was totally counter-productive, causing overcrowding and a stampede to those transmissions, prompting the Tunisian government's presidency to intervene and reorganize the distribution of subsidies on the basis of a previous date through a telephone application.

In the same context, solutions based on support for economic institutions and firms have focused on a continuation of the aforementioned economic policy. This makes the social role of the state limited in origin, as the official trend since the 1990s in Tunisia is to engage in market policy. Thus, the ability to confront crises, through the public sector, has been gradually declining for years.

It can be said that the State is devoid of the conditions of its ability to intervene in crises because of its previous policies and economic and social approach.

This explains the beginning of social protests by the end of the second week of public quarantine in Tunisia. Some of them have even turned into confrontations with security forces. Many of Jendouba countryside residents today called for help to provide them with basic foodstuffs, and Al-Mnihla of Ariana region witnessed protest movements, as the social failure to comply with the comprehensive quarantine decision leads to threats of social movements. Citizens find difficulty in getting basic needs because of the loss of many Tunisians' of their livelihood resources. In addition to the aforementioned about the policy of unregulated and inadequate grants.

The current crisis has strongly raised the problem of the role of the state, its development model and the nature of its social role. Decisions taken in favor of economic institutions have aroused the anger of many, especially as the role of these social institutions has diminished. This was also raised about the role of private clinics. The prevailing discourse about the private sector adheres to the "market" capitalist approach integrated into the structure of power and



the state since its inception. This makes them one of the obstacles to reform, while each role in crises becomes the title of preference and age, or it interferes in decree to reinforce its position in power.

The role of the public sector, as the most important role of the state at all levels, has also diminished, this factor that attracted our attention, as the private sector has been busy defending its narrow interests while the public sector remains in need of assistance and donations. When what is considered to be the feature of the exceptional public sector was relied upon, that is, the logic and instruments of public interest, it found itself devoid of capabilities and tools.

Central authority and local authority:

The official discourse during this period demonstrated the absence of a clear vision of decentralization as a policy and strategy, whether in development or crisis. As the discourse of incitement returned between the center and branch, there is fragmentation of policies between local and central, and absence of coordination that is strategically supposed to guide energy and effort in times of crisis. While the President of the Republic of Tunisia reiterates to the public the general perception of the state, some municipalities declare their rejection of official speeches and their rejection of the Prime Minister's decree No. 9 of 25 March 2020 on the necessity of coordination with the supervisory authority before taking measures within the framework of fighting the virus. Some municipalities have confirmed that they will not give up their legally and constitutionally guaranteed powers. In a crisis, the conditions of state policy change, but the decree moves contrary to the legal system as a whole.

It should also be noted, however, that the crisis has effectively demonstrated the ability of local authorities to react positively, quickly and immediately to emergencies and exceptional situations. This calls for a comprehensive approach, both in development strategies and in the face of emergency crises.

A new legal framework for emergency and exceptional situations, which is appropriate to the legal framework of the local authority, should be adopted.

In the Tunisian experience, the authoritarian approach does emerge, by focusing on executive power, centralizing decision-making, and subjecting everything to it, and while the legal foundations of legal and constitutional decentralization are promoted, the activation of decentralized decision-making remains limited. They become more limited by a discourse of political crisis that focuses on the state, versus the branches, as if it were a crisis in itself rather than a solution. The authoritarian approach advances at the expense of the sociological, economic, and rights approach, and they are all even inferior to it. This is due to its limited impact on the decision-making process and the institutions' work and routine.

[Al-Fakhfakh on loyalty and Head of municipalities: No initiative without my consultation](#)



[Head of Government of National Accord decided to declare curfew in Libya](#)



[The decision of Al-Ghawil's Government to declare a state of maximum emergency](#)



Libya

A) The legal and constitutional framework crisis

On 21 March 2020, the Government of National Accord declared a state of emergency. The decision was based on two old laws that are dated back to the monarchy period in Libya, which are Royal Decree No. 5 of 1956, published on 31 January 1956, and Royal Decree of 5 October 1955 concerning the state of emergency. The Presidential Council of the Government of National Accord resolution No. 215 of 2020 concerning the imposition of a curfew was also based on the latter decree.

The government of Khalifa Mohammed Al-Ghawil has already declared the state of maximum emergency in Libya in 2016, without relying on the aforementioned provisions. Prime Minister Al-Ghawil's declaration was to raise the security alert level after the Head of Government of National Accord declared his intention to move to Tripoli when his government refused to hand over authority.

