



## TUNISIA: WHEN BONES SPEAK

THE STRUGGLE TO BRING FAYSAL BARAKET'S TORTURERS TO JUSTICE

AMNESTY  
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**AMNESTY**  
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# 1. INTRODUCTION

**"I have known the name of your son since 1992 when I read the autopsy report Amnesty International sent me."**

Dr Derrick Pounder to Faysal Baraket's mother, 1 March 2013

**"My heart aches."**

Faysal Baraket's mother to Dr Derrick Pounder, 1 March 2013

On a grey, rainy 1 March 2013 in the small town of Manzil Bouzalfa in Nabeul governorate, the exhumation of Faysal Baraket,<sup>1</sup> a young man who had been tortured to death in custody over two decades earlier, took place. For his family, it was a moment of deep sadness and distress but it was also a moment of hope in their long struggle for truth and justice. As the skeleton, wrapped in black plastic sheeting and a white shroud, was brought to the surface, relatives and friends were overcome with emotion.

Among those witnessing the exhumation were Faysal's brother Jamal and other members of the family, and Dr Derrick Pounder, Professor of Forensic Medicine at the University of Dundee in the UK, who had reviewed the report of Faysal Baraket's autopsy on behalf of Amnesty International back in 1992. For the Amnesty International delegates at the graveside, the moment represented a milestone in the organization's 22-year campaign for justice for Faysal Baraket's family, and for accountability for all perpetrators of human rights violations in Tunisia. Indeed, the death under torture of Faysal Baraket had become emblematic of the brutal treatment meted out to political detainees in Tunisia under the rule of President Zine al Abidine Ben Ali, and of the authorities' persistent denial that torture had become a method to run the country, and refusal to hold torturers to account for their crimes, even in the face of irrefutable evidence of torture.

## 2. DEATHS IN CUSTODY IN 1991

Faysal Baraket was a 25-year-old mathematics and physics student at Tunis University. He was a well-known member of the then outlawed Islamist opposition party Ennahda (Renaissance) and of the students' union close to it.<sup>2</sup> On 8 March 1991, in an interview on Tunisian television, he criticized the government's handling of clashes between students and the police which had left several students dead. Afterwards, he went into hiding and was subsequently sentenced in absentia to six months' imprisonment for offences that included membership of an illegal organization.

A few months later, on 1 October, police went to his home. When it became clear that he was not there, they arrested his brother Jamal instead, apparently to put pressure on Faysal to surrender. Jamal was repeatedly tortured in detention.

A week later, on 8 October, members of the Intelligence Brigade of the Nabeul National Guard arrested Faysal Baraket at his hideout along with four other men. An autopsy report

dated 11 October from Nabeul Hospital described external injuries of an “unidentified man” brought in by Manzil Bouzalfa traffic police. That man was Faysal Baraket.

On 17 October, the authorities told Faysal Baraket’s family that he had died in a traffic accident. They said that his body had been found by the side of a road in Manzil Bouzalfa after an anonymous telephone call to the police. Faysal Baraket’s father, Hedi Baraket, was asked to identify the body at Charles Nicolle Hospital. He said that his son’s face was disfigured and that he was not allowed to see the body.<sup>3</sup> He was forced to sign a statement saying that his son had been killed in a road accident. Police brought the coffin to the funeral, oversaw the burial and did not allow the coffin to be opened. By that stage, it had become clear – to the family and to Amnesty International – that there was another explanation for the death of Faysal Baraket: torture.

Not long after, on 28 October, Rachid Chammakhi, a 28-year-old supporter of Ennahda, died in custody in the same Nabeul police station. He had been sentenced in his absence in February 1991 to three months in prison for handing out leaflets, and had gone into hiding. His lawyers contested the conviction and a retrial was set for 19 August and then postponed to 25 October 1991. In the early hours of 24 October, he was arrested at his sister’s house and detained incommunicado. Four days later his father was called to the police station where he was told that his son had died from jaundice. The family, which was only allowed to see his body for a few minutes, and under strict police surveillance, said that there was a scar at the top of his chest and bruises on his head.

Several other political detainees died in incommunicado detention, apparently as a result of torture, in 1991.<sup>4</sup> All had been held in *garde à vue* (pre-arraignment) detention - the period after arrest during which, under Tunisian law at the time, a suspect could be held by the police without access to lawyer or family for up to 10 days<sup>5</sup> - after which security forces told their relatives that they had died. Families were not allowed to see the bodies and were forced to bury their loved ones quickly and sometimes almost in secret. Despite repeated requests, the authorities never provided a medical or autopsy report to explain the cause of death. Only in the case of Faysal Baraket was Amnesty International able to obtain a copy of an autopsy report.

Among those who died in custody between April and August 1991 were:

- Abdelaziz Mahuashi, an Interior Ministry employee who failed to return home from work on 21 April. On 30 April, Ministry of Defence officials told his family that he had died of a heart attack the previous day.
- Abdelraouf Laaribi, who was arrested on 3 May and held incommunicado until his death on 26 or 27 May. On 27 May, the authorities told his family that he had died of a heart attack.
- Abdelwahed Abdelli, a student at the Ecole Normale Supérieure, who died in Sousse on about 30 June. Fellow detainees in Sousse Prison said he had been arrested two days earlier and had a gunshot wound to the leg. They said he was given no medical care and was tortured in detention.
- Ameur Degache, a theology student at Tunis University, who was arrested in June. Police told his family on 11 July that he had died but provided no cause of death.
- Fathi Khiari, a post office worker, who was arrested on 16 July. Police told his family on 5 August that he had died of an unspecified illness.

As Amnesty International learned of these cases, it asked the government to clarify the circumstances of death, but received no response. In reality, not only did the authorities not provide any answer but they dedicated all their efforts and considerable resources into denying the obvious, intimidating and threatening families seeking the truth about their relatives and orchestrating, at significant cost, public relations campaigns presenting Tunisia as a beacon of human rights.

Under mounting international pressure, two government-appointed Commissions of Inquiry headed by Rachid Driss, a former Tunisian ambassador to the UN, failed to conduct full, independent and transparent investigations into these deaths. The report of the first commission, presented in 1991 to President Zine al Abidine Ben Ali, was not made public. Its purported conclusions were publicized in a press release in October 1991, acknowledging that "some abuses did occur" although it stated that they were isolated acts that went against government policy. The second commission, established in April 1992 to implement the recommendations of the first Commission of Inquiry, stated in its report that "the [first] commission of inquiry had concluded, in its report dated September 11, 1991 that a number of deaths had taken place in unclear and suspicious circumstances."<sup>6</sup> However, in not a single case of suspicious deaths in custody in the period in question did the government hold a public inquiry or release findings of investigations, let alone hold a security official responsible.

### **3. BACKGROUND: UNCHECKED REPRESSION AND TORTURE**

In the early 1990s, under the government of Ben Ali, thousands of government critics and suspected opponents were arbitrarily arrested, held in often unacknowledged and unlawful prolonged incommunicado detention, tortured, and imprisoned after unfair trials. Among those targeted were members and suspected supporters of Ennahda, members of leftist parties; relatives and friends of political detainees; human rights activists, lawyers, journalists and anyone else who tried to expose human rights violations. Relatives faced night-time raids as well as interrogation and ill-treatment in police stations. Female relatives who wore a headscarf faced additional abuse, including having their headscarves torn off by members of the security forces.

In this period, torture of political detainees was widespread in police, gendarmerie and National Guard stations across the country, even though it was clearly prohibited by Tunisian domestic law and several international human rights treaties to which the country is a state party. Indeed, torture was also frequently reported to have taken place in the Interior Ministry building, metres from the office of the minister responsible for enforcing the ban on torture.

