



UNITED NATIONS HUMAN RIGHTS COUNCIL

**41<sup>st</sup> Session of the Working Group on the Universal Periodic Review**

November 2022

**INTERNATIONAL COMMISSION OF JURISTS' SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF  
TUNISIA**

Submitted on 30 March 2022

*Composed of 60 eminent jurists and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.*

P.O. Box 1740, Rue des Buis 3, 1211 Geneva 1, Switzerland  
Tel: +41(0) 22 979 3800 – Fax: +41(0) 22 979 3801 Website: <http://www.icj.org>  
E-mail: [info@icj.org](mailto:info@icj.org)

## **Introduction**

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Human Rights Council's (HRC) Universal Periodic Review (UPR) of Tunisia. In this submission, the ICJ wishes to draw the attention of the Working Group on the UPR to the following concerns:
  - The detrimental impact of President Kais Saied's 25 July 2021 power grab on the rule of law, the independence of the judiciary, the separation of powers and the protection of human rights;
  - The recent attacks on the independence of the judiciary, including the dissolution of the High Judicial Council;
  - The increased use of military courts to try civilians; and
  - Recent attacks on civil society.

## **Rule of law and separation of powers**

2. On 25 July 2021, President Saied dismissed the government, declared himself the head of the executive branch and the Public Prosecutor Office, suspended the country's parliament (the Assembly of the People's Representatives), and stripped parliamentarians of their parliamentary immunity.<sup>1</sup> To justify his decisions, he invoked Article 80<sup>2</sup> of the 2014 Constitution<sup>3</sup> on exceptional circumstances (*état d'exception*, hereafter State of Exception, SoE), which, under certain conditions, authorizes the President to take any measures necessitated by the exceptional circumstances "in the event of imminent danger threatening the nation's institutions or the security or independence of the country and impeding the normal functioning of the state". The armed forces implemented the President's decisions and prevented parliamentarians from entering their offices and convening.
3. Suspending Parliament, however, is incompatible with Article 80, which provides that the Parliament shall be deemed to be in a state of continuous session throughout the SoE. Article 80 also requires that, prior any SoE declaration, the President inform the President of the Constitutional Court. The same article further provides that the Parliament may request the Constitutional Court to rule on maintaining the SoE thirty days after the entry into force of the SoE and at any time thereafter. However, eight years after the adoption of the Constitution, the Constitutional Court is yet to be established, making it impossible to review the President's decisions. In light of the above, the current suspension of Parliament is null and void and has no legal effect or force.
4. On 22 September 2021, President Saied issued Presidential Decree 2021-117.<sup>4</sup> Referring to Article 80 of the Constitution, the Decree 'suspended' most parts of the Constitution, prolonged the suspension of the Parliament and entrusted the President with full executive and legislative powers, including to rule by decree-law on the organization of the judiciary, while abolishing the provisional body in charge of reviewing the laws' constitutionality.