This points out the absence of sufficient legal controls in exceptional cases and emergencies in the country, and the impact of the political and military context and institutional division.

It is clear that the situation in Libya is more complicated, and it causes a complete disturbance of the legal and constitutional framework for managing all kinds of crises.

Legal rules are also divided between different legal texts, as the decision to impose a state of emergency was based. For example, in article 136 of Act No. 106 of 1974, which is defined by the Health Act and article 467 of the Libyan Penal Code, which stipulates that: « Anyone who infringes upon a lawful decree issued by an authority to maintain justice or public security, decree or health shall be punished by detention not exceeding one month or a fine not exceeding LYD 5.» Those are broad and inaccurate texts, which are not directly related to state of emergency.

B) Practice and application crisis

1. On the process of applying exceptional measures

Violence and human rights violations

News continued in Libya about the mismanaging of imposing the curfew, as the security forces used to:

- Shave the hair of those who are arrested
- Hold their vehicles papers
- Commit violence and physical and verbal abuse

Under the forgoing security situation in Libya, and amid the disintegration of the judiciary and the Sunni system, these practices are expected. The curfew has also become an opportunity to expand the military operations in Tripoli



and its suburbs, and the battlefield has expanded in the meantime West to the Tunisian borders, and East to Misrata and Sirte.

Meanwhile, immigrants and refugees in Libya face a double-edged danger, the security situation and the epidemic in an already deteriorating situation. This is what international organizations active in Libya have warned about, as detention centers could increase the danger of spreading the epidemic between detainees and local citizens.

Although authorities in eastern and western Libya seek to provide basic commodities, provide the suitable infrastructure to face the epidemic and work on expanding sterilization operations, news continue to be reported about death cases for people residing at their homes without following them up and knowing the causes. Many of these deaths are suspected to result from corona virus pandemic, especially that cities and remote areas lack the minimum conditions to fight the disease.

The state of institutional and geographical division of the country has also put municipal institutions (on the decentralized levels) on the front line of facing the crisis, especially as there are no provinces in Libya. The presidential Council allocated 75 million Libyan dinars to municipalities in response to the outbreak. However, the decision provoked a wide argument in the western region, where half of the municipalities are controlled by the Libyan army led by Field Marshal Haftar. This led some to require the government to provide in-kind aids instead of financial ones. This comes under the title of the current political and military conflict.

Municipalities and local councils represented a practical and direct solution to strengthen the unity of the state after the 2011 revolution. These unelected entities have gained their legitimacy from the population's consensus on local interest. The Transitional Council's decided later a set of rules and procedures to be its internal regulation. These entities were gradually elected and budgets were started to be allocated to them. In addition, the authorities of the governorates (states) were transferred to them. However, this unifying path has been hampered by demands by other villages to classify them as municipalities to obtain their own budgets, although they do not meet the demographic requirements.

As a result of the political division, municipalities have been subjected to two ministries, and establishing new municipalities continued on a non-objective and a non-legally framed basis, and the fundamental criterion were tribal and regional balances.

In 2016, the Ministry of Local Government announced the transfer of several powers to municipalities. However, four years after this declaration, powers have not been effectively transferred with the corresponding needed financial resources, as municipalities found themselves in the face of citizens' demands and local accountability without the actual means of carrying out their duties. In the meantime, municipal action has been militated in the eastern region with all municipalities being involved in the political conflict. The situation led therefore to municipalities that are poor on the levels of human logistical and financial resources, whether in the eastern or western regions.



Libya's local government is strengthening the country, but power and conflict over it are abusing it in every direction. Today, the challenge facing Libyans is an existential one in front of an enemy that does not distinguish between them, while the right tools to fight this enemy are weak or non-existent.

2. The practical complexity of the Libyan situation and the need to develop texts and approaches

Libyan scholars referred to the complicated situation in Libya, by emphasizing several points, which refer to the construction process in Libya that will actually start from scratch. Professor Dr. Hadi Abu Hamra, a faculty member in Tripoli University, mentioned in a post on his Facebook account a set of ideas, saying (by considering how different countries face the current crisis, we believe that its results include reconsidering several issues (for example):

- **Effectiveness of preventive measures in the face of human rights and fundamental freedoms (necessity and proportionality).**
- **The limits of State guarantee of the right to safety, health care and the provision of preventive services (equality, priority, deprivation of the right of benefit, or subordinating it to it).**
- **Capital systems, social systems and the effectiveness of protecting the rights of individuals.**
- **Centralization and decentralization, and their scope.**
- **Freedom of access to information and measures to combat the dissemination of false information.**
- **Reconsideration of the emergency system construction and structure.**
- **The State's responsibility, including its responsibility for not being ready for disasters.**

Egypt

A) The legal and constitutional framework crisis

Egypt has been living a state of emergency since the colonial period, and this emergency has been associated with state policies and the choices of successive presidents to rule Egypt for both internal and external reasons.