Among the torture methods frequently cited were electric shocks, suspension in contorted positions, sexual abuse and beatings, almost always inflicted when the victims were being held in incommunicado detention prolonged beyond the legal 10-day limit at the time and often unacknowledged.<sup>7</sup> Jamal Baraket, speaking to Amnesty International in 2013, recalled what had happened to him and other detainees at that time:



*"Torture methods included the 'roast chicken': they put a bar behind your knees, tie your hands and legs together and suspend the bar between chairs or tables. Then they beat you on sensitive parts of your body, with truncheons, either solid or supple, sometimes with metal rulers. They hung people over the door too... They would let you rest for a couple of hours, sometimes untie us and force us to walk in the corridor. It's very painful after they've beaten you on the soles of your feet... After a while you get used to the pain."*

He said that political prisoners were tortured systematically and repeatedly, whereas ordinary detainees were tortured mainly on arrest. He added:

*"Sometimes they hit you in the genitals: at this time they don't ask questions, they just say: we're going to make you sterile."*

There were many reasons why torture had by then become institutionalized and the torturers could commit their crimes without fear of punishment, several of which were highlighted by the campaign for justice for Faysal Baraket. Among them were:

- General failures of the judicial system. These included loopholes in the law that rendered safeguards against torture ineffective, and the failure of the security and judicial officials to follow legal procedures; implement the safeguards; exercise control over detention centres and their officials; investigate complaints of torture and deaths in custody, and prosecute torturers.
- Failure of the investigating judges (*juges d'instruction*) and prosecutors (*procureurs*) to independently and effectively fulfil their roles and functions. This included failing to properly supervise incommunicado pre-arraignment (*garde à vue*) detention; ignoring requests for medical examinations of political detainees who alleged that they had been tortured; failing to order investigations into allegations and complaints of torture; readily accepting forged documents produced by the police and other officials (who often falsified dates of arrest so as to hide periods of illegally prolonged incommunicado and/or unacknowledged detention); failing to inspect detention centres where people were held unlawfully and tortured; and allowing the few investigations into alleged torture to be dropped or to drag on interminably without results.
- Failure of the judiciary at every level, from investigating judges to the final appeal in the Court of Cassation, to act on evidence of torture, for example by ordering medical examinations of alleged victims or investigations of alleged torture.
- Pressure brought on medical doctors, judicial officials and civil servants to cover up torture and other human rights violations, so as to ensure that those responsible would not be held accountable.

In the case of Faysal Baraket and other political detainees who died under torture, the refusal of the authorities to conduct thorough, prompt and impartial investigations into the torture allegations not only denied the families their right to learn the truth, to obtain reparation and to see those responsible for the crimes brought to justice. It also ensured that such crimes continued to be committed with impunity.



## 4. CAMPAIGN FOR TRUTH AND JUSTICE

The long campaign to obtain the exhumation of Faysal Baraket's body to clarify the circumstances of his death and, it is hoped, to finally achieve justice for his killing has taken over 22 years. Many people have either put themselves at risk or contributed to the campaign for truth and justice for his killing.

### 1991

Shortly after learning of Faysal Baraket's death, Amnesty International received information indicating that he had died of injuries inflicted by torture. On 21 October 1991 it issued an Urgent Action, calling for an investigation into his death and those of five other detainees and for the findings to be made public. The authorities vociferously denied that Faysal Baraket had been tortured to death, repeating the claim that he had died in a traffic accident. In December, the Tunisian External Communication Agency<sup>8</sup> said Amnesty International had been misinformed. It wrote: "Should members of the so-called Ennahda movement wear phosphorescent armbands so that cars pay particular attention to them and drivers may not be accused of premeditated murder? And should the Tunisian State be accused every time a Tunisian citizen is the victim of a road accident?"

Amnesty International delegates visiting Tunisia in December 1991 reiterated their concerns about Faysal Baraket's death to the authorities. The authorities again rejected the allegations and told the organization's delegates that Faysal Baraket's father had accepted that his son had been killed in a traffic accident.

When the case was raised by the UN Special Rapporteur on torture, the government's response, dated 16 December 1991, stated that an "autopsy was carried out by order of the courts by two doctors from the university hospital of Nabeul and their report shows that the body of the victim showed no trace of degrading or inhuman treatment". However, the medical certificate issued by Nabeul Hospital and dated 11 October 1991, a copy of which Amnesty International obtained, lists a number of external and internal injuries, including bruises on the soles of both feet, and a "small haematoma of the pelvis with perforation of the rectosigmoid junction".

It later transpired that the original autopsy report was altered by the authorities. Amnesty International received information that the alterations included a change of the name of the security force which authorized the autopsy from the National Guard of Nabeul to the traffic police of Manzil Bouzalfa, a change of the date of the autopsy report from 9 October to 11 October 1991, and the deletion of reference to anal margin lacerations seen on Faysal Baraket's body. This detail cast doubt on the claim that Faysal Baraket was injured in a road accident and indicated that he had been sodomized with a sharp object. However, the mention of a "small haematoma of the pelvis with perforation of the rectosigmoid junction" appears to have got past the censure of the authorities. It was this, together with the mention of bruises on the body of Faysal Baraket, particularly his feet, which allowed international experts to understand that the cause of his death was torture.

This not only reinforces the evidence that Faysal Baraket was tortured, but also shows how the authorities covered up a crime and shielded the perpetrators from accountability. From then on, the authorities ensured that no other such medical report could be obtained in cases where torture was suspected.

## 1992

In January, Amnesty International recorded the testimony of witnesses who said that they had seen Faysal Baraket in the corridor of Nabeul Police Station after his arrest on 8 October. They said that he had obviously been tortured; he was bare-chested and bound, his face was bruised and he had cuts around the eyes. They said he was taken to the office of the head of the police station, from where the noise of beating and screaming was heard for four hours. Afterwards, Faysal Baraket's apparently lifeless body was dumped in the corridor. It was contorted into the position used in the *poulet rôti* (roast chicken) torture method (where the victim is tied to a horizontal pole with hands and feet crossed over and tied together in front of the body and head hanging back). Water was thrown over him. About 30 fellow detainees were in the corridor; at first they were told not to touch him but later were allowed to carry him to a chair. It took half an hour for a doctor to be summoned.

On 10 January, on the basis of the information it had gathered, Amnesty International issued an update to its Urgent Action. This repeated the organization's concern that no investigation had been launched and called for those responsible for the death to be held to account and for the family to be compensated.<sup>9</sup>

In February, the forensic pathologist Dr Pounder, to whom Amnesty International had sent Faysal Baraket's autopsy report for an expert opinion, concluded that the death could not have been caused by a traffic accident but had resulted from "the forcible insertion of a foreign object at least 6 inches into the anus". His review of the report also noted:

*"Prior to his death he had been beaten about the soles of his feet and buttocks. Other scattered injuries to the body are consistent with further blows. The entire pattern of injury is that of a systematic physical assault and very strongly corroborates the allegation of ill-treatment and torture that has been made. The injury pattern as a whole and the injuries to the anus, feet and buttocks in particular are incompatible with involvement in a road traffic accident and this explanation of the death has no credibility in the light of the autopsy findings."<sup>10</sup>*

Dr Pounder's report was presented to the Tunisian government on 3 March 1992, the day before the publication of an Amnesty International report, *Tunisia: Prolonged incommunicado detention and torture*,<sup>11</sup> which highlighted the cases of Faysal Baraket and other detainees who had died in custody in 1991. The organization also launched an international campaign, asking Amnesty International members and medical professionals to write to the Tunisian government asking for all reported deaths in custody to be investigated, and the findings of such investigations to be made public. On 20 March, the government wrote to Amnesty International, insisting that Faysal Baraket had died in a road accident.

Also in March 1992, Amnesty International asked the UN Centre for Human Rights<sup>12</sup> to bring Dr Pounder's report to the attention of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

In July, during an Amnesty International fact-finding visit to Tunisia, delegates asked the authorities why the inquiry into Faysal Baraket's death had still not been reopened in light of the new evidence. The Interior Minister told the delegates that he could not concern himself with traffic accidents as every day at least three people were killed on the roads and 30 injured. However, the Minister of Justice and the Principal Presidential Adviser for Human

Rights promised that the inquiry would be reopened by the State Prosecutor<sup>13</sup> of Grombalia, in the Nabeul governorate. Rachid Driss, the man appointed by the government to head the Commissions of Inquiry into the deaths in custody, also told the delegates that he had asked for the inquiry to be reopened. Despite this, when an Amnesty International delegate went to Grombalia on 5 July, the State Prosecutor told her that he had not been given Dr Pounder's expert opinion and that the inquiry remained closed. He said that the inquiry had remained open until the end of February as he had been concerned that the original autopsy had used the subjunctive tense when describing the cause of death, but that the same month another autopsy had clearly stated that Faysal Baraket had died as a result of a road accident.

Soon after, the Foreign Minister told Amnesty International that the State Prosecutor had been empowered to reopen the case and had done so. The government also informed the UN Special Rapporteur on extrajudicial, summary or arbitrary executions that the State Prosecutor of Grombalia had reopened the investigation.

Later in July 1992, one of the commissions set up by the Tunisian government in July 1991 and chaired by Rachid Driss recommended that the families of five people who had died in custody should receive "humanitarian assistance". It also stated that the deaths of Faysal Baraket and Rachid Chammakhi seemed to have happened in suspicious circumstances and that new evidence warranted the opening of a new investigation.

