

POLICY BRIEF

Defending the defense: Strengthening protection for lawyers to preserve freedoms in Tunisia

August 2023

Executive Summary

This policy brief highlights the challenges and violations faced by lawyers in Tunisia, as well as key recommendations for preserving their independence, which is increasingly threatened in the context of autocratic rule¹. After visiting the important role played by the profession during the Ben Ali regime until the present day, this paper presents the multiple attacks faced by lawyers in Tunisia that restrict their freedom to exercise their profession.

The policy brief makes five recommendations aimed at preserving the independence and free exercise of lawyers. Among the key recommendations is the need to guarantee a safe environment conducive to the defense of lawyers, by preventing attacks, intimidation and violence against them. This means putting an end to abusive lawsuits, protecting the confidentiality of exchanges between

lawyers and clients, and combating smear campaigns.

In short, Avocats Sans Frontières (ASF) calls for urgent actions to strengthen the protection of lawyers in Tunisia. The suggested recommendations at the end of this document aim to preserve their independence, guarantee their fundamental rights and create an environment conducive to legal defense, free from interference and reprisals, especially from the executive. By adopting these measures, Tunisia will strengthen the rule of law, promote access to justice and improve the human rights situation.

¹ <https://asf.be/600-days-after-article-80-from-the-state-of-exception-to-the-establishment-of-autocracy/>



Introduction

The principle of the right to defense, which has been entrenched since Roman times, has evolved in line with democratic societies. In Tunisia, lawyers represent a counter-power and can only exercise their profession fully and freely within a democratic framework that respects the separation of powers and the rule of the law. The legal protection of lawyers aims to preserve their integrity and independence, but these guarantees are often violated in repressive political contexts. Since July 2021, Tunisia has been transitioning to an authoritarian regime characterized by a collapse of the rule of law and an unprecedented erosion of rights and freedoms, as dozens of political opponents, trade unionists and journalists are behind bars.

More recently, lawyers defending many of these critiques have become targets of abuse and smear campaigns by the regime and its supporters.

This policy brief is the result of the monitoring work that *Avocats Sans Frontières* (ASF) realizes with regards to violations against lawyers. It examines the abuses and violence faced by lawyers defending freedom of expression and the right to participate in peaceful political opposition.

After a brief contextual reminder of the historical and legal framework surrounding profession of lawyers in Tunisia, the document maps the main positions of the bodies representing lawyers since July, 25, 2021. A third section highlights the main attacks and threats against lawyers before and after the 2011 Revolution, highlighting the restoration of the certain practices inherited from the dictatorship.

Historical developments in the legal profession in Tunisia: Repression and attacks on the independence of lawyers

The legal profession in Tunisia has undergone significant historical changes, reflecting the country's political and social transformations. However, these developments have not been smooth, and were episodically marred by periods of repression and attacks on lawyers' independence.

Challenges prior to 2011

Prior to the 2011 Revolution, the former regime kept an open eye on lawyers as perceived them as a potential threat to the established political order. Independent lawyers, who displayed a degree of autonomy from the authorities, were often victims of various forms of repression. They were subjected to harassment, intimidation, attacks on their physical integrity, restrictions on their freedom of movement, abusive tax reassessments and arbitrary legal proceedings.

Emblematic cases bear witness to this repression, such as the arrest and sentencing of **Mohamed Abbou** in 2005 for publishing an article criticizing prison conditions in Tunisia.²

On May 11, 2006, several lawyers, including **Ayachi Hammami, Abderraouf Ayadi and Abderrazak Kilani**, were violently assaulted by political police officers during a sit-in organized in response to the announcement of a bill aiming at the establishment of a training institute for lawyers. The lawyers in question were injured, their clothes torn, and paramedics were prevented from accessing the site for an hour.³

² Mohamed Abbou was sentenced to prison for "publication and dissemination of false news likely to disturb public order", "contempt of court", "inciting the population to break the laws of the country" and "publication of writings likely to disturb public order

(source: <https://nawaat.org/2005/04/29/tunisie-lavocat-dissident-mohamed-abou-condamne-a-3-ans-et-demi-de-prison/>)

³ Source :

<https://www.omct.org/fr/ressources/appels->

In July and August 2008, several lawyers, including **Radhia Nasraoui, Ridha Reddaoui, Mr Zouari, Mohamed Abbou, Saida Garrach, Mondher Cherni, Ayachi Hammami, Khaled Krichi and Chokri Belaïd**, were forbidden by the prison administration to visit their clients who were involved in the protests in the Gafsa mining basin.

