

ATTACKS ON JUSTICE - TUNISIA

Highlights

Lawyers are frequently subjected to violence as a direct consequence of criticizing the government. Intimidation of lawyers and their clients has increased over the past two years. The government interfered with international monitoring. The situation of the judiciary remains critical. The adoption in July 2005 of the Law reforming the organization of the judiciary wrecked the aspirations of judges and prosecutors for independence and transparency in their profession. Until two years ago, the judiciary acted as a tool of government oppression. Since then, lawyers and judges have gradually asserted their wish to be independent of the executive. In response, the government has hardened its policy towards judicial institutions and has openly persecuted lawyers. Several important trials, including the trial of lawyer Mohammed Abbou and another involving three members of the Tunisian Workers' Communist Party, demonstrated a lack of respect for fair trial guarantees. These failings triggered strikes by the legal profession in February 2002 and March 2005. The Constitution was amended by referendum in May 2002 to remove the limit on the number of terms Presidents may serve and to grant them lifelong immunity. New anti-terrorist legislation adopted in December 2003 further restricted fair trial and due process rights.

BACKGROUND

On 26 May 2002, the first national referendum to be held in Tunisia purportedly approved constitutional reforms (*Organic Law N° 2002-51* of 1 June 2002), with the official figures claiming a majority of 99.52 per cent in favour. The reforms removed the three-term limit for Presidents (new article 39 of the [Constitution of 1959](#)). That limit had been set by President Ben Ali when he came to power in 1987 and was a reaction to former President Habib Bourguiba's proclamation of himself as President-for-life. The reforms also increase the age limit for presidential candidates to 75 (new article 40) and grant former Presidents lifelong judicial immunity (new article 41). The opposition disputed the official results of the referendum and broadly criticized the constitutional reform, especially given that the incumbent President, Zine El Abidine Ben Ali, would otherwise have been prevented from running for a fourth term in the presidential and legislative elections held on 24 October 2004.

The President was elected to a fourth term of office with an officially reported majority of 98.48 per cent. His party, the *Rassemblement Constitutionnel Démocratique (RCD)*, purportedly received 87.59 per cent of the votes and was allotted 89 of the 152 seats in the Chamber of Deputies.

A weak opposition reflects the overwhelming control exercised by the ruling party in both the public and private domain. Over the past two years, political opponents,

judges, lawyers and human rights defenders have continued to suffer repression. Many national and international organizations, journalists and lawyers acknowledge the existence of a political police force, the State Security Police (*Police de Sécurité de l'Etat*), said to be acting under the supervision of the government though the latter refuses to officially admit that this is the case. Civil liberties are severely restricted. The media and the Internet are closely scrutinized and censored by the government. Most television and radio channels and newspapers are state-owned, independent media are strongly encouraged to self-censor, and the authorities regularly prevent the registration of numerous human rights associations by blocking legal recognition.

The government continued to hamper attempts by the international community to monitor the situation: two delegations from the Centre for the Independence of Judges and Lawyers (CIJL/ICJ) were turned back by the authorities at Tunis airport in May and November 2002. However, the CIJL did publish a report in March 2003 (<http://www.icj.org/IMG/pdf/doc-87.pdf>) based on interviews with several Tunisian lawyers and human rights defenders conducted outside of the country. Other international NGOs reported similar difficulties. The UN Special Rapporteur on the Independence of Judges and Lawyers has requested an invitation from the government to visit the country but has received no response to date. The UN Special Representative for Human Rights Defenders was supposed to visit Tunis on 5 March 2005 at the invitation of the Tunisian League for Human Rights (LTDH) but was denied a visa by the Tunisian authorities.

THE JUDICIARY

Overall, the judiciary remains heavily under the influence of the executive. Cases that raise politically-sensitive issues, such as civil liberties, reveal a lack of any functional independence, with the judiciary (including both judges and prosecutors) put under constant pressure to comply with the wishes of the authorities. Such pressures reportedly include the removal or relocation of judges since security of tenure is not guaranteed by the Constitution. The past two years have seen disciplinary action taken against judges who have shown too much independence. Judges hearing cases involving the President or his relatives are kept under close scrutiny and receive instructions to rule in his favour.

