



LAWYERS COMMITTEE
FOR HUMAN RIGHTS

333 Seventh Avenue, 13th Floor
New York, New York 10001-5004
USA

Telephone (212) 845 5200
Facsimile (212) 845 5299
E-mail: nyc@lchr.org
<http://www.lchr.org>

Washington, D.C. Office:
100 Maryland Avenue, N.E.
Suite 500
Washington D.C. 20002-5625

Telephone (202) 547 5692
Facsimile (202) 543 5999
E-mail: wdc@lchr.org

June 27, 2002

Burt Blanchard
Section of Litigation
American Bar Association
750 North Lakeshore Drive
Chicago, IL 60611

Dear Mr. Blanchard,

The Lawyers Committee for Human Rights nominates Judge Mukhtar Yahyaoui of Tunisia for the Litigation Section's International Human Rights award.

The Lawyers Committee for Human Rights is a non-governmental human rights organization dedicated to the promotion of human rights and the rule of law. Through its Human Rights Defenders program, the Lawyers Committee upholds the professional and personal freedom of judges, lawyers and rights advocates around the world.

Mukhtar Yahyaoui, known as "le juge rebelle" in the francophone press, is one of the Arab world's leading voices for an independent judiciary and for the rule of law. Last July he wrote a now-famous open letter to Tunisian President Zine Al-Abidine Ben Ali, in which the judge forthrightly condemned the government's constant tampering with judicial process. Lack of judicial independence in Tunisia has been widely reported from a variety of observers, from human rights groups to private corporations. According to the U.S. Department of Commerce website Tradeport (www.tradeport.org), "the [Tunisian] judiciary is not independent of the executive branch, and local legal experts assert that courts are susceptible to political pressure. Commercial cases involving U.S. firms [...] that have occurred in the past year have prompted multiple complaints from the U.S. parties about apparent extralegal influences on the outcomes." Judge Yahyaoui's open letter, a translation of which is enclosed, comes from an even more important perspective, that of a career jurist of unimpeachable knowledge and authority.

Since the publication of his letter, Judge Yahyaoui has been cajoled, harassed, unsuccessfully bribed, and physically threatened by the Tunisian authorities. His judgeship was suspended and then revoked, and he has recently been barred from leaving the country. Despite this ongoing harassment he has been busy establishing the Center for the Independence of Judges and Lawyers, of which he is the founding president.

Judge Yahyaoui's legal career has been exemplary. Born on June 1st 1952 in Ghomrassen, Tunisia, he obtained his degree in Law and Political Science from the Faculté de

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Tunis in 1976. Continuing his studies in Paris, he earned a DEA in international commercial law at the Sorbonne. After three years as a member of the Tunis bar, he entered the judiciary in 1983.

Yahyaoui began his career in the judiciary as a trial judge in the Tribunal de Première Instance then moved successively to posts as substitute to the Procureur de la République (district attorney), cantonal judge (district judge), *juge d'instruction* (pre-trial judge), substitute to the Attorney General, President of the Fifth Penal Chamber, and finally, as President of the 10th Civil Chamber of the Trial Court Tribunal, a post he occupied for three years before his dismissal. Judge Yahyaoui would normally have been promoted in 2002 to a seat on the Court of Cassation, Tunisia's highest court.

Judge Yahyaoui has never been an active member of any political party in Tunisia. He has the reputation of great integrity and honesty and is the one of the most widely respected judges in Tunisia. One testament to the judge's sterling reputation is that his docket usually had twice as many cases as his fellow 10th Civil Chamber judges. (In Tunis, plaintiff's attorney is allowed to choose the judge who will hear the complaint.)

On July 6th 2001, Judge Yahyaoui addressed an open letter to President Zine Al-Abidine Ben-Ali in his capacity as President of the High Council of Judges. The letter, a translation of which is enclosed, was posted on the internet and widely read both in Tunisia and abroad. It drew an immediate response, prompting an article five days later in *Le Monde*, France's most prestigious newspaper. On July 12th, the Tunisian Ministry of Justice issued a press release that attempted to smear the dissident judge by portraying him as a petty malcontent motivated by the unfavorable outcome of a legal dispute over a parcel of land. The next day, Yahyaoui was summoned before the Inspector General of the Ministry of Justice. The judge maintained his denunciation of Tunisia's corrupted judiciary and refuted the charges that he was acting from personal spite; the judge also launched a civil suit for defamation against the head of the ruling party, the Rassemblement pour le Changement et la Démocratie. On July 14th, Yahyaoui was suspended without salary from his judgeship, with a hearing before the judiciary's disciplinary council scheduled for August 2nd.

