

## AMNESTY INTERNATIONAL PUBLIC STATEMENT

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# TUNISIA: THE ABUSE OF PRE-TRIAL DETENTION TO SILENCE POLITICAL OPPONENTS

## TUNISIA: AUTHORITIES TARGETING POLITICAL OPPOSITION WITH VAGUE PRETRIAL DETENTION LAWS

Tunisian authorities have used vague provisions in the law governing pretrial detention to jail a series of high-profile opponents, public figures, and perceived enemies of President Kais Saied without showing that the measure is reasonable and necessary as required by international law. These detentions highlight a deepening regression for human rights and judicial independence in Tunisia.

Amnesty International has documented the cases of 22 people held in pre-trial detention on a range of accusations. They include politicians, political activists, and lawyers. Eight of them have been accused of "conspiracy against the state" - accusations that Amnesty International deems unfounded.<sup>1</sup> Other accusations include offences relating to terrorism and financial misconduct.

Most of the 22 people have been held for at least five months, and one for almost two years. In all 22 cases, according to the lawyers, the authorities have presented either vague grounds to justify pretrial detention or no specific grounds at all. Lawyers have filed requests for provisional release for at least 12 of them. As of mid-September 2023, courts had provisionally released only two of the 22 people.<sup>2</sup>

Since 2021, President Saied has consolidated nearly unchecked power to rule, including new powers over the judiciary. Authorities have opened criminal investigations against scores of his critics and perceived enemies, detaining some of them.

Those targeted include at least 19 members of Ennahda, a major political party that opposes President Saied.<sup>3</sup> Courts have placed at least 11 of them in pretrial detention, including one man who has been held for one year.<sup>4</sup> Others in pretrial detention include six people held since February 2023 in the so-called "conspiracy case."

To document the 22 cases, Amnesty International interviewed 17 defence lawyers including lawyers for each of those detained, as well as family members of 12 of them. The organization has also reviewed requests for provisional release for several of these cases.<sup>5</sup>

Under international law, there is a presumption that people charged with a criminal offence will not be detained while under investigation or awaiting trial, in keeping with the presumption of innocence. As such, the authorities may detain people

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<sup>1</sup> The eight people are accused of "conspiracy" under articles of the Penal Code and 2015 anti-terrorism and money laundering law. See Amnesty International, *Tunisia: Authorities just free prisoners held in latest crackdown*, 30 March 2023. Available at: <https://www.amnesty.org/en/latest/news/2023/03/tunisia-authorities-must-free-prisoners-held-in-latest-crackdown/>

<sup>2</sup> Authorities released activist Chaima Issa and lawyer Lazhar Akremi on 13 July 2023. An investigative judge had previously refused to grant them provisional release without stating an explanation.

<sup>3</sup> Former president, Zine El Abidine Ben Ali, outlawed the party and the authorities arrested thousands of Ennahda activists. After Ben Ali's government was toppled in 2011, Ennahda led a coalition government until 2014.

<sup>4</sup> Fathi Beldi, a former security official held in pre-trial detention since 21 September 2022.

<sup>5</sup> Where lawyers have been unable to share written pretrial detention orders that are embedded in documents that also contain sensitive information, they have cited the exact language of the orders.

under criminal investigation or awaiting trial only as an exceptional and strictly necessary measure based on an individualized assessment.<sup>6</sup>

The Tunisian authorities must therefore show that they have made such an assessment and ensure that the justification for continued detention is subject to regular review.<sup>7</sup> Without such periodic re-evaluation, keeping a person in any form of detention is arbitrary.

The authorities should release all those who have been unlawfully and arbitrarily detained. Even where the accusations correspond with recognizable crimes, pretrial detention may still only be justified for a limited number of reasons.

The authorities must present evidence based on an individualized assessment to show that detention is necessary and proportionate because of a substantial risk of either flight, serious harm to others, the recurrence of crime, or interference with the evidence or investigation.<sup>8</sup> In the absence of any such evidence, those held in pretrial detention should be released.

