Follow-up Workshop on Transitional Justice Mechanisms

Tunis – 6 March 2012

Report
1. Introduction

On 6 March 2012, Al-Kawakibi Democracy Transition Centre (KADEM) and the Arab Democracy Foundation (ADF) in partnership with No Peace Without Justice (NPWJ) and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) held a one-day follow-up workshop under the framework of the Transitional Justice Academy (the Academy). The Workshop, which was held in Tunis, focused on transitional justice and brought together participants from all previous courses organised under the Academy.

The Academy is a joint initiative of ADF and KADEM, in partnership with NPWJ and GIZ, aimed at providing a conceptual space within which main stakeholders and actors in Tunisia can gather and build their knowledge and capacity on transitional justice issues. It also aims to build and strengthen capacity of key actors in the country.

The Follow-up Workshop brought together those who participated in:

- The Media training course on Transitional Justice Mechanisms
  (Hammamet – 16-18 December 2011).
- The Training Workshop on Transitional Justice Mechanisms
- The Training-of-Trainers on Transitional Justice Mechanisms

2. Participants

The Workshop had 42 participants, including judges and members of the National Fact-Finding Commissions to Investigate Abuses and on Embezzlement and Corruption, members of the Ministries of Justice and of Human Rights and Transitional Justice, the police, legal professionals, notaries, academics and representatives of the media and civil society. It provided a forum where participants from various groups involved in transitional justice-related work could exchange views and experiences, also drawing from their different professional backgrounds, and develop a common vision on the main topics emerging in relation to transitional justice. The Workshop also offered an opportunity to elaborate a common strategy on how to advance transitional justice priorities with relevant stakeholders, including policy- and decision-makers.

3. Opening session

On behalf of the Academy, Mr Mohsen Marzouk opened the Workshop, underlining that it was organised on the basis of a recommendation adopted in the past three training courses. This recommendation underlined the need for further cooperation and coordination among those who participated in previous courses under the Academy in order to strengthen the capacity of key stakeholders on transitional justice. Mr Marzouk highlighted the diverse professional backgrounds of the participants in the Workshop and stressed that one of its purposes was to allow participants to develop common visions on transitional justice issues.

Mr Marzouk stressed the willingness of the organising partners to continue involving all participants in their various initiatives on transitional justice. Therefore, he invited them to a public consultation on “Transitional Justice: for a Participatory and Consultative Process” that the United Nations Development Programme, the International Centre for Transitional Justice, the Office of the High Commissioner for Human Rights, KADEM and NPWJ organised in Tunis on 7-9 March 2012.
4. Methodology
The presenter, Dr Benyoub, presented the working methodology that would be adopted in the Workshop, drawing upon the results and recommendations of the past three training courses.

After agreeing on the working methodology, the participants continued discussions in the following working groups:

- Establishment of a national transitional justice mechanism;
- Temporal jurisdiction;
- Subject-matter jurisdiction;
- Truth revelation and definition of responsibilities;
- Individual and collective reparations; and
- Suggestions concerning the final report.

Each group reviewed the suggestions and recommendations made on the theme with which it was concerned, based on the thematic synthesis reports of the past training sessions, and then proposed new relevant ideas and suggestions. The results of the working groups were then presented in a final plenary session.

5. Recommendations of the Working Groups
The following are the recommendations suggested by participants in the Workshop in light of the relevant universal principles, standards and the Tunisian national requirements and challenges:

I – Working Group 1 – Establishment of a national transitional justice mechanism

- National legal reference
  - Article 24: The National Constituent Assembly shall enact a fundamental law organising transitional justice and defining its foundations and fields of competence.

- International legal references
  - International laws and conventions ratified by Tunisia.
  - National laws not incompatible with Tunisia’s international commitments.
  - Internal laws harmonised with international human rights conventions.
  - International humanitarian law, when necessary.

