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TUNISIA: LAWYERS TARGETED WITH JUDICIAL HARASSMENT AND REPRISALS

Since January 2022, at least 20 Tunisian defence lawyers in high profile cases, have faced judicial harassment through criminal investigations based on their peaceful exercise of their human rights including the rights to freedom of expression and association, Amnesty International said today. The organization calls on the Tunisian authorities to immediately drop all charges against lawyers who are facing criminal investigation solely based on the peaceful exercise of their human rights and the discharge of their professional duties.

These lawyers are representing defendants who are members of a range of political opposition groups, dissident activists or victims of violations committed by the authorities. They are being investigated for "spreading fake news," "offending others through telecommunications networks" and "accusing public officials of illegal acts without proof or the discharge of their duties as lawyers."

In one example, four members of the legal defence team of the six detained political opposition members in the high profile "conspiracy case" are themselves now being investigated for statements they made to the media about the case. In another example, the prosecution opened an investigation against 14 members of the legal defence team of Noureddine EL Bhiri, prominent member of the Ennahdha opposition party, after a complaint against the group from a national guard officer following a verbal argument between the lawyers and the national guard. An investigative judge banned the 14 lawyers from traveling under this investigation.

Amnesty International interviewed nine lawyers and reviewed the statements that led to the investigations.

Four of the lawyers received notice of investigations being opened against them after they had made public statements regarding the cases in which their clients are defendants. The lawyers made these statements during press conferences or media interviews in which they defended their clients, saying the charges were unfounded, or expressed concern about the conditions of detention or transportation from and to prison.

In four other cases, the investigations were opened soon after the lawyers had publicly criticised actions by the Minister of Justice as a form of executive interference in judicial processes or made allegations of corruption against her – pointing to for example the refusal of the minister to comply with the administrative court decision to reinstate the summarily dismissed judges. In cases, the investigation was opened after direct instructions from the Minister of Justice under Article 23 of the Code of Criminal Procedures (CCP).

Article 23 of the CCP provides that the Minister of Justice may "report to the Prosecutor-General the criminal offences within their knowledge, may require them to initiate, or ask someone to instruct to initiate, the prosecution or to seize the competent jurisdiction with the written submissions considered desirable". In addition, by virtue of Article 21 of the CCP, all public prosecutors are "required to comply with written submissions in accordance with instructions given to them under the conditions set out in article 23".

The Minister of Justice has been increasingly using these provisions to instruct the opening of criminal investigations against lawyers, members of the opposition and dissidents. According to legal professionals that Amnesty International interviewed, the last two years have seen a significant increase in the use of Article 23 of CCP.

In five of the cases, Amnesty International found that the investigation order originated from instructions directly given from the minister of justice to the Public Prosecutor of the Tunis Court of First Instance. Two other cases stem from a complaint by the General Committee of Prisons and Rehabilitation, which is an administration attached to the Ministry of Justice.

In four of the cases documented, lawyers were being investigated in connection with charges under the cybercrime law Decree law 54 which several UN Human Rights Council Special Procedures mandate holders, as well as national and international organizations, have condemned as a serious threat to the rights to freedom of expression and privacy. In a communication sent to the Tunisian government by UN experts, including the Special Rapporteur on the independence of

judges and lawyers, they highlighted the risk that this Decree be used to undermine the independence of lawyers, to silence them and to prosecute lawyers acting on behalf of their clients.[1]

Four of the lawyers Amnesty International has interviewed are facing investigation in two different cases.

Three other defence lawyers – Abdelrazak Kilani, Mehdi Zagrouba and Seifeddine Makhlouf – have been tried and in two cases imprisoned by military courts in 2022.

As a result of the criminal investigations against them, 15 of the lawyers have been banned from traveling and were informed of this restriction on their right to freedom of movement by the investigative judges who investigated them.

The statements made by the lawyers which led to these investigations included statements regarding interference by the executive in the judiciary, allegations of abuse of the law by authorities to target political opposition members, criticism of conditions of detention and transfers of detainees. None of the statements reviewed by Amnesty International included any incitement to violence or other forms of speech that could legitimately amount to a recognizable criminal offence.

The UN Human Rights Committee states in General Comment 34 that all public figures are legitimately subject to public criticism, and that there should be no prohibition of criticism of public institutions. The Committee said that:

> **"In circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high. Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties."[2]**

Lawyers, like any other person, enjoy the right to freedom of expression, as guaranteed under article 19 of the International Covenant on Civil and Political Rights and article 9 of the African Charter on Human and Peoples' Rights to which Tunisia is a state party.

