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# 1. INTRODUCTION

“In our view, achieving this objective [preventing the occurrence and propagation of terrorism] largely depends on the methods we adopt to combat terrorism, the most important of which being: no countering of violence by violence; no exclusive reliance on security solutions which, though necessary, remain insufficient<sup>1</sup>”

President Zine El Abidine Ben Ali, November 2007

Twenty-seven year old Ziad Fakraoui told a trial judge in March 2007 that he was tortured when in police custody at the Department of State Security (*Idarat Amn ad-Dawla*, hereafter DSS) of the Ministry of Interior and Local Development. He gave the names of those he alleges were responsible. He said that as a result of the torture and other ill-treatment, and a lack of medical care, he is now sexually incapacitated. He requested before the court that he be medically examined, that an investigation be opened and that those responsible for his torture be brought to justice.

The judge refused to register Ziad Fakraoui's allegations in court records, and rejected the request that he be medically examined for evidence of torture. His lawyers then filed a complaint with the Public Prosecutor in April 2007; this complaint named the individuals

alleged to have tortured Ziad Fakraoui.<sup>2</sup> At the beginning of June 2008, his lawyers had received no response from the Public Prosecutor's office; nor had they received information indicating that any investigation was underway.

His mother told Amnesty International that he was taken into custody at around 11pm on 18 April 2005. Security officials in plain clothes came to his home in Mhamdia, in the outskirts of Tunis, and gave no reasons for his arrest. She said they returned the next day and removed a piece of paper with a phone number written on it but told her not to worry and that her son would be released soon. Ziad Fakraoui's family then received no further information until he was taken before an investigating judge on 30 April 2005, when they were told that he would be transferred to 9 avril prison in Tunis.

The official police report falsely states that Ziad Fakraoui was arrested on 26 April 2005, eight days after the actual date of arrest. When he was taken before the investigating judge he was not permitted the assistance of a lawyer; other suspects in the same case were denied legal counsel and questioned by the investigating judge late at night, outside normal office hours, apparently to prevent their being assisted by defence lawyers. All the suspects were later charged under the Anti-terrorism Law<sup>3</sup> with various offences, including membership of a terrorist organization and incitement to terrorism.

Ziad Fakraoui's mother told Amnesty International that she was able to visit him in prison for the first time on 2 May 2005, 15 days after his arrest. She observed that he had burns, apparently from a lighted cigarette, near his right eye. He was also in a disturbed state of mind – asking for news of his brother, Haitham, who was reported to have died in Iraq, and his deceased father. During subsequent visits, he told his mother and lawyers that he had been taken to the Ministry of Interior after his arrest and tortured; he was suspended from the ceiling, beaten with sticks all over his body, his pubic hair was set alight with a cigarette lighter, and he was burned near his eyes with lighted cigarettes. He also said that security officials squeezed his testicles until he fainted, following which he saw blood in his urine for several days but received no medical assistance. He told his mother and lawyers that a few days after his arrest, security officials had driven him late at night to a deserted area in Carthage, 15 km north of Tunis, where they beat him and kicked him in the head, demanding he tell them the whereabouts of other suspects in the same case.

In September 2007, he went on hunger strike for almost two months to protest against the fact his request to see a medical doctor remained unmet, and against the lack of investigation into his allegations of torture and the impunity imparted on his alleged torturers. His lawyers and relatives were prevented by the prison administration from visiting him on several occasions between September and November 2007 and again in December 2007. When transferred to Bourj Erroumi prison in November 2007, he was put in isolation, not allowed to shower and denied access to adequate medical care. In December 2007, he was sentenced, together with the other co-defendants, to 12 years' imprisonment, a sentence which was reduced to three years' imprisonment by the Appeal Court. Ziad Fakraoui was released on 24 May 2008 as having already served his sentence.

This case is echoed by many others highlighted in this report. It reveals the Public Prosecutor and investigating judges' failure to take appropriate action when complaints or evidence of torture and other violations of the rights of detainees have been brought to their attention. It

suggests that the Public Prosecutor and his staff, as well as investigating judges and trial judges, are in effect helping to cover up instances of unlawfully prolonged incommunicado detention, including for lengths of time prohibited even by domestic Tunisian law, and torture and other ill-treatment of detainees in violation of Tunisian and international law. The security forces responsible for the torture and other ill-treatment of detainees, in particular those of the DSS, consequently enjoy total impunity.

Despite the routine failures to protect detainees from torture and other violations which are highlighted in this report, the Tunisian government has repeatedly asserted that it abides by its international human rights obligations. Tunisia has indeed introduced legal reforms which – although they fall short of international human rights standards – theoretically offer better protection for human rights. In practice, however, they are nothing more than hollow rhetoric.

The fact that gaping discrepancies exist between law and practice in the country signals a conscious refusal by the Tunisian authorities to fully subscribe to and abide by their obligations under international human rights law. The laws that should have increased protection have been routinely flouted by the Tunisian authorities, and have not served as an adequate safeguard against torture, unfair trial and other serious human rights abuses.

Despite the real risk of torture and other ill-treatment and flagrantly unfair trials that individuals arrested in connection with terrorism-related offences face in Tunisia, Arab, European and US governments have returned people suspected of involvement in terrorist activities back to Tunisia in violation of the principle of *non-refoulement* which prohibits government from sending people to places where they are at risk of torture and other grave human rights abuses. Indeed, foreign governments praise Tunisia's counter terrorism measures. For instance, in his official visit to Tunisia in April 2008, French President Nicolas Sarkozy paid "tribute to Tunisia's resolute determination to fight terrorism, which is the real enemy of democracy".<sup>4</sup>

This reports ends with a list of detailed recommendations. In particular Amnesty International calls on the Tunisian government to:

- amend the 2003 Anti-terrorism Law in order to bring it into full compliance with relevant international human rights law and standards;
- end incommunicado detention and ensure that all arrests and detentions comply fully with procedures set out in international human rights law and standards;
- institute effective safeguards against torture and other ill-treatment, in particular by granting anyone who is taken into detention prompt access to a lawyer;
- end the abuses in prisons and uphold the rights of prisoners in line with the UN Standard Minimum Rules for the Treatment of Prisoners;
- fulfil its international obligation to investigate and punish torture and other ill-treatment.

## ABOUT THIS REPORT

This report covers events until mid-June 2008 and details Amnesty International's concerns regarding the serious human rights violations that are being committed in connection with the Tunisian authorities' security and counter-terrorism policies. These include arrest and detention practices, torture and other ill-treatment of detainees and sentenced prisoners, and unfair trials, including trials of civilians before military courts. It makes recommendations to the Tunisian government and to foreign governments co-operating with Tunisia in counter-terrorism measures.

Amnesty International has closely monitored the human rights situation in Tunisia for years. Our findings and concerns, as set out in this report, are based on information on hundreds of cases of torture and other ill-treatment and unfair trial since the introduction of the Anti-terrorism Law on 10 December 2003. Amnesty International monitors public information sources on Tunisia, investigates individual cases of abuse which are brought to its attention and maintains continuous contact with human rights lawyers and activists in Tunisia. During visits to Tunisia in June/July and November/December 2007, Amnesty International conducted in-depth research on cases of torture and other ill-treatment and unfair trials. It conducted a series of interviews with relatives and lawyers of detainees, former prisoners, and met members of local human rights organizations.<sup>5</sup> Amnesty International also observed several sessions of the high profile trial of the Soliman case (see below) on 1 December 2007 and in January and February 2008.

Amnesty International delegates raised concerns about their preliminary findings during meetings in 2007 with Tunisian government officials, namely the Minister of Justice, the Human Rights Co-ordinator at the Ministry of Justice, the Director General for External Relations at the Ministry of Interior, the Secretary of State for European Affairs at the Ministry of Foreign Affairs, the President of the Higher Committee on Human Rights and Fundamental Freedoms, and the Minister Delegate to the Prime Minister in charge of Public Function and Administrative Development. The organization requested meetings with key directorates at the Ministry of Interior and the Public and Military Prosecutors in order to raise its concerns regarding violations against people detained in connection with terrorism related offences. It also asked for meetings with Presidents of the Tunis Court of First Instance and Tunis Court of Appeals in order to discuss the application of the Anti-Terrorism Law.<sup>6</sup> However, these request remained unanswered. Amnesty International also raised these concerns about its preliminary findings with representatives of European Union member states in Tunis and the US Ambassador to Tunisia and especially the issue of the deportation by their governments of Tunisian nationals suspected of involvement in terrorism despite the high risk of torture. In many of their responses, the Tunisian authorities considered Amnesty International's concerns as mere unproven allegations or individual instances not reflecting patterns of abuse and highlighted the protection against human rights violations that Tunisian law provides.

In May 2008, Amnesty International sent a memorandum to the Minister of Justice and Human Rights and the Minister of Interior and Local Development. The memorandum provided information and details of 14 cases in which suspects were charged with terrorism-related offences under either the Anti-terrorism Law or the Tunisian Code of Military Justice. These cases illustrated abusive practices which continue to be used in Tunisia in the context of counter-terrorism. The memorandum sought further information about these cases from the Tunisian authorities and clarification regarding any steps that have been taken to investigate

alleged violations and to ensure that any officials responsible for violating human rights are held to account. A response had not been received at the time of going to print. In addition, the Tunisian government has given only elusive answers to the Human Rights Committee in March 2008 and later to the Human Rights Council in April 2008, continuing to deny that abuses take place in Tunisia. Amnesty International publishes this report to expose the growing discrepancy existing between Tunisian government statements, laws and Tunisia's international human rights obligations on the one hand, and what happens in practice, on the other.

## BACKGROUND

The ascent of Islamism in the late 1980s and early 1990s both in Tunisia and neighbouring countries was considered by the Tunisian authorities as a threat to the project they envisaged for Tunisia as a "secular modern country". To prevent increasingly popular Islamist movements from growing in influence, the authorities proscribed political parties based on religion and clamped down on Islamist activists and sympathizers. Following acts of violence in 1990 and 1991,<sup>7</sup> hundreds of known and alleged members of *Ennahda* (Renaissance) banned Islamist organization were arrested and tried in military courts in 1992 on charges of plotting to overthrow the government and belonging to an unauthorized association.<sup>8</sup>

Although the leadership of *Ennahda* repeatedly condemned the use of violence, the Tunisian authorities have, since the late 1980s, considered it a terrorist organization involved in violence, imprisoned most of its members in Tunisia and issued Interpol arrest warrants against those based abroad seeking their extradition back to Tunisia.<sup>9</sup> Virtually the entire leadership of the organization were imprisoned and many were tortured and otherwise ill-treated and suffered medical neglect in prison. Most have since been released, but continue to be subjected to arbitrary measures which prevent their reintegration into society: they are subjected to restrictions on movement, access to health care, education and jobs, and are also randomly arrested and detained.

Nonetheless, the authorities have relentlessly continued to use "security" concerns as a pretext for the repression of Islamists and political dissent in general and arrests of other less influential and less known Islamist groups continued to take place throughout the 1990s. With the introduction of the Anti-terrorism Law in 2003, hundreds of people, including children under 18, have been arrested in connection with alleged terrorism-related offences. Amnesty International has compiled a list of at least 977 individuals who have been brought to trial since June 2006 under the Anti-terrorism Law. Their treatment is said by lawyers, human rights activists and even former *Ennahda* prisoners themselves to have been harsher than that of *Ennahda* in the 1990s. Typically, they are religiously committed young men in their mid-twenties who frequent mosques, discuss religious trends with like-minded others and the situation in Iraq and Palestine, and express their opinions about joining or not joining *salafist jihadist* groups in Iraq and other countries. Virtually all of them have been convicted on charges of planning to join jihadist groups abroad or inciting others to join, but never on charges of having planned or committed specific acts of violence. Indeed, Tunisia has virtually been free of political violence for years, with the notable exceptions of the April 2002 bomb attack outside a synagogue in Djerba, which killed 21 people, and the December 2006 clash between security forces and an armed group later identified by the authorities as the Soldiers of Assad Ibn Furat, in which 14 people, including two members of the security forces, were killed. Both incidents were linked by the authorities respectively to al-Qa'ida and "al-Qa'ida in the Islamic Maghreb", an armed group reputedly responsible for attacks against civilians in Algeria.

