

# TUNISIA

## Country Profile prepared by the ICJ Centre for the Independence of Judges and Lawyers

Current to January 2015

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<http://www.icj.org/cijlcountryprofiles/tunisia/>

### Overview

Tunisia is undergoing comprehensive reform of its political and legal system, following the December 2010-January 2011 popular uprising.

The ICJ considers the adoption of the new Constitution in 2014 marks a significant step forward towards establishing the rule of law and protecting human rights in Tunisia. The Constitution establishes a more balanced separation of powers compared to its 1959 predecessor, recognizing the institutional and individual independence of the judiciary and establishing a High Judicial Council to oversee judges' careers.

Nevertheless, the 2014 Constitution falls short of international law and standards in certain key aspects.<sup>1</sup> In particular, it does not affirm that international human rights treaties ratified by Tunisia are binding and have supremacy over domestic law,<sup>2</sup> and some provisions of the Constitution are not consistent with international human rights standards. Among other things, as addressed further below, provisions related to the irremovability of judge, the independence of the Office of the Public Prosecutor and the jurisdiction of military tribunals fall short of international standards.

This profile at the moment does not include a section on lawyers. It will be made available, as well as more in-depth assessment of some of the concerns raised in this profile, as the ICJ continues its research.

### A. Introduction

#### 1. Legal tradition

The law in Tunisia blends Western and Northern African concepts and traditions. Many laws, and the court system, are based on the French civil law model, stemming from the period when Tunisia was governed as a French protectorate (1881-1956). In addition, the source of some legislation, such as the non-abolition of the death penalty and some aspects of family law, is Islamic law.

In this context, it should be noted that Tunisia was the first Arab country to revise its legal framework redressing some manifestations of discrimination against women. The Code of

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<sup>1</sup> For a comprehensive analysis, see: International Commission of Jurists, *The Tunisian Constitution in light of international law and standards* (31 January 2014).

<sup>2</sup> See 2014 Constitution, Article 20, which provides that ratified international agreements have a status superior to that of laws, but inferior to that of the Constitution. In theory, international agreements could be applied by Tunisian judges, but this almost never happens.

Personal Status introduced by President Bourguiba in August 1956, five months after the declaration of independence from France, among other things outlawed polygamy, established a divorce procedure that could be initiated by either partner and set a legal minimum age for marriage. Nevertheless, full equality between men and women in law and in practice remains elusive to this day.

Under President Zine El Abidine Ben Ali, who assumed power following a bloodless coup ousting Bourguiba in November 1987, human rights were repressed and Tunisia's laws and regulations were adjusted to serve the dictatorial ruling and economic interests of the President and his family members and cronies.<sup>3</sup>

After President Ben Ali was ousted in the December 2010-January 2011 popular uprising, the transitional authorities began to comprehensively reform the country's political and legal system. Legislative elections took place in October 2014 and presidential elections in November and December 2014. They were deemed fair and transparent by international observers.<sup>4</sup>

## 2. Constitutional structure

Tunisia is a country in transition. Under the one-party regime of former President Zine El Abidine Ben Ali, power was consolidated in the hands of the executive. Judicial independence was not guaranteed in law or in practice, and there was a systematic failure to investigate or prosecute allegations of serious human rights violations.<sup>5</sup>

Since the ouster of Ben Ali, the transitional authorities have begun reforming the country's political and legal system. In January 2014 the National Constituent Assembly, a body elected in October 2011 in Tunisia's first free and fair elections,<sup>6</sup> by an overwhelming majority approved a new Constitution.

The ICJ views the 2014 Constitution as the product of a representative and inclusive process, marking a significant step towards establishing the rule of law and protecting human rights in Tunisia. The Constitution establishes a more balanced separation of powers compared to its 1959 predecessor, recognizing the institutional and individual independence of the judiciary and establishing a High Judicial Council to oversee judges' careers.

Nevertheless, the 2014 Constitution falls short of international law and standards in certain key aspects.<sup>7</sup> In particular, it does not affirm that international human rights treaties ratified by Tunisia are binding and have supremacy over domestic law,<sup>8</sup> and some provisions of the Constitution are not consistent with international human rights standards. Among other things, as addressed further below, provisions related to the irremovability of judge, the independence of the Office of the Public Prosecutor and the jurisdiction of military tribunals fall short of international standards.

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<sup>3</sup> On the latter, see World Bank (Bob Rijkers, Caroline Freund, Antonio Nucifora), *All in the Family: State Capture in Tunisia* (March 2014).

<sup>4</sup> See Carter Center, Election monitoring reports: Tunisia. [http://www.cartercenter.org/news/publications/peace/democracy\\_publications/tunisia-peace-reports.html](http://www.cartercenter.org/news/publications/peace/democracy_publications/tunisia-peace-reports.html) (last accessed 19 February 2015); Mission d'observation électorale de l'Union européenne – Tunisie 2014. <http://www.eueom.eu/tunisie2014/rapports> (last accessed 19 February 2015).

<sup>5</sup> See e.g. the cited sources at International Commission of Jurists, *The Independence and Accountability of the Tunisian Judicial System: Learning from the Past to Build a Better Future* (May 2014), p. 4, footnotes 5 and 6.

<sup>6</sup> See e.g. International Commission of Jurists, *Enhancing the Rule of Law and guaranteeing human rights in the Constitution: A report on the constitutional reform process in Tunisia*, p. 10-14.

<sup>7</sup> For a comprehensive analysis, see: International Commission of Jurists, *The Tunisian Constitution in light of international law and standards* (31 January 2014).

<sup>8</sup> See 2014 Constitution, Article 20, which provides that ratified international agreements have a status superior to that of laws, but inferior to that of the Constitution. In theory, international agreements could be applied by Tunisian judges, but this almost never happens.