The UN Basic Principles on the Role of Lawyers reaffirms this principle and states that governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference. The Basic Principles also provides in principle 18 that "lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions." Furthermore, principle 26 of the Basic Principles provides that "lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession." According to principle I(b)(iii) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, lawyers "shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics."

According to the UN Special Rapporteur on the Independence of Judges and Lawyers, "Governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; are able to travel and to consult with their clients freely both within their own country and abroad."

The UN Special Rapporteur on the Independence of Judges and Lawyers has urged public prosecutors "to closely monitor situations and cases in which lawyers might be criminalized for performing their duties. When such circumstances arise, appropriate orders should be issued to prevent public prosecutors from maliciously prosecuting members of the legal profession who criticize State officials and institutions in the exercise of their independence and freedom of expression."

ATTACKS ON JUDICIAL INDEPENDENCE AND WEAKENING OF SAFEGUARDS

Since President Kais Saied's power grab on 25 July 2021, Tunisia has witnessed a significant rollback of the human rights progress following the 2011 Revolution, including the dismantling of many existing institutional safeguards such as the dissolution of the High Judicial Council in February 2022. President Saied used his seized legislative authority to issue new repressive legislation.

On 1 June 2022, President Saied granted himself the power to dismiss judges summarily through Decree Law 2022-35; the same day, he used that power to arbitrarily dismiss 57 judges through Presidential Decree 2022-516. On 9 August 2022, the President of the Tunis Administrative Court issued an interim decision in favour of 49 dismissed judges

[1] United Nations Special Procedures Joint communication to Tunisia, AL TUN 2/2023, pp. 1, 3
[2] Human Rights Committee General Comment 34, para. 38

suspending the President's order until the Court rules on the merits of their requests to annul their dismissal. The Ministry of Justice has thus far failed to reinstate the 49 judges.

President Saied further entrenched far-reaching executive powers through a new constitution drafted under his supervision and adopted by referendum on 25 July 2022. The new constitution undermines institutional guarantees for human rights and fails to provide the necessary safeguards for the judiciary to function with full independence and impartiality.

On 13 September 2022, President Saied unilaterally issued Decree-law 2022-54 on "fighting offences related to information and communication systems", which imposes heavy prison sentences (up to 10 years) and hefty fines upon conviction for "maliciously spreading false information online and via digital networks" based on ambiguous terms, such as "fake news" and "rumours."

In 2023, the authorities intensified their campaign against political opponents and perceived critics of President Saied, arresting at least 30 individuals during the year. In one case, judicial authority are investigating at least 50 people, such as dissidents, opposition figures, and lawyers, in connection with criminal charges of conspiring against the State or threatening State security, including under Tunisia's 2015 counter-terrorism law.

President Kais Saied often publicly criticised what he deems the inefficiency of the judicial system especially the slowness of procedures, and made allegations of complicity of some judges with political parties in power prior to 25 July 2021 and other allegations of corruption within the judiciary. The President repeatedly made statements that refer to his plan to "cleanse" and "purify" the judiciary from those who are corrupt, which he accused of complicity with political parties in power before July 2021, as well as of inefficiency, corruption and political bias, and attacked the HJC and its members,9 limiting certain of their financial benefits.

Since then, the President has followed up on his rhetoric with successive decisions and measures aimed directly at dismantling the judiciary's institutional independence.

On 10 February 2023 one day before a wave of arrests of opposition activists, Tunisia's President Kais Saied met the Minister of Justice and urged her to speed up what he referred to as the "accountability process." After the meeting, the official presidency Facebook page published a statement citing the President as stating that "it is unacceptable that those against whom there is evidence of guilt, before courts can establish such guilt, escape accountability."

In a video published on the official Presidency Facebook Page during the night of 14 February 2023, the President appeared to confirm that he had supervised the recent arrests personally, adding that "the judicial system has to cooperate, history has proven these people guilty before the courts. On 22 February 2023, in another video televised speech, President Kais Saied also warned that "Whoever dares to exonerate them is their accomplice," in reference to the people arrested earlier in the month and accused of conspiracy against state security. This can be considered as a direct threat to judges and prosecutors from the head of the executive authorities but also has direct repercussions on the work on defence lawyers.