Amnesty International unreservedly condemns attacks against civilians and calls for those responsible to be brought to justice in proceedings that meet international standards for fair trials. It recognizes the Tunisian government's responsibility to protect the civilian population from attack, including by preventing, investigating and punishing such acts. In carrying out their responsibilities, however, the Tunisian authorities must take lawful and proportionate measures and abide at all times by relevant international human rights law and standards, including the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (Convention against Torture) and other treaties to which Tunisia is a state party. These treaties set out standards to which governments must adhere at all times, even after the most heinous crimes. Any law, policy or practice aimed at countering attacks on civilian populations must never undermine the rule of law or fail to comply fully with international human rights law and standards.

The Tunisian authorities have so far signally failed in this respect. In their persistent attempts to pre-empt the formation of what they call "terrorist cells" inside Tunisia, they have carried out arbitrary arrests and detention, used torture and other ill-treatment and tried, convicted and sentenced people using unfair proceedings, including trials of civilians before military courts, and with little evidence to substantiate the charges.

At the international level, the Tunisian government has sought the return of Tunisians allegedly suspected of "terrorism" offences. Its security and intelligence services monitor Tunisian nationals suspected of such offences abroad or wanted by the Tunisian authorities. Many Tunisians were arrested in connection with terrorism-related offences in various countries, including Algeria, Egypt, France, Italy, and Syria. Others were reported by the media as well as by their relatives to have died in Iraq, while the names of at least 30 Tunisians who have joined or intended to join armed groups in Iraq were reportedly found in records captured by the US-led coalition forces in Iraq in October 2007.<sup>10</sup>

Many of those who have been forcibly returned, however, have then suffered human rights violations, including arbitrary arrest and detention, torture and other ill-treatment, and flagrantly unfair trials at the hands of the Tunisian authorities. Some of them have been victims of prolonged incommunicado detention.

Transfers of Tunisian nationals from abroad, on security grounds, have been carried out in collaboration with European, US and Arab governments. In some cases, the return has followed an extradition request by the Tunisian authorities. In others, the return has been the result of a deportation order by foreign authorities, often following the rejection of an asylum claim. All these returns have violated the principle of *non-refoulement* and have been carried out despite documentation provided by national and international non-governmental organizations to highlight the high risks of torture and other abuses that face those threatened with forcible return.

The Tunisian government has repeatedly showed its support for international efforts to combat terrorism. Tunisia hosts the Secretariat of the Council of Arab Interior Ministers in Tunis, where regular ministerial meetings and meetings of heads of counter-terrorism units are held to coordinate regional security efforts. In November 2007, Tunisia hosted an international conference on terrorism jointly organized by the UN Department of Political Affairs, the Islamic, Educational Scientific and Cultural Organization (ISESCO) and the Organization of the

Islamic Conference (OIC). The conference was attended by the UN Secretary-General Ban Ki-moon and Tunisian President Zine El Abidine Ben Ali. In the opening session, President Ben Ali stressed, amongst other things, the importance of UN conventions adopted by the General Assembly, the Security Council, and the specialized international organizations and institutions in the fight against terrorism.<sup>11</sup>

At the same time, however, Tunisia has only agreed on 9 June 2008 to invite the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism to visit the country, despite repeated requests by the Special Rapporteur to do so for the last three years.<sup>12</sup> It continues to refuse access to the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, although it indicated before the UN Human Rights Committee in March 2008 that it would invite the latter to visit the country. Nonetheless, in their aide-memoire of 9 June 2008 with regard to the implementation of the recommendations emanating from the Universal Periodic Review before the working Group on the Human Rights Council, the Tunisian authorities have not yet invited the Special Rapporteur on Torture to visit Tunisia.

## 2. “COUNTER TERRORISM” LAWS AND POLICIES IN TUNISIA

### TUNISIA’S COUNTER-TERRORISM LAWS

After the instances of violence that took place in 1990 and 1991, the Tunisian authorities amended the Penal Code in 1993 to introduce a broad definition of terrorism. Article 52bis of the Penal Code considered as acts of terrorism “all actions relating to individual or collective initiative, aiming at undermining individuals or properties, through intimidation or terror” and “acts of incitement to hatred or to religious or other fanaticism, regardless of the means used”.<sup>13</sup>

Article 52bis was also used to criminalize legitimate and peaceful opposition activities. Members of unauthorized movements such as *Ennahda* and *al-Ansar* and *Ahl al-Sunna wal-Jama’a*, who were previously charged with belonging to an unauthorized association, then frequently faced charges of supporting a “terrorist” organization, an offence which incurs a heavier sentence.

Four months after the bomb attack in Djerba in April 2002, the Tunisian authorities confirmed to the UN Counter-Terrorism Committee in August 2002 that “a comprehensive bill on combating of terrorism” had been submitted to the National Assembly, Tunisia’s parliament.<sup>14</sup> The bill was adopted on 10 December 2003 into what is now known as Law No. 2003-75 (10 December 2003), concerning support for international efforts to combat terrorism and prevent money-laundering.

Article 1 of the Anti-terrorism Law stipulates that Tunisia will counter terrorism in conformity with international, regional and bilateral treaties and conventions and with full respect for constitutional guarantees. However, certain aspects of the Anti-terrorism Law put this in question, notably its criminalization as acts of “terrorism”, “acts of incitement to hatred or to racial or religious fanaticism, regardless of the means used” is so broadly cast that it could include legitimate forms of peaceful expression; the potential criminal liability it confers on conduct without criminal intent and unintended consequences that are deemed to fall foul of the law; the limitations it places on fair trial rights for those accused in terrorism-related cases; and the potential it provides for prolonged pre-trial detention without review.

The definition of terrorism contained in the Anti-terrorism Law was significantly broader than that of Article 52bis of the Penal Code, which it has replaced.<sup>15</sup> It extends the notion of “terrorism” to include acts seen as illegitimately “influencing state policy” and “disturbing public order”, with possibly far-reaching consequences for the rights to freedom of expression, association and

assembly. The vagueness and breadth of the definition of “terrorism”, and thereby any offence which is based on it, may violate the principle of legality and legal certainty by being too wide and vague, thus failing to meet the clarity and precision requirements for criminal law; it may not amount to a “recognizably criminal offence” under international human rights law. Therefore, any arrest, detention, charge and trial based on such definition may lead to injustice and undermine human rights protection and the rule of law.

The UN Special Rapporteur on the protection and promotion of human rights while countering terrorism observed in his report 2005 that the definition of terrorism contained in the Tunisian Anti-terrorism Law is overly general and broad, and could be used as a repressive measure to curtail legitimate dissent.<sup>16</sup> Similar concerns were reiterated by the Human Right Committee in March 2008 in its concluding observation regarding Tunisia.<sup>17</sup>

The Anti-terrorism Law also criminalizes certain terrorist and other activities, as well as instigating, supporting and financing terrorist acts, and makes them punishable as separate offences distinct from the principal act or independently of any specific terrorist act. As a result, whenever a particular act is designated as having been a terrorist act, it automatically incurs the application of the most severe penalties for those convicted of it.

Furthermore, Tunisian nationals living abroad may also be charged with offences under the Anti-terrorism Law and provisions of the Code of Military Justice (CMJ). The Tunisian CMJ places certain criminal offences within the jurisdiction of military courts – for example, undermining the internal or external security of the state (Article 5) – and permits civilians accused of such offences to be tried before military courts (Article 8).<sup>18</sup> The CMJ also empowers the authorities to prosecute Tunisian nationals who serve, during peacetime, in a foreign army or in a “terrorist” organization operating abroad (Article 123).<sup>19</sup>

The Anti-terrorism Law also gives exclusive competence to the judicial police, the public prosecutors and investigating judges attached to the Tunis Court of First Instance to investigate and prosecute terrorism offences all over Tunisia. The Tunis Court of First Instance has the power to try people charged with such offences.

## THE ROLE OF THE DEPARTMENT OF STATE SECURITY

The two main police bodies in Tunisia are the National Security Police (*Sûreté nationale*), which is mainly an urban force, and the national guard (*Garde nationale*), originally a mainly rural force, but which also has a number of paramilitary and defence duties as a riot force, bodyguard and border patrol force, as well as functions in the towns. They both operate under the Office of National Security (*Direction de la sûreté nationale*) within the Ministry of Interior. The judicial police (*police judiciaire*), a branch of the national security police, is jointly controlled by the Ministry of Interior and the Ministry of Justice. It specializes in arresting offenders under Tunisian law and collecting evidence against them; the national guard performs the same function.

Amnesty International requested meetings with the heads of a number of key directorates at the Ministry of Interior during its mission in November/December 2007 in order to further inquire about the police and security structure in Tunisia. The organization regrets that it received no answers to these requests, although its delegates met the General Director for External Relations at the Ministry of Interior. He told Amnesty International that in summer

2007 two central directorates for counter terrorism were created within the national security police and the national guard.

The Department of State Security (DSS) is part of the Tunisian General Directorate for Special Units at the State Secretariat for National Security. It is often referred to in Tunisia as the political police (*la police politique*) and plays a central role in the surveillance and monitoring of political activists and opponents as well as groups or individuals considered by the government to constitute a threat, including Islamists, human rights activists and journalists. Officers of the DSS carry out arrests and house searches and conduct the initial interrogation of suspects in their role as the judicial police. There appears to be no public legal statute defining the duties or organization of the DSS.

DSS officers have been responsible for a number of serious human rights violations, including arbitrary arrests and detention, torture and other ill-treatment and harassment of lawyers and relatives of terrorist suspects. Although the Ministry of Interior has oversight over DSS officers, they continue to act with impunity and there is no information available as to whether any criminal or disciplinary action has been taken against DSS officers for these abuses.

### **3. ARREST, INCOMMUNICADO DETENTION AND ENFORCED DISAPPEARANCE**

Oualid Layouni, who worked as an interior designer in Dubai, was detained in the United Arab Emirates, together with his twin brother, Khaled, who was previously in Syria. They were both returned involuntarily on 18 October 2005 to Tunisia, where they were arrested on arrival by DSS officers. Oualid was released after one week in detention but Khaled continued to be detained and was later charged under the Anti-terrorism Law. Despite his release, Oualid was repeatedly summoned by the police in Tunis and always complied with these instructions. On 11 December 2006 he went to a police station after receiving a phone call from the State Security police. However, on this occasion, he did not return home afterwards. He was a victim of enforced disappearance for more than a month.

His mother and lawyers informed Amnesty International during a meeting in November 2007 that they inquired about him at the Ministry of Interior and were told that he was not being detained, but on 13 December, DSS officers searched his house, using his keys to open a wardrobe, yet continued to deny that he was being detained or divulge any information about his whereabouts. In fact, it was not until he was taken before an investigating judge on 19 January 2007 that his family and lawyers received confirmation that he was in custody, and when he appeared before the investigating judge he was questioned without the presence of his lawyer. The official police report states that he was arrested on 17 January 2007, more than one month later than the actual date of his arrest. He alleged he was tortured and otherwise ill-treated (see section Safeguards against torture flouted).