5. On 13 December 2021, President Saied announced his intention to prolong the suspension of Parliament for a year and to formally amend the 2014 Constitution.<sup>5</sup> He proposed a three-month public consultation online, between January and March 2022, at which point a Constitutional Committee would be assigned to draft the final text for referendum on 25 July 2022, followed by elections on 17 December 2022. The online consultation, heavily criticized<sup>6</sup> for its lack of transparency, inclusivity and attention to data security in its design and implementation, closed on 20 March 2022 with a reported participation of less than four percent of the population.<sup>7</sup>
6. The 2014 Constitution emerged from an inclusive constitution-making process; it was drafted by a legitimate, democratically elected constituent assembly, through a transparent process that involved relevant stakeholders and representatives of the Tunisian population. Suspending significant parts of the Constitution, and dissolving the institutions whose establishment it provides, lacks constitutional or legal basis and violates the right to take part in the conduct of public affairs under international human rights law.<sup>8</sup> The proposed roadmap to amend the Constitution fails to guarantee a participatory, inclusive and transparent process.
7. The measures taken by President Saied under the SoE severely infringe upon the separation of powers and the rule of law as guaranteed by the Constitution. They also run counter to Tunisia's obligations under international human rights law.
8. Under international law and standards, before a State moves to invoke article 4 of the International Covenant on Civil and Political Rights (ICCPR) on States of Emergency, "two fundamental conditions must be met: the situation must amount to a public emergency which threatens the life of the nation, and the State party must have officially proclaimed a state of emergency".<sup>9</sup> When proclaiming a state of emergency with consequences that could entail derogation from any provision of the Covenant, States must "act within their constitutional and other provisions of law that govern such proclamation and the exercise of emergency powers".<sup>10</sup>
9. President Saied's decrees under the SoE fall short of these standards. While they refer to article 80 of the Constitution, they fail to explain why the imminent danger threatening the nation's institutions, as provided by Decree 117, is invoked to justify the suspension of the Parliament or to abolish the provisional body in charge of reviewing the constitutionality of laws, while other branches of the State and constitutional bodies continue to function normally. The ICJ is concerned that the danger evoked by the President, if it exists, does not meet the required threshold under international law and standards for a declaration of a state of emergency, and that the President has abused the exceptional measures under the Constitution to undermine, suspend and abolish other branches of the State and constitutional bodies that can act as a check on his one-man rule. The ICJ is also concerned that the decrees issued after the 25 July 2021 severely infringe the separation of powers and the rule of law, including the supremacy of

the Constitution, without any limit in duration, circumstances and scope, and they are not subject to any scrutiny, such as parliamentary control or judicial review.<sup>11</sup>

**Recommendations:**

**10. The ICJ calls on the Working Group and the HRC to urge the Tunisian authorities to :**

- **Re-establish the Constitutional order and reinstate the Parliament and the constitutional institutions and bodies suspended or dissolved under the SoE; and**
- **Fully comply with Tunisia's obligations under the Constitution and international law setting clear and precise conditions under which the SoE may be declared.**

**Attacks on the independence of the judiciary**

11. Tunisia's 2014 Constitution recognizes the institutional and individual independence of the judiciary and its members and provides for the creation of the High Judicial Council (HJC), an independent judicial council to ensure the functioning and independence of the judiciary.<sup>12</sup> Organic Law No. 2016-34<sup>13</sup> further regulated the HJC, directing its organisation into three separate judicial councils – the judicial, financial and administrative councils – and establishing rules for its effective functioning.<sup>14</sup>
12. At least since invoking Article 80 of the Constitution and declaring a SoE, the President has engaged in a series of actions that have undermined the independence of the judiciary, including by publicly calling for the judiciary's purification.<sup>15</sup> These attacks were amplified through a smear campaign against individual judges and the President of the HJC on social media.<sup>16</sup>
13. On 6 February 2022, the President announced his intention to dissolve the HJC by decree.<sup>17</sup> The following day the police closed the HJC's offices and HJC's members and staff were prevented from entering them.<sup>18</sup> On 12 February 2022, the President enacted Decree 2022-11,<sup>19</sup> dissolving the HJC and replacing it with a provisional body – the Temporary High Judicial Council (THJC), and repealing the 2016 Organic law.<sup>20</sup>
14. Decree 2022-11 grants the executive broad control over the composition of the THJC and the management of the career of judges, in violation of the 2014 Constitution, the law on the HJC and international standards. Under its former composition, almost half of the HJC's 45 members were judges elected by their peers, with other members, including ex-officio judges and elected independent experts, as provided for by article 112 of the 2014 Constitution and articles 10-12 of the 2016 law. In the new THJC, the President of the Republic oversees the appointment of all 21 members of the THJC, of which 12 are ex-officio members and nine are appointed retired judges, under articles 3-5 of Decree 2022-11.
15. Decree 2022-11 allows the executive, through the President, Minister of Justice and Prime Minister, to interfere in the appointment, promotion, transfer, suspension and removal of