The UN Special Rapporteur on the Independence of Judges and Lawyers has requested to conduct an official visit to Tunisia since April 2022. After accepting a visit between 16 and 26 May 2023, two weeks prior, Tunisian authorities indefinitely postponed the visit of the Special Rapporteur.

INVESTIGATIONS FOLLOWING CRITICISM OF THE MINISTER OF JUSTICE

Lawyers Lazhar Akermi and Ghazi Chaouachi are both subject to investigation after critical statements they made against the minister of justice.

The General Prosecutor in the Tunis Court of First Instance opened an investigation against **Lazhar Akermi** on 21 September 2022 under Articles 128 of the Penal Code and Article 86 of the Telecommunications Code "attributing illegal acts to a public employee without providing evidence" and "offending others or disturbing their comfort through public telecommunications networks." The charges stem from a media interview that Akermi gave on a Tunisian radio on 14 September 2022 in which he stated that he had doubts about the fabrication of cases against the dismissed judges. Akermi is not currently in detention and a date for his trial is yet to be scheduled.

The General Prosecution of the Tunis Court of First Instance opened an investigation against **Ghazi Chaouachi** under Article 24 of Decree 54 on 22 November 2022 based on a statement that he gave to a Tunisian TV channel in which he criticized the intervention of the executive in the judiciary and asserted that the Ministry of Justice had been harassing the arbitrarily dismissed judges. On 21 November, the Minister of Justice's office had instructed the prosecutor to open the investigation against Chaouachi. On 23 June 2023, Ghazi Chaouachi, appeared before an investigating judge of the Tunis Tribunal of First Instance. Ghazi Chaouachi has been detained as a result of being charged with conspiracy against the State in the "conspiracy case," since February 2023. On 17 January 2024, Ghazi Chaouachi received notification in his detention that

the investigating judge concluded the investigation and confirmed the charges referring him to the indictment chamber. Chaouachi's lawyers appealed the judge's decision. The indictment chamber is due to examine the case on 28 March.

AYACHI HAMMAMI:

On 2 January 2022, the bar association Tunis section informed Lawyer and human rights defender Ayachi Hammami that he would be investigated for "deliberately using communication networks and information systems to promote and spread false rumours with the aim of infringing on the rights of others and threatening public security and attributing false information to defame others and damage their reputation." under Article 24 of Decree law 54-2022, which is punishable by a 10-year prison sentence. Hammami appeared before the investigating judge on 10 January 2023.

On 30 December 2022, the Tunis public prosecutor opened the investigation upon instruction from the Minister of Justice to the public prosecutor of Tunis. The only evidence brought against Ayachi Hammami are statements he had made during a radio interview on 29 December 2022 in his capacity as a defence lawyer and coordinator of the Defence Committee of the dismissed judges. In that interview he said that "The refusal of the minister of justice to reinstate the dismissed judges as per the administrative court's order amounts to a crime of corruption under the law and that is he is filing a complaint against the minister on behalf of 37 of the said judges", all of which are protected speech under international human rights law.

Ayachi Hammami is in addition facing criminal investigation as a suspect in the "conspiracy case," to which he was added in May 2023 after he appeared before the investigative judge to defend his client in the same investigation as a member of their Defence Committee . The investigating judges issued a decision to ban Hammami from travel and from "appearing in public places" on 11 October 2023.

On 26 May 2023, the UN Special Rapporteur on the Independence of Justice and lawyers sent a communication to the Tunisian government jointly with four other mandate holders to raise concerns about the investigation of 11 judges and lawyers including Mr Chaouachi, Akermi and Hammami in the cases mentioned above. The mandate holders expressed concerns at "what seems to be a pattern of judicial harassment." The Tunisian government has not replied to the communication.

INVESTIGATIONS AGAINST DEFENCE LAWYERS IN RELATION TO THE "CONSPIRACY CASE"

The "conspiracy case" is a high-profile case that started in February 2023 following the arrests of eight high profile opposition political activists, six of whom remain in detention, under investigation on charges of conspiracy against state security and terrorism charges.

The defence team of the detainees in the "conspiracy case" is composed of eight lawyers, three of whom have been targeted by criminal investigations in relation to their peaceful expression about this case.

