

TUNISIA
A LAWSUIT AGAINST THE HUMAN RIGHTS LEAGUE,
AN ASSAULT ON ALL RIGHTS ACTIVISTS

Introduction2
The LTDH Election of October 2000.....4
The Legal Challenge to the LTDH Elections6
The Response of the LTDH Steering Committee.....9
Crackdown under Cover of a Court Decision16
Déjà vu: The 1992 Legal Effort to Undercut the League21
Recommendations23
 To the Government of Tunisia23
 To the European Union24
 To the Government of France.....24
Appendix26
Acknowledgements27

INTRODUCTION

The Tunisian League for Human Rights (Ligue Tunisienne pour la Défense des Droits de l'Homme, LTDH¹) is fighting for its survival as an independent and robust organization. The courts have already voided the League's internal elections, shut down its headquarters, and ordered the eviction of its steering committee (*comité directeur*).

The steering committee's appeal against these decisions is scheduled to begin on April 16. At stake is the future of the oldest independent human rights monitoring organization in the Arab world.

The catalyst for the court action is a suit filed by four LTDH members who claim irregularities in the preparation of the League's last elections. Both the plaintiffs and government authorities state that the government has played no role in bringing the case. But the plaintiffs, whatever their motives, have handed the government a potent weapon in its wide-ranging campaign to repress all those who criticize its human rights record.

At its fifth general assembly held October 27-30, 2000, the League elected a dynamic leadership that was certain to abandon the quieter, less confrontational approach pursued by its predecessors for the past six years. In choosing this course, Tunisia's most prestigious rights group joined the growing ranks of associations and personalities willing to defy government efforts to tame civil society organizations and silence its critics. Other indications of this trend include the creation in 1998 of a major new human rights organization, the National Council for Liberties in Tunisia (Conseil National pour les Libertés en Tunisie, CNLT), and elections within the Tunisian Association of Young Lawyers (Association Tunisienne des Jeunes Avocats, ATJA) and the Bar Council (Conseil de l'Ordre de Tunisie), where candidates close to the government or the ruling party, the Democratic Constitutional Union (Rassemblement Constitutionnel Démocratique, RCD), were defeated in 1997 and 1998 respectively.

Three weeks after the LTDH election, the suit demanding its nullification was filed in court. The plaintiffs promptly won an interim injunction expelling the new steering committee from the LTDH offices, barring it from taking any actions in the name of the LTDH, and replacing it with a court-appointed administrator. These interim measures remain in place, pending a decision in the appeal of the original case.

Despite the injunction, the LTDH steering committee has continued to issue communiqués and has attempted to conduct meetings and business, stating that its local sections have urged it to continue working while the case is on appeal. These activities have prompted further legal measures against the League's president and first vice-president, as well as large-scale police deployments to prevent the steering committee and other LTDH bodies from gathering.

The four plaintiffs all ran as candidates in the League elections. Their lawsuit claims that procedural irregularities violated the LTDH's own internal rules and the plaintiffs' rights both as citizens and as members of an entity that is governed by Tunisia's Law on Associations. Many of those "irregularities" had been apparent—and debated inside the League—long before the election took place. However, the plaintiffs went to court only after they ran as candidates and lost. They insist that they are acting to protect the LTDH's independence from what they view as underhanded maneuvers by one political tendency to dominate the organization.

The vast majority of the League's members who have expressed themselves on the dispute reject this view. All four former presidents of the LTDH (outgoing president Taoufik Bouderbala, Moncef Marzouki, Saâdeddine Zmerli, and Mohamed Charfi—who also served as minister of education and science under President Zine el-Abidine Ben Ali) have signed a petition in support of the League, demanding "an end to efforts to block its functioning so that it can freely resume its activities."

¹ The LTDH website is under construction. Many of its communiqués can be viewed at <http://www.maghreb-dhdh.sgdh.org/lddh>, which is one page of a larger site devoted to human rights in North Africa.

Tunisian authorities have repeatedly described the LTDH as an “established institution” (*un acquis*) of the country. Official publications about human rights often mention the League and its venerable place among human rights organizations of the region. But while authorities cherish the League’s *existence* for public relations reasons, they have actively impeded, and now appear intent on further crippling, its watchdog role.

The evidence that the government views the lawsuit as a means to halt the revival of an activist LTDH includes:

- Concordant statements made about the dispute by the plaintiffs, officials of the ruling party and government officials, all objecting to the steering committee’s supposed domination by political “extremists”;
- the uncharacteristically zealous enforcement by the police of the temporary injunction issued in this case;
- the increased repression of all human rights activists and activities in recent months; and
- the precedent of the government’s use in 1992 of seemingly neutral legal maneuvers to undermine the outspoken leadership of the LTDH of the time.

THE LTDH ELECTION OF OCTOBER 2000

The fifth general assembly of the LTDH, held in Tunis last October, was the first since February 1994. One of the main orders of business was to elect a new steering committee to replace the one headed by the League's then-president, Taoufik Bouderbala. On the night of October 29-30, assembly-goers elected a twenty-five-member committee dominated by persons known for their independence vis-à-vis the authorities. Not one is a member of the ruling party; some are considered close to opposition parties that have been denied legal recognition by the government. Later on October 30, the new steering committee selected lawyer Mokhtar Trifi as president. On November 6, the new committee chose the rest of its office-holders, including journalist Slaheddine Jurchi as first vice president and Khemaïs Ksila as secretary general. Both men have been targeted by the government for their views on human rights and/or politics, and it is noteworthy that their re-election to the steering committee was one target of the lawsuit.

Since its election, the new committee has revived the kind of activism that put the League on a collision course with the authorities before 1994 (see below). Compared with its immediate predecessor, the new steering committee has issued more frequent and more sharply worded communiqués criticizing human rights abuses. Dissemination of these communiqués and contact with international media have been broader than in the past, thanks to a more aggressive communications policy at the League and the ease of exchanging information via the Internet.

The new leadership also showed early on that it did not intend to sidestep the plight of suspected Islamists, who are repressed more harshly than members of any other political formation. One of the new committee's first communiqués, issued November 18, called attention to the plight of mostly Islamist hunger strikers in prison, and urged President Ben Ali to "use his powers under the constitution to intervene in order to save the lives of the strikers." (Relatives of Islamist prisoners had attempted to attend the LTDH general assembly to plead their case but had been denied access by the police.)

Despite its frequent criticism, the new committee has also praised positive steps by the authorities² and called for dialogue.³

The previous League leadership was elected in 1994, at a moment when the government was working actively to undermine the League's independence through legal maneuvers and other pressures (see below). That leadership lowered the tone and frequency of public denunciations of government abuses while seeking more dialogue with authorities to address problems. Despite the more moderate approach taken by the LTDH from 1994 until 2000, the government largely spurned requests for dialogue. Instead it increased pressure through

² In a November 18, 2000 communiqué, it strongly endorsed the reforms announced by President Ben Ali in his speech of November 7, 2000 liberalizing the Press Code, transferring administration of the prisons from the Interior Ministry to the Justice Ministry, and providing for compensation by the state to persons unjustly imprisoned. However, the communiqué stressed that the value of positive laws "is established more easily when they are accompanied by a real commitment to give them force in daily reality..." As of mid-March, the press reform measures had been approved by the council of ministers and were being examined by a committee of the Chamber of Deputies. "Le projet de loi examiné en commission," *La Presse de Tunisie*, March 20, 2001, and Taher as-Soueih, "What Is Happening with Scrutiny of the Proposed Amendments to the Press Code?" *es-Sabah*, March 16, 2001.

³ "The League is, and always was, open to dialogue with the authorities," Trifi said in an interview published in *le Soir* (Brussels), November 2, 2000. "Each time there was a break in the dialogue, it came from the authorities. We hope that there will be a climate of confidence between the League and the authorities." In March 2001, Trifi told an interviewer, "We have constantly called for dialogue with the authorities, in the press and everywhere. We consider the authorities to be our interlocutor. Is there any other way?" *Alternatives Citoyennes*, an online magazine, no. 0, March 20, 2001. Available: <http://www.alternatives-citoyennes.sgdg.org/num0/actualite-w.html> [April 11, 2001].

police surveillance⁴ and the harassment of LTDH members and of citizens who sought its assistance, a blackout of League activities in the major media, and the imprisonment of League Vice President Ksila from 1997 to 1999.

The election in 2000 of a more assertive LTDH leadership came two years after the establishment of a second major human rights monitoring group in Tunisia, the CNLT.⁵ The founders of the CNLT include several prominent figures from the LTDH of the early 1990s, such as Moncef Marzouki, Sihem Ben Sedrine, and Mustapha Ben Jaâfar, along with the outspoken journalist Taoufik Ben Brik and lawyer Néjib Hosni (see below).

The CNLT has issued a steady flow of communiqués and reports on the human rights situation even though Tunisian authorities have refused to allow it legal status.⁶ By openly defying the interdiction, by highlighting abuses against suspected Islamists, and by publishing the names of security officials accused of practicing torture,⁷ the CNLT has aroused the ire of authorities, who have subjected CNLT members to prosecution, persistent harassment and, in recent months, beatings by plainclothes police. At the same time, the boldness and productivity of the CNLT probably influenced the election of a more assertive leadership by LTDH members.

