



## **GFAR PROGRESS REPORT ON TUNISIA – DECEMBER 2019**

### **DEVELOPMENTS IN GFAR COUNTRIES SINCE DECEMBER 2017**

#### **KEY FINDINGS**

##### *Adequacy of Legal Framework*

One of the main weaknesses that Tunisia is facing in asset recovery is the absence of any law that organizes the roles and responsibilities in this regard. To date, these procedures follow a decree issued by the interim President Foued Mbazza in 2011. The decree includes the names of allegedly corrupt members from the Ben Ali and Trabelsi families, but it does not set clear procedures to work on the asset recovery portfolio.

The government's work on this portfolio continues to rely mainly on international legal assistance. During a meeting between I WATCH and the Minister of State Domains at the GFAR meeting in 2017 in Washington DC, the latter promised that he would present a law on asset recovery to the parliament and that he would create a national asset recovery commission upon his return to Tunisia. None of the promises were realized. Currently, the portfolio is divided between three ministries: The Ministry of State Domains, the Ministry of Finance and the Ministry of Justice. However, there is no law that organizes the roles and responsibilities of these three ministries. As a civil society organization, we do not have a point of contact to coordinate with on our work on asset recovery, which makes it very hard for civil society organizations to collaborate with them, to follow up on the different cases, or to hold them accountable.

##### *Adequacy of Institutions and Political Will*

Since the end of the Asset Recovery Commission's mandate in 2015, no other commission or body has been created to replace it.

The asset recovery portfolio has never been a priority for the decision makers and the political parties in Tunisia since 2011. Even during the last elections, that took place in 15 September 2019, no political party or presidential candidate mentioned asset recovery as a priority. In fact, there is no political will to recover the stolen assets. The work of the Tunisian government on asset recovery has always focused on the technical process, even though we do not have the needed expertise in Tunisia. The government has also never tried to find diplomatic solutions in an effort to try to recover the stolen assets or to bring back the corrupt officials to Tunisia to face fair trials. In some cases, the decision makers have helped the corrupt officials to recover their frozen assets in the host countries.

##### *Transparency and Participation*

There is no available data or reports on the asset recovery portfolio in Tunisia. In fact, the Asset Recovery Commission had a 3 years' mandate, from 2012 until 2015, and no reports were published during or after its mandate. This also applies to the courts' decisions regarding most of the corrupt officials whose' assets have been frozen in different countries. None of these decisions



are publicly available. This lack of information has significantly impacted our role as a civil society organization. Therefore, in I WATCH, we are relying on investigative journalism, work with whistleblowers and cooperation with different international stakeholders to obtain the information we need.

In addition, the adoption of the “Access to Information Law in 2016, has facilitated the work of civil society organizations. However, without a designated contact person, it is impossible to get verifiable information on asset recovery and or obtain the court’s decisions.

### *Enforcement Experience*

Former President Ben Ali and his wife were convicted in absentia in Tunisia for: theft; unlawful possession of cash; possession of property as a result of corrupt property deals and embezzlement. He was sentenced to 35 years imprisonment. Since he passed away in September 2019, it is not clear what will happen to the different cases he was part of.

Ben Ali’s son-in-law, al-Materi, was sentenced in absentia to 16 years of imprisonment as well as a fine of 97 million Tunisian Dinars (USD 33’708’600). He is living in Seychelles, where he was granted asylum. The Seychelles have ignored the Tunisian request for his extradition and recently provided him citizenship and a passport.

Assets linked to Ben Ali were frozen in various countries in January 2011 based on the EU and Swiss sanctions list, originally including 48 persons. The most recent update of the EU sanctions list regarding Tunisia took place in January 2019, when it was decided to remove the name of Marouane Mabrouk, Ben Ali’s former son-in-law, following the political intervention of the Tunisian Prime Minister. In addition, in October 2019, the Swiss Federal Criminal Court has decided to end all criminal prosecutions against the Mabrouk brothers: Marwan, Mohamed Ali and Ismail, in Switzerland. The court also lifted the travel ban decisions issued against Marwan Mabrouk.