In August, Amnesty International again wrote to President Ben Ali requesting whether any investigation was being carried out. It received no response.

According to Jamal Baraket, later in 1992 the authorities reopened the case as a result of Dr Pounder's report, repeated family requests and "pressure from Amnesty International". He said that the judge spoke to the doctor who had carried out the initial autopsy, but then closed the file again without completing the investigation.

## 1994

Early in the year, Amnesty International issued a report – *Tunisia: Rhetoric versus reality* – which highlighted the cases of Faysal Baraket and Rachid Chammakhi and spelled out the growing evidence pointing to torture as the cause of death.<sup>14</sup>

In March, Khaled Ben M'Barek,<sup>15</sup> of the NGO the Information and Documentation Centre on Torture in Tunisia,<sup>16</sup> submitted Faysal Baraket's case to the UN Committee against Torture (CAT).<sup>17</sup> The submission stated:

*"Upon his arrest, he was reportedly beaten and towards noon he was brought to the quarters of the Brigade where his hands and feet were bound and he was suspended between two chairs on a big stick, with his head down and the soles of his feet and his buttocks showing, in which is commonly called the 'roast chicken' position. The blows and screams continued from then until nightfall, when officers threw him out into the corridor after bringing another prisoner into the office. Faïsal Barakat was in a very bad condition and seemed to be dying. The officers nevertheless prohibited the 30 or so prisoners present, including his own brother, Jamel, from giving him assistance. One half hour later, he seemed to have died."*

Around four months later the Tunisian authorities wrote to the UN denying the allegations of torture.

Towards the end of the year, reports from three other professors of forensic science all agreed with Dr Pounder's findings. They were: Professor Bernard Knight of the University of Wales (report dated 6 October 1994); Professor Fournier of the Université René Descartes in France (10 October 1994); and Professor Joergen L Thomsen of the University of Odense in Denmark (11 November 1994).

## 1995

In March, a medical report to the Ministry of Health by three Tunisian doctors, which assessed the 11 October 1991 autopsy report and Dr Pounder's report, claimed that the latter did not rely on objective information. The counter-opinion stated that as there were no anal margin lacerations mentioned in the first autopsy report, the cause of death could have been a road accident.

In April, the Tunisian authorities again denied the allegations of torture in the case of Faysal Baraket in a communication to the UN.

In May, the UN Committee Against Torture ruled that the submission by Khaled Ben M'Barek was inadmissible on the grounds that he was not a properly designated representative of the family.<sup>18</sup>

## 1996

In November, the UN Committee Against Torture responded to a revised submission of the case of Faysal Baraket.<sup>19</sup> The submission included a copy of the 11 October 1991 autopsy report, a copy of Dr Pounder's 1992 report, as well as copies of the reports from the three other international experts, all professors of forensic science. It also included the names of two witnesses who said that Faysal Baraket had died in their arms at the Intelligence Brigade's headquarters.

The Committee Against Torture's response took note of Tunisia's rejection of the allegations as "insulting and injurious to the Tunisian State and its institutions", its comment that the complaint was "obviously politically motivated", and its assertion that the family had not exhausted domestic remedies. It also summarized Tunisia's submission that Faysal Baraket had been killed in a road accident.

On 2 October, the Tunis Appeal Court awarded damages totalling 12,000 dinars to the Baraket family as compensation for Faysal's death in a traffic accident.<sup>20</sup> Although the authorities claimed that the content of the verdict was communicated to Faysal Baraket's family by a lawyer representing them, the family said that they never appointed this lawyer.<sup>21</sup>

## 1997

In November, the Committee Against Torture found the 1996 submission of Khaled M'Barek to be admissible.

## 1999

In November, the Committee Against Torture found that Tunisia had breached its obligations under articles 12 and 13 of the Convention Against Torture to hold an impartial investigation into the case.<sup>22</sup>

The Committee Against Torture also stated:

*“The Committee considers that the magistrate, by failing to investigate more thoroughly, committed a breach of the duty of impartiality imposed on him by his obligation to give equal weight to both accusation and defence during his investigation, as did the Public Prosecutor when he failed to appeal against the decision to dismiss the case. In the Tunisian system the Minister of Justice has authority over the Public Prosecutor. It could therefore have ordered him to appeal, but failed to do so.”*

The Committee also noted that an exhumation of Faysal Baraket's body should have been done “in order at least to confirm whether the victim had suffered fractures to the pelvis (confirming the road accident hypothesis) or not (confirming the hypothesis that a foreign object had been introduced into his anus)” and “as far as possible, in the presence of non-Tunisian experts, and more particularly those who have had occasion to express a view on this matter.”

## 2000 ONWARDS

Faysal Baraket's family repeatedly asked the authorities to reopen the file on Faysal Baraket and exhume his body, in accordance with the decision of the Committee Against Torture. Amnesty International also continued to campaign on the case. For example, in August 2002 it issued a press release highlighting the lack of justice for detainees who had died in custody after having been allegedly tortured,<sup>23</sup> and in June 2003 again raised the cases of Faysal Baraket and Rachid Chammakhi in its report, *Tunisia: The cycle of injustice*.<sup>24</sup> Radhia Nasraoui, a prominent Tunisian human rights lawyer, added her weight to the struggle for justice. In 2008, for instance, she wrote to the investigating judge in Grombalia, calling for the investigation into the case to be reopened and for Faysal Baraket's body to be exhumed, as recommended by the Committee Against Torture.

## 2009

In August, the government wrote to the Committee Against Torture agreeing to exhume the body of Faysal Baraket. However, the investigating judge in Grombalia notified Faysal Baraket's family that their exhumation request was rejected by the general prosecutor at the Grombalia Appeal Court.

## 2011

The breakthrough came following the Tunisian uprising that toppled the government of President Ben Ali in January. The family and their legal counsel, who had persistently pressed the authorities to hand over Faysal Baraket's file in the face of official intransigence, learned that the Court of Appeal had returned the file to the investigating judge on 3 February and ordered him to reopen the case and order an exhumation. However, the investigating judge refused, arguing that the body would be too decomposed to establish the cause of death. The family's lawyer appealed, explaining that the point of an exhumation would be to find out whether the pelvis and other bones had been broken, as would be the case if Faysal Baraket had died in a car accident.

The investigating judge also received the testimonies of four witnesses to Faysal Baraket's detention.

## 2012

A new investigating judge was appointed at the Court of First Instance in Grombalia after the retirement of his predecessor. Finally, to the enormous relief of the family, the exhumation was authorized. Jamal Baraket told Amnesty International:

*"So the commission of investigating judges told the judge to start the exhumation. They tried to exhume the body without doctors being there, so I refused. Then they wanted it to be only in the presence of Tunisian doctors, so we contacted Amnesty International and the exhumation finally happened on 1 March with Dr Pounder there."*

## 2013

After the exhumation, which occurred in the presence of Faysal Baraket's relatives, Tunisian forensic pathologists, including Dr Ahmed Benasser, investigating judge Ali Abbes, two representatives of the Prosecutor's office, Dr Pounder, and three Amnesty International delegates, Faysal Baraket's body was brought to Charles Nicolle Hospital in Tunis, where it was examined in the presence of Dr Pounder. The examination discredited the version of the previous Tunisian government that the cause of death had been a traffic accident.

Meanwhile, the investigation into the death in custody of Rachid Chammakhi, who died on 28 October 1991, three weeks after Faysal Baraket's death after being detained in the same police station, has been progressing. One policeman was arrested as part of the investigation into his death. He is detained in Mornaguia Prison pending the completion of the investigation. According to Faysal Baraket's family, those who are responsible for his torture and death are the same ones who killed Rachid Chammakhi. However, at least 20 other officers were at the police station when Faysal Baraket and Rachid Chammakhi were tortured. They, along with many other police implicated or involved in torture, have so far evaded justice, including some for whom arrest warrants were issued. Some appear to have fled or to have gone into hiding, including the former head of Nabeul Police Station.

The autopsy report of Faysal's remains from March 2013 was added to the legal file in early June 2013 and forms part of an ongoing judicial investigation into his killing. Faysal Baraket's family was told that the case was examined by a commission of investigating judges to decide the precise charges to be laid and the names of those accused of his killing. At the time of writing, the case is back with the investigating judge. Faysal Baraket's family are awaiting to hear further developments in the judicial process.