- The national dialogue and procedures of the National Constituent Assembly
  - As part of a national dialogue under the auspices of the Ministry of Human Rights and Transitional Justice, a national conference on transitional justice will be organised.
  - The Ministry of Human Rights and Transitional Justice will submit the results of the conference to the National Constituent Assembly.
  - One or more groups in the National Constituent Assembly submit(s) a relevant proposal, in light of the results of the national dialogue.
- A committee will be set up within the National Constituent Assembly concerned with transitional justice or the issue will be submitted to the Legislation Committee.

- **Nature of the relevant legal text**
  A law issued by the National Constituent Assembly, defining the following aspects of the National Commission on Transitional Justice:
  - Legal organisation;
  - Composition;
  - Duration of work; and
  - Temporal and subject-matter jurisdiction.

- **Prerogatives of the National Commission on Transitional Justice**
  - Establishing the Commission’s internal regulations.
  - Establishing the central management, and ensuring its financial and administrative independence.
  - Building upon the work of past Truth Commissions.
  - Truth revelation and accountability.
  - Submitting grave violations to the public prosecution.
  - Reparations (also forming a committee to set reparations standards).
  - Organising a dialogue with the political community and civil society on how to ensure a successful democratic transition.
  - Preparing and publishing the final report immediately after the Commission finishes its work.

- **Duration of work of the Commission**
  The duration of work will depend on the Commission’s temporal and subject-matter jurisdictions.

- **Composition of the Commission**
  The Commission may include:
  - Civil society;
  - Independent personalities known for their competence, independence and neutrality;
  - Persons from other fields of specialisation: experts, judges, sociologists, historians, etc.; and
  - Number of members of the Commission: a maximum of 11.

- **Powers given to the Commission**
  - Access to information and to the archives of the State’s institutions.
  - The binding character of the Commission’s decisions, independently of administrative and judicial authorities.
- Bind relevant State’s institutions to enforce its decisions and facilitate its decisions.

- **Subject-matter jurisdiction**
  It involves intensive, flagrant violations extending over a considerable period of time, including violations by official and “hidden” State agencies, including:
  - All types of human rights violations;
  - Torture;
  - Unfair trials;
  - Rape;
  - Coercive disappearance;
  - Coercive deportation;
  - Violation of ownership rights (property transgressions);
  - Uneven distribution of wealth (especially the interior regions);
  - Inter-regional disparities; and
  - Flagrant violations of public/individual freedoms.

- **Temporal jurisdiction**
  Temporal jurisdiction refers to the period of history covered by the transitional justice process. It serves as a reference for the Commission in addressing flagrant violations.
  - From the National Constituent Assembly of 1956 to the National Constituent Assembly of 2011.
  - Preservation of the national memory of past violations.
  - Rehabilitation of victims.

- **Preparation of final report**
  A final report will be prepared that includes the results achieved, along with recommendations and suggestions for political, institutional and legal reforms to protect human rights and guarantee the non-recurrence of abuses.

- **Other requirements**
  Pursuant to article 24 stated above, the National Commission on Transitional Justice undertakes the following:
  - Conducting a comprehensive assessment of all the commissions set up since the Revolution, with the aim of compiling lessons learned and avoiding the obstacles and difficulties that they faced.
  - The Commission establishes a national integrated strategy to ensure the enforcement of its jurisdictions.
  - Establishing, in addition to the central headquarters, functional mechanisms at the local and regional levels.
Membership of the Commission should not contradict the standards of modern management of human rights projects. Its members should enjoy legal immunity.

The Commission deals with the periods of history in accordance with the standards and criteria of its composition and membership, in terms of impartiality, integrity and objectivity.

The Commission is essentially funded by national resources. Some of its programs may, however, be taken in charge by international human rights organisations.

The choice of the members of the Commission should be the subject of in-depth future discussions. Appointments should be based on a consultative approach, away from any considerations of alliance or interests. The Commission should be composed of national personalities known for their independence, neutrality and integrity.

Making sure the Commission launches its work shortly after adopting the internal regulations.

Asserting that human rights violations do not expire over time.

The Commission should work within an encouraging and adequate political and cultural environment.

