Judicial Off-Bench Resistance in Post-Revolution Tunisia

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Judicial Off-Bench Resistance in Post-Revolution Tunisia

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ABSTRACT

Since the populist Kaid Said has risen to the office of the presidency in Tunisia, the country has been experiencing its largest threat to its hard-fought democracy since the 2011 Revolution. In this paper, I argue that Tunisian judges have utilized off-bench resistance tactics to protect their own autonomy from executive encroachment. I find that judges’ strikes are the dominant form of off-bench resistance. I explain this by looking at the relationships that judges’ unions maintain with other civil society organizations and unions, particularly the UGTT. I argue that the post-revolutionary environment, the strong union culture in Tunisia, and the ability of judges to mobilize allies explains why judicial off-bench resistance has manifested as strikes.

INTRODUCTION

An exhausted title assigned to Tunisia is that it was the “sole success story of the Arab Spring.” However, this changed in 2019 when Kais Said, a populist with no political party or previous political experience, was elected president. Upon taking office, President Said attacked the democratic institutions that Tunisians worked so hard to build following the 2011 Jasmine Revolution. Since then, international media and academics have reversed Tunisia’s previous attribution as the single democracy to emerge from the Arab Spring. Often neglected by academics, however, are the country’s sources of resistance. While the literature discusses youth disengagement in formal political participation and nostalgia for the autocratic past under the control of Zine El Abidine Ben Ali, it overlooks evidence of Tunisian forms of defiance. In this paper, I examine one professional community in Tunisian society that has been resisting executive encroachments on its independence: judges.

This paper particularly focuses on judicial off-bench resistance, defined here as the tactics employed by judges outside of the courtroom to petition a cause or stage a protest, often against executive manipulation. What judicial off-bench resistance tactics have Tunisian judges historically used and currently adopt? Through news articles, I find that strikes, organized by judges’ unions, are the most visible manifestations of judicial off-bench resistance. Why have
strikes become the dominant tactic utilized by Tunisian judges? I argue that the country’s history of strong labor unions, the judges’ unions’ collaboration with other professional associations, and Tunisia’s strong civil society help explain why off-bench resistance often manifests as strikes.

This paper seeks to contribute to the under-researched field of judicial off-bench resistance. By focusing on judicial off-bench resistance, particularly strikes, I bring attention to the ways in which judges can contribute to democratic consolidation and counter democratic backsliding outside of the courtroom, even if democratic preservation is not the motivation for their off-bench resistance, but rather preservation of their independence. By concentrating on a specific tactic of judicial off-bench resistance, I find that the tools of resistance adopted by judges can also teach us something about the historical and current political context in a particular country.

EVIDENCE OF DEMOCRATIC BACKSLIDING SINCE 2019

This section begins with a brief overview of democratic backsliding in Tunisia, particularly since 2019 when Kais Said moved into the presidential palace. In the literature, I identified five main categories of democratic backsliding. I explain the attraction to populist politics, constitutional manipulation, restrictions on the opposition, and attacks on civil society (see “Explaining Judges’ Strikes” for the discussion on civil society). I follow this overview with a deeper analysis of Said’s assaults on the judiciary.

The rise of populist politics in Tunisia highlights a growing disenchantment with democracy. The growing popularity of populist politicians can be largely attributed to the failures of democratization to improve socio-economic conditions; decrease inequality between the wealthier coastal regions and poorer in-land regions; and the failure of political parties to
appeal to voters, especially the youth. These factors led to the presidential electoral victory of the populist Kais Said in 2019, who has played the largest role in dismantling Tunisia’s democratic institutions since the revolution.

Continued youth economic discontent post-democratization facilitated the rise of Tunisian populists. Young people were the leaders of the Arab Spring, in large part because youth economic prospects were significantly worse than they were for older generations.1 Tunisian youth took to the streets in 2011 demanding, “Jobs, Freedom, and Dignity,” expecting democratization to not only enhance individual freedoms, but improve economic conditions.2 However, economic hardship has only worsened since the revolution, particularly since the Covid-19 pandemic. In the rural interior where the Arab Spring sparked, inflation and the unavailability of basic food goods is even more acute.3 The rural-urban economic divide has not shrunk since democratization and the interior feels just as excluded from power as it did before the revolution.4 Representational inequalities in the government add another layer to societal discontent. Despite having led the revolution and making up 60 percent of the country’s population, young people under age thirty-five are excluded from government positions.5 This has contributed to youth disillusionment with formal politics and to an extent, democracy. They have instead turned their political participation toward civil society organizations and social movements.6

2 Houda Chograni, “Tunisia’s Revolution Has Neglected the Country’s Youth,” Arab Center (2021).
4 Sadiki, 2019.
5 Chograni, 2021.
6 Yerkes, 2017.
6 Chograni, 2021.
The combination of economic, geographic, and representational inequalities merge with a disenchantment with party politics. Of the Tunisian political parties, the moderate, Islamist Ennahda party played the largest role in the democratization process and is today the only consistent party in Tunisian politics.\(^7\) However, it has disengaged voters.\(^8\) Voters feel that Ennahda should have been more successful in addressing economic concerns because of the consistently high degrees of power that it has maintained since the revolution.\(^9\) This contributed to feelings of dissatisfaction with democracy and consequently led Tunisians to populist candidates who promise that they are the only ones capable of addressing these grievances. When political parties fail to deliver, voters seek change, which often takes the form of a populist outsider.\(^10\) In Tunisia, this manifested into the presidential, electoral victory of Kais Said in 2019 and populist parliamentarians winning their elections.