Here is a timeline for declaring the state of emergency in Egypt:





- 1914 → The imposition of martial laws for the first time and the appointment of the British military ruler
- 1922 → Declaration of the independence of Egypt
- 1923 → The first constitutional provision regulating customary provisions in article 45 of the Constitution.
- 1939 → The proclamation of martial law for the second time after the outbreak of the Second World War and its aftermath
- 1950-1943 → The declaration of martial laws for the third time after the Egyptian army entered the Palestine war, and it ended with the end of the war, except for Sinai region
- 1956-1952 → The declaration of martial laws for the fourth time following the Cairo fire “Black Saturday” during this period the revolution of free officers happened.
- 1958 → The promulgation of the Emergency Act No. 162 of
- 1964-1954 → State of emergency declared with triple aggression on Egypt. “Suez Crisis”
- 1980-1967 → Declaring a state of emergency during the Israeli aggression on Egypt
- 1988-1980 → The first period of Hosni Mubarak’s reign, an annual renewal of the state of emergency
- 2010-1988 → Renewing the state of emergency every three years
- 2012-2010 → The House of Representatives decided to approve the extension every two years, and the Supreme Council of the Armed forces extended its
- 2013 → Interim President Adly Mansour declared a state of emergency for two months
- 2014 → The first declaration of a state of emergency during Sisi’s reign, covering only the Sinai region
- 2017 → State of emergency declared following terrorist attacks against Coptic churches, continues to this day and is renewed every three months

[The failure of the Supreme Court to exercise constitutional control over the declaration of the state of emergency because it is an act of sovereignty](#)



The declaration of the current state of emergency violates article 154 of the Constitution, which stipulates that the declaration of state of emergency should be: « for a specified period not exceeding three months, which can only be extended by another similar period upon the approval of two-thirds of House members”.

However, the state of emergency in Egypt is approaching three years now with the approval of the legislative and executive authorities, after the judiciary was banned from its monitoring authority on declaring the state of emergency. As the Constitutional Court decided in 1977 that the judiciary is not competent to monitor the state of emergency as it is an act of sovereignty.

The state of emergency in Egypt is regulated by law No. 162 of 1958. Its provisions expand the powers of the executive authority at the expense of individual and public rights and freedoms, as well as limiting the powers of the legislative and judicial authorities. This raises several scenarios for power abuse and human rights violations. This is what is actually happening in Egypt, for example:

- Specifying meetings, transportation, residence and passage in certain places or times and to inspect and arrest persons in violation of the articles of section III of the Constitution on rights and freedoms, which guarantee freedom of assembly, movement, inviolability of the body and personal liberty.

- Entrusting any person to perform any work, in violation of article 12 of the Constitution, which prohibits forced labor of citizens that can be done only in accordance with regulations.

- Monitoring messages, newspapers, pamphlets, publications, documents, drawings, and all means of expression and advertisements before being published, and seizing, confiscating, and closing their printing places in violation of article 71 of the Constitution, which has prohibited any censorship, confiscation, suspension or closure of Egyptian newspapers and media

- Imposing guardianship on companies and institutions in violation of article 35 of the constitution that prevents imposing guardianship on private property except by a judicial verdict.

- Forming State Security partial circuits, which is composed by a judge and two officers of the armed forces at least one of them is a captain or an equivalent rank, and forming the High Court of State Security circuit from three chancellors and two senior officers. State Security Courts appointments are made after consulting the Minister of Justice for judges and the Minister of Defense for officers. Crimes punishable by public law are referred to the State Security Courts. This is a violation of the judiciary’s jurisdiction. The High State Security (Emergency) Courts are one-degree courts whose decisions cannot be challenged before courts of appeal or cassation, which violate the principle of two-degree litigation, as the law gives immunity to the judgments of the State Security Court from all means of appeal and therefore they cannot be appealed or overruled.

