

## AMNESTY INTERNATIONAL PUBLIC STATEMENT

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# TUNISIA: HUNDREDS OF PEACEFUL PROTESTERS TRIED IN THEIR ABSENCE IN GAFSA

## AUTHORITIES MUST STOP JUDICIAL HARASSMENT OF PEACEFUL PROTESTERS

Tunisian authorities must stop the judicial harassment of peaceful protesters demanding employment rights in the Gafsa region, Amnesty International said today. In case of prosecution, authorities must guarantee the right to fair trial to everyone by ensuring that all persons brought to trial on protest-related charges are informed sufficiently in advance of the charges against them and allowed to prepare for their defence.

In the past five years, the Gafsa Court of First Instance (hereafter Court of Gafsa) has convicted hundreds of people, often sentencing them to prison terms between six and eight months on charges of “disruption of the freedom to work” under Article 136 of the Tunisian Penal Code. These trials have happened in complete violation of the right to fair trial due to the failure of authorities to inform the protesters that they were facing charges. The charges brought against the protesters violate their right to freedom of peaceful assembly and the trials conducted in their absence violate the defendants’ right to a fair trial.

Since the 2011 uprising that toppled former Tunisian President Zine El Abidine Ben Ali, the Gafsa region, and particularly its phosphate mining towns, has been the site of regular social protests. Demonstrators, the vast majority of whom are unemployed, have been protesting the lack of employment opportunities for local youths at the state-owned phosphate mining company, which is the main employer in the mining towns of Redeyef, Moularès, Metlaoui and M’dhilla. The unemployment rate in the Gafsa region is estimated at 28% compared to the [national rate](#) of 15.5%<sup>1</sup>. As a result, the region has seen an average of 70 protests a month in 2017, according to a study conducted by the International Network for Economic, Social and Cultural Rights. In 2018 alone, at least [791 protests](#) took place in the region, according to the Tunisian Forum of Economic, Social and Cultural Rights<sup>2</sup>[https://www.escr-net.org/fr/nouvelles/2017/rapport-sur-manifestations-liees-aux-enjeux-economiques-et-sociaux-en-tunisie?\\_sm\\_au\\_=iVV1B1J3ds7Z4H4Qhttps://ftdes.net/ost-rapport-fevrier-2018-des-mouvements-sociaux/](https://www.escr-net.org/fr/nouvelles/2017/rapport-sur-manifestations-liees-aux-enjeux-economiques-et-sociaux-en-tunisie?_sm_au_=iVV1B1J3ds7Z4H4Qhttps://ftdes.net/ost-rapport-fevrier-2018-des-mouvements-sociaux/).

Lawyers estimate that the Court of Gafsa has convicted some 400 people on protest-related charges in recent years, often sentencing them to six to eight months in prison without informing them that charges are being brought against them, or without informing them of the dates of the trials. The failure to deliver the proper notification to the individuals on trial deprives them from their right to prepare their defense by hiring lawyers and attending the court sessions.

Afef Zarrouk, a lawyer volunteering to appeal court sentences on behalf of more than 200 individuals facing a range of charges related to the protests, told Amnesty International that the number of prosecutions has increased since 2016 and that it spiked in 2017:<sup>3</sup>

“We [lawyers] have been shocked by the large number of sentences *in absentia* against protesters. The indictments are often arbitrary and are followed, almost systemically, by sentences *in absentia*.”<sup>4</sup>

She also said that the prosecution’s indictments have been based, in most cases, on the phosphate company’s complaints only and expressed concern that the authorities’ abusive use of Article 136 was intended to punish social protesters.

<sup>1</sup> The Tunisian National Institute for Statistics, *2018 fourth quarterly report*, December 2018, [www.ins.tn/ar/publication/-مؤشرات-التشغيل-والبطالة-،-الثلاثي-الرابع-2018](http://www.ins.tn/ar/publication/-مؤشرات-التشغيل-والبطالة-،-الثلاثي-الرابع-2018)

<sup>2</sup> Tunisian Forum on Economic and Social Rights, *Report of the Social Tunisian Observatory of December 2018*, [www.ftdes.net/ar/ost-rapport-decembre-2018/](http://www.ftdes.net/ar/ost-rapport-decembre-2018/)

<sup>3</sup> Interview with Afef Zarrouk, Gafsa, 8 August 2018.

<sup>4</sup> Interview with Afef Zarrouk, Gafsa, 8 August 2018.

Article 136 of the Tunisian Penal Code makes the offence of “disrupting the freedom to work” conditional on the use of “violence, assault, threats or fraudulent claims”. The offence is punishable with a maximum prison sentence of three years and a fine up to 720 Tunisian dinars (approximately 230 USD). However, in the cases that Amnesty International examined, the prosecution did not provide any allegations or evidence of the use of violence.

Prosecutors’ sweeping use of “disrupting the freedom to work” charges to criminalize peaceful protest contravene Tunisia’s commitments to protect the right to freedom of peaceful assembly as enshrined in Article 21 of the International Covenant on Civil and Political Rights. It also contravenes Tunisian law and constitution.

Amnesty International stresses that the court must not convict protesters under Article 136 unless there is evidence that violence, fraud or threats were employed by them. Moreover, in cases where protesters used peaceful ways to organize their activity, the court must recognize that peaceful protest that temporarily obstructs the activity of a third party is protected under the right to freedom of assembly according to international standards.

## TRIALS IN RELATION TO PROTESTS IN MOULARÈS

The bulk of the convictions under Article 136 by the Court of Gafsa relate to protests in the mining town of Moularès where judges convicted some 200 people from the town in 12 separate trials.