Working conditions for judges in Tunisia are poor and financial and human resources are severely inadequate. Courts are ill-equipped to dispense justice. Several dozen cases are often examined during a single hearing, yielding only summary justice. Approximately 1,500 judges in Tunisia rule on three million cases per year.

Notwithstanding the obstacles, Tunisian judges have recently begun to stand up against the increasing subjection of the judiciary to the executive. In the **spring of 2003**, the Association of Tunisian Judges (*Association des Magistrats Tunisiens, AMT*) expressed concern during its annual meeting at increasing acts of intimidation, harassment and aggression perpetrated by members of the State Security Police against judges. In **April 2004**, the AMT issued a communiqué condemning an attack by police officers on a judge from the Court of First Instance in Monastir. In **July 2004**, the executive board of the AMT were planning to hold a press conference in Tunis to discuss their claim for improved working conditions (including improved

status, fairer representation of judges on the High Council of the Judiciary and security of tenure). However, the authorities banned it and police dispersed the invited journalists.

Reform of the law on the organization of the judiciary, the High Council of the Judiciary and the status of judges (Law N° 67-29 of 14 July 1967):

In **November 2004**, the Council of Ministers convened to discuss a bill amending the *Law on the organization of the judiciary, the High Council of the Judiciary and the status of judges (Law N° 67-29 of 14 July 1967)*. The executive board of the AMT expressed regret that it had not been included or consulted in the legislative process. A memorandum on the subject addressed to the Minister of Justice by the AMT in **May 2005** went unheeded. The draft bill failed to guarantee security of tenure, remedy the lack of judicial independence or provide for allocation decisions by the High Council of the Judiciary to be challenged by a fair and impartial body. The AMT also sought reform of the High Council of the Judiciary to increase the number of elected members and to improve the transparency and fairness of the election process. Despite protests by judges and members of civil society, the bill was adopted by the Chamber of Deputies on **30 July 2005** and promulgated shortly thereafter by the President.

Cases

In *Attacks on Justice 2002*, we reported on the case of **Judge Mokhtar Yahyaoui**, the founder of various organizations including the Centre for the Independence of the Judiciary (CTIJ, created in December 2001) and the International Association for the Support of Political Prisoners (AISPP, created on 14 November 2002). Judge Yahyaoui was disciplined after he published an [open letter](#) to the President on **6 July 2001** denouncing the absence of judicial independence in Tunisia. Although the initial sanctions had been lifted on **1 August 2001**, Judge Yahyaoui was summoned to appear before the Disciplinary Council on **29 December 2001**. He was accused of not “fulfilling his professional obligation” and of “denigrating the reputation of the judiciary”. Despite the short time allowed to him to prepare his case, which was compounded by the fact that 29 December fell within the holiday period, the Disciplinary Council rejected an application for adjournment and that same day upheld his dismissal. Official notification of the decision, which Mr. Yahyaoui needed in order to lodge an appeal, was only issued over a year after the decision was taken, therefore precluding any appeal.

On **11 December 2002**, **Mokhtar Yahyaoui** was physically attacked by plain-clothed individuals allegedly belonging to the State Security Police as he was entering the building housing the law office of Nourredine Bhiri (a member of the executive committee of the CTIJ) and his wife, Saida Akermi (Secretary General of AISPP), in downtown Tunis. Three days later, he was taken into police custody for five hours and questioned about his ties with the AISPP. He had been banned from international travel by order of the Ministry of Justice in November 2001, purportedly on the premise that the demands of his position as a judge prevented him from being absent from work in order to travel. In spite of the fact that Mr. Yahyaoui was dismissed from his position in December 2001, the travel ban apparently remained in force on

21 February 2003 when the authorities refused to let him travel to Cairo to attend an international conference.

After police violently entered the Tunis law courts (*Palais de Justice*) on **2 March 2005**, where lawyers were convening to prepare the defence of their colleague **Mohammed Abbou**, the executive board of the AMT released a press statement condemning the police action and expressing solidarity with Tunisian lawyers. In response, members of the political police reportedly besieged the local offices of the AMT. Judge **Kalthoum Kennou**, who witnessed the attacks on the lawyers, was reportedly subjected to intimidation including telephone harassment.