⁴ The newly installed Minister of Human Rights, Slaheddine Maâoui, in an interview published in *le Monde* on April 6, 2001, appeared to repudiate the practice of having police follow human rights activists in their movements:

I am convinced that this kind of measure [*des filatures*] is useless and counter-productive. We are revolted to see the government held responsible for a system of harassment and repression since what is happening is not the result of a system but of isolated initiatives.

So the government is being overwhelmed by individual initiatives?

Certainly not. I do not wish to add to the polemics. But in some cases, there is an escalation of words between the security forces and the human rights activists that is set off by an insult.

⁵ The CNLT website can be accessed at <http://www.cnlt98.org> and www.welcome.to/cnlt.

⁶ The minister of interior issued the decision on March 2, 1999. According to Article 5 of the Law on Associations, the minister must provide a justification for the refusal. His letter stated that the CNLT did not fulfill some of the conditions specified in the Law on Associations, but did not elaborate or specify which conditions were not met. The CNLT responded by appealing the refusal before an administrative court, pursuant to Article 5, and also by declaring its “determination to exercise openly and serenely the freedom granted to it by the constitution of the Republic” and by international human rights instruments. See CNLT communiqué of May 31, 1999, “Pour l’abrogation de la loi sur les associations.” In the above-cited interview in *le Monde* of April 6, 2001, Human Rights Minister Maâoui stated, “The CNLT applied in 1999 as an association, whereas its aims were those of a political party. So it received a received a justified refusal.” In April 1999, the CNLT appealed the denial of legal recognition; two years later, the administrative court has yet to rule.

⁷ The list is appended to its report, *Rapport sur l’état des libertés en Tunisie*, March 2000. Available <http://welcome.to/cnlt> [April 12, 2001].

THE LEGAL CHALLENGE TO THE LTDH ELECTIONS

The first official public response to the LTDH election appeared in the press two days after it was held. In an interview published in the Tunisian Arabic-language daily *ech-Chourouk* on November 2, Abderrahim Zouari, then-secretary general of the ruling RCD,⁸ observed:

Public opinion in our country is surprised by the direction that the League took during its recent congress. A number of observers concur that the League has been tarnished by numerous violations that have put the League on a path that is contrary to its objectives and function....What emerged from the recent congress was a departure from the working framework of the League, giving it the appearance of an extremist political party, which constitutes a dangerous turn in the path of this association.

Zouari went on to list two of the alleged violations of the LTDH's internal statutes that, three weeks later, figured in the lawsuit filed by the four league members. These were the "failure to renew the regional sections before holding the general assembly, and noncompliance with Article 22 of the bylaws, which does not allow serving in the steering committee for more than two consecutive sessions." Such violations, Zouari contended, "have paved the way for a monopolization of responsibilities by extremist figures." He said the first statements emanating from some members of the new steering committee "were evidence of a dangerous departure from the principles of the League" and confirmed a "sectarian bent" that will "hinder its future relations with all entities within civil society." He continued, "It is clear that behind this tendency is an exclusionary mentality that will work to alienate others committed to defending and protecting human rights..."⁹

Following this critique by the head of the ruling party, Tunisia's main media published similar allegations—and worse—without presenting viewpoints sympathetic to the steering committee. *Es-Sabah*, an Arabic-language daily that like all other privately owned dailies hews close to the official line, cautioned readers in an editorial "to distinguish between the right to struggle for individual and collective freedoms and the agenda of certain persons to exploit the human rights dossier for partisan and political interests at home and abroad...and to distinguish between improving the state of liberties and the plans of certain parties who wish to impose on Tunisia conditions that everyone knows have nothing to do with the interests of the Tunisian people and their aspirations for progress, to say nothing of an effort to put an end to national sovereignty..."¹⁰

On November 15, two weeks after the RCD chief denounced the election, Tunis lawyer Fayçal Triki told journalists he had been engaged by four LTDH members to file a civil suit seeking nullification of the general assembly and all actions emanating from it, including the election of the new steering committee.¹¹ The complaint filed two days later by Samir Assbouï, Abderraouf El-Jemel, Kamel Ben Younes, and Arbia Ben Ammar Bouchiha alleged that the general assembly was marred by several violations of the League's statutes (*statuts*) and bylaws (*règlement intérieur*), including:

- failure to enforce the rule requiring annual renewal of individual memberships (Articles 9 and 10 of the statutes);
- failure to hold biennial elections within the LTDH's forty-one local sections (Article 9 of the bylaws);

⁸ Zouari became minister of youth and sports one month later and was replaced as party chief by Ali Chaouch, a former minister of interior.

⁹ "Zouari to *ech-Chourouk*: The League Has Deviated from Its Principles...And This Is What Has Hurt Its Credibility," *ech-Chourouk*, November 2, 2000.

¹⁰ "Supporting freedoms is a principled choice...but loyalty to Tunisia comes first," *es-Sabah*, November 16, 2000. For further examples of media attacks on the League in the days preceding the filing of the civil lawsuit, see Selim al-Krai, "Human Rights League in Tunis and Exclusionist Practices," *El-Gharb* (weekly), November 15, 2000, and "The Human Rights League Is Walking a Fine Line!!" ("*Sha'ra mu'awiya fi rabita huquq al-Insan!!*"), *as-Sarih* (weekly), November 20, 2000.

¹¹ Associated Press, "Tunisie: recours en justice pour l'annulation du dernier congrès de la LTDH," November 15, 2000.

- failure to hold the general assembly within three years of the previous one (Article 20 of the statutes);
- failure to follow the bylaws in allowing for the election by local sections of up to eight additional delegates each to the general assembly (Article 15 of the bylaws);
- the election of a twenty-five member steering committee instead of the twenty-two member body stipulated in Article 13 of the statutes;
- the designation of six vice presidents and a deputy treasurer but no deputy secretary-general, in violation of Article 17 of the statutes, which calls for three vice presidents, a deputy secretary-general but no deputy treasurer;
- the re-election to the committee of long-time members Slaheddine Jouchi and Khemaïs Ksila, in violation of Article 22 of the bylaws, which prohibits more than two consecutive terms of service in the committee; and
- the prevention of certain members of the outgoing steering committee from attending the general assembly.

These “infractions,” according to the complaint, reveal “an intention to monopolize the association, usurp control over it and to lead it away from its objectives, for the purpose of preventing citizens who joined from participating, making their voices heard, expressing their opinions, and choosing their representatives in a legal manner, in complete freedom.” The complaint focused not on the actual ballot count, which no one contested, but rather on irregularities in the preparation of the elections. It named as respondents Héli Abdeljaoued as president of the fifth general assembly and the LTDH in the person of its legal representative.

The lawsuit explains the basis for going to court: Article 1 of the Law on Associations states that the establishment of associations is governed “by general principles of contracts and business transactions.” The association’s statutes constitute, according to the plaintiffs, a legal contract to which League members are bound. Article 242 of the Code of Contracts and Obligations stipulates that “contractual obligations validly formulated have the force of law to those who enter into them.” The plaintiffs state that they embraced the statutes of the League upon joining it and have now suffered harm by the violation of those statutes. The plaintiffs also claim that they have suffered violations of their rights under the Tunisian Constitution, notably Articles 7 and 8, which say in part, respectively, “The citizen shall enjoy all of his rights in the forms and under the conditions provided by the law,” and “freedom of thought and expression...shall be guaranteed and exercised in accordance with the law.”

The Tunis Court of First Instance, Second Chamber, scheduled the first hearing in the case (docket number 2000/18819) for December 9, but postponed it until December 25.

Meanwhile, on November 25, the plaintiffs requested a preliminary injunction that would freeze activities by the new steering committee and designate a legal administrator to oversee League affairs until a ruling was issued in the original court case. Their written request contended, “The current steering committee, by its fundamental violations of the law and the internal regulations of the League, and its usurping the administration of the League, is causing grave harm to the League and its internal structures that necessitate removing it and stopping further damage, not to mention the fact that their conduct should be seen as an outrageous abuse of authority that is without any legal or legitimate basis.” The plaintiffs asked the court to protect the LTDH’s documents and assets from the steering committee.

With the hearing on the injunction scheduled for November 27, the LTDH’s lawyers requested a postponement of oral arguments in the case. On the morning of November 27, Emergency Judge (*juge des référés*) Imed Derouiche of the Tunis Court consented to reschedule the hearing for November 30 but nonetheless issued an interim injunction, effective immediately, ordering the steering committee to halt all activities and surrender its prerogatives, pending a ruling in the original case.

That afternoon, a bailiff arrived at the LTDH headquarters in downtown Tunis, accompanied by the local district police commander (*préfet*). According to LTDH President Mokhtar Trifi, the bailiff ordered all present to

evacuate the office within thirty-five minutes and then sealed the premises. On the street below, a large contingent of police cordoned off the neighborhood and prevented arriving LTDH members from reaching the office.

