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TUNISIA

SUMMARY OF AMNESTY INTERNATIONAL'S CONCERNS

SEPTEMBER 1990

SUMMARY

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In November 1987 President Habib Bourguiba, who had been Tunisia's Head of State since independence, was replaced by President Zein el-Abidine Ben-Ali. Since his coming to power, more than 10,000 criminal and political prisoners have benefitted from amnesties by being released from prison or having their civil rights restored. No executions have taken place and President Ben Ali has on several occasions publicly stated his opposition to the death penalty. Reforms to the Criminal Procedure Code have limited to a maximum of ten days the length of time a suspect can spend in pre-trial garde à vue detention, without access to relatives or a lawyer. In addition the Tunisian Government has ratified the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

However Amnesty International remains seriously concerned at a number of violations of human rights, including the use of torture and the imprisonment of prisoners of conscience and possible prisoners of conscience, which are still taking place. Torture or ill-treatment of detainees usually takes place in pre-trial incommunicado detention; Amnesty International is concerned that the ten-day period still violates international standards. Amnesty International considers that a number of articles in existing laws place unnecessary restrictions on freedom of association and expression and have led to the arrest and detention of prisoners of conscience. The organization is concerned at the Tunisian Government's apparent unwillingness to recognise and investigate such abuses.

This summarizes a 13-page document, Summary of Amnesty International's Concerns in Tunisia, AI Index: MDE 30/03/90, issued by Amnesty International in September 1990. Anyone wanting further details or to take action on this issue should consult the full document.

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SUMMARY OF AMNESTY INTERNATIONAL'S CONCERNS IN TUNISIA

On 7 November 1987, President Habib Bourguiba who had been Tunisia's Head of State for over 30 years, was replaced by Zein el-Abidine Ben Ali. In his inaugural speech on that day President Ben Ali promised to introduce a multi-party system, to respect human rights and to restore the rule of law.

In the next months a number of new laws were passed. Act 87-70, promulgated on 26 November 1987, amending Articles 13 and 57 of the Code de Procédure Pénale, limited the period a suspect could remain in garde à vue detention before trial; Act 87-79 of 29 December 1987 abolished the State Security Court and Decree 1876 of 4 November 1988 established a number of rights for prisoners in areas of hygiene, visits and disciplinary measures. In addition, on 23 September 1988 the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment was ratified without reservation. Other laws passed during this period include a Law on Political Parties, under which seven opposition parties have been legalised, a new Press Code and a new Law on Associations.

Since his coming to power, more than 10,000 criminal and political prisoners have benefitted from amnesties by being released from prison or having their civil rights restored.

Amnesty International has welcomed the amnesties and reforms passed under the present government of President Ben Ali, his stated commitment to human rights and his opposition to the death penalty. The organization recalls that during the last years of the government of President Bourguiba its concerns included arbitrary arrests, the imprisonment of prisoners of conscience, widespread use of torture, unfair trials, cruel and inhumane prison conditions and the death penalty. However, the organization remains seriously concerned at a number of violations of human rights, including torture and the imprisonment of prisoners of conscience and possible prisoners of conscience, which are still taking place. It is also concerned at the Tunisian Government's apparent unwillingness to recognise and investigate such abuses.

Torture or ill-treatment of detainees usually occurs immediately after arrest or during garde à vue incommunicado pre-trial detention. Amnesty International believes that incommunicado detention facilitates such torture and ill-treatment particularly as the time limits and safeguards laid down in Tunisian law are sometimes violated. Amnesty International is concerned at the Tunisian Government's apparent failure to investigate certain specific cases in which torture of detainees has been alleged and the failure of the government to take measures to prevent continuing torture.

Amnesty International considers that a number of articles in existing

laws place unnecessary restrictions on freedom of association, expression and thought, conscience and religion in violation of the requirements of the International Covenant of Civil and Political Rights (ICCPR) and other internationally recognized standards. Such laws have led to the arrest and imprisonment of persons considered by Amnesty International to be prisoners of conscience. The organization is also concerned at the continuing imprisonment of four people after an unfair trial in September 1987. It believes that Article 154 of the Tunisian Code de Procédure Pénale (CPP) violates international standards for fair trial in allowing a suspect to be convicted on the basis of a single unsigned and unsupported police statement.

Amnesty International welcomes the fact that no death sentence has been carried out in Tunisia since October 1987. It is concerned, however, that death sentences continue to be passed by courts in Tunisia and the death penalty remains for a wide range of offences.

1. TORTURE AND OTHER ILL-TREATMENT

Amnesty International is concerned about reports suggesting that torture or ill-treatment of political and other detainees is widespread in Tunisia in violation of Article 7 of the ICCPR and the Convention Against Torture. Allegations of ill-treatment on arrest and torture and ill-treatment in police custody have been received from all parts of the country and involve various law enforcement bodies. The victims frequently have been members of unregistered political groupings such as the Hizb al-Nahda, Party of the Renaissance, (al-Nahda, the former Mouvement de la tendance islamique, Islamic Tendency Movement, MTI), the Parti communiste des ouvriers tunisiens (PCOT), Communist Party of Tunisian Workers, and the Parti de l'unité populaire (PUP), Party of Popular Unity. Amnesty International is concerned that members of these, and other unregistered political groupings, are often charged with political offences under laws which appear to violate the right to freedom of expression enshrined in Article 19(2) of the ICCPR.