On **1 August 2005**, a wave of disciplinary transfers affected the most active members of the ATM. **Ms Kalthoum Kennou**, Secretary General of the Association, was transferred to Kairouan (160 km from Tunis) and **Ms Wassila Kaabi**, a member of the executive board, was transferred to Gabès (420 km from Tunis). Fifteen members of the administrative commission were transferred to other judicial districts, as a consequence of which they were unable to keep their seats on the commission owing to the rules governing geographical representation. Judges believe that the transfers are intended to penalize those who assert their independence or participate in union activities.

THE LEGAL PROFESSION

Lawyers continue to be harassed and persecuted in the exercise of their professional duties by the executive. The working and living conditions of lawyers, particularly those who defend civil liberties or act in cases contrary to the interests of the President's family, have not improved over the period. There were reports of repeated physical assaults, burglaries of lawyers' offices, the seizure of legal documents, wiretapping, the blocking of email accounts, repeated arrests and travel bans. The authorities denied visas to human rights lawyers and defenders and seized documentation from them in an attempt to deter them from their activities and prevent a negative image of Tunisia from spreading beyond its national boundaries. The Ministry of Justice has repeatedly accused certain lawyers, including the former President of the Bar Association Council, of "making politics". International observers fear that "making politics" is a euphemism for seeking the improvement of civil liberties and fundamental rights.

Cases of physical attacks and burglaries by unidentified plain-clothed individuals continued. Lawyers who are subjected to this type of harassment generally believe the assailants to be members of the State Security Police (*Police de Sécurité de l'Etat*) acting under the supervision of the government. They believe that the State Security Police enter and search law offices at night without identifying themselves and remove documents in order to discredit lawyers by shaking their clients' confidence in the security of sensitive documents held by them.

The government has also interfered in individual cases lawyers are working on. In some cases, the government has repeatedly restricted the access of lawyers to their detained clients, either by denying them a visiting permit or refusing to admit them into the prison even though they have a valid visiting permit. Other reported problems

were that security officials restricted access to courtrooms and that the police harassed clients in order to deter them from using the services of lawyers engaged in the defence of civil liberties. It has also become commonplace for lawyers' offices to be subjected to prolonged police surveillance. This technique is allegedly used to deter clients from entering the office, thereby bankrupting certain lawyers.

It is virtually impossible for lawyers to seek redress from the authorities by way of legal proceedings. The authorities systematically refuse to register complaints from lawyers involved in cases that are contrary to the interests of the government or of the President's family.

On **20 June 2004**, the National Bar Association held elections to select a new President of the Council (*Bâtonnier du Conseil de l'Ordre des Avocats*). **Abdessattar Ben Moussa** defeated the incumbent, Béchir Essid, a result welcomed by the authorities, who had sought to discredit Bechir Essid for having taken positions that dissent from the government view. (http://www.tunezine.com/breve.php3?id_breve=211)

Lawyers' strikes

Following the trial of three members of the Tunisian Workers' Communist Party (see [Access to Justice](#) below), the National Bar Council (whose former President, Bechir Essid, was a defence lawyer in the case) called a nationwide one-day strike on **7 February 2002** to protest at the lack of due process in the court proceedings. Over 3,500 lawyers reportedly went on strike while 80 did not join in.

Six members of the Bar filed a complaint with the Tunis Court of Appeal, which has jurisdiction over complaints against decisions of the National Bar Council, alleging that the strike call was contrary to such "fundamental freedoms" as the freedom to work and professional freedom. The complaint called for retroactive annulment of the decision to strike and for an order to be issued prohibiting the National Bar Council from taking any further such initiatives, which the complainants claimed exceeded the powers granted to it under article 62 of *Law 89-87* of 7 September 1989 governing organization of the legal profession.