A special workshop should be devoted to economic violations in their individual and collective dimensions, based on transitional justice developments across the world, especially as regards collective reparations. It is important, in this regard, to refer to the report of the National Fact-Finding Commission on Embezzlement and Corruption.

It is also necessary to undertake an in-depth analysis of the violations and their impact on the individuals and on society.

The internal regulations should grant the Commission political and legal immunity and the right of access to information and archives, in cooperation with the State’s agencies.

II – Working Group 2 – Temporal jurisdiction

Divergent views were advanced concerning the period to be covered by the transitional justice process. The diverse suggestions made in this regard reflect the rich discussions and the significant political and cultural dynamism that characterised the Workshop. Suggestions were as follows:

**Suggestion 1:**

Two views:

- The era of Ben Ali.
- The period since Independence.

Going back to the period since independence, insisting on the fact that human rights abuses do not expire over time, as provided for by the relevant international conventions, and Tunisia has ratified most of these conventions.

**Suggestion 2:**

- The importance of defining the temporal jurisdiction, the violations, and the historical periods during which they were perpetrated.
- The temporal jurisdiction should cover the period starting from internal independence (1955).
Suggestion 3:
- From the National Constituent Assembly of 1956 to the National Constituent Assembly of 2011.

Suggestion 4:
- From the Constitution of 1956 to 2012, as violations still persisted after the Revolution of January 2011.
- Overall, from the National Constituent Assembly of 1956 to the National Constituent Assembly of 2011.

Suggestion 5:
- From the National Constituent Assembly of 1956 until the date the Commission starts its work.
- From the National Constituent Assembly of 1956 until the passing of the law establishing the Commission.
- Insisting on the role of victims and their families in setting the Commission’s temporal jurisdiction.
- The need to involve historians, sociologists and political scientists in discussions for setting the Commission’s temporal jurisdiction.
- Standards for setting the temporal jurisdiction:
  - Truth revelation
  - Reparations
  - Accountability

Suggestion 6:
- The period from the birth of the State, as the State would bear responsibility from 1955 until 23 October 2011.

Conclusions:
- The importance of the period extending from 1955 until the Commission starts its work.
- Taking into consideration the results of the past training sessions, as in some other transitional justice experiences the temporal jurisdiction has been surrounded with a “historical ambiguity”.
- It is necessary to organise a workshop for in-depth thinking on the starting date of the temporal jurisdiction, with the participation of political scientists and historians, along with victims and their families.
- It is necessary to distinguish between the starting date of the temporal jurisdiction (to be set by law) and the Commission’s priorities for the historical period under examination, which is part of its working strategy.
III – Working Group 3 – Subject-matter jurisdiction

• Introduction

The period covered by the temporal jurisdiction, extending from the Constituent Assembly of 1956 to the National Constituent Assembly of 2011, is a crucial period in the contemporary history of Tunisia.

• Reference

International human rights law, as it marks the shift from dictatorship to legitimacy.

• Categorisation of violations against the right to life and human dignity
  o Torture (victims and their families).
  o Restrictions on freedom of speech and the press.
  o Coercive disappearance.
  o Limitations on freedom of movement.
  o Illegal arrests.
  o Political trials.

• Violation of political rights
  o Freedom to establish political parties and associations.
  o Electoral fraud.
  o Violation of the right to vote.

• Social rights
  o Using certain segments of society to serve political ends.
  o Depriving victims and those who suffered from political persecution of their rights to education and work.

• Economic rights
  o Inter-regional disparity in terms of development.
  o Imposing restrictions on economic initiatives through laws intended to serve private interests (the law to rescue businesses in economic difficulty).
  o Financial corruption:
    - Taxation (subjecting investors to fiscal review);
    - Banks: Granting loans without guarantees;
    - Absence of transparency in public procurement contracts;
    - Choice of the winner of the contract by persons outside the committees in charge of public procurement contracts; and
- Unnecessary public procurement contracts.
  - Real-estate corruption:
    - Changing the nature of the estate;
    - Illegal granting of agricultural lands; and
    - Loss of property rights.

