

Tunisia

Submission to the UN Universal Periodic Review

First Session of the UPR Working Group, 7-11 April 2008

In this submission Amnesty International provides information under sections B, C and D:

- Under section B, Amnesty International raises concern over the use of military courts to try civilians, the independence of the judiciary, and restrictions imposed on human rights organisations.
- In section C, we describe concerns related to anti-terrorism measures, including the use of torture and unfair trials, as well as concerns related to political prisoners, prison conditions, freedom of expression and religion.
- In section D, Amnesty International makes a number of recommendations in the areas of concerns listed.

B. Normative and institutional framework of State

Anti-terrorism legislation and the use of military courts to try civilians

Amnesty international is concerned about the broad Anti-Terrorism law in Tunisia, because its very broad definition of may constitute terrorist activity and very broad penalization of terrorist-related offences undermine and excessively restrict human rights and fundamental freedoms.

Under the 2003 Anti-terrorism Law as well as the Military Justice Code, civilians charged with offences related to terrorism are tried before military courts.

Military courts in Tunisia violate a number of international fair trial standards. While the military court's presiding judge is a civilian he is assisted by four counsellors, all of whom are serving military officers, and public access to the court is limited by virtue of its location inside a military compound. Those convicted by a military court can appeal only before the military court of cassation, which reviews only procedural issues and not the substance of the case. Defence lawyers have only restricted access to their clients' files and sometimes lack crucial information about the proceedings, such as advance notice of the dates of hearings. Unlike ordinary criminal courts, military courts do not allow lawyers access to the register of pending cases.

Independence of the judiciary

Amnesty International is concerned over the constant threats to the independence of the judiciary in Tunisia. The authorities deny the existence of serious and structural irregularities in the administration of justice and often attempt to silence those who speak out about systematic political interference in the independence of the judiciary. In a series of intimidating measures, judges' activities and their freedom of expression are further restricted; for example, there are reports that many judges were arbitrarily transferred to isolated areas, far from their families, apparently in an attempt to intimidate and silence them. In October 2006, these concerns were confirmed by the outgoing head of the European Commission delegation in Tunis who publicly criticized the slow pace of political reform and called for better training for judges and lawyers to consolidate the independence of the judiciary.

In August 2005, members of the Association des Magistrats Tunisiens (AMT) were barred from their offices, under orders from the Ministry of Justice and Human Rights. After it called for greater judicial independence in Tunisia, the AMT's telephone, fax and internet access were increasingly disrupted and later effectively cut off by the authorities.

In May 2006, lawyers organized a number of sit-in protests against a new law creating the Higher Institute for Lawyers on the grounds that it had been adopted by Parliament without taking account of the outcome of consultations with the Lawyers' Association, which held it would undermine judicial independence. The Institute, which under the new law would be

placed under the supervision of the Ministries of Justice and Human Rights and of Higher Education, was to be responsible for training future lawyers, a task so far entrusted to the Lawyers' Association and the AMT. During the sit-ins, many lawyers were physically assaulted by the police.

In September 2006, a judge, and member of the executive board of the AMT, was prevented from travelling to Hungary to participate in a meeting of the International Union of Judges. Under Tunisian law, judges require the permission of the Secretary of State for Justice to leave the country.

Restrictions imposed on human rights organizations

Despite the protection afforded by international and regional human rights treaties and standards, human rights organizations in Tunisia continue to experience repressive action. The Tunisian law on associations requires new NGOs to submit an application to the government to gain recognition and be able to operate legally. According to this law, an NGO that has filed such an application may operate freely while the government processes its application. If the government does not reject the application within 90 days, the NGO is automatically registered.

In practice, however, the government routinely blocks the registration of new NGOs by refusing to provide receipts for their registration applications. Without such a receipt, NGOs are unable to counter the government's assertions that they have not applied to register and, therefore, that they are not allowed to operate. Registration has been denied in this manner to several leading independent human rights organizations, including the International Association for the Support of Political Prisoners (*Association Internationale de Soutien aux Prisonniers Politiques*) and the Association Against Torture in Tunisia (*Association de Lutte contre la Torture en Tunisie*). The National Council for Liberties in Tunisia (*Conseil National pour les Libertés en Tunisie*) was refused registration in 1999, and filed a complaint against the decision of the Ministry of Interior before an administrative court; the case remains pending.

