

His Excellency Kais Saied

The President of the Republic of Tunisia
Place du Gouvernement
La Kabash, 1030,
Tunis,
Tunisia

Date: 8 March 2022

**Open letter to His Excellency Kais Saied, President of the Republic of Tunisia, from the
International Bar Association's Human Rights Institute**

Your Excellency,

We are writing to you on behalf of the International Bar Association's Human Rights Institute (IBAHRI) to express our grave concern over the recent presidential decree establishing a temporary judicial authority to replace the Supreme Judicial Council (CSM) and affording the executive wide-reaching powers to control appointments, dismissals, and promotions and transfers of judges in Tunisia's most senior judicial body responsible for the independent functioning of the judiciary. Such a move stands in stark contrast to Tunisia's obligations to protect judicial independence under its national constitution and international law. It also further dissolves the separation of powers between government entities, incumbent to the proper governance of any democratic state, which is guaranteed under Tunisian law.

The International Bar Association, established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. It has a membership of over 80,000 individual lawyers, and 190 bar associations and law societies, spanning over 160 countries. The IBAHRI, an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

On 6 February 2022, Your Excellency announced that the CSM would be dissolved by presidential decree, citing that the judicial body served 'political interests', and later, following [international backlash](#), on 10 February announced the CSM will be 'reformed', rather than dissolved, and that, under Presidential Decree 11 of 2022, a temporary judicial body would be established under the direct supervision of the President. Nine of the 21 member-judges are directly appointed by the office of the President, whilst the remainder are indirectly under executive influence through the new, broad power to dismiss 'any judge failing to do his professional duties.'

Such a move effectively renders the President the head of the judiciary, severely undermining judicial independence and the separation of powers between the government branches. This directly contravenes Article 107 of the Tunisian Constitution, which guarantees that judges ‘cannot be dismissed or suspended from their functions, nor be subject to disciplinary sanction, except in the cases and the guarantees regulated by the law and in accordance with a reasoned decision by the Supreme Judicial Council.’ Furthermore, Article 109 holds that ‘All kinds of interference in the functioning of the judicial system are prohibited.’

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

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

The IBAHRI notes that since the 26 July 2021 executive decree that consolidated power to the President’s office, there has been a systematic dismantlement and overall deterioration of democratic institutions established following the Jasmine Revolution of 2011, especially those systems that establish checks and balances over the executive. The recent presidential decree forms part of a prolonged campaign of targeting the functioning of the judiciary since then, including the alarmingly increasing [use of military courts to try civilians](#), in direct contravention of Article 110 of the Constitution, as well as the [smear campaign](#) targeting the CSM, calling for the ‘*purification*’ of the judiciary. Following the suspension of parliament, the judiciary remained the last institutional check on executive power in Tunisia.

In targeting the only body that predicates judicial independence, the separation of powers doctrine that facilitates checks and balances on public functions has been severely and directly undermined, leaving the executive in de facto exclusive control of the government. Your Excellency has cited that such reformation is required to bring an end to corruption, however, **the UN Convention Against Corruption**, to which Tunisia is a state party, states in Article 11 that measures taken to strengthen integrity and to prevent opportunities for corruption among members of the judiciary must not prejudice judicial independence.

The IBAHRI calls on Your Excellency to respect international norms on judicial independence and cease undue interference with the functioning and organisation of the judiciary, in line with the Tunisian Constitution and international legal standards. We urge Your Excellency to guarantee judicial independence by reversing the overly broad powers afforded to the executive by Presidential Decree 11 of 2022 in the appointment, dismissal and control over the careers of judges in the temporary judicial body which replaces the CSM. We urge that any reformation to the judiciary must come through a political reform process in Tunisia, in order to prevent the subjugation of the judiciary, in a manner that responds to the aspirations of the Tunisian people and must be achieved through an inclusive participatory process which includes judges, political parties, civil society and unions. We are willing to provide technical, legal assistance and guidance in this regard.

We would be grateful to receive your assurances that you have received our letter and that our concerns will be addressed as a matter of urgency.



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Cc.

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