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### INTRODUCTION

Over the past 18 months thousands of suspected members of the Islamic *al-Nahda* (Renaissance) movement have been arrested and held incommunicado for periods of up to five months in Tunisia<sup>1</sup>. Arrest dates have been regularly falsified by the Tunisian police and national guard to cover up illegally prolonged pre-trial incommunicado detention. Torture has been practised systematically not only in police and national guard stations throughout the country but also in detention centres in Tunis, including at the Bouchoucha police station, at the national guard centre at al-Aouina and in the Ministry of the Interior. Detainees have died in custody in suspicious circumstances. Allegations of torture or ill-treatment are rarely investigated by police or judicial authorities. Deaths in custody remain unresolved. The evidence that the above violations are condoned at the highest levels is compelling.

Amnesty International remains seriously concerned about other human rights violations in Tunisia including the detention of prisoners of conscience, unfair trials, prison conditions amounting to cruel, inhuman or degrading treatment and the death penalty. Moreover, members of other groups, especially of illegal left-wing political groups such as the *Parti communiste des ouvriers tunisiens* (PCOT), the Tunisian Workers' Communist Party, as well as ordinary criminals, have also suffered prolonged incommunicado detention and torture; the arrests of leftists in particular have recently increased. However, the most extensive violations of human rights during the pre-trial period have been directed towards members and suspected sympathizers of the illegal *al-Nahda* movement. Furthermore, the methods by which the Tunisian Government has repressed this movement have led to generalised and wide-ranging human rights abuses throughout the country. For these reasons this report concentrates on prolonged incommunicado detention and torture of suspected members and sympathizers of *al-Nahda* in Tunisia.

Amnesty International believes that human rights violations have reached such levels in Tunisia that unless the authorities act now, these violations will become deeply entrenched as a normal practice of Tunisian law enforcement officials.

#### 1.1 Background

In November 1987, after a summer of mounting tension during which more than 3,000 supporters of the

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<sup>1</sup> *Al-Nahda* was founded in January 1989 to replace the *Mouvement de la tendance islamique* (MTI), Islamic Tendency Movement, as a political party. It applied for official registration, but never received it. Its leader is Rachid Ghannouchi who has lived in exile since 1989.

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*Mouvement de la tendance islamique* (MTI), Islamic Tendency Movement, were arrested, many unfairly tried and two executed, President Zine El Abidine Ben Ali replaced President Habib Bourguiba as head of state.

In the following months the Tunisian Government declared its intention to reform *garde à vue* detention, the period before a suspect is brought in front of a judge during which s/he is held for interrogation in the sole custody of the police and/or interrogating officer without contact with family or lawyer. Law 87-70 of 26 November 1987 limited the period of *garde à vue* detention to four days, renewable to an absolute maximum of ten days, established an arrest register and permitted medical visits. Act 87-79 of 29 December 1987 abolished the State Security Court, responsible for several unfair political trials in previous years. Decree 1876 of 4 November 1988 laid down rights for prisoners in areas of hygiene, visits and disciplinary measures. Over the next two years more than 3,000 political prisoners benefited from presidential amnesties; 150 others, arrested in November 1987, were released between May 1988 and May 1989. The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified without reservation on 23 September 1988.

Amnesty International has welcomed these initiatives by the Tunisian Government. However the organization became increasingly concerned at reports of prolonged *garde à vue* detention, torture, the detention of prisoners of conscience and unfair trials. These concerns were included in a report published in September 1990: *Tunisia: Summary of Amnesty International's Concerns* (AI Index: MDE 30/03/90). In February 1991 a detailed response was received from the Tunisian Government denying the substance of the organization's report.

The report cited a number of cases in which *garde à vue* detention had extended beyond the 10-day maximum limit allowed under Law 87-70. However, what were then isolated cases of extended *garde à vue* detention have since become a pattern of long-term incommunicado detention in which time-limits and safeguards laid down by Tunisian law are ignored and the permitted 10-day maximum is consistently exceeded. The report also detailed a number of cases in which torture or ill-treatment were alleged. Amnesty International now believes that the use of prolonged *garde à vue* detention has allowed a situation to develop which enables torture to be systematic and even routine. Reports that torture is inflicted also within the Ministry of the Interior on Habib Bourguiba Avenue further suggests that it is condoned at the highest level in Tunis.

In May 1991 Amnesty International delegates visited Tunisia to discuss the organization's concerns and were able to meet the Prime Minister and the Ministers of the Interior, Foreign Affairs, Justice and Social Affairs. They were not able to meet President Ben Ali. On 24 May they gave the Minister of Justice a list of 71 named individuals believed to be still detained incommunicado, some for more than three months. Government officials, in addition to the dates of arrest provided, asked the delegates at different times over the next four days, for addresses, identity card numbers and the reference number given on receipt of an official complaint. Meanwhile one of the detainees on the list, Abdelraouf Laaribi, had died in circumstances which strongly suggested that his death was the result of torture.

On 20 June 1991, having received no response to this or other lists sent to the Tunisian Government, Amnesty International made its concerns public in a news release. The same day President Ben Ali appointed a special presidential adviser on human rights, Sadok Chaabane, and set up a Commission of Inquiry headed by Rachid Driss to investigate the allegations made in a 15 June communique by the

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*Ligue tunisienne pour la défense des droits de l'homme* (LTDH), Tunisian Human Rights League, and Amnesty International.

Amnesty International welcomed the announcement of a Commission of Inquiry in the expectation that this would lead to a full investigation of the reports of prolonged *garde à vue* detention and torture and that any officials guilty of torturing detainees or otherwise violating Tunisian criminal procedure would be brought to justice. In August the Driss Commission apparently asked the President for wider powers and was given the right to visit prisons and examine prisoners. However, no public Commission sessions were held and its report, which was presented to President Ben Ali in October 1991, was not made public. The only public statement relating to the Commission was a news release, issued on 20 October by the Tunisian Government, which included a number of recommendations, said to be those of the Commission of Inquiry. The news release stated that "some abuses did occur" but that these

"were individual and isolated acts that went against government policy and the guidelines set by the President of the Republic. The allegations of abuse made by relatives of detainees were, however, proven groundless by the testimony of the detainees themselves and that of the physicians."

Amnesty International has consistently called for the findings of the Commission of Inquiry to be made public. Only then will the truth be seen to be established, sending a clear message from the highest authority in the country that human rights violations will not be tolerated and that prompt action will be taken to redress such violations. Amnesty International is also concerned that the summary of the report given in the news release may not accurately reflect its contents.

On 28 October 1991 the special presidential adviser for human rights, Sadok Chaabane, visited Amnesty International's International Secretariat for discussions about the situation in Tunisia. Mr Chaabane felt unable, either then or when Amnesty International delegates visited him in Carthage on 2 December, to promise that the Driss report would be made public, stating that the Commission had been set up by the President and had submitted its report to him. He did, however, promise that information would be given on some of those on Amnesty International's lists of people reported to have been kept in prolonged *garde à vue* detention - no such information, however, has been forthcoming.

The Tunisian Government continues to reject the overwhelming evidence of the systematic use of prolonged *garde à vue* detention and torture in Tunisia. In this report Amnesty International is placing these concerns on the public record and proposing steps the Tunisian Government should take to stop similar violations in the future and to respect the rights of its citizens.

## 2. ARREST AND GARDE A VUE DETENTION

### 2.1 International Standards Prohibiting Arbitrary Detention and Guaranteeing Right of Access to the Outside World

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The International Covenant on Civil and Political Rights (ICCPR) and other international standards to which Tunisia is a party prohibit arbitrary detention, and require the authorities to inform pre-trial detainees of the charges against them and their rights and to grant such detainees prompt access to the outside world.

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Article 9(1) of the ICCPR prohibits arbitrary detention:

"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law."