### 3. [International treaty status](#)

The following table sets out the status of a range of human rights treaties in Tunisia, as of 15 October 2014:

	Status (including ratification, accession and succession)
International Covenant on Civil and Political Rights	18 March 1969
<i>ICCPR-OP1</i>	29 June 2011
<i>ICCPR-OP2</i>	No signature or ratification
International Covenant on Economic, Social and Cultural Rights	18 March 1969
<i>ICESCR-OP</i>	No signature or ratification
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment	23 September 1988
<i>CAT-OP</i>	29 June 2011
International Convention on the Protection of All Persons from Enforced Disappearance	29 June 2011
International Convention on the Elimination of All Forms of Racial Discrimination	13 January 1967
Convention on the Elimination of All Forms of Discrimination against Women	20 September 1985
<i>CEDAW-OP</i>	23 September 2008
Convention on the Rights of the Child	30 January 1992
<i>CRC-OP1</i>	2 January 2003
<i>CRC-OP2</i>	13 September 2002
<i>CRC-OP3</i>	No signature or ratification
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	No signature or ratification
Convention on the Rights of Persons with Disabilities	2 April 2008
<i>CRPD-OP</i>	2 April 2008
	Ratification (including ratification, accession and succession)
Geneva Convention I	4 May 1957
Geneva Convention II	4 May 1957
Geneva Convention III	4 May 1957
Geneva Convention IV	4 May 1957
<i>Additional Protocol I</i>	9 August 1979
<i>Additional Protocol II</i>	9 August 1979
Rome Statute	24 June 2011
Convention Against Corruption	23 September 2008

African Charter on Human and People's Rights	16 March 1983
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At the Universal Periodic Review of its human rights record in May 2012, Tunisia stated that "[s]ince January 2011, [it] had worked to build a democratic system by taking measures such as ... reforming the judiciary".<sup>9</sup> All UPR recommendations that included reform of the judicial system enjoyed the support of Tunisia, and it considered the stand-alone recommendation to reform "the judicial system to establish an independent judicial power in accordance with international standards, and ensure the existence of the rule of law and justice" to be implemented or in the process of implementation.<sup>10</sup>

#### 4. [Court structure](#)

The Constitution states that the judiciary is composed of the Court of Cassation, appellate courts and courts of first instance. The Constitution provides that a law will establish the organization of the judicial system, its procedures and the statute of its judges.<sup>11</sup>

Currently, in the absence of a law implementing article 115 of the Constitution, the organization of jurisdictions remains governed by Law No. 67-29. According to Law No. 67-29, there are five jurisdictions of the judicial order, comprising a Court of Cassation, appellate courts, property courts, first instance tribunals and district courts.<sup>12</sup> The jurisdictions are created by Decree<sup>13</sup> and the law determines their competence.<sup>14</sup> Currently, there are 139 courts.<sup>15</sup>

Pursuant to the Constitution, the administrative judiciary is composed of the Supreme Administrative Court, the administrative courts of appeal and administrative courts of first instance. The administrative courts have jurisdiction over cases involving the alleged abuse of power by the administration as well as all administrative disputes. A law is to regulate the organization, mandate, procedures and the statute of judges.<sup>16</sup> As of 19 November 2014, only the Administrative Tribunal in Tunis had been established; the reform of the administrative justice system remains to be implemented.<sup>17</sup>

The financial judiciary is composed of the Court of Audit with its different bodies. It oversees the sound management of public funds in accordance with the principles of legality, efficiency and transparency. Its organization, mandate, procedures and the statute of its judges are to be regulated by law.<sup>18</sup> As of 19 November 2014, it was unclear whether there will be a new law or whether the current law<sup>19</sup> will remain in force.

The Constitutional Court is an independent judicial body, composed of 12 members three-quarters of whom are legal experts having no less than twenty years' experience.<sup>20</sup> The Constitutional Court is the sole body competent to oversee the constitutionality of draft laws, constitutional draft laws, treaties, laws referred to it by courts in a preliminary reference-type procedure, and the rules of procedure of the Assembly of People's

<sup>9</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review: Tunisia, UN Doc. A/HRC/21/5 (9 July 2012), para. 8.

<sup>10</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review: Tunisia, UN Doc. A/HRC/21/5 (9 July 2012), para. 115.1-115.2.

<sup>11</sup> 2014 Constitution, Article 115.

<sup>12</sup> Law No. 67-29, Article 1.

<sup>13</sup> Law No. 67-29, Article 2.

<sup>14</sup> Law No. 67-29, Article 3.

<sup>15</sup> See Portail de la Justice en Tunisie. <http://www.e-justice.tn/index.php?id=278> (last accessed on 11 August 2014).

<sup>16</sup> 2014 Constitution, Article 116.

<sup>17</sup> Law No. 72-40, which establishes the *Tribunal Administratif* in Tunis, will need to be amended or replaced in light of the new administrative justice system set out in the Constitution.

<sup>18</sup> 2014 Constitution, Article 117.

<sup>19</sup> Law No. 68-8 concerning the organization of the Court of Audit.

<sup>20</sup> 2014 Constitution, Article 118.

Representatives; the Constitution specifies who can take the initiative to submit the question of constitutionality to the Court.<sup>21</sup>

The public prosecution service is part of the judicial order and benefits from the same constitutional protections as the judiciary. The magistrates of the public prosecution service exercise their functions in the framework of the penal policy of the State and in conformity with the procedures established by law.<sup>22</sup> (Further see Section C.)

## **B. Judges**

*Individual judges and the judiciary as a whole must be independent and impartial.<sup>23</sup> The requirement that courts and other tribunals be effective, independent and impartial "is an absolute right that is not subject to any exception."<sup>24</sup>*

*International standards set out specific safeguards of judicial independence;<sup>25</sup> these are described in greater detail in the sections that follow.*

### **1. Constitutional and legislative recognition of the principle of judicial independence**

*The independence of the judiciary must be guaranteed by the State and enshrined in the Constitution or the law.<sup>26</sup>*

*Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.<sup>27</sup>*

The Constitution provides that the judiciary is independent and ensures the administration of justice, the supremacy of the Constitution, the sovereignty of the law, and the protection of rights and freedoms. Judges are independent, with the law being the sole authority over them in the discharge of their functions.<sup>28</sup> Furthermore, "any interference with the functioning of the judiciary is prohibited".<sup>29</sup>

The Constitution envisages the creation of a new High Judicial Council, consisting of four bodies: the Judiciary Council, the Administrative Judicial Council, the Financial Judicial Council and the general assembly uniting the three councils. Two-thirds of the membership of each of these bodies is to be composed of elected and appointed judges, and elected

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<sup>21</sup> 2014 Constitution, Article 120.