Kais Said posed the most severe threat to the country’s democracy in July 2021, when he staged what has since been described as a “self-coup.” On July 25, 2021, Said suspended parliament, fired the prime minister, began ruling by presidential decree, and revoked parliamentary immunity to legally pursue corrupt parliamentarians.\(^11\) The following day, he issued a month-long, nationwide curfew.\(^12\) In September 2021, Said suspended all but the preamble and first two chapters of the constitution.\(^13\) He also granted himself the right to rule by decree and banned anyone from overturning his laws.\(^14\) In March 2022, Said turned the

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\(^8\) Ibid.

\(^9\) Ibid.


\(^12\) Ibid.


\(^14\) Ibid, 7-8.
suspension of parliament into a full dismissal. He accused parliament of a failed coup attempt and a conspiracy against state security. Said argued that he acted within the confines of Article 80 of the constitution, which provides for the declaration of a state of emergency in the event of an “imminent threat.” However, there was no clear “imminent threat” on which Said based utilization of the article. Moreover, because Said had blocked the establishment of the Constitutional Court, he was able to invoke Article 80 without judicial challenge.

In July 2022, President Said held a referendum to adopt a new constitution, which was boycotted by Tunisia’s largest trade union, the General Union of Tunisian Workers known by its French acronym UGTT, and the major political parties. Although the referendum to accept the constitution passed with 94 percent of the vote, only 30 percent of eligible voters turned out. The new constitution concentrates power into the hands of the president, particularly by removing previous democratic safeguards. For example, it does not guarantee the independence of the judicial oversight institution known as the High Judicial Council (HJC), it increases the president’s power to control judicial appointments, and allows the president unchecked powers during a declaration of a state of emergency. The new constitution provides for a nine-member constitutional court (the previous constitution provided for twelve) who are all nominated by the

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16 Ibid.
18 Haythem Guesmi, “What happened in Tunisia was a coup,” Al Jazeera (27 July 2021).
19 Saleh Al-Dahni, “What is Article 80 which Tunisia's president has used to justify his ‘coup,’?” Middle East Monitor (27 July 2021).
21 Boussen and Lakhal, 2022.
president. Previously, the president, parliament, and Supreme Judicial Court each had the power to appoint four justices.

Throughout Kais Said’s presidential term, Tunisian authorities have arrested key opposition figures, particularly in 2023. Since February, authorities have arrested more than twenty political opponents, including “politicians, former government ministers, businessmen, trade unionists, and journalists.” One of those arrested in February was Noureddine Boutar, the owner of Tunisia’s most popular radio station, Mosaique, which has been critical of Said and his government. Boutar was interrogated concerning the station’s publications before being charged with “money laundering and illegal enrichment.” Law enforcement also arrested Mehdi Jelassi, the head of the National Syndicate of Tunisian Journalists (SNJT), which defends the rights of judges to free speech. Journalists and staff members at the media station One TN were arrested for “conspiring against the state’s internal security.”

Prominent members of opposition parties were also arrested and prevented from traveling abroad in February 2023. Some of them were leading members of the Ennahda party. Noureddine Bhiri, Ennahda’s deputy leader and a former minister of justice, was arrested and charged with “assault with the intention of changing the form of state,” with evidence coming

24 Ibid.
“HRW calls on Tunisia’s president to halt crackdown on judiciary,” Al Jazeera (28 February 2023).
28 Alessandra Bajec, “Political Arrests in Tunisia Mark Escalation in Kais Saied’s Power Consolidation,” The Tahrir Institute for Middle East Policy (6 April 2023).
29 Ibid.
from a Facebook post. A year before, Bhiri was placed under house arrest on “terror-related charges” before his release in March 2022. Said Ferjani, another leading figure in the Ennahda party, was arrested without a charge and prevented from traveling abroad. Authorities also arbitrarily banned Sihem Bensedrine, the former head of the Truth and Dignity Commission, from traveling abroad without judicial authorization. The government charged him/her with falsifying parts of the commission’s report.

Other political parties were targeted. The government arrested Lazhar Akremi, the former head of the Nidaa Tounes party, following a home raid. A few months earlier, Akremi was accused of “plotting against the state’s external security” and making critical statements against the justice ministry. The leader of the Republican Party, Issam Chebbi, and the former head of the Democratic Current Party, Ghazi Chaouachi, were also arrested. Leading members of the National Salvation Front, the opposition coalition composed of political parties and organizations that formed following Said’s “self-coup,” were arrested. These included Jaouhar Ben Mbarek, Chaima Aissa, and Issam Chebbi, all critics of Said and top figures in the coalition. President Said said that those arrested were “terrorists” who had “plotted against state security” and went

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30 Ibid.
31 Ibid.
32 “HRW calls on Tunisia’s president to halt crackdown on judiciary,” Al Jazeera (28 February 2023).
33 Ibid.
34 Ibid.
35 Ibid.
36 Ibid.
37 Ibid.
38 Ibid.

“HRW calls on Tunisia’s president to halt crackdown on judiciary,” Al Jazeera (28 February 2023).
Bajec, 2023.

“Tunisia police arrest prominent figures as crackdown continues,” Al Jazeera (22 February 2023).
on to blame those arrested for causing the shortages of basic goods.\textsuperscript{39} The arrested opposition figures have since been charged with crimes that include, “setting up a terrorist conspiracy, recruiting and training individuals to commit terrorist acts, conspiring against state security, and committing a disrespectful act against the president.”\textsuperscript{40}

In April 2023, there was another round of arrests of major political opposition leaders. Rached Ghannouchi, one of President Kais Said’s main opponents and the co-founder of Ennahda, was arrested at his home and taken “to an unknown location.”\textsuperscript{41} Another leading figure of Ennahda and critic of President Said, Abdelhamid Jelassi, was arrested along with Khayam Turki, a former leader of the Ettakatol party.\textsuperscript{42} Turki was arrested after hosting a meeting with other opposition figures “to rally” against Said.\textsuperscript{43} Police also evacuated and searched the Ennahda party headquarters, and surrounded the National Salvation Front offices to stop members from holding a news conference concerning Ghannouchi’s arrest.\textsuperscript{44} Said made the same claims that he had used in the February arrests, arguing that those detained were “terrorists conspiring against state security.”\textsuperscript{45}

Throughout President Said’s term in office, he has adopted reforms that have eroded Tunisia’s democratic institutions. The failure of the revolution to improve the economic situation has increased the attractiveness of his populist appeals. Since becoming president, Said has ruled by decree, rewritten the constitution, arrested major opposition figures, threatened civil society,
and attacked the independence of the judiciary. In the following section, I will provide an overview of the recent attacks on the judiciary.