On 9 March 2013, after the final autopsy had been carried out, a symbolic funeral was held and Faysal Baraket's body was reburied. At the graveside were his mother and other relatives.

The perseverance of all those involved in the campaign has led to the recognition that Faysal Baraket died under torture. The members of the security forces who committed the torture and the officials who colluded with and covered up the crime must now be held accountable. Several months after the exhumation of his remains, Faysal Baraket's family are still waiting for the perpetrators of his killing to be brought to justice.

Despite the terrible ordeal they endured for more than two decades, Faysal Baraket's family have never given up demanding that the truth about what happened on 8 October be revealed and that those responsible be held to account. Faysal Baraket's father died in 1995 without any answer and while the Tunisian authorities were attempting to shut down all avenues for international recourse, providing a counter-opinion by three Tunisian medical doctors to Dr

Pounder's analysis of his son's autopsy report and trying to discredit those who submitted the case to the Committee Against Torture. Jamal Baraket, Faysal's brother, was himself repeatedly tortured in the same police station, and was prevented by policemen from intending to his own brother when he was dumped, unconscious, in the corridor of the police station. Jamel told Amnesty International how after he was released from detention, he would for years come across police officers who had tortured him, and that they would often taunt him and arrest him under false pretenses. Jamal's house in Manzil Bouzalfa overlooks the cemetery where Faysal was buried in 1991. Jamal explained that it allowed him to ensure that the grave would not be tampered with by the authorities, and later on, that an exhumation would not be carried out without him and international experts being present. Faysal's mother described to Amnesty International how the family had been shattered by the death of her son and how much it affected his siblings and how for years the family suffered stigmatization, contempt and threats by the authorities. Jamal Baraket concluded that without the international pressure by human rights organizations and activists and the decision of the UN Committee Against Torture, their demands for truth and justice may have never materialized.

Amnesty International members mobilized as early as 1991 sought to put pressure on the Tunisian authorities and demand a full investigation. Yet the authorities continued to deny any wrongdoing and provide improbable explanations. For instance, on 25 November 1991, Amnesty International members in the USA organized a demonstration in front of the Tunisian Embassy in Washington, DC, in protest at the use of torture in detention and the recent deaths in custody. Tunisia's Ambassador to the USA wrote to them to explain that Faysal Baraket had died in a road accident.

## **RACHID CHAMMAKHI**

On 4 November 1991, shortly after Rachid Chammakhi's death, Amnesty International issued an Urgent Action raising concerns about his case. Also in early November 1991 the investigating judge at Grombalia opened an investigation and interviewed Rachid Chammakhi's father. The local prosecutor was unable to tell Amnesty International delegates whether the investigating judge had also interviewed members of the security forces or doctors and nurses at Nabeul University hospital who saw his body. The inquiry was closed on 21 November 1991, apparently after the investigating judge received a medical report stating that Rachid Chammakhi had died a "natural death following acute renal failure".

Not long after his death the Tunisian authorities told Amnesty International that Rachid Chammakhi had been arrested on 22 October and died the same day as a result of kidney failure that had been "left unattended for a long time". However, several people held at Nabeul police station with Rachid Chammakhi told Amnesty International that he had been there on the night of 27 October and that his body was covered with marks of torture. They said he had been taken to Nabeul hospital after he collapsed. A witness who saw him at the hospital also said that his body was covered with wounds and bruises, and that he was in great pain and struggling to breathe. He died in the early hours of 28 October.

Later in 1991, after Amnesty International had collected witness testimonies and other evidence strongly indicating that Rachid Chammakhi had died as a result of torture, it publicized this evidence and asked the government to reopen the inquiry, but received no response.



On 10 January 1992, Amnesty International issued an updated Urgent Action. In July, the prosecutor of Grombalia acknowledged the information Amnesty International had provided, but said that there was insufficient evidence to warrant reopening the case.

22 years later, an investigation into Rachid Chammakhi's death in custody by an investigating judge has made progress (see above), but only one of the security forces officers allegedly involved in the torture has been arrested. Arrest warrants (*mandats de dépôt*) were also issued against Abdallah Kallel<sup>25</sup> and Saadok Chabaane, respectively former Minister of Interior and former Minister of Justice under Ben Ali, but these were overturned in January and February 2013 by the accusation chamber of the Nabeul Appeal Court.

At the same time, radical reforms of the justice system and the security apparatus as well as a comprehensive transitional justice process to ensure truth and justice for the systemic abuses of the past are yet to be implemented to ensure that such crimes and cover-ups never happen again in Tunisia. Reforms were initiated after Ben Ali was ousted but are currently stalled.

## 5. THE NEED FOR REFORMS

Although torture and other ill-treatment are not committed on the same scale as under the rule of former President Ben Ali, reports of torture or other ill-treatment have continued to be reported since he was ousted in January 2011.<sup>26</sup> One such case is that of Abderraouf Khamassi, who was brought unconscious to hospital hours after his arrest on 28 August 2012 by police and who died in hospital on 8 September 2012, apparently as a result of torture or other ill-treatment.<sup>27</sup>

Reports of torture or other ill-treatment by the security forces were seldom, if at all, investigated during the rule of Ben Ali, leaving Tunisia with a legacy of impunity for those who committed or ordered torture. Such impunity is one of the factors that perpetuate the commission of torture in today's Tunisia.

Tunisian law must be brought in line with international standards to prevent torture and ensure that anyone responsible for such crime is held to account.

### URGENT REFORMS TO THE JUSTICE SYSTEM AND THE SECURITY FORCES NEEDED

As the cases of Faysal Baraket and Rachid Chammakhi so clearly demonstrate, tackling impunity for human rights violations cannot be achieved if the justice system and the security apparatus in Tunisia are not reformed, and transformed into tools for the protection of human rights rather than instruments of repression subservient to the authorities' interests.

Such reforms are making little progress. Tunisian civil society, survivors of human rights violations and Amnesty International are concerned at the slow pace of reforms and the lack of a comprehensive approach by the authorities to address the abuses of the past and put an end to impunity. Politically motivated trials which tarnished the image of the judiciary under Ben Ali appear to have resumed and Amnesty International has deplored the use of Ben Ali

era provisions to stifle dissent and quell criticism of the government's performance.

The Baraket family faced a number of obstacles in their efforts to obtain redress for the death of Faysal. These ranged from the judiciary refusing or avoiding to open thorough investigations and failing to act on evidence pointing to torture and to interview witnesses, to the authorities and the security forces colluding to cover-up the truth ensure they would not be held responsible. Faysal Baraket's case exposed the fundamental flaws in Tunisia's justice system and the extent to which security forces were unaccountable.

Although the exhumation of Faysal Baraket's body is an important step forward, the perpetrators of his torture are yet to be brought to justice. The Baraket family is worried that those responsible for his death may escape justice through obstruction by the security forces or the Ministry of Interior, their non-cooperation with the judicial investigation, or possible influence and pressure on the judiciary to stall the progress made so far.

Such concerns were also highlighted in the ongoing trials of members of the security forces and former high-ranking officials for the killings of and injury to thousands of persons during the 2010 and 2011 uprisings.<sup>28</sup> Lawyers for the victims have pointed at shortcomings in investigations and evidence-gathering. For instance, victims' lawyers requested without success records of communications between the Ministry of Interior and the security forces, and records of arms, munitions and other equipment given to the security forces. In some cases the security forces have been apparently reluctant to carry out summons and arrest warrants issued by the judiciary. Some members of the security forces accused have not been suspended from their positions pending investigations and prosecutions.

The court verdicts issued in first instance in these cases, which have been appealed, were also criticized as being inconsistent. For example, some high-ranking officials, including former President Ben Ali, convicted of complicity in murder received longer prison sentences than some lower-ranking defendants convicted of murder.<sup>29</sup> The military courts' judgments show the difficulties of holding high-ranking security officials in decision-making positions criminally accountable without material proof that they had knowledge of crimes committed by those under their command and that they gave orders to use lethal force. Tunisian law does not include the concept of command responsibility, which under international law makes commanders or superiors liable for crimes committed by those under their command if they knew, or had reason to know, such crimes had been or were going to be committed and failed to prevent or punish them.