## Dissidents, perceived critics, public figures targeted

### Ennahda Party

In late 2022, an investigative judge detained Fathi Beldi, a former security official, and Ali Laarayedh, a former Interior and Prime Minister, under investigation in connection with claims that former state officials created conditions that helped lead Tunisians to join armed groups abroad. They are accused under the Penal Code and anti-terrorism and money laundering law.<sup>9</sup>

The judge detained Beldi and extended his detention twice without citing specific grounds. The judge initially cited only the accusations against Laarayedh as grounds for his detention. Upon extending Laarayedh's detention on 15 June 2023, the

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<sup>6</sup> International Covenant on Civil and Political Rights, Article 9 (3). Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

Human Rights Committee, General Comment 35, paras. 37 and 38. Available at: <https://www.ohchr.org/en/calls-for-input/general-comment-no-35-article-9-liberty-and-security-person>

<sup>7</sup> The UN Human Rights Committee has repeatedly found that placing a person in pretrial detention without showing that the measure is reasonable and necessary constitutes a violation of Article 9(3) of the International Covenant on Civil and Political Rights (ICCPR), which Tunisia has ratified. Examples include:

Human Rights Committee, Communication 1502/2006, *Marinich v. Belarus*, para. 10.4. Available at: <https://juris.ohchr.org/casedetails/1103/en-US>

Human Rights Committee, Communication 1940/2010, *Cedeño v. Bolivarian Republic of Venezuela*, para. 7.10. Available at: <https://juris.ohchr.org/casedetails/1463/en-US>

Human Rights Committee, Communication 1547/2007, *Torobekov v. Kyrgyzstan*, para. 6.3. Available at: <https://juris.ohchr.org/casedetails/1640/en-US>

Human Rights Committee, Communication 1178/2003, *Smantser v. Belarus*, para. 10.3. Available at: <https://juris.ohchr.org/casedetails/1451/en-US>

*Moadh Kheriji Ghannouchi and Others v Republic of Tunisia*, Application No. 004/2023: Order (Provisional Measures), 28 August 2023, para. 59. On file with Amnesty International.

<sup>8</sup> International Covenant on Civil and Political Rights, Article 9 (3). Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

Human Rights Committee, General Comment 35, para. 38. Available at: <https://www.ohchr.org/en/calls-for-input/general-comment-no-35-article-9-liberty-and-security-person>

PRINCIPLES AND GUIDELINES ON THE RIGHT TO A FAIR TRIAL AND LEGAL ASSISTANCE IN AFRICA, Section M(1)(e). Available at: <https://archives.au.int/handle/123456789/2065>

<sup>9</sup> INTERVIEW, lawyer for Fethi Beldi, 24 July 2023.

PRIVATE MESSAGE, Samir Dilou, lawyer for Ali Laarayedh, 22 August 2023

INTERVIEW, Zeineb Brahmi, lawyer for Ali Laarayedh, 25 August 2023. Judges issued pretrial detention orders for Beldi and Laarayedh on 21 September and 19 December 2022, respectively.

Articles 1, 5new, 10, 13new, 14, 31, 32, 33, 34, 35, 36, 37, 40, 92, 93, 94, 95, 96, and 97 of Tunisia's 2015 anti-terrorism and money laundering law, and Article 32 of the Penal Code.

judge cited the need to ensure the integrity of the investigation but did not present underlying reasoning. Courts have rejected four requests for Laarayedh's provisional release.<sup>10</sup>

On 14 February 2023, an investigative judge detained Nouredine Bhiri under investigation for allegedly posting a call on social media to oppose President Saied, citing only the "abundant evidence".<sup>11</sup> The authorities later also cited a video showing Bhiri speaking at a public rally as evidence of that he had violated article 72 of the Penal Code, which mandates the death penalty for trying "to change the nature of the state". Another judge referred the case to trial, prompting Bhiri's lawyers to appeal the referral.<sup>12</sup> In response, the Tunis Court of Appeals returned the case to the investigative judge for further investigation on 30 August without releasing Bhiri.<sup>13</sup>