<sup>22</sup> 2014 Constitution, Article 115.

<sup>23</sup> The requirement embodies the principle of the rule of law, the right to a fair trial, the right to liberty and security of the person, and to the right to effective remedy for violations of human rights. See, among others, Universal Declaration of Human Rights, Article 10; International Covenant on Civil and Political Rights (ICCPR), Article 14(1); African Charter on Human and People's Rights, Article 7(1); Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 (hereinafter: 'UN Basic Principles on the Independence of the Judiciary'), Principle 1 and 2; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 1; Bangalore Principles of Judicial Conduct, Adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002, Value 1 and 2. Generally, see also International Commission of Jurists, International principles on the independence and accountability of judges, lawyers and prosecutors – Practitioners' guide, no. 1 (2007).

<sup>24</sup> Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19.

<sup>25</sup> See Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19; UN Basic Principles on the Independence of the Judiciary. See also International Commission of Jurists, International principles on the independence and accountability of judges, lawyers and prosecutors – Practitioners' guide, no. 1 (2007), pp. 3-61.

<sup>26</sup> UN Basic Principles on the Independence of the Judiciary, Principle 1; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(a).

<sup>27</sup> UN Basic Principles on the Independence of the Judiciary, Principle 9.

<sup>28</sup> 2014 Constitution, Article 102.

<sup>29</sup> 2014 Constitution, Article 109.

members will form the majority of each council. The High Judicial Council will elect its president from among its most senior judges-members. The mandate, organization, composition of each of the four bodies is to be determined by law.<sup>30</sup>

The Constitution provides that High Judicial Council shall enjoy administrative and financial independence and is to be self-managing.<sup>31</sup> It will work to ensure the sound functioning of the justice system and respect for its independence. Among other things, the general assembly of the councils will review draft laws related to the judiciary. Each of the three councils is responsible for making decisions on the professional careers of judges and for disciplinary measures taken against them.<sup>32</sup>

The High Judicial Council is due to be established before April 2015.<sup>33</sup> Meanwhile, a temporary judicial authority, called the *Instance Provisoire de la Justice Judiciaire* (IPJJ) was established mid-2013,<sup>34</sup> replacing the executive-controlled *Conseil Supérieur de la Magistrature* (CSM) that was suspended with the adoption of the Provisional Constitution in December 2011.

## 2. Appointment and promotion of judges; Security of tenure

*Judges should be appointed through an open process on the basis of prescribed criteria based on merit and integrity, and without discrimination.*<sup>35</sup>

*Only "individuals of integrity and ability with appropriate training of qualifications in law" should be eligible for appointment.*<sup>36</sup>

*Steps should be taken to ensure the appointment of qualified women and members of minority communities.*<sup>37</sup>

*An appropriate clearly-prescribed method of appointment of judges is a prerequisite for the independence of the judiciary<sup>38</sup> and is a means of ensuring equal access to the profession. Whatever method of judicial selection is adopted must "safeguard against judicial appointments for improper motives".<sup>39</sup> In other words, election and appointment should be based on an objective assessment and determination of the applicant's professional knowledge, merits and suitability. Appointments and promotions should be decided by bodies that are independent from the executive,<sup>40</sup> that are plural and are composed mainly*

<sup>30</sup> 2014 Constitution, Article 112.

<sup>31</sup> 2014 Constitution, Article 113.

<sup>32</sup> 2014 Constitution, Article 114.

<sup>33</sup> 2014 Constitution, Article 148(5): "The High Judicial Council shall be created within a maximum of six months from the date of the first legislative elections".

<sup>34</sup> Law No. 2013-13.

<sup>35</sup> Principle 10 of the UN Basic Principles on the Independence of the Judiciary provides in part: "In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory." Also, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(h)-(j); Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19.

<sup>36</sup> UN Basic Principles on the Independence of the Judiciary, Principle 10; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(i) and (k).

<sup>37</sup> UN Special Rapporteur on the independence of judges and lawyers, Report to the General Assembly, UN Doc. A/66/289 (2011), para. 22-33, 92. Human Rights Committee, Concluding Observations on: the United Kingdom, UN Doc. CCPR/CO/73/UK (2001), para. 15; France, UN Doc. CCPR/C/FRA/CO/4 (2008), para. 26; Sudan, UN Doc. CCPR/C/79/Add.85 (1997), para. 21. Committee on the Elimination of Racial Discrimination: General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, UN Doc. A/60/18 (pp. 98-108) (2005), para. 5(d); Concluding Observations on Guatemala, UN Doc. CERD/C/GTM/CO/12-13 (210), para. 8, and on Colombia, UN Doc. CERD/C/304/Add.76 (1999), para. 13.

<sup>38</sup> Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19.

<sup>39</sup> UN Basic Principles on the Independence of the Judiciary, Principle 10; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(h).

<sup>40</sup> Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(h) encourages "the establishment of an independent body".