judges. Article 18 provides that each provisional judicial council be responsible for preparing proposals for the annual rotation of judges, including appointments, assignments, transfers, promotions and dismissals. However, Article 19 provides for the President to approve these decisions. The President may “object to the appointment, assignment, promotion or transfer of any judge”, and oblige the council in question to review its proposal. Further, Article 20 empowers the President to request the removal of any judge following a report from the Prime Minister or the Ministry of Justice in cases of “professional misconduct”. If the THJC does not rule on the removal request within one month, the President can himself remove the concerned judge, following an investigation by the Prime Minister or the Ministry of Justice.

16. Article 14 of the ICCPR guarantees the right to equality before courts and tribunals and to a fair and public hearing by a competent, independent and impartial tribunal established by law.<sup>21</sup> As a party to the ICCPR, Tunisia is obligated to respect this right and to ensure the adoption of measures to give effect to it. The United Nations Basic Principles on the Independence of the Judiciary affirm that it is the responsibility of all institutions to respect the independence of the judiciary.<sup>22</sup>
17. The Human Rights Committee has stressed in its General Comment 32 that a situation where the executive is able to control or direct the judiciary is “incompatible with the notion of an independent tribunal”.<sup>23</sup> The Committee has further recommended the “establishment of an independent body to safeguard the independence of the judiciary and to supervise the appointment, promotion and regulation of the [judicial] profession”.<sup>24</sup> Judicial councils should be bodies that are independent of the executive and legislative powers and a significant proportion of their membership should be judges who are chosen by their peers.<sup>25</sup> The UN Special Rapporteur on the independence of judges and lawyers has recommended that the judge members of a judicial council should “be elected by their peers following methods guaranteeing the widest representation of the judiciary at all level”.<sup>26</sup>
18. Decree 2022-11 gives the executive ultimate control over membership and removes election by peers, in contravention of international law and standards. Additionally, by granting the executive decision-making powers in the management of judicial careers, including appointment, suspension and removal, Decree 11-2022 undermines the independence of judges and makes them subordinate to the President, in clear violation of Tunisia’s obligations under international law.
19. Article 9 of Decree 2022-11 further imposes a blanket prohibition on judges to exercise the right to strike or to take collective action. The right to strike is enshrined in the 2014 Constitution in Article 36 and is guaranteed by international standards. The right to strike is not absolute, and restrictions on judges’ right to strike may be justified, for instance to ensure that individuals have continuous access to the courts.<sup>27</sup> However, a total prohibition on judges’ exercise of any element of this right would devoid it of its sense. Under international law and standards, any limitations on the exercise of human rights must be lawful, reasonable and justifiable. In

particular, any limitation must be necessary and capable of being demonstrably justified in a free and democratic society.

**Recommendations:**

**20. The ICJ calls on the Working Group and the HRC to urge the Tunisian authorities to:**

- **revoke Presidential Decree 2022-11 and reinstate the HJC; and**
- **end any executive interference in, or control over all aspects related to the selection, appointment, transfer and disciplining of judges and, to this end, immediately end the President's powers to request the suspension or removal of judges.**