- Cultural rights
  - Violations on archaeological sites.
  - Misuse of Tunisia’s enlightened heritage.

- Chart of violations

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<tr>
<th>Violation</th>
<th>Intensive</th>
<th>Systematic</th>
<th>Continuous</th>
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<td>Torture</td>
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<td>Coercive disappearance</td>
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<td>Illegal arrests</td>
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<td>Restrictions on freedom to create political parties and associations</td>
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<td>Violation of the right to vote</td>
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<td>Political and social exploitation of national capacities</td>
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<td>Deprivation of the rights to education and work</td>
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<td>Uneven distribution of the national wealth</td>
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<td>Restrictions on social initiatives</td>
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<td>Arbitrary imposition of taxes</td>
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<td>Violations on archaeological sites</td>
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- Violations generally concern:
  - Freedom of expression.
  - Illegal arrests and torture.
  - Establishment of political parties and associations.
  - The right to vote.
  - Political and social exploitation.
- Inter-regional disparity in terms of development.
- Corruption in public procurement contracts.
- Torture.
- Coercive disappearance.

○ The subject-matter jurisdiction is seen in terms of its relation with the intensive and systematic violations on civil, political, social, economic and cultural rights, and in its relation with the temporal jurisdiction.

○ The need to address the social impact of flagrant human rights violations.
○ The need to fight against violations, which helps to promote reconciliation and guarantee non-recurrence, while involving all direct and indirect victims.
○ The need to address violations perpetrated in past historical periods.

IV – Working Group 4 – Truth revelation and determination of responsibilities

• Responsibilities:
  ○ Responsibilities are determined according to the nature of the violations (civil, political, economic, social, cultural, etc.) and whether they are individual or collective.
  ○ Determining the responsibility of the State’s agencies and institutions.
  ○ Determining the individual responsibilities of the State’s senior officials (individual abuses or non performance of duties).
  ○ Providing for the possibility of accountability before judicial authorities.
  ○ Laying bare the flagrant violations perpetrated during the period covered by the transitional justice process, so as to preserve the national memory, highlight the structural, legal and political factors that led to the perpetration of these violations, draw the proper lessons, and undertake the necessary legal and institutional reforms.

• Difficulties involved in truth-seeking
  ○ The difficulty of access to information in general.
  ○ Access to archives.
  ○ The vanishing of items of evidence with the passing of time.
  ○ Some of the victims abstain from giving testimonies, especially as regards flagrant violations against human dignity.
  ○ Truth is sometimes held by officials only.
  ○ Fear of accountability.
  ○ Methodological and technical difficulties.
  ○ The difficulty of obtaining confessions especially without guarantees against prosecution.
  ○ The duty of confidentiality and professional secrecy.

• Truth revelation
  ○ Truth revelation mechanisms:
- Hearing sessions;
- Field visits;
- Testimonies;
- Fact-finding / investigations;
- Referring to the files of cases (courts and lawyers); and
- Referring to the reports of national, regional and international organisations on human rights violations.

- **Difficulties related to the length of the period covered by the transitional justice process and the vanishing of items of evidence**
  - Importance of the specific mechanism of transitional justice.
  - Using various sources of information.
  - Coordinating with judicial bodies and all the related institutions.

- **Specific mechanisms / Archives as a sample**
  Which archives?
  - Judicial archives (judges, lawyers, etc.).
  - Archives of prisons.
  - Archives of notaries.
  - Archives of Ministries (the Interior, Health, Justice, Finance, etc.).
  - Archives of media institutions.
  - Archives of public and private financial institutions.
  - Archives of past truth commissions.

Keeping the archives
  - Enacting a decree-law that requires all the concerned parties to cooperate with the Commission and to provide it with all needed documents and information for the revelation of truth, and not to stick to professional secrecy and to the duty of confidentiality, and to appoint a representatives in each institution to coordinate with the Commission.

- **Difficulties concerning the investigation/fact-finding mechanism**
  - Providing for mechanisms of judicial and political accountability in case a given party refuses to cooperate with the Commission (resort to courts and to representative bodies).
  - Providing mechanisms to lay bare abuses through the media and press conferences.