Oualid Layouni was charged under the Anti-terrorism Law with belonging to a terrorist group and money laundering for terrorism, apparently because he had given a sum of money to his brother, Khaled, who was charged with terrorism-related offences in a separate case. Oualid Layouni was acquitted by the Tunis Court of First Instances on 16 January 2008, and released.

#### **VIOLATION OF ARREST PROCEDURE**

The illegal detention and enforced disappearance of Oualid Layouni was no exception. Indeed, since the entry into force of the Anti-terrorism Law, hundreds, possibly thousands, of people

have been detained on suspicion of involvement in terrorism-related offences. Many such arrests have been carried out by security officials in plain clothes, generally believed to be DSS officers, who have conducted house searches. Often, arrests and house searches have been carried out in the middle of the night in breach of the Tunisian Code of Penal Procedure (CPP).

Tunisian law makes no mention of the need to show an arrest warrant or even proof of identity during an arrest. If the arrest is made in *flagrant délit* (that is in the act when the arresting officer sees someone apparently committing a crime) or as part of normal procedure, arrests can be made without warrant. A warrant is shown only when a summons is ordered by the investigating judge; it should indicate the name, age, date and place of birth of the accused and the charges against him or her.<sup>20</sup> No house searches should take place between 8pm and 6am except in cases of flagrant crime or when necessary in order to seize a suspect or arrest someone who has escaped.<sup>21</sup> Article 102 of the Penal Code provides a maximum one-year sentence for a public official who enters the house of another person without observing the official procedures and without the latter's consent.

## PROLONGED INCOMMUNICADO DETENTION AND ENFORCED DISAPPEARANCE

Those arrested, including individuals who were forcibly returned to Tunisia from European and other countries (see Chapter 7 on Abuses of returnees), have frequently been held by officers of the DSS in prolonged incommunicado detention, lasting weeks or months, during which the detention is not acknowledged or the fate or whereabouts of the detainee is concealed, leaving the detainee outside the protection of the law, a situation that amounts to enforced disappearance.

This use of enforced disappearance is deeply worrying as it puts those who experience it outside the protection of the law and exposes them, through the secrecy surrounding their situation, to a serious risk of torture and other abuses at the hands of officials who are able to evade accountability and act with virtually total impunity.

Principle 16(1) of the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment states that “[p]romptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.” Principle 13 of the Body of Principles stipulates that the arresting authorities must promptly provide any person taken into detention with “an explanation of his rights and how to avail himself of such rights”.

Tunisian law empowers the Public Prosecutor to supervise the judicial police and to oversee and visit places of pre-trial detention. According to Article 13bis of the CPP, suspects may not be detained by the police or the National Guard for more than three days; the Public Prosecutor must be informed of each detention and is empowered to authorize continued *garde à vue*,<sup>22</sup> by written order and “in cases of necessity”, for a further three days, allowing a total of six days. The detaining authorities are required to notify detainees of the procedures taken against them, the reason/s and duration of their detention and of the guarantees provided to them by law, including the right to medical examination during or after the detention. They must also notify a member of the detainee's immediate family of the arrest and detention. During or after the

*garde à vue* period the detainee or any member of his or her immediate family may request that he or she be given a medical examination. The dates and times of the beginning and end of *garde à vue* detention, and the dates and times at which each interrogation starts and finishes, must be noted in a register kept in each police station. Article 13 of the CPP states that officers of the judicial police must inform the Public Prosecutor of any actions they take or crimes they discover.

Amnesty International welcomes these safeguards, which were introduced in 1999 and should have served to afford greater protection to detainees during *garde à vue*.<sup>23</sup> In practice, however, they have appeared little more than cosmetic. They have been routinely flouted by Tunisian detaining authorities and have not served as an adequate safeguard against torture and other abuses. The fact that Tunisian law does not guarantee the right of detainees to have access to legal counsel promptly after arrest remains a major deficiency that further exposes detainees to risk of torture and other ill-treatment and deprives them of effective means of challenging the legality of their detention before a court, as is required by Article 9(4) of the ICCPR.

Furthermore, Article 9(3) of the ICCPR, provides that “anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power”. The Human Rights Committee has applied this provision also in cases where a person is held on what are in substance criminal allegations, but formal charges have not been laid. It has also held that “promptly” in this context means that any delay “must not exceed a few days”. It does not appear that such requirements are being respected in practice in Tunisia as regards persons arrested or detained on suspicion of terrorism-related offences.

In most terrorism-related cases, detainees have been held incommunicado well in excess of the time limit set out in Article 13bis of the CPP. As well as in the Ministry of Interior building in Tunis, detainees who have been arrested outside Tunis are also held incommunicado for several days in police stations and National Guard centres before being transferred to Tunis. Following their detention, the detaining authorities have frequently concealed or denied holding the detainees concerned and have refused to disclose information about them and their circumstances to their families and lawyers.

## FAILURE TO NOTIFY THE FAMILY

As illustrated by some of the case examples cited in this report, families who have sought information from the Ministry of Interior and Public Prosecutor about relatives who they believed were being held by the DSS, even when accompanied by a lawyer, report that the authorities have refused to confirm that the individuals in question have been taken into custody or to divulge other information, such as the reason/s for arrest or place of confinement. Such families have been able to obtain news of their relatives only through unofficial sources within the police or from other detainees following release, or after their detained relatives were moved to prisons and permitted to receive visits. Requests by lawyers and families for information often remain without answer by the authorities until after the detainee's interrogation by the DSS has been completed and the detainee has appeared before an investigating judge. In some cases, detainees' whereabouts have remained undisclosed for several days even after they appeared before an investigating judge. This also suggests that the Public Prosecutor may not be informed immediately about certain arrests carried out by DSS officers, in breach of Article 13bis of the CPP and Article 33 of the Anti-terrorism Law.

## FALSIFICATION OF ARREST DATES

Police, including the DSS, in many instances in political and security-related cases, falsify arrest dates in official case documentation in order to suggest that the detainee was arrested days or even weeks later than was actually the case; in this way, they create an illusion of compliance with national law whereas, in practice, they hold detainees during an initial period of detention without a legal basis in Tunisian law, and in violation of international human rights law. This is a longstanding practice to which Amnesty International has previously drawn attention, but it appears still to be tolerated by the Tunisian authorities.

Police falsification of arrest dates facilitates misuse of *garde à vue* for interrogation purposes and torture and other ill-treatment. In some cases, there have been very significant discrepancies between the actual date of arrest, as reported by the detainee, family members or other witnesses to the arrest and the official arrest date shown on the police report. Detainees' relatives and lawyers have sometimes sought to expose this by sending inquiries about detainees to the authorities using registered mail and have been able to show that these were sent, and predate by several days or weeks, the arrest date as officially recorded in the police report.

## MOHAMED AMINE JAZIRI

Mohamed Amine Jaziri was detained on 24 December 2006 while he was on his way to Sidi Bouzid Hospital, in Sidi Bouzid, 260 km south of Tunis. He was responding to a text message that had been sent from a friend's mobile phone, asking him to visit him there, which was sent at a time when this friend was being held in police custody. After he went missing, Mohamed Amine Jaziri's father inquired about him with the police in Sidi Bouzid and at the Ministry of Interior in Tunis, but was repeatedly told that they had no record of him. However, on 27 December, a group of men believed to be police officers in plain clothes searched Mohamed Amine Jaziri's house, using his keys to gain access.

Mohamed Amine Jaziri was among scores of people detained by police in late December 2006 and January 2007, following an exchange of gunfire on 23 December 2006 between Tunisian security forces and alleged members of an al-Qa'ida-aligned armed group identified by the Tunisian authorities as the Soldiers of Assad Ibn Fourat. Those detained were held incommunicado for several weeks at the DSS detention facility within the Ministry of Interior in Tunis, and allege that they were tortured and otherwise ill-treated there. Mohamed Amine Jaziri alleges that he was beaten all over his body, given electric shocks, suspended from the ceiling for several hours, doused with cold water, deprived of sleep, and had a dirty hood placed over his head during interrogation. He was brought before an investigating judge for the first time on 22 January 2007, almost a month after his arrest. In December 2007, he was sentenced to 30 years' imprisonment after being convicted, together with 29 others, on terrorism-related charges in the Soliman case. His sentence was confirmed by the Tunis Appeal Court in February 2008 and later upheld by the Court of Cassation on 23 May 2008.

## 4. TORTURE TO EXTRACT “CONFESIONS”

“I was beaten with a stick all over my body, given electric shocks, and threatened with death. When I asked to read the police report, which I had been forced to sign without reading, I was subjected to further beatings.”

Houssine Tarkhani told his lawyer in June 2007.

### METHODS AND PURPOSE OF TORTURE

Most allegations of torture and other ill-treatment relate to periods of incommunicado and unacknowledged detention, prior to any period of officially recorded detention. Despite overwhelming evidence that torture and other ill-treatment have been widespread during the *garde à vue* detention and sometimes in prisons, the Tunisian authorities contend that the Tunisian law has since 1999 been strengthened to provide further protection to detainees during *garde à vue*, which has also been reduced to a maximum of six days.

According to information obtained by Amnesty International from diverse and authoritative sources, including detainees themselves, their families and lawyers and Tunisian non-governmental organizations, many detainees are tortured or otherwise ill-treated while they are held incommunicado during the period of pre-arraignment detention; this frequently occurs soon after arrest but before the detainee is officially acknowledged to be in *garde à vue*.

Political detainees and those arrested in connection with terrorism-related offences are commonly detained by DSS officers, and tortured and otherwise ill-treated to extract

“confessions” or other statements that are later submitted as evidence at trial, and, it appears, to punish and intimidate. Many defendants – including most of those whose cases are cited in this report – have subsequently retracted such “confessions” at trial, contending that they were obtained under torture or other ill-treatment, but the courts have routinely failed to adequately investigate such allegations, and indeed have accepted such contested statements as evidence for conviction without adequate investigation, in violation of Article 15 of the Convention against Torture and Article 7 of the ICCPR.

Prisoners detained for terrorism-related offences are also reported to have been tortured or otherwise ill-treated in prisons while held in pre-trial detention or when serving their sentences (see Chapter 6 Abuses in prisons).

Methods of torture most commonly reported to Amnesty International include beatings on the body and especially the soles of the feet (*falaka*); suspension by the ankles or in contorted positions (in which the victim is trussed up and tied to a horizontal pole by hands and feet bound in front (*poulet rôti*); or the victim’s hands and feet are bound together behind the victim’s back and beaten (*avion*); or the victim is suspended on a pulley by the ankles and has their head plunged into a bucket of dirty water (*bañõ*)); electric shocks; and burning with cigarettes. Amnesty International has also received reports of sexual abuse of detainees, including the insertion of bottles or sticks into the rectum of the victim; and threats, both of such abuse and of the sexual abuse of female relatives, and mock executions. This is, for instance, the case of Ramzi el Aifi, who was allegedly raped by having a stick inserted in his anus, and Amin Dhiab, who was allegedly subjected to mock executions in Mornaguia prison in 2007 (see below).

## NOUAFEL SASSI

A former political prisoner and father of four, Naoufel Sassi was arrested at his workplace on 14 June 2006 by officers believed to be from the DSS. When he did not return home that day, his wife searched for him at Tunis hospitals and police stations but was not able to obtain any information about him. Eyewitnesses later told her that around six men in plain clothes had taken him in an unmarked car from his workplace. On 18 June 2006, his lawyer inquired about him at the Ministry of Interior and with the Public Prosecutor’s office but was told that they had no information about his arrest and detention. His lawyer and relatives also asked about him at various prisons, again without eliciting any information. After two months, however, his family received an anonymous phone call in which they were told that Nouafel Sassi was being held at 9 avril prison.