*(if not solely) of judges and members of the legal profession;<sup>41</sup> and that apply transparent procedures.<sup>42</sup>*

*Promotions within the judiciary must also be based on objective factors, particularly ability, integrity and experience.<sup>43</sup>*

*To guard against pressure from those who could otherwise influence or make decisions about the renewal of their terms of office, judges' tenure must be guaranteed until a mandatory retirement age or expiry of the term of office.<sup>44</sup>*

*Judges may be removed from office only in exceptional, strictly limited and well-defined circumstances provided for by law, involving incapacity or behaviour that renders them unfit to carry out the duties of their office, and following a fair procedure.<sup>45</sup>*

The 2014 Constitution provides that judges will be appointed by presidential decree with the assent of the High Judicial Council, while also stating that appointments to senior positions are made by presidential decree after consultation with the Prime Minister, based on a list of candidates prepared by the High Judicial Council.<sup>46</sup>

Senior judicial functions, as defined by Law No. 67-29, comprise the positions of President and Prosecutor-General of the Cassation Court, the President and Prosecutor-General of the Tunis Court of Appeal, the Inspector-General who is the head of the General Inspection Service, the President of the Property Court and the Prosecutor-General Director of Judicial Services.<sup>47</sup>

However, judges of the Constitutional Court are appointed by the President of the Republic, the Assembly of People's Representatives, and the High Judicial Council, who each appoint four members for a single six-year term. One third of the membership shall be renewed every three years. The members of the Court elect a President and Vice President from among the members who are specialists in law.<sup>48</sup>

The Constitution is otherwise silent on the selection process, to be determined by a new law.

The assessment of judges continues to be governed by Law No. 67-29. Under this law, judges are rated by their hierarchical superiors, following the advice of the prosecutor of

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See e.g. Human Rights Committee, Concluding Observations on: Honduras, CCPR/C/HND/CO/1 (2006), para. 16; the Congo, CCPR/C/79/Add.118, para. 14; Liechtenstein, CCPR/CO/81/LIE, para. 12; Tajikistan, CCPR/CO/84/TJK, para. 17; Azerbaijan, UN Doc. CCPR/C/AZE/CO/3 (2009), para. 12; Kosovo (Serbia), UN Doc. CCPR/C/UNK/CO/1 (2006), para. 20. Also see Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration"), cited with approval in UN Commission on Human Rights, resolution 1989/32, Article 11; Universal Charter of the Judge, Article 9.

<sup>41</sup> UN Special Rapporteur on the independence of judges and lawyers, Report to the Human Rights Council, UN Doc. A/HRC/11/41 (2009), para. 28-29; International Commission of Jurists, International principles on the independence and accountability of judges, lawyers and prosecutors – Practitioners' guide, no. 1 (2007), pp. 45-48.

<sup>42</sup> Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(h); UN Special Rapporteur on the independence of judges and lawyers, Report to the Human Rights Council, UN Doc. A/HRC/11/41 (2009), para. 32. See also Preliminary Report to the Human Rights Commission on a mission to Ecuador, UN Doc.E/CN.4/2005/60/Add.4 (2005), para. 5(d).

<sup>43</sup> UN Basic Principles on the Independence of the Judiciary, Principle 13; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(o); Singhvi Declaration, Article 14.

<sup>44</sup> UN Basic Principles on the Independence of the Judiciary, Principle 12; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(l); Singhvi Declaration, Article 16(b) and 18(c); Universal Charter of the Judge, Article 8.

<sup>45</sup> UN Basic Principles on the Independence of the Judiciary, Principles 17-20; Human Rights Committee, General Comment no 32, paras. 19-20. While as described below in section 4, there must be effective means for holding judges accountable (for crimes, violations of human rights, corruption for instance), all accountability measures must fully respect guarantees of independence and impartiality including as regards grounds and procedures for removal.

<sup>46</sup> 2014 Constitution, Article 106.

<sup>47</sup> Law No. 67-29, Article 7bis.

<sup>48</sup> 2014 Constitution, Article 118.

the jurisdiction to which they belong.<sup>49</sup> The law does not provide any criteria, but a form from the Ministry of Justice specifies some, including among others, competence, compliance with respect for judicial duties, productivity, relationship with superiors, and management abilities. The judge is not informed or consulted in the process.<sup>50</sup> This vague framework, without detailed and objective criteria for the assessment or any avenue for the affected judge to challenge it, leaves judges vulnerable to their hierarchical superiors.<sup>51</sup>

The 2014 Constitution does not mention how judges are promoted, leaving procedures to the new High Judicial Council.<sup>52</sup> Under the Ben Ali regime, promotion was in the hands of the Executive through its control of the Conseil Supérieur de la Magistrature. In practice, promotion was based on loyalty to the regime.<sup>53</sup> During the transitional period, promotions are made by Prime Minister's decree, with the assent of the Instance Provisoire de la Justice Judiciaire (IPJJ). The main consideration is still seniority, as provided under Law No. 67-29.<sup>54</sup>

Despite the adoption of some new safeguards against judges' arbitrary transfer, executive interference continues to be a threat to judicial independence. Under the 1967 law, the Minister of Justice had the power to decide to transfer a magistrate for "*nécessité de service*", and arbitrary transfers were used to punish outspoken judges. Currently, under Law No. 2013-13, transfers are made by Prime Minister's decree, with the assent of the IPJJ, and judges cannot be transferred, promoted or appointed to a new position without their written consent.<sup>55</sup> Transfers for "*nécessité de service*", which do not require the judge's consent, remain possible, but must meet several conditions.<sup>56</sup> Compliance with these new procedures is questionable.<sup>57</sup>

The 2014 Constitution does not guarantee tenure until a stated retirement age, falling short of the requirements under international law.<sup>58</sup>

### 3. [Financial independence of the judiciary](#)

*The State must provide adequate resources to enable the judiciary as an institution to perform its functions properly.*<sup>59</sup>

*The remuneration and pensions of judges must be secured by law at an adequate level<sup>60</sup> that is consistent with their status and is sufficient to safeguard against conflict of interest and corruption.*<sup>61</sup>

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<sup>49</sup> Law No. 67-29, Article 34.

<sup>50</sup> "Personal Form" of the Tunisian Ministry of Justice. See International Commission of jurists, *The Independence and Accountability of the Tunisian Judicial System: Learning from the Past to Build a Better Future* (May 2014), p. 26.