Radhia Nasraoui, Mokhtar Trifi, Néjib Hosni, Samir Dilou and Abdelwahab Maatar have repeatedly been victims of harassment, physical assault, intimidation, and restrictions on their freedom to exercise their profession.

On December 28, 2010, **Abderraouf Ayadi** was violently assaulted and abducted outside his home by police officers. On the same day, the late **Chokri Belaïd** was abducted in front of the Jardin du Passage in Tunis. They were released the following day after spending the night in detention.

These repressive practices against lawyers multiplied over the course of Ben Ali's dictatorship, and were increasingly used to restrict the attorney's ability to defend themselves in political trials and to fully exercise their profession.

Post 2011 Revolution: Major improvements but old reflexes remain

After the 2011 Revolution, important changes took place in the Tunisian political and legal landscape, with the constitutional recognition of the legal profession as an essential player in the construction of the democratic ideal. However, despite this progress, lawyers continued to face abuse and violence in the exercise of their profession.

For example, in 2016, **Essia Haj Salem** was sentenced to a year in prison for defamation following a complaint lodged by the director of Mahdia civil prison. She had denounced

the practices of torture and ill-treatment suffered by certain detainees.

Lawyers Ayadi and Laabidi were also prosecuted and sentenced in absentia on October 12, 2016 after condemning the multiple irregularities marring a trial and the lack of impartiality of a judge in charge of a torture case. The complaint lodged by the magistrate in question for "contempt of a judicial official" was contrary to the legal immunity granted to lawyers during the exercise of their functions, according to article 47 of the decree-law organizing the profession of lawyers.

On August 4, 2020, **Nesrine Garneh** was kidnapped, violently assaulted and had her phone confiscated by the chief of the Mourouj 5 police station and his officers, where she was assisting her client during a hearing and after she had denounced procedural flaws.

It is worthy to note here that all the violations listed above took place in the context of cases involving the security apparatus.

Lawyers' rights crisis: The impact of the July 25, 2021 coup

On July 25, 2021, Tunisia's democratic transition came to a halt and an autocratic project was set in motion. Criticism of the measures taken by the President of the Republic, such as the freezing of parliament and the suspension of the constitution by a decree-law, was rare in the immediate aftermath of July 25, but gradually multiplied in the course of the unilateral process initiated by the President.

Prosecutions of political opponents and contrasting voices have increased considerably since February 2023. This increase is certainly due to the adoption of liberticidal decrees such as Decree 54, but above all to the President of the Republic's stranglehold on the judiciary. Indeed, the President of the Republic dissolved the High

Judicial Council (CSM) as early as February 2022, and then arbitrarily dismissed 57 magistrates occupying key positions, such as public prosecutors and magistrates. These decisions were supported by the former President of the Bar, **Brahim Bouderbala**, a staunch supporter of the President of the Republic and currently President of the Parliament (ARP).

New forms of abuse and violence have been observed against lawyers during the past few months, particularly those representing political prisoners. Specific cases testify to these abuses, ranging from intimidation to physical aggression, as we shall see in the last section of this document. Since then, lawyers face restrictions on their freedom to practice, unfounded restrictions, pressure and unjustified interference in their professional activities. These attacks undermine the independence of the legal profession and hinder the establishment of a fair judicial system that respects human rights.

The legal profession in Tunisia: Beyond regulatory frameworks, towards an independent and committed defense

Lawyers in Tunisia are governed by a set of national and international standards designed to guarantee the freedom, independence and legal protection in the exercise of their profession.

Tunisian domestic law

Following the 2011 Revolution, a new legal framework replaced law n°89-87 of September 7, 1989, marking a historic turning point for the profession.

