



## Human Rights Institute

Stakeholder Submission to the United Nations Universal Periodic Review

International Bar Association Human Rights Institute

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The Republic of Tunisia

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### **A. Introduction**

1. The International Bar Association's Human Rights Institute (IBAHRI) submit this report on the state of human rights in the Republic of Tunisia (**Tunisia**), particularly focusing on the legal profession, and the Judiciary, with recommendations for the 41<sup>st</sup> session of the Universal Periodic Review (**UPR**) Working Group in the United Nations Human Rights Council (**HRC**) in November 2022.

2. The International Bar Association (**IBA**), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of 80,000 individual lawyers and more than 190 Bar Associations and Law Societies, spanning all continents. The IBA's Human Rights Institute (**IBAHRI**), an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

### **B. Executive summary**

3. This submission highlights IBAHRI's key concerns regarding compliance of Tunisia with its international human rights obligations to guarantee Judicial Independence as set out in the United Nations Basic Principles on the Independence of the Judiciary ("**Basic Principles**") and other international rights instruments, as well as the deteriorating human rights situation, focusing on extraordinary measures taken since 25 July 2021, including the weakening of

separation of powers, and the targeting of government critics and lawyers.

### **C. Normative Framework:**

4. Tunisia is a party to all main United Nations (UN) human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

5. Tunisia underwent its 3rd cycle UPR in 2017. Recommending states called on Tunisia to **‘Take all the necessary steps to resolve the divergences in the interpretation of the legal text on the Supreme Judicial Council and ensure that such interpretation is in accordance with the provisions of the Constitution (Botswana)’ and ‘Quickly establish the Constitutional Court and expedite the revision of laws that are incompatible with the Constitution and international human rights standards (Guatemala);** Tunisia supported these recommendations.

### **D. Undue Interference with the Judiciary**

6. On 6 February 2022, the President announced that the Supreme Judicial Council, responsible for overseeing the independence of the judiciary and the appointment/dismissal of judges, would be dissolved by presidential decree, citing that the judicial body served ‘political interests’, later announcing that it will be ‘reformed’, rather than dissolved. Further, under Presidential Decree 11 of 2022, a temporary judicial body would be established under the direct supervision of the President.

7. Such a move effectively renders the President the head of the judiciary, severely undermining judicial independence and the separation of powers between the government branches. Nine of the 21 member-judges are directly appointed by the office of the President, whilst the remainder are indirectly under executive influence through the new, broad power to dismiss ‘any judge failing to do his professional duties.’ This directly contravenes Article 107 of the Tunisian Constitution, which guarantees that judges ‘cannot be dismissed or suspended from their functions, nor be subject to disciplinary sanction, except in the cases and the guarantees regulated by the law and in accordance with a reasoned decision by the Supreme Judicial Council.’ Furthermore, Article 109 holds that ‘All kinds of interference in the functioning of the judicial system are prohibited.’

8. Under the [UN Basic Principles on the Independence of the Judiciary](#) (the ‘Basic Principles’) the independence of the judiciary ‘shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.’ The [UN Human Rights Committee](#) has determined that executive branch interference in the judiciary, including control over the appointment and careers of judges, violates the right to trial by an ‘independent and impartial tribunal’, as guaranteed by **Article 14** of the [International Covenant on Civil and Political Rights](#) (ICCPR), which Tunisia has ratified.

9. Furthermore, the presidential decree forbids ‘judges of all ranks to go on strike or hold any organised collective action that could disturb or delay the normal working of the courts.’ Such an interdict directly contravenes Article 19, the right to freedom of expression; Article 21, the right of peaceful assembly; and Article 22, the right to freedom of association, all of which are enshrined in the ICCPR. It further contravenes Article 8 of the Basic Principles, which holds that ‘members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly’ so long as it is ‘preserves the dignity of their office and the impartiality and independence of the judiciary.’ In his [report](#) on ‘the rights to freedom of expression, association and peaceful assembly by judges and prosecutors’, the UN Special Rapporteur on the Independence of Judges and Lawyers recommended that ‘judges and prosecutors themselves are best placed to determine the scope and content of legal and ethical norms on the exercise of their fundamental freedoms and political rights’ through an open and transparent process that includes their representatives in order to preserve the independence and impartiality of the judiciary.

