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Urgent Call to Action to the Minister of Justice and the President of the Supreme Judicial Council on COVID-19 Justice Sector Response

As esteemed members of the Tunisian legal and human rights community, we respectfully write this letter to the Minister of Justice and the President of the Supreme Judicial Council to express our concerns regarding the health and safety of those who are in detention centers, jails and prisons across Tunisia in light of the spread of the novel coronavirus, COVID-19. The World Health Organization (WHO) Interim Guidance on Preparedness, prevention and control of Covid-19 detention has identified persons locked in detention centers, jails and prisons as being at high risk of contracting COVID-19 because of the confined conditions in which they live together, and because they typically have greater underlying health conditions. The WHO has also made clear that the increased risk of COVID-19 spread in detention facilities extends to detention staff and their families, and the community-at-large.

The majority of prisons in Tunisia, 28 units, have a dilapidated infrastructure and they lack healthcare requirements, in addition to facing the problem of overcrowding, as the prison population in a number of prisons exceeds 300% of their capacity, which caused many prisoners to live in inhumane conditions in small areas, where the total number of detainees is about 24000. This overcrowding has contributed to the outbreak of many infectious diseases such as tuberculosis, scabies and ophthalmia, which makes this situation a cause of great concern. The concern becomes greater in the midst of the present exceptional circumstance with the existence of a highly spreading and contagious virus, which will infect thousands of prisoners and officers in prisons in addition to their families.

Tunisia has the responsibility to protect the liberty, health and safety of detainees and prisoners and ensure fundamental fair trial guarantees--even during states of emergency. In line with global responses, the hereunder signing organizations and bodies jointly propose representatives of the judicial sector to take immediate action to release those most vulnerable to COVID-19 and to reduce overcrowding in Tunisia's detention centers, jails and prisons.

- 1. Use all legal avenues to immediately reduce prison populations.**

In this time of crisis, Tunisia must not fall out of step with justice systems around the world who are engaging in measures to contain the spread of the virus by releasing detainees, as well as the guidance of the World Health Organization which advises that the number of detained and incarcerated individuals be reduced through the use of bail and release at all stages of the judicial process.

We respectfully call on the Minister of Justice, the Supreme Judicial Council, and therefore the judges of all ranks to exercise their power to grant conditional release to those in Tunisia's prisons in order to protect these vulnerable populations, without the requirement of submitting a formal application given the exceptional circumstances.

The conditional release committee at the Ministry of Justice

- (a) Grant conditional release (parole) to those serving sentences in Tunisia's prisons who face heightened risk of severe illness or death due to COVID-19, including people who are over 60, who have underlying medical conditions, as well as vulnerable young people who are under 20 regardless of the length of time they have left on their sentences, pursuant to article 355 of the Criminal Procedure Code.
- (b) Grant conditional release (parole) to all prisoners serving time for misdemeanor offenses in the interests of justice regardless of the length of time they have left on their sentences, pursuant to Article 353 of the Criminal Procedure Code
- (c) Grant conditional release (parole) to all children, for whom final judgments were issued, who are sentenced to juvenile rehabilitation centers or in segregated sections of prisons, regardless of the length of time they have left on their sentences, pursuant to Article 353 of the Criminal Procedure Code.
- (d) Grant Conditional release (parole) to all prisoners who are otherwise eligible for release pursuant to Article 354 of the CPC Criminal Procedure Code.

Sentencing judges:

- (a) Grant conditional release (parole) to all prisoners sentenced to imprisonment for a period not exceeding 8 months regardless of the remaining duration of imprisonment and without having to submit the required documents, pursuant to Article 356 of the Criminal Procedure Code.

2. Use all legal avenues to reduce pre-trial detention populations.

Public attorneys, public prosecutors and investigating judges have broad authority to help curtail the impact of COVID-19 in Tunisia's detention centers. In order to reduce the pre-trial detention populations, while still upholding the administration of justice, we urge them to do the following:

Public attorneys, public prosecutors and investigating judges

- (a) Limiting the issuance of detention warrants and arrest warrants to only the most serious flagrant offenses, which present a grave risk to public safety.
- (b) Agree to the immediate release of detainees pre-trial and avoiding the extension of the suspects' detention
- (c) Provide for the pre-trial release of all eligible detainees, pursuant to Articles 84, 85, and 116 of the Criminal Procedure Code
- (d) Provide for the immediate release of the detainees who do not have a lawyer.

Judges

The judiciary has a heavy responsibility to ensure the protection of fundamental rights and equal protection of the law, even during times of crisis, and declarations of emergency. Therefore, it is essential to the administration of justice that courts continue to operate, at least in part, even under emergency measures, for critical hearings and emergency applications.

Thus, we urge courts to take the following measures:

- (a) Provide for the acceptance of pre-trial release requests with or without bail as per the provisions of the Criminal Procedure Code, mainly Article 206 of the Criminal Procedure Code.
- (b) Application of alternatives to incarceration such as fines, suspension of sentences, and house confinement.
- (c) Expedite scheduling of hearings for appealed cases and the release of all detainees, especially if they have already served part of the punishment.

(4) Implement more rigorous procedures to protect detainees and prisoners

It is critical that public prosecutors and the administration of detention centers and prisons in Tunisia take the following actions to ensure the health and well-being of detainees and prisoners:

- (a) In serious crimes such as public security crimes, murder, kidnapping and armed robbery where the detainee cannot be released, public prosecutors should ensure that suspects are immediately referred for medical examination to ensure that they do not have COVID-19 before their investigation, interrogation or placing them in detention centers.
- (b) To procure separate places for the new pre-trial detainees brought to detention centers and to immediately quarantine them from other detainees for two weeks.
- (c) To procure ensure appropriate medical treatment facilities in detention centers and prisons.
- (d) To procure communication facilities or other technology for detainees and prisoners so that they may communicate freely with their lawyers and their relatives using the tools such as phone, Skype, Viber, or WhatsApp.
- (e) To make available sanitizer and antiseptics for the use of detainees and prisoners.

- (f) To provide medical tools facilities for checking the body temperature and to generally check the suspects, accused and convicted persons.
- (g) To procure a suitable place that follows medical guidance and recommendations for ensuring the health and safety of the suspects, accused and convicted persons while meeting justice and judicial sector officials, including the defense lawyers.
- (h) To provide honest, transparent and accurate information to stakeholders about the capacity of institutions to adequately protect their staff and detainees, and to transparently report any cases of COVID-19 among staff and detainees
- (i) To procure facilities such as; masks, elastic/plastic gloves, sanitizer and antiseptics while transferring suspects, accused persons, and convicted prisoners from one place to another including the transfer to court for trials/hearings.

Minister of Justice and M. President of the Supreme Judicial Council, this exceptional situation imposed on us a call to take all pre-emptive measures and precautions to prevent a catastrophe that might happen if the epidemic broke out in detention centers, jails and prisons. We are sure that you will take into account our suggestions in order to avoid what might happen to the country if the epidemic broke out in detention centers, jails and prisons. We also would like to express our readiness to provide any cooperation that would help to accelerate any protective measure to avoid the dangers of overcrowding in the aforementioned centers in such circumstances.