When his wife visited him in prison, she saw wounds on his back and handcuff marks on his wrists. He told her that he had been tortured, including by being kept naked for 96 hours while handcuffed with his feet tied and had had cold water poured onto his back. He alleged too that he had been suspended from his ankles and that his head had been forcibly immersed in water in order to force him to sign a statement written for him by the police. He said that a medical doctor had given him medication for some of the injuries that he had sustained through torture. He had, he said, launched a hunger strike while held in an underground cell at the Ministry of Interior in order to protest against his torture and harsh conditions of detention.

In February 2008, he was convicted of membership to a terrorism organization and sentenced to eight years in prison, which was reduced to five years by the Tunis Appeals Court on 27 May

2008.

## SAFEGUARDS AGAINST TORTURE FLOUTED

Although Article 101bis of the Tunisian Penal Code falls short of the compliance with the UN Convention against Torture, it still stipulates prison sentences of up to eight years for “any public servant or officer of similar category who subjects, in the exercise of or during the exercise of their duties, an individual to torture”.

Public prosecutors oversee the period of *garde à vue* detention and under Article 26 CPP are responsible for investigating all complaints brought before them, including torture allegations. They are also required to order a medical examination if the detainee or a close relative requests this during or immediately after the period of *garde à vue*.<sup>24</sup> The purpose of such examination is to assist in determining whether the detainee has been the victim of violence.

An additional safeguard is supposedly provided by the first hearing before the investigating judge, where the detainee should have an opportunity to inform the judge if he has been tortured or otherwise ill-treated or held in breach of the law on *garde à vue* detention. If such allegations are made, the investigating judge is required to listen to the detainee, record his claims, and refer them to the Public Prosecutor for the latter to open an investigation.<sup>25</sup> In practice, however, these safeguards are not effective. In virtually all relevant cases known to Amnesty International, the Tunisian authorities have failed to respect these requirements or to undertake adequate investigations into allegations of torture and other ill-treatment and bring alleged perpetrators to justice.

International law obliges states to investigate complaints of torture and other ill-treatment. The Convention against Torture requires that each state party must institute a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed. Article 12 makes it clear that this duty is not dependent on a formal complaint being made by a detainee. Article 13 guarantees the right of any individual to “complain to and to have his case promptly and impartially examined by, its competent authorities.” Such investigations should be capable of leading to the identification and punishment of those responsible.

Principle 24 of the Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment requires that a proper medical examination be offered to detainees promptly after admission to the place of detention. Principle 25 recognizes the right of a detainee or his lawyer to apply to an independent authority for a second medical examination or opinion. Principle 26 provides that the name of the physician and the results of an examination shall be recorded, and that access to such records must be ensured.

In no case known to Amnesty International in recent years have detainees been permitted access to medical examinations while being detained in *garde à vue* detention by the DSS, or been examined by forensic medical doctors at the end of their DSS detention. When detainees have expressly requested medical examinations when they first appeared before an investigating judge, such requests have either been dismissed by the judge or received no or inadequate follow-up when the investigating judge referred the matter to the Public Prosecutor.

Lawyers and detainees' relatives have told Amnesty International that when they have

submitted requests to the Public Prosecutor for the detainee to be medically examined, or have filed complaints about torture and other ill-treatment, these have been consistently ignored. In some cases, the Public Prosecutor has agreed to register the complaint but no investigation is known to have been opened. In the rare cases where investigations were opened into alleged torture or other ill-treatment, the investigations were without outcome.

In some cases, investigating judges have failed to refer torture allegations to the Public Prosecutor even when the detainee appeared before them bearing obvious signs of possible torture. Detainees' lawyers maintain that investigating judges will register torture allegations only if they are extremely persistent in requesting this but even then avoid using the term "torture" or any description of the methods of torture alleged, preferring to record it only as "physical pressure" so that it need not be referred to the Public Prosecutor for investigation.

In its reports to the African Commission on Human and Peoples' Rights and the UN Human Rights Committee of April 2007, the government of Tunisia stated that "between 2000 and 2005, 104 police officers had been brought to justice and convicted with penalties of up to 10 years in jail". However, the government has not disclosed further information indicating the offences of which these police officers were convicted and whether any arose from prosecutions for torturing or otherwise ill-treating prisoners. Indeed, the Human Rights Committee in its concluding observations of March 2008 regarding Tunisia regretted "the lack of statistical data on the number of complaints of torture submitted to and registered by the authorities" and called on them to "ensure that all allegations of torture and cruel, inhuman or degrading treatment or punishment are investigated by an independent authority, and that the perpetrators of such acts, including their hierarchical superiors, are prosecuted and punished and that the victims receive reparation, including appropriate compensation".<sup>26</sup>

## QUALID LAYOUNI

Oualid Layouni is alleged to have been tortured or otherwise ill-treated while in custody awaiting trial. In January 2007, when his family and lawyers were able to visit him at Mornaguia prison they found him shaking and unable to stand, with a bruised face and a cut above his eye, and he told them that he had been deprived of sleep and tortured for two weeks prior to the date on which he was officially said to have been arrested. Later, he was held in isolation at Mornaguia prison for more than two months and in early April 2007 was reported by his family and lawyers to have been assaulted and injured by a prison guard, who beat him and kicked him in the head, causing temporary memory loss. Following this, he was unable for a time to recognize his mother, wife or lawyers when they came to the prison to visit him, he suffered from hallucinations, he was confused as to his whereabouts, imagining himself still to be in the United Arab Emirates (where he was working before being forcibly returned to Tunisia on 18 October 2005) and appeared afraid of being struck when he saw his mother, wife and lawyers approach him. His lawyers filed a formal complaint before the Public Prosecutor concerning his alleged torture and other ill-treatment but no investigation is known to have been opened. Oualid Layouni was moved to a psychiatric hospital in May 2007 but kept chained to a bed for the two weeks that he was there, and thereafter returned to Mornaguia prison. On 15 October 2007, his family were not permitted to visit him because, they were told, he was being "punished" for reasons that were not disclosed, and when his lawyers next saw him five days later he was unable to stand, had a bruised eye and injuries on his arms and legs. His lawyers again filed a complaint with the authorities but, again, it appears that no action was taken to investigate the circumstances in which Oualid Layouni sustained these

injuries while in custody.

## **5. A JUDICIAL PROCESS LEADING TO UNFAIR TRIALS**

On 15 December 2007, the defence lawyers in the Soliman trial walked out of the court in protest at the way the proceedings were being conducted; when they did so, several of the defendants present in the court room then were assaulted by security officials in full view of the court when they attempted to leave the courtroom.

- Soliman trial

In November 2007, 30 men stood trial before the Tunis Court of First Instance in the so-called Soliman case, named after the town of Soliman near which clashes between security forces and an armed group took place. They faced an array of offences, including conspiracy to overthrow the government, use of firearms and belonging to a terrorist organization, charges which they

all denied. All were arrested in December 2006 and January 2007 in connection with an armed clash between security forces and alleged members of an armed group that the Tunisian authorities later identified as the Soldiers of Assad Ibn al-Fourat. They were detained well beyond the six-day limit Tunisian law provides for *garde à vue* detention, and alleged in court that they had been tortured and otherwise ill-treated in pre-trial detention. Their lawyers asked both the investigating judge and, subsequently, the trial court to order that they be medically examined for evidence of torture, but these requests were denied. The security forces allowed only restricted access to the court room for the relatives of the defendants. Men in plain clothes believed to be DSS officers were also inside the court room, apparently taking notes of the lawyers' pleadings. During a court session on 15 December 2007, the defence lawyers walked out of the court in protest at the way the proceedings were being conducted by the trial judge; when they did so, several of the defendants present in the court room then were assaulted by security officials in full view of the court when they attempted to leave the courtroom. All 30 defendants were convicted. On 30 December 2007, the court imposed death sentences on two of the accused, Saber Ragoubi and Imed Ben Amar, sentenced eight other defendants to life imprisonment and the remaining 20 to prison terms ranging from five to 30 years. On 21 February 2008, the Tunis Court of Appeal, following lengthy overnight sessions that began on the morning of 19 February, commuted Imed Ben Amar's sentence to life imprisonment, confirmed the death sentence on Saber Ragoubi, and amended other sentences to prison terms ranging from three years to life imprisonment.

The Soliman case trial, which was observed in part by Amnesty International, suffered from serious breaches of the right to fair trial. In particular, defence lawyers were allowed insufficient time to examine the court papers and prepare the defence case, and the court failed to adequately investigate defendants' allegations that they were tortured and forced to "confess" during pre-trial detention. Defence lawyers repeatedly urged the court to order that the defendants be medically examined for evidence of torture, but the court refused to do so, without providing clear reasons for its decision.

What happened during the Soliman trial is typical of trials of terrorist suspects in Tunisia and breaches Tunisian law and international human rights law and standards.

Tunisia's Constitution and CPP both include provisions that aim to guarantee the right to a fair trial, including the right to legal counsel, the obligation to investigate allegations of torture and other ill-treatment and the right to be tried before an independent and impartial court of law. However, these safeguards have regularly been violated at all stages of the judicial proceedings before military and other courts, particularly in cases deemed by the Tunisian authorities to affect national security.

## A JUDICIARY LACKING INDEPENDENCE

The Tunisian Constitution states: "The judiciary is independent; the only authority to which judges are subject in the exercise of their functions is that of the law".<sup>27</sup> The Law on the Judiciary (Law No. 29 of 1967) specifies that judges must render justice impartially and without consideration of persons or interests. The Tunisian authorities contend that the judiciary is independent and free from state interference. In practice, however, the judiciary is not independent in Tunisia and occupies a position of subservience in relation to the executive branch of government.

The Supreme Council of the Judiciary, which has responsibility for the appointment, promotion, transfer and discipline, including dismissal, of judges, is headed by the President Ben Ali and has the Minister of Justice as its vice-president. In all, no less than 11 of its 17 other members are representatives of the executive branch or appointed by it. The remaining six members are judges who are directly elected through a ballot controlled by the Ministry of Justice which lacks transparency. The voting is by post and the envelopes containing votes are opened and counted at the Ministry of Justice by a four-member commission appointed by the Minister of Justice.

In its March 2008 concluding observations on Tunisia, the Human Rights Committee expressed concern about the lack of independence of the judiciary in Tunisia and the omnipresence of the Supreme Council of the Judiciary. It urged the Tunisian authorities to strengthen the independence of the judiciary vis-à-vis the executive.<sup>28</sup>

Indeed, the overarching role of the Supreme Council of the Judiciary, the absence of independence of the judiciary and the lack of security of tenure for judges make judges open to influence and put undue pressure on the work and independence of judges to respect fair trial standards when rendering verdicts in politically sensitive and security-related cases. Judges also fear the possibility of transfer or disciplinary measures if they issue judgments conflicting with the interests of the executive.

## PROMPT ACCESS TO LAWYERS DENIED

Article 13bis of the CPP does not give detainees a right to have contact with their families or lawyers for the duration of their *garde à vue*. However, some detainees in terrorism-related cases appear also to have been denied legal representation when brought before an investigating judge for the first time, in violation of Article 69 of the CPP; this provision requires that the investigating judge designate a lawyer to represent the detainee if he lacks the means to engage one. Articles 70 and 72 of the CPP state that access to a lawyer should never be denied and the lawyer is also to be informed of any interrogation 24 hours beforehand. The investigating judge should not, except in specific cases prescribed in law,<sup>29</sup> proceed to further interrogate the detainee without the presence of legal counsel.