The decree-law of August 20, 2011, published in the Official Gazette (JORT), establishes new provisions regulating the profession in Tunisia. The text ensures immunity for lawyers in the context of their work, sets a non-renewable three-year term for the President of the Bar and the

presidents of sections, and confers on lawyers the responsibility of representing parties, assisting them and conducting proceedings before the courts and other judicial bodies. The decree-law also sets conditions for registering as a lawyer, prohibits cumulating with other paid activities, provides for the creation of a higher institute of the bar, and establishes rules of conduct and discipline for lawyers. The National Bar Council, made up of the President of the Bar, the presidents of the sections and elected members, has legal personality and financial autonomy. Lawyers are bound by the rules of professional conduct and may be subject to disciplinary sanctions in the event of breach of their duties.⁴

The 2014 Constitution also recognized and valued the legal profession by elevating it to the status of a free and independent profession that participates in the establishment of justice and the defense of rights and freedoms. Article 105 of the aforementioned Constitution stipulates that: **"The legal profession is free and independent and participates in the establishment of justice and the defense of rights and freedoms. The lawyer benefits from legal guarantees protecting them and enabling them to carry out their functions"**. However, these constitutional advances have been largely diminished in the constitution of July 25, 2022, by excluding lawyers from public life and downgrading the judicial branch from a "power" to a mere "function".

International law

In addition to national legislation, the legal profession in Tunisia is also regulated by international standards designed to protect human rights and guarantee the independence of the judiciary.

The principles of freedom of defense, independence and legal protection are recognized by instruments such as the

⁴ Source : [Tunisie, le décret-loi sur la profession d'avocat devient effectif - Dr. Brahim LATRECH \(cabinetavocat-bl.com\)](#)

International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples Rights (ACHPR). These standards establish everyone's right to a free defense and the independence of lawyers in the exercise of their profession.⁵

It is the responsibility of the public authorities to ensure that lawyers can practice their profession freely, independently and without fear of reprisal⁶, without being subjected to unjustified restrictions or interventions.⁷ It is important to emphasize that lawyers must not be equated with their clients or their causes in the exercise of their functions.

Furthermore, access to and practice of the legal profession must be free from any discrimination based on political or other opinion.⁸ In accordance with the provisions of the ICCPR and the ACHPR, lawyers must enjoy freedom of expression, belief, association and assembly. They also have the right, as stipulated in the Declaration on Human Rights Defenders, to form organizations, study and discuss human rights, denounce violations and take part in peaceful activities to combat them.⁹

We should also mention the *Basic Principles on the Role of Lawyers* adopted by the United Nations¹⁰. These principles are a set of international guidelines and standards that define the role and responsibilities of lawyers in the justice system. They were adopted by the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana,

Cuba, from August 27 to September 7, 1990. The Basic Principles recognize the importance of the independence of lawyers and emphasize their essential role in the protection of human rights, access to justice and the administration of fair justice. They also set out the standards of ethics and professional conduct to which lawyers must adhere.¹¹

Tunisian lawyers against the July 25, 2021 regime

It is clear that the normative principles outlined in the previous section are now being violated in Tunisia¹², jeopardizing lawyers' ability to provide a free and fair defense. Attacks on the independence of lawyers persist, compromising their crucial role in the judicial system and thus its ability to guarantee fair justice and preserve the fundamental rights of individuals in the country.

Since July 25, 2021, numerous lawyers have been prosecuted for acts carried out in the framework of their clients' defense in both the civil and military courts, in a bid to intimidate and put pressure on these professionals.

1. Nouredine Bhiri's defense lawyers:

The lawyers **Samir Dilou, Inès Ben Harrath, Saïda Akrémi, Anouar Ouled Ali, Ridha Belhaj, Mohamed Sami Triki, Malek Ammar, Naceur Harrabi, Mohsen Sahbani, Monia Bouali, Ramzi Ben Diya,**

⁵ International Covenant on Civil and Political Rights, 1966, Article 14-3-d ; African Union Organisation, African Charter on Human and Peoples Rights, 1981, Article 7

⁶ Human Rights Council, Resolution 35/12, "Indépendance et impartialité du pouvoir judiciaire, des jurés et des assesseurs et indépendance des avocats", 22 June 2017

⁷ United Nations, Compilation of General Comments and General Recommendations adopted by the treaty bodies, General Comment 13, Article 14 (twenty-first session, 1984), July 29 1994.