According to international observers, the subsequent proceedings, which involved six hearings held during 2002, revealed a dysfunctional justice system in which judges are kept under constant pressure to adhere to guidelines laid down by the authorities. (http://www.icj.org/IMG/pdf/Tunisia_Report_Englis_1_.pdf)

On **8 July 2003**, the Tunis Court of Appeal upheld the position of the six complainants, ruling that the National Bar Council was not competent to call strikes. According to international observers, this decision was received with indignation by other members of the Bar Association. In a press release, the President of the National Bar Council expressed his belief that the judgment was an attack on the independence of the National Bar. The Council announced that it intended to appeal the decision before the Court of Cassation; however, the Council did not receive formal notification of the judgment by the Court of Appeal, without which it was impossible for the case to be referred to the higher court.

On **9 March 2005**, the National Bar Council again called for a national strike in protest at the intrusion by police into the Tunis law courts (*Palais de Justice*) on 2 March 2005, where some fifty lawyers were convening to prepare the defence of attorney Mohammed Abbou. Abbou had been arrested a few days earlier because, in August 2004, he had “disseminated false information” by publishing an internet article denouncing the widespread practice of torture in Tunisia and, in February 2005, another article, criticizing the official invitation of Ariel Sharon to Tunisia for the World Summit on the Information Society to be held in Tunis in November 2005. While the authorities denied that the strike had disrupted judicial activity, a majority of Tunisian lawyers reportedly joined the strike. No legal action was taken in connection with this second strike call. (<http://www.arabnews.com/?page=4§ion=0&article=60215&d=10&m=3&y=2005>)

Cases

On the night of **6 February 2002**, the office of the President of the Tunisian League of Human Rights (LTDH), **Mokhtar Trifi**, was burgled and ransacked by unidentified people.

On **13 December 2002**, lawyers **Nouredine Bhiri** and **Saida Akremi**, together with their children, were assaulted by plain-clothed individuals, believed to be from the State Security Police, as they were getting out of their car in front of their home. Saida Akremi was then taken away in a car to a police station where she was questioned for several hours. That same day, several other lawyers were seriously assaulted in front of Saida Akremi’s law office. They included **Mokhtar Trifi**, President of the Tunisian League of Human Rights (LTDH), and **Youssef Rezgui**, President of the Tunisian Association of Young Lawyers (ATJA).

On **26 December 2002**, the **National Bar Council** filed a criminal complaint on behalf of the lawyers who had been assaulted on 13 December, as well as those whose offices had been subjected to constant surveillance to the detriment of their business. To date, no action has been taken by the authorities with regard to their complaint.

On **16 April 2003**, around 40 members of the State Security Police surrounded the office of **Radhia Nasraoui**, lawyer and wife of political opposition leader Hama Hammami, barring access to other lawyers and clients.

On **13 July 2003**, Mrs. **Radhia Nasraoui** was attacked by plain-clothed policemen as she was on her way to a reception at the Tunisian League of Free Writers, an association that had been prevented from legally registering by the government. She suffered bruises to her arm and was on sick leave for six days. By the end of 2003, there had been no follow-up to the complaint she had filed with the police. On **15 October 2003**, she started a hunger strike in protest at the conditions to which she had been subjected by the government, including police surveillance of her home, the tapping of her telephone, interception of correspondence and the exertion of pressure on her clients. On 10 December 2003, she came off hunger strike which, while it had not succeeded in changing her own situation, had drawn the attention of the international community and the media to the situation of lawyers and human rights defenders in Tunisia. On **4 March 2005**, she was again subjected to police violence as

she was on her way to a public demonstration protesting at the President's decision to invite Israeli Prime Minister Ariel Sharon to Tunis.

On **10 May 2003**, the then President of the Council of the Bar Association, **Bechir Essid**, was assaulted by police officers as he was on his way to the Lawyers' Club "El Soukra" (a building assigned to lawyers by the State and located on the outskirts of Tunis) to investigate its sudden closure. His office had been burgled and ransacked by unidentified people on the night of **25 January 2003**.