<sup>51</sup> International Commission of jurists, *The Independence and Accountability of the Tunisian Judicial System: Learning from the Past to Build a Better Future* (May 2014), p. 34.

<sup>52</sup> 2014 Constitution, Article 114.

<sup>53</sup> International Commission of jurists, *The Independence and Accountability of the Tunisian Judicial System: Learning from the Past to Build a Better Future* (May 2014), p. 26.

<sup>54</sup> Law No. 67-29, Article 33. International Commission of jurists, *The Independence and Accountability of the Tunisian Judicial System: Learning from the Past to Build a Better Future* (May 2014), p. 26.

<sup>55</sup> Law No. 2013-13, Article 12 and 14.

<sup>56</sup> See Law No. 2013-13, Article 12.

<sup>57</sup> See International Commission of jurists, *The Independence and Accountability of the Tunisian Judicial System: Learning from the Past to Build a Better Future* (May 2014), p. 27-28.

<sup>58</sup> International Commission of jurists, *The Independence and Accountability of the Tunisian Judicial System: Learning from the Past to Build a Better Future* (May 2014), p. 34-35.

<sup>59</sup> UN Basic Principles on the Independence of the Judiciary, Principle 7; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(v); Singhvi Declaration, Article 33.

<sup>60</sup> Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(v).

<sup>61</sup> UN Basic Principles on the Independence of the Judiciary, Principle 11; Singhvi Declaration, Article 16(a); Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 13; Statute of the IberoAmerican Judge, Article 33. Inter-American Commission on Human Rights, *Guarantees for the Independence of Justice Operators*, para. 128.



*The overall budget for the courts should be prepared "in collaboration with the judiciary having regard to the needs and requirements of judicial administration".<sup>62</sup> The total budget should be adequate to cover not only remuneration, but other human and technical resources, training, and means for providing for physical security, as well.<sup>63</sup>*

Pursuant to the Constitution, the High Judicial Council enjoys administrative and financial autonomy and has a self-governing character. It prepares its own budget proposal and discusses it before the specialized committee in parliament.<sup>64</sup>

The budget of the judiciary is drafted and managed by the Ministry of Justice.<sup>65</sup> It is not separate from the latter's budget, which includes for example all the expenses related to the tribunals' infrastructure.

#### 4. [Independence and impartiality; Judicial integrity and accountability](#)

*Judges must be free to "decide matters before them impartially, on the basis of the facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason".<sup>66</sup> The prohibition on such acts "from any quarter" underscores its application to both state actors and non-state actors alike. Even within the judicial hierarchy, judges of the same or higher level of court must not interfere with a judge's exercise of judicial functions, other than as provided for by formal procedures such as appeal.<sup>67</sup>*

*In the exercise of judicial functions, judges must be impartial, and be seen to be impartial.<sup>68</sup> Judges "must not allow their judgment to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other."<sup>69</sup>*

*A judicial code of conduct, drafted primarily by judges and members of the legal profession and consistent with international standards,<sup>70</sup> can help to safeguard judicial integrity and protect against conflicts of interest.<sup>71</sup> A judicial code of conduct meeting these criteria and*

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<sup>62</sup> Singhvi Declaration, Article 34.

<sup>63</sup> Inter-American Commission on Human Rights, *Guarantees for the Independence of Justice Operators*, para. 128. Statute of the IberoAmerican Judge, Article 35.

<sup>64</sup> Constitution, Article 113.

<sup>65</sup> Decree No. 92-1330 concerning the organization of the Ministry of Justice, Article 17.

<sup>66</sup> UN Basic Principles on the Independence of the Judiciary, Principles 1-7, in particular Principle 2; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.5(a); Singhvi Declaration, Articles 2-8; Bangalore Principles of Judicial Conduct, Adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002, Value 1; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 1-4.

<sup>67</sup> Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 4. Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(f), which provides in part "... nor shall decisions by judicial bodies be subject to revision except through judicial review, or the mitigation or commutation of sentences by competent authorities, in accordance with the law"; Article A.5(e) states that "A judicial officer may not consult a higher judicial authority before rendering a decision in order to ensure that his or her decision will be upheld".

<sup>68</sup> Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 21; UN Basic Principles on the Independence of the Judiciary, Principle 2; Singhvi Declaration, Article 25; Bangalore Principles of Judicial Conduct, Adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002, Values 2, 3 and 4; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Articles 5-7. The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.5(d) presents four concrete situations in which the impartiality of a judicial body would be undermined. The "seen to be impartial" standard means for instance that, even if an individual judge might *in fact* be able to ignore a personal relationship to one of the parties to a case, he or she should step aside from the case to protect against a reasonable *apprehension* of bias.

<sup>69</sup> Human Rights Committee, General Comment no 32, para 21.

<sup>70</sup> See Bangalore Principles of Judicial Conduct; International Bar Association Minimum Standards of Judicial Independence, pp. 35-42.

<sup>71</sup> See Bangalore Principles of Judicial Conduct, Preamble and 'Implementation'.

*enshrined in the law, should serve as the basis for the determination of cases of alleged judicial misconduct.*<sup>72</sup>

*Complaints about judicial misconduct must be processed expeditiously and fairly under an appropriate procedure.*<sup>73</sup> *The judge in question has the right to a fair hearing*<sup>74</sup> *before an independent and impartial body. The body responsible for discipline of judges should be independent of the executive,*<sup>75</sup> *plural and composed mainly (if not solely) of judges and members of the legal profession.*<sup>76</sup> *The judge's rights to a fair proceeding, including to notice of the accusations against him or her, to adequate time and facilities to prepare and present a defence including through counsel,*<sup>77</sup> *to challenge the evidence against him or her and present witnesses must be respected.*

*Decisions in disciplinary matters must be based on established standards of judicial conduct, and sanctions must be proportionate. Judges may be suspended or removed only where the incapacity or behaviour of a judge renders the individual unfit to discharge his or her judicial duties.*<sup>78</sup> *Disciplinary investigations and sanctions imposed on a judge should never be based solely on disagreement with a legal opinion or judgment he or she wrote in a decision.*<sup>79</sup>

*Decisions and sanctions in disciplinary proceedings should be subject to independent judicial review.*<sup>80</sup>

*Judges should also enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.*<sup>81</sup>

Tunisian law requires judges to render justice impartially, and to refrain from any action or behaviour likely to harm the honour of their profession.<sup>82</sup>

Under the Ben Ali regime, the provisions regarding judicial accountability were set out in Law No. 67-29, the Code of Criminal Procedure and the Criminal Code. Law No. 2013-13

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<sup>72</sup> UN Basic Principles on the Independence of the Judiciary, Principle 19.