**Increased use of military courts**

21. In Tunisia, the number of civilians brought before the military justice system is increasing at an alarming rate.<sup>28</sup> In the past three months alone, “more civilians have faced military courts than did in the preceding ten years”.<sup>29</sup> Since 25 July 2021, military courts have targeted civilians for publicly criticizing President Saïed.<sup>30</sup>
22. As set out in the Code of Military Justice (CMJ),<sup>31</sup> the military tribunals’ jurisdiction is very broad. Their personal jurisdiction extends to civilians, and their subject matter jurisdiction includes cases of gross human rights violations committed by members of the military as well as by law enforcement officials.
23. Article 8 of the CMJ provides that military courts have jurisdiction to try civilians “as perpetrators or co-perpetrators” for offences provided for in Title II of the CMJ. Article 91 of the CMJ, under which the majority of civilians are being charged, criminalizes offences such as attacking the military’s “dignity” or “reputation”, or exposing “facts that may weaken the military”. This article is sufficiently broad to cover the legitimate exercise of the right to freedom of expression concerning the army or the President of the Republic, as high commander of the armed forces.
24. The expansive nature of the current jurisdiction of military courts is inconsistent with international law and standards.<sup>32</sup> These restrict the jurisdiction of military courts to offences of a strictly military nature committed by military personnel, a principle also established by the Tunisian Constitution in its article 110, and exclude ordinary crimes, human rights violations, and crimes under international law.
25. In addition, although military judges are said to be independent from the military hierarchy,<sup>33</sup> military courts in Tunisia cannot be considered independent and impartial under international standards so as to ensure the right of everyone accused of a criminal offence to “a fair and public hearing by a competent, independent and impartial tribunal established by law” guaranteed by article 14 of the ICCPR, among others. The executive, in particular the Minister of Defence, controls the recruitment and appointment process of military judges.<sup>34</sup> The Military

Justice Council (MJC) oversees the disciplinary process for military judges, and the institution is dominated by the Ministry of Defence – as the Minister of Defence sits as its President.<sup>35</sup> Prosecutors and investigating judges operating in military courts are subject to the military chain of command, lacking the required independence and impartiality under international standards<sup>36</sup>.

**Recommendations:**

**26. The ICJ calls on the Working Group and the HRC to urge the Tunisian authorities to:**

- **Immediately end the use of military courts to try civilians, and guarantee the full and unhindered exercise of the right to freedom of expression in accordance with international law and standards; and**
- **Explicitly restrict the jurisdiction of military tribunals to cases involving members of the military for strictly defined military offences**

**The targeting of civil society**

27. The ICJ understands that the Tunisian authorities are planning to amend the 2011 Law on Associations through Presidential decree.<sup>37</sup> The proposed amendment,<sup>38</sup> yet to be promulgated by the President, presents two core threats to freedom of association and expression currently protected by the Tunisian Constitution<sup>39</sup> and guaranteed by international human rights law.

28. First, the proposed amendment empowers the President to dissolve or to refuse to register an association if it “threatens the unity of the State, or its republican and democratic regime”.<sup>40</sup> As such, this amendment would be sufficiently broad to silence associations suspected of opposing the President, particularly considering recent comments describing some civil society associations as vehicles for foreign influence.<sup>41</sup>

29. Second, it would prohibit associations from accepting foreign funding without approval from the Tunisian Financial Analysis Commission.<sup>42</sup> Given that the 2011 law already imposes “complex procedures” on associations attempting to access Tunisian public funds<sup>43</sup>, this amendment would likely further impede their access to funding necessary for their work.

30. The ICCPR, among others, requires that Tunisia guarantee to everyone under its jurisdiction the rights to freedom of association and expression, and that any limits on the exercise of these rights must be prescribed by law and be necessary in a democratic society.<sup>44</sup> In 2020, the Human Rights Committee voiced concern at the inconsistent application of the 2011 law to associations “dealing with politically sensitive issues” and at the barriers to public funding pursuant to the complex procedures in the law, and urged Tunisia to allow these associations to carry out their activities freely and to simplify the procedures for access to public funding.<sup>45</sup>

**Recommendations:**

**31. The ICJ calls on the Working Group and the HRC to urge the Tunisian authorities to:**

- **End the President's attacks on CSOs, including those aimed at delegitimizing them and their important work, and refrain from introducing any amendments to the 2011 Law that would undermine the independence of CSOs;**
- **Ensure that the procedures on the establishment, dissolution, and access to foreign funding of associations be fully in line with Tunisia's obligations under international law.**

#### ENDNOTES

<sup>1</sup> See, Decree 2021-69, 26 July 2021, available at: <https://legislation-securite.tn/law/105034> Decree 2021-80, 29 July 2021, available at: <https://legislation-securite.tn/law/105038>.