International human rights standards also require an arrested or detained person to have prompt access to family, lawyer, doctor and a judge.

Article 9(3) of the ICCPR states that:

"Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment."

General Comment 8 (16) of the UN Human Rights Committee on the definition of "promptly" states that "delays must not exceed a few days". In addition, Article 9(4) of the ICCPR states that any detainee may go to court so that the "court may decide without delay on the lawfulness of his detention and order the release if the detention is not lawful".

Rule 92 of the UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules) provides:

"An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to such restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution."

The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that even in exceptional circumstances a detainee's right "to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel" as set forth in Principle 18 "shall not be denied for more than a matter of days" (Principle 15).

Rule 24 of the Standard Minimum Rules provides that the detention facility's "medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures".

Tunisia has failed to implement most of these standards in law or practice.

## 2.2 Tunisian Law and Legal Procedure

AI Index: MDE 30/04/92 Amnesty International March 1992

The two main police bodies in Tunisia are the national security police (*sûreté nationale*), which is mainly an urban force, and the national guard (*garde nationale*), originally a mainly rural force, but which also has a number of paramilitary and defence duties as a riot force, bodyguard and border patrol force, as well as functions in the towns. Since 1967 both police forces have been placed under a single Office of National Security (*Direction de la sûreté nationale*) within the Ministry of the Interior. The judicial police (*police judiciaire*), a branch of the national security police, is jointly controlled by the Ministry of the Interior and the Ministry of Justice. It specializes in arresting offenders under Tunisian law and collecting evidence against them; the national guard performs the same function.

In addition to these police forces two other bodies have been involved over the years in arresting political offenders. The Office of Territorial Surveillance, (DST, *Direction de la surveillance du territoire*), a political police force, operates in plain clothes as an intelligence-gathering and also very frequently as an arresting body. There appears to be no public legal statute defining its duties or organization. Another body involved in recent arrests is the *Brigade d'Ordre Publique* (BOP), Brigade of Public Order, a uniformed paramilitary riot police.

Tunisian law makes no mention of the need to show an arrest warrant or even proof of identity during an arrest. If the arrest is made in *flagrant délit* (in the act, when the arresting officer sees someone apparently committing a crime) or as part of normal procedure, arrests can be made without warrant. A warrant is shown only when a summons is ordered by the investigating judge; it should indicate the name, age, date and place of birth of the accused and the charges against him or her (*Code de procédure pénale* (CPP), Criminal Procedure Code, Articles 78 and 81). No house searches should take place between 8pm and 6am except in cases of flagrant crime or *délit* or when necessary in order to seize a suspect or arrest someone who has escaped (CPP 95). Article 102 of the *Code pénal* (CP), Penal Code, provides a maximum one-year sentence for a public official who enters the house of another person without observing the official procedures and without the latter's consent.

According to officials at the Ministry of Justice and the Ministry of Interior, as soon as an arrest has been made a telegram (*barqiya*) is sent from the arresting police or national guard station to the *procureur de la république*, public prosecutor, of the local area informing the office of the arrest. The telegram is then registered and information about the arrest itself entered into an official register. Although a local *procureur's* office does not have details on those whose cases do not fall within its jurisdiction, the same telegram goes to the *procureur général de la république*, public prosecutor general, and to the Office of National Security at the Ministry of the Interior where the information is said to be recorded. Amnesty International delegates visiting the Inspector General of National Security, who handles complaints against the police forces, were shown a list, apparently compiled daily, of all those arrested or transferred to a higher judicial authority.

The Tunisian Criminal Procedure Code (which before 1987 allowed unlimited *garde à vue* detention) was changed under law 87/70 of 26 November 1987 so as to limit the period during which a suspect might be detained without access to lawyer and family to an absolute 10-day maximum. Under this law, which revised Article 13 of the CPP, *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 (CPP 13bis). In addition, during this period of *garde à vue* detention, when detainees

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do not have access to family or lawyer, either they or any close relative might request and obtain a medical examination. A special register must be placed in each police station to record the identities of all those held with the date and hour of the beginning and end of *garde à vue* detention.

At the end of the period of *garde à vue* detention the accused is transferred from the police or national guard station to prison where the prison inspectorate have the task of letting the family know the place of detention. The family can obtain a visiting card from the investigating judge or the *procureur's* office and, as well as having at least one visit a week, is entitled to bring the detainee food and clothes.

### 2.3 Arrest Procedure: the Practice

Since September 1990 at least 8,000 suspected *al-Nahda* supporters have been arrested in Tunisia.

The large-scale arrests started in September 1990 after the death of a student, Tayeb Hammasi, who was shot by police while distributing leaflets. Waves of arrests were followed by protest demonstrations which in turn led to further arrests. Government statements accused *al-Nahda* members of being involved in plots to overthrow the government. In this context members of the "Habib Lassoued Group" were arrested in October and November 1990. In April-June 1991 about 500 people (including about 200 security force members) were arrested in connection with an alleged plot to overthrow the regime, and a large number were arrested in September and October 1991 in connection with a reported attempt to kill President Ben Ali and members of his government by using a "Stinger" rocket. None of these groups has yet been brought to trial. There was also a wave of arrests in February-March 1991 in connection with a raid on the Bab Souika centre of the *Rassemblement constitutionnel démocratique* (RCD), Democratic Constitutional Rally (the governing party), during which two guards were set on fire and one of them died; 28 people, including one juvenile, were brought to trial, five of whom were sentenced to death (two *in absentia*), and three executed in October 1991.

However, most of those arrested appear to have been jailed simply for their alleged support for *al-Nahda* without having been charged with any offence against state security. Up to January 1991 many of those arrested were released uncharged. But those arrested since February 1991 have mostly remained in detention, the majority receiving sentences of up to three years' imprisonment on charges such as membership of an illegal organization and holding unauthorized meetings.

Amnesty International has received hundreds of reports from families of detainees describing a pattern of nocturnal arrests, typically by men in plainclothes refusing to show any identification. Houses are searched, including the women's and children's bedrooms, without search warrants, and members of families face verbal, or even physical, abuse. Sometimes, families have claimed, their personal possessions have been seized.

Khalifa Khalfet, a 41-year-old technical assistant at the Ministry of Agriculture was arrested at 7am on 8 April 1991 at his house in Cité al-Ghazzala in Tunis by plainclothes policemen who allegedly hit Khalfet's 14-year-old son and insulted the family; he then remained three months in incommunicado detention. His arrest date was subsequently falsified to 4 July 1991. Mohamed Hedi Ben Ibrahim Chebeb, a 36-year-old mechanic from Bizerta, was arrested on 2 October 1991 at 1am apparently by 30 members of BOP. They surrounded his and his parents' houses, broke in and ill-treated Mohamed Chebeb

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in front of his wife. They took him away, still wearing his pyjamas. He remained held incommunicado for over a month.

Out of more than 70 testimonies collected from detainees' families in one provincial Tunisian town at least 12, none of whom were arrested in *flagrant délit* or accused of advocating or using violence, had been arrested between 11pm and 4am. On no occasion did families report being shown any form of identification or search warrant by those who made the arrests.

A number of arrests were carried out in a highly intimidatory and violent manner, by carloads of armed police. Rachid ben Belqasim Bouzhaba, a 21-year-old student, was arrested at his home in El Kef at 3.15am on 5 October 1991 by about 40 armed police in five cars who allegedly searched the house from top to bottom and abused his mother by pushing her against a wall and hitting her. He remained in incommunicado detention for two months. Rachid Bouzhaba was sentenced on 16 January 1990 to 20 months' imprisonment for membership of an illegal organization, attending unauthorized meetings and distributing illegal leaflets.