### *International Cooperation*

Since 2011, the Tunisian government has been working in collaboration with different countries, mainly the EU and Switzerland<sup>1</sup>, to recover the stolen assets. StAR has been an important partner for the government in this respect. Since 2012, Star tried to provide the Tunisian officials and judges with the needed expertise and contacts to work on asset recovery. One of the obstacles encountered is the frequent change of officials responsible for these cases. Consequently, few cases have been completed, and many are ongoing.

In a recent case, related to Alstom, I WATCH was informed that the Serious Fraud Office in the UK has unsuccessfully been trying to get in touch with officials from the Tunisian government.. This illustrates the negative impact from dividing the asset recovery portfolio over different ministries.

As a civil society organization, I WATCH, has been working on the asset recovery portfolio in collaboration with different international stakeholders, mainly the Transparency International (TI) chapters and the UNCAC coalition, lastly in relation to removing the name of Ben Ali’s son-in-law from the EU sanctions list. With support from TI-EU, I WATCH organized a campaign to prevent the

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<sup>1</sup> In 2016 Switzerland returned USD 60.5 million to Tunisia.

EU council from removing his name from the EU sanctions list. In fact, I WATCH sent an open letter to the EU council and the embassies of different EU countries in Tunisia. In addition, a media press release was published by TI-Secretariat to his name from being deleted.

### *Recent Cases*

- **Alstom Case:** On November 23, 2019 Alstom SA, a French train manufacturer, was ordered to pay £16.4 million (\$21.2 million) in relation to a corruption case involving the supply of trams to Tunisia. The fine stems from an April 2018 conviction of Alstom Network UK Ltd. on corruption charges involving the payment of bribes to Tunisian public officials to secure a transportation contract in Tunisia. The British subsidiary paid £2.4 million through an intermediary to secure a contract with Transtu, the company that runs the Tunis Metro. The contract was worth £79.9 million.
- **Marouane Mabrouk Case:** Further to the update on this case above, I WATCH has initiated a case against the Tunisian Prime Minister Youssef Chahed, for using his position as a Prime Minister to serve his personal interests. I WATCH accused him of corruption and the case is under investigation in the Tunisian Judiciary Pole, the court responsible for investigating corruption and fraud crimes. Mabrouk appealed the EU decision to put him on the sanctions list in 2015, 2016 and 2017 but his appeal was refused. Therefore, Youssef Chahed intervened politically to help him get his assets and bank accounts in the EU countries back. The Prime Minister intervention came right after he created his political party few months before the presidential and parliamentary elections. In its case against the Prime Minister, I WATCH stated that there has been a deal between Youssef Chahed and Marwan Mabrouk to finance the new political party and support Chahed who later ran for the presidential elections.
- **Sakhr El Matari Case:** In 2018, I WATCH received information from the TI chapter in Seychelles. They informed us that the Seychellois government is willing to provide El Matari with the Seychellois citizenship and passport. All what they requested to stop the process was a duplicate of the conviction against El Matari in Tunisia. I WATCH tried for over 6 months, with all means, to get this conviction but in vain. Therefore, El Matari, got the citizenship and he can now freely travel out of Seychelles.

### *Compliance with GFAR principles (See the principles attached)*

The Tunisian government does not respect the GFAR principles and nothing has changed the GFAR meeting 2017. The government has not applied these principles as a means to improve the assets return process. However, after the new parliamentary elections, I WATCH will start working with the new elected MPs to create a law on asset recovery that will include all the needed reforms to enhance the process.

## **RECOMMENDATIONS**

### *Institutions and Political Will*

- The creation of an asset recovery commission that would represent the government in the different phases of the asset recovery process. This commission shall include experts from



the different ministries as well as from civil society. It shall serve as the single point of contact on this portfolio to prevent any political intervention.

*Transparency and Participation*

- Ensure that a database on seized, confiscated and recovered assets as well as court decisions becomes available and open to the public.

*Compliance with GFAR principles*

- Include principles of transparency, accountability, integrity, solidarity and effectiveness in the upcoming reform on responsible asset repatriation.

5 December 2019