In early 2023 an investigative judge detained Riadh Bettaieb, a former Investment Minister, and Said Ferjani, a senior Ennahda member, under an investigation into Instalingo, a media company that authorities link to Ennahda. The judge cited only the "gravity" of the accusations against them and "what the research requires in terms of investigation and inductive reasoning". On 19 June, the judge referred the case to trial. The men are facing charges under the Penal Code and anti-terrorism and money laundering law. On 20 July, the Sousse Court of Appeals refused an appeal by lawyers, keeping Bettaieb and Ferjani in detention without citing specific grounds.<sup>14</sup>

Police arrested Mohamed Mzoughi and Mohamed Saleh Bouallagui, Ennahda officials in the city of Beja, on 9 and 10 March 2023, respectively. The arrests stem from a video that Mzoughi posted on social media showing an anti-Saied protest. An investigative judge remanded the men to pretrial detention citing the need to ensure the integrity of the investigation as grounds for detention without presenting underlying reasoning. The men are accused of crimes including conspiracy to threaten state security.<sup>15</sup>

In April 2023, authorities arrested Rached Ghannouchi, the leader of the Ennahda Party, and Ennahda officials Ahmed Meshergui and Youssef Nouri. An investigative judge remanded them to pretrial detention under investigation for conspiracy against the state based partly on public remarks by Ghannouchi. The judge cited only the "gravity of the acts" of which the men are accused and the "abundant evidence" of criminal activity.<sup>16</sup>

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<sup>10</sup> INTERVIEW, lawyer for Fethi Beldi, 24 July 2023.

PRIVATE MESSAGE, Samir Dilou, lawyer for Ali Laarayedh, 22 August 2022.

The judge remanded Beldi and Laarayedh to pretrial detention on 21 September and 19 December 2022, respectively.

The judge declined to respond to a 17 January 2023 request for Laarayedh's provisional release, de facto refusing it. The Tunis Court of Appeals upheld the refusal on 2 March. This sequence was repeated on 17 April and 1 June, respectively.

<sup>11</sup> INTERVIEW, Saida Akremi, lawyer for Nouredine Bhiri, 30 June 2023. Akremi is also Bhiri's wife. Amnesty International has reviewed a leaked court document citing a transcript of the alleged post that circulated online and was authenticated by lawyers for Nouredine Bhiri. Amnesty found nothing in it that went beyond the bounds of free expression as protected by international law. Bhiri has denied writing the alleged post.

<sup>12</sup> INTERVIEWS, lawyers for Nouredine Bhiri, 4 September 2023

Report by lawyers for Nouredine Bhiri submitted to the Tunis Court of Appeals for a hearing on 30 August 2023. On file with Amnesty International.

Amnesty International has been unable to determine whether the video in question is publicly available.

<sup>13</sup> PRIVATE MESSAGE, Anour Ouled Ali, lawyer for Nouredine Bhiri, 31 August 2023.

<sup>14</sup> INTERVIEW, Nejwa Bettaieb, lawyer for Riadh Bettaieb, 4 August 2023.

INTERVIEW, Zeineb Brahmi, lawyer for Said Ferjani, 25 August 2023.

PRIVATE MESSAGE, Zeineb Brahmi, lawyer for Said Ferjani, on 28 August 2023.

The judge remanded Bettaieb and Ferjani to pretrial detention on 27 February and 1 March, respectively. Authorities accuse them of violating Articles 61bis, 67, 72 of the Penal Code and 92, 93, 94 of the 2015 anti-terrorism and money laundering law.

<sup>15</sup> INTERVIEWS, Zeineb Brahmi, lawyer for Mohamed Mzoughi and Mohamed Saleh Bouallagui, 25 and 31 August 2023.