ATTACKS ON THE JUDICIARY

To contextualize the forms of judicial off-bench resistance that Tunisian judges have employed since the revolution, I provide a timeline of the major incidences of judicial manipulation beginning in 2012 after the revolution until 2023. President Said launched his heaviest assault against the judiciary at the start of 2022. His government threatened, fired, and arrested judges in the name of fulfilling his campaign promises of fighting corruption and terrorism.

Post-revolution governments have purged the judiciary and have failed to create a constitutional court. In 2012, just a few months after the revolution, the new government led by the Ennahda party announced that it was firing eighty-two judges. Justice Minister Noureddine Bhiri (one of the opposition leaders arrested in February 2023) argued that he was combating corruption by removing the judges.46 Since the Revolution in 2011, Tunisia has been without a constitutional court. In 2021, President Said rejected parliament’s attempt to set up a constitutional court.47 With the absence of a constitutional court, Said has been able to consolidate power and rule by presidential decree without legal challenges. Some of the power granted to the Constitutional Court by the 2014 Tunisian Constitution included the power of judicial review, the power to impeach the president following a two-thirds majority vote by the Assembly, and the ability to determine whether or not a state of emergency can be maintained.48

48 Aida Delpuech and Samia Hanachi, “Without a Constitutional Court, ‘We Have No Defence Against Authoritarianism,’” Inkyfada (29 July 2021).
Due to the lack of a constitutional court, a temporary council was established to determine the constitutionality of new laws adopted. However, its only power is to determine the constitutionality of new laws; it cannot regulate the declaration of a state of emergency or rule on the constitutionality of previously adopted laws.

President Kais Said started the 2022 new year by attacking the High Judicial Council (HJC). The HJC was established following the revolution and constitutionally mandated to guarantee the independence of the judiciary and protect it from executive encroachment. It was mostly composed of elected judges, prosecutors, and legal, financial, tax, and accounting experts. The council was responsible for “appointing, removing, promoting, and transferring” judges between courts. It also decided cases pertaining to the lifting of judicial immunity, managed judges’ resignations, organized judges’ court rotations, and acted as the disciplinary committee for judges.

First, on January 19, 2022, President Said adopted Decree-Law No. 2022-4, which cut-off financial privileges afforded to HJC members. On February 7, 2022, state security shut down the HJC building, preventing all members from entering. Youssef Bouzakher, the prosecutor of the Court of Cassation (Tunisia’s highest appellate court) and the council’s former president, was prevented from entering and later accused of terrorism. A few days later, on February 12, 2022, Said dissolved the HJC and arrested two judges without charges against them. One of these judges was Taieb Rached, the former president of the Court

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49 Delpuech and Hanachi, 2021.
50 Ibid.
52 Ibid.
54 Ibid, 3.
55 Ibid, 2.
57 Ibid.
of Cassation, who was arrested for alleged financial corruption.\(^{58}\) The other judge, Bechir Akremi, who was the former general prosecutor of the Tunis Court of First Instance, was arrested due to “his link” to the investigation of the assassination of political activist Chokri Belaid in 2013.\(^{59}\) Following the council’s termination, Said issued decree no. 2022-11. The order created a temporary HJC composed of twenty-one members, nine of whom were appointed by Said himself.\(^{60}\) Through the same decree, Said also granted himself the power to intervene in judicial appointments, dismissals, and the career tracks of judges and prosecutors.\(^{61}\)

On June 1, 2022, Said granted himself the power to dismiss judges and prosecutors if they threaten “public security” or “the supreme interests of the country,” or “impinge on the reputation, independence or proper functioning of the judiciary.”\(^{62}\) In a second decree issued the same day, Said fired fifty-seven judges and prosecutors, accusing them of “financial and moral corruption, and obstructing investigations.”\(^{63}\) Additionally, he made the decision to fire the judges under a decree that prevents judges from immediately appealing.\(^{64}\) In a speech, President Said accused the judges of “obstructing terrorism-related investigations, financial corruption, ‘moral corruption,’ adultery, and participating in ‘alcohol-fueled parties.’”\(^{65}\) He also used his speech to personally target individual judges, specifically a female judge accused of adultery, Khira Ben Khalifa.\(^{66}\) After the speech, Said’s supporters flocked to social media and led an

\(^{58}\) Bajec, 2023.
\(^{59}\) Ibid.
\(^{60}\) “Tunisia: President Intensifies Attacks on Judicial Independence,” Human Rights Watch.
\(^{61}\) Ibid.
\(^{62}\) “Tunisia: Arbitrary dismissals a blow to judicial independence,” Amnesty International.
\(^{63}\) “Tunisia: Arbitrary dismissals a blow to judicial independence,” Amnesty International: 10-11.
\(^{64}\) “Tunisia: President Intensifies Attacks on Judicial Independence,” Human Rights Watch.
\(^{65}\) Ibid.
online harassment campaign against Ben Khalifa. They leaked personal data related to her case, including the official police report and a “virginity test medical examination.” Other judges have also reported being victimized by Said’s followers on social media.

