

# TUNISIA

CONTINUING ABUSES IN  
THE NAME OF SECURITY

**AMNESTY**  
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# 1. INTRODUCTION

**“The definition of terrorist acts should not lead to interpretations allowing the legitimate expression of rights enshrined in the Covenant [on Civil and Political Rights] to be violated under the cover of terrorist acts. The State party should ensure that the measures taken to combat terrorism are in conformity with the provisions of the Covenant (arts. 6, 7, 14). ”**

Para 15, UN Human Rights Committee, March 2008

The UN Human Rights Committee (HRC) issued the above statement in March 2008 after examining Tunisia’s fifth periodic report on its implementation of the International Covenant on Civil and Political Rights (ICCPR). The Committee expressed concern about the Tunisian authorities’ use of anti-terrorism legislation to restrict the legitimate exercise of freedom of expression and other rights and in its recommendations, urged the Tunisian government to respect human rights and abide by its international human rights obligations when combating terrorism. More than a year later, the Tunisian authorities do not appear to have implemented these recommendations of the HRC. On the contrary, the measures taken by the Tunisian authorities to “combat terrorism and extremism” and prevent the emergence of what they describe as “terrorist cells” have been accompanied by further, serious human rights violations, including arbitrary arrests and detentions, torture and other ill-treatment and unfair trials.

In a speech in December 2008 marking the 60<sup>th</sup> anniversary of the Universal Declaration of Human Rights, Tunisian President Zine El Abidine Ben Ali declared “the values and principles of human rights are so supreme that they cannot be exploited to serve certain interests; they are so noble that they cannot be used to

serve political ends”.<sup>1</sup> At UN and other international meetings, Tunisian government representatives continue to seek to present Tunisia as a country in which human rights are respected and upheld. The reality, however, is far different.

In practice, the Tunisian authorities continue to demonstrate little regard for human rights, constantly harassing human rights defenders and impeding their legitimate activities, and employing counter-terrorism measures that lead directly to serious violations of human rights. As recently as May 2009, at a meeting with the US Deputy Assistant Secretary of Defense for African Affairs, Theresa Whelan, Tunisian Defence Minister Kamel Morjane declared that the government was committed to “fighting all forms of extremism and terrorism” and to “universal values of liberty, stability, democracy and respect for human rights”.<sup>2</sup> In practice, however, human rights have been routinely flouted, with drastic impact on the lives of those affected.

The authorities continue to use their “security and counter-terrorism” concerns to justify arrests and other repression of Islamists, and political dissent in general – including the rights to freedom of expression, association and assembly – and arrests and harassment of alleged Islamist youth are common. At the same time, the government’s preoccupation with the rhetoric of counter-terrorism and security has enabled it to strengthen Tunisia’s cooperation with other states and attract international assistance.

This short report describes human rights violations committed in Tunisia in the past year in the name of counter-terrorism and security and updates information in Amnesty International’s report, *In the Name of Security: Routine Abuses in Tunisia* (AI Index MDE 30/007/2008), published in June 2008. That report described a pattern of human rights violations including arbitrary arrests, incommunicado detention and enforced disappearances; torture and other ill-treatment; unfair trials, including before military courts; and abuses in prisons as well as abuses against Tunisian nationals forcibly returned from abroad.

The Tunisian government rejected Amnesty International’s report, stating that it considered it “totally subjective and devoid of any credibility”, and denied that allegations of torture are not investigated and that security officials are allowed to abuse the law with impunity. One year on, however, the Tunisian authorities have yet to provide any information indicating that detainees’ torture allegations are adequately investigated or about any prosecutions of officials responsible for torture and other ill-treatment of detainees and prisoners, and such abuses continue to be alleged. Indeed, the pattern of human rights violations remains unchanged and none of the measures recommended by Amnesty International to address this grave situation have been implemented by the Tunisian government.

Despite this and the recent ruling by the European Court of Human Rights that Tunisian nationals abroad should not be returned involuntarily to Tunisia due to the risk of torture or other serious human rights violations, several Tunisian terrorism suspects have been sent to Tunisia by the Italian authorities during the past year and at least 18 other Tunisian nationals are at risk of such return from Italy and

other European countries. Those forcibly returned during the past year were all arrested on arrival by the Tunisian authorities. The Tunisian government is also seeking the extradition of two Tunisians held in US detention facilities at Guantánamo Bay, Cuba, and Bagram, Afghanistan, and have indicated their willingness to receive back any Tunisians held by the US at Guantánamo, where 10 Tunisians are currently reported still to be detained.