Some can justify these exceptional measures with reference to the crisis, which requires exceptional powers, but the problem is the absence of control that allows estimating the proportionality between the crisis and the authority created to face it. In the absence of such control, the assumptions of deviation and power abuse open up opportunities to assault rights and freedoms. This

applies to all cases of Tunisia, Egypt and Libya, especially in the absence of the oversight role of other authorities on the executive authority's work, whether because of the weakness of legal frameworks associated with it or the political system's closed nature and its violation of democracy.

In fact, the Egyptian emergency law grants exceptional powers to the executive authority and raises its need to be reviewed by the judicial and legislative authorities, and gives the latter enough power to control the situation. The numerous Egyptian laws provide provisions that allow most important measures to be taken by the emergency law, but they were originally linked to the issuance of a judicial verdict or decrees from the public prosecution or approval by the People's Assembly. These controls, which, with little legal and practical development, can operate quickly enough to make the emergency law specified only for exceptional cases, and not a daily life routine for Egyptians, whether when it was promulgated with its old or modern name, as right now, the few days that pass through in Egypt without the activation of the state of emergency became the exception, not the general normal situation!

B) Crisis of practice and application

1. History of arrest warrants based on the Emergency Law

For many years, the greatest violations against the citizens were the issuing arrest warrants which are granted by emergency law to the President and his deputies, as it became purely a security measure and not a judicial or legal one and it has no judicial or penal characteristics. This is the most important thing that distinguishes detention from pre-trial detention and imprisonment in execution of a punishment or sentence; the first is a security measure, the second and the third are judicial procedures.

Accordingly, arrest is viewed as an exceptional and incidental measure, for its assault on individual freedom, which is guaranteed by the articles and provisions of the Constitution.

The President of the Republic, in his capacity as the Military General Governor, is competent to issue arrest warrants, in accordance with article III of the Emergency Law. However, the President of the Republic has authorized the Minister of the Interior to issue these decisions and appointed the Prime Minister as Deputy Military Governor and delegated to him all the powers of the President of the Republic, which were provided for in the Emergency Law. Accordingly, the competent authority to issue arrest warrants in Egypt are any of these (President of the Republic, Prime Minister, Minister of the Interior).

Detainees and other concerned persons are enabled to complain about arrest or detention, as he/she can file the petition by himself/herself, or by his/her lawyer or someone with an imminent interest in his/her release, whether his/her guardian, father or wife. Complaints shall be made only after thirty days from the date of the arrest and can by no means made before the completion of the period of 30 days.

[Nazih Abd Al-Latif: Imprisonment and detention according to Egyptian Penal Code](#)



[In Cairo only... 50,000 compensation claims for political detention since July Revolution](#)



[Al-Ahram Gate» publishes the» reasoning behind the verdict of the unconstitutionality of emergency law](#)



On the practical side, 30 days after arrest, a detainee usually appeals on his/her warrant arrest in court, which usually orders his/her release, but while that is happening a new arrest warrant gets issued before his/her release and it becomes a loop of endless series of warrants that many detainees spend years in prison.

The Emergency Law continued to be linked to arrest warrants in the minds of Egyptians until the Constitutional Court ruled that the provisions of article (1) (3) of the President's Decree No. 162 of 1958 were unconstitutional. The articles used to authorize the President of the Republic to authorize arrest and detention and to inspect persons and places without complying with the provisions of the Code of Criminal Procedures.

The Court explained, the reason behind its verdict, as it stated that the Court's jurisdiction had been held on the fact that the Emergency Law was purely an exceptional system, intended to support the executive authority and to provide it with certain procedures, that limit public rights and freedoms, in order to confront emergency circumstances that threaten the public safety or national security of the country and therefore could not be extended. The narrow interpretation of its provisions must be observed, and the authority established by the Emergency Law, namely the President of the Republic or his Vice-President, must abide by the specific purpose of the Emergency Law, when taking any of the measures provided for in article (3) of Decree-Law No. 162 of 1958; Otherwise, the decision would be violating the Constitution.

The court added that, in its preamble, the Constitution provided that the State was subject to the law, thus demonstrating that it is a legal State that complies in all its aspects to laws and whatever the nature of its powers are it should comply with legal norms that top it. Rules in itself control the state's acts in their various forms. As a result, combining the principle of the State's subordination to law to the principle of the legitimacy of power has become the basis of State of law, whenever it is. The Constitution states in article 74 that «the rule of law is the basis of governing», and in article 148 it states that: «The President of the Republic shall declare, after consulting the Government. The state of emergency as regulated by law...» the law regulating the state of emergency must comply with the regulations established for legislative work, the most important of which is not to violate the other provisions of the Constitution, as the promulgation of the emergency law according to one provision of the Constitution does not mean that this law is authorized to exceed the rest of its provisions.