The right to communicate with and be represented by counsel of his own choosing in the determination of criminal charges is guaranteed by Articles 14(3)(b) and (c) of the ICCPR. The Human Rights Committee has emphasized that this includes the requirement of prompt access to counsel. In cases of serious criminal charges such as terrorism-related offences, the state has an obligation to assign legal assistance where the accused does not have the means to pay for it himself.

In many cases involving terrorism-related offences, no lawyer was present to assist the detainee during the first hearing before the investigating judge. Some detainees later told their lawyers that they were not informed of their rights by the investigating judge or that when they requested legal counsel it was not provided and the investigating judge continued with the interrogation. According to some detainees, they were asked by the investigating judge if they agreed to make a statement without the presence of a lawyer but were too afraid to insist on a lawyer's presence because they had previously been threatened with return to the premises of the Interior Ministry and further torture if they should retract statements that had been included in the police report on their case.

In some cases – including some of those detailed in this report – detainees have been taken to the office of the investigating judge without their lawyer being notified by the authorities. In one such case, a lawyer found that his client was being questioned by an investigating judge without his presence although he had asked about the date of the hearing earlier that day and been told that there was no information. Detainees have also been taken before investigating judges outside normal office hours, apparently in an attempt to prevent their being assisted by defence lawyers and to conceal evidence of their torture (see, for instance, the case of the co-defendant in the case of Ziad Fakraoui described in the Introduction).

## RIGHT OF DEFENCE VIOLATED

In terrorism-related cases, defence rights have been frequently disregarded in breach of Tunisian and international law. Defence lawyers complain that they are not given adequate time and facilities to prepare the defence and are required to spend considerable time in seeking to obtain copies of case files, which are often incomplete and may lack key documents.

Lawyers complain also that they are sometimes denied access to their clients during pre-trial detention on the spurious grounds that their clients do not wish to see them and that when they do have access to them, client-lawyer confidentiality may also be breached by the detaining authorities, in violation of international standards as well as the Tunisian law on legal profession (Law No. 89-87 of 7 September 1989).

Article 14(3)(b) of the ICCPR guarantees the right not only to communicate with counsel, but also to “have adequate time and facilities” for the preparation of the defence. The Human Rights Committee has said this includes the right to have access to documents and other evidence, including all materials that the prosecution plans to present in court against the accused or that could free the accused from the charge. The Committee has also said that counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications.

The Anti-terrorism Law also undermines the confidentiality of client-lawyer communication. Article 22 makes it an offence punishable for up to five years in prison for anyone “even where bound by professional secrecy,” to fail “to notify immediately the competent authorities of any acts, information or instructions which may have emerged concerning the commission of a terrorist offence”. Article 23 penalizes all those who refuse to give testimony or respond to a request to testify concerning terrorist offences.

Article 49 of the Anti-terrorism Law empowers both an investigating judge and the president of a court to examine an accused and to hear the evidence of any witnesses through adequate visual or oral means of communication without the accused or witness having to appear in person. Moreover, under Article 51, the identifying details of persons who participated in the investigation or suppression of terrorist acts, or who reported such acts to the competent authorities, can be recorded in a separate file that is not disclosed to the accused or his legal counsel. Although the court decision not to disclose these details can be appealed within 10 days after the content of the witness's declarations has been revealed, it is not subject to further appeal if the court confirms its

decision to maintain the anonymity of the proceedings and witnesses.<sup>30</sup>

Such provisions have the potential to grossly undermine the due process guarantees of the defendants, in particular the rights to be presumed innocent, to be tried before an independent and impartial judge, to examine witnesses against the accused and to test the evidence against him or her. In effect, they establish de facto special procedures for terrorism-related offences. The UN Human Rights Committee also expressed concerns in March 2008 regarding provisions in the Tunisian anti-terrorism legislation which allow for anonymous proceedings and witnesses.<sup>31</sup>

When lawyers have presented their defence in court, they have often been interrupted by trial judges when they have drawn attention to the prolonged pre-trial incommunicado detention of defendants, allegations of torture and other ill-treatment, and called for their clients to be given medical examinations and for investigation of torture allegations. Defence lawyers have also been interrupted and prevented from continuing when they have questioned the constitutionality of the Anti-terrorism Law.

The Human Rights Committee has specified in its general comment on fair trials that “lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter.”

However, lawyers representing detainees in terrorism-related cases are also routinely intimidated and harassed by state authorities. When they file complaints about this harassment, interference and sometimes physical violence, their complaints remain without proper investigation. For instance, lawyer and human rights defender Abderaouf Ayadi was assaulted by a police officer in April 2007 as he was about to enter a courtroom to represent a defendant facing terrorism-related charges. In June 2007, Abderaouf Ayadi’s car was vandalized by unknown persons, believed to be state agents. In November 2007, he was insulted, thrown to the floor and dragged by police officers seeking to prevent him from visiting a human rights activist and a journalist who were on hunger strike to protest against the authorities’ refusal to issue them with passports. No action was taken by the authorities against those responsible for the assaults on Abderaouf Ayadi. He was on several occasions prevented from visiting his clients in prison.

On 7 December 2007, human rights lawyer and member of the International Association for the Assistance of Political Prisoners (AISPP) Samir Ben Amor was forced into a car by three police officers who had previously come to his office asking him to go with them but he refused as they did not have a written summons as required by Tunisian law. They then drove him to Sidi Béchir police station where a police commander told him to cease allowing members of the AISPP to hold meetings in his office and that his activities on behalf of the AISPP are illegal because it is not “recognized” as an association in Tunisia.

## **MOHAMED AMINE DHIAB**

Mohamed Amine Dhiab, one of the 30 defendants in the Soliman case, was arrested in late December 2006 in Hammam Ech-chatt, some 20km south of Tunis, where the exchange of gunfire between security forces and alleged members of an armed group named by the authorities as the Soldiers of Assad Ibn Fourat took place in December 2006, after he was shot in his right

hand and back. The bullet in his back was reportedly not removed until after he had been interrogated by the DSS on 20 January 2007. Two days later, on 22 January, he appeared before the investigating judge without the assistance of a lawyer. The investigating judge noted in his report that Mohamed Amine Dhiab was suffering from “certain disturbance in behaviour in addition to a sort of absentmindedness”, but failed to refer him for psychiatric assessment until his lawyer requested this on the ground that Mohamed Amine Dhiab was incapable of standing trial by reason of mental incapacity and had been previously acquitted by a criminal court in February 2001 for lack of legal responsibility (Case No. 30609/2000). In March 2007, the investigating judge ordered that Mohamed Amine Dhiab be examined by three psychiatrists from the Military Hospital in Tunis; they concluded that he was mentally fit to stand trial. He was charged with an array of offences, including conspiracy to overthrow the government, use of firearms and belonging to a terrorist organization.

His parents told Amnesty International that they were informed of his place of detention in early February 2007, more than a week after his first appearance before the investigating judge and more than a month after his arrest. During their first three prison visits, they found Mohamed Amine Dhiab with chains tied to his feet and unable to move his right hand due to the bullet wound. He also told his lawyers that he had been tortured, including by being beaten, having a pen inserted into his bullet wound and being subjected to mock executions. After the bullet in his back was removed, he was brought in a wheelchair when his family visited him in prison, and he was shaking and unable to speak. According to his lawyers, the prison authorities refused to give them access to his medical report or any information regarding the surgery that had been carried out on him in order to remove the bullet from his back. Despite repeated request by his lawyers, he was not medically examined nor was he re-examined by an independent psychiatric expert to establish legal responsibility. He was sentenced to 20 years’ imprisonment, which was confirmed on appeal in February 2008. This sentence was confirmed by the Court of Cassation on 23 May 2008.

## USE OF INFORMATION EXTRACTED UNDER TORTURE AND OTHER ILL - TREATMENT

Although Article 155 of the CPP can be read to mean that statements extracted under torture can be rejected by the courts, there are no provisions in Tunisian law which expressly prohibit the use of evidence obtained under torture in court. Indeed, “confessions” are left to the discretion and appraisal of the judge to accept or reject as evidence, in accordance with Articles 150 and 152 of the CPP. In breach of the Convention against Torture and despite repeated calls by the Human Rights Committee and Committee against Torture, Tunisian law has yet to be amended to ensure that no information obtained through torture can be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, in line with international standards and as recommended by the Committee against Torture in 1998.<sup>32</sup>

The use in any proceedings of statements obtained under torture is prohibited by the Convention against Torture, except against a person accused of torture as evidence that the statement was made.<sup>33</sup> The UN Human Rights Committee has also stated that the use or admissibility in judicial proceedings of statements or confessions obtained through torture or “other prohibited treatment” must be proscribed by law.<sup>34</sup> In its concluding observations regarding Tunisia, the Human Rights Committee called on Tunisian government to ban the use of statements obtained under torture in front of all courts and ensure that the burden of proof

does not fall on the victims.<sup>35</sup>

Despite this, trial judges at every level have not only markedly failed to ensure that defendants received medical examinations or that their torture allegations were properly investigated, even when there was visible evidence of physical abuse, they have also accepted confessions that defendants had retracted in court as evidence in convicting defendants who have then been sentenced to prison terms or even to death.

## CIVILIANS TRIED BEFORE MILITARY COURT

The Tunisian authorities use provisions of the Military Justice Code to try civilians accused of terrorism-related offences before military courts. These trials fail to satisfy international standards of fair trial, notably the right to a public trial before an independent and impartial court, the right to prompt access to a lawyer, the right to prepare an adequate defence, and the right to appeal. Amnesty International believes that civilians should never be tried in military courts.

Trials in military courts in Tunisia are conducted before a presiding judge, who is a civilian, and four counsellors, all of whom are serving military officers. Military courts are located within military compounds to which public access is restricted, thus severely limiting public access to the court. Defendants, if convicted, have no right of appeal other than a right to seek a review before the military court of cassation. Civilian defendants often lack information about the proceedings and a number have reported that they did not realize that they were being questioned by an investigating judge during their pre-trial detention because he was wearing a military uniform. Defence lawyers complain that they are given only restricted access to their clients' files and that the authorities obstruct them by withholding relevant information, such as the dates of scheduled hearings. Unlike the ordinary criminal courts, military courts do not allow lawyers access to a register of pending cases.

## DEATH PENALTY

Attacks against state security, together with a range of other offences such as rape and murder, are subject to death penalty under the Tunisian law.

Tunisian courts continue to impose death penalties, although infrequently, but the authorities have in practice not carried out executions since 1991, a step which Amnesty International greatly welcomes. In March 2008, a group of 25 members of parliament submitted a draft law to the President of parliament proposing the abolition of the death penalty, but it has yet to be placed before the full body of parliament for consideration.

Amnesty International opposes the death penalty in all cases, without exception, as a violation of the right to life and the ultimate cruel, inhuman and degrading punishment.

While Amnesty International welcomes the continuing practice of not carrying out executions and notes that Tunisia did not vote in December 2007 against the UN General Assembly resolution in favour of a worldwide moratorium (Resolution 62/149), it remains concerned that Tunisian courts have continued to impose death sentences, including in cases where they have failed to ensure that fundamental fair trial safeguards are applied at all stages of the process, including pre-trial investigation.

## **SABER RAGOUBI**

On 30 December, the Tunis Court of First Instance sentenced Saber Ragoubi and Imed Ben Amar to death on terrorism-related charges in the so-called Soliman case. Defence lawyers could not comprehend the reasons why these two were singled out and given capital sentence because according to them, all defendants had more or less the same charged levelled against them. The 28 other defendants in the same trial were convicted and sentenced to prison terms ranging from five years to life imprisonment. On 21 February 2008, the Tunis Court of Appeal confirmed the death sentence against Saber Ragoubi and commuted Imed Ben Amar's sentence to life imprisonment. Both the trial and the appeal in this case breached a number of fair trial safeguards guaranteed under the ICCPR. On 23 May 2008, the Court of Cassation confirmed the death sentence against Saber Ragoubi.