With regards to the judiciary, the latest draft of a new Constitution, yet to be approved, fails to fully guarantee the independence of the judiciary from the executive, including that of the yet-to-be-created Supreme Judicial Council. Amnesty International is particularly concerned about the composition of the Supreme Judicial Council and that essential principles of security of tenure of judges and key fair trial guarantees are not explicitly guaranteed in the June 2013 draft for the Constitution.<sup>30</sup>

A Temporary Judicial Council pending the adoption of a new Constitution was created through a law passed by the National Constituent Assembly in May 2013. Before and during the debate on the draft law, concerns were also expressed at the potential interference of the executive in the nomination of members of the Temporary Judicial Council. However, the

establishment of this temporary body remedied a void since the 2011 uprisings which allowed the Minister of Justice to interfere in judges' appointment and career

Amnesty International also urges that judges are trained in carrying out prompt, independent and impartial investigations into all allegations of torture, and in cases of deaths in custody. The case of Faysal Baraket shows the failure of the judiciary in Tunisia to carry out investigations in accordance with the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. The authorities failed to conduct a thorough, prompt and impartial investigation as required by the UN Principles. The investigation opened into his case in 1992 failed to collect statements from witnesses and take into account information provided by Amnesty International, or to collect further documentary evidence. Faysal Baraket's autopsy report was falsified by the authorities in an attempt to conceal evidence that he had been tortured, preventing medical doctors from functioning impartially and independently. The authorities also repeatedly intimidated Faysal Baraket's relatives and witnesses throughout the years to ensure that investigations could not progress. Police officers of the Nabeul Police Station present when Faysal Baraket died were never suspended.

The case of Faysal Baraket also highlights the key role of forensic medicine in criminal investigations and the prosecution of perpetrators of torture. For the innumerable victims of torture in Tunisia to obtain justice, it is essential that the authorities strengthen the capacity of forensic pathologists in the country, and ensure that they are able to operate with professional independence, according to the principles laid out in the Istanbul Protocol – Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).<sup>31</sup> Judges should also be trained in the Istanbul Protocol to ensure that investigations are conducted in accordance with international human rights standards and supported by appropriate medical documentation of torture.

The lack of progress in addressing human rights violations by the security forces, particularly torture and ill-treatment in detention, and excessive or unnecessary use of force against demonstrators, remains a major threat hanging over Tunisia's future. While the feared Department of State Security was disbanded in 2011, concerns remain that some of its members have been integrated into other security forces. No comprehensive measures have been taken to ensure oversight of the security forces, or to establish vetting mechanisms to ensure that members of the security forces suspected to be responsible for human rights violations are suspended, pending investigations and prosecutions. Amnesty International has also received several testimonies in the past two years from persons complaining that they were tortured or otherwise ill-treated during demonstrations but who do not wish to file a complaint at the police station, as this would mean complaining to the very body they allege was responsible for the violations.

The opacity of the security forces and the lack of comprehensive and publicly available information as to the existing chain-of-command in security forces, and widespread concerns that personnel associated with abuses of the former government remain in place, are clear obstacles to truth and accountability.

## TRANSITIONAL JUSTICE

Although the Tunisian authorities took some steps to address some human rights violations after Ben Ali fled to Saudi Arabia in January 2011, these initiatives have remained *ad hoc* and disjointed.

The authorities released hundreds of political prisoners held by the previous government, and issued a law stipulating that former political prisoners had a right to be reintegrated in their previous employment and to reparation. Some prisoners were reintegrated but no clear action was taken to provide reparation, in the face of criticisms by political opposition that reparations, including financial compensation, would primarily benefit Ennahda supporters, who bore the brunt of the repression orchestrated under Ben Ali.

The authorities mainly focused their efforts on addressing human rights violations committed in the context of the December 2010 and January 2011 uprising, during which at least 338 protesters were killed and more than 2,000 injured by the security forces. A "National Fact Finding Commission on Abuses Committed from December 17, 2010 to the End of its Mandate" investigated such human rights violations, and recommended the creation of a truth commission. The authorities granted financial compensation for relatives of persons killed and those injured during the uprising, and put in place some measures to provide medical treatment and care. In December 2012, the NCA voted a law to improve support to persons injured during the uprising. Such initiatives were criticized by victims of human rights violations committed before the uprising, as they did not apply to them. For instance, victims of state repression in response to protests in the south-east mining region of Gafsa in 2008 argued that these protests paved the way for the 2010 and 2011 uprising and that they should also be considered as "martyrs", further highlighting the need for comprehensive measures to deal with the legacy of decades of repression.

The Ministry for Human Rights and Transitional Justice has attempted to address such shortcomings and criticisms in the law on transitional justice it drafted in 2012, following consultations with civil society in Tunis and different regions of Tunisia on truth, reparations, trials and reforms.

Amnesty International welcomes the involvement of civil society in discussions on establishing a transitional justice mechanism, but notes that several organizations are frustrated at the lack of continuous engagement by the authorities. In building a transitional justice framework, the Tunisian authorities must ensure that victims of human rights violations and civil society organizations are fully and regularly consulted.

The draft transitional justice law has been under consideration at the NCA since January 2013 and has yet to be passed. It was debated at the NCA in June 2013, but the NCA's work was suspended after the killing of opposition politician Mohamed Brahmi on 25 July.

The draft law sets out the principles and process of transitional justice in Tunisia, and creates a Truth and Dignity Commission. The proposed mandate of the Truth and Dignity Commission is to investigate human rights violations committed in Tunisia since 1955, receive complaints from victims, identify state agencies responsible for such violations, develop standards for reparation and redress, and formulate recommendations for reforms, including in the judicial and security sectors. The Truth and Dignity commission is also

tasked with recommending measures to preserve national memory, and perpetuate the memory of victims of human rights violations.

The draft law contains many positive features. However, the law should be seen as part of a broader human rights agenda to address impunity for human rights violations, ensure accountability for perpetrators of human rights violations, and reparations to victims. However an overhaul of the justice system and the security sector are essential for the rule of law to prevail in Tunisia and human rights to be respected. Amnesty International urges the Tunisian authorities to adopt a transitional justice framework that effectively and comprehensively articulate the following elements, without any limitation: truth, criminal justice, reparation and guarantees of non-recurrence.

It is envisaged that the Truth and Dignity Commission will also have functions of developing a comprehensive program of reparations. The creation of a Dignity and Rehabilitation Fund is proposed, and the Truth and Dignity Commission will put forward measures to implement the reparations program. The Commission will also include an Arbitration and Reconciliation Committee which can initiate an arbitration process if the victim consents to it, on the human rights violations it investigated, as well as cases of corruption. This committee could issue an arbitration agreement, stating the facts, the nature of the violations suffered, those responsible, and the damage and remedies.

The UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, who visited Tunisia in November 2012, expressed concern at the ambitious functions proposed for the Truth and Dignity Commission, both regarding the implementation of a reparations program, and the creation of an Arbitration and Reconciliation Committee that will also look at corruption cases. The Special Rapporteur voiced his concern that this broad mandate could overburden the commission and distract it from its core mandate to establish the truth regarding human rights violations.<sup>32</sup>

Amnesty International believes that flaws in the draft law should be addressed to ensure the Truth and Dignity Commission is effective.<sup>33</sup>

Article 2 of the draft law provides that all citizens have the right to know the truth about human rights violations, "without prejudice to the protection of personal data". While protection of personal data is indeed important, it should not be used as an excuse to prevent publishing information on human rights violations the Commission investigates, referring cases to the prosecution, or giving crucial evidence to victims of abuses. This would undermine the essence and objective of achieving the truth.

The draft law states that specialized sections in law courts should be created to investigate serious violations of international human rights treaties ratified by Tunisia, including murder, rape and any form of sexual violence, torture, enforced disappearances, and executions without fair trial guarantees. Amnesty International underlines the importance of investigating all human rights violations, including arbitrary and secret detentions as well as cruel, inhuman and degrading treatment or punishment.

Amnesty International welcomes that the draft law stresses the principle of accountability for human rights violations. The draft law clearly states that judicial redress for past human

rights violations will fall within the remit of the judiciary and that the Truth and Dignity Commission would transfer information showing grave human rights violations to the Public Prosecutor. Article 9 of the draft law provides that judicial proceedings for human rights violations would not be limited in time,<sup>34</sup> which Amnesty International welcomes. The authorities should also ensure that national laws are amended to remove statutes of limitation for all serious human rights violations and other crimes under international law.

Article 11, which provides that reparation for victims of human rights violations is a right guaranteed in law, and that the state is responsible for granting adequate reparation commensurate to the gravity of the violation and “the status of each victim”, should be improved. The clause mentioning the “status of each victim” should be removed, as it could be interpreted to refer to the economic or social status of the victims. The law should emphasise that reparation will be based on the nature and degree of violations; on the fundamental principle of non-discrimination; and on the basis of rehabilitation and reintegration of victims and/or their families back into society.