⁸ *Ibid*, principle 10

⁹ United Nations, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, United Nations General Assembly, A/RES/53/144, March 8, 1999

¹⁰ <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>

¹¹ Source: Teaching manual on human rights and the protection of human rights for lawyers, 2011 (<https://tinyurl.com/3pxkbhvn>)

¹² Source : [Asf – Alliance pour la sécurité et les libertés \(asl.org.tn\)](http://Asf – Alliance pour la sécurité et les libertés (asl.org.tn))

Nizar Toumi, Abderraouf Abba, Abderrazak Kilani, were prosecuted on February 17, 2023 and summoned to appear before the investigating judge of the Bizerte Court of First Instance, following a complaint filed by the General Union of the National Guard regarding acts committed in the exercise of their profession.

The facts date back to January 2, 2022, when the lawyers went to the Menzel Jemil national guard district to obtain information on the whereabouts and conditions of detention of their client, Nouredine Bhiri, arrested on December 31, 2021 and placed under house arrest at an undisclosed location.

2. Abderrazak Kilani

In the same context, **Abderrazak Kilani**, former President of the Bar, was prosecuted by the military justice system for disturbing public order and assaulting a civil servant during a verbal exchange with police officers outside the Habib Bougatfa hospital in Bizerte, where his client Nouredine Bhiri was admitted. Mr. Kilani was incarcerated on March 2, 2022 and released on March 21, 2022, after receiving a one-month suspended prison sentence. The military court of appeal withdrew from the case, overturning the lower court's verdict, and the military prosecutor's office decided to lodge an appeal in cassation.

3. Mehdi Zagrouba and Seiffedine Makhoul :

Mehdi Zagrouba was arrested in September 2021 in the context of the so-called airport affair, while accompanying his client, who was banned from traveling under the S17 procedure.¹³ On May 17, 2022, the military court of first instance sentenced him to 6 months' imprisonment. On appeal, he was sentenced to a harsher 11 months' imprisonment with immediate execution,

and banned from practicing his profession for 5 years. On May 5, 2023, the Court of Cassation overturned the appeal. **Mr Makhoul**, the main protagonist in the airport affair and a lawyer, was sentenced by the Military Court of Appeal on January 21, 2023 to 14 months' imprisonment and a 5-year ban on practicing law. He served his prison sentence and was released on April 27, 2023.¹⁴

4. Hayet Jazzar and Ayoub Ghedamsi

Hayet Jazzar and Ayoub Ghedamsi were prosecuted and summoned on October 12, 2022 to appear before an investigating judge of the Tunis Court of First Instance for contempt of a judicial official, following a complaint filed by a magistrate of the Carthage District Court. They were prosecuted for pleading in defense of a victim of acts of torture committed by police officers, a plea which the court considered to be contempt, thus promoting impunity for the perpetrators of violations. These attacks on the defense contravene the legal immunity granted to lawyers during the exercise of their profession, in accordance with article 47 of the decree-law, which stipulates that "pleadings and conclusions drawn up by the lawyer during or on the occasion of the exercise of their profession may not be the subject of any legal proceedings".

In February 2023, the Tunisian authorities stepped up repression and opened an investigation against 17 political figures in connection with the so-called plot against state security. Several of them are lawyers of political opponents, including in the so-called conspiracy case. Among them :

5. Ghazi Chaouachi :

Ghazi Chaouachi, former secretary general of Attayar and member of Khayem Turki's defense committee, was arrested at his

¹³ <https://tinyurl.com/4vs5vtv4>

¹⁴ <https://lapresse.tn/156834/affaire-de-laeroport-apres-avoir-purge-sa-peine-seiffedine-makhoul-libere/>

home on the night of February 25, 2023 after a search by some twenty police officers, according to statements by his sons. His request for release was also rejected. He is being prosecuted under Decree 54, following a complaint lodged by the Minister of Justice, Leila Jaffel, for a media statement made in November 2022 as well as membership of a terrorist organization and plotting against the internal and external security of the State.¹⁵

6. Ridha Belhaj

Ridha Belhaj, Khayem Turki's lawyer and member of the Salvation Front, was arrested on the same night of February 25 in circumstances similar to those of his colleague **Mr. Chaouachi**. He remains in detention to this day, following the rejection of his request for release.