Even where official registration and legal recognition is obtained, however, this provides no guarantee that an organization can operate free from official interference, as evidenced by the experiences of the Arab Institute for Human Rights (*Institut Arabe des Droits de l'Homme*), the Tunisian League for Human Rights (*Ligue Tunisienne des Droits de l'Homme*) and the Association of Tunisian Judges (*Associations des Magistrats Tunisiens*). Although legally-registered, these organizations are required to obtain official authorization prior to public meetings and events, and such authorization is often withheld. Attempts to hold demonstrations or gatherings without official sanction are prevented or disrupted by the police.

C. Promotion and protection of human rights on the ground

Torture and other ill-treatment in the "anti-terrorism" campaign

The number of people charged with "terrorist" activities has increased markedly over the past few years. Hundreds of people, most of them in their early twenties, have been charged under the 2003 anti-terrorism law; many of them were arrested for allegedly seeking to go to Iraq to take up arms against the US-led coalition.

People arrested in connection with terrorism-related activities have often been detained incommunicado for days or weeks, well beyond the six-day maximum legal limit of the *garde à vue* detention permitted under the Tunisian Code of Penal Procedure. Some were reportedly tortured or ill-treated during this period. Methods of torture alleged include suspension while naked in contorted positions, beatings on sensitive parts of the body and sleep deprivation. Such torture and other ill-treatment is reportedly perpetrated against

detainees held in the custody of the security forces, notably officials of the State Security Department of the Ministry of Interior, and used to extract “confessions” or other information or to force detainees to sign statements which they later retract in court on the grounds that these were extracted under torture or duress.

Unfair trials and the “anti-terrorism” campaign

Since its introduction in December 2003, the anti-terrorism law has been widely used by the authorities to arrest, detain and try alleged terrorist suspects. Those convicted have been sentenced to long prison terms after grossly unfair trials, including before military courts. Independent observers from Amnesty International and other organizations who attended some of these trials reported that prosecution evidence submitted to the courts to sustain charges of violence was often weak. In many cases, defendants have been convicted largely or exclusively on the basis of confessions which they allege were obtained through torture or ill-treatment. Access by defence lawyers to their clients has been increasingly curtailed in terrorism-related cases.

The anti-terrorism law and provisions of the Military Justice Code have also been used against Tunisian nationals who were returned to Tunisia against their will by the authorities in other countries, including Bosnia and Herzegovina, Bulgaria, Italy and the USA. While in the custody of the Tunisian authorities, some were charged with links to terrorist organizations operating outside the country. Some were referred to the military justice system although they are civilians.

The current patterns of violations in cases involving alleged terrorists bear a striking resemblance to the grossly unfair mass trials of the early 1990s in which hundreds of prisoners were sentenced to lengthy prison terms. Amnesty International observers at the military trials of Bab Saadoun and Bouchoucha in 1992 found that basic standards for fair trial, including prompt access to lawyers, were violated, that there was insufficient evidence of a plot and that presumption of guilt prevailed over the principle of the presumption of innocence. Amnesty International’s recommendations for a retrial and for independent inquiries into allegations of torture and of pre-trial irregularities – notably prolonged incommunicado detention, falsified arrest dates and lack of access to lawyers – were ignored. Fifteen years on, the Tunisian authorities still reject Amnesty International’s findings.

Political prisoners

Despite the release of some 100 political prisoners in recent years, hundreds more continue to be imprisoned, including scores who have been held since the early 1990s after being convicted of membership in *Ennahda*, an Islamist organization that is banned in Tunisia. The government continues to deny the existence of political prisoners or prisoners of conscience, describing them as ordinary criminal prisoners, and has previously banned demonstrations highlighting their plight and calling for their release.

Political prisoners are subject to discrimination and arbitrary measures in prison. The Tunisian authorities continue to hold them together with convicted criminal prisoners in breach of international standards requiring that different categories of prisoners be kept separate. Some political prisoners are reported to be in poor health and in urgent need of medical treatment due to the harsh prison conditions, including prolonged solitary confinement.

After their release, political prisoners are often subject to arbitrary measures preventing them from travelling freely within Tunisia or abroad and are denied identity documents. Sometimes members of their families are also subject to restrictions.

Prison conditions

Amnesty International is concerned at reports that prison conditions in Tunisia amount to cruel, inhuman or degrading treatment or even torture. For many years, prisons in Tunisia

remained effectively hidden from public scrutiny; no comprehensive report on prisons or information on the numbers of prisoners being held and their different categories were made public by the authorities, and independent national and international human rights and humanitarian organizations did not have access to prisons or detention centres.

In April 2005, however, the Tunisian authorities agreed that the International Committee of the Red Cross (ICRC) would be permitted to undertake regular visits to prisons, and the first such visits were carried out in June 2005. At the same time, the government said it would no longer hold prisoners in solitary confinement for more than 10 days. Despite the positive decision to allow the ICRC access, however, political prisoners continue to launch hunger strikes to protest against the denial of medical care, interruption of family visits and harsh prison conditions; some prisoners are reported to have been forcibly fed and ill-treated for protesting through hunger strikes.