This short report also updates cases described in Amnesty International's report of June 2008 and provides information about new arrests under the Tunisian government's counter-terrorism policy and of Tunisian nationals who have been tried and sentenced for terrorism-related offences in Tunisia after being forcibly returned from abroad. It shows that, contrary to the Tunisian government's stated commitment to human rights and its international obligations, the human rights situation remains bleak and serious violations of human rights remain common.

Amnesty International is now reiterating its calls to the Tunisian government and to other governments to implement the recommendations listed in its 2008 report, in particular:

- The **Tunisian authorities** must ensure that all allegations of torture and other ill-treatment are promptly, fully and independently investigated, with the outcome made public and officials responsible for torture or other serious abuses being held accountable and prosecuted before the courts, in conformity with international law.
- **European and other governments** should not forcibly return to Tunisia any Tunisians who would be at risk of torture or other serious human rights violations.
- The **US** government should not return to Tunisia any Guantánamo or Bagram detainees or other Tunisians who would be at risk of torture or other serious human rights violations, either directly or via third countries such as Italy.

## 2. NEW LEGAL DEVELOPMENTS – INSUFFICIENT AND WITHOUT IMPACT

Although several legal amendments have been introduced in the past year, the description of Tunisian law and its failure to protect human rights given in Amnesty International's June 2008 report remains valid and the legal changes introduced over the past year have had little or no impact. Law No. 21 of 2008 amended Article 13bis of the Code of Penal Procedure (CPP) concerning pre-arraignment police custody (*garde à vue*), Article 57 concerning actions by investigating judges, and Article 85 concerning preventive detention. As a result of these amendments, public prosecutors and investigating judges must now give reasons when authorizing extensions of the normal *garde à vue* period for a further three days and when ordering the period of pre-trial detention to be extended. In addition, Law No. 75 of 2008 also amended the CPP in relation to pre-trial detention, requiring the investigating judge and the accusation chamber to grant release on bail, in specific cases, so as not to exceed the maximum preventive detention period prescribed in law.

In addition, the Tunisian parliament approved in July 2009 new amendments to the controversial and much-criticized 2003 anti-terrorism law. While these amendments have not been published in the Official Journal at the time of writing, their key components have been reported in the Tunisian media. The new amendments reportedly annulled provisions keeping secret the identity of judges and prosecutors in counter-terrorism trials (Article 52) and provisions classifying incitement to hatred as terrorist acts, unless accompanied with acts of intimidation (Article 6).<sup>3</sup> They follow repeated criticism of the 2003 law by UN human rights bodies and international and national human rights non-governmental organizations.<sup>4</sup> However, the vague definition of terrorism acts contained in the law remains unchanged and it may still be used to criminalize freedom of expression, association and assembly.

While these reforms are welcome, they remain insufficient. In addition, torture remains pervasive in detention centres, particularly in the State Security Department, and no legal reform has been introduced to ban unequivocally the use of information and statements obtained under torture as evidence in courts to secure convictions. While judges continue to have discretion to determine whether "confessions" allegedly made under torture or other ill-treatment should be accepted as evidence, they continue to accept statements which defendants allege were obtained under torture without taking adequate steps to assess the defendants'

allegations.

The judiciary lacks independence and remains effectively subservient to the executive branch of government, particularly in politically-sensitive cases, despite the authorities' assertions to the contrary.

Despite the longstanding evidence of misuse of detention laws, torture and other ill-treatment of suspects and unfair trials, the Tunisian authorities maintain that they observe the rule of law. When abuses by the security forces are brought to their attention, the authorities respond that Tunisian law protects human rights and makes provision for the punishment of those who commit abuses, but in practice the authorities fail adequately to investigate detainees' allegations and to hold officials to account for abuses that they commit.

The positive image that the Tunisian authorities seek to convey to the outside world is far removed from actual practice. For instance, while the authorities point to Article 13bis of the CPP as a provision which protects the physical and mental integrity of detainees, the reality is that its requirements are routinely violated by the detaining authorities, especially the State Security Department (see below). Unless the authorities end the impunity accorded to the security forces and take steps to bring to justice those officials responsible for committing human rights violations, legal reforms in Tunisia which appear to offer improved human rights safeguards can be expected to have no more than cosmetic effect.