On several occasions detainees' families have alleged that the arresting authorities have taken away money or possessions such as tape recorders and even jewellery. Sometimes members of a suspect's family appear to have been arrested to bring pressure to bear on the suspect to surrender himself to the police. Hayya Khardani, the 17-year-old sister of Mohammed ben Ali Khardani, who was sought by the police, was detained for four days in Bardo police station at the end of September 1991 in an attempt to persuade her brother to surrender. On 1 October Mohammed Khardani gave himself up and Hayya was released.

### 2.4 Prolonged Incommunicado Detention

Between September 1990 and January 1992 thousands of suspected members of *al-Nahda* were held in incommunicado detention for far longer than the maximum 10-day period for *garde à vue* detention. Neither families nor lawyers were allowed access to such detainees, sometimes for months. Although some of these detainees were not tortured, much of the prolonged incommunicado detention seems to have occurred in order to hide the signs of torture which, between April and November 1991, appears to have caused the deaths of at least seven young men during detention.

Between September and November 1990 reports of prolonged incommunicado detention lasting up to 20 days became more frequent. After November 1990, when numerous arrests were made in connection with alleged *al-Nahda* plots, incommunicado detention was sometimes prolonged for more than 30 or even 40 days. Frequently such detention seems to have been accompanied by torture. Arrests continued throughout 1991, with large waves of arrests accompanying the Bab Souika affair in February, the alleged *al-Nahda* plot within the army in May and the so-called "Stinger rocket affair". Many of those arrested between February and May remained without access to family and lawyers for two, three, or sometimes as long as five months.

In the autumn of 1991 arrests and prolonged incommunicado detention continued, affecting thousands of citizens throughout the country. Few of the arrests were directly connected with the alleged plots and often only tenuously with *al-Nahda* movement. When those detained were eventually brought to trial,

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often after being held 30 to 50 days incommunicado, they were usually charged with such offences as membership of illegal associations or holding unauthorized meetings for which they nonetheless received heavy sentences of up to three years' detention.

Members of detainees' families have told Amnesty International how, day after day, in search of those who have often been arrested before their very eyes, they have made the rounds of police stations, the Ministry of the Interior and the *procureurs'* offices, sending telegrams to the President of the Republic, ministers and law enforcement officials and making requests for medical examinations and complaints before the *procureur de la république* - all without success.

Habib Ayachi was arrested on 10 October 1990 and was held in incommunicado detention for 28 days until he appeared before the investigating judge on 7 December 1990. He was said to have been in Bordj al-Rumi detention centre and to have been severely tortured. Two lawyers, Nouredine Bhiri and Hedi Zenzemi were arrested on 20 February 1991 and 22 March 1991 respectively; Nouredine Bhiri was kept incommunicado for 24 days before being released uncharged on 14 March 1991; Hedi Zenzemi remained incommunicado until 13 April 1991. Neither was ill-treated, but the authorities have not investigated their prolonged incommunicado detention.

Lotfi Snousi, a 38-year-old engineer, married with four children, was arrested in Tunis on 20 April 1991 and held incommunicado until June. On 23 May his elderly mother, who had spent six weeks visiting police stations and the Ministry of the Interior and making complaints at the *procureur's* office, protested outside the Ministry of the Interior, shouting out that her son was being killed and they were not allowing her to see him. She said that she was taken up to the fourth floor at the Ministry of the Interior and her son was brought in. His hands and face were bruised and he was extremely thin. They were not allowed to talk. She was able to visit him normally when he came out of incommunicado detention on 25 June in 9 Avril Prison. No investigation into the prolonged incommunicado detention or the ill-treatment appears to have been conducted.

Certain of those arrested in the spring of 1991 were not seen by their families and lawyers until the autumn, having spent five months or more incommunicado. Abdelaziz al-Bouzidi, a Ministry of Agriculture engineer, who had spent 32 days incommunicado between 23 February and 27 March, was rearrested on 12 April and remained incommunicado, without access to family or lawyer, until August. Mustapha Ben Halima, a university lecturer, was arrested on 15 March 1991 and also remained incommunicado until mid-August - a period of five months. Apparently the authorities have failed to investigate any of these cases.

During the further waves of arrest that took place during autumn 1991, many of those apprehended as suspected *al-Nahda* members were kept in prolonged incommunicado detention for up to 50 days. Many families no longer bothered to make complaints to the *procureur de la république* or send letters to the President of the Republic, government officials and local human rights organizations, previous complaints and appeals having been unsuccessful. In certain centres *procureurs de la république* or their agents reportedly refused to accept or register complaints and witnesses have mentioned instances of complaints being torn up before their very eyes. One *procureur de la république* reportedly told a student who came to lodge a complaint that the law was "frozen" for the Islamists.

Abdelhamid ben Ameer Cherni, a 25-year-old former soldier and breadwinner for his widowed mother

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and schoolboy brothers, was arrested at around 3.30am on 30 September 1991 at his home in the Bernousa suburb of El Kef by four or five people in plainclothes. His mother stated that she had gone to all the local police and national guard stations but had got no information. She had gone to the *procureur de la république* in El Kef who had said that Abdelhamid was held by the police. She states that when she tried to make a complaint to the *procureur* he tore it up. Later the *procureur général de la république* accepted a complaint and promised a response but none was received. Abdelhamid Cherni was brought before the military investigating judge in December 1991 charged with offences against internal state security.

Amnesty International delegates visiting Tunisia in December 1991 studied the procedure for making complaints within the Tunis lawcourts. Every complaint lodged by a relative or lawyer has to have a number and be recorded in a book. When a complaint about prolonged *garde à vue* detention is made the official in charge of registering complaints may try to cross check with the arrests register. Although the *procureur de la république* is entitled to make unannounced visits to detention centres in order to verify the number and condition of the inmates, in practice this is almost never done. The official in charge stated that no response was ever posted to a complainant but that complainants could come to the lawcourts building and request responses. None of the numerous complainants interviewed by Amnesty International had ever received responses to their complaint or requests for medical examinations or further information.

Occasionally, especially in the provinces, security forces have denied families access to or information about detainees but have accepted from them clothing and sometimes food. Moundher Boughanmi, a 21-year-old student was arrested at midnight by five plainclothes police in El Kef on 7 or 8 October 1991. His mother went to all the police stations but was told they knew nothing about the matter. After a fortnight they accepted food and clothes at the El Kef police station but she was still not allowed to see him. Later they refused to accept clothes and she heard he was in Tunis. Moundher Boughanmi was brought to trial on 16 January 1992 on charges including membership of an illegal organization. He was acquitted but not released from El Kef Prison.

## 3. TORTURE

### 3.1 Tunisia's Obligations under the Convention against Torture

On 23 September 1988 Tunisia ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In addition to defining torture, the Convention against Torture obliges Tunisia to "ensure that all acts of torture are offences under its criminal law" (Article 4(1)) and to "make these offences punishable by appropriate penalties which take into account their grave nature" (Article 4(2)).

The Convention also requires Tunisia to "ensure that any individual who alleges that he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities (Article 13). Article 12 requires Tunisian authorities also to investigate whenever there is reason to believe that torture has taken place, even if no

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complaint has been made. Furthermore, the Convention provides that Tunisia "shall ensure that any statement made as a result of torture shall not be invoked as evidence in any proceedings except against a person accused of torture as evidence that the statement was made" (Article 15).

The Convention requires Tunisia to "ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible" (Article 14). The Convention also requires Tunisia to educate its officials about the prohibition of torture (Article 10) and to keep under review its practices "with a view to preventing any cases of torture" (Article 11).

Article 2 requires Tunisia to "take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction" and states that:

"No exceptional circumstances whatsoever, whether a state of war or of threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture".

Although Tunisia has incorporated the Convention into its national law, its practices violate most of these obligations.