According to the draft law, the Truth and Dignity Commission will be composed of 15 members, with no less “than a third of either of the sexes represented”, selected by the National Constituent Assembly. The commission will include two representatives of victims' associations and two representatives of human rights organizations, nominated by their associations. The members of the commission will be well-known personalities of neutrality, impartiality and efficiency.

Amnesty International stresses the importance of ensuring women's representation in the composition of the commission, particularly given concerns in Tunisia that human rights violations experienced by women have not benefited from the same attention as those experienced by men, and that discrimination against women in law and practice continues.

The draft law should also explicitly mention human rights expertise as a criterion for the selection of the commission's members, as well as proven independence and recognized impartiality.

In addition, civil society should be fully consulted and involved in discussions on the establishment, mandate and powers of the commission. The UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, suggested that, given the climate of political tensions and victims mistrust in Tunisia, further safeguards could be introduced to ensure civil society's involvement in the selection of commission members. He recommended a clearer nomination process, public hearings by the NCA of short-listed candidates, and changes to the appointment procedure to ensure that no partisan affiliations influence the selection process.

The draft law indicates that the mandate of the commission will be to identify state agencies or any other parties responsible for violations covered by the provisions of this law, to clarify the factors that facilitated the violations and offer solutions that prevent recurrence in the future. Amnesty International recommends that as part of its work, the commission should gather information indicating individual criminal responsibility, which it should forward on a confidential basis to the relevant prosecution authorities for further investigation, with a view to bringing suspected perpetrators of crimes under international law to justice in fair

proceedings without recourse to the death penalty. The commission should also seek to establish how the commission of human rights violations was entrenched and systematized in Tunisia, and the responsibilities not only of those who committed human rights violations, but also of those who ordered them or acquiesced, shedding light on the chain-of-command and the mechanism which allowed so many human rights violations.

The draft law provides that commission members are committed to maintaining professional secrecy and that they are not allowed to disclose the work of the commission or publish it outside official reports and data. Amnesty International recommends that these provisions are clarified to ensure that all aspects of the work of the commission will be made public, that the media and the public are given access to the proceedings and information on which the commission bases its findings. A specific provision should be added to the law to provide that confidentiality may be required to protect the rights of individual victims and witnesses and the rights of suspected perpetrators.

The draft law sets out that the commission can take all appropriate measures to protect witnesses, victims and experts and all those who provide information or testify, including security measures and protection mechanisms. Amnesty International welcomes this provision and recommends that the commission establishes a comprehensive, long-term and effective victim and witness protection programme as the country lacks a specific legal framework to protect victims and witnesses of human rights violations.<sup>35</sup>

The draft law stipulates that the commission's work will span over four years from its start date, which can be extended for one year at the request of the commission to Parliament. Initial discussions at the NCA in June 2013 included a proposition that the commission is established for five years, non renewable. The draft law states that the commission will prepare annual reports to parliament and publish a comprehensive report at the end of its mandate.

Amnesty International believes that truth commissions should be given sufficient time to carry out their mandate. In order to avoid the possibility of losing momentum and public attention, as well as ensuring that the right of victims to truth is respected, the commission could produce interim reports, outlining progress made and obstacles encountered to help maintain communication with the victims and their families, authorities, civil society organizations and the general public. It should also ensure that such information is made available in all regions of Tunisia, in a context where the interior regions have felt marginalized for decades. The law should explicitly require that the findings and recommendations of the Truth and Dignity Commission are made public.

The draft law also specifies that the government must submit plans and proposals to parliament to implement the commission's recommendations within a year of the end of its mandate. This clause should be strengthened and stipulate that the government should explicitly commit to implement the recommendations of the commission. The establishment of a new body tasked with monitoring the implementation of Truth and Dignity Commission's recommendations could be envisaged, as well as continuing investigations if needed, preserving archives, and following-up on the reforms needed to ensure truth, justice and reparation.



The draft law remains succinct on the need for an overhaul of the justice system and the security apparatus. For too long Tunisians have been abused by members of the security forces and the judiciary did not offer redress for victims of human rights violations; rather, it was keen to toe the government's line. In order for the right of victims to justice to be fully realized, and for judicial redress for human rights violations to be implemented, the authorities must devise a long term and comprehensive plan, which should also address institutional reforms, prosecutions and vetting of security forces members and other officials who have committed, colluded in or ordered torture and other human rights violations.

## THE NEED FOR ADEQUATE SAFEGUARDS AGAINST TORTURE

After the ousting of former President Ben Ali, the Tunisian caretaker government, and subsequently the transitional authorities elected in October 2011, took some steps to improve the legal framework protecting human rights. Articles criminalizing torture in the Penal Code were amended in an attempt to bring them in line with international standards. However, the new law includes a statute of limitations of 15 years, even though under international human rights law, torture is a crime for which there is no statute of limitation.

The Tunisian authorities also ratified the First Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). A draft law is being considered by the National Constituent Assembly (NCA) to create a National Authority for the Prevention of Torture.

This draft law, introduced at the NCA in December 2012, and debated several times, has yet to be passed, like several other laws and a new Constitution for Tunisia. While it is important that draft laws are the subject of debate, notably if this leads to improved protections for human rights, many Tunisians are frustrated at the length of time taken by the authorities since the uprising to put in place an adequate and effective framework to protect human rights. Many have questioned the reasons behind such lack of progress, and have argued that improving human rights protections are not a priority of the transitional authorities. The current political crisis, prompted by the second killing in 2013 of an opposition politician, Mohamed Brahmi,<sup>36</sup> five months after the assassination of Chokri Belaid, has resulted in the suspension of the work of the NCA, and growing uncertainty as to the transitional process and when necessary reforms will be enacted.

Despite positive features, the draft law on the National Authority for the Prevention of Torture contains several flaws.

The mandate of the National Authority for the Prevention of Torture should include not only torture, but also all types of cruel, inhuman and degrading treatment or punishment. The latest published draft of the new Constitution of June 2013 also omits to mention other cruel, inhuman and degrading treatment or punishment in the provision prohibiting torture.<sup>37</sup>

The draft law should cover any form of deprivation of liberty, that is any situation where a person is prevented from leaving at will either by an order given by a public authority or at its instigation or with its consent or acquiescence as stipulated in Article 4(1) of OPCAT. Similarly, it should make clear that "places of detention" include a broad definition of those places, and cover any place under the state party jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence, according to Article 4(1) of OPCAT.

A specific provision should be added to the draft law to clarify that the authorities will duly

examine the National Authority's recommendations and enter into a dialogue with it regarding their implementation, as stated in Article 22 of OPCAT.<sup>38</sup>

Article 3 of the draft law, which sets out the mandate of the National Authority for the Prevention of Torture, provides for it to have preventive and investigative functions. It would be preferable for two separate bodies, or units to carry out these different functions, as recommended by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>39</sup>

Amnesty International is also concerned that the draft law's provisions that the members of the National Authority for the prevention of torture are bound by confidentiality ("secret professionnel", Articles 9 and 23 of the draft law) are too broad. They could potentially be interpreted as preventing them from publishing information about their work, observations made during visits to detention centres and even recommendations to the government. While sensitive information such as personal data should be kept confidential (unless the person concerned explicitly consents to its disclosure) as foreseen by Article 21(2) of OPCAT, aggregated information and observations, allowing the personal data to be truly anonymous, as well as recommendations made by the body, should be made public if and when it decides to do so. The law should instead include a specific provision to reflect article 21(2) of OPCAT, which provides for safeguards on confidentiality.<sup>40</sup>

Article 13 grants the authorities the power to refuse a request for information by the National Authority on the condition that "it is justified, temporary and linked to defence or national security issues, or an imminent danger or a critical state of health" and that the decision is notified in writing. This provision is open to abuse, and would severely undermine the very purpose of the National Authority. OPCAT does not foresee such restrictions. In addition, should the refusal of a request by the National Authority for the Prevention of Torture amount to any form of participation in crimes under international law such as torture and enforced disappearance, the draft law should set out that a refusal to provide such information could entail criminal prosecution.

Article 14, which states that persons giving information about torture to the National Authority should not be prosecuted or charged should be strengthened to ensure that they face no sanctions or reprisals on account of the information they submit.<sup>41</sup>

Articles 21 and 22 provide for benefits of National Authority for the Prevention of Torture members and for the status of its staff to be regulated by decree. These provisions raise serious concerns in terms of functional independence of the body as well as independence of its personnel. The National Authority for the Prevention of Torture must be independent and seen as independent.<sup>42</sup> For this reason, salaries and potential benefits of the members of the National Authority should not be decided by the executive but by Parliament.