## 3. PATTERN OF VIOLATIONS PERSISTS

### ARREST, DETENTION, TORTURE AND ENFORCED DISAPPEARANCE

The Tunisian authorities continue to arrest and detain people suspected of involvement in terrorism-related activities and appear particularly to target bearded, religiously committed young men in their mid-twenties who frequent mosques, discuss religious trends with like-minded others, or the situation in Iraq or Palestine, and who express positive opinions about *salafist-jihadist* groups in Iraq and other countries.

The authorities have carried out waves of arrests in Tunis and in Bizerte, Menzil Bourguiba, Kairouan, and other centres in recent months. Some of those arrested were questioned about how and where they prayed, what and where they studied, and about their financial assets, and were then photographed and released, but threatened that they could be re-arrested, detained and tortured.

In most terrorism-related cases, however, detainees have been held incommunicado well in excess of the maximum six day time limit set out in Article 13bis of the CPP. 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, rendering them in effect victims of enforced disappearances. When they appear before investigating judges, detainees' arrest dates are often falsified in official documentation in order to conceal the real duration of their detention and breaches of the law by the detaining authorities, and to create an illusion of legality. This practice of falsifying arrest dates is a longstanding one to which Amnesty International has repeatedly drawn the attention of the Tunisian authorities, but without effect.

The case of **Abdelmottaleb Ben Marzoug** is illustrative of such violations. He was arrested on 19 February 2009 by officers of the State Security Department at his workplace in the city of Gabès and transferred on the same day to the State Security Department at the Ministry of Interior in Tunis. His family and lawyer contacted the State Security Department, the Public Prosecutor and an investigating judge in an attempt to obtain news regarding his whereabouts and gain access to him, but received no information. On 26 February the Public Prosecutor told his lawyer that he had no information about Abdelmottaleb Ben Margouz's arrest or his whereabouts. After almost a month of enforced disappearance, Abdelmottaleb Ben

Marzoug was brought before an investigating judge on 12 March 2009, and charged under the anti-terrorism law. According to his lawyer, Abdelmottaleb Ben Marzoug told the investigating judge that he had been tortured by being suspended from his ankles in the contorted “poulet rôti” (roasted chicken) position and forced by his interrogators to sign a statement that they presented to him, and that bruises were visible on his ankles. However, the investigating judge did not order an investigation into his allegations, as required by Article 14 of the CPP. The arrest date of Abdelmottaleb Ben Marzoug was also falsified in the police report to suggest that he was arrested on 10 March, whereas he had actually been detained more than three weeks earlier. He remains in detention pending trial in connection with terrorism-related offences.

In May 2008, Amnesty International submitted a number of cases of alleged torture and other ill-treatment of detainees, illegally prolonged pre-arraignment police custody (*garde à vue*) and falsification of arrest dates to the Tunisian authorities, calling for them to be investigated. These were further described in Amnesty International's June 2008 report, yet – to date – the Tunisian authorities have not carried out any investigation as far as Amnesty International is aware.

## UNFAIR TRIALS

Trials in alleged terrorism-related cases take place almost every week. They are unfair and in most cases result in defendants being sentenced to long prison terms. Those tried in the past year include several Tunisian nationals who were forcibly returned to Tunisia from other states, despite fears that they would be at risk of torture and other ill-treatment. Often, convictions appeared to rest exclusively on “confessions” that defendants had made while they were being held incommunicado in pre-trial detention and which they retracted in court, alleging that they had been obtained under torture. Investigating judges and courts routinely failed to investigate such allegations.

Amnesty International has information suggesting that at least 1,200 people have been sentenced under the anti-terrorism law since June 2006. Tunisian human rights activists and lawyers estimate that some 2,000 defendants have been sentenced since the adoption of the law in December 2003; however, the Minister of Justice and Human Rights was reported in May 2009 to have said that the number of defendants sentenced was around 300.<sup>5</sup>

Virtually all of those tried under the 2003 anti-terrorism law were convicted on charges of planning to join *jihadist* groups abroad or inciting others to do so, but rarely on charges of having planned or committed specific acts of violence, with the notable exception of those sentenced in the so-called Soliman case, who were arrested in connection with armed clashes with security forces in December 2006 and January 2007.