## 6. ABUSES IN PRISONS

Amnesty International notes and welcomes reports that the government of Tunisia signed an agreement with the International Committee of the Red Cross (ICRC) in April 2005 under which the ICRC is given access to Tunisian prisons and detention centres and started visiting detention places in June 2005.<sup>36</sup> The Tunisian government has also announced that it has launched discussions with Human Rights Watch with a view to reaching an agreement on visits to detention centres like that concluded with the ICRC.<sup>37</sup> However, Amnesty International remains concerned that detainees held in connection to terrorism-related charges and prisoners serving sentences imposed for political or security reasons, who number hundreds, remain subject to abuse in prisons. The organization asked the Minister of Justice for the possibility to visit individual prisoners whose cases it monitors, but he declined.

Amnesty International delegates who visited Tunisia in November/December 2007 met scores of families of such sentenced prisoners and prisoners held in pre-trial detention and received information that they were subjected to various violations of their rights, including ill-treatment and even torture, or being held in isolation for weeks beyond the 10-day limit on solitary confinement prescribed under Article 22(7) of the law on prisons (Law No. 2001-52 of 14 May 2001), which could in some circumstances itself constitute a violation of the prohibition of torture and other ill-treatment. In some cases, prison authorities had refused to allow visits by their families, saying that they were being punished, or to accept food and clothing brought for them by their families.

It was also reported to Amnesty International by former detainees, lawyers and relatives of prisoners that political prisoners are denied adequate medical care arbitrarily and on a discriminatory basis. Medical doctors who had been among those imprisoned reported after their release that virtually all long-term prisoners are ill due to poor prison conditions, including inadequate hygiene and medical care, and sometimes as a result of torture or other ill-treatment.

Political prisoners have launched a number of hunger strikes to protest against their harsh conditions, to which prison authorities have sometimes responded with torture or other ill-treatment, as in October 2007 when defendants in the Soliman case were tortured or ill-treated by guards at Mornaguia prison. In other cases, prisoners have been moved to remote prisons, hundreds of kilometres away from their family's home.

### SEIFALLAH BEN HASSINE

Tunisian national Seifallah Ben Hassine was deported from Turkey to Tunisia on 3 March 2003 and was arrested on his arrival by the DSS and held incommunicado for two months during which time he alleges that he was tortured. His family was informed of his detention only on 27 May 2003, more than two months after his arrest.

He was accused of the offences, under Tunisian law, of membership in a terrorism organization operating abroad in peacetime and incitement to hatred and terrorism. He was tried in six separate trials (four before the Tunis Military Court and two before the Tunis Court of First Instance) on the same charges. During the various hearings, his lawyers pleaded that this is a clear violation of Article 4(5) of the Tunisian CPP, which stipulates that no one should be tried twice for the same offence, but this was rejected by the trial judges in the different cases and he was sentenced to a total of 62 years' imprisonment. He has been detained in isolation in 9 avril prison and in Bourj Amri for several periods, and has been held in isolation continuously since his transfer in January 2007 from 9 avril to Mornaguia prison, where he is currently held. When held in isolation, according to his relatives and lawyers, he has been kept in a humid, inadequately ventilated cell, with the result that he has suffered breathing difficulties and asthma. He is also not allowed access to books or newspapers, to send or receive letters, and prison visits by his relatives are sometimes interrupted or denied as, for example, occurred in June 2007 and July 2007. Seifallah Ben Hassine has been on hunger strike several times to protest against his harsh prison conditions and to request a medical examination. In a meeting in December 2007, Amnesty International asked the Minister of Justice and the General Coordinator for Human Rights at the Ministry of Justice about the reasons behind the prolonged solitary confinement of Seifallah Ben Hassine and the legal basis of such measures. They were told that he is a "very dangerous criminal" and often "incites others to riot and calls for prayers early in the morning."

### **RAMZI EL AIFI AND OTHERS**

Ramzi el Aifi, Ousama Abbadi and Mahdi Ben Elhaj Ali are three co-defendants in the Soliman case. They are reported by their lawyers to have been punched, tied up and kicked by prison guards at Mornaguia prison on 16 October 2007, apparently because they had gone on hunger strike in protest against their conditions of detention. Ousama Abbadi sustained a serious eye injury and a deep, open leg wound and was in a wheelchair, unable to stand, when seen by his lawyer on 20 October 2007. Ramzi el Aifi told his lawyer that he had been tied up with a rope, beaten up and that a stick had been inserted into his anus. Other inmates at Mornaguia prison were stripped naked by guards and dragged along a corridor in front of the prison cells. Lawyers for Ramzi el Aifi and Ousama Abbadi submitted complaints to the authorities (respectively, complaint numbers 17655 and 17656 of 2007), but no investigation is known to have been initiated and those allegedly responsible for these abuses have not been brought to justice. Family members of some of the prisoners who went to visit them on the weekend of 20/21 October 2007 were told by prison guards that they were being punished for 15 days and were not allowed to receive family visits, food or clothes from outside the prison. Ramzi el Aifi and Ousama Abbadi were sentenced to life imprisonment, which was later upheld for Ramzi el Aifi and reduced to 30 years' imprisonment for Ousama Abbadi after appeal. Mahdi Ben Elhaj Ali was sentenced to 12 years in prison, reduced to eight years on appeal. All sentenced were upheld by the Court of Cassation on 23 May 2008.

## 7. ABUSES OF RETURNEES

It is not clear how many Tunisian nationals suspected of involvement in terrorism-related activities or terrorist links – by the Tunisian or the other foreign government authorities – have been returned to Tunisia in recent years. What is clear, however, is that those known to have been returned against their will by foreign governments, including Egypt, France, Italy, Luxembourg and the US, have suffered a wide range of human rights violations, including prolonged incommunicado detention, torture and other ill-treatment, and flagrantly unfair trials, including before military courts.

Some foreign governments have argued that the use of bilateral measures such as “diplomatic assurances” (or “diplomatic contacts”) eliminates the risk that Tunisians suspected of involvement in terrorism either abroad or in Tunisia will be arrested and tortured or otherwise ill-treated if they are returned to Tunisia. However, attempting to use such “assurances” to facilitate the return of individuals at risk is inconsistent with international human rights obligations in a range of ways. First, in seeking or accepting these assurances, sending governments effectively turn a blind eye to the vast majority of torture taking place in the receiving country. This is inconsistent with the obligations of all states to co-operate to bring serious violations of the prohibition of torture to an end and not to recognize a situation of such violations as lawful. Further, given that receiving countries such as Tunisia already fail to comply with their legally binding obligations under multilateral treaties prohibiting torture, it is difficult to see how non-binding diplomatic assurances offer any better guarantee of compliance. Even if post-return monitoring mechanisms were put in place, neither state has an actual incentive to discover or disclose violations should they occur. Finally, such assurances provide no means to remedy violations should they occur; their ability to prevent such violations in the first place is therefore even less plausible. In short, Amnesty International rejects any attempt to use “diplomatic assurances” to justify the return of foreign nationals who face a real risk of torture or other-ill treatment on return, as is the case for Tunisian nationals who are considered to be a security threat.

Requests for assurances against torture and other ill-treatment were made by a number of European countries when they sought to deport Tunisian nationals suspected of terrorism back to Tunisia. The Tunisian authorities have not given such assurances. Instead, they have repeatedly asserted that Tunisia is a state of law and its domestic legislation and international human rights obligations have provisions providing protection and safeguards against torture and other ill-treatment. This was, for instance, the case in relation to the request from the Italian authorities asking the Tunisian government to provide assurances that Tunisian national, Nassim Saadi, would not be tortured or otherwise ill-treated when sent back to Tunisia. The Tunisian authorities replied that “... the Tunisian laws in force guarantee and protect the rights of prisoners in Tunisia and secure to them the right to a fair trial. The Minister would point out

that Tunisia has voluntarily acceded to the relevant international treaties and conventions.”<sup>38</sup> Later the European Court of Human Rights (ECHR) issued a decision in February 2008 reaffirming the absolute prohibition of torture and that “the deportation of the applicant to Tunisia would constitute a violation of Article 3 of the Convention”. However, a few months later, on 3 June 2008, the Italian authorities forcibly returned another Tunisian Sami Ben Khemais Essid to Tunisia, despite interim measures from the ECHR requesting Italy to suspend the expulsion until it examines his allegations that he will be at risk of torture and other ill-treatment in Tunisia. Sami Ben Khemais Essid was arrested on arrival and will be retried before a military court in Tunis on 2 July 2008. This occurred after he challenged on 6 June 2008 a 10-year prison sentence that had previously been imposed on him in his absence by a Tunisian military court.

While Amnesty International welcomes Tunisia’s non-participation in schemes to use diplomatic assurances to circumvent the prohibition of torture and other ill-treatment, it regrets the gaping discrepancies that exist between the Tunisian government’s statements and the practices of the security forces against detainees, including those that were forcibly returned to Tunisia.

Most of the detainees who were forcibly returned from abroad have been arrested upon arrival in Tunisia. They were held in prolonged incommunicado detention, lasting weeks or months, in which the detention is not acknowledged or the fate or whereabouts of the detainee is concealed, a situation that amounts to enforced disappearance. They later told their families and lawyers that they were subjected to torture and other ill-treatment but none of their allegations are known to have been investigated by the Tunisian authorities. The case files of those returned from abroad and detained generally include no documentation indicating or acknowledging their return and police reports include no or only vague information indicating that the detainee was arrested in Tunisia. They were tried and convicted of terrorism activities abroad and sentenced to prison terms; some were tried before military courts although they were civilians.

### LUXEMBOURG: TAOUFIK SALMI

On 12 July 2006, the Tunis Permanent Military Court sentenced Tunisian-Bosnian dual national Taoufik Salmi to five years in prison on charges of “belonging in time of peace to a foreign army or terrorist organization operating abroad”. He was expelled from Luxembourg on 4 April 2003 after the authorities there arrested him on suspicion of planning “terrorist acts”, and arrested on arrival at Tunis airport. He was detained incommunicado for more than a month. He was subjected to torture on six consecutive days from 8am to 6pm. He says he was tortured by being beaten all over his body and suspended in the *poulet rôti* position, hit on his genitals until he fainted, threatened with rape and the rape of his family members. He did not have the assistance of a lawyer when he was taken before an investigating military judge for the first time, on 8 May 2003. He was unable to move his shoulder and still had visible injuries on his wrists and ankles, apparently the result of torture, when first seen by his lawyer in May 2003. The police report states that he was arrested in Tunisia on 5 May 2003 after he returned voluntarily whereas, in reality, he had been arrested one month earlier. His lawyers told Amnesty International that the court refused to allow them to review the full case file but did permit the defendant to undergo a medical examination, which was undertaken, however, by a general practitioner rather than a doctor specialized in identifying injuries caused by torture. The general practitioner’s medical report stated that there were no signs of violence on Taoufik Salmi and that he had not reported having suffered any violence when first admitted to prison and examined by the prison doctor a few weeks earlier. No official investigations

were carried out into his alleged torture and other ill-treatment or the falsification by police of his date of arrest.