Freedom of expression

The Tunisian authorities continue to impose severe restrictions on freedom of expression, including freedom of the press. Foreign publications are subject to censorship, and editors and journalists who criticise the government are liable to be dismissed by their newspapers, harassed through smear campaigns in the official press, or subject to prosecution or threats of prosecution on charges of criminal defamation. Many of these concerns were shared by the Special Rapporteur on the right to freedom of opinion and expression during both of the visits undertaken in 1999 and 2005.

Independent journalists are prevented, often by force, from holding meetings or covering events organized by human rights organizations or those that may be critical of the authorities. In April 2006, for example, the Union of Tunisian Journalists (*Syndicat des Journalistes Tunisiens*) was prevented from holding a meeting of its executive board, and its members continue to face police harassment and intimidation. The President of the Union, Lotfi Hajji, was briefly detained on at least three separate occasions in 2006. Most recently, in September 2007, he was prevented from reporting on the hunger strikes by the Secretary General of the opposition Progressive Democratic Party and the editor-in-chief of its official newspaper, *Al-Mawkif*, to protest against their judicial harassment by the authorities.

Freedom of religion

Harassment of women wearing the *hijab* (Islamic headscarf) was routine throughout the 1990s, but diminished in the early 2000s. In recent years, however, the authorities have stepped up harassment of women wearing the *hijab* following statements by senior government figures. The Ministers of Foreign Affairs and of the Interior and the Secretary-General of the ruling political party, the Constitutional Democratic Rally (*Rassemblement Constitutionnel Démocratique*), publicly criticised the increase in the use of the *hijab* by women and girls, and beards and the *qamis* (knee-length shirts) by men, and called for strict implementation of a 1980s decree from the Ministry of Education banning women from wearing the *hijab* at educational institutions. Women especially have suffered in the enforcement of these policies. Some women are reported to have been ordered to remove their *hijabs* before being allowed into schools, universities or workplaces. Some women have also reportedly been taken to police stations and required to sign statements that they would no longer wear the *hijab*; others have reportedly had their *hijab* stripped off them in the street by police officers in plain clothes.

In October 2007, an administrative court in Tunis ruled that the decree was unconstitutional when it considered a complaint against the Ministry of Education by a teacher who was dismissed for wearing a *hijab*. The Minister of Education appealed the decision on 18 October 2007 and the outcome is still pending.

D. Identification of achievements, best practice, challenges and constraints

Amnesty International would like to highlight some key challenges that the government must address to uphold its commitment to human rights protection, including as a member of the Human Rights Council:

- Amnesty International calls for the 2003 Anti-Terrorism legislation to be reformed to comply with the Tunisia's international human rights obligations, especially its expansive definition of terrorism and terrorism-related offences, and calls all those accused under the anti-terrorism law and on other charges to receive fair trials in line with international standards;
- Amnesty International calls on the Tunisian government to take effective measures, including legislative reform, to address the serious and structural irregularities in the administration of justice which harm the independence of the judiciary;
- Amnesty International calls on the Tunisian government to uphold the country's obligations under both national law and international human rights law and standards and to lift restriction arbitrarily imposed on former political prisoners. It also calls on the Tunisian authorities to amend or repeal all laws that continue to allow prison sentences for the peaceful exercise of the right to freedom of expression, association or assembly and to release immediately and unconditionally all prisoners of conscience;
- Amnesty International calls for effective measures to put an end to the restrictions imposed on human rights organizations and to stop the harassment and intimidation of human rights defenders, journalists and others;
- The Tunisian government must take effective measures to stop incidents of torture and other ill-treatment at any stage of an individual's detention or questioning, and to ensure that all allegations of torture and other ill-treatment of prisoners are urgently investigated and the perpetrators brought to justice;
- Amnesty International strongly urges the Tunisian government to take concrete and effective measures to improve prison conditions as well as ensuring that prisoners have full access to family visits and medical care, and are not subject to torture or ill-treatment including from prison authorities;
- Amnesty International urges the Tunisian authorities to uphold freedom of religion and to take measures to protect women wearing the *hijab* from discrimination or harassment, including by law enforcement officials.

Appendix: Amnesty international document for further reference:

- Tunisia: releases welcome but reform needed, MDE 30/007/2007
- Tunisia: human rights briefing for the 20th anniversary of President Ben Ali's rule, MDE 30/010/2007
- Annual Report entry 2006-2007