### 3.2 Tunisian Law

Tunisian legal procedure contains various safeguards which should militate against torture; the most important being the right under CPP Article 13 for detainees, their spouses or any close relatives, to demand a medical examination even during the period of *garde à vue*; at the same time the hour and date of every period of interrogation is to be noted in the register and any police statement countersigned by the detainee.

Article 101 of the Tunisian Penal Code states that:

"Any public servant or similar person who, in the exercise of or in connection with his functions, uses violence or causes it to be used against any person without legitimate motive, is liable to five years' imprisonment and a 500 franc fine."

Article 103 elaborates on this specifying five years' imprisonment for the use of violence or ill-treatment against an accused, a witness or an expert in order to obtain confessions or declarations and six months' imprisonment for the threat of violence.

The United Nations Convention against Torture was incorporated into national law as Law 88-79 with the power to override any provisions of national law contrary to its articles.

The Tunisian Government has frequently declared torture unacceptable. Amnesty International has been shown directives incorporating the Convention against Torture (Directive No.3 of 4 January 1989) which were for circulation to central, regional and local offices of all authorities under the Ministry of the Interior. The government has loudly proclaimed its respect for the integrity of the human person. But the government's failure to conduct public, impartial investigations into widespread and well-founded

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allegations of torture and deaths in custody or to take decisive action to end all this suggests that such practices are still condoned at the highest level.

### 3.3 Torture: The Practice

Despite Tunisia's 1988 ratification of the Convention against Torture, Amnesty International remained disturbed by a number of torture cases reported to it in 1988 and 1989. The organization's September 1990 report *Tunisia: Summary of Amnesty International's Concerns* (AI Index: MDE 30/03/90), described a number of such cases of alleged torture and ill-treatment of political detainees, including suspected members of *al-Nahda* and members of the *Parti communiste des ouvriers tunisiens* (PCOT, the Tunisian Workers' Communist Party). The organization was also worried by the seemingly widespread torture of non-political detainees, at least three of whom appeared to have died in custody in suspicious circumstances during the period in question. The organization is gravely concerned over Tunisia's apparent failure to implement further safeguards against torture since its ratification of the Convention against Torture. On the contrary, the Tunisian Government has consistently denied that cases of torture are more than isolated incidents. Amnesty International has more than 200 testimonies of torture inflicted on detainees; they came from former detainees, the families of detainees, lawyers, doctors and independent eye-witnesses. In some cases the testimonies are supported by medical certificates. Often those who have given testimonies have asked not to be named for fear of arrest or harassment by the authorities. Among them are members or previous supporters of the governing party as well as independents and supporters of opposition parties. The Tunisian authorities have frequently suggested that no "Islamic fundamentalist" testimony is worthy of belief; that the doctors who have signed medical certificates are "fundamentalist sympathizers"; and that non-governmental organizations concerned with human rights are being "manipulated by fundamentalists". Amnesty International is concerned that such statements are used by the Tunisian Government as excuses to cover up its lack of proper and impartial investigations into the many allegations of torture or ill-treatment of detainees in Tunisia.

Amnesty International is now concerned because the torture or ill-treatment of people suspected of Islamist sympathies appears to be systematic in almost every police station or national guard centre throughout Tunisia. Torture or ill-treatment seems to be routine in the three main detention centres in Tunis, the police station of Bouchoucha, the national guard station at al-Aouina and in the cells at the Ministry of the Interior. Unless they are sufficiently well-known, Islamist detainees who have been active in the *al-Nahda* movement or are believed to have been involved in alleged plots against the Tunisian Government have almost invariably been tortured or ill-treated. The torture or ill-treatment of people who deny any connection with *al-Nahda* is also widespread. In addition a number of young people and students, among them many women, have also allegedly been tortured and ill-treated.

Torture is apparently used for two main reasons: in order to extract information or simply at random in order to create an atmosphere of terror. A number of detainees, including people believed to have sympathized with *al-Nahda* in the past and young secondary-school students, have stated that they were tortured without even being interrogated.

Torture methods alleged include beating various parts of the body, especially the soles of the feet; suspension by the feet or in contorted positions such as the *poulet rôti* (roast chicken), in which the

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victim is trussed up and tied to a horizontal pole by hands and feet bound in front) or *avion* (in which hands and feet are bound behind), usually accompanied by beating; electric shocks; insertion of bottles in the rectum. Sexual abuse is also alleged and a number of women have stated that they were undressed and sometimes touched or caressed by male guards. Psychological tortures include the threat of sexual abuse to both men and women and mock executions.

Abdellatif Tlili, a member of the so-called "security group" who were detained without trial for 18 months between 1987 and 1989, was arrested on 21 November 1990 and reportedly kept incommunicado for 42 days (27 of which he alleges were in cell number 9 in the Ministry of Interior) before being released uncharged on 1 January 1991. Monji Jouini, who stood as an independent candidate in the 1989 parliamentary election, was reportedly arrested on 19 December 1990, held incommunicado for 43 days in Bouchoucha police station and released uncharged on 31 January 1991. Both men have maintained they were tortured and ill-treated while detained incommunicado.

According to Abdellatif Tlili:

"I was summoned and arrested on 21 November 1990 in Ariana, subjected to violence on the spot by the police, which shocked and angered bystanders...

I was then taken to the Ministry of the Interior where I was taken to [name] who ordered me to be tortured. They suspended me in the "roast chicken" position and blows rained on my body and sensitive parts. They used sticks, rubber tubes, bars and other tools. This "hell" lasted from 2pm till 3.00 in the morning..."

Abdellatif Tlili describes being rolled naked on thorns, facing sexual abuse with sticks and undergoing mock execution. He said that on the third day a doctor was called in to disinfect his wounds but that he was nevertheless afterwards suspended upside-down and beaten for three hours. His wife received sexual threats. After that he was held incommunicado for 39 more days, 27 of them in isolation, in the Ministry of the Interior, before being released without charge on 1 January 1991. Medical certificates issued by the Polyclinique Taoufik in Tunis on 3 January and by the Policlinique El Omrane in Tunis on 5 January state that as a result of alleged torture Abdellatif Tlili suffered from partial paralysis of both lower arms, especially the right arm, and that he had traces of burns on the left calf, bruises on the right calf and bruises on the soles of the feet.

Monji Jouini states:

"My experiences of torment began following my arrest on 19 December 1990, when they stripped me of all my clothes, leaving me completely naked. Then they suspended me for consecutive periods, each lasting about four hours, beating me violently with sticks. The torturers took turns to beat me. Whenever any of them got tired another would take his place, so that my feet became swollen and bleeding. I fainted and they took me down from my suspended position, and they poured cold water on me to bring me round again...My torment continued till I had been suspended 15 times. The last time was on 31 December 1990, when they dragged me out of my dark, solitary cell, crawling on my knees as I couldn't bear to stand on my feet or walk properly...and they asked me 'Are you still determined to deny what you've done?' ... At that point they stripped me of my clothes and ordered me to be suspended again, ... until I lost consciousness and was struck dumb. I was unable to speak, and they left me alone, returning

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me to my solitary cell where I remained for 10 days, unable to speak, eat or move. They brought me a doctor from security... that is how they left me for 29 days without any investigation. When they were sure that most traces of torture had disappeared, they transferred me..."

A medical certificate issued by La Rabta Hospital in Tunis on 7 February 1991, 36 days after his alleged torture had ended, states that Monji Jouini bore bruises and scars on the soles of both feet. Apparently neither the judicial nor the police authorities have investigated the torture allegations made publicly by either Abdellatif Tlili or Monji Jouini.