<sup>73</sup> UN Basic Principles on the Independence of the Judiciary, Principle 17 and 20; Singhvi Declaration, Article 28; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(r).

<sup>74</sup> Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(r).

<sup>75</sup> Human Rights Committee, Concluding Observations on Azerbaijan, UN Doc. CCPR/C/AZE/CO/3 (2009), para. 12; Human Rights Committee, Concluding Observations on Honduras, UN Doc. CCPR/C/HND/CO/1 (2006), para. 16; Human Rights Committee, Concluding Observations on Kosovo (Serbia), UN Doc. CCPR/C/UNK/CO/1 (2006), para. 20.

<sup>76</sup> Leandro Despouy, Special Rapporteur on the independence of judges and lawyers, Report to the Human Rights Council, UN Doc. A/HRC/11/41 (2009), paras. 28-29.

<sup>77</sup> Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(q).

<sup>78</sup> UN Basic Principles on the Independence of the Judiciary, Principle 18; Singhvi Declaration, Article 20; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 10.

<sup>79</sup> Inter-American Commission on Human Rights, *Guarantees for the Independence of Justice Operators*, paras 216 and 249 (recommendation 22). See also Inter-American Court of Human Rights, *Case of Apitz Barbera et al ("First Court of Administrative Disputes") v Venezuela*, Series C no 182 (5 August 2008), para 86, emphasising the strict distinction under international law between, on the one hand, procedures (such as appeal) for challenging the correctness of a substantive legal decision taken by a judge acting within the competence given to them by domestic law, and on the other hand, "disciplinary oversight, which is intended to assess the conduct, suitability and performance of the judge as a public official". The Court concluded that it was not enough, then, simply to believe that the judge was wrong about the law, there must be "an autonomous reason warranting a finding that a disciplinary offense has been committed."

<sup>80</sup> UN Basic Principles on the Independence of the Judiciary, Principle 20; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(p)-(q); Singhvi Declaration, Articles 26-31; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 8 and 11. The UN Basic Principles suggest that the principle of independent review "may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings."

<sup>81</sup> UN Basic Principles on the Independence of the Judiciary, Principle 16; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article A.4(n)(1); Singhvi Declaration, Article 20; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 10.

<sup>82</sup> Law No. 67-29, Articles 23-24

introduced some changes to the procedure for judicial discipline, but left the substantive standards in force. The Constitution envisages further amendments, such as mandating that disciplinary matters will be decided by the High Judicial Council, but does not provide much detail.<sup>83</sup>

Under the 2014 Constitution the High Judicial Council is mandated to ensure the judiciary's sound performance, and a judge may not be suspended, expelled or subjected to disciplinary punishment "except in such cases and in accordance with the guarantees provided for by the law and by virtue of a justified decision issued by the High Judicial Council".<sup>84</sup>

Law No. 67-29 defines a disciplinary offence as a "failure of the duties of the status, honour or dignity of a judge or prosecutor".<sup>85</sup> Further, the Code of Civil Procedure provides that a claim for damages can be brought against a judge for wilful misconduct, fraud or corruption, or where the law expressly provides for civil liability. Some criminal offences are explicitly applicable to judges, including various degrees of corruption and denial of justice.<sup>86</sup>

Late 2012, the Ministry of Justice presented a draft code of judicial ethics to the National Constituent Assembly, which attracted criticism on the basis that judges had not been consulted in the drafting process. Consideration of the draft was dropped.<sup>87</sup> As of November 2014, a new draft code had yet to be presented.<sup>88</sup>

Until the High Judicial Council is established, the disciplinary procedure is governed by existing law. The disciplinary procedure set out in Law No. 67-29 was amended by Law No. 2013-13, which also provides that those provisions not incompatible with the new law remain in force.<sup>89</sup> It is not clear precisely which provisions are affected by this clause.<sup>90</sup>

Under this legal framework, the Minister of Justice can initiate disciplinary investigations by the General Inspection Service (GIS), which falls under the Minister's supervision.<sup>91</sup> The jurisdiction of the Instance Provisoire de la Justice Judiciaire (IPJJ) is then engaged once the minister transmits the disciplinary file, based on the GIS report.<sup>92</sup> A panel of seven designated members of the IPJJ sits as a disciplinary council to rule on allegations of misconduct.<sup>93</sup>

The president of the disciplinary council must convene the council within 15 days from the date of referral by the Minister, and the council must make a decision within one month from referral.<sup>94</sup> The Inspector-General at the Ministry of Justice, who is the head of the GIS, functions as rapporteur of the IPJJ (but has no right to vote).<sup>95</sup> The rapporteur must notify the judge concerned of the hearing before the council. The judge suspected of misconduct is permitted access to the case file, can present evidence in his or her defence and may be assisted by a lawyer or any other person whom he or she selects.<sup>96</sup>

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<sup>83</sup> International Commission of jurists, *The Independence and Accountability of the Tunisian Judicial System: Learning from the Past to Build a Better Future* (May 2014), p. 37.

<sup>84</sup> 2014 Constitution, Articles 114 and 107.

<sup>85</sup> Law No. 67-29, Article 50.

<sup>86</sup> Criminal Code, Articles 88-90 and 108.