Violations of fair trial standards – such as denial of prompt access to a lawyer, restriction of the right of defence, the use of “confessions” allegedly extracted

under torture in order to secure convictions – continue to be reported. Further, some defendants are reported to have been sentenced for the same offence more than once in violation of Article 4(5) of the Tunisian CPP, which stipulates that no one should be tried twice for the same offence, and of Tunisia's international human rights obligations. In addition, since June 2008, at least three retrials of civilians before military courts have taken place in cases in which the defendants had previously been tried and sentenced *in absentia*. The defendants in these trials were apprehended after they were forcibly returned to Tunisia from other states, and had lodged appeals against the sentences previously handed down to them in their absence. They received new prison sentences.

The majority of those convicted of terrorism-related offences are also made subject to additional administrative control orders following their release from prison, which requires them to report regularly to a particular police station. Such administrative control measures are not specified in Tunisian law and, in practice, it is the State Security Department officials with authority in the district in which a former prisoner under administrative control resides who determine the frequency of the reporting requirement, sometimes making this so onerous as to prevent the former prisoner from obtaining paid employment and obstruct his reintegration into society. Many former prisoners under administrative control orders have been summoned to the relevant police station to be questioned about their daily activities, apparently as a form of harassment.

## **22 MEN WITH LINKS TO THE SOLIMAN GROUP**

On 24 January 2009, 22 men aged between 21 and 35 from the regions of Gabès, Gafsa, Kébili and Kasserine were brought to trial charged with having links to the Soliman group (whose members were arrested following armed clashes with the security forces at the end of 2006 and in early 2007 in which 14 people were killed). The 22 faced an array of charges, including membership of a terrorist organization, incitement to commit terrorist acts on Tunisian territory, fundraising to finance persons with terrorist links, and providing arms and explosives. The trial opened amid heavy security and the judge insisted that the defendants remain standing for several hours, despite their lawyers' protests. The defendants retracted "confessions" made in pre-trial detention, alleging that they were extracted under torture, but the court failed to adequately investigate their allegations. The trial judge repeatedly interrupted some defence lawyers, ordering one to cease speaking after he questioned the investigating judge's failure to abide by the CPP. All 22 defendants were convicted and sentenced to prison terms ranging from six to 14 years. On 5 June, their sentences were reduced on appeal to between three and eight years in prison. All 22 were also given an additional five years' administrative control order which they have to serve after their release.

## MARIAM BENT SALEM ZOUAGHI

Mariam Bent Salem Zouaghi, a 23-year-old married student, was arrested on 26 July 2008 and accused of belonging to a terrorism organization operating inside Tunisia and abroad, and incitement to join terrorist organizations, funding terrorism and travelling outside the country without official documents. She admitted having consulted an internet website on *salafism* and having collected funds in support of Palestinian people but denied belonging to a terrorist organization. On 14 May 2009, she was sentenced to six years in prison.

## ABUSES IN PRISON

Most of the scores of prisoners sentenced on terrorism-related charges after unfair trials whose cases are documented in Amnesty International's report of June 2008 remain in prison; some are reported to be held in harsh conditions.

## UPDATE: SABER RAGOUBI

Saber Ragoubi remains in isolation on death row in Mornaguia Prison, 15km from Tunis. Although no death sentences have been carried out in Tunisia in recent years, his death sentence remains in force. His father wrote to President Ben Ali asking for his son to be pardoned. He is believed to be held in harsh conditions and is not permitted family visits or to send and receive mail. The Tunisian authorities maintain a *de facto* moratorium on executions and generally commute death sentences after a decision of the official commutation commission, taking into account the time that has elapsed since the death sentence was passed. In its concluding observations in March 2008, the HRC expressed concern regarding this procedure, which can take several years, and called on the Tunisian authorities to take the necessary measures to commute death sentences as soon as possible, with a view of abolishing the death penalty (CCPR/C/TUN/CO/5, para. 14).

Saber Ragoubi was sentenced to death in December 2007 on terrorism-related charges in the so-called Soliman case. The 29 other defendants in the same trial were convicted and sentenced to prison terms ranging from five years to life imprisonment. His death sentence was confirmed by the Appeal Court in February 2008 and the Court of Cassation in May 2008. Both the trial and the appeal in this case breached a number of fair trial safeguards guaranteed under the ICCPR.

Relatives and lawyers of prisoners sentenced under the 2003 anti-terrorism law or counter-terrorism provisions of the Military Justice Code continue to report that their rights were seriously violated, with some being subjected to torture or other ill-treatment or detained 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). In certain circumstances, such prolonged solitary

confinement could itself constitute torture or other ill-treatment. In some cases, prison authorities are reported to have refused to allow prisoners to receive visits from their families as punishment, or to accept food and clothing for prisoners brought by their families.