### REPUBLIC OF IRELAND: ADIL RAHALI

Tunisian national Adil Rahali was deported to Tunisia from Ireland in April 2004 after his application for asylum was refused. He was arrested on arrival in Tunisia and taken to the DSS, where he was held in secret detention for several days. He told his lawyer that he was beaten, suspended from the ceiling and threatened with death. Adil Rahali, who had resided and worked in Europe for more than a decade, was charged under the 2003 Anti-terrorism Law with membership of a terrorist organization operating abroad. Although his lawyer filed a formal complaint about his alleged torture, the Tunisian authorities apparently failed to undertake an investigation. In March 2005, Adil Rahali was sentenced to 10 years' imprisonment after an unfair trial; his sentence was reduced to five years' imprisonment on appeal in September 2005.

### BOSNIA AND HERZEGOVINA: BADREDDINE FERCHICHI

On 1 September 2006, Badreddine Ferchichi (also known as Abu Malek) was expelled to Tunisia from Bosnia and Herzegovina (BiH), after the authorities there stripped him of his Bosnian citizenship<sup>39</sup> and later rejected his application for asylum. He was arrested upon return to Tunisia and detained incommunicado for six days, during which he alleged he was beaten, suspended upside down and in the *poulet rôti* position in order to force him to give information about whether he has been involved in terrorist activities or has connections with terrorist groups abroad. He first appeared before the investigating military judge in the absence of his lawyer on 6 September and later charged under Article 123 of the Military Justice Code, with "serving, in time of peace, in a foreign army or terrorist organization operating abroad." He had fought as a volunteer for the Bosnian Muslim forces during the 1992-95 war in the former Yugoslavia and worked for an Islamic charity organization afterwards. His lawyers told Amnesty International that they have repeatedly requested from the Tunisian authorities access to the case documents regarding Badreddine Ferchichi's return from BiH because his case file – like all those who were forcibly returned to Tunisia – did not have any documentation to indicate that he was actually expelled from BiH. They did not receive any reply to this request. They also said that he was twice taken out of Mornaguia prison without proper permission from the investigating military judge who ordered his pre-trial detention and taken to the Ministry of Interior building where he was interrogated and ill-treated. On 16 January 2008 he was acquitted by the Tunis Military Court but the Public Prosecutor appealed against the sentence before the Military Court of Cassation. He remains in detention at the Mornaguia prison pending the decision of the court.

### ITALY: FOUAD CHERIF BEN FITOURI

Fouad Cherif Ben Fitouri was expelled from Italy to Tunisia on 4 January 2007 because of his alleged association with Islamic groups planning "terrorist acts" in Italy. He was arrested and detained upon arrival in Tunisia. He was held incommunicado for 12 days, twice as long as the maximum period allowed for *garde à vue* under Tunisian law, and in violation of international human rights law, during which he is alleged to have been tortured, including by being beaten and suspended upside down. His lawyer observed wounds on the head of Fouad Cherif Ben Fitouri when he first gained access to him. The official police report states that he was arrested on 14 January 2007, 10 days later than the actual date of arrest, apparently in an effort to conceal the fact that he had been held beyond the time limit provided for by Tunisian law. He

was taken before an investigating judge on 16 January 2007 and charged under the Anti-terrorism Law with sponsoring a terrorist organization operating abroad. His lawyer, who was able to be present at the hearing, requested that he be medically examined, as required by Tunisian law, but the investigating judge declined to issue any such instruction without giving reasons. Fouad Cherif Ben Fitouri's lawyer subsequently filed a formal complaint of torture with the Public Prosecutor in February 2007 but, as yet, more than a year and a half later, has still to receive a response. The case files relating to Fouad Cherif Ben Fitouri do not contain any documentation concerning his involuntary return to Tunisia from Italy.

Fouad Cherif Ben Fitouri was convicted of "membership of a terrorism organization operating abroad" and sentenced to one year's imprisonment on 3 March 2008; he should have been released, taking into account the period he spent in detention before this sentence was imposed, but he remained in detention awaiting the outcome of an appeal by the Public Prosecutor against the sentence imposed at trial. He was finally released on 24 May after the court confirmed the initial decision.

### **EGYPT: ADAM BOUKADIDA AND AYMAN HKIRI**

Adam Boukadida and Ayman Hkiri were amongst nine Tunisians returned by the Egyptian authorities in January and March 2007. The nine had all been arrested and detained by Egyptian security officers with other foreign and Egyptian students in Egypt in November 2006 and reportedly tortured while being interrogated about an alleged plot to recruit people in Egypt to fight against the US-led coalition in Iraq. The nine Tunisians were arrested upon arrival to Tunis and detained for up to several weeks for interrogation. Most were released. Adam Boukadida and Ayman Hkiri remained in detention and were later charged with membership of a terrorist organization, incitement to join terrorist groups and providing arms, explosives and information to terrorist organizations. They both received a two-year suspended sentence on 3 March 2008.

### **FRANCE: HOUSSINE TARKHANI**

Houssine Tarkhani was forcibly returned from France to Tunisia on 3 June 2007, and detained on arrival. He was kept in secret detention in the DSS in Tunis for nine days, in violation of international human rights law, as well as three days longer even than the period permitted by Tunisian law for *garde à vue* detention, and during which his lawyer said that Houssine Tarkhani was beaten with a stick all over his body, given electric shocks, insulted and threatened with death. He was subjected to further beating when he asked to be allowed to read the police report, which he was not permitted to read. During this detention in *garde à vue*, none of his immediate relatives were informed of his detention as required under Article 13bis of Tunisian CPP. His family knew of his whereabouts only when he was brought before the investigating judge on 12 June 2007. He first appeared before the investigating judge without the assistance of his lawyers, who were not permitted access to him until 19 June 2007, when they saw him at Mornaguia prison. His lawyer's request to have him examined for evidence of torture still remains unanswered.

He was charged under the 2003 Anti-terrorism Law and is currently held in Mornaguia prison awaiting trial before the Tunis Court of First Instance, which was scheduled to take place at the end of June 2008.

Houssine Tarkhani left Tunisia in 1999, and subsequently lived in Germany and, between

2000 and 2006, in Italy. He was arrested at the French-German border on 5 May 2007, as an irregular migrant, and held in a detention centre in the French city of Metz, pending the execution of an expulsion order. On 6 May 2007 he was taken before a judge, who authorized his detention for a further 15 days, and told him that he was being investigated by the French police on suspicion of "providing logistical support" to a network which assists individuals to travel to Iraq to take part in the armed conflict with the US-led coalition forces there – an allegation which he denies. However, no charges were ever brought against him in France. His application for asylum in France was assessed under an accelerated procedure and rejected on 25 May 2007.

### **USA: ABDALLAH AL-HAJJI AND LOTFI LAGHA**

Abdullah al-Hajji and Lotfi Lagha, two of 12 Tunisians held by the US authorities in Guantánamo Bay, were returned to Tunisia in June 2007. They were arrested on arrival and detained at the DSS, where they alleged they were ill-treated and forced to sign statements. According to Abdallah al-Hajji, he was deprived of sleep, slapped in the face and threatened that his wife and daughters would be raped in order to make him "confess." Abdallah al-Hajji, was retried before a military court in Tunis. This occurred after he challenged a 10-year prison sentence that had previously been imposed on him in his absence by a Tunisian military court in 1995. In November 2007, he was convicted of belonging "in time of peace to a terrorist organization operating abroad" and sentenced to seven years' imprisonment. Lotfi Lagha was convicted under the Anti-terrorism Law of associating with a terrorist organization operating abroad and sentenced to three years' imprisonment in October 2007, which sentence was upheld by the Tunis Appeal Court in January 2008.

## 8. CONCLUSION

The patterns of human rights violations described in this report demonstrate that Tunisian security forces, in particular those of the DSS, continue to falsify arrest dates and detain individuals suspected of involvement in terrorist activities in prolonged incommunicado detention that amounts in some cases to enforced disappearance. During this period, detainees are systematically tortured and otherwise ill-treated. Complaints of torture made by their lawyers or their relatives to the Public Prosecutor have often been ignored and at best inadequately investigated. Investigating and trial judges continue to turn a blind eye to the allegations of torture made before them by the detainees and their lawyers, thus imparting total impunity for the perpetrators. These abuses have culminated in detainees sentenced to prison terms after unfair trials, including before military courts.

Amnesty International believes that neither justice nor security are served effectively if detainees are deprived of their basic rights and if the government and its allies in the “war on terror” turn a blind eye to torture or ill-treatment and condone unfair trials as a means to counter terrorism. Tunisia must ensure that its own security agents uphold its human rights obligations while combating terrorism. Strengthening accountability for human rights violations, ending the practice of torture and other ill-treatment and guaranteeing fair trials should be among the Tunisian government's foremost priorities.

The persistent denial of the Tunisian authorities that widespread abuse has taken place and their relentless reference to the protection of human rights provided in Tunisian law is a clear indication that Tunisia has some way to go in combating prolonged incommunicado detention, torture and other ill-treatment and putting an end to unfair trials. As a first step towards addressing the problem and bridging the gap between rhetoric and reality, the Tunisian authorities should acknowledge the disturbing allegations of abuse documented in this report and publicly commit to adequately investigating them.

In spite of Tunisia's record of torture and other ill-treatment, European countries, the USA and others continue to return to Tunisia people suspected of involvement in terrorism where they are at serious risk of torture and other grave human rights abuses.

# RECOMMENDATIONS

## To the Tunisian government

Amnesty International calls on the Tunisian authorities to ensure, including by repeal or amendment, that all provisions of its anti-terrorism and other laws fully comply with international human rights law and standards, and that the practices of the Tunisian security forces, in particular those of the DSS, fully respect international human rights law and standards. In particular, the Tunisian government should:

### ■ Amend the Anti-terrorism Law

- Amend the 2003 Anti-terrorism Law in order to bring it into full compliance with relevant international human rights law and standards including by specifying as precisely as possible the acts and activities that will be considered to constitute a criminal offence, and by ensuring that any limitations on the rights of freedom of expression, assembly and association are restricted to those prescribed by law that are demonstrably necessary and proportionate.

### ■ Condemn torture and other ill-treatment

- Publicly condemn torture and other ill-treatment; ensure that these practices cease; and make clear to all officers involved in arrest, detention and interrogation, in particular those of the DSS, that torture and other ill-treatment will not be tolerated under any circumstances; ensure prompt, effective, independent and impartial investigations of all complaints of torture or other ill-treatment and that perpetrators are brought to justice; ensure effective reparations to victims

- Ensure that those making a complaint of torture or other ill-treatment and any witnesses to torture or other ill-treatment are adequately safeguarded against possible reprisals, intimidation or harassment, and take firm action if such harassment or other abuses takes place.

### ■ End incommunicado detention

- Abolish incommunicado detention and ensure that detainees have immediate access – guaranteed by law and provided in practice – to the outside world, in particular their lawyers and families, as well as independent medical care.

- End the practice of holding individuals in prolonged incommunicado detention in the DSS and other premises, during which the detention is not acknowledged or the fate or whereabouts of the detainee is concealed, leaving the detainee outside the protection of the law, a situation that amounts to enforced disappearance.

- Publish up-to-date lists of all places of detention in a form that is readily accessible to lawyers and members of the public.

- Establish and maintain a central register to ensure that all detainees can be promptly traced; and bring appropriate sanctions against officers responsible for the unlawful detention of detainees, including failure to keep proper and accurate records of detainees.

- Allow the Public Prosecution to inspect all detention places, including those used by the DSS.

- Allow regular, unannounced, independent and unrestricted inspections by national and international independent expert bodies to all places where people are or may be detained.

■ **Strengthen protection during detention**

- Ensure that all officers carrying out arrests identify themselves to those arrested and notify them in writing of the reasons for the arrest, the authority ordering the arrest, and the place where they will be detained.