Lawyer and President of the International Association for the Support of Political Prisoners (AISPP), **Mohamed Nouri** was repeatedly harassed by the authorities throughout 2003. On **18 July 2003**, on his return from a trip to Switzerland, his home was heavily surrounded by police for 24 hours. On **5 December 2003**, his law office was similarly surrounded in order to prevent a planned press conference from being held to denounce the situation of political prisoners in Tunisia, particularly the situation in Borg el-Amri Prison where prisoners were on the 34th day of a hunger strike. On **9 December 2003**, he was prevented from attending the World Summit on the Information Society that was being held in Geneva. He was stopped at Tunis airport and prevented from boarding the aircraft.

In **January 2005**, lawyer **Abdelraouf Ayadi** received an anonymous phone call threatening him with death if he did not withdraw from defending a case involving an unrecognized political movement, the Democratic Forum for Labour and Freedom (*Forum Démocratique pour le Travail et les Libertés, FDTL*). Over the next few days, his law office was surrounded by police, thus deterring clients from entering. He had lodged a complaint in **November 2004** against the Interior Ministry and the Justice Ministry for obstructing a bailiff sent by him to deliver a notification of complaint against Dr Gueddiche, the President's personal physician and adviser. The police had reportedly confiscated the notification of complaint from the bailiff. There has been no follow-up to this complaint.

Lawyer **Mohammed Abbou** was arrested on **1 March 2005** for having published an article on the internet in August 2004 comparing the prison conditions in Tunisia to those in the Iraqi prison of Abu Grahیب and alleging that torture was practiced by the Tunisian authorities. An arrest warrant which was only presented to his lawyers the day after he was detained had apparently been backdated to 28 February in order to legitimate the arbitrary arrest which took place the day after he had published another article on the internet, this time criticizing the invitation extended by the Tunisian President to the Israeli President, Ariel Sharon. After a summary trial, an 11-year sentence was confirmed by the Court of Appeal and Mohammed Abbou is currently being held in very poor conditions in El-Kef Prison.

On **29 April 2005**, the lawyers acting for Mohammed Abbou, **Nejib Hosni** and **Ousama Bou Tahlja**, were refused entry to El-Kef Prison to meet with their client. Entry was denied despite the fact that they had received official authorization from a judicial authority. Lawyer **Sonia Ben Amor**, who was authorized to enter, was only able to see Mohammed Abbou for a few minutes before being dragged out of the prison by two guards and the prison director, who subsequently filed two complaints against her, one for material damage to the prison and the other for assault and battery of a prison guard.

PROSECUTORS

Prosecutors come under the direct authority of the Ministry of Justice and do not have any autonomy.

ACCESS TO JUSTICE

Access to justice continues to be denied and defence rights are largely ignored in politically-motivated trials. Lawyers and other human rights defenders who have been subjected to government harassment and intimidation are generally deprived of judicial remedies, investigations and a fair trial. Prisoners who are the victims of human rights violations are also largely denied access to justice. The general population has no satisfactory access to justice because the judicial system is extremely corrupt. The decision to open an investigation remains largely at the discretion of the police and court decisions are often the result of bribery.

One positive step towards achieving access to justice was the incorporation of human rights provisions into the amended 2002 Constitution, article 5 of which now obliges Tunisia to guarantee fundamental liberties and human rights, the rule of law, pluralism and human dignity, and enshrines solidarity and tolerance among peoples and generations. Article 9 now provides for the protection of private information, home and correspondence. Lastly, article 12 provides guarantees for those held in pre-trial detention: the decision to detain suspects is the subject of judicial supervision, preventive detention can only take place following a court order and arbitrary detention is prohibited.