### **RAMZI ROMDHANI**

In April 2009, Ramzi Romdhani is reported to have been tortured and otherwise ill-treated by officers at Mornaguia Prison, where he is serving a sentence totalling 29 years in prison imposed under the 2003 anti-terrorism law in nine separate cases on the same charges. When his brother visited him on 23 April, Ramzi Romdhani complained that prison officers had beaten him with sticks, kicked him while wearing military boots, inflicted cigarette burns on his body, and plunged his head repeatedly into a bucket of water causing him to fear drowning and eventually to lose consciousness. After this, he said he was taken to the prison infirmary and put on a respirator for two days and received medical treatment for his injuries. His brother observed that he had bruises on his body and that some of his teeth were missing and had apparently been knocked out.

Ramzi Romdhani is believed to have been assaulted because he had protested against a decision by the prison authorities not to allow him to receive a visit from his two-year-old daughter, although Tunisia's law on prisons states that children under 13 years of age may be permitted to visit imprisoned parents outside normal visiting hours. Such visits, the regulations state, may be carried out without the use of glass screens or other barriers and in the presence of a prison guard in civilian clothes. Ramzi Romdhani's daughter was born after his arrest and he has never been allowed to hold her. Following an intervention by Amnesty International, he was allowed visit by his family and granted a direct visit with his daughter in May 2009.

### **SEIFALLAH BEN HASSINE**

Seifallah Ben Hassine has continued to be held in solitary confinement for some two and a half years, in contravention of the prohibition of torture and other cruel, inhuman and degrading treatment or punishment. He was arrested by State Security Department officials when he was forcibly returned to Tunisia from Turkey in March 2003. He was held incommunicado for two months during which he is reported to have been tortured and was then charged with "membership of a terrorist organization operating abroad in peacetime", "incitement to hatred" and "terrorism". He was tried in six separate court cases, four before the Tunis Military Court and two before the Tunis Court of First Instance, and was convicted in all. He received six prison sentences, which are to be served consecutively, totalling 68 years. Seifallah Ben Hassine has been held in solitary confinement in a humid, poorly ventilated cell since his transfer to Mornaguia Prison in January 2007, and now suffers from breathing difficulties and is in poor health. In the summer, when the temperature in Tunis can reach 45°C, his cell is unbearably hot.

Generally, the Tunisian authorities deny that these violations occur, pointing to the access to prisons accorded to the International Committee of the Red Cross (ICRC) since 2005. As well, the authorities have suggested that Human Rights Watch, the US-based international human rights organization, may be permitted access to prisons; Human Rights Watch, however, says it is still waiting to be permitted access to Tunisian prisons four years after requesting it and that it considers the conditions proposed by the Tunisian Ministry of Justice and Human Rights to be unacceptable.<sup>6</sup>

## 4. ABUSES AGAINST RETURNEES

Despite the dismal human rights record of Tunisia and the risk of torture and other ill-treatment and grossly unfair trials that individuals arrested in connection with terrorism-related offences face, the authorities of a number of other states continue to forcibly return Tunisian nationals they consider terrorism suspects to Tunisia in breach of the principle of *non-refoulement*, which requires that governments do not return people to states in which they would be at risk of torture and other serious human rights violations.

The Tunisian authorities have repeatedly expressed their willingness to receive back Tunisian nationals abroad, including those suspected of terrorism by other states and those currently being held by the US authorities at Guantánamo Bay, Cuba. They have also protested against proposals to transfer Tunisians held at Guantánamo Bay to European countries, rather than to Tunisia, on the grounds that they would be at serious risk of torture or other ill-treatment if forcibly returned to Tunisia.<sup>7</sup> The Tunisian authorities have also contested decisions taken by other states not to forcibly return specific Tunisians to Tunisia on the grounds that they would be at risk of torture or other ill-treatment. For instance, the Tunisian authorities protested against a decision of Denmark's asylum commission in October 2008 to grant "tolerated residency" status to a Tunisian national detained in Denmark for allegedly plotting to kill a Danish cartoonist for caricaturing the Prophet Mohamed. They also protested the decision of the European Court of Human Rights in May 2009 that 42-year-old Tunisian national Ezzedine Ben Edris Sellem should not be returned to Tunisia by the Italian authorities because he faced a "real risk of torture". Ezzedine Ben Edris Sellem has been sentenced *in absentia* to 10 years in prison in Tunisia.