Leaders of civil society quickly rallied to Yahyaoui's cause. The Tunisian Human Rights League, the National Council for Liberty in Tunisia, the Association of Democratic Women and the Tunisian Association of Young Lawyers all came out in support of the judge, as did numerous lawyers, who formed a defense committee for the Judge. Even the usually timid Association of Tunisian Judges voiced its cautious support. In an effort to avoid scandal and publicity, the Tunisian authorities preemptively restored Yahyaoui's judgeship, albeit to another court, the day before his scheduled hearing. It seemed like the end of the story.

Here the harassment of Judge Yahyaoui began in earnest. The representatives of the Ben-Ali regime tried to bribe him with a favorable resolution to his land dispute; with an appointment as ambassador to Lebanon; with the opportunity to head a commission on judicial reform. But these rewards were always held out in exchange for Yahyaoui backing off from the criticisms made in his open letter, his withdrawal of the civil suit against the head of the RCD, and his abandonment of all contacts with other political dissidents. Yahyaoui soon noticed that

he and all his communications were under constant surveillance. His phone lines were periodically cut, his electronic mail was intercepted, his mail was opened, all of which is the usual fate of Tunisian dissidents. After a long interview with the Judge appeared in the magazine *Jeune Afrique*, Yahyaoui was physically threatened and intimidated into signing a retraction. When the magazine printed the retraction, it hinted broadly that the letter had not been written by Yahyaoui, and had been signed under duress.

Judge Yahyaoui was also subject to coercion and harassment on the job. His chambers were repeatedly broken into and rummaged through. People who visited the judge's office were tagged for surveillance themselves. The authorities attempted to recruit Yahyaoui's fellow judges on the tribunal as informants, luring them with the prospect of promotions and other benefits. His correspondence was opened and then re-closed with Scotch tape. When the head of the tribunal requested that Yahyaoui give him all his case files for the ostensible purpose of redistributing them to other members of the tribunal, the judge suspected he was simply trying to deprive him of all his cases. Yahyaoui refused to hand the files over, and received no further cases.

On December 20th, Yahyaoui received a summons to appear before the Judicial Disciplinary Council on December 29th—a date no doubt chosen for its inconvenience to foreign observers. Despite the short notice, the judge's defense committee was able to hold a press conference attended by representatives of the international media, including Reuters, AP and the Agence France Presse. Important representatives of Tunisian civil society—members of the Tunisian Human Rights League, of the National Committee for Liberty in Tunisia, and the Tunisian Association of Women for Democracy—tried to enter the meeting, but were turned away. Roughly 120 lawyers were able to enter the court after a direct appeal made by a cabinet minister. The Disciplinary Council's deliberations are not public, but their decision was published by the state media agency the next day: Yahyaoui's judgeship was revoked. The night before this announcement, the Qatar-based television news program Al Jazira requested a live phone interview with the judge. Fifteen minutes after this request, Yahyaoui found that both his cell phone and his home phone lines had been cut, and that any attempt to reach the television channel through other lines was mysteriously impossible.

In spite of constant harassment and surveillance, Judge Yahyaoui has been a leading force behind the creation of a new Center for the Independence of Judges and Lawyers in Tunis. This center has 46 founding members, of which Yahyaoui is the president. Its goal is to assemble judges, lawyers, and academics for the purpose of restoring the integrity of the Tunisian judiciary. Perhaps not surprisingly, even the straightforward task of registering the group with the government has turned into a tedious struggle with the obstructionist authorities.

Judge Yahyaoui is married and the father of four children.

We believe that Yahyaoui's selection for the Human Rights Award would focus important attention on a nation and an entire region at risk of becoming ever more closed and authoritarian. In the event that Judge Yahyaoui receives the award, we suggest that he be invited to travel to the United States to accept the honor. Such an invitation would force the Ben-Ali

regime either to rescind the judge's travel ban or to suffer even more unflattering publicity in the global media.

Enclosed please find a translation of Judge Yahyaoui's open letter to President Ben Ali and a detailed report in support of Judge Yahyaoui written (in French) by the Organisation Mondiale Contre la Torture (World Organization Against Torture), the Federation internationale des ligues des droits de l'Homme (International Federation for Human Rights) and Avocats Sans Frontières Belgique (Lawyers Without Borders Belgium).

Sincerely,

Neil Hicks, Director, Human Rights Defender Project
Lawyers Committee for Human Rights