On 1 June 2023, Abdelaziz Essid, a lawyer member of the defence committee of political prisoners in the "conspiracy case" representing the eight political activists detained in the case, appeared before an investigating judge of the Tunis Court of First Instance for questioning in connection with accusations of "offending others through telecommunications networks" and "accusing public officials of illegal acts without proof," under Article 86 of the Telecommunications Code and Article 128 of the Criminal Code. The investigation was prompted by an instruction from the Minister of Justice to the Public Prosecutor of the Tunis Tribunal of First Instance following statements Essid had made during a press conference held on 15 May 2023 claiming that there were discrepancies in the dates and facts in the case file of the "conspiracy case" indicating the possibility that the file has been tampered with. If convicted on the two counts, Essid could face up to 4 years in prison.

On 10 January, lawyer Abdelaziz Essid learned that the investigative judge had referred him to trial under the same charges. A first court date was set for 23 February, and was then postponed to 27 March at the request of the defence.

During a radio interview on 28 September 2023, defence lawyer in the "conspiracy case" Islam Hamza said that the charges against her clients were fabricated and that the aim of the investigation was to silence political opposition.

On 2 October, the Tunis Court of First Instance general prosecutor referred Lawyer Islam Hamza, to investigation based on the said statements.

On 21 June, Islam Hamza, appeared before an investigating judge of the Tunis Court of First Instance for investigation in connection with "promoting and spreading false rumours with the aim of infringing the rights of others and threatening public security, and attributing false information to defame others and damage their reputation" pursuant to Article 24 of Decree-Law 2022-54 on cybercrime, which is punishable by a sentence of 10 years' imprisonment upon conviction. Hamza's prosecution followed a complaint by the General Committee of Prisons and Rehabilitation, which is an

administration attached to the Ministry of Justice, submitted on 5 May 2023 based on a declaration she had made on Radio Shems FM on 19 April 2023 stating that the conditions of transportation of the detainees from the prison to the court were inhumane and calling the vehicle "the torture van." On 2 November 2024, the investigating judge issued a decision to dismiss the charges against Hamza. However, the prosecution appealed the decision and the on 20 December 2023, the indictment chamber issued a decision to indict Hamza under article 24 of Decree law 54-2022 and referred her to trial.

Islam Hamza told Amnesty International that these investigations are a form of harassment, "as a lawyer I should be able to focus on defending my clients who are arbitrarily detained and not defending myself against outrageous accusations. This will undermine my ability to fulfil my duties as a lawyer."

Dalila Msaddak spoke about the conspiracy case in a TV interview on 21 November 2023 in which she defended her clients saying that the charges against the political opposition members detained since February 2022 were unfounded and that the case was fabricated. In doing so, Msaddak was exercising her responsibilities as a defence lawyer, in addition to exercising her right to freedom of expression.

Two days later, on 23 November 2023, the prosecutor at the Tunis Court of First Instance opened a criminal investigation against lawyer Dalila Msaddak for "intentionally using telecommunication networks to spread false news and accusations with the objective of defaming others and disturbing public order" under Decree 54 of 2022.

Msaddak had already faced a separate investigation for similar reasons. A Tunis prosecutor had opened an investigation against Msaddak on 2 October 2023 following statements that she had made on 29 September where she tried to explain to the public the request that the defence committee made to the judge requesting to subpoena the testimonies of foreign diplomats with whom detainees are accused of having exchanged intelligence. Msaddak stated that the refusal of the judge to summon the diplomats for questioning was "politically motivated" because her clients are accused of having exchanged intelligence with foreign diplomats without any evidence and summoning the diplomats would confirm that. The prosecutor opened an investigation against Msaddak under Article 24 of Decree law 54.

Dalila Msaddak told Amnesty International that these two investigations have had a significant effect on her life and work. She said "Because of all this exposure as a lawyer who is targeted by the authorities,people think they have small chances of winning a case if I am their lawyer." She adds that "authorities do not have answers to our claims, so they answer us with the violence of the law and judicial harassment."[3]

INVESTIGATION AGAINST 14 LAWYERS BASED ON EVENTS THAT OCCURRED WHILE THEY WERE DISCHARGING THEIR PROFESSIONAL DUTIES

In March 2023, the Tunis public prosecutor opened a criminal investigation against Abderrazak Kilani, a lawyer and former president of the Tunisian Bar Association, along with lawyers Saida Akermi, Samir Dilou, Anouar Ouled Ali, Ines Harrath and nine others, based on a complaint from national guard officers accusing them of "causing a public disturbance" and "processing of personal information without consent." Pursuant to Articles 27 and 87 of Law 63/2004 and Articles 315 and 316 of the Penal Code, these offences are punishable by up to two years' imprisonment and a 10'000 dinar fine (approximately 3,250 USD). Two of the 14 lawyers, Saida Akermi and Samir Dilou, also face investigation on the additional charge of "verbally assaulting public officials on duty," which, according to Article 125 of the Penal Code, is punishable by one year's imprisonment.