Mohamed Mzoughi is in charge of media and youth outreach for Ennahda's regional office in Beja. Mohamed Saleh Bouallagui is the party's regional secretary general in Beja. Authorities accuse them of violating Articles 1, 3, 3new, 10, 13new, 14, 32, 33, 37, 40, 92, 93, 94, 95, 96, and 97 of the 2015 anti-terrorism and money laundering law, Articles 32, 32, 61bis, 62, 67, 68, 72, 125, 131, and 132 of the Penal Code, and Article 86 of the telecommunications law.

<sup>16</sup> INTERVIEWS, Zeineb Brahmi, lawyer for Rached Ghannouchi, Youssef Nouri, and Ahmed Meshergui, 17 and 26 April, 8, 18 and 31 May, and 25 and 31 August 2023

On 9 May, another judge issued a parallel pretrial detention order for Ghannouchi as a suspect in the Instalingo investigation. The judge's final investigation report on 19 June cites the need to avert potential crimes as grounds for the detention order, based on the claim that some of the same lawyers represent both Ghannouchi and some members of the company.<sup>17</sup>

On 12 May, an investigative judge detained Sahbi Atiq, a member of Ennahda's governing council, under investigation for allegedly forming a group to launder money, illegal possession of foreign currency, and witness tampering, citing only "the gravity of the acts attributed to him." Atiq is facing accusations under the Penal Code, a law on foreign currency and exchange, and the 2015 anti-terrorism and money laundering law.<sup>18</sup>

### **Former Ennahda Party Member:**

On 3 March 2023, authorities arrested Mohamed Ben Salem, who served as Agriculture Minister while a member of Ennahda.<sup>19</sup> Authorities have detained him continuously since that date. Following the arrest, he suffered a heart ailment. On 7 March, an investigative judge questioned him in hospital and remanded him to pretrial detention without citing specific grounds. Authorities accuse Ben Salem of arranging to leave Tunisia clandestinely and of financial crimes. He suffers from Parkinson's Disease, diabetes, high blood pressure, and heart ailments, and since his arrest has begun using a wheelchair.<sup>20</sup>

### **The "Conspiracy" Case:**

In February 2023, authorities opened a criminal investigation initially targeting at least 17 people accused of "conspiring" against the state, under articles of the Penal Code and anti-terrorism and money laundering law. Amnesty International has deemed the accusations and related investigation to be unfounded.<sup>21</sup> An investigative judge placed at least eight of those accused – Khayam Turki, Abdelhamid Jlassi, Lazhar Akremi, Jaouhar Ben Mbarek, Chaima Issa, Issam Chebbi, Ghazi Chaouachi, and Ridha Belhaj - in pretrial detention citing only "the gravity of the acts attributed" to them.<sup>22</sup>

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Ahmed Meshergui is the office director for Rached Ghannouchi, Ennahda's leader. Youssef Nouri is a member of the party's governing council. An investigative judge remanded them to pretrial detention on 19, 20 and 20 April 2023, respectively. Authorities accuse them of violating Articles 68 and 72 of the Penal Code.

Ghannouchi made the remarks in question at a public meeting on 15 April 2023 at a public meeting. The remarks were videotaped and shared online. Amnesty International has reviewed the video and found nothing in Ghannouchi's remarks that goes beyond freedom of expression as protected by international law. The video is available at: <https://www.facebook.com/Front.de.salut.national.2022/videos/1513110239505739> (Ghannouchi begins speaking at 2:07:30)

<sup>17</sup> INTERVIEW, Zeineb Brahmi, lawyer for Rached Ghannouchi, 25 August 2023.

Authorities accuse Ghannouchi as a suspect in the Instalingo case under Articles 61 bis, 67, 72 of the Penal Code and 92, 93, 94 of the 2015 anti-terrorism and money laundering law.

<sup>18</sup> INTERVIEW, lawyer for Sahbi Atiq, citing the written pretrial detention order, 14 June 2023

PRIVATE MESSAGE, lawyer for Sahbi Atiq to Amnesty International, 3 August 2023.