Salah Hedri, a former colonel who worked in the Ministry of Defence, was arrested from home at 1am on 23 April 1991 and remained incommunicado until 25 June. When his family was first able to visit him on 3 July 1991 they reported that they saw marks of torture on him: his left arm appeared semi-paralyzed; three fingers of his left hand were paralysed, and he evidently found it difficult to stand up. They sent a telegram to the military investigating judge on 4 July requesting a medical examination but apparently received no response. During his torture Salah Hedri was allegedly suspended by the feet and beaten on his feet and knees. In the course of the Driss Commission of Inquiry's investigation into the allegations made by the LTDH and Amnesty International, he was apparently examined by an independent doctor but the findings of this commission have not been made public by the Government. He is now said to be in Bizerta Prison.

Ajmi Lourimi, a philosophy teacher and member of the *al-Nahda* legislative council (*majlis al-shura*), was arrested on 5 April 1991. He was said to have been held at the Ministry of the Interior and Amnesty International was told by fellow detainees that he had been savagely tortured; one fellow detainee reported that he had seen him carried back to his cell covered in blood; another stated that he had heard someone screaming for four hours on end and a guard had shouted to "Ajmi" to keep quiet. He was brought before the investigating judge on 13 May and transferred to a cell in 9 avril Prison but remained in a poor condition. At his trial on 7 July he was charged with holding unauthorized meetings and was acquitted, but he remained in prison under investigation for involvement in the May plot. After an LTDH delegation visited 9 avril Prison, Tunisian Government newspapers incorrectly stated that he had told the delegates that he was well and had denied being tortured.

Abdelkhalik Alaoui, aged 28, was a supervisor at a youth centre in El Kef. He was arrested in March 1991 at Ksour by the national guard and held incommunicado. Twelve days after his arrest a friend heard that he was in hospital and went to see him. The friend testified that he saw him lying naked on a bed under a blood-stained sheet. He raised the sheet and saw that he was naked and that his body was dark blue with bruises all over except on his face. He had drips in the arms and was wearing an oxygen mask which he raised, saying: "If I die it's because of - "[naming the Chief of the national guard in El Kef]. At this point the people guarding him, about eight people in civilian dress, realized that he (the friend) knew Abdelkhalik Alaoui. He had wanted to bring Abdelkhalik Alaoui's mother to see her son but before she had arrived his guards had carried him downstairs and put him in a police car.

His mother lodged a formal complaint with the *procureur de la république* against the national guard for assault against her son, in breach of CP Article 101. She demanded that both she and the *procureur de la république* see her son. According to a source in the lawcourts building the *procureur de la république* saw Abdelkhalik Alaoui and sent him for a medical report. He apparently ordered that the injured man's transfer to prison, which eventually came about. His mother was not allowed to see him for six weeks.

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His trial started on 4 June but was postponed three times on account of his health. Then, on 27 June, he was carried into the court by two other detainees. His lawyer raised the question of his client's torture, but the President of the Tribunal replied: "It's not the court's business, it's the doctor's". Abdelkhalik Alaoui was sentenced to imprisonment for a total of a year and eight months, one year for membership of an illegal organization, six months plus a 25-dinar fine for distributing leaflets and two months for holding unauthorized meetings. On appeal in January 1992 the sentence for membership of an illegal organization was raised to two years.

A 33-year-old chauffeur, Hamide ben Lazhar al-Said, who drove the Governor of El Kef and was apparently believed to have been implicated in the so-called "Stinger rocket affair", was arrested on 3 October 1991 and kept incommunicado. A few days after his arrest a friend was able to see him through a window of his cell and ask how he was. Hamide al-Said apparently said he had been made to sit on a bottle and had 26 stitches in his rectum. He was lying on his side, evidently in extreme pain. He was tried on 16 January 1992 with 57 other detainees all but two of whom alleged torture in incommunicado detention. The investigating judges had apparently refused to record the torture allegations in their *procès verbaux*. The President of the Tribunal reportedly constantly interrupted the detainees and forbade them to speak. Hamide al-Said was sentenced to a total of seventeen months' imprisonment on charges which included membership of an illegal organization.

Mansouri Toumi, aged 37, a member of the *al-Nahda* legislative council who was previously arrested in 1981 and 1987, had been in hiding for a year when he was arrested on 3 October 1991. His mother initially heard that he was at the police station, then that he had been moved to the national guard station. When he was in El Kef she was allowed to take him food and clothes. When the clothes were returned to her for laundering she found there was a lot of blood on the pants and trousers. She was later told he had been moved to Tunis. When he was sent for trial before the El Kef Appeal Court (*Cour d'appel*) on 16 December 1991 he stated that he had been tortured in al-Aouina by being suspended by the arms from an iron bar two metres above the ground. Although he was unable to walk unaided the judge refused to order an investigation into his allegations. He was sentenced to 20 months' imprisonment on charges which included membership of an illegal association.

A student at the University of Tunis in Manouba testified that at the time of the riots in her faculty she was studying and had not taken part. However, when lectures stopped because of the riots and she left with the other students, she was arrested (she believes because she was wearing a *hijab* - the Islamic veil) together with four other female and about 150 male students. At the police station they were forced to kneel and keep their hands raised until many of them had fainted. She saw one student beaten and kicked until he lost a tooth and another forced to his knees, with a police officer riding him like a horse, kicking him all the time. Each student was brought before a senior police officer, who had not been present during arrests. He apparently distributed charges at random; she herself had been charged with stone-throwing. Later she was taken to Bouchoucha where two of the female students told her that they had been suspended, one of them from 10am to 4pm. While she was there other female students taken for interrogation reported that they had been suspended; she herself saw five female students undressed by the police and threatened with rape. She was released after three days with most of the other students. The women were in a state of severe psychological shock. On the day of the university examinations she was arrested again and brought before the investigating judge. When her lecturer testified that she had been attending classes at the time she was supposed to be rioting she was released.

A Sfax University student stated:

"I was called by police on the day of registration [in autumn 1991]... I was then accused of 'organizing a gang of criminals in order to plan and administer the beating and burning of persons, private properties and public buildings' with etc.' at the end of the sentence. I rejected all the accusations...

I was therefore kept four days and nights within a room containing twice as many people as it should do. There was no air and no light. It was extremely hot. The majority of the occupants of the "room" were Islamists... The guards were, in a polite expression, inhumane. While answering their already-answered questions I was hung in the way a chicken is when being cooked. I was very severely beaten on my head and face. I had to take off my clothes, even my underwear. Besides their hands, the agents of torture... were using very strong hosepipes. These monstrous creatures were [names]. With torture they got some false and unproved evidence. After four days I was left free".

Five days after the torture the student was thoroughly examined by a doctor who recorded bruising on the soles of the feet and the backs of the knees. The doctor stated that the injuries were consistent with his torture allegations.

A woman detainee, Fatima Guitouni, was arrested at the beginning of May 1991 and held at Nabeul Police Station. She reported that she was tortured by being beaten while sitting on the floor with her foot suspended from a metal wire between two chairs. She stated that the pain was so severe that she lost consciousness. She was beaten to give information about her son-in-law, Mohammed Khamis, thought to be in hiding. Her testimony is supported by a medical certificate and the testimony of fellow detainees. She was sentenced in June 1991 to a month's imprisonment for providing a room for illegal meetings.

## 4. DEATHS IN CUSTODY

### 4.1 International Standards

The death of a detainee in custody infringes the most important of all rights - the right to life, enshrined in Article 6(1) of the ICCPR which states that:

"Every human being has the inherent right to life. The right shall be protected by law. No one shall be arbitrarily deprived of his life".

The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted in United Nations Economic and Social Council resolution 1989/65 and welcomed by the United Nations General Assembly on 14 December 1989, require all states to conduct "a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions" and to issue a written report within a reasonable period on the methods and findings of the investigation. This report "shall be made public immediately".

Tunisia's executive authorities and courts have failed to comply with these standards.