On November 30 Judge Derouich appointed Abderraouf Majour, an accountant, as administrator (*juge administrateur* in French, or *haris qadha'i* in Arabic) of the office and the affairs of the LTDH until a verdict was reached in the original case. These have since remained under Majour's administration without interruption, even though a verdict was reached in the original case February 12 and there was no new judicial order renewing his mandate until six weeks later.

Since November 27, the League's steering committee has been prevented from using the office. Majour also dismissed the League's staff secretary and brought in his own assistant. Steering committee members expressed concern to Human Rights Watch and the Observatory for the Protection of Human Rights Defenders that, under these circumstances, confidential LTDH files—such as complaints or testimony by private citizens who had requested anonymity—could easily be viewed, photocopied, or tampered with by state authorities.

Government officials, including Minister of Human Rights Afif Hindaoui (who was replaced by Slaheddine Maâoui in late February 2001), have steadfastly denied to the media and before the Chamber of Deputies that the government has had any role in the lawsuit. In an interview with Human Rights Watch and the Observatory for the Protection of Human Rights Defenders in Tunis on February 15, 2001, Hindaoui said, "I defy anyone to provide a shred of evidence showing the government has had anything to do with the case. It is a purely internal dispute. The League is an institution (*un acquis*) of Tunisian society. We want it to function normally."¹²

At the same time, Minister Hindaoui used terms to describe the LTDH that echoed much of the hostile coverage in the pro-government press. "This is the first time the League is dominated by a single tendency, that of Maoists and Trotskyists," he said. "The plaintiffs are unwilling to accept a departure from the League's tradition of being composed of diverse political currents." He also suggested that politics lay behind the way the elections were organized, saying that to have held section-level elections before the general assembly would have "threatened" the eventually successful slate, presumably by changing the composition of the electorate at the assembly. Still, Hindaoui observed, "it is regrettable the plaintiffs didn't try to resolve the dispute internally, rather than go to court."

Maâoui, Hindaoui's successor as minister, echoed the same themes in an interview published in *le Monde* on April 6, 2001:

No one wants to believe it, but the state takes no sides in the case....Politically, I have to admit it's true that the government was not very comfortable with the composition of the new steering committee of the League, which is dominated by extreme leftists. But if an assembly of the League were summoned to meet again and elect for a second time its steering committee, I think they'd choose pretty much the same committee. The League members seem determined to confirm the choices they made the first time.

Do you really think that certain opposition figures, whom the authorities regard as particularly controversial, will be tolerated within the steering committee?

There is no factual basis to say the government has a veto over this or that member. The government is closely following the recent quarrels within the League, but has no intention of interfering in order to impose its preferences....

¹² Hindaoui made a similar denial in an Associated Press story dated December 2, 2000, "Les autorités soulignent ne pas être impliquées dans la crise de la Ligue tunisienne des droits de l'Homme."

THE RESPONSE OF THE LTDH STEERING COMMITTEE

The LTDH Steering Committee acknowledges most of the facts as presented in the lawsuit but contests the plaintiffs' legal interpretation of them. But beyond their point-by-point response to the allegations of irregularities—a summary of which is provided below—the committee and its defenders stress the political pressures under which the LTDH had to decide on the modalities of its upcoming assembly.

Although the League's internal dynamics also contributed to the delay in convening the general assembly, the government impeded the normal functioning of the League through such measures as blocking efforts by the LTDH to rent halls for meetings. Government harassment also made it difficult for the League's forty-one local sections to function normally, helping to reduce all but a handful of them to inactivity. Amnesty International noted in a 1998 report,

...[T]he LTDH, the ATFD [Tunisian Association of Democratic Women] and the Amnesty International Tunisian Section have come up against a barrage of restrictions on their activities. Most notably, their meetings have often been banned or disrupted. The authorities have at times refused authorization for meetings or refused to grant permission to these organizations to use public halls; at other times the security forces surrounded the area where the meetings were supposed to take place and stopped those trying to attend, and on other occasions the authorities reportedly put pressure on the hotels where the meetings were scheduled to take place. Countless meetings organized by these organizations had to be canceled at the last moment because the hotels informed them that the meeting rooms were no longer available because of "technical reasons".¹³

As LTDH President Trifi summed it up in a recent interview, "No meeting could be held, not even receptions, due to supposed 'leaks' or 'fires' in the hotel halls that had been hired. Meetings could not take place because the material prerequisites for them were made unavailable."¹⁴

LTDH activities at the local level have also been stymied by conspicuous police surveillance and the intimidation of section members and potential clients. In 1998, Adel Arfaoui, who was then president of the LTDH section in the city of Jendouba and is now a member of the LTDH steering committee, told Human Rights Watch, "It would be fair to say that the LTDH is the weakest it has ever been." In that 1998 interview, Arfaoui described the pressures that contributed to the demobilization of the Jendouba section:

The section was created in 1983 and had an office since 1990. But in May [1998], we decided to close down the office. There were two reasons: first, lack of funds. Second, we feared for the security of our files, after the office of [Tunis human rights attorney] Radhia Nasraoui had been ransacked and files removed [on February 11, 1998]. Our office was under surveillance. Mail sent to us would sometimes arrive opened. The authorities once asked me to give them the names and addresses of our members; I refused. Citizens who got in touch with our section would get questioned by the police. If someone turned to us, say, for our help in obtaining a passport, that person would then get questioned informally, along the lines of, "Why did you get in touch with the human rights league? Don't you know it can complicate things?" People would often not show up for their follow-up appointments. They would say they would return but then they wouldn't.¹⁵

¹³ Amnesty International, "Human Rights Defenders in the Line of Fire," November 1998. Available: <http://www.amnesty.org> [April 11, 2001].

¹⁴ Interview in the online magazine *Alternatives Citoyennes*.

¹⁵ Interview with Human Rights Watch, Jendouba, August 25, 1998.

As for the timing of the legal challenge to their election, steering committee members contend that all four plaintiffs objected formally to the “irregularities” only after they ran as candidates and lost, even though many of these “irregularities” had been evident long before election day. One of the plaintiffs, Arbia Ben Ammar, was herself a member of the outgoing steering committee and of the commission charged with preparing the general assembly.

Steering committee members stated that the League’s national council, which is composed of the steering committee and representatives of each local section, discussed and made decisions on some of the “irregularities” during the months preceding the election. The steering committee at the time presented a report justifying the holding of the assembly under such conditions. According to Trifi, only two sections, Sfax and Kelibia, voiced objections.¹⁶

Ben Ammar participated in this process, and shortly after failing to be elected to the steering committee was quoted as pledging that she would “abide by the results of the ballot box,” and “continue working in the ranks of the League, since its work was not limited to the steering committee.”¹⁷ Then two weeks later, she filed the lawsuit.

The plaintiffs have explained their lawsuit in various forums, including a December 1 press conference in Tunis, an Arabic/English/French press kit they distributed in Tunisia and abroad, letters to foreign media, and meetings with international human rights organizations. In their public comments they have focused more on criticizing the character of the new steering committee than on the alleged irregularities.

Interviewed by Human Rights Watch and the Observatory for the Protection of Human Rights Defenders in Tunis on February 12, Kamel Ben Younes repeated the plaintiffs’ contention that they—and not the LTDH steering committee—were the ones most attached to safeguarding the League’s independence and nonpartisanship.¹⁸ If the LTDH had wished, Ben Younes contended, it could have organized the elections in conformity with its bylaws and statutes. This did not happen, he said, because a small group around the successful presidential candidate, Mokhtar Trifi, was determined to manipulate the preparations to exclude from the vote those who might stand in their way. Ben Younes characterized the current leadership as dominated by political radicals whose uncompromising style would cause the LTDH to become marginalized and less effective vis-à-vis the government.

This allegation, with its suggestion that a more accommodating leadership would bring the LTDH more influence with the authorities, is in line with a remark attributed to one of the plaintiffs at the December 1 press conference: “It is preferable that the members of the [steering] committee have good relations with the authorities because this provides a strong asset when the League makes requests in favor of human rights and respect for the law.”¹⁹

¹⁶ Interview in the online magazine *Alternatives Citoyennes*.

¹⁷ “Ms. Arbia Ben Ammar: I Will Continue My Militancy in the League Despite the Crooked Methods,” *ech-Chourouk*, November 2, 2000. The article said she was unhappy with the circumstances prior to the elections, principally the exclusion from the candidate slates of members of legal political parties and the inclusion of members of “illegal” political parties. Ben Ammar is a prominent member of the legal Popular Unity Party (Parti d’Union Populaire). The article describes her charge of partisan divisiveness within the League but mentions no allegations of procedural irregularities.

¹⁸ Ben Younes and the other plaintiff who is not a member of the ruling party, Arbia Ben Ammar, issued a joint statement on November 28, 2000 declaring, “Our effort is aimed at securing that the League, which represents an invaluable achievement, reinforce its underpinnings...in total independence and without being subjected to any intrusion or external interference.” (English version as provided by Ben Younes.) At the December 1 press conference, the four plaintiffs were reported to have said they were “devoted” to the League and were only trying to “rescue it from the wrong turn it has taken.” “We Oppose Control over the League by Any One Group—including the Ruling Party!” *es-Sabah*, December 2, 2000.