When foreign governments have requested assurances from the Tunisian government that potential returnees will not be subject to torture or other ill-treatment, the Tunisian authorities have provided a detailed account of Tunisian laws and the safeguards they ostensibly provide throughout the legal process for individuals who are subject to arrest and detention, trial and imprisonment. This has been enough for a number of foreign governments to agree to forcibly return Tunisian nationals to Tunisia.

At least four Tunisians are known to have been returned to Tunisia by the Italian authorities since June 2008, when they forcibly returned Sami Ben Khemais Essid to Tunisia despite a European Court of Human Rights decision that he should not be returned at least until the Court had had an opportunity to examine his case. The Italian authorities forcibly returned Mourad Trabelsi on 13 December 2008, Mehdi

Ben Mohamed Khalaifia and Ziad Ben Mabrouk Ben Maftah in April 2009 and Ali Ben Sassi Toumi in August 2009. These five were all arrested on arrival by the Tunisian authorities. Mourad Trabelsi was detained incommunicado for five days during which his family were unable to obtain any information about him from the Tunisian authorities; then he was permitted access to his lawyer. He appealed against a 20-year prison sentence imposed on him *in absentia* by the Tunis Military Court in 2005 on terrorism-related charges. He was sentenced in March 2009 to three years in prison following a retrial before the same court.

Mehdi Ben Mohamed Khalaifia, who had previously been sentenced in his absence to 10 years in prison on terrorism-related charges, was detained in *garde à vue* for 12 days, twice the maximum period allowed under the CPP, and alleges that he was tortured and otherwise ill-treated by being kicked, beaten with sticks on his hands, shoulders and feet and slapped, and suspended in the “poulet rôti” and “balanco” positions and threatened with rape. He appealed against the 10-year prison sentence imposed on him in his absence and on 12 June this was reduced to four years’ imprisonment by the Tunis Court of First Instance. Ziad Ben Mabrouk Ben Maftah, who had previously been sentenced *in absentia* to eight years in prison on terrorism-related charges, appealed against his sentence on 4 June and is awaiting retrial. He and Mehdi Ben Mohamed Khalaifia continue to be held at Mornaguia Prison.

Ali Ben Sassi Toumi was forcibly returned to Tunisia on 2 August 2009 after his application for asylum was rejected on the basis that he had been convicted of committing a “serious crime”. He was released from prison in Benevento, Italy, on 18 May 2009, after serving four years of a six-year sentence on charges of belonging to a terrorist cell in Italy and recruiting fighters for the insurgency in Iraq. However, he remained in detention at an immigration detention centre, known as an Identification and Expulsion Centre (*Centro di identificazione ed espulsione*), in Isola di Capo Rizzuto in the Province of Crotone, south-east Italy, following his release from prison until the time of his forcible return to Tunisia.

The Italian authorities forcibly returned Ali Ben Sassi Toumi despite three separate rulings of the European Court of Human Rights urging them to stay his forcible return on the grounds that he would be at risk of torture and other ill-treatment in Tunisia. He was arrested on arrival in Tunis and taken to the Department of State Security of the Ministry of Interior in Tunis, where he was held in *garde à vue* detention until 7 August. On the same day, he was brought before an investigating judge who remanded him in custody at Mornaguia Prison. On 10 August, he was brought before the investigating judge, questioned and then released on bail. During his *garde à vue* detention, his relatives were not immediately informed of his whereabouts or the reason of his detention, as required under Tunisian law. He has been accused of “membership of a terrorist organization”, “providing expertise and logistical support to a terrorist organization” and fraud. He has been told by police that he must not leave his house or meet others without first obtaining their authorization. Investigations into the terrorism-related charges levelled against Ali Ben Sassi Toumi are still ongoing. However, he appeared in court on 14 August to be tried in connection with the fraud charges.

Currently, Tunisian nationals face possible forcible return to Tunisia from a number of member states of the Council of Europe, including Belgium, Bosnia and Herzegovina, Italy, Sweden and Switzerland. In March 2009, the European Court of Human Rights reiterated that eight Tunisian nationals resident in Italy – named as Mohamed Abdelhedi, Maher Ben Salah, Maher Bouyahia, C.B.Z, Kamel Darraji, Kamel Hamraoui, O.V, and Mohamed Soltana - should not be forcibly returned to Tunisia as this would place them at risk of torture. The Court “concluded – unanimously – that, in the event that the decisions to deport the applicants to Tunisia were enforced, there would be a violation of Article 3”.