Law N° 2003-75 on Support to International Efforts for the Fight against Terrorism and Money Laundering (Loi relative au Soutien des Efforts Internationaux de Lutte Contre le Terrorisme et à la Répression du Blanchiment d'Argent), which was promulgated on **10 December 2003**, contains a disconcertingly broad definition of terrorism, and could seriously curtail freedom of expression and lead to the unacceptable situation of civilians being tried by military courts. In addition, the law allows for the period of pre-trial detention to be extended by the prosecutor's office without having to bring the accused before a judge, and without charges having been brought: it does not clarify whether this refers to the possibility of extending pre-trial detention for up to six days, as specified in article 13 (bis) of the *Code of Criminal Procedure*, or whether this is an unlimited period of pre-trial detention. Article 22 makes it a punishable offence for anyone who has knowledge of terrorism-related information not to inform the government; no exception is made for information provided to lawyers which they are committed to keeping confidential.

The authorities have reportedly increasingly referred suspected Islamic extremists, particularly those arrested after spending time outside of the country during 2002, to military courts. Dozens of civilians have been charged, many *in absentia*, under article 123 of the *Code of Military Justice* for “serving, in time of peace, terrorist organizations operating abroad”. Military courts deprive defendants of fair trial

guarantees and their rulings contravene due process rights in that they are not subject to appeal.

Cases

On **30 January 2002**, the Tunis Military Court convicted **Béchir Ben Zayed, Mounir Ghaith, Abdelbasset Dali** and **thirty absentee co-defendants** for forming an Al-Qaeda-linked terror group. The court imposed prison sentences ranging from 8 to 20 years. Their lawyers claimed the court ignored allegations that testimonies had been obtained under duress, that arrest dates had been falsified to hide irregularities and that the prosecution had failed to produce any convincing evidence against the defendants.

(<http://www.hrw.org/wr2k3>)

On **2 February 2002**, **Hama Hammami**, spokesman of the banned Tunisian Workers' Communist Party, appeared with two of his party colleagues before the Court of First Instance in Tunis for a retrial. They had been tried and convicted *in absentia* in July 1999 for belonging to an unauthorized organization. Just as the retrial was about to start, police officers entered the courtroom and removed the defendants without any explanation and reportedly without the judge's permission. Later in the day, the court reconvened with one of the defendants missing. Neither the remaining defendants nor their lawyers were allowed to address the court during the proceedings. The Council of the Bar Association, whose President, Echir Bessid, was a defence lawyer in the case, called for a national one-day strike of lawyers on **7 February 2002** in protest at the irregularities that occurred during the proceedings. Over 3,500 lawyers reportedly supported the strike.

Two separate proceedings were opened against lawyer Mohammed Abbou, one accusing him of publishing and disseminating false information, disturbing public order and libelling prison institutions and the other accusing him of physically assaulting lawyer Dalila M'Rad. International observers noted serious breaches of defence rights throughout the trial which took place on 28 April 2005 at the Court of First Instance in Tunis. Observers considered that the court's decision sentencing Mohammed Abbou to 11 years' imprisonment for both cases was reached summarily. Over 150 lawyers who had agreed to act on behalf of Mohammed Abbou appealed against the court's decision.

On **10 June 2005**, the 16th Criminal Division of the Tunis Court of Appeal confirmed the decision of the first instance court, despite the fact that defence lawyers filed appeals on grounds of both procedure (flaws in the arrest and investigation and failure to comply with procedural rules during the first trial) and substance (he was convicted for exercising a right that is protected under international law). The appeal hearing was marked by irregularities: police and the public prosecutor barred the defence lawyers from entering the court, the judge prevented the defendant from speaking freely in his own defence when he was given the floor, the court refused to register the list of defence lawyers acting on his behalf, there was a heavy police presence in the court and international observers were thrown out of the courtroom. International observers attending the hearing said that, rather than being a judicial procedure, it was a purely political settling of scores.

LIST OF LEGAL REFORMS OVER THE LAST 2 YEARS

- 1 June 2002:** *Law N° 2002-51 amending the Constitution of 1959.*
- 10 December 2003:** *Law N° 2003-75 on Support to International Efforts for the Fight against Terrorism and Money Laundering (“Loi relative au Soutien des Efforts Internationaux de Lutte Contre le Terrorisme et à la Répression du Blanchiment d’Argent”)*