¹⁹ “We Oppose Control,” *es-Sabah*, December 2, 2000.

In a similar vein, the plaintiffs were quoted as maintaining that “the LTDH must not be a counter-force (*contre-pouvoir*) but a harmonizing national force (*force nationale d'équilibre*).”²⁰ The same news report quoted plaintiff Abderraouf Jemel as calling the assignment of posts within the new steering committee “the straw that broke the camel’s back” in prompting the decision to file the lawsuit.

Ben Younes denied that he and his co-plaintiffs had failed to object to the alleged procedural irregularities within the League prior to the elections. However, several members of the elected steering committee, as well as others who attended the general assembly, flatly contradicted Ben Younes. They said the plaintiffs could easily have raised such issues but did not do so,²¹ although congress-goers did debate the composition of the slates and, later, the awarding of posts within the steering committee. But among those LTDH members who criticized the makeup of the candidate lists or the division of posts within the steering committee, few voiced support of the plaintiffs’ lawsuit; in fact, some publicly dissociated themselves from it.

Plaintiff Ben Ammar was asked at the press conference how she could mount a legal challenge to the legality of the assembly and the elections when she had served on the outgoing steering committee and the committee preparing the assembly, and then ran as a candidate. “A person has the right to reconsider her assessment and to scrutinize the matter in detail,” she was quoted as saying. “And that’s what happened—not to mention the fact that many of the issues relating to preparation of the Congress were not decided upon by majority vote within the outgoing steering committee.”²²

Members of the LTDH, like activists in human rights organizations around the world, have honest differences about the best strategy to adopt vis-à-vis the government. Some fear the LTDH will achieve less under a leadership that is perceived, whether accurately or not, as close to political tendencies that the authorities regard as radical. Some believe quieter *démarches* and private contacts will be more fruitful with the present government than a barrage of critical *communiqués*. The plaintiffs have made such arguments to justify their case. Nonetheless, their action has given the government a judicial cover for trying to neutralize the League at a time when it is led by persons committed to aggressively monitoring and criticizing abuses.

The government’s interest in the case was revealed by, among other things, the unusual alacrity with which a court bailiff and the police executed an interim order freezing the activities of the steering committee (see below). The action came on the very afternoon that Emergency Court Judge Derouich granted the plaintiffs’ request, filed two days earlier, to suspend the steering committee.

To justify these drastic measures, Judge Derouich in his written ruling (docket number 2000/81786), cited a defiant comment attributed to steering committee Vice President Anouar Kousri as evidence that the plaintiffs’ interests were in immediate jeopardy:

[Kousri’s] affirmation that the League would not stop carrying out its activities under any circumstances displayed an intention toward obstinacy and autocratic behavior. This supports the contention of the plaintiffs in their petition, especially that this autocratic conduct could endanger the documents and assets of the association that are located in its offices and that are at the disposal of those who presently exercise control of its administration. The fact that these materials will be decisive in the original court case justifies the request to appoint a court administrator to take the place of those who are exercising management, and to freeze all actions and activities and authority until a decision is rendered in the original case.

²⁰ “Nous ne cherchons pas la dissolution de la Ligue,” *le Temps*, December 2, 2000.

²¹ The observer sent by the Euro-Mediterranean Human Rights Network (EMHRN) to attend the general assembly, Network president Abdelaziz Bennani, endorsed this claim. His unpublished report to the EMHRN notes, “The case filed in court by persons who attended the Congress was all the more surprising because they never voiced any reservations during the Congress about the way it was conducted.”

²² “We oppose control,” *es-Sabah*, December 2, 2000.

In an ultimately unsuccessful appeal of the emergency judge's ruling, the steering committee argued that it exhibited numerous errors of form and of law. Their arguments, made in a brief dated November 29 and another one for the appeal court dated February 2, are summarized here:

- The decision to freeze the steering committee and replace it with an administrator is a misapplication of a law intended to apply to disputes over ownership of material assets (Article 1044 of the Code of Contracts and Obligations), and not to a dispute within an association over an election.
- The injunction was issued on the basis of a mere suspicion that the steering committee might mishandle documents and assets, whereas a far higher standard of showing misconduct should be required to suspend the committee and designate an administrator to replace it. Moreover, it was wrong to base such a suspicion on remarks attributed to one member of the steering committee (those of Anouar Kousri), since those remarks had not been part of the defense's submission to the court. The LTDH is an organization with a specific structure, and oral statements made by one member do not necessarily represent the position of the LTDH.
- The new steering committee had already held office for nearly a month and there was no evidence of such wrongdoing. The plaintiffs, furthermore, had not shown the court that they had first requested the documents in question from the steering committee and been rebuffed.
- The minister of interior is the only authority empowered to suspend a legally recognized association, and then only "in a case of extreme urgency and in order to prevent a disturbance to the public order," and for a period not to exceed fifteen days, pursuant to Article 23 of the Law on Associations (see text in Appendix).

In terms of procedure, the steering committee contended that the emergency court judge had violated the right to a fair legal proceeding by taking draconian measures against it on November 27 before hearing the oral arguments that had been postponed until November 30. The committee also alleged that the judge had allowed the case to proceed even though the plaintiffs had failed to prove their standing in the case by providing the court with legally recognized documentation of their membership in the LTDH.²³

The plaintiffs responded in a brief prepared for the appeal and dated February 12 that Judge Derouich had acted properly in issuing the injunction on November 27 before the hearing scheduled for three days later. The brief argued that the injunction was an appropriate "preemptive measure" given the "fear of actions that could harm the rights of the petitioners during this period." In the plaintiffs' view,

Statements made by some [steering committee] members before the emergency court show an intent toward obstinacy and defiance of the courts and their rulings. The insistence of the committee even at this stage of the case that the plaintiffs lack standing as members despite the documentary evidence of membership and despite the awareness among most of the lawyers of this membership...point to clear bad faith and an autocratic mindset. All this makes the petitioners uncomfortable with the League remaining subject to the administration and conduct of persons having such bad intentions. This makes it reasonable to appoint an administrator in order to confront a committee that is not legal and is behaving toward members in bad faith, depriving them of their rights, and monopolizing the activity of the League.

²³ This was a procedural objection; the respondents knew the plaintiffs to be LTDH members, but some found evidence of bias in the court's non-enforcement of its usual procedure by which parties prove their standing at the opening of the case by presenting to the court pertinent identification documents in the original.

The appeal against the emergency court's injunction was finally examined on March 13, after four postponements. On March 27, the court upheld the original ruling of the emergency court, renewing the mandate of the court-appointed administrator until a verdict is reached in the appeal of the original case.

The trial of the original case was postponed three times, from December 9 to December 25, to January 15, then to January 29. The hearing on January 29 was cut short before oral arguments began by a walkout by the lawyers for the steering committee. The lawyers protested that they had been deprived of their right to a fair trial when Judge Néjib Hanene ordered them even before oral arguments had begun to confine their remarks to the legal points in dispute, and when he refused to allow lawyers dispatched by the Cairo-based Arab Lawyers Union (ALU) and the Arab Organization for Human Rights (AOHR) to join the defense team. After the walkout, Judge Hanene heard arguments presented by the plaintiffs' lawyers and then orally summarized some of the arguments made by the respondents in their written briefs. The judge then ended the hearing and announced he would issue a ruling on February 12.

The AOHR had sent to the January 29 session an Algerian lawyer, Boudjemaâ Ghechir, president of the Algerian Human Rights League. According to a bilateral treaty, Ghechir as an Algerian lawyer is entitled to plead before courts in Tunisia. The ALU had mandated Egyptian lawyers Nur Farahat and Yahia al-Gamal. In addition, the day before, lawyer Eric Plouvier, who had been mandated by the Observatory for the Protection of Human Rights Defenders to attend the hearing, was refused entry at Tunis-Carthage airport and put on a plane back to France.

With rare exceptions, however, the LTDH trial has been open and accessible to the public. Sessions have generally been attended by several observers from foreign human rights organizations, as well as locally based foreign diplomats.

On February 12, Judge Hanene's ruling was announced. The court nullified the League's fifth general assembly and all decisions emanating from it, and ordered the outgoing steering committee to reconvene the general assembly in a manner consistent with the League's statutes and bylaws. In the written version of this decision, published a few days later, Judge Hanene explained why the plaintiffs were entitled to bring a dispute of this nature before the court. He rejected the respondents' contention that the burden of proof rested with the plaintiffs, and ruled that the failure of the respondents' lawyers to answer in court to the allegations of irregularities (occasioned by their walkout on January 29) was procedurally equivalent to conceding the case against them:

The plea that the General Assembly's decisions are valid and immune to challenge denies the rights of the minority, irrespective of its size, to settle a dispute through litigation and seek rectification of the irregularities that marred the General Assembly's proceedings. [This plea] unreasonably establishes the exemption of the association's activities from judicial control, which remains the last resort for [ensuring] proper enforcement of the law....