Said’s critics argue that most of the judges were fired for refusing to succumb to “political or police pressure.” Some of the fired judges revealed that they were not informed of the reasons for their dismissal, the evidence against them, or given a hearing or means to appeal. Other judges reported to the media that they were fired because of the decisions that they had given on sensitive political cases in the past. A handful of dismissed judges went public and exposed that they had been fired after “refusing to follow Said’s instructions on trying political cases against his opponents.”

On August 9, 2022, an administrative court ordered the reinstatement of forty-nine of the fired fifty-seven magistrates. However, the Justice Ministry refused to do so, despite that the ruling is not even allowed to be appealed. Instead, Said’s Justice Minister announced that he was pursuing criminal charges against the dismissed judges and had opened investigations related to “financial, economic, and terrorist crimes.”

President Said has also targeted prominent lawyers and judges handling the cases of arrested opposition leaders, saying that “anyone who dares to acquit [those arrested] is their

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67 Ibid.
68 Ibid.
69 Ibid.
70 Bajec, 2023.
72 Ibid.
73 “HRW calls on Tunisia’s president to halt crackdown on judiciary,” Al Jazeera (28 February 2023).
74 “Tunisian Judges on Strike: Is the Independence of the Judiciary at Stake?” The Tahrir Institute for Middle East Policy (15 June 2022).
75 Ibid.
76 Ibid.
77 Ibid.
accomplice.” On February 13, the government arrested the lawyer defending dismissed judges, Lazhar Akremi, after he had criticized the arbitrary dismissal of the judges. He was arrested without a charge, but the leaked search warrant contained vague language that accused him of “conspiracy against internal and external state security.” Ayachi Hammami, a lawyer in charge of the Defense Committee for the Dismissed Judges, faces charges after making critical comments regarding the treatment of the magistrates. On March 4, 2023, Tunisia’s largest judges’ union, known as the Association des Magistrats Tunisiens (AMT), released a statement denouncing “significant and unprecedented pressure on the judicial system as well as threats and intimidation exerted on the judges in charge of said cases.” The AMT also exposed that judges adjudicating major political cases, including concerning the arrests of politicians, journalists, and trade unionists, have been threatened by the president and his supporters on social media.

In this section, I constructed a timeline of President Kais Said’s attacks on the judiciary. Since coming to office, Said has prevented the formation of the Constitutional Court, dismantled the HJC, fired judges, arrested judges, defamed judges, threatened to suspend judges’ salaries, and issued decrees that enhance his power over judicial appointments. These attacks will contextualize the forms of off-bench resistance that have emerged in response. I use this context as part of my theoretical framework to argue that it is not necessarily dedication to democracy

77 Agence France-Presse in Tunis, “Tunisia forces arrest senior opposition figure as crackdown escalates,” The Guardian (24 February 2023).
82 Ibid.
that motivates judges to go off-bench. Instead, I will argue that these threats to judicial independence motivate judges to go off-bench to preserve their autonomy.

METHODS

My first research question, which asks how Tunisian judges have responded to executive interference, is answered using primary and secondary source literature. I read news articles and reports published by Non-Governmental Organizations (NGOs) to find evidence of judicial off-bench resistance. Based on my finding that judicial off-bench resistance largely manifests as strikes, I developed my second research question, which asks why strikes have become the dominant method of resistance. To answer this question, I interviewed a Tunisian political scientist with expertise in this field. I followed this by studying the recent, revolutionary history of union organizing to explain why strikes are the dominant manifestation of judicial off-bench resistance.

JUDICIAL OFF-BENCH RESISTANCE TACTICS

What are the different manifestations of judicial off-bench resistance? How have judges fought to preserve their own autonomy through off-bench resistance? In this section, I analyze judicial off-bench resistance literature to identify what forms of resistance have already been documented. This is necessary in order to construct a framework that explains why judicial off-bench resistance in Tunisia has manifested in the ways that it has. Alexei Trochev and Rachel Ellett identified five main categories of judicial off-bench resistance. Literature from other authors provide examples of types of off-bench resistance that fall into these categories. These categories include “mobilizing allies, lobbying and negotiation with friends and foes,
complaining to the public, organizing and going on strike, and seeking refuge abroad.”

Trochev and Ellett argue that judges may first act as “diplomats,” holding meetings with government officials and members of the opposition to protect themselves from “attackers.”

Judges also seek to build alliances within their own personal networks of friends and family, and also in professional circles. Judges with international connections may seek protection against interference through their international connections, and seek refuge abroad if their lives are threatened. For example, Syrian judges fleeing threats against their lives have moved abroad and joined the resistance against President Bashar al-Assad in the diaspora.

Another way judges build alliances is by exposing the threats they are facing to the media. This helps judges raise awareness about their struggle and find allies. Off-bench resistance through media engagement may involve judges writing newspaper editorials, speaking on the radio, publicly denouncing government encroachment on the judiciary, and proposing legal reforms. For example, in response to repression in Syria, judges and prosecutors issued public statements that denounced the regime’s human rights abuses. Approximately 100 judges and prosecutors publicly resigned from office in protest. Syrian prosecutors and judges also

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84 Ibid, 72-73.
85 Ibid, 73-74.
86 Ibid, 74.
88 Trochev and Ellett, 74-75.
89 Ibid, 74-75.
91 Cardinal, 16.
92 Ibid, 18.
released videos denouncing the government’s human rights abuses and control of the judiciary. Judge Talal Hushan, who was appointed by the government to lead an investigation into a massacre, published a video explaining that the Syrian army carried out the massacre, contradicting the commission’s conclusion that the atrocity was perpetrated by “armed terrorists.” In the video, he also encouraged other judges and prosecutors to resign from their positions. The Syrian case study reveals how social media has become a tool of resistance for judges in their off-bench mobilizing.