### **UPDATE: SAMI BEN KHEMAIS ESSID**

On 3 June 2008, the Italian authorities forcibly returned Sami Ben Khemais Essid to Tunisia despite fears for his safety. He was arrested on arrival. He had previously been sentenced *in absentia* in several trials, including by military courts, to prison terms totalling more than 100 years on terrorism-related charges between 2000 and 2007. He challenged the sentences imposed in his absence and was retried by the Tunis Court of First Instance in July 2008 and sentenced to eight years in prison. In February 2009, this was overturned by the Tunis Appeal Court, which declared the Court of First Instance incompetent to hear the case, transferring it to the Tunis Military Court. Four months earlier, in November 2008, the Tunis Military Court had imposed a 12-year prison sentence on Sami Ben Khemais Essid following a retrial and on 10 June 2009, the Military Court determined that he should not receive a further sentence in addition to the 12-year prison term it had imposed in November 2008. He is now serving this sentence at Mornaguia Prison. On 27 January 2009 he was removed from the prison by State Security Department officials and taken to the premises of the Ministry of Interior, where he was kept for two days, interrogated about other suspects and tortured. He was again removed from the prison in June 2009 for further interrogation and threatened with further torture.

### **UPDATE: BADREDDINE FERCHICHI**

Badreddine Ferchichi, who was forcibly returned to Tunisia from Bosnia and Herzegovina on 1 September 2006, was acquitted by the Tunis Military Court on 16 January 2008. However, the Public Prosecutor appealed against his acquittal to the Military Court of Cassation, which ordered a retrial on 11 February 2009. He continued to be held at Mornaguia Prison awaiting his retrial. On 20 May 2009, he was retried before the Tunis Military Court and sentenced to three years in prison. He is expected to be released in September 2009 due to the time he has already spent in prison.

## UPDATE: ADEL RAHALI

Adel Rahali, who was forcibly returned to Tunisia from Ireland in 2004 and thereafter sentenced to five years in prison, was released in April 2009 after completing his sentence. He is now restricted under a five year administrative control order requiring him to report to the police daily.

## TUNISIANS DETAINED BY THE US AT GUANTÁNAMO BAY, CUBA

Following US President Barak Obama's announcement that the US detention facility at Guantánamo Bay is to close, the Tunisian authorities announced their willingness to receive for "legal examination" the 10 Tunisians still held there. Reports suggested that two of them, Riadh Nasserri and Adil Ben Mabrouk, may be sent to Italy together with Mouez Fezzani, reportedly detained in Bagram Air Base in Afghanistan.<sup>8</sup> Riadh Nasserri and Mouez Fezzani were both accused in 2007 by the Milan Prosecutor of "providing logistical support to an Italian cell with links to the Salafist Group for Preaching and Combat, now known as Al-Qaeda in the Islamic Maghreb". In May 2009, the Tunisian authorities requested that the two men be extradited to Tunisia.

All 10 Tunisians held at Guantánamo have been previously sentenced in their absence to prison terms of up to 60 years. Adel El Ouerghi, Adil Ben Mabrouk, Ridha Ben Saleh, and Lotfi Ben Ali (known as Mohamed Abderrahman) were all sentenced to 40 years in prison by the Tunis Military Court. The same court sentenced Riadh Nasserri to 50 years in prison and Adel Al Hakaimi to 60 years in prison. The Tunis Court of First Instance also sentenced Hisham Sliti and Rafiq al-Hammi to 32 years' imprisonment and Hedi Hammami and Saleh Sassi to 11 years in prison. The Belgian authorities have requested from the US government that two of the 10 Tunisians held in Guantánamo, Adel Al Hakaimi and Hisham Sliti, be extradited to Belgium to face charges of terrorism. Both men have been previously tried *in absentia* by a Belgian court and their retrial is expected in October 2009.<sup>9</sup>

Two Tunisians who were returned to Tunisia from Guantánamo by the US authorities in June 2007, Abdallah al-Hajji and Lotfi Lagha, are both serving prison sentences and reported to be subject to persistent harassment by prison authorities and ordinary criminal prisoners at Mornaguia Prison. Abdallah al-Hajji, who was detained upon arrival and ill-treated, reportedly being threatened with the rape of his wife, is serving a seven-year sentence. He is reported to have been shown pictures of his family, and given information intended to demoralize him and break his spirit.