10. Further, President Saied informed the public that he would preside over the office of the public prosecutor.<sup>1</sup> Ever since, cases accusing judges of wrongdoing have emerged, whilst 45 officials were placed under house arrest.<sup>2</sup> One of those under house arrest is Béchir Akermi, former general prosecutor of the Tunis Court of First Instance.<sup>3</sup> The IBAHRI is concerned that these reforms around the judiciary is enabling an environment that lacks checks and balances over the President’s office, and has employed the courts to arbitrarily target critics of these recent reforms.

#### **E. Deteriorating Separation of Power**

11. The IBAHRI notes that since the 26 July 2021 executive decree that consolidated power to the President’s office, there has been a systematic dismantlement and overall deterioration of democratic institutions established following the Jasmine Revolution of 2011, especially those systems that establish checks and balances over the executive. The recent presidential decree forms part of a prolonged campaign of targeting the functioning of the judiciary since then, including the alarmingly increasing [use of military courts to try civilians](#), in direct contravention of Article 110 of the Constitution, as well as the [smear campaign](#) targeting the CSM, calling for the ‘*purification*’ of the judiciary. This includes the judicial harassment of Yassine Ayari, a member of Tunisian Parliament, who was sentenced to 10 months imprisonment (in absentia) by a military court for calling the suspension of the legislature a ‘Coup’ in a Facebook statement.<sup>4</sup> Following the suspension of parliament, the judiciary remained the last institutional check on executive power in Tunisia.

12. In targeting the only body that predicates judicial independence, the separation of powers doctrine that facilitates checks and balances on public functions has been severely and directly undermined, leaving the executive in de facto exclusive control of the government. The President has cited that such

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<sup>1</sup> <https://nawaat.org/2021/10/04/kais-saied-and-the-judiciary-a-clash-of-powers/>

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> <https://www.middleeasteye.net/news/tunisia-military-court-sentences-mp-prison-insulting-president-army>

reformation is required to bring an end to corruption,<sup>5</sup> however, [the UN Convention Against Corruption](#), to which Tunisia is a state party, states in Article 11 that measures taken to strengthen integrity and to prevent opportunities for corruption among members of the judiciary must not prejudice judicial independence.

#### **F. Establishment of a Constitutional Court**

13. Additionally, after 8 years since the new Tunisian Constitution was adopted, the establishment of a Constitutional Court is still lacking, despite article 148 of the Constitution providing that the Constitutional Court shall be established no later than one year after the first legislative elections.<sup>6</sup> These elections were held on 26 October 2014.

14. The lack of a Constitutional Court in charge of ruling on the lawfulness of legislative acts in light of the Constitution, created a vacuum for the presence of numerous laws infringing upon the rights and freedoms set out in the Constitution. Article 230 of the Penal Code on homosexuality can be cited as an example.<sup>7</sup>

15. Second, the absence of a Constitutional Court has an impact on the functioning of public institutions. Several of the political crises since 2014 were conflicts between the heads of the Executive. Due to the lack of a neutral arbitrator, these conflicts have been settled according to the political power balance between the Head of Government and the President, which has led to increased instability within the government. What's more, the Tunisian judicial system still suffers from grave shortcomings, namely corruption, inequity of the system and political instrumentalisation.<sup>8</sup>

#### **G. Threats to the Legal Profession and Civil Society**

16. Overall, there has been an increase in the influence and overt assertion of power over the judiciary and the legal profession by the Tunisian Executive. An increase in the prosecution of human rights defenders has been recorded since 14 January 2021.<sup>9</sup> Especially targeted are members of the Tunisian Association for Justice and Equality.<sup>10</sup>