Authorities are investigating Atiq under Articles 92, 93, 94, 96, and 97 of the 2015 anti-terrorism and money laundering law, Articles 6, 22, 35, 36, and 37 of a 1976 law on foreign currency and exchange, and Articles 32, 56, 57, 158, 241 and 244 of the Penal Code.

<sup>19</sup> Ben Salem officially left Ennahda in 2021. He is currently a member of the Labour and Achievement party, which he co-founded in 2022.

<sup>20</sup> INTERVIEWS, Abdelwahab Maatar, lawyer for Mohamed Ben Salem, 19 June and 8 September 2023.

The investigative judge referred the case to trial under Articles 38, 40, 41, 42 and 43 of the 1975 law on travel documents, as well as articles of the Penal Code, the 2014 finance law, and the 2008 customs law. On 4 July the investigative judge closed the investigation and referred the case to trial, prompting appeal by the prosecution and lawyers for Ben Salem. In response, the Gabes Court of Appeals returned the case to the judge for further investigation. Ben Salem remained in pretrial detention.

<sup>21</sup> Court documents that leaked online and were authenticated by lawyers. Authorities cited Articles 32, 61bis, 62, 67, 68, 69, 70, 72, 131, and 131 of the Penal Code, and Articles 1, 3, 5, 10, 13 (new), 14, 32, 35, 37, 40, 92, 93, 94, 95, 96, 97 of the 2015 anti-terrorism and money laundering law.

Amnesty International, *Tunisia: Authorities just free prisoners held in latest crackdown*, 30 March 2023. Available at: <https://www.amnesty.org/en/latest/news/2023/03/tunisia-authorities-must-free-prisoners-held-in-latest-crackdown/>

Amnesty International, *Tunisia: Authorities add human rights lawyers to trumped-up conspiracy case*, 9 May 2023. Available at: <https://www.amnesty.org/en/latest/news/2023/05/tunisia-authorities-add-human-rights-lawyers-to-trumped-up-conspiracy-case/>

<sup>22</sup> INTERVIEW, Dalila Ben Mbarek, lawyer for the eight detainees, 13 June 2023. Dalila Ben Mbarek is also the sister of Jaouhar Ben Mbarek. The pretrial detention orders were issued between 24 and 26 February 2023.

The judge and the Tunis Court of Appeals initially rebuffed requests by lawyers to release the eight suspects provisionally.<sup>23</sup> Since July, the court has released two of them under a ban on traveling abroad or "appearing in public spaces" and extended pretrial detention for the remaining six, citing the need to "ensure the sound course of the investigation".<sup>24</sup>

### **Prominent Judge and Businessmen:**

Since February 2012, authorities have arrested **Bechir Akremi**, a prominent former judge, twice and issued two pretrial detention orders against him in connection with his work as a judge. The detention orders relate to parallel investigations into the same issue. Akremi is among 57 judges arbitrarily dismissed by President Saied on 1 June 2022.<sup>25</sup>

Anti-terror police arrested Akremi on 12 February 2023 and detained him for 12 days based on a complaint over his anti-terrorism investigation in 2015.<sup>26</sup> On 24 February he was released but promptly re-arrested based on a new complaint over his handling of a 2013 investigation into the murder of a political leader.<sup>27</sup>

On 10 March, an investigative judge detained Akremi under investigation for allegedly falsifying information, citing only the "gravity of the acts attributed to him". Authorities accuse him under the Penal Code of falsifying information. A judge handling Akremi's case declined to respond to a request by Akremi's lawyers for his provisional release.<sup>28</sup>

Meanwhile, on 24 July, an investigative judge issued a second detention order for Akremi under a separate investigation also based on his handling of the 2013 murder investigation. The judge cited only "the gravity of the acts attributed to him". Authorities accuse him of fraud and failure to arrest a criminal suspect.<sup>29</sup>

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<sup>23</sup> INTERVIEW, Dalila Ben Mbarek, lawyer for the eight detainees, 13 June 2023.