7. Lazher Lakremi

Political activist **Lazher Lakremi** was arrested in relation to the conspiracy against the state affair on February 13, 2023, after his home was surrounded. He was then taken to the Bouchoucha prison. The defense committee's request for his release was rejected on March 20, 2023. He was released along with political activist Chaima Aissa on the 13th of July 2023 but banned from travelling abroad or appearing in public places – an unprecedented decision largely condemned by lawyers for its numerous procedural flaws¹⁶.

In May 2023, the Tunis branch of ONAT was informed by the Tunis Court of Appeal (in compliance with procedure) that 4 lawyers

¹⁵ <https://tinyurl.com/y725w57r>

¹⁶ <https://tinyurl.com/3a6whrdf>

¹⁷ <https://www.amnesty.org/fr/latest/news/2023/05/tunisia-authorities-add-human-rights-lawyers-to-trumped-up-conspiracy-case/>

had been added to the list of suspects in the conspiracy case:¹⁷

8. Ahmed Nejib Chebbi

Ahmed Nejib Chebbi, victim of harassment and several smear campaigns because of his opposition to President Saied, has been summoned several times for various reasons. He was the target of a complaint filed against him by PDL president Abir Moussi in January 2022. On June 16, 2023, he was summoned to appear before a magistrate in connection with the "conspiracy affair". Nejib Chebbi was kept at liberty.¹⁸

9. Ayachi Hammami

Mr. Hammami, prominent Human rights activist, chairman of the committee of the dismissed judges and member of the committee for the defense of political prisoners has been informed of the opening of a judicial inquiry against him in connection with the "conspiracy affair".

He has already been prosecuted and questioned on the basis of article 24 of decree-law 2022-54 following a complaint filed by the Minister of Justice after public statements in which Mr Hammami criticized the arbitrary dismissal of 57 magistrates.¹⁹

10. Bochra Belhaj Hmida

Bochra Belhaj Hmida, former President of the Tunisian Association of Democratic Women, political activist and opponent of President Saied's regime, was informed on May 3 of the opening of a judicial investigation against her in connection with the case of conspiracy against the State.²⁰

¹⁸ <https://www.mosaiquefm.net/fr/actualite-national-tunisie/1171979/affaire-de-complot-contre-l-etat-audition-de-ahmed-nejib-chebbi>

¹⁹ <https://www.jeunefrique.com/1405880/politique/lavocat-tunisien-ayachi-hammami-poursuivi-pour-avoir-critique-la-justice/>

²⁰ <https://www.lemonde.fr/afrique/article/2023/05/05/en-tunisie-des-avocats-denoncent-les->

11. Lamia Farhani and Abderraouf Ayadi:

Lamia Farhani lawyer and president of the association of families of martyrs and wounded of the revolution "Awfia" and **Abderraouf Ayadi** lawyer and human rights activist were informed on May 3, 2023 that a judicial investigation has been opened against them in connection with a plot to change the form of the State²¹.

12. Nouredine Bhiri

Since May 3, 2023, **Mr Bhiri** has been prosecuted as part of the plot against the State, and the leader of the Ennahdha party has also been arrested twice; first on December 31, 2022, and placed under house arrest as part of a "terrorism" case. Released on March 7, 2022, without any charges being brought against him²², then arrested again and brought before an investigating judge at the Tunis Court of First Instance on February 14, 2023 for a forged Facebook status according to his lawyer, **Ines Harrath**.²³ A detention warrant was issued against him.