The creation of a national mechanism for the prevention of torture or other ill-treatment would be a step forward towards the eradication of such crimes in Tunisia. However, other safeguards need to be introduced to prevent the commission of torture or other ill-treatment, in particular to ensure that persons arrested by the security forces are protected against torture.

According to Article 13bis of Tunisia's Code of Criminal Procedure, the period of *garde à vue* (pre-arraignment detention) can last up to three days, a period which can be renewed once for a further three days by the prosecutor, who can also order a medical examination of a suspect within four days. According to the same article, the judicial police must ensure

detainees are examined by a doctor upon their request or the request of their relatives. In practice, the legal period of *garde à vue* detention was often not respected by the detaining authorities, who falsified detainees' arrest dates in official documents in order to conceal the real duration of their detention and detaining authorities' breaches of the law. This practice was denounced by Amnesty International throughout the 1990s and up to 2009, in the context of terrorism-related cases.<sup>43</sup>

Tunisian law must be amended to ensure that the period of *garde à vue* is shortened and that detainees have prompt access to a lawyer. The Tunisian authorities must also ensure that the detaining authorities respect the legal period of *garde à vue* detention.

## 6. CONCLUSION AND RECOMMENDATIONS

The relatives of Faysal Baraket have struggled for 22 years for truth and justice. Although concrete steps to investigate the circumstances of Faysal Baraket's death in custody were made in 2013, they have not yet led to those responsible for his death being tried. Much remains to be done to tackle impunity for past human rights violations, and to ensure guarantees of non-recurrence of such violations. The Tunisian authorities must not only fully and transparently investigate human rights violations and ensure justice and adequate reparations for the victims but they must also put in place effective safeguards against torture, establish without delay a transitional justice framework, and push through a comprehensive human rights agenda to tackle impunity for human rights violations, which must include reforms of the justice system and the security apparatus.

Amnesty International is calling on the Tunisian authorities to:

- Fully and transparently investigate the deaths in custody of Faysal Baraket, Rachid Chammakhi, and all cases of human rights violations committed in Tunisia for decades and ensure that any member of the security forces and officials who have committed or ordered torture are brought to justice in fair trials, without recourse to the death penalty;
- Ensure that any allegation of torture or ill-treatment is promptly, independently and impartially investigated, including by ensuring prompt medical examinations of persons alleging torture and ill-treatment by independent medical doctors. Victims, relatives and their lawyers should have access to the records of such examinations;
- Ensure that all investigations into suspicious deaths are carried out according to the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions;
- Strengthen forensic expertise capacity to investigate unnatural deaths and allegations of torture or other ill-treatment and ensure sufficient training on the standards and implementation of the Istanbul Protocol;
- Suspend, pending full investigations and the conclusion of judicial proceedings, all

members of the security forces who are suspected of having committed or ordered human rights violations;

- Co-operate fully with investigations into human rights violations, including by ensuring that summons and arrest warrants for members of the security forces suspected of involvement in human rights violations are being carried out;
- Adopt a comprehensive transitional justice framework which puts at its heart victims of human rights violations and upholds their right to truth, justice, reparation and guarantees of non-recurrence;
- Strengthen the draft law on transitional justice, in order to ensure that the Truth and Dignity Commission is effective in achieving its principal objective to establish the truth for human rights violations committed in Tunisia and ensure accountability, up and down the chain-of- command. In particular it must have the power to summon officials to obtain information and documentation, and compel officials and witnesses to testify. The law should guarantee the protection of victims, their relatives and witnesses who might face threats, intimidation and reprisals.
- Guarantee and respect the principle of the independence of the judiciary from the executive branch in the new constitution including the security of tenure of judges; establish a High Judicial Council tasked with appointing, promoting, transferring and where necessary, disciplining and dismissing magistrates that is independent in its composition, functions and funding;
- Bring Tunisian law into line with international human rights standards, including removing the statute of limitation for the crime of torture; introducing safeguards to protect persons under police custody; ensuring that the new constitution provides for a definition of torture that complies with Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and that explicitly prohibits other cruel, inhuman or degrading treatment or punishment; establishing without further delay an independent national mechanism to prevent torture, in line with the Optional Protocol to the Convention against Torture;
- Undertake a comprehensive overhaul of the security apparatus and make public a clear structure of the security branches including chain of command;
- Establish an oversight body to hold security forces to account for any abuses.

## 7. ENDNOTES

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<sup>1</sup> Also spelt "Faisal Barakat" in previous Amnesty International documents. See *Tunisia: Prolonged Incommunicado Detention and Torture* (index: MDE 30/004/92, <http://www.amnesty.org/en/library/asset/MDE30/004/1992/en/7de243c2-f93b-11dd-92e7-c59f81373cf2/mde300041992en.pdf>), 4 March 1992; *Tunisia: Rhetoric versus reality* (Index: MDE 30/01/94, <http://impact22.amnesty.org/en/library/asset/MDE30/001/1994/en/b7a1d6f4-f8c7-11dd-b40d-7b25bb27e189/mde300011994en.pdf>), January 1994.

<sup>2</sup> Union générale tunisienne des étudiants

<sup>3</sup> *Faisal Barakat and family v Tunisia*, Communication No. 14/1994, U.N. Doc. A/50/44 at 70 (1995).

<sup>4</sup> Amnesty International Reports, *Tunisia: Deaths in custody during garde à vue detention* (Index: MDE 30/22/91, <http://www.amnesty.org/en/library/asset/MDE30/022/1991/fr/d6e7bc55-f93f-11dd-92e7-c59f81373cf2/mde300221991en.pdf>), October 1991; *Tunisia: Prolonged Incommunicado Detention and Torture* (index: MDE 30/004/92, <http://www.amnesty.org/en/library/asset/MDE30/004/1992/en/7de243c2-f93b-11dd-92e7-c59f81373cf2/mde300041992en.pdf>), 4 March 1992; *Tunisia: Rhetoric versus reality* (Index: MDE 30/01/94, <http://impact22.amnesty.org/en/library/asset/MDE30/001/1994/en/b7a1d6f4-f8c7-11dd-b40d-7b25bb27e189/mde300011994en.pdf>), January 1994.

<sup>5</sup> Law 87/70 of 26 November 1987, which revised Article 13 of the Criminal Procedure Code, limited the period during which a suspect might be detained without access to lawyer and family to 10-day maximum. Under this law, *garde à vue* detention in the hands of the police was limited to an initial four-day period, after which an extension could be obtained from the *Procureur de la République* (giving a decision in writing), once for a further four-day period and, "in case of absolute necessity", for a further period of two days (Article 13bis of the Criminal Procedure Code). See Amnesty International Report, *Tunisia: Prolonged Incommunicado Detention and Torture*, 4 March 1992. This law was revised by Law 99-90 of 2 August 1999, which limits the period of *garde à vue* detention to three days, after which it could be renewed once only by the *Procureur de la République* for a further three days.

<sup>6</sup> Amnesty International, *Tunisia: Rhetoric versus reality*, January 1994

<sup>7</sup> Amnesty International, *Tunisia: Deaths in custody during garde à vue detention* (Index: MDE 30/22/91), October 1991

<sup>8</sup> The Tunisian External Communication Agency was the media through which the Tunisian government was making statements, including for instance responding to Amnesty International's reports.

<sup>9</sup> Amnesty International, Urgent Action, Further information on UA 352/91 (MDE 30/25/91, 21 October) - Tunisia: death in custody: Faisal Barakat (Index: MDE 30/002/1992), January 1992.

<sup>10</sup> Report of 28 February 1992 by Mr. Derrick Pounder, Professor of Forensic Medicine at the University of Dundee (United Kingdom) at the request of Amnesty International, on file with Amnesty International

<sup>11</sup> *Tunisia: Prolonged incommunicado detention and torture* (Index: MDE 30/03/1992).

<sup>12</sup> Now the Office of the High Commissioner for Human Rights in Geneva.

