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### *Concept note*

#### *Specialized Chambers: A judicial mechanism to fight against impunity*

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Tunis, Africa Hotel, December 15-16, 2016

Improving criminal justice mechanisms and confronting human rights violations committed in periods of dictatorship or political repression are prominent challenges for post- conflict countries—like Tunisia—marked by weakened institutions, diminished security and divided population. Thus, Tunisian people won't regain their confidence in state institutions unless persons who were in key positions during the rule of the former regime are prosecuted.

So far, the process of prosecuting persons involved in corruption and human rights violations, before and during the Tunisian revolution, has been characterized by an absence of strategy and the predominance of improvisation. For example, after courts of ordinary justice began investigating more than 182 cases of martyrs and wounded of the revolution brought against the ousted president, former ministers and officials of the deposed, the cases were transferred to military courts. The government justified this change by invoking article 22 of law no°70, issued on May, 6, 1982. This article provides, “are referred to the military courts cases involving an agent of the Internal Security Forces during the maintenance of public order”.

Therefore, during the 2012 debates on transitional justice establishing the transitional justice legal framework, most participants emphasized the importance of holding perpetrators from the former regime accountable. Participants also wished to use new judicial panel within the courts, composed of judges who have not participated in political trials, and not military courts. As a result, the specialized chambers were introduced in the Organic law n° 2013-53, dated 24 December 2013, which established and organized the transitional justice framework.

During the last five years, Tunisia has done little to bring to justice those most responsible for gross human rights violations committed under former regime. Victims' families and CSOs disapproved and rejected recent military judgments relating to the cases of martyrs and wounded people of the revolution.

In order to respond to victims' worries and as a political step, the national Constituent Assembly (NCA) adopted in June 12, 2014 an organic law n°17-2014 concerning TJ dispositions and the cases related to period between December 17, 2010 to February 28, 2011. This law qualified the attacks against civilians during the revolution as gross human rights violations under articles 3 and 8 of the TJ law.

The absence of a clear strategy in implementing accountability was clear by how the government dealt with the specialized chambers. Decree no 2887-2014 established nine specialized chambers. However, the specialized chambers' judges were nominated only two years later by a unilateral decision by the Provisional Instance of Magistrate (PIM). Since that time, discussions about the relationship between the TDC and specialized chambers, and who will carry out criminal investigations continued among TJ stakeholders, due to the ambiguity of TJ law.

This topic of specialized chambers deserves a special attention from TJ stockholders because of its particular importance. For that reason, the forthcoming conference will seek to strengthen practitioners' understanding of the specialized chambers' role and importance in the pursue of accountability. Among others, the following issues will be discussed: the role of criminal justice among Transitional justice mechanisms, the interrelationship between TDC and specialized chambers specialized chambers and the applicable law and procedure before specialized chambers.

### **Conference Goals/objectives**

The goals of the workshop are to:

- Introduce justice practitioners (Judges, prosecutors and defense counsels) to the challenges of criminal justice within transitional justice framework;
- Provide participants with access to comparative expertise;
- Explain the relationship between TDC and specialized chambers under the TJ law n°53-2013.

- Identify specific challenges for judges, prosecutors and defense counsels in the transfer of cases to the specialized chambers.
- Identify applicable law and procedure to the specialized chambers as well as the legal gaps currently existing in the Tunisia legal system;
- Elaborate a set of recommendations to the relevant authorities, i.e. the High Judicial Counsel, the Ministry of justice and to the TDC in order to equip the specialized chambers with the required legal instruments.

## Draft Workshop Agenda

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#### Day one: December 15 2016

**8.30 – 09.00** Registration of participants

**9:00 – 09:30**

- **ICTJ:** Introduction and welcoming words (Training goals and objectives)
- **Mr. Ghazi Jribi**, Minister of Justice
- **Mr. Radhouen Ouerthi**, Vice president of the Provisional Authority for the Supervision of Judicial Justice
- **Mr. Amer Mehrzi**, President of the Tunisian Bar Association
- **Mrs. Sihem Bensedrine**, Chairwoman of Truth and Dignity Commission

**09.30-10.00** Fighting against impunity in Transitional justice / Criminal justice within transitional justice (**Anna Myriam Roccatello, ICTJ Deputy Program Director**)

**10.00 – 10.35** Relationship between truth commissions and courts (comparative experiences) (**Howard Varney, ICTJ Senior Program Advisor**)

**10.35-11.00 Discussion**

**11.00 – 11.15** Coffee Break

**11.15 – 11.45** Specialized chambers according to the Reflection Committee on art 8 of the TJ law (**Judge Walid Malki , Member of the Reflection Committee and a member of the Provisional Authority for the Supervision of Judicial Justice )**

**11.45 – 12.15** Legal provisions regulating specialized chambers in comparative studies (**Howard Varney**)

**12.15 – 13.00** The role of Public Ministry according to TJ law ( **Mohammed Kammoun, Investigative Judge at the court of first instance Tunis** )

**3:00 – 14.30** Lunch Break

**15:0014.30 – 17.00** **Workshop 1:** The relationship between TDC and specialized chambers

**15:0014.30 – 17.00** **Workshop 2:** Applicable law and procedure before the specialized chambers (moderator and rapporteur TBC)

**114.30 – 17.00** **Workshop 3:** The principle of the legality of criminal offences and penalties under the jurisdiction of the specialized chambers

**16.00- 16.10** Coffee break

**17:00 – 17.30** Plenary session: presentation of conclusions and recommendations of the three workshops, discussion

## **Day one: December 16 2016**

**09.00 – 10.00** Workshops'' outcomes and recommendations

**10.00 – 10.30** Role of Victims in fighting against impunity (**Howard Varney**)

**10:30 – 10:00** Comments and discussion

**11.00 – 11.15** Coffee Break

**11:15 – 11:45** How to implement recommendations / and mobilize legal practitioners, State institutions, the civil society and parliament

**11:45 – 12.15** Closing words (**ICTJ and partners**)

**13:00 – 14: 30** Lunch Break