<sup>2</sup> Article 80: In the event of imminent danger threatening the nation's institutions or the security or independence of the country, and hampering the normal functioning of the state, the President of the Republic may take any measures necessitated by the exceptional circumstances, after consultation with the Head of Government and the Speaker of the Assembly of the Representatives of the People and informing the President of the Constitutional Court. The President shall announce the measures in a statement to the people.

The measures shall guarantee, as soon as possible, a return to the normal functioning of state institutions and services. The Assembly of the Representatives of the People shall be deemed to be in a state of continuous session throughout such a period. In this situation, the President of the Republic cannot dissolve the Assembly of the Representatives of the People and a motion of censure against the government cannot be presented.

Thirty days after the entry into force of these measures, and at any time thereafter, the Speaker of the Assembly of the Representatives of the People or thirty of the members thereof shall be entitled to apply to the Constitutional Court with a view to verifying whether or not the circumstances remain exceptional. The Court shall rule upon and publicly issue its decision within a period not exceeding fifteen days.

These measures cease to be in force as soon as the circumstances justifying their implementation no longer apply. The President of the Republic shall address a message to the people to this effect.

<sup>3</sup>Constitution of the Republic of Tunisia, 2014, available in English here: [https://www.constituteproject.org/constitution/Tunisia\\_2014.pdf](https://www.constituteproject.org/constitution/Tunisia_2014.pdf)

<sup>4</sup>Presidential Decree 2021-117, of 22 September 2021, available at: <https://legislation-securite.tn/law/105067>.

<sup>5</sup>Presidential Speech, 13 December 2021, available at: [https://www.facebook.com/watch/live/?ref=watch\\_permalink&v=3139262353030080](https://www.facebook.com/watch/live/?ref=watch_permalink&v=3139262353030080).

<sup>6</sup> See, for example, I-Watch, 'Press Release: The National Consultation - victim of poor planning', 22 March 2022, available at: <https://www.iwatch.tn/ar/article/916>.

<sup>7</sup>See, for example, the National, 'Your Opinion Our Decision – Tunisia's Grand E-Survey Falls Flat', 18 March 2022, available at: <https://www.thenationalnews.com/mena/2022/03/18/your-opinion-our-decision-tunisias-grand-e-survey-falls-flat-but-raises-questions/?fbclid=IwAR2CFaR0KgRLGzgETel3IveJF1FAyD0J4pIC1UuT-RO6GsRYQgsvMCQSAMY>.

<sup>8</sup> See, inter alia, ICCPR, art. 25 ; HRC, General Comment No. 25, General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25) CCPR/C/21/Rev.1/Add.7, Para. 5-6, available at: <https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2025.pdf>.

<sup>9</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, CCPR/C/21/Rev.1/Add.11, para. 2, available at: <https://www.refworld.org/docid/453883fd1f.html>

<sup>10</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, CCPR/C/21/Rev.1/Add.11, para. 2, available at: <https://www.refworld.org/docid/453883fd1f.html>

<sup>11</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, CCPR/C/21/Rev.1/Add.11, available at: <https://www.refworld.org/docid/453883fd1f.html>

<sup>12</sup> Constitution of the Tunisian Republic, 2014, available at: [https://lib.ohchr.org/HRBodies/UPR/Documents/Session27/TN/6Annexe4Constitution\\_fr.pdf](https://lib.ohchr.org/HRBodies/UPR/Documents/Session27/TN/6Annexe4Constitution_fr.pdf)

<sup>13</sup> <http://www.isie.tn/wp-content/uploads/2019/03/Loi-organique-n-2016-34.pdf>

<sup>14</sup> Organic Law No. 2016-34 available at: <https://legislation-securite.tn/ar/law/45776>

<sup>15</sup> As reported, inter alia, by Al-Yawm Al-Sabi3, The President calls for purification of the judiciary and for the prosecutor to perform his role, 11 October 2021, available [here](#).