Judges may also engage in collective resistance through protests and strikes, which is more effective than individual acts of resistance. When judges act together, they prove to onlookers that they are “willing to protect” their colleagues, which can help mobilize allies. This is because group mobilization demonstrates a widespread commitment to judicial independence, rather than an “isolated belief of a few judges.” Protests and strikes also put judges into the public spotlight, creating a popular image of judges when authorities are disliked.

Within the field of judicial off-bench resistance, there is a growing body of literature that concentrates on judges’ personal relationships and their organizing potential. Consistent with Trochev and Ellett, research in this concentration finds that judges organizing themselves into associations can be one of the most effective methods of off-bench resistance. In 2012, 145 judges and public prosecutors throughout Syria came together to form an association, the Judges’

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93 Ibid, 17.  
94 Ibid, 17.  
95 Ibid, 17.  
96 Trochev and Ellett, 76-78.  
97 Ibid, 77-78.  
98 Ibid, 77.  
99 Ibid, 77.
Club of Syria, to petition to reform the judicial system. Other judges and prosecutors who resigned organized themselves into an association called the Free Syrian Judicial Council to investigate war crimes. Collective organizing into associations demonstrates unity and facilitates future acts of group defiance, which is harder for an oppressive regime to control than singular, defiant judges who can easily be imprisoned.

The literature shows that tools of resistance are adopted by judges in order to find allies who will back their cause. Judges often engage in off-bench resistance by relying on their domestic and international connections, and organizing themselves into associations. Judges also expose the threats they are facing to the media, which brings attention to their cause. They use strikes and stage protests to gather support and make demands. In the next section, I look at which of these tactics Tunisian judges have adopted.

JUDGES RESPOND: MANIFESTATIONS OF JUDICIAL OFF-BENCH RESISTANCE IN TUNISIA

How have Tunisian judges responded to President Kais Said’s attempts to consolidate his power vis-a-vis threats, purges, and arrests? What tactics of judicial off-bench resistance have Tunisian judges adopted? Have they used the same tactics identified in the literature? In this section, I present my findings. I find that Tunisian judges have resisted and continue to resist executive encroachments on judicial independence through off-bench resistance tactics. By interviewing a Tunisian political scientist and analyzing news articles, I find that the most visible and most common tool of resistance that judges have adopted are strikes. Other tools of

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100 Cardinal, 16.
101 Ibid, 17.
resistance that Tunisian judges have adopted include issuing public statements, organizing with other parts of civil society, and going on hunger strikes.

In order to understand the judges’ strikes, it is first necessary to understand Tunisian judges’ unions. There are four judges’ unions in Tunisia. The largest is the Tunisian Judges Association, more commonly known by its French name, l’Association des Magistrats Tunisiens (AMT), which was founded in 1990 and has operated continuously since then. The other three unions formed after the revolution; these include the Tunisian Association of Young Judges, the Tunisian Judges Union known by its French name Syndicat Magistrat Tunisien (SMT), and the Tunisian Association of Women Judges. Membership in one or multiple associations is voluntary, rather than mandatory. These unions exist separately from the country’s largest labor union, the Tunisian General Labor Union known by its French name Union Générale Tunisienne du Travail (UGTT), which does not include state employees.

Immediately after the revolution, unionized judges began striking. After Ben Ali’s regime fell, the new government charged him with illegally possessing arms and drugs. Judges announced a three-day strike ahead of the case after facing threats and harassment from the Justice Ministry of the ancien régime. After the strike, Judge Touhami Hafi and Vice President of the SMT judges’ union Boubaker Souguir announced that they were postponing the case because of the intimidation.

102 Interview with Tunisian political scientist, Sidi Bou Said, Tunisia (April 2023).
103 “Tunisia judges strike after mass sackings, Saied ‘interference,’” Al Jazeera (6 June 2022).
104 Interview, 2022.
106 Ibid.
107 Ibid.
In response to the 2012 judicial sack that left eighty-two judges unemployed, Tunisian judges launched an indefinite strike demanding that their colleagues be reinstated.\textsuperscript{108} They demanded that the dismissed judges accused of corruption have a “proper investigation and fair trial.”\textsuperscript{109} The Justice Minister had used a controversial article that allowed him to fire the judges without approval from any other authority.\textsuperscript{110} The judges’ unions also called on the Tunisian government to abolish this article in their demands.\textsuperscript{111} During this time immediately following the revolution, judges also went on strike in solidarity with the rest of civil society. In 2013, following the political assassination of the opposition leader Chokir Belaid, unions called for a general strike and lawyers and judges followed suit by launching a two-day strike.\textsuperscript{112}

In November 2020, amidst the Covid-19 pandemic, judges launched a strike in protest of their poor working conditions. However, larger political reforms were also included in the judges’ list of demands. Judges demanded protection and health care equipment for themselves and their families, and improved working conditions.\textsuperscript{113} However, they also weaved in demands for more judicial independence. They called for a more effective justice system that follows international standards, and suggested reforms that could be made to the judicial system.\textsuperscript{114} After two judges died from Covid, judges organized a meeting attended by 1,000 judges who decided to stage a five-day strike beginning on November 16, 2020.\textsuperscript{115} After the government failed to deliver on the judges’ demands, they extended the strike for another five days.\textsuperscript{116} Although an

\textsuperscript{108} Reuters Staff, “Tunisia judges start indefinite strike over purge,” \textit{Reuters} (29 May 2012).
\textsuperscript{109} Jamie Davis, “Tunisia judges strike to protest firings,” \textit{Jurist} (31 May 2012).
\textsuperscript{110} \textit{Ibid}.
\textsuperscript{111} \textit{Ibid}.
\textsuperscript{114} \textit{Ibid}.
\textsuperscript{115} \textit{Ibid}.
\textsuperscript{116} \textit{Ibid}.
agreement was eventually reached, the judges’ unions organized a “Day of Anger” on December 21, 2020 to express their continued discontent with the government’s treatment of the judiciary and judges.117

