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## TRIALWATCH REPORTS SHOW NEED FOR CONSTITUTIONAL COURT IN TUNISIA

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### CHARGES

Emna Chargui: 'advocacy of hatred between religions' and 'undermining a licensed religious rite'

Myriam Bribri: 'offensive speech'

### OUTCOMES

Emna Chargui: Convicted and sentenced to six months in prison; obtained asylum in Germany

Myriam Bribri: Trial ongoing

### TRIALWATCH EXPERTS

Emna Chargui: Knox Thames, former Special Advisor for Religious Minorities at the U.S. Department of State.

Myriam Bribri: Professor Mila Versteeg, Director of the Human Rights Program at the University of Virginia Law School.

### June 24, 2021

Tunisia must establish its long-awaited Constitutional Court as authorities continue to misuse vague laws to target speech perceived as critical or offensive and suppress freedom of expression. That's according to two TrialWatch reports on cases against Tunisian bloggers.

Emna Chargui was convicted and sentenced to six months in prison and a fine for re-sharing a satirical poem about COVID-19 on Facebook. Tunisian authorities charged her with 'advocacy of hatred between religions' and 'undermining a licensed religious rite' because the poem was written in the style of Quranic verse. The TrialWatch Fairness Report gives her trial a grade of D (on a scale of A-F, with F being the worst). Myriam Bribri is currently on trial for violating Tunisia's Telecommunications Code based on her Facebook post about police brutality. If found guilty, Bribri could be sentenced to up to two years in prison. The Clooney Foundation for Justice urges the Tunisian authorities to withdraw the charges against her; and TrialWatch will continue to monitor her case.

These are not standalone cases. The UN Special Rapporteur on Freedom of Religion or Belief has [noted](#) that while "there is no specific law or policy that penalizes blasphemy in Tunisia, several existing provisions have been used" to similar effect. Likewise, as [documented](#) by Amnesty International, "there has been a steady increase of prosecutions for Facebook posts that reveal cases of alleged corruption, criticize the authorities, or are deemed to 'insult' officials online." The vague laws in these two cases have yet to be subject to scrutiny by the long-awaited Constitutional Court, which was due to be established in 2015, but is [being blocked](#) by the Tunisian President in connection with an internal power struggle.

**"Tunisia must stop exploiting vague and overbroad laws to criminalize speech considered 'blasphemous,' as they violate international standards and jeopardize Tunisia's leadership role in the Middle East,"** said TrialWatch Expert Knox Thames, former Special Advisor for Religious Minorities at the U.S. Department of State. Professor Mila Versteeg, Director of the Human Rights Program at the University of Virginia Law School and the TrialWatch Expert on Myriam Bribri's case, added, **"Tunisia should complete the process of establishing its Constitutional Court, which would be able to align its laws with key human rights norms and provide remedies for violations of constitutional rights."**

## BACKGROUND

**Emna Chargui's** trial, which was held in July 2020 and consisted of a one-day hearing, took place against the backdrop of Tunisia's increasing use of broad laws to punish speech deemed insulting to Islam. Prior to the trial, Chargui had received rape and death threats for her re-sharing of the poem, "Verse of Corona," that is the subject of the case.

The Fairness Report by Knox Thames finds, the laws that the authorities used to prosecute Chargui—Articles 52 and 53 of Decree 115 of 2011—fail "to define vague terms," are over-broad, covering "conduct not necessarily constituting incitement," and allow for excessive penalties. It also concludes that the prosecution failed to present any evidence of guilt, stating that "Ms. Chargui's conviction despite the prosecution's functional abstention from the proceedings violated the presumption of innocence." This reflects a broader problem: prosecutors rarely make presentations at trial due to various factors, including case overload.

The Fairness Report further finds that:

- Ms. Chargui's trial was marred by violations of her right of counsel and her right to be tried by an impartial tribunal. Her lawyer was not allowed to attend her pre-trial interrogation by the Public Prosecutor's Office, which has reportedly become common practice in recent years, and the court "in effect 'replaced the prosecutor.'"
- "[I]t was unforeseeable that posting a poem about a public health crisis could qualify" as criminal, and therefore Ms. Chargui's prosecution breached the principle of legality. Likewise, sharing the "Verse of Corona" constituted protected speech on a topic of public interest and her conviction violated her right to freedom of expression because her prosecution and conviction did not meet international standards for restricting speech.

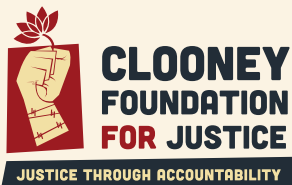
In October 2020, **Myriam Bribri** posted an expletive in response to a video that was circulating online of a police officer beating someone. As a result, Bribri faces charges under Article 86 of the Telecommunications Code, which criminalizes intentionally 'offending others' through telecommunications networks. The charges are based on a complaint by a police official who said that he and others had been offended by Bribri's post. The next hearing in the case is scheduled for June 28, 2021.

Professor Mila Versteeg finds that Bribri's prosecution violates her right to freedom of expression. In particular, the report concludes that Article 86 of the Telecommunications Code "is imprecise and ambiguous, failing to define the conduct that is criminalized," giving the authorities too much discretion, and thus making it inconsistent with the principle of legality. Further, the report concludes that "shielding the Secretary-General and other security officials from injured feelings caused by critical commentary does not qualify as a legitimate objective" for restricting freedom of speech and that criminal prosecution is neither necessary nor proportionate. Professor Versteeg calls for the establishment of the Constitutional Court as soon as practicable, so that Article 86 and other problematic laws can be subject to the necessary scrutiny to ensure compliance with the 2014 Tunisian Constitution and international and regional human rights standards.

For a full legal analysis of these proceedings, please see the reports on [Ms. Chargui's case](#) and [Ms. Bribri's case](#).

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### ABOUT THE CLOONEY FOUNDATION FOR JUSTICE'S TRIALWATCH INITIATIVE



The Clooney Foundation for Justice's [TrialWatch®](#) initiative monitors and grades the fairness of trials of vulnerable people around the world, including journalists, women and girls, minorities, LGBTQ+ persons and human rights defenders. Using this data, TrialWatch advocates for victims and is developing a Global Justice Ranking measuring national courts' compliance with international human rights standards.