- **Other relevant requirements**
  - Some officials do not reveal the truth for fear of accountability. Sometimes truth is held only by certain officials. Some victims abstain from giving testimonies especially as regards sexual violence.
o Dissemination of the culture of transitional justice, using all means (the media, seminars, workshops, training sessions etc.) and through all central and regional bodies, prominent personalities, specialised professionals (notaries, religious scholars), while adopting an interactive approach.

o Encouraging confession as a means for reconciliation with society and with the past.

o Thinking of formulae for confrontation between the victim and the perpetrator.

o Providing guarantees to help with truth revelation:
  - Secrecy and non-revelation of identity;
  - Granting pardon in certain cases and with conditions in exchange for truth;
  - Psychological care and support etc.; and
  - Recalling the considerable efforts made for the sake of truth revelation, in relation to political, ethical and legal responsibilities, and criminal responsibility, which falls under the competence of the courts and is dealt with in accordance with the due process principles and the fair trial guarantees.

o Archives pose many challenges:
  - The relationship between access to archives and the problems of truth revelation.
  - The preservation of archives and the legal framework governing their opening, keeping, classification and management.
  - The Commission needs, in the process of truth-seeking, to have recourse to the services of specialists and experts.
  - Truth revelation promotes reconciliation.
  - It is useful to pursue discussions concerning relations with the parties that refuse to cooperate with the transitional justice mechanism, and whether accountability will be legal, political or administrative.

V – Working Group 5 – Individual and collective reparations

• Definitions
  o Damage: The material or moral harm inflicted, directly or indirectly, on a person or a group, in a way that affects the physical integrity or the financial status of a person or a group.
    Practical importance: finding formulae for compromise and for achieving stability and social peace.
    Theoretical importance: addressing all types of abuse, and whether they entitle victims to compensation.

  o Reparations: The act of compensating for an abuse or injury. There are harms for which there is no reparation.
    The legal issue: what are the reparations mechanisms (nature, scope, etc.)?

  – Physical reparations:
• Financial compensation: compensation for the loss incurred (including the costs of legal, medical or psychological assistance).
• Medical care (psychological and medical rehabilitation).
• Return to the initial job and re-launching of the professional career.
• Curbing inter-regional disparity (providing productive infrastructures, basic facilities, etc.).
• Restitution of violated rights at the individual and collective levels.

• Moral reparations
  • Symbolic reparations: memorials, medals of Honour, museums, etc.
  • Reparations on the basis of truth revelations, identification of types of violations, and determination of the state’s responsibility in the perpetration of these violations.
  • Apology (public apologies, proclaiming a national remembrance day for the commemoration of victims).

• Promotion of development programs
  • Reforming education, the judiciary, the security institution, etc.
  • Contribution of corrupt businessmen with a part of their fortune to establish development projects in the deprived regions.
  • Transforming the past illegal detention centres into development and economic projects in the interior regions, or to museums to preserve the national memory.
  • Social re-integration of victims.
  • Public confessions and organising hearing sessions for accountability.
  • Offering victims certain preferential benefits (priority in employment, free healthcare, free transport, etc.).

VI – Working Group 6 – Suggestions concerning the final report

• Introduction
  • The historical context (the revolution requires truth revelation).

• Creation, composition and jurisdiction
  • Composition of the Commission: choice of the chairman, members, independence, impartiality, neutrality, competence.
  • Prerogatives:
    - Temporal jurisdiction and subject-matter jurisdiction; and
    - Internal regulations.
  • Administrative and financial independence:
    - Material and human resources;
    - The Commission’s working strategy and time-schedule; and
    - Classification of archives.
• **Method of fact-finding**
  o Investigations.
  o Field visits.
  o Working methodologies adopted by the Commission.
  o Public/non-public hearing sessions.

• **Examination of violations**
  o Violations against physical integrity.
  o Social violations.
  o Economic violations.
  o Political violations.
  o Determination of responsibilities in light of truth revelation:
    - Political and institutional responsibilities;
    - Individual responsibilities; and
    - Media responsibility.