The investigative judge declined to respond to a request in early March 2023, a de facto refusal. The Tunis Court of Appeals upheld the refusal on 30 March 2023.

<sup>24</sup> INTERVIEW, lawyer for the eight detainees, 20 July 2023.

PRIVATE MESSAGE, Dalila Ben Mbarek, 23 August 2023

PRIVATE MESSAGE, lawyer for the eight detainees, 4 September 2023

On 13 July, the Tunis Court of Appeals provisionally released Chaima Issa and Lazhar Akremi. The investigative judge extended pretrial detention for the other six detainees on 22 August.

<sup>25</sup> United Nations' Special Rapporteur on the independence of judges and lawyers et al, (AL TUN 2/2023), 26 May 2023. Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27919>

<sup>26</sup> United Nations' Special Rapporteur on the independence of judges and lawyers et al, (AL TUN 2/2023), 26 May 2023. Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27919>

INTERVIEW, lawyer for Bechir Akremi, 17 August 2023.

An anti-terrorism unit arrested Bechir Akremi based on a complaint filed by two of its agents on 12 February 2023. According to lawyers for Akremi, he had removed the two agents from working on an investigation into the 2015 Bardo terrorist attack based on accusations against them of torture. Authorities held Akremi at a police facility without access to lawyers, then interned him in the psychiatric ward of a state hospital in Tunis.

<sup>27</sup> INTERVIEWS, lawyers for Bechir Akremi, 16 February and 31 July 2023.

Authorities arrested Bechir Akremi on 24 February 2023 based on a complaint filed by a political party over his handling of an investigation into the 2013 murder of Chokri Belaid, a leading figure in the left-leaning Popular Front political coalition. According to lawyers for Akremi, during the investigation he questioned a man as a witness and later named him as a suspect after the man had gone abroad. Akremi then issued an international arrest warrant for him.

<sup>28</sup> INTERVIEW, lawyer for Bechir Akremi, 31 July 2023.

INTERVIEW, lawyer for Bechir Akremi, 17 August 2023

PRIVATE MESSAGE lawyer for Bechir Akremi, 19 August 2023.

Request for provisional release for Bechir Akremi filed by his lawyers to the Tunis Court of Appeals on 13 July 2023. On file with Amnesty International.

Authorities accuse Bechir Akremi of fraud under Articles 114, 172, 175, and 176 of the Penal Code.

<sup>29</sup> INTERVIEW, lawyer for Bechir Akremi, 17 August 2023

PRIVATE MESSAGE, lawyer for Bechir Akremi, 19 Aug 2023.

Request for provisional release for Bechir Akremi filed by his lawyers to the Tunis Court of First Instance on 21 July 2023. On file with Amnesty International.

Police arrested **Mehdi Ben Gharbia**, a prominent businessman and former Minister of Relations with Constitutional Bodies, Civil Society, and Human Rights, on 16 October 2021. The arrest came following vows by President Saied to crack down on what he described as corrupt businesspeople and other elites.<sup>30</sup>

On 20 October 2021, authorities opened an investigation against Ben Gharbia and others for alleged business fraud and money laundering under the Penal Code, 2015 anti-terrorism and money laundering law, and 2015 law on competition. An investigative judge remanded him and another suspect to pretrial detention without citing specific grounds.<sup>31</sup>

On 14 December 2021, the judge provisionally released both men and referred the case for trial under less serious charges.<sup>32</sup> However, the prosecution appealed that decision. On 10 May 2022, the Sousse Court of Appeals referred the case to trial and upheld pretrial detention for Ben Gharbia and the other suspect, citing "the gravity of the acts of which they are the authors, to prevent new infractions and to ensure the execution of the sentence," without presenting underlying reasoning.<sup>33</sup> Authorities have repeatedly postponed the trial.<sup>34</sup>

On 27 June 2023, the Cassation Court issued a decision voiding the Court of Appeals' decision, based on an appeal by two other suspects.<sup>35</sup> Authorities have continued to detain Ben Gharbia and the other suspect. They have held Ben Gharbia continually since his October 2021 arrest.