<sup>13</sup> *Procureur de la République*

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- <sup>14</sup> Amnesty International, *Tunisia: Rhetoric versus reality* (Index: MDE 30/01/94), January 1994, <http://impact22.amnesty.org/en/library/asset/MDE30/001/1994/en/b7a1d6f4-f8c7-11dd-b40d-7b25bb27e189/mde300011994en.pdf>
- <sup>15</sup> Khaled Ben M'barek is now an adviser to the current Tunisian President, Moncef Marzouki.
- <sup>16</sup> Centre d'Information et de documentation sur la Torture en Tunisie (CIDT).
- <sup>17</sup> *Faisal Barakat and family v. Tunisia*, Communication No. 14/1994, U.N. Doc. A/50/44 at 70 (1995).
- <sup>18</sup> *Faisal Barakat and family v. Tunisia*, Communication No. 14/1994, U.N. Doc. A/50/44 at 70 (1995).
- <sup>19</sup> *Barakat v. Tunisia*, Communication No. 60/1996, CAT/C/23/D/60/1996.
- <sup>20</sup> *Barakat v. Tunisia*, Communication No. 60/1996, CAT/C/23/D/60/1996.
- <sup>21</sup> *Barakat v. Tunisia*, Communication No. 60/1996, CAT/C/23/D/60/1996.
- <sup>22</sup> Communication No 60/1996: Tunisia 24/01/2000, CAT/C/23/D/60/1996. See: <http://www.unhchr.ch/tbs/doc.nsf/0/00c2952fe36f0b46802568b8004e05de?Opendocument>
- <sup>23</sup> Amnesty International, "Tunisia: Ten years on - no justice for Bab Saadoun and Bouchoucha prisoners while civilians continue to be brought before military courts" (Index: MDE 30/015/2002), August 2002.
- <sup>24</sup> Amnesty International, *The cycle of injustice* (Index: MDE 30/001/2003), June 2003.
- <sup>25</sup> Abdallah Kallel was detained in 2011 and tried in various cases, including the case known as the "Baraket Essahel" case, which involved many army officers tortured in 1991. In November 2011, Abdallah Kallel was sentenced to four years' imprisonment on charges of "using violence against others either directly or through others". In April 2012, his sentence was reduced on appeal to two years' imprisonment. He was released in July 2013.
- <sup>26</sup> Report by the Special Rapporteur on torture and cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, following his visit to Tunisia in May 2011, A/HRC/19/61/Add.1, and the report by Action des chrétiens pour l'abolition de la torture (ACAT-France) in collaboration with Liberté et Équité and the Organization against torture in Tunisia (OCTT): *Vous avez dit justice? Etude du phénomène tortionnaire en Tunisie*, June 2012.
- <sup>27</sup> Amnesty International, *One step forward, two steps back? One year since Tunisia's landmark elections* (Index: MDE 30/010/2012), October 2012, <http://www.amnesty.org/fr/library/info/MDE30/010/2012/en>
- <sup>28</sup> Amnesty International, *One step forward, two steps back? One year since Tunisia's landmark elections* (Index: MDE 30/010/2012), October 2012, <http://www.amnesty.org/fr/library/info/MDE30/010/2012/en>
- <sup>29</sup> In June 2012, former President Ben Ali was sentenced to life imprisonment for complicity in murder, for the killings of protesters in Thala and Kasserine, by the Kef Military Tribunal. He was also sentenced to 20 years in prison for incitement to use arms and provoke sedition in the case of the killings of four people in the town of Ouardanine. In July 2012, the Tunis Military Tribunal also convicted and sentenced him to imprisonment in the case of the killings of 43 protesters in the Tunis region.
- <sup>30</sup> For detailed concerns regarding the independence of the judiciary in the draft of the constitution, please see Amnesty International Briefing, *Last opportunity for Tunisian lawmakers to enshrine human rights for all in Tunisia's new Constitution* (Index: MDE 30/005/2013), 5 June 2013, <http://www.amnesty.org/en/library/asset/MDE30/005/2013/en/10fae36f-a04f-4237-9767->

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[b0ca42225178/mde300052013en.pdf](http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf)

<sup>31</sup> *Istanbul Protocol: Manual on the Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Geneva, 2004, <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>

<sup>32</sup> Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, Mission to Tunisia (11-16 November 2012), A/HRC/24/42/Add.1

<sup>33</sup> For Amnesty International's recommendations on the establishment of truth commissions, see Amnesty International, *Truth, justice and reparation: Establishing an effective truth commission* (Index: POL 30/009/2007), June 2007, <http://www.amnesty.org/en/library/asset/POL30/009/2007/en/7988f852-d38a-11dd-a329-2f46302a8cc6/%20pol300092007en.html> and *Checklist for the establishment of an effective truth commission* (Index: POL 30/020/2007), <http://www.amnesty.org/en/library/asset/POL30/020/2007/en/fb484945-d36c-11dd-a329-2f46302a8cc6/pol300202007en.pdf>

<sup>34</sup> This means that there should be no statute of limitations for crimes such as torture.

<sup>35</sup> Amnesty International Public Statement, "Tunisian authorities must protect victims and their families in former officials' trial" (Index: MDE 30/003/2012), 12 February 2012: <http://www.amnesty.org/en/library/info/MDE30/003/2012/en>

<sup>36</sup> Amnesty International, "Tunisia: Urgent need for investigation into Chokri Belaid's killing", 6 February 2013, <http://www.amnesty.org/en/news/tunisia-urgent-need-investigation-chokri-belaid-s-killing-2013-02-06>) and Tunisia, Critical need for justice after second political killing this year, 25 July 2013, <http://www.amnesty.org/en/for-media/press-releases/tunisia-critical-need-justice-after-second-political-killing-year-2013-07-2>

<sup>37</sup> Amnesty International, *Last opportunity for Tunisian lawmakers to enshrine human rights for all in Tunisia's new Constitution* (Index MDE 30/005/2013), 5 June 2013, <http://www.amnesty.org/en/library/asset/MDE30/005/2013/en/10fae36f-a04f-4237-9767-b0ca42225178/mde300052013en.pdf>

<sup>38</sup> Article 22 of OPCAT states: "The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures". The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has for instance recommended that the state authorities and the National Prevention Mechanism enter into a follow-up process with a view to the implementation of any recommendations which the National Prevention Mechanism may make ( Guidelines on national preventive mechanisms, CAT/OP/12/5, paragraph 13)

<sup>39</sup> Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Guidelines on national preventive mechanisms, CAT/OP/12/5, paragraph 32 (<http://www2.ohchr.org/english/bodies/cat/opcat/mechanisms.htm>), states: "Where the body designated as the NPM performs other functions in addition to those under the Optional Protocol, its NPM functions should be located within a separate unit or department, with its own staff and budget."

<sup>40</sup> Article 21(2) of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment states: "Confidential information collected by the national



preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.”

<sup>41</sup> Article 21(1) OPCAT states: “1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.”

<sup>42</sup> Article 18(1) of OPCAT states: “The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.”

<sup>43</sup> Amnesty International Reports, *In the Name of Security: Routine Abuses in Tunisia* (AI Index MDE 30/007/2008), June 2008, <http://www.amnesty.org/en/library/asset/MDE30/007/2008/en/b852a305-3ebc-11dd-9656-05931d46f27f/mde300072008eng.pdf>; and *Tunisia: continuing abuses in the name of security* (AI Index MDE 30/010/2009), August 2009, <http://www.amnesty.org/en/library/asset/MDE30/010/2009/en/5215d731-d6ec-4a2d-ad72-ab8244c7040e/mde300102009eng.pdf>



## **TUNISIA: WHEN BONES SPEAK**

### **THE STRUGGLE TO BRING FAYSAL BARAKET'S TORTURERS TO JUSTICE**

On a grey, rainy 1 March 2013 in the small town of Manzil Bouzalfa in Nabeul governorate, the exhumation of Faysal Baraket, a young man who had been tortured to death in custody over two decades earlier, took place. For his family, it was a moment of deep sadness and distress but it was also a moment of hope in their long struggle for truth and justice. As the skeleton, wrapped in black plastic sheeting and a white shroud, was brought to the surface, relatives and friends were overcome with emotion.

Among those witnessing the exhumation were Faysal's brother Jamal and other members of the family, and Dr Derrick Pounder, Professor of Forensic Medicine at the University of Dundee in the UK, who had reviewed the report of Faysal Baraket's autopsy on behalf of Amnesty International back in 1992. For the Amnesty International delegates at the graveside, the moment represented a milestone in the organization's 22-year campaign for justice for Faysal Baraket's family, and for accountability for all perpetrators of human rights violations in Tunisia.

Indeed, the death under torture of Faysal Baraket had become emblematic of the brutal treatment meted out to political detainees in Tunisia under the rule of President Zine al Abidine Ben Ali, and of the authorities' persistent denial that torture had become a method to run the country, and refusal to hold torturers to account for their crimes, even in the face of irrefutable evidence of torture.

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