• **Reparations program**
  o Material.
  o Moral.
  o Victims’ demands, society’s demands, and the relevant State’s requirements.

• **Reconciliation**
  o The process and foundations of reconciliation.
  o Preludes to reconciliation.
  o Preservation of the memory.

• **Final conclusions**
  o Truth revelation.
  o Analysis of contexts.
  o Reparations.
  o Determination of responsibilities.

• **Reforms and guarantees of non-recurrence**
  o Constitutional guarantees.
  o Legal guarantees.
  o Reform of the judiciary.
- Security and institutional reform.
- The role of the government.
- The role of parliament.
- Media reform.
- Promoting the culture of human rights and incorporating it into education curricula as one of the guarantee of non-recurrence.
- The report should be prepared by a technical team composed of members of the Commission:
  - The report should be published as an official document. It should also serve as a reference for drawing up democracy-oriented plans and programs, and to promote human rights.
  - The report should be highlighted in terms of its educational and cultural dimensions, considering it as one of the guarantees of non-recurrence.
  - The report should be officially presented in a national forum.
Annex I – The Workshop Program

Follow-up Workshop facilitator: Dr Ahmed Chaouqui Benyoub, lawyer, expert in human rights and transitional justice, former member of the Equity and Reconciliation Commission, Morocco.

8.30 – 9.00: Reception of participants

9.00 – 9.30: Opening, acquaintance among participants, presentation of the program, and agreement on working methodology

9.30 – 10.00: Review of the results of the past two training Workshops in Hammamet and Tunis

10.00 – 11.00: Working groups
  - Establishment of the mechanism
  - Temporal jurisdiction
  - Subject-matter jurisdiction
  - Truth revelation and determination of responsibilities
  - Reparations
  - Final report and recommendations for guarantees of non-recurrence

11.00 – 11.20: Break

11.20 – 12.15: Working groups (continued)

12.15 – 13.00: Presentation of results of Workshops

13.00 – 15.00:
  - Discussion
  - Presentation of conclusions by working groups rapporteurs
  - Closing of Workshop

15.00 – 16.00: Lunch
### Annex II – The List of Participants

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<th>No.</th>
<th>Name</th>
<th>Profession</th>
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<tr>
<td>1</td>
<td>Mourad Bouguerra</td>
<td>Ministry of Interior</td>
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<td>2</td>
<td>Rached Mahjoub</td>
<td>President of the Tunisian Association for the national police</td>
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<td>3</td>
<td>Mohamed Sghaier Zaabouti</td>
<td>Ministry of Interior</td>
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<td>Imed Bennour</td>
<td>Ministry of Interior</td>
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<td>Wiem Jrad</td>
<td>Ministry of Interior</td>
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<td>6</td>
<td>Mohamed Smati</td>
<td>Notary Public</td>
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<td>Noureddine Ayari</td>
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<td>Messaoud Khedher</td>
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<td>Akrem Ben Aissa</td>
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<td>Tarek Jlassi</td>
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<td>11</td>
<td>Omar Oueslati</td>
<td>Lawyer</td>
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<td>12</td>
<td>Monia Ammar</td>
<td>Coordinator of HR</td>
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<td>13</td>
<td>Mondher Ben Salah Adab</td>
<td>Criminal Justice Department</td>
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<td>14</td>
<td>Ichrak Ben Zine</td>
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<td>Abdelkader Ghzal</td>
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<td>16</td>
<td>Hayet Khamessi</td>
<td>Advisor at the court of cassation</td>
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<td>17</td>
<td>Mohamed Chikh Rouhou</td>
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<td>Abdelwaheb Rejab</td>
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<td>Ferid Ben Jha</td>
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<td>22</td>
<td>Amel Ouahchi</td>
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<td>24</td>
<td>Imen Abdeltif</td>
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<td>Lawyer - Association of justice and rehabilitation</td>
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<td>Fethi Ltaief</td>
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