The precedent of judicial strikes has continued more than a decade after the revolution. On February 10, 2022, in response to President Said’s decision to dissolve the HJC, the Tunisian Judges Association called for a two-day strike for all courts.118 In typical Tunisian revolutionary fashion, the judges also organized a sit-in outside the courthouse in Tunis. After Said announced that he had fired fifty-seven judges, Tunisian judges’ unions announced a week-long strike. This strike was extended for a second, third, and fourth week. The AMT argued that President Said’s accusations of corruption and terrorism were “politically motivated.”119 Said responded to the strikes by cutting the salaries of striking judges, a form of judicial manipulation intended to force judges into compliance.120 The strikes continued nevertheless, and gathered support from allies. On June 13, Habib Rebani resigned from the Independent High Authority of Elections in solidarity with the judges. The strikes also gathered support from civil society organizations, activists, and Said’s political opponents.121 For example, Naila Zoghliami, the secretary-general of the Tunisian Association of Democratic Women, spoke out against social media attacks on female officials and criticized Said’s control over Tunisia’s democratic institutions.122

The four-week long strike, organized by the four judges unions, protested the judicial sack that left fifty-seven of their colleagues unemployed. All courts in Tunisia were involved

119 “Tunisia judges extend strike over sackings by president Saied,” Al Jazeera (19 June 2022).
120 “Tunisian president orders judges’ salaries cut,” Middle East Online (7 June 2022).
121 Ltaief, 2022.
122 Middle East Eye Staff, “Tunisia: Judges' strike intensifies as Saied supporters launch vicious online attacks,” Middle East Eye (8 June 2022).
The unions argued that the judges should be reseated until a fair trial had been held for those accused of corruption. During this time, five judges who were members of the AMT also launched hunger strikes against their arbitrary dismissals. Four of the judges, Hammadi Rahmani, Ramzi Bahria, Mohamed Taher, and Kais Sabbahi, developed health problems during their hunger strike, and Judges Kanzari and Sabbahi were sent to the intensive care unit. The judges encouraged solidarity by spending their hunger strike together, sleeping on the floor of the Judges’ Club in Tunis for weeks. Judge Sabbahi reported to the media that solidarity from his fellow judges, both those participating in the hunger strike and others extending their support, motivated him to continue.

Although the strike did not lead to the reinstatement of the fired judges, the Tunisian Judges Association announced that 99 percent of judges participated in the strike on the first day. In fact, judges organized these strikes despite Kais Said’s recent decree law, issued on February 12, 2021, which “restored a Ben Ali-era law that banned magistrates from striking or carrying out any other labor action that disrupts the functioning of courts.”

In this section, I shared my findings on the main forms of judicial off-bench resistance in Tunisia. I find that Tunisian judges have used a variety of resistance methods, including issuing media statements, mobilizing civil society allies, negotiating with the government, and going on

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124 “Two more judges join hunger strike (AMT),” *Agence Tunis Afrique Presse* (6 July 2022).
125 “Tunisia: 2 judges join hunger strike over judicial purge,” *Middle East Monitor* (7 July 2022).
126 O’Grady and Bliwa, 2022.
127 Ibid.
strike. Of the tactics that judges have adopted, I found that striking has become the most
dominant manifestation of off-bench resistance. This finding was substantiated in my interview
with a Tunisian political scientist, who explained that striking is the main opposition tactic used
by civil society in general. In the following section, I explain why strikes have been judges’
tactic-of-choice.

WHY DO JUDGES GO OFF-BENCH?

What motivates judges to adopt off-bench resistance tactics? In other words, why do
judges go off-bench? In this section I examine how the literature has tried to answer this
question. I rely on Trochev and Ellett, and Bakiner, who are leading scholars in this field.
Judicialization is the most prevalent theory used to explain judges behavior. Interest-group
theory looks at the way judges are motivated to go off-bench for the sake of the profession. And
finally, the most effective explanation known as the legal-complex approach looks at the way
judges protect their own independence through informal, organizing tactics.

Judicialization is the process of a judiciary becoming increasingly responsible for
deciding politically charged court cases. Courts in a judicialized judiciary may be deciding
contested election results, for example, and judges may wield higher degrees of power because
of their role in determining such important decisions. Judicialization has thus been used to
explain judges’ behavior. In this school of thought, judges’ higher degree of political power can
influence the way they decide cases and, in turn, shape the way executives handle courts. What
can judicialization tell us about off-bench resistance? Trochev and Ellett, and Bakiner find that
judicialization is the dominant framework used to explain judicial behavior. These theories
suggest that when courts begin deciding more political cases, judges are more likely to engage in
off-bench resistance. However, judicialization does not go far enough in explaining why judges go off-bench to protect their own autonomy. Instead, judicialization is the context that empowers judges to go off-bench, rather than the motivation. Furthermore, judicialization frameworks risk “ignoring” the situation within the judiciary itself that may encourage judges to go off-bench. This is important in the case of Tunisia, particularly because it is the judges’ unions that organize the strikes.

The interest-group model argues that judges engage in off-bench resistance because they want to enhance the power and legitimacy of their institution. Judges engage in off-bench resistance in order to defend the rights and privileges of the profession against political encroachments. In this theory, judges are less motivated by individual interests, but rather the judiciary as a whole. Trochev and Ellett, and Bakiner find that this explanation is not the most accurate explanation of judicial behavior, particularly when trying to explain what motivates judges to go-off bench. This is because they found that “resisting judges often act neither with a sense of mission or duty to protect citizens.” When judges go off-bench for material gain, they are often demanding higher wages and better working conditions. But, even when material gain appears to be the cause of off-bench resistance, often more political reasons are embedded. For example, during the Covid-19 pandemic, Tunisian judges were not only demanding safer working conditions, but also a judicial system that follows international standards of autonomy.