#### 4.2 Suspected Deaths under Torture

At least seven people suspected of *al-Nahda* sympathies died in custody in Tunisia between April and October 1991 in circumstances which strongly suggested that the death was caused or hastened by torture. On each occasion Amnesty International asked for a public inquiry but none was conducted.

1. Abdelaziz Ben Hamuda Mahuashi, a civil servant working in the Ministry of the Interior, is believed to have been arrested on 21 April 1991 when he failed to come home from work. Although his family kept trying to find out where he was they were apparently told that he was working and could not go home. On 30 April 1991, Ministry of Defence officials notified the family that he had died of a heart attack the previous day. His body was returned a few hours later to the family who were permitted to see only his face and were told the body should be buried within two hours. Several people believed to be Defence Ministry officials remained in close attendance until the burial took place. Reports indicate that Abdelaziz Ben Hamuda Mahuashi was already dead on arrival at the Habib Thameur Military Hospital. The certificate from the military court, dated 30 April 1991, allowing the family to bury the body does not state the cause of death. The family was not given a death certificate, an autopsy report or any other medical certificate indicating the cause of death.

2. Abdelraouf Laaribi was arrested on 3 May 1991 and reportedly held incommunicado in the Ministry of the Interior until his death on 26 or 27 May 1991. His family and lawyers were not informed of his whereabouts or allowed to see him although the pre-trial *garde à vue* detention limit was reached on 13 May. On 27 May the Tunisian authorities notified his family that he had died of a heart attack. His body was delivered to the family early in the morning on 28 May 1991, but they were not allowed to examine it and had to bury it immediately. Abdelfattah Mourou, the lawyer called to wrap the body in its shroud and a former spokesman for *al-Nahda*, reported that traces of injury were visible on the legs. No autopsy report or other medical certificate indicating the cause of death was apparently given to the family. On 9 August one of the family's lawyers registered a complaint 57208/5 before the Tunis procuracy lodging a plea under CP 103 against persons unknown for having caused Abdelraouf Laaribi's death. She reported that subsequently she had seen the complaint obliterated in the register.

3. Abdelwahed Abdelli, a fourth year student at the *Ecole Normale Supérieure*, Teachers' Training College died in Sousse on about 30 June 1991. A Ministry of the Interior spokesperson said that Abdelli had been shot dead while resisting arrest. However, Amnesty International has heard from fellow detainees in Sousse Police Station that he was shot in the leg and arrested two days before he died. He was left without medical attention and tortured during his time in detention. No autopsy report has ever been given to the family.

4. Ameer Degache, a third year theology student at Tunis University, was arrested in June 1991. His family was informed by police on 11 July that he had died and that he would be buried the following day. The family was given no information on the cause of death or any medical certificate, and at the burial they were reportedly not allowed to examine the body. Later a spokesman from the Ministry of the Interior stated that he died from injuries sustained after he threw himself from a third floor window in the Ministry of the Interior, where he had been taken for interrogation. No autopsy report was ever given to

the family.

5. Fathi Khiari, a 33-year-old post office official and brother-in-law of Abdelraouf Laaribi, was arrested at 4.30am on 16 July 1991 from his parents-in-law's home where he was staying with his wife and three children. The police officers who arrested him did not produce an arrest warrant and he was held incommunicado beyond the officially permitted 10-day limit for *garde à vue* detention. His family and lawyer kept asking the authorities where he was and what was his legal status - but all in vain.

On 5 August 1991 two police officers went to his family's house and asked his father and elder brother to go to the police station. There they were informed that Fathi Khiari had died and that he would be buried on the following day at 7 am; the family was told to go directly to the cemetery. The body was not returned to them before the burial. They were told he had died as a result of an illness but were given no details and supplied with no medical certificate or autopsy report. At the cemetery the family was not allowed to examine the body which was apparently wrapped in plastic beneath the shroud.

6. Faisal Barakat, a 25-year-old mathematics and physics student at Tunis university, was a well-known member of *al-Nahda* and of the student union, the *Union Generale Tunisienne des Etudiants* (UGTE), General Tunisian Union of Students, which was banned in 1991. He had appeared in an interview on Tunisian television condemning the government for its handling of the 8 March 1991 events, when several students were reportedly killed or injured after clashes with the police. He later went into hiding and was tried *in absentia* and sentenced to six months' imprisonment, accused, among other things, of membership of an illegal organization. At the beginning of October 1991 his brother Jamal Barakat was arrested by the police, possibly as a means of putting pressure on Faisal to give himself up. Faisal Barakat was arrested in Nabeul between 8 and 10 October 1991 at the place where he was hiding with four other men. He was held incommunicado. On 17 October 1991 his family were apparently told by the Tunisian authorities that he had died as a result of an accident - they offered no further explanation. The Nabeul Hospital medical certificate, dated 11 October 1991, states that the examination of the body of an unknown person revealed concussion and bruises on various parts of the body, including the knees and the soles of the feet. It also states that the stomach was empty.

Jamal Barakat continued to be held after his brother's death, allegedly in order to discourage the family from querying the official account of the death. Amnesty International delegates to Tunisia in December 1991 were told by Sadok Chaabane that Faisal Barakat's father had accepted that his son had died in a road accident.

Later, Amnesty International received testimony from eyewitnesses who stated that they had seen Faisal Barakat in Nabeul Police Station before his death. When he was brought in on 8 October, they said, he had clearly already been tortured; he was reportedly bare-chested and bound, his face looked bruised and his eyes were bleeding. He was taken to the office of the head of the station. Some of the people in the passage (including a group of about 30 fellow detainees) have maintained that for four or five consecutive hours they had heard the noise of beating and screaming.

Afterwards his body, appearing to be lifeless, was taken out and dumped in the passage. According to one witness it was contorted and in the "*Poulet rôti*" position. Some water was thrown over him. At first fellow detainees were not permitted to help him, but later they were allowed to carry him to a chair. Half

an hour later doctors were summoned. A few days later fellow detainees heard he was dead.

7. Rachid Chammakhi, a 28-year old supporter of *al-Nahda*, was sentenced *in absentia* to three months' imprisonment for distributing leaflets on 28 February 1991. He went into hiding and on 15 July 1991 he embarked on legal proceedings to contest his sentence. The retrial was set for 19 August 1991 but was postponed until 25 October. On 23 October his wife was reportedly detained and ill-treated and his house and his sisters' houses were searched. He was arrested at 6.30am the next day at his sister's house in Mornag. The police returned to his home on 25 October to get some telephone numbers, and on 26 October to look for a video recorder. The day after his arrest he was reportedly seen in a street at Sliman surrounded by policemen by a number of witnesses in what was described as a "lamentable state". His hands were handcuffed behind his back and there was a chain round his neck. His back was bleeding. On 28 October his father was summoned to the police station and told his son had died of jaundice. The family spent the day trying to get permission to take his body home before the burial. On 29 October the body was taken to the family home in a police car escorted by five other police cars. It was only after the family insisted on this that the body was taken into the house for a few minutes under strict police surveillance. It bore the marks of an autopsy and, although the family were not able to examine it, they could see a scar on the left chest and bruises on the head. Police officers then took the body to the place of burial, where there was a heavy police presence.

Later, Amnesty International received eye-witness testimony that they had seen Rachid Chammakhi on the night of 27 October in Nabeul Police Station. They said that he was wearing only his underclothes and that his body bore clear marks of torture and bruises; he was handcuffed and made to stand in the corridor for over three hours, then was taken to a room for interrogation. The noise of the beatings and his screams went on for several hours. Afterwards he had collapsed in the bathroom and been taken to hospital.

Another witness who claimed to have seen Rachid Chammakhi in hospital stated that his body was covered in wounds and bruises; he talked with difficulty and complained of pain. He died in the early hours of 28 October.