The respondents' plea that, in all cases, the burden of proof lies with the plaintiffs, constitutes a breach of their obligation to observe lawfulness, transparency and openness, which would make it incumbent upon them to inform members of all the stages and proceedings of their association's voting session when its lawfulness is in dispute....

The silence of the respondents, who are responsible for convening the General Assembly in a lawful manner, their failure to respond to the breaches of which they stand accused, and their unwillingness to provide information confirming the validity of all proceedings surrounding the process of lawfully renewing the electorate, calling elections, endorsing deputations and monitoring candidacies, are tantamount to a judicial admission of the irregularities and breaches associated with it.²⁴

²⁴ The court ruling is reprinted in *es-Sabah*, February 20, 2001.

The steering committee has filed an appeal, which is scheduled to be heard April 16 before the Tunis Appeals Court.

Some Tunisian lawyers sympathetic to the LTDH steering committee questioned the legal reasoning of the verdict. They asked how a judge could rule on a civil suit between two parties (on one side the four plaintiffs and, on the other side, the LTDH and H ela Abdeljaoued as general assembly president) by ordering a third party (the outgoing steering committee) to take a certain action (redo the assembly and the elections) without even summoning that party to be heard during the proceedings.²⁵

Taoufik Bouderbala—who as outgoing LTDH president, heads that third party—endorsed this analysis. He has also indicated that he had no intention of reconvening the general assembly. However, he said he preferred to withhold a definitive assessment of the affair until the Appeals Court rules.²⁶

The LTDH did not get to argue the merits of the original case, due to the lawyers walkout (see above). However, lead attorney Mohamed Jmour outlined orally to Human Rights Watch and the Observatory for the Protection of Human Rights Defenders in a meeting on February 13, 2001 the defense’s point-by-point response to the allegations of irregularities in the complaint. Jmour also noted, in introducing the steering committee’s position, that the League’s statutes give it wide discretionary powers. Article 16 states, “The steering committee is empowered to take all measures concerning the association except for those decisions that lie within the competence of the general assembly.” A summary of Jmour’s presentation of the case for the respondents follows:

- The plaintiffs note that LTDH statutes require in Article 9 that members pay their dues each January. However, the statutes and bylaws do not state that nonpayment triggers automatic loss of membership. Similarly, while Article 9 of the bylaws states the sections are to elect their office-holders every two years, the failure to do so carries no sanction.
- The plaintiffs claim that certain LTDH members who were entitled to participate in the general assembly had been excluded. However the outgoing steering committee complied with the bylaws by notifying LTDH members of the assembly by placing announcements in the press rather than sending out individual invitations. Members of the steering committee who did not attend the assembly, were not “prevented” from participating or “stripped” of their status as delegates, as the lawsuit contended. Rather, these committee members chose not to attend, and for the most part were members who had seldom if ever attended LTDH functions in the past.
- The plaintiffs allege an irregularity in the absence of delegates to the assembly who were to be elected by the general membership of each section, pursuant to Article 15 of the bylaws. However, the steering committee had decided early in 2000 not to initiate the process of electing and inviting these delegates, a decision taken within its prerogatives under the League’s statutes. The LTDH also contested the standing of the plaintiffs to file a suit that alleges certain potential delegates were excluded when those delegates had not joined the suit or authorized the plaintiffs to file such a complaint on their behalf.
- The plaintiffs claim that the reelection of two members of the outgoing steering committee, Khema s Ksila and Slaheddine Jouchi, violates Article 22 of the bylaws since they had already served two consecutive terms on the committee. However, Article 22 had been put into effect only in 1994. The steering committee interprets this article to be non-retroactive, and therefore the first term for Jouchi and Ksila commenced with the 1994 election and the second with their reelection in 2000.

²⁵ This line of argument is taken up in the newsletter of the League, *Risalat ar-Rabita*, no. 3, March 2001, p. 1.

²⁶ Phone interview with Human Rights Watch and the Observatory for the Protection of Human Rights Defenders, March 22, 2001.

The challenge to Jourchi and Ksila's election follows a history of the two men being singled out for harassment by the authorities. Apparently in reprisal for his activities in the LTDH, Ksila was fired in 1996 from the post he held for more than fifteen years with the national railroad authority. The following year he was arrested and then sentenced to three years in prison for defamation and disseminating "false" information capable of disturbing "the public order." The "false" and defamatory information was contained in a press release he had issued in his own name on September 29, 1997 condemning his dismissal and the deterioration of human rights in general.²⁷ Ksila was released after serving two years, in the wake of sustained international pressure.²⁸ Jourchi, a leading thinker within Tunisia's Islamist movement in the 1980s, has served on the LTDH steering committee since 1982. In 1997, he was fired from his post as an editor of the Arabic-language section of the privately owned weekly political magazine *Réalités/Haqa'iq*. Jourchi said his boss told him at the time that he was being dismissed because of pressure from the Presidency. Jourchi believes this pressure was prompted by his LTDH activities. He noted, in particular, a visit he had made with other LTDH members in September 1996 to the United States, where they had solicited support for their demand that political and human rights activist Khemaïs Chammari be released from prison in Tunisia.²⁹ Earlier, in the mid-1990s, Jourchi had been prevented from traveling abroad for several months. He has been free to travel since then.

The suit against the League was reportedly the first time in its twenty-four-year history that members had gone to court to resolve an internal dispute.³⁰ In bringing the suit, plaintiff Ben Younes declared that the courts "will rule in complete independence and openness, in light of the arguments put forward by the parties concerned and in conformity with the law."³¹ Yet Ben Younes, as a member of a human rights organization, could not fail to be aware that in Tunisia, the chances were slim that the courts would give an impartial hearing to a politically sensitive case like this one.

The lack of judicial independence in Tunisia has been noted by numerous observers. For example, Amnesty International stated in a 1998 report that the court system "appears to be more concerned with implementing the authorities' agenda than with respecting the rights of those coming before it," and "leaves virtually no avenue of recourse for victims of violations."³² The U.S. Department of State, which has had observers at numerous political trials in recent years, observed in its *Country Reports on Human Rights Practices* for the year 2000:

The Constitution provides for an independent judiciary; however, the executive branch and the President strongly influence the judiciary. In practice the judicial branch is part of the Ministry of Justice and the executive branch appoints, assigns, grants tenure to, and transfers judges. In addition the President is head of the Supreme Council of Judges. This situation renders judges susceptible to pressure in politically sensitive cases.³³

²⁷ For detailed expositions of the case and the trial, see the Euro-Mediterranean Human Rights Network, "Mission d'Observation en Tunisie: Rapport à l'occasion du procès en appel de M. Khemaïs Ksila," July 1998, and Fédération internationale des droits de l'Homme, "Une détention manifestement arbitraire: rapport d'observation judiciaire au procès de Khemaïs Ksila, Tunis 1998," *La Lettre de la Fédération Internationale des Ligues des Droits de l'Homme*, no. 756-758, July 30, 1998, pp. 16-26.

²⁸ The U.N. Working Group on Arbitrary Detention ruled that Ksila's detention was arbitrary "in view of the fact that it violated Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights..." Opinion No. 5/1999, adopted May 20, 1999.

²⁹ Telephone interview with Human Rights Watch and the Observatory for the Protection of Human Rights Defenders, March 24, 2001.

³⁰ LTDH communiqué, November 24, 2000.

³¹ Letter, dated December 14, 2000, addressed to the editor of *Marianne*, in response to article by Marie-Claire Mendès-France in the issue of December 11-17, 2000. Copy of letter provided by Ben Younes.

³² "Human Rights Defenders in the Line of Fire."

³³ See also numerous reports by trial observers, including Amnesty International, HRW, The Observatory for the Protection of Human Rights Defenders (a joint program of the International Federation of Human Rights and the World Organization against Torture), "The Administration Of Justice In Tunisia: Torture, Trumped-Up Charges and a Tainted Trial," Human Rights Watch, Volume 12, No. 1(E), March 2000. Available: <http://www.hrw.org/reports/2000/tunisia/> [April 12, 2001] and <http://www.fidh.imagnet.fr/rapports/robs1.htm> [April 12, 2001]; Human Rights Watch and the International Human Rights Law Group, "Military Courts that Sentenced Islamist Leaders Violated Basic Fair-Trial Norms," October 1992).

CRACKDOWN UNDER COVER OF A COURT DECISION

Quite aside from the question of whether the emergency court ruled to evict the steering committee on the merits of the arguments made before it, the immediate and zealous enforcement of the injunction betrays the government's interest in the case. In contrast to the more leisurely pace at which injunctions are usually executed in Tunisia, a bailiff arrived at the LTDH office on November 27 within hours of the emergency court ruling, accompanied by the district police station chief and a large contingent of policemen. They ordered the immediate eviction of LTDH members present. To this date, the entrance to the office is under police surveillance and the keys are in the hands of the court-appointed administrator. According to steering committee members, this is the first time ever that a court in Tunisia has appointed an administrator to oversee an independent association, a procedure that is normally imposed only in commercial disputes.