<sup>87</sup> International Commission of jurists, *The Independence and Accountability of the Tunisian Judicial System: Learning from the Past to Build a Better Future* (May 2014), p. 38.

<sup>88</sup> See e.g. La Presse de Tunisie, 'Bientôt un code de déontologie' (25 April 2014). <http://www.lapresse.tn/09092014/82172/bientot-un-code-de-deontologie.html> (last accessed 9 September 2014).

<sup>89</sup> Law No. 2013-13, Article 20.

<sup>90</sup> International Commission of jurists, *The Independence and Accountability of the Tunisian Judicial System: Learning from the Past to Build a Better Future* (May 2014), p. 39.

<sup>91</sup> Decree No. 2010-3152, Article 26.

<sup>92</sup> Law No. 2013-13, Article 16.

<sup>93</sup> Law No. 2013-13, Article 16.

<sup>94</sup> Law No. 2013-13, Article 16.

<sup>95</sup> Law No. 2013-13, Article 16. The head of the GIS is appointed by presidential decree from among judges of the third grade, Law No. 67-29, Article 7bis.

<sup>96</sup> Law No. 2013-13, Article 17.

The disciplinary council can dismiss a judge "if the facts so require",<sup>97</sup> providing reasons for doing so. If the alleged misconduct constitutes a crime or intentional misdemeanour likely to harm the honour of an individual, the council may waive immunity and transfer the file to the public prosecutor, in which case the disciplinary proceedings are suspended until a final decision is taken in the criminal case.<sup>98</sup>

It is not clear if, in addition to dismissal the other sanctions for judicial misconduct set out in Law No. 67-29 (reprimand, disciplinary transfer, removal from the promotion shortlist, demotion, suspension for a period of maximum 9 months)<sup>99</sup> can be applied by the new disciplinary council.

Decisions of the disciplinary council can be appealed to the Administrative Tribunal.<sup>100</sup> Final decisions by the Council are forwarded to the Minister of Justice for implementation of the sanctions.

It is not clear whether, pending the establishment of the High Judicial Council, the Minister's disciplinary powers under Law No. 67-29, including the power to issue warnings and to temporarily suspend a judge,<sup>101</sup> remain in force.

In light of the above, the legal framework in Tunisia for judicial discipline does not comply with international law and standards in several respects, including:

- There is no comprehensive and consolidated code of judicial ethics;
- Disciplinary infractions are too vaguely and overly broadly defined, entailing a lack of legal certainty;
- Safeguards ensuring fair proceedings are lacking and the disciplinary procedure cannot be considered independent or impartial, given the role of the executive; and
- The law does not explicitly determine that sanctions must be proportionate to the misconduct found, and that judges can only be dismissed on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the Constitution or in the law.<sup>102</sup>

### **C. Prosecutors**

*Prosecutors perform an active role in criminal proceedings,<sup>103</sup> including the institution of prosecution and, in some instances, in the investigation of crime, supervision over the legality of such investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.<sup>104</sup>*

*International standards set out guidelines and safeguards for the impartiality, functional independence, and accountability of prosecutors; they are described in greater detail in the sections that follow.<sup>105</sup>*

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<sup>97</sup> Law No. 2013-13, Article 18: "Si les faits attribués au juge requièrent sa révocation, ...".

<sup>98</sup> Law No. 2013-13, Article 18.

<sup>99</sup> Law No. 67-29, Article 52.

<sup>100</sup> Law No. 2013-13, Article 16 and 3.

<sup>101</sup> Law No. 67-29, Article 51 and 54.

<sup>102</sup> See International Commission of Jurists, *The Independence and Accountability of the Tunisian Judicial System: Learning from the Past to Build a Better Future* (May 2014), p. 46-49.

<sup>103</sup> Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article F(g).

<sup>104</sup> UN Guidelines on the Role of Prosecutors (welcomed by General Assembly resolution 45/166, 1990), Guideline 11.

<sup>105</sup> See for example UN Guidelines on the Role of Prosecutors (welcomed by General Assembly resolution 45/166, 1990). See also International Commission of Jurists, *International principles on the independence and accountability of judges, lawyers and prosecutors – Practitioners' guide*, no. 1 (2007), pp. 71-77.

## 1. Functioning of the prosecutorial services

*Prosecutors must carry out their functions fairly and effectively, in an independent, impartial and objective manner, without discrimination of any kind.*<sup>106</sup>

*They must maintain the honour and duty of their profession, and must respect and protect human dignity and uphold human rights.*<sup>107</sup>

*To these ends, prosecutors must among other things: inform, and consider the views of, victims; not initiate or continue an unfounded prosecution; refuse to use evidence obtained in violation of human rights, and take steps to bring those responsible for the violation to justice; give due attention to crimes committed by public officials (including corruption, abuse of power, violations of human rights and crimes under international law).*<sup>108</sup>

*States must ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.*<sup>109</sup>

*The authorities must physically protect prosecutors and their families when their personal safety is threatened as a result of discharging their prosecutorial functions.*<sup>110</sup>

*The office of prosecutors must be strictly separated from judicial functions.*<sup>111</sup>

The prosecutors' functions are set out primarily in the Code of Criminal Procedure.<sup>112</sup> The Minister of Justice is granted broad powers over the prosecution services. Pursuant to the amendment of the Code of Criminal Procedure by Law No. 87-80, the Advocates-General at the appeals courts exercise the prosecutorial functions, under the direct authority of the Minister of Justice.<sup>113</sup> Further, the Minister may denounce violations of the criminal law of which he has knowledge to the prosecution service, enjoining the latter to initiate a prosecution or to seize the competent jurisdiction with written submissions deemed desirable,<sup>114</sup> and all prosecutors are required to comply with written submissions made in accordance with such instructions.<sup>115</sup> Moreover, the Minister of Justice can order the Prosecutor General to the Court of Cassation to lodge an appeal with that Court against any final-instance judicial decision on the merits of a case.<sup>116</sup> Taken together, these provisions serve to consolidate the Minister of Justice's control over the prosecution service as a whole, at odds with international standards, which require that each prosecutor can act in an impartial and objective manner in each case.

