

LAWYERS, CONFLICT AND TRANSITION INTERVIEW GUIDE: TUNISIA

INTRODUCTION: RESEARCH OBJECTIVES, RESEARCH TEAM, FUNDER

This is a comparative project looking at the role of lawyers in conflict and transition in Chile, Cambodia, South Africa, Israel, Palestine, and Tunisia. We are interested in the role that lawyers play during conflict and authoritarian regimes, as well as transitional periods, in defending and promoting human rights, engaging with civil society, litigation strategies as well as conversely using law to inhibit transformation. Themes include:

- The meaning of the **rule of law in Tunisia – and the role that lawyers play in shaping understandings**
- **Tunisian legal culture** over time
- The role of legal collectives e.g. **Bar Association**
- **Public perceptions** of law and lawyers
- **The relationship of lawyers to social movements**
- Legal pluralism in Tunisia (e.g. **international human rights law** or **religious law**)

Project is **independent academic research** funded by ESRC involving QUB Law and TJI. It will lead to academic publications and practical reports.

INFORMED CONSENT, ANONYMITY AND DIGITAL RECORDING

- Explain informed consent (including confidentiality, anonymity and going off-the-record) and seek permission for digital recording
- Give interviewees the opportunity to ask questions about the project
- Explain that they can ask for clarity about nature or motives for questions at any stage
- Explain role of each interviewer

ETHICS QUESTIONS AND CLOSING

- Have you had any previous experiences (good or bad) with international researchers? What made them good or bad in your view? Does international research actually help the people of Tunisia? Why did you agree to take part in this research?
- Explain ethical commitment to put something back – two reports for local community – ask if they have any ideas?
- Reminder of confidentiality policies etc and ask interviewees to complete ethics forms
- Exchange contact details

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1. Interviewee's Personal Background

- Brief outline of their career history
 - Tasks in a particular role
 - Dates of particular roles – coincide with political events?
 - Do they have legal qualifications?
 - *Link to how aspects of background relate to project themes*
- (For Lawyers) What motivated them to become a lawyer?

2. Rule of Law and Transition *

- What does the phrase '**rule of law**' mean in Tunisia today?
 - How does this contrast with the rule of law **during the dictatorship**?
 - How do you hope/think the rule of law will change **as the transition progresses**? Why is this important?
 - What needs to happen for this to be achieved? What are the obstacles to this?
 - What is the legal legacy of the Ben Ali regime? Can you provide examples?
- How is the term '**human rights**' understood in Tunisia?
 - What is included or excluded (e.g. socio-economic, gender, LGBT rights, migrants)?
 - Has the transition shifted understandings of human rights? If so, how? Why?

3. Legal Culture and Gender

- How would you describe the **legal culture** in Tunisia (conservative, radical, deferential)?
 - What has shaped it (e.g. legal education, patronage, religion, elite position)?
 - Do any traces of the **colonial period** remain in the Tunisian legal culture? (e.g. education, cultural traits – accents, language, ceremony, robes)
 - Has the transition prompted any changes in the legal culture? If so, are lawyers **driving these changes**? Give some examples of how they are doing this.
- How significant is the fact that the '**founding fathers**' of the nation were lawyers? (e.g. perceptions of lawyers, lawyers' willingness to engage in public debate, a legalistic culture)
- What influence do **international actors** have on the Tunisian legal culture?
 - Which international actors?
 - How do they exert influence? Directly or indirectly? What impact does it have?
 - Can Tunisian lawyers with international contacts and networks be '**brokers**' between the local and the international? In what ways? Can you give some examples?
- Does the **relatively small size** of Tunisia impact on its legal culture?
 - If so, how? (personal relationships between lawyers or judges with different political perspectives, lawyers having been educated together etc)
 - What does this mean for lawyers doing political work?
- **Gender** in the Tunisian legal community
 - Is there sexism in the Tunisian legal community? How is it manifested?
 - Does this impact on the areas of practice in which women decide to work?
 - What implications does this have on responsiveness to gender issues?
- **Youth** in the Tunisian legal community:
 - How hard is it for young people to enter the legal profession?
 - Are they expected to show deference to their elders? Is it difficult to advance careers?