It also concluded that article 34 of the Constitution stipulates that: «Except in the case of flagrante delicto, no one shall be arrested, inspected, imprisoned, prevented from moving or restricted of his/her freedom with any restriction except by a judicial decree necessitated by an investigation,» as article 39 of the Constitution stipulates: «Homes shall be inviolable. Except in cases of danger and distress, they may not be entered, inspected or controlled except in the circumstances specified in the law, and by a reasoned judicial decree specifying the place, timing and purpose...», thus the provision in section (1) of article (3) of the President's Decree Law No. (162 of 1958) on the authorization to arrest persons, inspect them and their places without a reasoned judicial permission has violated the personal freedoms of citizens and violated the inviolability of their homes, in violation of the rule of law principle, which is the basis of the



state's legitimate rule, and it violated the provisions of articles 34, 35, 39 and 81 of the Constitution.

2. Emergency and The Virus crisis management

As described in the legal and constitutional framework, in addition to the history of detentions in the light of the emergency law, the situation of crisis management can be expected during this period in Egypt as the following.

- Crisis of human rights violation continues in Egypt:

The arrest of prisoners of conscience and civil society activists in Egypt continues, despite international and local demands for their release, as well as prisoners with non-serious crimes, in order to avoid a possible humanitarian catastrophe. This takes place despite the international warnings of using the health crisis to justify human rights violations. In fact, what is happening in Egypt is the existence of an additional cover for violations, only because they are actually present intensively.

The status of Egyptian prisons does not comply with the international law terms, as the minimum conditions for respecting the dignity of the prisoner and protecting their lives are absent. International rules in this field are one of the possible conditions to face the spread of the virus, if it is respected properly, but it is far from being applied in Egyptian prisons.

The Constitution and international law permit the use of a state of emergency to deal with exceptional situations, but international experts have stressed that such measures must be «proportionate, necessary and non-discriminatory». This is completely absent from the Egyptian situation because the state of emergency is actually permanent, and is employed in administrating power before managing crises, especially in order to confront political opponents and activists.

In the same direction, the Arab Observatory for Media Freedom documented 39 violations against press and media freedoms in Egypt during last March, confirming that the Corona virus pandemic has affected press freedom under what they described as media blackout, pursuing Egyptian and foreign journalists, as well as blocking sites and pages on social media sites.

The Observatory also noted that: «The regime has been keen on controlling the published information about the epidemic and number of cases, denying any stories transmitted by opposition or external media or through social media pages, and that many sites and pages that published news that do not appeal to the Egyptian authorities have been pursued, some of which have been stopped and blocked, and others have been warned of being blocked. Some journalists have been arrested for following up the epidemic in some areas,» they said

- The economic and social crisis continues and the proposed solutions are limited

The Egyptian government offered solutions similar to those which were adopted in Tunisia. The official initiative has been to help institutions and companies cope with the recession caused by the virus. With the exception of the central bank's decision to postpone all credit benefits to corporate and individual clients, including consumer loans and home loans for personal housing



Definition of Macro crisis or Micro crisis: The definition of crisis varies according to the analysis angle, the macro analysis or the micro analysis. The analysis is impacted by the approach, the background and the analyzer's point of view and context. Therefore, in opposition to the macro crisis which necessitates an intersection between many levels approach, the micro crisis, necessitates the topical dealing with separate units.

for six months, the rest focused on institutions and companies. With the aim of supporting factories and companies, the government decided to reduce the price of natural gas for the industry at 4.5 dollars per million thermal unit, reduce electricity prices by 10 piasters, and provide one billion pounds to exporters during March and April 2020 to pay part of their dues, with an additional 10% cash payment to exporters in June. This proves what we first mentioned about the failure of capitalist economic approaches in the face of the crisis, thus perpetuating a sense of inequality and injustice.

Conclusion

The aforementioned reflects the devotion of the authoritarian approach in Egypt under successive non-democratic regimes, and the same approach continues under the Tunisian experience to be relatively present, while the Libyan experience lives a dislocated and complicated reality due to the ongoing war in particular.

While the focus was on the Center in the Tunisian and Egyptian situation and the restoration of State discourse, the municipalities were the solution in the Libyan context, especially since they enjoyed the advantage of proximity, which is considered to be decisive in crisis management. However, all this remains in conjunction with the changes resulting from that crisis and how the global system will be affected and the consequences for the three countries in the coming weeks and months will decide what is coming.