Amnesty International reviewed the casefiles of 91 peaceful protesters from Moularès prosecuted solely on “disrupting the freedom to work” charges. They were tried between 2016 and 2019 in seven separate group trials, involving groups of five to 32 individuals. The organization interviewed 15 individuals amongst the group of convicted protesters, including three women and 12 men, and also spoke to their defense lawyers. In all cases, the defendants were convicted without being present in court.

Amnesty International reviewed the charges sheets, police reports and prosecutor’s reports of the seven trials and noted that they did not contain claims that the protesters used violence. The prosecutor of the Court of Gafsa brought the charges against the peaceful protesters following a complaint by the National Phosphate Company of Gafsa in relation to their peaceful participation in different protests in Moularès during the years 2014, 2015 and 2016. In one complaint, which Amnesty International reviewed, the company alleged that the defendants prevented employees from working and shut down a water pump at a phosphate-washing site in Moularès.

The convicted protesters were denied the right to defense, a key component of the right to fair trial, because the authorities did not inform them of the charges being brought against them and the place and time of the proceedings. All 15 individuals interviewed by Amnesty International confirmed that they had not received any notice of the judicial proceedings against them at any stage. The convicted protesters were later notified by the police in their town of the convictions. Article 14 (3) of the International Covenant on Civil and Political Rights includes the right to be present in court as a requirement for a fair trial. Therefore, authorities are required to inform the accused of proceedings being brought against them in sufficient time to enable them to appear and to prepare their defense before the case can go ahead in their absence.

In one of the 91 cases examined by Amnesty International, Sihem<sup>5</sup>, a 37-year-old woman from Moularès, who was initially sentenced to six months in prison in February 2017, told Amnesty International that she learned of the trial against her only when the verdict was reported on television. She said she had been watching the news when she saw the ticker at the bottom of the screen mention a trial related to a sit-in protest at the state-owned phosphate-mining company’s water-pumping site in Moularès that she had attended in May 2015.<sup>6</sup>

“I worried that I might be included [in the verdict] when I saw the news and asked one of my relatives to inquire with the police about my situation. He went to the police station and was delivered the sentence notice,” Sihem said.<sup>7</sup>

Upon learning the news of her conviction, Sihem appealed the absentia sentence against her through a lawyer in Gafsa. The sentence was reduced to 200 dinars fine (64 USD).

In another case, Hichem<sup>8</sup>, a 21-year-old protester, told Amnesty International that he also did not know that he had been charged with any crime until after he was sentenced to six months imprisonment for his participation in a peaceful protest in January 2017.<sup>9</sup>

<sup>5</sup> Full name withheld to protect the identity of the interviewee.

<sup>6</sup> Interview with Sihem, Moularès, 7 August 2018.

<sup>7</sup> Interview with Sihem, Moularès, 7 August 2018.

<sup>8</sup> Full name withheld to protect the identity of the interviewee.

<sup>9</sup> Interview with Hichem, Moularès, 7 August 2018.

For nine of the individuals that Amnesty International interviewed the court reduced the prison sentences to fines ranging from 200 to 350 Tunisian dinars (approximately 64-115 USD) on appeal.

In one such case, the Court of Gafsa sentenced Fajr<sup>10</sup>, a 70-year-old resident of Moularès, to eight months in prison on charges of “disrupting the freedom to work” for her participation in a protest in the town. She was not notified of the charges until after her conviction, and so was unable to participate in her own trial or to mount a defense to the charged against her.

“They [the prosecution] say I participated in a sit-in that cost the company money and hurt the economy of the country and [first] they sentenced me to eight months in prison for blocking access to the site when all I did was sit there,” she told Amnesty International. “Now I have to pay the 350 dinars fine (115 USD). I do not have that money. I joined the sit-in because none of my sons are employed and we are desperate.”<sup>11</sup>

Abdel-Kader Amari, a retired 75-year-old man from Moularès also told Amnesty International that he has been participating in protests on behalf of his children’s right to employment.<sup>12</sup>

“I prefer to take the risk of being tried myself instead of letting my children protest. They are young and looking for work I don’t want them to end up with a criminal record. It is becoming normal for people to face charges and get sentenced, we all know there is a risk of that happening, but we don’t have a choice.”<sup>13</sup>

Abdel-Kader has six children that are struggling to find employment in the region. In 2017 he was sentenced with four other protesters to a 300 dinar fine (approximately 100 USD) for participating in a sit-it at the phosphate washing site of Moularès.

Several of the protesters convicted in their absence told Amnesty International that their economic situation has made it difficult to navigate the appeals process. Younger protesters said they worried that having a criminal record would make it even more difficult for them to find work.

“It feels like the entire town is sentenced *in absentia*,” Hichem told Amnesty International. “If you have not been sentenced yet, it is only a matter of time before you are, because we all participate in the protests, in the absence of concrete solutions from the state to the dire situation of the town...Now instead of fighting for my right to employment, I find myself fighting to appeal the sentence. It is as if we are being punished for daring to claim our rights.”<sup>14</sup>

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<sup>10</sup> Full name withheld to protect the identity of the interviewee.

<sup>11</sup> Interview with Fajr, Moularès, 9 August 2018.

<sup>12</sup> Interview with Abdelkader, Moularès, 3 March 2019.

<sup>13</sup> Interview with Abdelkader, Moularès, 3 March 2019.

<sup>14</sup> Interview with Hichem, Moularès, 7 August 2018.