Finally, the most effective explanation of judicial off-bench resistance looks at judges as “protectors of their own autonomy.” Trochev and Ellett argue that judicial off-bench

129 Bakiner, 134.
130 Ibid, 136.
131 Ibid, 134.
132 Ibid, 134.
133 Trochev and Ellett, 71.
134 Ibid, 68.
resistance tactics are informal strategies of survival that judges adopt to protect their autonomy and maintain their influence, particularly in hybrid regimes. Judges engaging in off-bench resistance “seek to maintain, reform, or transform judicial institutions” in ways that align with their interests. Trochev and Ellett explain that judges resort to off-bench resistance when their autonomy is threatened by a “blatant interference in the judicial process.” To succeed in their goals, judges must have a vast network of allies that includes others in the legal field, politicians, civil society, and the media. Finally, crisis situations can trigger off-bench resistance by threatening judges’ employment on the bench and their reputation. If judges feel threatened by a crisis situation, going off-bench may be an attempt by judges to protect themselves physically or professionally. Similarly, Bakiner finds that a “social or political crisis can serve as an enabling condition for judicial off-bench resistance.”

Recent scholarship on judicial off-bench resistance finds that judges are motivated to engage in off-bench resistance during crisis situations where they feel that their autonomy is threatened. Although judicialization may enable off-bench resistance, it is not necessarily what motivates judges to protest outside of the courtroom. In the following section, I explain how the crisis situation and the threats to judicial autonomy inspired Tunisian judges to take their resistance outside of the courtroom.

EXPLAINING JUDGES’ STRIKES

135 Ibid, 68.
136 Bakiner, 131.
137 Cardinal, 15.
138 Bakiner, 135.
139 Ibid, 136.
140 Ibid, 153.
What motivated Tunisian judges to go off-bench? Why has off-bench resistance manifested as judicial strike? How can we account for the emergence of this tactic of off-bench resistance in Tunisia? Due to the sensitivity of the research topic and the reluctance of judges to speak about their forms of resistance given the growing autocratic context, I was unable to hold any interviews with judges. Although this is a limitation of the research, I could partially compensate by instead interviewing a Tunisian political scientist who has expertise in Tunisian judicial politics and connections to judges.

The context of the downfall of the dictatorship and the emerging democracy in 2011 opened the courts to greater independence. With the ousting of Ben Ali and the establishment of democratic institutions, judges were afforded more power and independence. Before the revolution, judges’ strikes did not exist. Thus, I argue that the new democratic environment helped to enable and empower judges to engage in off-bench resistance. Consistent with Trochev and Ellett, and Bakiner, I argue, however, that judges were not necessarily motivated to go off-bench due to a commitment to democracy. Rather, judges’ desire to preserve their own autonomy has motivated them to go off-bench. I found three main reasons to account for the manifestation of strikes as the dominant form of judicial off-bench resistance in Tunisia. First, I will develop an historical explanation. Tunisia has a history of strong trade unions and a strong civil society that emerged during the revolution. Second, judges’ unions have found allies within other sections of Tunisian civil society, who also utilize strikes as a resistance tactic. Finally, the state lacks the strength to stop strikes.141

Trochev and Ellett discovered that crisis situations that jeopardize judges’ autonomy motivate judges to go off-bench. In Tunisia, judges are being arrested, purged, and verbally

141 Interview with Tunisian political scientist, Sidi Bou Said, Tunisia (April 2023).
attacked by the executive. Moreover, the dismantling of the HJC stripped judges of the institution that safeguarded their judicial independence. I argue that these threats have culminated into a crisis situation for judges. Off-bench resistance has thus become a tool adopted by judges to fight to preserve their independence in response to attacks. Further, judges had grown accustomed to some degree of judicial independence since the Revolution. Before the latest purge, threats, and dissolution of the HJC, Tunisia had a “largely independent judiciary,” in terms of separation between the three branches of government. Thus, I argue that the crisis situation left judges desperate to preserve their autonomy from executive encroachment, motivating them to adopt judicial strikes and other forms of off-bench resistance.

Why have strikes been judges’ tactic-of-choice? First, Tunisian judges are unionized. There are four judges’ unions in Tunisia, and judges may choose to join as few or as many as they want. These unions include magistrates from all levels of the judiciary, giving them high organizing potential. Further, judges and their unions have allies in other civil society organizations. Because the success of judges’ strikes depends upon how well judges can gather allies and rally support, this is important for Tunisian off-bench resistance. I argue that cross-union alliances further empower judges to go on strike. The judges’ unions exist separately from the UGTT and have no formal relationships with other unions. However, the judges’ unions do maintain informal relationships with the UGTT and other labor unions. The judges’ unions and the UGTT talk with each other, sign petitions together, and publish the same reaction statements. The importance of a collaborative relationship with the UGTT is especially crucial

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142 Ltaief, 2022.
143 Interview with Tunisian political scientist, Sidi Bou Said, Tunisia (April 2023).
144 Trochev and Ellett.
145 Ibid.
146 Ibid.
147 Ibid.
because the UGTT boasts a membership of nearly 1 million, making it the “most powerful civilian force” in Tunisia.\textsuperscript{148} Moreover, the UGTT (despite being significantly more powerful than the judges’ unions) does not interfere with the operations of the judges’ unions.\textsuperscript{149} Instead of telling judges when to strike, it instead extends its support and solidarity when judges decide to mobilize.\textsuperscript{150}