The investigating judge at Grombalia conducted an investigation into Rachid Chammakhi's death and apparently called for evidence from the police and from doctors who had treated him before and after arrest. This inquiry appears to have been adjourned in December 1991.

Amnesty International has called for independent, impartial, public investigations into each of these deaths in custody. The organization has also called for the results of the Driss Commission's reports into the deaths of Abdelaziz Mahuashi and Abdelraouf Laaribi to be made public.

## 5. FAILURE IN PRE-TRIAL PROCEDURES

### 5.1 International Standards

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Article 14(3)(d) of the ICCPR provides that the accused is entitled "to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it". Principle 17(1) of the Body of Principles contains a virtually identical guarantee.

The Convention against Torture requires each state to investigate promptly and impartially "wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction" (Article 12) or whenever an individual has complained that he or she has undergone torture (Article 13), and to submit the case of anyone accused of torture "to its competent authorities for the purpose of prosecution" (Article 7(1)). Article 15 prohibits the "use against the accused of any statement made as a result of torture".

### 5.2 Tunisian Law and Legal Procedure

According to standard Tunisian procedure, at the end of *garde à vue* detention the dossier of the detainee - which should include the telegram announcing his or her arrest, the form signed by the *procureur* permitting any extension and the records of any medical examinations, as well as the police statements (*procès verbaux*, singular *procès verbal*, PV, Arabic, *mahdar* or *mahdar bahth*) - is presented to the *procureur de la république* or substitute who, depending to some extent on the gravity of the offence, may follow one of the following procedures:

1. The detainee may be brought before an investigating judge designated by the *procureur de la république*; this is obligatory if the accused is charged with a crime and optional if the offence is lesser (CPP 47).
2. Otherwise the detainee may be interrogated by the *procureur de la république* or substitute;
3. By *commission rogatoire* (rogatory commission) - the whole interrogation may be by the judicial police (CPP 57).
4. Finally, the *procureur de la république* may decide to proceed immediately with a trial.

The period during which the detainee is investigated by the investigating judge is known as the period of "instruction".

At the first meeting the investigating judge should inform detainees of the charges against them and their rights, including the right to be represented by a lawyer (CPP 69). The detainees should state whether they accept the police statement as true. The investigating judge should not, except when the accused is facing imminent death or taken in *flagrant délit*, proceed at this stage to further interrogation as the accused is entitled to legal representation during his interrogation. If a defendant chooses a lawyer, access to the latter should never be denied (CPP 70) and the lawyer should be informed of any interrogation 24 hours beforehand (CPP 72).

This first hearing before the investigating judge should provide another safeguard (in addition to the *procureur de la république's* obligation to oversee the period of *garde à vue* enabling the detainee to make any allegations of prolonged *garde à vue* detention, ill-treatment and torture. Under CPP 54 the investigating judge has the right to order a medical examination, but this is a separate matter, and the investigating judge continues to investigate the offence. At the most the torture allegation is sent to the

*procureur de la république*, who may order an investigation. Moreover the accused's allegation of torture and denial of the PV renders any previous PV signed during the of *garde à vue* period null and void.

The investigating judge should also decide whether to grant the detainee provisional freedom or remand him/her in custody. According to CPP Article 84: "*détention préventive* is an exceptional measure"; however, suspected *al-Nahda* sympathizers seem seldom to be granted provisional freedom.

### 5.3 Systematic Violations in Pre-Trial Procedure

Amnesty International is concerned because certain safeguards which should protect the detainee from pre-trial violations are absent from Tunisian law and safeguards which do exist are frequently violated.

As for the danger of torture during prolonged *garde à vue* detention, the failure of the Tunisian CPP to spell out clear and speedy procedures to be followed in the event of torture allegations being made is a serious defect. There appears to be no means whereby any torture allegation by the accused can be immediately dealt with by the investigating judge, who is obliged merely to convey the allegation to the *procureur de la république* and then proceed with investigating the original offence. Even when the investigating judge orders a medical examination, this is not necessarily or usually carried out immediately. Making the consideration of torture or prolonged *garde à vue* detention a separate matter from the original charge means that pre-trial abuses are effectively not taken into account during the accused's period of instruction.

Amnesty International has, furthermore, received many complaints that, even when torture marks are clearly visible investigating judges are apt not to allow a medical examination. Hamed Ouahish, arrested on 3 November 1990, alleged torture in *garde à vue* detention when he came before an investigating judge on 22 November 1990, after 19 days in *garde à vue* detention, but even though the lawyer insisted, the judge refused to permit a medical examination. Lawyers consistently maintain that investigating judges will register torture only if the accused's lawyers keep demanding this. Nevertheless, police statements which are denied by the accused are often still made the basis of an investigation or a trial.

The difficulty of raising and investigating allegations of torture or prolonged *garde à vue* detention emphasises the necessity for the accused to have the right of access to lawyers during the period of "instruction". Most lawyers have maintained that if a defendant has no lawyer or cannot afford one no lawyer will be present. Even though the presence of a lawyer is mandatory in criminal cases, it would seem that, unless this is actually requested, a lawyer needs be appointed only for the court hearing; otherwise the investigation continues without legal representation for the defendant. According to CPP 69, defendants accused of a *délit* or an *infraction* (felony) are not entitled to legal representation unless they actually choose and pay for a lawyer. However, Tunis lawcourts officials told Amnesty International delegates that all detainees are entitled to legal representation during instruction and, if they cannot afford it, a lawyer will be assigned to them.

However, even before the recent repression of Islamists lawyers complained that investigating judges sometimes omitted to inform suspects of their right to legal representation and common law suspects were particularly likely not to be represented during investigation. The fact that insistence on the presence of a lawyer may lead to delays in investigating and bringing the case acts as a disincentive to many accused to

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choose a lawyer. Although lawyers are supposed to receive advance notice of investigative sessions, many lawyers maintained that often they were not informed of the date and time of their clients' instruction and might only find out by sending someone round to the lawcourts building to look at the lists posted outside each day.

It is also alleged that *procureurs de la république* have used their power to appoint investigating judges as a means of bypassing those judges known to investigate torture allegations. The possibility of irregularities occurring in pre-trial procedure when the accused is examined by the *procureur de la république*, or, by *commission rogatoire*, by the judicial police is even greater. Under the system of *commission rogatoire*, which can go on for 10 days after the end of the *garde à vue* period, the accused may not be accompanied by a lawyer during interrogation, although theoretically the right of access to legal representation still applies.

Evidence gathered by Amnesty International, supported by the testimonies of detainees and their families and lawyers, suggests that prolonged incommunicado detention has been used extensively in the cases of thousands of detainees - mainly in order to allow time to elapse so that any signs of torture or ill-treatment can disappear, but also as a form of punishment. Amnesty International delegates who visited Tunisia in May and December 1991 were able to discuss procedure and study registers in the Tunis *Procureur de la république's* office. They also discussed procedures with the Inspector General for National Security in the Ministry of the Interior. However, the dates of arrest indicated in telegrams and registers in the lawcourts conflicted with the dates of arrest obtained by Amnesty International from detainees' families, lawyers and eyewitnesses. Amnesty International believes that detainees are being held incommunicado for long periods in police stations, national guard centres and the Ministry of Interior building without their arrests being formally reported to and registered in the offices of the *procureur de la république*.

The most frequent method of concealing illegally prolonged *garde à vue* detention has been by falsifying the date of arrest so that the *garde à vue* detention period appears, from the records in the detainee's dossier, to be within the legal limits. Police statements of Hassan ben Kader al-Khaiati from al-Zahrouni in Tunis record his date of arrest as 4 July 1991 although he was actually arrested nearly three months earlier, on 19 April 1991. Al-Khaiati's wife wrote to the *procureur de la république* on 11 May and 19 June but heard no news about her husband until the beginning of July. The official date of arrest of Ibrahim ben Ali al-Bakai is given as 31 October 1991 though al-Bakai, a secondary school teacher and father of 12, was arrested seven weeks before, at 7pm on 10 September, when armed police reportedly came to the house and threatened the family.