The government enforced the temporary freeze in additional ways. First, it took legal action against League President Trifi and First Vice President Jouchi when the committee continued to issue communiqués following the interim court order—subsequently appealed—that it suspend all activities. The state prosecutor first summoned Jouchi for a December 25 hearing, in connection with a December 11 LTDH communiqué he had signed describing recent incidents of harassment of human rights defenders. At the hearing Jouchi refused to answer questions when his request to be assisted by his lawyers was denied. He was then questioned by an investigating judge (*judge d'instruction*) on January 2 and 18 on charges of failure to obey a judicial order (Article 315 of the Penal Code) and disseminating “false” information capable of disturbing “the public order” (Article 49 of the Press Code). The first offense carries a maximum prison sentence of fifteen days; the second, of three years.

Trifi's turn was next. After signing most of the communiqués issued by the steering committee since its election, he was summoned for questioning by the state prosecutor on February 23 regarding a communiqué issued on February 12, criticizing the verdict issued earlier that day nullifying the general assembly and its elections. The communiqué attacked the trial as “unjust” and the verdict as proof of “the determination of the authorities to liquidate the LTDH.” The steering committee would “pursue the mission for which it had been elected,” the communiqué declared. Before the state prosecutor, Trifi, like Jouchi two months earlier, refused to answer questions when his request to be assisted by his lawyers was denied. Trifi then appeared on March 3 before an investigating judge, who notified him that he was being investigated on the same charges as Vice President Jouchi: disseminating “false” information capable of disturbing “the public order” and failing to obey a judicial order. At the next hearing, on March 10, Trifi came accompanied by some fifty lawyers who had joined the defense team. When the judge refused to transfer the hearing to a chamber large enough to accommodate all of them, Trifi's lawyers walked out in protest. Trifi then refused to respond to questions in the absence of his lawyers, and requested a postponement. The judge denied this request. As this report went to press, there had been no further developments in the cases against Trifi and Jouchi.

While the emergency injunction supposedly freezes only the activities of the national steering committee, police have on numerous occasions been deployed in large numbers to thwart attempted gatherings of LTDH at every level, including the national council, the local sections, and meetings of any kind at the law offices of LTDH President Trifi and his partner Mohamed Jmour, the steering committee's lead attorney. Police have also prevented meetings organized by other organizations in support of the LTDH steering committee. For example:

- On December 3, police prevented the LTDH National Council from holding a meeting at the headquarters of the section in Bizerte, sixty kilometers north of Tunis. Police were stationed along the road to that city and followed cars carrying LTDH members. Police surrounded the office of the LTDH section in Bizerte and prevented those who had come from assembling there. When they tried to move the meeting to a local hotel police dispersed them again. Later that day the council tried to convene at the Tunis home of new LTDH Vice President Souhayr Belhassen, but police turned back all persons approaching it.³⁴

³⁴ LTDH communiqué, December 3, 2000.

- On December 8, authorities prevented a gathering co-sponsored by the LTDH section in Sousse, Amnesty International's Tunisian section and the Association of Young Lawyers.
- On January 28, the Sfax section of the LTDH attempted to hold a ceremony commemorating LTDH activist Fadhel Ghedamsi forty days after his death. (Ghedamsi, a Tunis lawyer, had been re-elected to the new LTDH steering committee but was then defeated by Trifi in the vote for president.) Police surrounded the LTDH office and prevented entry to persons who were not members or officers of the local section.
- On February 18, police attempted to prevent another gathering at the Sfax section office, at which LTDH attorney Mohamed Jmour was scheduled to discuss the lawsuit against the League. League officials immediately protested to the Ministry of Interior, and the police withdrew, allowing the meeting to take place.
- Police have increased their surveillance of the downtown Tunis law office of Mokhtar Trifi, and on more than one occasion in 2001 prevented LTDH steering committee members and other rights activists from reaching his office. For example, on February 6, police stationed outside the building denied access to Anouar Kousri, a LTDH vice president and a prominent human rights lawyer in Bizerte, and Adel Arfaoui, a steering committee member, as well as to Salah Hamzaoui and Brahim Alloui.
- Police intensified their harassment on March 15 and 16 of Anouar Kousri in Bizerte. Kousri detailed in a statement he issued on March 16 the increase in the number and aggressiveness of the plainclothes police assigned to follow him:

For a long time I have been harassed. My law office is always under close police surveillance, which causes me to lose a lot of clients and is slowly strangling me financially. My home is also under close police surveillance, my neighbors are terrified, and so is my family, especially my three daughters, who have been living a nightmare for quite some time. I do not feel safe these days, especially since I have been handling very sensitive cases such as the one last Tuesday [March 13] concerning Ridha Jeddi, who died at a police station in Menzel Bourguiba at the end of last September, a case that has been taken on by the LTDH.³⁵

Police have blocked gatherings by other groups called in solidarity with the LTDH and its new steering committee:

- On December 10, police blocked an award ceremony to honor the LTDH organized at the Tunis home of a former head of the Bar Council, Mohamed Chakroun. When participants attempted to gather instead at the home of Sihem Ben Sedrine and Omar Mestiri, police blocked entry there as well. The group then moved to the restaurant at the downtown Abou Nawas Mechtel hotel, but police instructed the hotel staff not to serve them, according to a statement signed by Dr. H ela Abdeljaoued of the LTDH and six other women.
- On January 29, a solidarity meeting organized by the Association of Democratic Women was blocked by police who stationed themselves outside the association's office in downtown Tunis and prevented access. A few persons who insisted eventually were allowed entry, while others were shoved or beaten by the police for persisting.

³⁵ Reprinted in the online digest Tunis News, issue dated March 16, 2001. Available: www.groups.yahoo.com/group/TUNISNEWS [April 11, 2001]

GENERALIZED REPRESSION OF HUMAN RIGHTS ACTIVISTS³⁶

Vigorous police repression has extended to a broad range of human rights activity in recent months. It has included beatings and other forms of physical and verbal aggression carried out by men in plainclothes.

- The Support Committee for Hamma Hammami, a political activist in hiding, tried to hold a meeting on January 12, 2001 at the Tunis home of its president, Salah Hamzaoui. Tens of police were deployed on the street and turned back all comers wishing to reach Hamzaoui's home.
- On December 15, members of the National Committee to Defend Moncef Marzouki, in a pre-announced action, attempted to deliver a petition to the minister of public health at the ministry's headquarters in Tunis. The more than 500 signers of the petition called for rescinding the dismissal of Marzouki as a professor of medicine, a move taken in apparent reprisal for his human rights activities. Police blocked the entrance to the ministry, surrounded the car carrying committee coordinator Mohamed Bechri and CNLT members Sihem Ben Sedrine and Omar Mestiri,³⁷ and ordered them to depart immediately. They pushed Bechri and Ben Sedrine back into the car. When Mestiri resisted, the police beat him on his head and body, continuing to do so after he was pushed to the ground. They finally put him in a police car, drove him fifty kilometers outside the capital and then released him.

Police have shown particular zeal in their dealings with the CNLT, which has continued to hold meetings and issue communiqués despite the government's denial of its legal status. Nearly all of the most visible members of the CNLT have been deprived of their passports at one time or another since its founding. As this report went to press, those unable to travel include Marzouki, Hosni, Sadri Khiari, Ali Ben Salem, Ali Ben Romdhane, Mohamed Ali Bedoui and Jalal Zoghلامي.

The state's response to the CNLT's activism has included prosecutions and increasingly violent police actions:

- Moncef Marzouki, the CNLT's spokesperson until February 2001, was convicted on December 30, 2000 of involvement in an "unauthorized" association (i.e., the CNLT)³⁸ and spreading "false" information capable of disturbing "the public order," in connection with public statements he made on human rights and the need for government transparency. He has not appealed his one-year prison sentence, explaining in a statement prepared for the court that the "refusal to participate in such judicial games is the only thing that will contribute to putting an end to them and provide the minimum guarantees of a fair trial for political defendants in the future."³⁹ Marzouki is provisionally free pending the appeal sought by the prosecutor over the "leniency" of the sentence. He has been subjected to intensive harassment and persecution, including the dismissal from his post as a professor of medicine in the public sector, cutoff of his phone service, deprivation of his passport for most of the past five years and police surveillance of his residence, where officers have recently demanded identification from persons paying him a visit. Marzouki was recently issued a new passport but when he tried to use it for the first time on March 10, police turned him back at the airport.

³⁶ For a systematic treatment of this subject, see Amnesty International, "Tunisia: Human Rights Defenders in the Line of Fire."

³⁷ Mestiri, then secretary-general of the CNLT, was detained in May 1999 and then questioned by an investigating judge on charges of maintaining an illegal organization, defaming "the public order," dissemination of "false" news capable of disturbing the public order, and other charges. He has not yet been brought to trial.

³⁸ Article 30 of the Law on Associations provides prison terms of one to five years, plus a fine, for this offense.

³⁹ For an account of his trial, see the Euro-Mediterranean Human Rights Network, the Kurdish Human Rights Project, the Observatory for the Protection of Human Rights Defenders (a joint program of the FIDH and the OMCT), the Bar Human Rights Committee of England and Wales, and the Union Internationale des Avocats, "Freedom of Expression, Freedom of Association and Unfair Trials In Tunisia: A Report of the Trials of Dr Moncef Marzouki, Attorney Nejib Hosni and the Tunisian League For Human Rights," 2001.