The facts date back to 2 January 2023 as the group of 14 defence lawyers were trying to obtain information from security forces officials on the whereabouts of their colleague and client Noureddine El-Bhiri, who had been forcibly disappeared. El Bhiri was a former minister and a member of the leadership of the opposition party Ennahdha. Noureddine Bhiri was detained incommunicado at an undisclosed location between 31 December 2021 and 2 January 2023, when his family and lawyers learned that he had been transferred to the Bougatfa hospital in Bizerte, a town in northern Tunisia. Authorities were refusing his lawyers access to him, in violation of his due process rights. Upon learning that he was transferred for treatment to a hospital in Bizerte, the lawyers went to the national guard station of Bizerte, North of Tunisia to ask the chief officer to disclose the location of El-Bhiri. The National Guard officer refused to release any information on Bhiri's detention and condition verbal altercation to ensue inside the national guard's chief office. The lawyers refused to leave until they know where their client was being held and one of them recorded a video inside the station which was posted on Facebook and later deleted.

According to the lawyers present, Akermi and Dilou are being investigated under charges of verbal assault for accusing the National Guard officers of engaging in illegal acts by forcibly disappearing their client and said they would hold them to

[3] Interview with Amnesty International on Interview on 8 Feb

account. The lawyers' interaction with the authorities is protected by freedom of expression, falls under the discharge of their professional duties and should not be subject to criminal prosecution.

Samir Dilou told Amnesty International that the reason the escalation happened was when one of the officers presents accused him of using his phone to film in a way that he found to be disrespectful. He said: "I was leaning against the wall with my phone in my hand and one the officers yelled at me to stop filming in a very disrespectful way, so I told him that I was not filming and that he is free to check my phone and asked him not to speak to me with disrespect. I did not expect that to lead to a criminal investigation and a travel ban."[4]

On 21 March 2023, the investigating judge in charge of the case in the court of first instance of Bizerte has issued a travel ban decision against all 14 lawyers. The lawyers have appealed the travel ban decision and their appeal was denied.

CONCLUSIONS AND RECOMMENDATIONS

The pattern of judicial harassment of lawyers because of their exercise of their right of freedom of expression and the discharge of their professional duties is alarming. Authorities must respect, protect, promote, and fulfil the human rights of everyone including lawyers allow them to perform their professional duties and freely express themselves without any intimidation, harassment or any fear of reprisals. After undermining the independence of the judiciary, authorities are also undermining the independence of the legal profession which will inevitably hinder the effective enjoyment of the right to a fair trial in Tunisia.

AMNESTY INTERNATIONAL CALLS ON TUNISIAN AUTHORITIES TO:

- Refrain from using criminal investigations and prosecutions as a form of judicial harassment and reprisal against political opponents, human rights defenders and activists and to undermine the exercise human rights including the rights to freedom of expression and association.
- Put an end to the judicial harassment of lawyers solely for peacefully exercising their human rights and discharging their professional duties by immediately discontinuing all politically motivated investigations and prosecutions and dropping the charges against all the lawyers currently facing investigations.
- Ensure that lawyers are able to perform their professional duties and freely exercise their human rights without any intimidation, harassment or any fear of reprisals.
- Immediately end all attacks on the judiciary and ensure that judges are able to discharge their judicial functions independently and impartially in defence of the rule of law and human rights.
- Respect and effectively implement international standards on the independence of the legal profession including the Basic Principles on the Role of Lawyers and the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.
- Repeal Presidential Decree-Law 2022-54, repeal or amend all the other laws that criminalize the legitimate exercise of the right to freedom of expression, end all investigations and prosecutions based solely on the legitimate exercise of the rights to freedom of expression, freedom of peaceful assembly and of association, and guarantee the full and unhindered exercise of the right to freedom of expression in accordance with international human rights law and standards;

[4] Interview with Amnesty International on 7 Feb 2024.