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<sup>106</sup> UN Guidelines on the Role of Prosecutors, Guidelines 12 and 13; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article F(i); International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, 1999, Articles 1, 2, 3 and 4.1. Special Rapporteur on the independence of judges and lawyers, report on prosecutors, UN doc A/HRC/20/19 (7 June 2012), paras. 24-28, 98-99, 110, and 119.

<sup>107</sup> UN Guidelines on the Role of Prosecutors, Guidelines 3, 12, 14-16; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article F(h); International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties of and Rights Prosecutors, Articles 1, 3(a) and 4.3 (c), (f) and (g).

<sup>108</sup> UN Guidelines on the Role of Prosecutors, Guidelines 13(d), 14, 15, 16; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article F(k); International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 4.3. See also UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 (29 November 1985).

<sup>109</sup> UN Guidelines on the Role of Prosecutors, Guideline 4; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article F(a)(2); International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 6.

<sup>110</sup> UN Guidelines on the Role of Prosecutors, Guideline 5; International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 6(b).

<sup>111</sup> UN Guidelines on the Role of Prosecutors, Guideline 10.

<sup>112</sup> Code of Criminal Procedure, Chapter I, sections 2 and 3 (Articles 20-24).

<sup>113</sup> Code of Criminal Procedure, Article 24.

<sup>114</sup> Code of Criminal Procedure, Article 23.

<sup>115</sup> Code of Criminal Procedure, Article 21.

<sup>116</sup> Code of Criminal Procedure, Article 258(6).

During the Ben Ali regime, the hierarchical relationship between the prosecution services and the Executive meant that prosecutors were particularly susceptible to political pressure, as their careers depended on decisions taken by the Ministry of Justice. This contributed to the almost total absence of investigations into and prosecutions of gross violations of human rights.<sup>117</sup>

## 2. [The prosecutor's career](#)

*Persons selected as prosecutors must be individuals of integrity and ability, with appropriate training and qualifications.<sup>118</sup> Accordingly, States must ensure that selection criteria embody safeguards against appointments based on partiality or prejudice, and that prosecutors have appropriate education and training.<sup>119</sup>*

*Promotion of prosecutors must be based on objective factors and decided upon in accordance with fair and impartial procedures.<sup>120</sup>*

*Prosecutors must enjoy "[r]easonable conditions of service ... adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations".<sup>121</sup>*

In Tunisia, prosecutors are part of the judiciary. This was already the case under the 1959 Constitution,<sup>122</sup> and remains so under the 2014 Constitution.<sup>123</sup> The 2014 Constitution also provides that the public prosecution service enjoys the same constitutional guarantees and safeguards as other magistrates.<sup>124</sup> Prosecutors are to enjoy the same immunities and, like judges, must act with competence, impartiality and integrity.<sup>125</sup> The High Judicial Council, once established, will be responsible for making decisions on the professional careers and on any disciplinary measures taken against prosecutors.<sup>126</sup>

Meanwhile, under the transitional regime pursuant to Law No. 2013-13, the career of the prosecutor is overseen by the IPJJ. Selection, decisions on appointment, promotion and transfer are made by the Prime Minister, on the advice of the IPJJ.<sup>127</sup>

## 3. [Accountability of the prosecutorial services](#)

*Prosecutors at all levels, like other public officials must be accountable when they have been involved in violations of human rights or other breaches of professional standards, including in proceedings based on complaints brought by individuals.<sup>128</sup>*

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<sup>117</sup> In 2012, the UN Special Rapporteur on torture noted "a pattern of a lack of timely and adequate investigation of torture allegations by prosecutors or investigative judges" and that "complaint of torture were rarely investigated under the Ben Ali regime". See Report of Juan E. Méndez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, to the Human Rights Council (2 February 2012), UN Doc. A/HRC/19/61/Add.1, para. 29 and 32.

<sup>118</sup> UN Guidelines on the Role of Prosecutors, Guideline 1. See Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article F(a)(1).

<sup>119</sup> UN Guidelines on the Role of Prosecutors, Guideline 2.

<sup>120</sup> UN Guidelines on the Role of Prosecutors, Guideline 7; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article F(c); International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 6(e).

<sup>121</sup> UN Guidelines on the Role of Prosecutors, Guideline 6; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article F(b); International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 6(c)-(d).

<sup>122</sup> 1959 Constitution, Article 65.

<sup>123</sup> 2014 Constitution, Article 115.

<sup>124</sup> 2014 Constitution, Article 115.

<sup>125</sup> 2014 Constitution, Article 103-104.

<sup>126</sup> 2014 Constitution, Article 114.

<sup>127</sup> Law No. 2013-13, Article 14.

<sup>128</sup> Special Rapporteur on the independence of judges and lawyers, report on prosecutors, UN doc A/HRC/20/19 (7 June 2012), paras. 82-87, and 120-123.

*Disciplinary offences must be defined in law or lawful regulations, and complaints alleging misconduct must be processed expeditiously and fairly in the context of fair procedures before an independent and impartial body. Prosecutors who are the subject of allegations of misconduct must be afforded a fair hearing and the decision must be based on established standards of professional conduct, and subject to independent review.*<sup>129</sup>

The High Judicial Council, once established, will be responsible for making decisions on any disciplinary measures taken concerning prosecutors.<sup>130</sup>

Meanwhile during the transitional period, the new disciplinary council as described above in Section B(4) on the accountability of judges, which was established under the Law No. 2013-13, is in operation and can adjudicate on disciplinary proceedings against prosecutors. As noted above, the ICJ considers that the procedure in place does not fully comply with international standards.

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<sup>129</sup> UN Guidelines on the Role of Prosecutors, Guideline 21-22; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article F(n)-(o); International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 6(f)-(g).

<sup>130</sup> 2014 Constitution, Article 114.