- Néjib Hosni, a co-founder of the CNLT and one of Tunisia's most outspoken human rights lawyers, was returned to prison in December 2000 to serve the remaining five and-a-half years of an eight-year sentence on trumped-up charges of fraud. Hosni, who represented many Islamist clients facing political charges at a time when few lawyers were willing to do so, was given the eight-year sentence in January 1996 but released conditionally in December 1996 after sustained international pressure. He had by that time served two and-a-half years, including eighteen months of pretrial detention. Hosni's 1996 sentence included a five-year ban on practicing law.⁴⁰ Since his release he was also arbitrarily deprived of his passport and telephone service. In May 2000, the national Bar Council, which considers itself the sole body empowered by the law to determine who may practice law,⁴¹ formally stated that Hosni was a member in good standing of the bar. Judicial authorities contested this, insisting that the ban against Hosni practicing law remained in effect. After Hosni made oral arguments in courtrooms in 2000, he was twice tried and convicted, in December 2000 and January 2001, of failure to obey a judicial order (Article 315 of the Penal Code), and given the maximum punishment of fifteen days in prison for each offense. While Hosni was serving the first of these two sentences, the Ministry of Interior reinstated the remainder of his 1996 eight-year prison term on the grounds that he had committed a new offense while on conditional release. Hosni is presently in the prison in Le Kef, near his family's home.⁴² The recent convictions appear to have been a mere pretext to cancel Hosni's conditional release and re-imprison him for a long period. This harsh measure appears to be a punishment for Hosni's refusal to abandon his outspoken human rights activities both as a defense lawyer and activist.
- Police maintain heavy surveillance of the CNLT's makeshift office in an apartment in downtown Tunis, and have frequently turned away persons attempting to reach it. Persons refused access include both CNLT members and supporters, as well as victims and relatives seeking to inform the CNLT of human rights abuses. The latter have included, on separate occasions, former political prisoners Lassad Jouhri and Taoufik Chaieb. On March 1, plainclothes police turned back all persons attempting to reach a CNLT meeting and reception at the Tunis office of Maison Aloès, a publishing house founded by the CNLT's new spokesperson, Sihem Ben Sedrine. They beat and taunted several persons, including Moncef Marzouki and CNLT members Khédija Chérif, Ali Ben Salem, and Abdelkader Ben Khémis. According to a CNLT communiqué issued the following day, the police called the CNLT members "traitors" and "foreign agents." Chérif recounted in a written statement dated March 5 what she experienced as she and Héla Abdeljaoued, who presided over the October 2000 LTDH general assembly, drove to the reception:

When we turned onto the street [where the building is located] a group of plainclothes police officers told us to turn around. We protested that it was illegal to turn us back in this fashion and they showered us with insults, calling us "traitors to the country," etc. We got back in the car...and I began to turn the car around. That was when ten or so police pounced on me like mad dogs, shouting at me to move on. Through the open window, several hands started hitting me on my neck, head, and chest.... Shocked, I couldn't move and the car stalled, leaving me to the fury of these thugs who continued to

⁴⁰ The Penal Code in Article 5 provides as a complementary sentence an interdiction on practicing certain professions, including the law.

⁴¹ Article 3 of the Law governing the legal profession states, « Persons who may practice law are those whose names are registered in the directory of lawyers.» Article 62 states that it is the National Bar Council that « rules on applications for registration in the directory of lawyers. » La loi 89-97 du 7 septembre 1990, portant organisation de la profession d'avocat, reprinted in *Recueil des textes relatifs à la profession d'avocat* (Tunis : Imprimerie Officielle de la République Tunisienne, 2000).

⁴² For a careful study of the 1996 criminal case against Hosni, see Lawyers Committee for Human Rights, "Nejib Hosni: A Tunisian Lawyer Singled Out for Exemplary Punishment for Defending Human Rights and Upholding the Rule of Law," April 1996. For an update on his situation, see *Avocats sans frontières/Belgium*, "La situation des défenseurs des droits de l'homme et des avocats en Tunisie—Le cas de Me. Néjib Hosni", 2001, and the Eur-Mediterranean Human Rights Network et al., "Freedom Of Expression, Freedom of Association and Unfair Trials In Tunisia."

beat me brutally on the head and back, violently kicking the car...all this with a torrent of obscene insults and vulgarities that are used for women, in the presence of the police commander of the Médina district who threatened me with even worse abuse.... Collecting my wits, I started the car and drove away.

Chérif was once again physically assaulted on March 10 by men in plainclothes. Leaving the courthouse where LTDH president had appeared before the investigating judge, the men set upon Chérif and attempted to grab a folder from her hand. When she resisted, one of the men pushed her to the ground and seized the folder, according to a CNLT communiqué issued the same day. The folder contained materials relating to the formal complaint she filed in court concerning the assault against her committed on March 1, including photos of police swarming around her car that were taken from an apartment window above.⁴³

In response to the assaults on Chérif, the new human rights minister, Slaheddine Maâoui stated in an interview published in *le Monde* on April 6, 2001:

We are completely opposed to any form of harassment against human rights activists. What happened with Khédiija Chérif is intolerable. How can we accept that this intellectual member of civil society is roughly mistreated as she was? It was an aberration and it has been punished. It was the act of a police agent who was subsequently suspended and who will be brought before a disciplinary board. President Ben Ali is indignant about this case. He told me, "I made respect for women's rights one of the credos of my politics. I cannot tolerate women being roughly mistreated, especially a respectable scholar."

The minister's remarks are welcome. But if, as he states, a police agent has indeed been disciplined, Chérif as the victim was neither informed of this action taking place nor asked to testify. Nor has she received a response to the formal complaint she filed with the prosecutor's office about the assault.

⁴³ Some of those photos were published in the third issue of the online magazine *Kalima*, edited by CNLT spokesperson Sihem Ben Sedrine. Available: <http://www.kalimatunisie.com/index3.htm> [April 12, 2001]. Authorities have interfered with Ben Sedrine's efforts to publish a printed copy of the magazine: they have failed to issue a receipt for the formal notice she submitted in November 1999 to inform them of the new publication. Without that receipt, printing houses in Tunisia are unwilling to print a periodical.

DÉJÀ VU: THE 1992 LEGAL EFFORT TO UNDERCUT THE LEAGUE

The 2000 lawsuit is not the first time that the League's future was jeopardized by legal actions at a moment when its leadership showed independence and assertiveness.

In 1991-1992, when the government was engaged in an all-out crackdown against Islamists, the League was the only legal organization in the country to decry the massive human rights violations occurring as part of the crackdown. The government responded by rushing into law amendments to the Law on Associations designed to tame the League. After fiery internal debates and a war of communiqués with the government, the League dissolved itself rather than comply.

In 1992, as now, the pressures on the League included a smear campaign in the pro-government media against its leadership. The justice minister at the time was Abderrahim Zouari who, eight years later was the first official to denounce the LTDH election (see above).

The amendments adopted into law in 1992 empowered the Ministry of Interior to classify associations into eight categories. For associations "of a general character," the amendments undercut their prerogative to refuse applicants for membership and to choose as office-holders persons who simultaneously occupied senior positions within political parties. The ministry put the LTDH into this category.

Amended Article 1 of the Law on Associations states that associations "of a general character...may not deny membership to any person who is committed to its principles and decisions unless the said person does not enjoy full civic and political rights, or if the said person engages in activities or practices incompatible with the objectives of the association." A person rejected for membership can sue the association.

Amended Article 2 states, "individuals assuming functions or responsibilities in the central governing bodies of political parties may not become directors of associations of a general nature. These provisions apply to the steering committee of the aforementioned associations as well as to subsidiary sections or authorities..."

The government presented the reforms as intended to democratize civil society and "not directed against the League or any other specific association of a general nature." It said the amendment to Article 2 aimed "to protect associations, precisely those of a general nature, from the danger of being used for political aims, something which has already happened, crippling some of them and deflecting others from their original aims."⁴⁴

But the measures were widely perceived as an assault on the autonomy of the League, stripping it of its right freely to choose its steering committee—which at the time did contain senior members of various political parties—and to screen potential members.⁴⁵ The LTDH feared that the amendment to Article 1 would leave the League unable to fend off a flood of applications from persons belonging to the ruling party or close to the security services.

In criticizing the League's decision to dissolve itself in 1992 rather than comply with the new law, the official Tunisian Information Office blamed the League's trouble on what it said were stubborn extremists on the steering committee who were opposed to compromise. It said, "the defense of human rights in Tunisia cannot be

⁴⁴ "A Few Remarks about the Recent Amendment to the Law on Associations," an undated statement faxed to Human Rights Watch on June 2, 1992 by the official Tunisian Information Office in Washington, DC.