## Crackdown on dissent and attacks on judicial independence

On 25 July 2021, President Saied claimed emergency powers that he said were granted to him by Tunisia's 2014 constitution. Since then, authorities have opened criminal investigations against at least 74 opposition figures and other perceived enemies of the president, including at least 44 people accused of crimes in connection with their exercise of their human rights.

Meanwhile, Saied has dissolved Tunisia's former parliament, issued decree-laws that threaten freedom of expression, overseen the drafting of a new constitution, and sought to strengthen his influence over the judiciary.<sup>36</sup>

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Authorities accuse Bechir Akremi of fraud and failure to arrest a criminal suspect under Articles 241, 110, 258, 114 of the Penal Code.

<sup>30</sup> Financial Times, *Tunisian President Vows to Crack Down on Corruption*, 29 July 2021. Available at: <https://www.ft.com/content/98e57ccb-26a6-4efe-beae-of6189b88a01>

Reuters, *Thousands rally for Tunisian president urging change to political system*, 3 October 2021. Available at: <https://www.reuters.com/world/africa/backers-tunisian-president-rally-against-coup-accusations-2021-10-03/>

<sup>31</sup> Written report by lawyers for Mehdi Ben Gharbia, 14 May 2022. On file with Amnesty International.

INTERVIEW, Ahmed Seddik, lawyer for Mehdi Ben Gharbia, 11 August 2023.

<sup>32</sup> The investigative judge recommended charges under Article 199 of the Penal Code, Articles 6, 38, 70, 98 et 101 of the Code of Fiscal Rights and Procedures, and Articles 11 and 48(7) of the 2015-2016 Tax Code.

<sup>33</sup> INTERVIEW, Ahmed Seddik, lawyer for Mehdi Ben Gharbia, 11 August 2023.

Transcription of a decision by the Accusation Chamber of the Sousse Court of Appeals on 10 May 2022. On file with Amnesty International.

In addition, an investigative judge had extended Ben Gharbia's pretrial detention by 4 months on 18 April 2022.

<sup>34</sup> In its decision on 10 May 2022, the Accusation Chamber of the Sousse Court of Appeals referred Mehdi Ben Gharbia and Soufiene Bouhachem to trial under Articles 172, 175, 176, 177 and 199 of the Penal Code, Articles 94, 95 and 96 of the 2015 anti-terrorism and money laundering law, Article 49 of a 2015 competition law, and Articles 6, 38, 70, 84, 98 and 101 of the Code of Fiscal Rights and Procedures. It also referred other suspects in the case to trial on some of the same charges.

<sup>35</sup> Decision by the Court of Cassation, Number 48079/47331/47330, 27 June 2023. On file with Amnesty International.

Request for Clarification submitted by lawyers for Mehdi Ben Gharbia to the Court of Cassation, regarding the court's decision number 48079/47331/47330, 27 June 2023. On file with Amnesty International.

INTERVIEW, Ahmed Seddik, lawyer for Mehdi Ben Gharbia, 11 August 2023.

<sup>36</sup> Amnesty International, *Tunisia: A year of human rights regression since President Saied's power-grab* (Index: MDE 30/5876/2022), 21 July 2022. Available at: <https://www.amnesty.org/en/documents/mde30/5876/2022/en/>

The president has granted himself powers to intervene in judicial career tracks, including the power to dismiss judges summarily. The new constitution, adopted in 2022, grants the president the final word on judicial appointments.