- Ensure that the families of those detained are informed promptly of the place of detention of their relatives and any subsequent changes to the place of detention.

- Allow detainees to be examined by a doctor independent of the detaining authority as soon as they are arrested and thereafter whenever necessary or at the request of the detainee.

- Ensure that detainees and their counsel have access to the records of such examinations.

- Ensure that each detainee held on suspicion of criminal offences is promptly brought before a judge and is kept thereafter in custody only under the order and supervision of the court.

- Ensure that all detainees are legally entitled, and effectively able in practice, to take proceedings before a court, in order that that court may decide without delay on the lawfulness of the detention and order release if the detention is not lawful.

- Keep under systematic review interrogation rules, instructions, methods and practices with a view to preventing any cases of torture or ill-treatment, in line with the provisions of the UN Convention against Torture.

- Require that accurate records of interrogation be kept according to the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and make them available on request to the detainee, the family of the detainee and the lawyer or other representative of the detainee.

■ **Address unfair trials**

- Stop the practice of trying civilians before military courts and halt immediately all pending trials of civilians in military courts, and transfer the cases to civilian courts for a new trial in proceedings that meet international fair trial standards or release the individuals; order retrials for all civilians already convicted by military courts or release them.

- Order retrials in proceedings that meet international fair trial standards where evidence obtained by means of torture or other ill-treatment was admitted in the proceedings (except

against a person accused of torture), or where claims that evidence was obtained by torture or other ill-treatment were summarily or otherwise improperly dismissed.

- Ensure that any statement which is established to have been made as a result of torture or ill-treatment is not invoked as evidence in any proceedings, except against a person accused of torture or ill-treatment, and introduce legal safeguards to this effect;

- Amend existing legislation in order to uphold client-lawyer confidentiality, and any provisions in the Anti-terrorism Law that can undermine the rights to a fair trial, including repealing the possibility of anonymous trial proceedings as set out in the 2003 Anti-terrorism Law.

- **Abolish the death penalty**

- Introduce an immediate moratorium on executions with a view to abolishing the death penalty and commute all death sentences in line with the UN General Assembly resolution in favour of a worldwide moratorium (Resolution 62/149).

- Become a state party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

- **End violations in prison**

- Stop the use of prolonged solitary confinement as presently practised and ensure that any prisoners who have been subjected to this treatment are provided with the means to seek redress.

- Ensure that prisoners in need of medical attention receive adequate medical care without undue delay.

- **End impunity**

- Ensure that all allegations of torture and other ill-treatment are subject to prompt, effective, independent and impartial investigation and that officials responsible for the torture or other ill-treatment of prisoners are brought to justice, and that victims receive full reparation.

- Take all appropriate criminal or administrative measures against officials who fail to comply with safeguards against human rights abuses.

- **Co-operate with the UN to end torture**

- Implement recommendations by UN treaty bodies and special procedures.

- Issue a standing invitation to all UN human rights experts, facilitate immediately the visits requested by the UN Special Rapporteurs, especially the UN Special Rapporteur on torture, and fully cooperate with the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism.

- Ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

**To foreign governments**

- Do not return to Tunisia Tunisian nationals accused of terrorism-related offences which puts them at greater risk of torture and other ill-treatment and flagrantly unfair trial.
- Exercise their influence on the Tunisian government to promote human rights reform in the country.



## <sup>1</sup>ENDNOTES

Speech by President Zine El Abidine Ben Ali at the opening of the International Conference on “Terrorism: Dimensions, Threats and Countermeasures” (Carthage, November 15, 2007): <http://www.tunisiaonlinenews.com/novem07/151107.htm>.

<sup>2</sup> This complaint was registered under number 7021177 of 2007.

<sup>3</sup> Law No. 2003-75 (10 December 2003), concerning support for international efforts to combat terrorism and to prevent money-laundering (hereafter, the Anti-terrorism Law).

<sup>4</sup> See “Allocution de M. Le Président de la République, Dîner d'Etat offert par M. Zine El Abidine Ben Ali, Président de la République Tunisienne, Tunis – Lundi 28 avril 2008”, at [www.elysee.fr/documents/index.php?mode=view&lang=fr&cat\\_id=7&press\\_id=1330](http://www.elysee.fr/documents/index.php?mode=view&lang=fr&cat_id=7&press_id=1330).

<sup>5</sup> For the purpose of this report, Amnesty International had meetings with lawyers and members of human rights organizations in Tunisia, namely the AISPP (International Association for the Assistance of Political Prisoners, Association internationale de soutien aux prisonniers politiques), ALTT (Association against Torture in Tunisia, Association de lutte contre la torture en Tunisie), CNLT (National Council for Liberties in Tunisia, Conseil national pour les libertés en Tunisie), Liberte et Equite, LTDH (Tunisian League for Human Rights, Ligue Tunisienne pour la defence des droits de l'homme). Amnesty International is grateful for all the assistance they provided and expresses its grateful appreciation to the many individuals and organizations for their time and expertise. It also thanks the relatives and former prisoners for agreeing to speak to the organization about their ordeals. For security reasons, many people Amnesty International spoke to requested that their names not be mentioned in this report.

<sup>6</sup> Amnesty International requested meetings with the following: Office of National security, representative of the National Guard, General Director for Prisons and Rehabilitation, the General Director for Public Liberties, Associations and Parties, the First President of the Tunis Appeal, the Public Prosecutor of the Tunis Appeal Court, the President of the Tunis Court of First Instance, the Tunis Public Prosecutor, the Military Prosecutor, the President of the Permanent Military Court in Tunis and the Government Commissioner for the Permanent Military Court in Tunis.

<sup>7</sup> On 29 January 1990, three Islamist activists threw acid in the face of a police officer in Jendouba, 155 km south west of Tunis. In September 1990, the killing of student Tayeb Hammasi by police during a demonstration triggered a series of demonstrations, to which the authorities reacted by mass arrests of Islamists which were in turn followed by further protests. On 17 February 1991, the office of the Democratic Constitutional Rally (Rassemblement Constitutionnel Démocratique, RCD) in the Bab Souika district of Tunis was set on fire, reportedly by Islamist activists. A 60-year old security guard died in the fire; another was so severely burned that he had to have both hands amputated.

<sup>8</sup> See Amnesty International, Tunisia: Heavy sentences after unfair trials (AI Index: MDE 30/23/92, September 1992) and Amnesty International, Tunisia: Rhetoric versus reality, the failure of a human rights bureaucracy (AI Index: MDE 30/01/94, January 1994).

<sup>9</sup> The Tunisian authorities issued Interpol arrest warrants for Ennahda members and sympathizers based abroad; at least 35 of these warrants are until today still active on the Interpol website.

<sup>10</sup> See al-Qa'ida's Foreign Fighters in Iraq: A First Look at the Sinjar Records. Combating Terrorism Center, Department of Social Sciences, US Military Academy, December 2007. [www.ctc.usma.edu/harmony/FF-Bios-Trans.pdf](http://www.ctc.usma.edu/harmony/FF-Bios-Trans.pdf), downloaded on 10 January 2008.

<sup>11</sup> Speech by President Zine El Abidine Ben Ali at the opening of the International Conference on “Terrorism: Dimensions, Threats and Countermeasures”, (Carthage, 15 November 2007): <http://www.tunisiaonlinenews.com/novem07/151107.htm>, accessed 12 January 2008.

<sup>12</sup> See “Aide-memoire: Tunisia, measures taken by Tunisia as part of the implementation of UPR recommendations and the promotion of human rights” sent by Tunisia's Permanent Mission to the UN in Geneva to the Human Rights Council, 9 June 2008.

<sup>13</sup> Amended by Law 93-112 of 22 November 1993.

<sup>14</sup> Report S/2002/1024, 30 August 2002.

<sup>15</sup> Article 4 of Law No. 2003-75 (10 December 2003), concerning support for international efforts to combat terrorism and prevent money-laundering, provides that “An offence committed by a group or an individual, regardless of the motives, will be classified as an act of terrorism if it is capable of terrorizing a person or a group of persons or spreading alarm among the population with the intention of influencing the policy of the State and prompting it to do or to abstain from doing any action, of disturbing public order, international peace or security, of causing harm to persons or property, damaging to buildings, housing diplomatic and consular missions or international organizations, inflicting serious harm to the environment so as to endanger the life or health of inhabitants, or damaging vital resources, the infrastructures, transport, communications, information systems or to public amenities.”

<sup>16</sup> See E/CN.4/2006/98 Add.1, para. 15.

<sup>17</sup> See CCPR/C/TUN/CO/5, para. 15.

<sup>18</sup> Amended by Law 2000-56 of 13 June 2000.

<sup>19</sup> “Every Tunisian who puts himself/herself, in peacetime, at the service of a foreign army or a terrorist organization operating abroad, is punished by 10 years’ imprisonment with deprivation of their civic rights and the confiscation of all or part of their possessions... [This does not exclude additional] penalties provided for attacks on the security of the state committed by the defendant acting on their own initiative or in response to directions given by this organization. Whoever incites these crimes or facilitates their implementation by any means is subjected to the same punishment.” [Amnesty International’s translation].

<sup>20</sup> Articles 78 and 81 of the CPP.

<sup>21</sup> Article 95 of CPP.

<sup>22</sup> *Garde à vue*, a concept found in legal systems based on the French civil law system, is a period during which someone is held in police custody for questioning, before charges are filed.

<sup>23</sup> Law 99-90 of 2 August 1999, amending the CPP.

<sup>24</sup> Article 13bis of the CPP.

<sup>25</sup> Article 14 of the CPP.

<sup>26</sup> See CCPR/C/TUN/CO/5, para. 11.

<sup>27</sup> Article 65.

<sup>28</sup> See CCPR/C/TUN/CO/5, para. 17.

<sup>29</sup> These are (a) when the accused is facing imminent death, (b) when the accused is arrested during a *flagrant délit*, or (c) when there is risk of loss of evidence.

<sup>30</sup> Article 52.

<sup>31</sup> See CCPR/C/TUN/ CO/5, para. 15.

<sup>32</sup> See A/54/44, para. 103(c).

<sup>33</sup> Article 15.

<sup>34</sup> General Comment 20, para 12.

<sup>35</sup> See CCPR/C/TUN/ CO/5, para. 12.

<sup>36</sup> In Its Annual Report of 2007, the ICRC stated that 20,073 detainees in Tunisia were visited, of whom 605 were monitored individually (including one minor) and 446 newly registered (including one minor). See ICRC, *Annual Report 2007*, p. 369.

<sup>37</sup> See “Aide-memoire: Tunisia, measures taken by the Tunisia as part of the implementation of UPR recommendations and the promotion o human rights” sent by the Tunisia’s Permanent Mission to the UN in Geneva to the Human Rights Council, 9 June 2008.

<sup>38</sup> See ECHR, SAADI v. ITALY (Application no. 37201/06), 28 February 2008, para. 55.

<sup>39</sup> Badreddine Ferchichi was stripped of his citizenship following a review by the State Commission for the Revision of Decisions on Naturalization of Foreign Citizens, whose work began in March 2006. The Commission was tasked with reviewing the status of citizens who acquired BiH citizenship between 6 April 1992 and 1 January 2006. The Commission reviews are said to affect about 1,500 individuals, many of whom are reported to have come to BiH to join the Bosnian Muslim (Bosniak) forces as volunteer foreign fighters during the 1992-95 war or to work for Islamic charities during and after the war. The majority of these individuals are from countries including Algeria, Tunisia, Egypt and Morocco. See *Bosnia and Herzegovina: Withdrawal of citizenship must not result in human rights violations*, (Index: EUR 63/001/2006, 16 June 2006).