⁴⁵ The United Nations Human Rights Committee noted in 1994, "The Committee is concerned that the Associations Act [i.e., the amendments] may seriously undermine the enjoyment of the freedom of association under Article 22 [of the International Covenant on Civil and Political Rights], particularly with respect to the independence of human rights non-governmental organizations. In this connection, the Committee notes that the act has already had an adverse impact on the Tunisian League for Human Rights." Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Comments of the Committee, Fifty-second session, November 23, 1994, CCPR/C/79/Add. 43.

the monopoly of the three or so individuals whose attitude pushed the 24-member executive board of the Human Rights League to undermine the very existence of their own organization.”⁴⁶

Later in 1992, following behind-the-scene negotiations to break the impasse, authorities signaled to the League that it could begin preparing its fourth general assembly, apparently with the expectation it would use the occasion to decide on compliance with the new law. In March 1993, a Tunis administrative court facilitated this course of action for the League by staying the Ministry of Interior’s classification of it as an association “of a general character,” pending a ruling on the League’s appeal of that classification.

The new law and other government pressures—along with personality clashes and differences within the League about relations with the authorities—all contributed to the fourth general assembly electing in February 1994 a steering committee that favored lowering the tone toward the government. The general assembly also narrowly approved a motion to adapt its statutes to comply with the new law.

Two years later, an administrative tribunal overturned the Ministry of Interior’s classification of the League as an association “of a general character” subject to the new law. By the time this ruling favorable to its autonomy was handed down, the League had clearly settled on a more cautious approach to addressing violations. The more confrontational old guard that had been ousted in the elections was seeking other outlets for their activism, a search that culminated in the founding of the CNLT in 1998.

The effort in 1992 to change the law to force the LTDH to admit all comers who endorse its tenets was foreshadowed by a similar effort five years earlier. The author was Zine el-Abidine Ben Ali, who was minister of interior at the time.

In 1987, the government was rounding up Islamists, and the LTDH was regularly denouncing the attendant abuses. In a letter dated April 8, 1987—seven months before he ousted President-for-life Habib Bourguiba—Minister Ben Ali informed the president of the LTDH that its refusal to admit “a category of persons” contradicted the League’s statutes and goals, as well as the spirit of the Law on Associations, the Constitution, and the Universal Declaration of Human Rights. Moreover, it “could provoke disturbances that disrupt the public order.” Ben Ali demanded that the LTDH inform him, within fifteen days, of “the amendments [you shall make] to Articles 8 and 16 of the statutes of your organization in the direction of granting automatic membership to all those who desire it and no longer making it conditional on the prior approval of the steering committee.”

In the days that followed, government newspapers joined in the attacks on the League. Accusing it of refusing membership to “all those whose political beliefs do not agree with those of the huge majority of the League leaders,” *La Presse* observed that the organization “seems in recent months to have drifted further and further from its original purpose and toward becoming a partisan body.”⁴⁷

The League refused to comply. In a letter to Minister Ben Ali dated April 15, 1987, its then-president, Saâdeddine Zmerli, explained that the political diversity found in the steering committee of the League was a jealously guarded feature of the League that prevented any one party from imposing its views. “We do not wish to see the League become a mass organization because that would be contrary to its nature and mission,” he wrote. An amendment permitting “automatic membership” would constitute a key element “for turning [the League] into a satellite of the regime.”

The government let the matter drop—until five years later, when Ben Ali as president was cracking down on Islamists and the LTDH once again was calling attention to massive human rights violations.

⁴⁶ Tunisian Information Office, “Tunisian Human Rights League Disbands,” June 18, 1992.

⁴⁷ “Défense des droits de l’Homme ou front politique?” *La Presse*, April 9, 1987.

RECOMMENDATIONS

To the Government of Tunisia

The U.N. Secretary-General's Special Representative on Human Rights Defenders urged the government of Tunisia, in a statement of December 7, 2000, to "end the harassment of human rights defenders in the country and...ensure that the Tunisian League for Human Rights resume[s] its activities as soon as possible."

Tunisia's minister of human rights, Slaheddine Maâoui, in an interview published in *le Monde* on April 6, 2001, declared, "We are absolutely opposed to any form of harassment of human rights activists."

We urge the government to put the human rights minister's statement into practice by:

- Allowing all human rights organizations, including the LTDH and the CNLT, freely to carry out their mission of monitoring and reporting on human rights conditions;
- Immediately and unconditionally releasing from prison human rights lawyer Néjib Hosni, and re-examining the conviction of Moncef Marzouki for acts of speech and association that are protected under international human rights conventions to which Tunisia is a party;
- Reversing the decision by the Ministry of Public Health to dismiss Moncef Marzouki from his post as a professor of medicine;
- Guaranteeing the freedom of travel to those human rights activists who are either deprived of their passports or refused permission to leave the country, including CNLT members Néjib Hosni, Moncef Marzouki, Sadri Khiari, Ali Ben Salem, Ali Ben Romdhane, Mohamed Ali Bedoui, and Jalal Zoghلامي;
- Restoring telephone and fax service to human rights activists who have been deprived of them;
- Ending police surveillance that is manifestly conducted as a form of intimidation;
- Conducting impartial criminal investigations into recent incidents where men in plainclothes have physically assaulted human rights activists;
- Acting in accordance with the International Covenant on Civil and Political Rights, which requires that the rights to peaceful assembly (Article 21) and association (Article 22) be respected; and abiding by the Declaration of the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms. Adopted by the U.N. General Assembly on December 9, 1998, the Declaration states in Article 5:
 - For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:
 - (a) To meet or assemble peacefully;
 - (b) To form, join and participate in nongovernmental organizations, associations or groups;
 - (c) To communicate with nongovernmental or intergovernmental organizations.

Article 8 of the Declaration states:

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

2. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

To the European Union

The E.U./Tunisia Association Agreement, which came into force in 1998, stipulates in Article 2 that respect for human rights and democratic principles shall guide the domestic and international policies of all parties and constitute an essential element of the Agreement. Human Rights Watch and the Observatory for the Protection of Human Rights Defenders urge the E.U. to:

- Establish concrete mechanisms to evaluate regularly the compliance with Article 2 by all parties to Euro-Mediterranean association agreements. These mechanisms must include regular and impartial monitoring of human rights conditions and of the extent to which human rights defenders are free to act and speak out in defense of the rights of others;
- Press for verifiable progress on the basis of the recommendations specified above as well as the recommendations issued by U.N. bodies;
- Make appropriate démarches toward Tunisian authorities in individual cases where violations of basic human rights standards have taken place;
- Make the assessment of compliance with Article 2 a separate agenda item in all meetings held under the Agreement, and especially the Association Council meetings; and
- Encourage the government of Tunisia to invite the U.N. Secretary-General's Special Representative on Human Rights Defenders to conduct a visit to Tunisia.

To the Government of France

The French government has increasingly expressed concern about human rights abuses in Tunisia. Since December 2000, it has publicly criticized the conviction of Moncef Marzouki, the pressures exercised against the LTDH, the refusal to allow French trial observer Eric Plouvier to enter Tunisia, and the beating by "unknown" men of Jalal Zoghلامي, a CNLT member and political activist whose new magazine, *Kaws al-Karama* (The Arc of Dignity), has not been approved. Foreign Minister Hubert Vedrine observed in an interview published in *le Parisien* of April 1, that Tunisia's economic successes under President Ben Ali were such that "the regime could evolve more in the political realm, modernize itself, and advance in terms of democratization." In addition, French embassy personnel have increased their observation of political trials in Tunisia.

France's National Consultative Commission on Human Rights (Commission Nationale Consultative des Droits de l'Homme, CNCDH) adopted on January 25 a resolution "deploring the degradation of the state of public liberties and human rights in Tunisia." The resolution urged the French government to act more forcefully to promote human rights in that country.

Human Rights Watch and the Observatory for Human Rights Defenders urge the government of France to:

- Continue to speak out publicly about Tunisia's violations of its human rights obligations;
- Ensure that French diplomats regularly observe political trials in Tunisia; and
- Implement all of the recommendations of the CNCDH, including:

“do[ing] everything to ensure that Tunisian authorities stop systematically violating their engagements in terms of the protection and promotion of human rights”; and to “mobiliz[ing] our partners in the European Union to ensure its monitoring of respect for human rights in Tunisia, within the framework of Article 2 of the E.U.-Tunisia Association Agreement; notably on the occasion of the next meeting of the [bilateral] Association Council.”

APPENDIX

RELEVANT PORTIONS OF TUNISIA'S LAW ON ASSOCIATIONS (IN FRENCH)

ACKNOWLEDGEMENTS

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*Human Rights Watch
Middle East and North Africa Division*

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The Observatory is an action program operated jointly by the International Federation for Human Rights (FIDH) and the World Organization against Torture (OMCT). It is based on the conviction that strengthened cooperation and solidarity among defenders and their organizations will contribute to breaking the isolation of victims of human rights violations.

The Observatory sends out alerts on violations of the rights and freedoms of human rights defenders, including urgent appeals that are sent out to around 90,000 recipients worldwide. It also organizes trial observer missions and direct legal assistance. It reports on violations of the rights of human rights defenders and activists around the world and conducts sustained lobbying on their behalf with different regional, international, and intergovernmental institutions.