Other parts of Tunisian civil society have reciprocal relationships with the judges and their unions. Tunisian NGOs and unions work together. Judges’ unions especially coordinate events with journalists and their unions.\textsuperscript{151} Judges’ unions organize public events and participate in activities with NGOs, sign petitions with NGOs, and cooperate with secular civil society.\textsuperscript{152} Judges will also work with lawyers and their union, although to a lesser degree because of tension that exists between the professions.\textsuperscript{153} Further, judges can more easily find allies to support their cause with civil society solidarity, particularly because the rest of civil society has also adopted strikes as the dominant form of resistance. Since the revolution, the UGTT and other labor unions, police, lawyers, and journalists have all gone on strike. Striking has become the dominant form of resistance in Tunisia, not just for judges but for the country as a whole.\textsuperscript{154}

Moreover, there is a legacy of cross civil society organizing since 2011. Since the revolution, the UGTT and other civil society organizations have acted as a unifying force in Tunisian society. During the revolution, the UGTT and other Tunisian civil society organizations

\textsuperscript{148} Simon Speakman Cordall, “Tunisia’s Powerful Labor Union Is Thwarting President Saied’s Ambitions,” Foreign Policy (3 June 2022).
\textsuperscript{149} Interview with Tunisian political scientist, Sidi Bou Said, Tunisia (April 2023).
\textsuperscript{150} Ibid.
\textsuperscript{151} Ibid.
\textsuperscript{152} Ibid.
\textsuperscript{153} Ibid.
\textsuperscript{154} Ibid.
brought groups of different political ideologies together to form the opposition against Ben Ali’s regime.\textsuperscript{155} For example, the UGTT and Tunisian Bar Association allowed protestors to hold meetings in their offices, and the street demonstrations that forced Ben Ali to flee the country started outside the UGTT’s office in Tunis.\textsuperscript{156} Both the UGTT and the Tunisian League for Human Rights (LTDH) helped involve the interior regions in post-revolution country-building.\textsuperscript{157} Today, the UGTT continues to create ties between “different sectors of society” and different regions of the country.\textsuperscript{158} I argue that these alliances across civil society also help explain why judicial off-bench resistance has manifested as strikes. The infrastructure for cross civil society organizing was assembled during the revolution, which makes it easier for judges to rally allies from other parts of civil society when they want to strike today.

The post-revolutionary environment created a context ripe for civil disobedience, particularly strikes, from all sectors of society. My interview with a Tunisian political scientist revealed that the strength of Tunisian civil society’s organizing capacity is a legacy of the revolution. Strikes in general have become the dominant form of protest in Tunisia because of the post-revolutionary context and the state’s weakness in controlling these demonstrations. Since the revolution, unions’ organizing capacity has only strengthened.\textsuperscript{159} The tactic of striking is itself a form of gathering allies. Judges’ strikes as a tactic were not only made possible by the new democratic context, but also the safety provided by an opposition society that carries out strikes in other sectors. Looking at the tactic of resistance can thus tell us something about the political and historical context in which we are operating.

\textsuperscript{156} Henneberg, 314.
\textsuperscript{157} \textit{Ibid}, 315.
\textsuperscript{158} Deane, 19.
\textsuperscript{159} Interview with Tunisian political scientist, Sidi Bou Said, Tunisia (April 2023).
The strength in civil society’s organizing potential has not gone unnoticed by the President, who has been threatening civil society. He has accused civil society organizations of serving foreign interests and trying to meddle in Tunisian politics, and said that he would ban them from receiving foreign funding. However, Tunisian civil society has largely proved resilient, which I argue is partly attributable to the way in which organizations have operated together and crossed social boundaries.

In this section, I argued that the recent attacks on the Tunisian judiciary created a crisis situation for the judiciary. The verbal attacks, arrests, purges, and dismantling of the HJC promoted judicial off-bench resistance. Judges adopted off-bench resistance tactics, particularly strikes, to preserve their own autonomy. Strikes are the dominant form of resistance used by Tunisian judges because of the country’s union culture and because judges’ unions have forged alliances within the rest of the civil society. Moreover, the post-revolutionary environment opened up Tunisian society to contentious politics. This has helped shield judges, as they are not alone in their striking. It also makes it more difficult for the government to stop the strikes, even when it passes laws that ban judges from “disrupting” court processes.

LIMITATIONS

As mentioned, due to the sensitivity of this topic, I was unable to find judges or anyone connected to judges’ unions who were willing to be interviewed. Because of the high level of threats that judges are currently facing, it is understandable why they were reluctant to agree to a meeting. Interviews could have illuminated deeper organizing relationships that judges have with other parts of civil society. Interviewing judges would have also shown the individual motivating

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factors that inspired judges to adopt off-bench resistance tactics. Moreover, they could have revealed off-bench resistance tactics that have gone unreported in the media. Although I was able to partially address some of these limitations by interviewing a Tunisian political scientist, a deeper analysis would have been possible with direct interviews with judges.

IMPLICATIONS AND CONCLUSIONS

In this paper, I found that Tunisian judges have responded to executive attempts to interfere in judicial independence through off-bench resistance tactics, particularly judges’ strikes. The executive branch’s verbal assaults, judicial purges, dismantling of the HJC, and arrests of judges created a crisis situation in Tunisia. This led judges to adopt off-bench resistance tactics in order to protect their autonomy. Strikes have become the dominant form of resistance used by judges, and civil society more broadly. This can be explained by the post-revolutionary context which has opened up society and given organizations the ability to organize with one another and build alliances.

My findings support the latest research on judicial off-bench resistance, that judges are motivated to adopt off-bench resistance tactics when they feel that their autonomy is threatened. My findings are novel in that they look at the importance of the organizing tactic itself. I argue that the type of tactics used by judges are important to consider because they tell us something about the political and historical context in which judges are operating. In the case of Tunisia, the tactic of strikes helps reveal how civil society works together and shows solidarity with each other. I argue that this offers a glimmer of hope in an era of democratic backsliding. Tunisian civil society’s ability to build alliances with one another has helped it protect itself from executive encroachment.

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