4. Role and Responsibility of Lawyers in Tunisian Society

- (For lawyers) As a lawyer, what do you think your role is in Tunisian society? Is it primarily to represent clients or do lawyers have broader responsibilities?
- What was the role of lawyers in the **dictatorship**?
 - Why did they have this role? How well did they carry it out?
 - How did your own work fit within this role? Give examples.
 - What types of activities by lawyers were viewed as political by the dictatorship?
- Did the **revolution** cause a widening of the role of lawyers? How? Why?
- **How are lawyers seen by the Tunisian people?**

- What has caused these perceptions?
- Do perceptions depend on the **political or religious identity of the lawyer** (Islam v secular; supported or opposed Ben Ali; support or oppose Ennadha (secularists or those who view Ennadha as selling out)? What are the ways to categorise lawyers?
- To what extent is there a **North/South divide** in the actions & perceptions of lawyers?
- Has the transition prompted any changes in perceptions? (e.g. frustration over strikes)
- Does the political leadership try to **intimidate** lawyers?
 - What activities would make the state try to intimidate lawyers?
 - If lawyers say, 'I am just doing my job as a lawyer' – does this offer them any protection from such intimidation? Why, why not?
- Is the **relationship between lawyers and government** shifting in the transition? In what ways? Why?
- How important is **article 105 in the new constitution** protecting lawyers' independence?

5. Legal Collectives

- We understand that the Bourguiba and Ben Ali regimes exerted influence over the Bar Association through ***El Khaliyya***.
 - Why did they do this? Why was the Bar Association seen as **important**? Did they view profession as **political/dangerous**? Was it a **useful asset**?
 - Why was it useful to use '**lawyers against lawyers**' rather than more direct interference?
 - Did the lawyers who joined *El Khaliyya* share any particular characteristics? What were their main **motivating factors**?
 - How did *El Khaliyya* **benefit the regime**? How essential was control of the legal profession to the survival of the regime? Can you give examples of state interference?
 - How did the regime show its **gratitude** to *El Khaliyya* members?
 - Were there any **other ways** in which the state tried to exert influence over the legal profession?
- **Resistance** to *El Khaliyya* and political interference in the profession:
 - Which **groups of lawyers resisted** *El Khaliyya* and government interference?
 - How did they **resist** (sit ins, strikes, hunger strikes, international networks, litigation)? Did they have any **successes**? Which strategies were most successful? Why?
 - To what extent did resistance have **professional repercussions**? Give examples. How difficult was it for non-*El Khaliyya* members to **eke out a living**? Did it act as a **filter** on who entered the legal profession in the first place?
 - Were there any issues on which the legal community was **united** despite *El Khaliyya*? If so, which issues and why were these issues unifying?
 - Did the Bar Association **oppose attacks on lawyers** (eg the Abbou case) or **support social movements** (18 October Movement for Rights and Liberties)? Why did it mobilise on these issues? What significance did its interventions have?
- To what extent do the dictatorship's efforts to '**divide and rule**' lawyers continue to effect the profession?
 - Is the Bar Association divided over any transitional issues? Which issues? Why?
 - What impact, if any, do ongoing divisions have on the Bar's work?
- How would you describe the role of the **Tunisian Bar Association** today?
 - Is it **independent**? If so, how is this manifest? How has this change come about? If not, what factors are inhibiting its independence? What changes need to be made?
 - Is the Bar active in defending lawyers from intimidation today?
 - To what extent does it guarantee respect for the rule of law and human rights?
 - Is it a player in the political transition?

6. Cause Lawyering and Social Movements *

We are particularly interested in lawyers who work for or with civil society groups, or victims, or social movements – lawyers who litigate on behalf of these groups or help them with strategy – sometimes called '**cause lawyers**'.

- (For lawyers) Do you see yourself as such a lawyer? If so, **why** did you become a cause lawyer? How would you define your 'cause(s)'?
- What other types of cause lawyers are there in Tunisia (eg women's rights, LGBT rights)?
- Doing such work, how does one maintain **professional 'neutrality'**? **Does professionalism mean neutrality?**
- Are such lawyers seen as **troublemakers in the profession?**
- **Mobilisation by lawyers:**
 - What issues have prompted lawyers in Tunisia to mobilise? To what extent does this go beyond their core professional concerns?
 - How did **lawyers' protests in 2005** (e.g. Abbou case) fit within social movements? How typical were the lawyers who participated?
 - Did human rights **NGOs support lawyers'** efforts in resisting state interference during the dictatorship? If so, how? How important was this support? Why?
 - Why was **the lawyers' involvement in the revolution important?** What impact did it have that they staged sit ins outside courts **wearing legal robes** (drawing attention to identity)? To what extent did the involvement of lawyers legitimate or undermine the protests? Did they shape strategies (e.g. non-violence)?
 - Why did they **walk at the head of demonstrations** in some cities during revolution? Was this symbolically or politically important? Tell us why.
- Re lawyers working within **human rights organisations or trade unions:**
 - What is the place of lawyers within the organisation?
 - Do lawyers tend to **dominate civil society organisations?** Or are they more likely to be **assistants** to civil society leaders?
 - Do lawyers '**professionalise**' activism? Are they viewed as **conservative, legalistic?**
- (For activists)
 - Are there any **power imbalances** in relationships between lawyers and activists?
 - Do you trust lawyers? Which ones and why?
 - Can you give any examples of good or bad forms of cooperation?
- (For lawyers in private practice) What are the strengths and limitations of this approach?
- Does **international funding** of work or engaging **solidarity networks** affect legitimacy?
- To what extent do cause lawyers in Tunisia experience **burnout?**
- When was the **most difficult period** to be cause lawyer in Tunisia?