<sup>16</sup> ICJ, Tunisia : Stop Attacks on the Judiciary, 7 December 2021, available at: <https://www.icj.org/tunisia-stop-attacks-on-the-judiciary/>.



- <sup>17</sup> See Presidential Press Conference, Presidential Facebook Page, 6 February 2022, available at : <https://www.facebook.com/watch/?v=330334598837172>.
- <sup>18</sup> See Andalous Agency, Tunisie: 'la Dissolution du Conseil Supérieur de la Magistrature est illégale', 6 February 2022, available at : <https://www.aa.com.tr/fr/afrique/tunisie-la-dissolution-du-conseil-sup%C3%A9rieur-de-la-magistrature-est-ill%C3%A9gal-youssef-bouzackar-/2495411>.
- <sup>19</sup> Decree 2022-11, available at: <https://legislation-securite.tn/ar/law/105201>.
- <sup>20</sup> Decree 2022-11, art. 28, available at: <https://legislation-securite.tn/ar/law/105201>.
- <sup>21</sup> The International Covenant on Civil and Political Rights (ICCPR), art. 14
- <sup>22</sup> 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, Principle 1
- <sup>23</sup> General Comment No. 32, paras. 19-20, available at: <https://digitalibrary.un.org/record/606075>. See also Human Rights Committee, *Concluding Observations of the Human Rights Committee on the Congo*, UN document CCPR/C/79/Add.118, para. 14, available at: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhssZeM5yf4eKnxL2ILDRiS%2fTorgnZfGLnOCkBaX90JDHUYSwfSvuv7E68iaDsslZxo8NcOZuRh9BzQGxfWUR5x%2fdo3XGVy0RVtx16iKPXamW6>.
- <sup>24</sup> *Concluding Observations of the Human Rights Committee on Honduras*, U.N. Doc. CCPR/C/HND/CO/1, para. 16, available at: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsoNGbyGkOIGC%2fg46yWsxEHtCgdIEgydM7DfbfAfHv%2fw15lyZVvZOO5mdar9JLz2udLZWQJ7T3atZaKs%2bgz1owPiN3AtI2nxWin5aMggtzLA>.
- <sup>25</sup> This is further echoed by the Committee of Ministers of the Council of Europe, recommending that at least half of the members be judges chosen by their peers. See Recommendation CM/Rec (2010)12, para 46: <https://rm.coe.int/cmrec-2010-12-on-independence-efficiency-responsibilites-of-judges/16809f007d>. See also, U.N. Special Rapporteur on the Independence of Judges and Lawyers, Report of the Special Rapporteur, 2 May 2018, U.N. Doc. A/HRC/38/38, paras. 106-110, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/122/81/PDF/G1812281.pdf?OpenElement>.
- <sup>26</sup> See also, U.N. Special Rapporteur on the Independence of Judges and Lawyers, Report of the Special Rapporteur, 2 May 2018, U.N. Doc. A/HRC/38/38, paras. 107, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/122/81/PDF/G1812281.pdf?OpenElement>.
- <sup>27</sup> See UN Office of Drugs and Crime, Commentary on the Bangalore Principles of Judicial Conduct, 2005, p. 94, available at: [https://www.unodc.org/res/ji/import/international\\_standards/commentary\\_on\\_the\\_bangalore\\_principles\\_of\\_judicial\\_conduct/bangalore\\_principles\\_english.pdf](https://www.unodc.org/res/ji/import/international_standards/commentary_on_the_bangalore_principles_of_judicial_conduct/bangalore_principles_english.pdf).
- <sup>28</sup> Amnesty International, Tunisia : Alarming Increase in Number of Civilians Facing Military Courts, November 2021, available at: <https://www.amnesty.org/en/latest/news/2021/11/tunisia-alarming-increase-in-number-of-civilians-facing-military-courts/>.
- <sup>29</sup> Amnesty International, Tunisia : Alarming Increase in Number of Civilians Facing Military Courts, November 2021, available at: <https://www.amnesty.org/en/latest/news/2021/11/tunisia-alarming-increase-in-number-of-civilians-facing-military-courts/>.
- <sup>30</sup> This is the case of television presenter Amer Ayad; MPs Abdellatif Aloui and Yassine Ayari and Facebook activist Slim Jebali.
- <sup>31</sup> As established by Decree No. 9 of 10 January 1957 and amended by Decree-Laws No. 2011-69 and 2011-70 of 29 July 2011. <https://www.droit-afrique.com/uploads/Tunisie-Code-2017-justice-militaire.pdf>
- <sup>32</sup> See e.g. Draft Principles Governing the Administration of Justice through Military Tribunals (the Decaux Principles), UN Doc. E/CN.4/2006/58 (2006); Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Principle L(a); Updated Principles on Impunity, Principle 29. See also ICJ, Military jurisdiction and international law: military courts and gross human rights violations, Vol. I, Geneva, 2004 and Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Mission to Tunisia (11-16 November 2012), UN Doc A/HRC/24/42/Add.1 (2013), para 85(c).
- <sup>34</sup> The list of candidates authorized to sit for the examination is established by a commission set up by an order of the Minister of Defence and chaired by the General Prosecutor Director of Military Justice (Decree-Law No. 2011-70, art. 10). The modalities and programme of the examination are also fixed by an order of the Minister of Defence (Decree-Law No. 2011-70, art. 11). However, the Judicial Council of the HJC issued a decision on 14 July 2020, according to which the designation of judicial judges in military courts shall fall within its competence, thereby excluding the role of the executive in the appointment of judicial magistrates provided by art. 2 of Decree-Law No. 2011-70.
- <sup>35</sup> The composition of the MJC is set out at art. 14 of Decree-Law No. 2011-70.
- <sup>36</sup> Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc A/HRC/20/19 (2012), para. 57, available at: <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/20/19&Lang=E>.
- <sup>37</sup> Decree-Law no. 88-2011 of 24 September 2011 on the organisation of associations, available at: <https://www.acm.gov.tn/upload/1410083987.pdf>