## 5. COOPERATION WITH UN MECHANISMS

In March 2008, the Tunisian government reiterated, before the HRC, its commitment to international human rights law and standards and its willingness to cooperate with UN treaty bodies.

During the UN Human Rights Council's Universal Periodic Review of human rights in Tunisia in April 2008, Minister of Justice and Human Rights Béchir Tekkari stated that the government would submit eight outstanding reports to UN human rights treaty bodies before the end of 2008. As of July 2009, however, the following reports were still outstanding: Tunisia's third report to the Committee against Torture, due in 1997; its third report to the Committee on Economic, Social and Cultural Rights, due in 2000; and its initial report to the Committee on the Rights of the Child under the Optional Protocol on the sale of children, child prostitution and child pornography, due in 2004.

In June 2008, the Tunisian government agreed to invite the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism to visit Tunisia. As yet, however, no such visit has taken place.

The Tunisian government continues to refuse access to the Special Rapporteur on the independence of judges and lawyers and to the Special Rapporteur on the situation of human rights defenders (and, formerly, denied access to the Special Representative of the Secretary General on the situation of human rights defenders). In March 2008, the government informed the HRC that it would invite the Special Rapporteur on torture to visit Tunisia, but no formal invitation had been received by the Special Rapporteur by July 2009.

## Endnotes

- <sup>1</sup> Speech by President Ben Ali on 60<sup>th</sup> anniversary of Universal Declaration of Human Rights, 12 December 2008.  
[www.carthage.tn/en/index.php?option=com\\_events&task=view\\_detail&agid=15639&year=2008&month=12&day=12&Itemid=128](http://www.carthage.tn/en/index.php?option=com_events&task=view_detail&agid=15639&year=2008&month=12&day=12&Itemid=128)
- <sup>2</sup> Tunis Afrique Presse, 13 May 2009.
- <sup>3</sup> Amendments were also introduced to a number of articles concerning money laundering, after the entry into force of the Code of Financial Transactions for non-residents.
- <sup>4</sup> For more information on the 2003 anti-terrorism law and on relevant legal provisions, see Amnesty International, *In the Name of Security: Routine Abuses in Tunisia* (AI Index: MDE 30/2007/2008), June 2008. <http://www.amnesty.org/en/library/asset/MDE30/007/2008/en/b852a305-3ebc-11dd-9656-05931d46f27f/mde300072008eng.pdf>
- <sup>5</sup> Le Temps, “Primauté de la loi; souveraineté de la justice”, 27 May 2009.
- <sup>6</sup> HRW, “Tunisia: Honor Pledge on Prison Access, Human Rights Watch Rejects Conditions That Would Limit Prisoner Interviews”, 16 April 2009. <http://www.hrw.org/en/news/2009/04/16/tunisia-honor-pledge-prison-access>
- <sup>7</sup> La Presse, “La Tunisie condamne les allégations justifiant le transfert de Tunisiens de Guantánamo vers des pays européens”, 19 June 2009.
- <sup>8</sup> Reuters, “Tunisia asks Washington to hand over two detainees”, 31 May 2009 and Al-Quds al-Arabi, 20 June 2009.
- <sup>9</sup> AFP, “La Belgique réclame l’extradition de deux Tunisiens détenus à Guantanamo”, 12 August 2009.



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## TUNISIA

### CONTINUING ABUSES IN THE NAME OF SECURITY

The Tunisian authorities say the rule of law prevails in Tunisia, but that is far from the reality. In practice, the authorities carry out arbitrary arrests and detentions, allow torture and use unfair trials, all in the name of the fight against terrorism.

In June 2008 Amnesty International detailed such patterns of human rights violations in a report entitled *In the name of security: routine abuses in Tunisia* (MDE 30/007/2008). The government rejected the report as “totally subjective and devoid of any credibility”.

This follow-up report assesses the situation just over a year later and concludes that little has changed. Torture remains pervasive, particularly in detention centres run by the State Security Department. Statements allegedly obtained under torture continue to be accepted by courts as evidence to convict defendants without taking any, or adequate, steps to investigate. Despite the clear risks involved, other states continue to forcibly return Tunisian nationals or threaten such returns.

The report calls on the Tunisian authorities to end torture and the impunity accorded to the State Security Department and its officials.

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