7. Litigation Strategies

- **How effective is litigation** as a tactic compared to other strategies (e.g. lobbying, demonstrations)? Give examples where you can say good lawyering, good litigation made a real difference? Explain how this made a difference?
- Has human rights litigation had a **significant positive impact on events outside of the courtroom?** Are there instances when litigation **distracted** people or resources? Cases that have provoked a **backlash?**
- What is **the relationship between lawyers and clients?** Who controls the relationship and the approach taken in cases? Has this dynamic changed over time?
- (For Lawyers)
 - Is there ever an element of **performance** in your work? (eg accused and lawyers singing national anthem together in court in '38 trial' re the 2008 Mining Basin events) If so, give examples. Why does legal performance or legal 'theatre' matter in Tunisia?
 - Are there clients you would not represent? If so, why not? Has this changed over time?
 - How are you perceived if you defend persons affiliated with Salafist movements? By judges? Police? Prison authorities? In what ways is your work blocked?
- Are there any legal settings or issues that lawyers should **boycott** today? Where?
- What role does the **media** play in your work? Are the media responsive?
- What role do international organisations/**diplomats** play in your work?
- Do you expect to get justice (in past and today)? If not, why not? (eg unreformed judiciary)

9. 'State' Lawyers

- Have lawyers who previously challenged the state now **moved to working within government departments**?
 - If so, why have they made this change?
 - Do they tend to work within particular departments? If so, which ones?
 - Has this change required them to make compromises?
 - How do their former comrades view them?
- What is your view of lawyers within the government?
 - Can a government lawyer **advance the cause of justice and equality**? Why?
 - Should a government lawyer seek to **balance the public interest against their responsibilities to the political leaders**? Why? How should they do this?
 - Is the **Transitional Justice Ministry** encroaching on the work of civil society?
- Would you work as a government lawyer? If not, why not?

10. Lawyers and Political Negotiations *

- What role did lawyers play in **political negotiations** during the transition (eg within the High Authority ... and the 'Quartet')?
 - These bodies' objectives sound inherently political, why were lawyers appointed?
 - Was the role of lawyers within these bodies distinct from the other members? What do lawyers bring to the table in such very political settings?
 - To what extent can lawyers or the language of law play a role in mediating disputes between negotiating factions/finding a common language?
 - Do lawyers ever create obstacles in negotiations? How?
- What role are lawyers playing now in shaping legal reforms during transition?

11. Lawyers and Dealing with the Past during the Transition *

- How important is dealing with the past for addressing contemporary problems?
- To what extent have lawyers **driven the human rights and anti-corruption agenda**? In what ways (e.g. build capacity of NGOs)? Why have they been able to do this?
- Is it necessary that lawyers appointed to bodies to deal with the past be **representative** of different views (e.g. Islamist, leftist, liberal and independent)? Why?
- **'Group of 25'** lawyers to investigate corruption (inc corrupt lawyers)
 - How were lawyers appointed to the Group checked to ensure they were not corrupt?
 - Did they face any obstacles (e.g. from political authorities, judiciary)?
 - How did the legal community view the group members?
- **Truth Commission**
 - What role did lawyers play in shaping the **truth commission**? What role will lawyers play **within** this commission? Do lawyers involved in truth commissions help us to get to truth or do they get in the way of finding truth?
 - What skills do lawyers bring to the documentation process?
 - To what extent does international law shape its work and recommendations?
- **Transitional Justice Dialogue (2012) and Law (2013)**
 - What was the role of lawyers in the Technical Committee supervising the Dialogue? Why was it necessary for lawyers to be in this role?
- There have been legislative proposals to **vet** the legal profession, what are your views on these proposals? Why have they been made? What proposals, if any, would you suggest?
- What does justice mean for victims of the dictatorship? To what extent does the Tunisian legal system **deliver justice for victims**? What are the main **obstacles** to justice?