---

<sup>38</sup> On file at the ICJ. The government has in fact been working on this amendment since, at the latest, 2017. See al-Bawsala, *l'érosion de la liberté d'association en Tunisie*, 2018, available at; [https://www.albawsala.com/uploads/documents/policybrief-lerosion-de-la-liberte\\_fr.pdf](https://www.albawsala.com/uploads/documents/policybrief-lerosion-de-la-liberte_fr.pdf).

<sup>39</sup> Constitution of the Tunisian Republic, 2014, art. 31 and 35, available at: [https://lib.ohchr.org/HRBodies/UPR/Documents/Session27/TN/6Annexe4Constitution\\_fr.pdf](https://lib.ohchr.org/HRBodies/UPR/Documents/Session27/TN/6Annexe4Constitution_fr.pdf)

<sup>40</sup> Leaked decree, revised art 27(10) and art. 33, read with revised article 4, on file at the ICJ.

<sup>41</sup> See Presidential Speech, 24 February 2022, available at: <https://www.facebook.com/watch/?v=959141931436749>.

<sup>42</sup> Leaked decree, revised art. 35, on file at the ICJ.

<sup>43</sup> See analysis of the Human Rights Committee, Concluding observations on the sixth periodic report of Tunisia, UN DOC. CCPR/C/TUN/CO/6, 24 April 2020, paras. 49-50, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fTUN%2fCO%2f6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fTUN%2fCO%2f6&Lang=en).

<sup>44</sup> The International Covenant on Civil and Political Rights (ICCPR), arts. 19 and 22.

<sup>45</sup> See analysis of the Human Rights Committee, Concluding observations on the sixth periodic report of Tunisia, UN DOC. CCPR/C/TUN/CO/6, 24 April 2020, paras. 49-50, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fTUN%2fCO%2f6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fTUN%2fCO%2f6&Lang=en).