17. On March 2, 2022, lawyer Abderrazak Kilani, former president of the Tunisian Bar Association, was jailed by a military court.<sup>11</sup> The prosecution followed a verbal exchange between him and police officers who barred him from entering a hospital to visit his arbitrarily detained client, former Justice Minister Nouredine Bhiri. Kilani faces up to seven years in jail if found guilty.<sup>12</sup> The Tunisian Order of Lawyers has called on the authorities to release him.<sup>13</sup> Head of the Regional Branch of Lawyers in Tunisia, Mohamed El-Hadfi, asserted in a statement published on Thursday by Arabi21: *"Lawyers have become*

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<sup>5</sup> <https://www.middleeasteye.net/news/tunisia-saied-judicial-council-mounting-criticism>

<sup>6</sup> [https://euromedrights.org/wp-content/uploads/2021/01/Etat-des-lieux-des-droits-humains-en-Tunisie\\_Janvier-2021.pdf](https://euromedrights.org/wp-content/uploads/2021/01/Etat-des-lieux-des-droits-humains-en-Tunisie_Janvier-2021.pdf)

<sup>7</sup> [https://euromedrights.org/wp-content/uploads/2021/01/Etat-des-lieux-des-droits-humains-en-Tunisie\\_Janvier-2021.pdf](https://euromedrights.org/wp-content/uploads/2021/01/Etat-des-lieux-des-droits-humains-en-Tunisie_Janvier-2021.pdf)

<sup>8</sup> Ibid.

<sup>9</sup> <https://www.fidh.org/fr/regions/maghreb-moyen-orient/tunisie/tunisie-harcelement-et-attaques-contre-les-defenseurs-des-droits>

<sup>10</sup> Ibid.

<sup>11</sup> <https://www.amnesty.org/en/wp-content/uploads/2022/03/MDE3053682022ENGLISH.pdf>

<sup>12</sup> Ibid.

<sup>13</sup> <https://www.middleeastmonitor.com/20220305-tunisia-order-of-lawyers-calls-to-release-kilani/>

*clearly targeted. The real reason behind the detention of the former head of the National Bar Association, Abderrazak Kilani, is basically a political reason”.*<sup>14</sup>

18. Further, there are indications that threats against civil society have been increasing since 25 July 2021. These include a draft law to regulate civil society organisations which was recently<sup>15</sup> leaked. It would grant government authorities sweeping powers and discretion to interfere with the way civil society organisations are formed, their functions and operations, their funding, and their ability to speak publicly about their work and to express their views. Similarly, on February 24, President Saied accused civil society organisations of catering to foreign interests and trying to interfere in Tunisian politics. He said he intended to ban all funding for such groups from abroad.

#### **H. Recommendations to the government of Tunisia**

- **Take immediate measures to ensure sufficient safeguards are in place, both in law and in practice, to guarantee the full independence and safety of lawyers and their effective protection against any form of retaliation in connection with their professional activity;**
- **Refrain from undue interference with the functioning and organisation of the judiciary, in line with the Tunisian Constitution and international legal standards the UN Basic Principles on the Independence of the Judiciary.**
- **Refrain from any actions that may constitute harassment, persecution, or undue interference in the work of lawyers and judges, including their criminal prosecution on improper grounds such as the expression of critical views or the nature of the cases that the lawyer is involved in;**
- **Take immediate measures to rescind Presidential Decree 11 of 2022 that allows the president to directly appoint judges in the Supreme Judicial Council, and to guarantee the effective protection of the right of freedom of expression of Judges as set out in the UN Basic Principles on the Independence of the Judiciary**
- **Urge that any reformation to the judiciary must come through a political reform process in Tunisia, reflective of the Constitution of 2014, and must be achieved through an inclusive participatory process which includes judges, political parties, civil society and unions.**

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<sup>14</sup> Ibid.

<sup>15</sup> <https://www.hrw.org/news/2022/03/11/tunisia-looming-curbs-civil-society-must-be-stopped>; The report by Human Rights Watch is from 11.03.2022.