On 1 June 2022, Saied arbitrarily fired 57 judges whom he accused of conduct including failure to investigate terrorism-related cases, adultery, and holding alcohol-fuelled parties. The Justice Ministry has refused a ruling by Tunisia's Administrative Tribunal to reinstate 49 of them.<sup>37</sup>

Saied has branded some opposition figures as "terrorists" and has separately declared that anyone who "dares to exonerate" his critics is their "accomplice" – rhetoric that contributes to a climate of intimidation for judges.<sup>38</sup>

Since 2022, the United Nations' Special Rapporteur on the independence of judges and lawyers, with other special rapporteurs, has repeatedly expressed concern at President Saied's formal measures to weaken judicial independence, the apparent harassment of judges and lawyers by authorities, and the "precarious situation" of judges and lawyers in Tunisia.<sup>39</sup>

### Pretrial detention easy to impose, hard to fight

Tunisia's Code of Criminal Procedure provides for the pretrial detention of criminal suspects, plus alternative measures such as electronic monitoring. However, the Code gives judges wide leeway to order pretrial detention and does not clearly require them to explain their reasoning and justifications.<sup>40</sup> In effect, it is relatively easy for judges to order pretrial detention and comparatively hard for suspects to challenge it.

The Code states that pretrial detention is an exceptional measure that the judges may order when, "owing to the existence of strong evidence, detention is a necessary measure to prevent further infractions, or to ensure that a sentence is carried out, or as a means of protecting the course of the investigation."<sup>41</sup> The Code also states that pretrial detention must be based on "factual and legal justifications."<sup>42</sup>

However, the Code does not define those criteria, and sets no minimum standards for the evidence and reasoning required to justify pretrial detention. It sets rules for the length, renewal, and appeal of pretrial detention, including a 14-month maximum time limit for detention ordered by investigative judges, but does not subject it to regular review.<sup>43</sup> Investigative

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Amnesty International, *Tunisia: Adoption of new constitution must not institutionalize erosion of human rights* (Index: MDE 30/5925/2022), 19 August 2022. Available at: <https://www.amnesty.org/en/documents/mde30/5925/2022/en/>

Amnesty International, *Tunisia: Repeal draconian cybercrime decree* (Index: MDE 30/6290/2022), 12 December 2022. Available at: <https://www.amnesty.org/en/documents/mde30/6290/2022/en/>

<sup>37</sup> Amnesty International, *Tunisia: It is essential to end attacks on judicial independence* (Index: MDE 30/6844/2023), 1 June 2023. Available at: <https://www.amnesty.org/en/documents/mde30/6844/2023/en/>

<sup>38</sup> Videotaped remarks by President Kais Saied, posted on the official Facebook page of the Tunisian presidency on 14 and 22 February 2023. Available at <https://www.facebook.com/watch/?v=609398257754747> and <https://www.facebook.com/watch/?v=742766854160830>

<sup>39</sup> United Nations' Special Rapporteur on the independence of judges and lawyers, (AL TUN 5/2022), 9 June 2022. Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27353>

United Nations' Special Rapporteurs on the independence of judges and lawyers, and the right to peaceful assembly and freedom of association, (AL TUN 6/2022), 22 August 2022. Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27520>

United Nations' Special Rapporteur on the independence of judges and lawyers et al, (AL TUN 2/2023), 26 May 2023. Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27919>

<sup>40</sup> Pretrial detention is governed by Articles 80 - 85 of the Code of Criminal Procedure. Provisional release from detention pending trial is governed by Articles 86 – 92 of the Code.

<sup>41</sup> Code of Criminal Procedure, Articles 84 and 85.

<sup>42</sup> Code of Criminal Procedure, Article 85.

<sup>43</sup> Code of Criminal Procedure, Articles 80 - 87. Articles 80 - 85 allow investigative judges to remand suspects in criminal investigations to pretrial detention for an initial period of up to six months. This may be renewed once for up to three months for alleged misdemeanours, and twice for up to four months each time for alleged felonies.

judges may decline to answer requests for provisional release, which after four days is presumed under the law to be a refusal.<sup>44</sup>

Under the Code, after an investigation is closed, courts may keep suspects accused of criminal offenses in detention pending trial without providing an explanation.<sup>45</sup>

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<sup>44</sup> Code of Criminal Procedure, Articles 80 - 87

<sup>45</sup> Code of Criminal Procedure, Articles 107, 109, and 110.