13. Islem Hamza

Lawyer and member of the defense committee in the case of "conspiracy against the State", **Ms. Hamza** was summoned on June 21, 2023 to appear before the investigating judge of the Tunis Court of First Instance. She was prosecuted on the basis of article 24 of decree-law 2022-54 following a complaint filed by the General Directorate

of Prisons and Re-education (CGPR) after she denounced the conditions under which political prisoners were transferred, as political prisoners were transported in vehicles usually used for transporting people suspected of terrorism. Ms. Hamza described these vehicles as being "torture vehicles". She remains in liberty.²⁴

14. Abdelaziz Essid

Mr Abdelaziz Essid, a lawyer and member of the defense committee in the case of "conspiracy against the State", was summoned by the investigating judge of the Tunis Court of First Instance following a complaint filed by the Minister of Justice after expressing his opinions at a press conference organized by the defense committee, denouncing delays in the case of conspiracy against the state and the lack of evidence against detainees. He remains in liberty.²⁵

[intimidations-du-regime-de-kais-saied_6172210_3212.html](https://www.espacemanager.com/lavocate-islam-hamza-laissee-en-liberte-apres-son-audition-par-le-juge-dinstruction.html)

²¹ <https://tinyurl.com/f4f3vmv>

²² <https://www.jeunefrique.com/1325853/politique/tunisie-nouredine-bhiri-libere-quel-avenir-pour-ennahdha/>

²³ <https://www.businessnews.com.tn/ines-harrath--nouredine-bhiri-arrete-a-cause-dune-publication-fantome,520,126874,3>

²⁴ <https://www.espacemanager.com/lavocate-islam-hamza-laissee-en-liberte-apres-son-audition-par-le-juge-dinstruction.html>

²⁵ <https://www.webdo.tn/fr/actualite/national/l-avocat-abdelaziz-essid-convoque-par-le-juge-dinstruction/205708>

Conclusion and recommendations

Over the past two years, Tunisia has witnessed a concerning increase in the arrests and interrogations of lawyers, either in performing their duties or because of their involvement with civil society and politics. This alarming trend signifies a pivotal moment, highlighting how lawyers have now become prime targets for the authorities. After severely undermining the independence of the judiciary, the authorities aim to undermine the independence of lawyers and tighten their grip on the justice system. Such a situation poses a significant threat to citizens' access to justice and more broadly freedoms in Tunisia, particularly for those seeking to actively participate in their country's affairs.

It is imperative that the international community and human rights organizations take a stand against these violations of lawyers' rights and ensure their safety and freedom to practice. Protective measures must be implemented to safeguard their independence and free exercise of the legal profession in Tunisia.

To address this critical issue and guarantee the rights of lawyers, a collaborative effort is necessary. Lawyers must unite and continue to defend the rights of citizens in an environment that fosters justice and democracy in Tunisia. By standing together and advocating for the principles of fairness and impartiality, they can push back against attempts to stifle their independence and uphold the integrity of the legal profession.

ASF immediately calls on:

1. Put an end to abusive lawsuits against lawyers:

Put an end to unjustified and politically-motivated legal proceedings against lawyers, ensuring that justice is not used to suppress the defense of rights and freedom of expression.

2. Put an end to intimidation and violence against lawyers:

Take measures to put an end to intimidation, physical violence and smear campaigns against lawyers, guaranteeing their safety and prosecuting those responsible.

3. Amend articles 5, 6, 8 of the code of military justice:

Revise articles 5, 6 and 8 military justice code to put an end to the prosecution of lawyers before military courts. In addition, revise article 65 of the same code, which allows for the banning of lawyers to exercise law by military justice, to guarantee respect for the principle of independence of the legal profession.

4. Respect the Basic Principles of the Role of the Bar:

Respect and implement the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. In particular, ensure the application of articles 16 and 22 of these Principles, which guarantee the independence of lawyers in the exercise of their functions and their protection against reprisals or undue interference.

5. Preserving the legal immunity of lawyers:

Ensure that the legal immunity of lawyers during the exercise of their profession is respected and reinforced, in accordance with article 47 of the decree-law on the organization of the legal profession.

ASF SUPPORTS ACCES TO JUSTICE



Avocats Sans Frontières is an international NGO specialised in the defense of human rights and access to justice

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