12. Legal Pluralism / Role of International Law

- To what extent do Ottoman, French, and religious law form part of the Tunisian legal system? Give us examples.
- To what extent have traditional and local systems of justice persisted post-Ben Ali? How effective are they? Examples please.
- How **receptive are Tunisian judges** to arguments based on international law? Why?

TUNISIA TIMELINE

1600s	Tunisia becomes part of the Turkish Ottoman empire, but has a high degree of autonomy.
1881	French troops occupy Tunis. France controls economic and foreign affairs; Tunisia is a French protectorate from 1883.
1922	First Law School opens
1934	Habib Bourguiba founds the pro-independence Neo Dustour Party
1956 20 March	Tunisia becomes independent with Bourguiba as prime minister.
1957	The monarchy is abolished and Tunisia becomes a republic.
1961	Tunisia says French forces must leave their base in Bizerte. Fighting breaks out. France pulls out of Bizerte in 1963, after long-running talks.
1975	Bourguiba granted presidency for life
1981	First multi-party parliamentary elections since independence. President Bourguiba's party wins by a landslide.
1987	Bloodless palace coup: Prime Minister Zine El Abidine Ben Ali has President Bourguiba declared mentally unfit to rule and takes power himself.
1989	Ben Ali wins presidential elections. He goes on to be re-elected four more times, the last time in 2009.
1999	First multi-party presidential elections; Ben Ali wins a third term.
2000 April	Habib Bourguiba, the founding father of independent Tunisia, dies.
2002 May	President Ben Ali wins a referendum on constitutional changes, paving the way for his fourth term.
2004 October	President Ben Ali wins a fourth term with 94% of the vote.
2005	World Summit on Information Society and the creation of the 18 October Movement for Rights and Liberties and Abbou case
2007 January	Islamist militants and security forces clash in Tunis. Twelve people are killed. Interior Minister Rafik Belhadj Kacem says the Salafist militants had come from Algeria.
2008	Mining Basin events – 38 trial
2009 October	President Ben Ali wins a fifth term in office.
2010 December	Protests break out over unemployment and political restrictions, and spread nationwide.
2011 January	President Ben Ali goes into exile amid continuing protests. Prime Minister Mohammed Ghannouchi announces an interim national unity government, only partly satisfying protesters.
2011 February	Prime Minister Ghannouchi resigns, responding to demands by demonstrators calling for a clean break with the past.
2011 March	Date for election of a constitutional council set for 24 July. Rally for Constitutional Democracy (RCD), the party of ousted President Ben Ali, is dissolved by court order.
2011 April	Libyan troops cross border into Tunisia during clashes with rebels. Thousands of Tunisians flee by boat to the Italian island of Lampedusa.
2011 June	Ex-president Ben Ali is tried in absentia for theft. He is sentenced to 35 years in prison.
2011 October	Parliamentary elections. Ennahda Islamist party wins, but falls short of an outright majority.
2011 November	National assembly which will draft a new constitution meets for first time.
2011 December	Human rights activist Moncef Marzouki is elected president by the constituent assembly, Ennahda leader Hamadi Jebali is sworn in as prime minister.
2012 May	Hundreds of Salafi Islamic extremists clash with security forces and attack a police station in Jendouba in a dispute over Salafi attacks on alcohol sellers.
2012 June	Former president Ben Ali is sentenced to life in prison over the killing of protesters in the 2011 revolution. He is living in Saudi Arabia, which refuses to extradite him. The government imposes an overnight curfew in eight areas following riots by Islamists against an art exhibition. One man died after being shot in the head.

2012 August	Thousands protest in Tunis against moves by Islamist led government to reduce women's rights. Draft constitution refers to women as "complementary to men", whereas 1956 constitution granted women full equality with men.
2013 February	Prime Minister Jebali resigns after his ruling Islamist Ennahda party rejects his proposals to form a government of technocrats after the killing of an opposition anti-Islamist leader. Ennahda rejects opposition allegations that it was behind the killing of Chokri Belaid, whose death prompted violent protests.
2013 July	Assassination of opposition politician Mohamed Brahmi prompts mass demonstrations, a general strike and calls for the government to resign.
2013 October	Governing Islamist party, Ennahda, agrees to hand over power to caretaker government of independent figures tasked with organising fresh elections in 2014.
2013 December	After months of wrangling, Ennahda and the mainly secular opposition agree on appointment of Mehdi Jomaa as head of interim government.

- Over 10,000 people were arbitrarily detained during his rule. Tunisia's 2003 Anti-terrorism Law allowed security forces to arrest and try civilians who had allegedly committed acts of terrorism.
- Many cases were heard in a military court, where proceedings were closed to outside observation, and where defendants claimed convictions were often based on confessions obtained through the use of **torture**. There are thousands of cases of torture