Apart from alleging that families are lying or that individuals were in hiding at the time their arrest was reported to Amnesty International, the Tunisian Government has offered no explanation for such discrepancies.

Among a number of cases raised last year with the Tunisian Government was that of Monji Jouini whose torture testimony after his arrest on 19 December 1990 is recorded above. The Minister of Justice told Amnesty International delegates that he had not been in prolonged *garde à vue* detention but in Algeria, and that his statement that he had been tortured in detention was false. When the delegates showed the Tunis *Procureur de la république* reports of police interrogations of Monji Jouini dated 28 and 30 January 1991 the *procureur* then told them that Monji Jouini had only been arrested on his return from Algeria on 27 January. Amnesty International has continued to call for a full investigation of Monji Jouini's

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allegations.

Moncef Triki, a human rights activist and President of the Tunis branch of the *Association pour la protection des droits de l'homme et des libertés du peuple*, Association for Protection of Human Rights and People's Liberties, was arrested on 11 May 1991 at his home by a large body of police who came to his house and seized his fax machine and a printer. The arrest was witnessed by his wife Monjia and their four children, also by neighbours; the same day a fax reporting the event was sent to Amnesty International. The wife later requested the *procureur de la république* for a medical examination of her husband but received no reply. At his trial on 1 August, the arrest date indicated on his police statement was 27 June - 46 days after the actual date of his arrest.

Amnesty International believes that the arrest dates inscribed in its own documents have been accurate and that there has been much falsifying of arrest dates by the Tunisian authorities. The dates of arrest written on the police documents do not accord with actual dates of arrest; such dates are given in order to make it appear that the legal limits of *garde à vue* detention are being adhered to.

Occasionally, documents in actual prisoners' files reveal that arrest dates have been falsified. In one file, that of Murad Ben Dahabi Amri, a prison medical certificate was dated 30 October 1991, nine days before the official date of arrest, which was registered as 8 November. In another case two detainees, Lotfi Dimassi and Nouredine Masdi, were actually arrested at the beginning of October 1991 but the arrest date on their police statement is given as 22 November, although the police chief's signature is dated 15 November. Because of this error the Court of First Instance at Grombalia allowed the two detainees to go free.

## CONCLUSIONS

Out of at least 8,000 suspected sympathizers of *al-Nahda* who have been arrested since September 1990, Amnesty International believes that thousands have been held by the security police and the national guard in illegally prolonged incommunicado detention, the true dates of their arrest hidden by systematic falsification of records. Torture or ill-treatment has become routine in almost every detention centre in Tunisia. Hundreds of those who are detained have made allegations of torture which have gone largely uninvestigated and almost completely unpunished by the Tunisian authorities.

By its failure to recognize systematic violations of basic human rights by members of the security forces or to bring the perpetrators to justice, the impression that the Tunisian Government is not only condoning but even encouraging the abuses it purports to condemn is becoming inescapable.

## RECOMMENDATIONS

Amnesty International urges the Tunisian Government to act immediately to redress the serious violations of human rights during pre-trial detention at present taking place in Tunisia.

(i)Notwithstanding Tunisia's solemn obligations as party to international treaties and its obligations to enforce its own law, torture and ill-treatment have become routine in Tunisia. Amnesty International

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urges the Tunisian Government to recognize that torture continues to be a serious problem in Tunisia, that it will no longer be tolerated under any circumstances and that all law-enforcement officials are obliged to refuse to obey any order to torture.

(ii) Amnesty International urges the Tunisian Government to show its will to carry out serious reforms by announcing publicly its recognition that the practice of holding detainees in prolonged *garde à vue* detention is unacceptable. All those currently detained in pre-trial detention beyond the 10-day legally permitted limit should be charged and brought to trial or immediately released; those who remain in detention should have immediate access to lawyers, family and independent doctors.

(iii) All existing bodies which are entitled to inspect detention centres have been consistently failing to do so. An independent body should be immediately set up with the task of visiting all prisons and alleged places of detention, examining all records and ordering the release of anyone found to be illegally detained. An inspector-general, independent of the police and prosecutor, should be appointed, with sufficient staff and resources, and the obligation to make frequent and unannounced visits to places of detention.

(iv) The Tunisian Government should make public the findings of the Driss Commission of Inquiry. The government should reconstitute commission this or set up a new commission of inquiry made up of persons known for their independence, impartiality and attachment to human rights. The commission should have a wide mandate to investigate incommunicado detention and torture and all questions relevant to these abuses and have power to visit all police stations, detention centres and prisons, to take evidence from all detainees and prisoners as well as any other interested person. The commission should have the power to ensure the protection of witnesses by means which should be publicly announced in advance. The formation of the commission of inquiry should be taken as an opportunity to launch a wide and public discussion throughout Tunisia of the issues exposed in this report so that the atmosphere of secrecy and silence which has surrounded and encouraged these abuses within Tunisia is dissipated. The commission's report should promptly be made public. However, the Tunisian Government should not wait for the report of any commission of inquiry before taking the urgent steps to remedy human rights abuses outlined above.

The recent violations of human rights in Tunisia have taken place in violation of existing laws and international standards which should safeguard the rights of detainees. Reforms in laws must be accompanied by the means to enforce them.

The above steps should be taken without delay. In order to improve safeguards for the future, Amnesty International urges the Tunisian Government to eliminate torture and bring its *garde à vue* detention procedure into line with international standards by also implementing the following recommendations:

1) Ensure that arresting agents respect the dignity and integrity of the person; that arrest and detention are subject to strict judicial control, and that arrested persons are immediately informed of the charges against them and their rights;

2) Publicly declare that the arrest of substitutes in place of a wanted person as a means of putting pressure on the latter to surrender is unacceptable; severely punish contraventions of this requirement;

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3) Draw up clear and precise regulations to ensure detainees' prompt right of access to family, lawyers and doctors;

a) by instituting clearly defined rules whereby detainees' families are notified immediately upon arrest of their legal status and place of detention;

b) by ensuring prompt and confidential access to lawyers and the presence of lawyers during interrogation sessions;

c) by giving an immediate medical examination upon detention, and regular medical attention thereafter. As CPP Article 13bis, which allows access at any time to a doctor when requested by the detainee or immediate family, is being ignored, Amnesty International urges that the appropriate authorities should now be required to allow immediate access to the detainee of any qualified doctor holding a signed authorization from the detainee's family;

4) Ensure that each detainee has prompt access to a judge and thereafter is kept in custody only under order and supervision of the court;

5) Establish complete central detainee registers, open to lawyers and relatives of detainees;

6) Review and supervise detention and interrogation procedures; separate the authorities responsible for detention from those in charge of interrogation and see that detention centres are independently inspected;

7) Require all police statements made by the accused to be countersigned by his or her lawyer;

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

9) Ensure that thorough, independent and impartial investigations are conducted whenever procedural irregularities and torture or ill-treatment are alleged to have taken place or there is reasonable ground to believe that torture or ill-treatment have taken place - even if no formal complaint has been lodged;

10) Ensure that those responsible for torture or ill-treatment are brought to justice, and that torture victims are given medical treatment and compensation;

11) Undertake, as required by the Convention against Torture, systematic, public steps to review practices related to detention and interrogation. This review should include the participation of law enforcement officials at all levels and non-governmental organizations concerned with criminal justice or human rights questions;

12) Establish special rehabilitation programs through its health services, and fund private rehabilitation programs in Tunisia; if necessary, finance rehabilitation programs abroad or seek international assistance to rehabilitate victims.