Reports of the torture and ill-treatment in custody of people detained for common-law offences have also reached Amnesty International. The full extent, however, is difficult to assess: it is said that many common law detainees do not lodge formal complaints.

The reports of torture or ill-treatment received by Amnesty International refer almost exclusively to the period of garde à vue detention, which is governed by Article 13 bis of the Tunisian CPP.

1.1 Incommunicado Detention: One condition for Torture

Within three weeks of coming to power the government of President Zine el-Abidine Ben Ali issued Article 13 bis to regulate the length of time a suspect may be held garde à vue in pre-trial detention, without access to lawyers or family, and institutes certain safeguards.

Under this amendment, all arrests are required to be carried out by the police and the period of garde à vue detention, previously unlimited, is limited to four days. In addition, the police are required to inform the Procureur de la République (state prosecutor) of all detentions. The

latter can then extend the period of garde à vue detention by four days by written authorization and without giving reasons, and thereafter for a further two days "in case of absolute necessity", making a maximum of 10 days in all. The police are required to record the date and time at which the period of garde à vue detention commences, the dates and times at which each interrogation session starts and finishes, and the dates and times at which detainees are transferred to other places of imprisonment and/or released. Finally, Article 13 bis provides that, during the course of garde à vue detention or at the end of it, every detainee can seek access to a medical examination - though it does not specify that this be carried out by an independent doctor.

Neither Article 13 bis nor any other provision of the CPP requires that the family or legal representative of an arrested person be notified or given access to the prisoner during the period of garde à vue detention.

Although this law is an improvement on the previous situation, its provisions still fall short of international standards which require governments to provide immediate notice of detention to families of detainees and to grant detainees prompt access to their families, lawyers, independent doctors and a judge. Article 9(3) of the ICCPR guarantees that "[anyone] arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power ..." The Human Rights Committee, established to monitor implementation of the ICCPR, has explained in its General Comment 8(16) that Article 9(3) requires that delays in being brought before a judge "must not exceed a few days". Amnesty International considers that, by denying immediate notice to families and prompt access to the outside world, garde à vue detention under Article 13 bis contravenes these international standards.

The organization is also concerned that in practice garde à vue detention is frequently, rather than exceptionally, extended to the maximum of 10 days, and detainees are often not granted access to a doctor. The latter is of particular concern since injuries or other evidence of torture or ill-treatment may have disappeared by the end of the 10 day period.

Amnesty International is further concerned because Article 57 of the CPP, as amended by Act 87-70, permits the juge d'instruction (examining magistrate) to delegate his duties of cross-examination of the suspect by commission rogatoire (rogatory commission) to an officer of the police judiciaire (criminal police). Lawyers have told Amnesty International that the process of interrogation by the police judiciaire undermines certain of the rights instituted under Article 69, notably in that it removes in practice the right of the suspect to have a lawyer present during the interrogation which follows the period of garde à vue detention. Many cases appear to be passed on to the police in this way by commission rogatoire. As the procuracy is also empowered under Article 85 of the CPP to detain a suspect for six months, renewable to a maximum of eighteen months in case of crimes, in preventive detention, this potential lack of access to legal advice during interrogation appears to represent a serious violation of Article 14(3)(b) of the ICCPR.

1.2 Violations of the Time Limits and Safeguards in the Garde à Vue Law

While Amnesty International considers that incommunicado detention for ten days as permitted by Article 13 bis of the CPP does not provide the prompt access to family, lawyers or a judge required by internationally recognized standards, the organization is concerned that even those standards laid down in the law have been violated on a number of occasions. The organization has received several complaints of suspects being held in prolonged pre-trial incommunicado detention which exceeded the time limits presented in Article 13 bis.

Cases of garde à vue detention prolonged beyond the ten-day maximum include some of the so-called "security group" arrested in November 1987: they were held garde à vue for up to 40 days. Similarly, Salih al-Abidi was arrested in January 1988 and allegedly kept garde à vue for over 25 days and Fathi Ali Hachad was reportedly kept garde à vue for 17 days in September 1989. These have alleged torture in garde à vue detention and their cases are discussed in greater detail below.

Two other cases involving garde à vue detention which exceeded statutory limits are those of Hussein al-Najjar and Mohamed Ali Hrath. Hussein al-Najjar was arrested at his parents' house in Tunis at 11am on 6 June 1989; Mohamed Ali Hrath was arrested at 6.30am on 7 June 1989 by the Sûreté nationale who searched his house. They were apparently held in cells contained in headquarters of the Ministry of the Interior until 4 July 1989 when they were released. Attempts were made by their families and lawyers to determine their whereabouts from the Ministry of the Interior and the procuracy, but without success. In another two cases, Taoufik ben Mansour and Adel el-Soumari were arrested without warrant on 12 November 1989 while travelling by public bus and released without charge after 20 days in police custody. During this period, the families were not informed of their whereabouts and, despite many attempts to do so, did not obtain this information from the authorities.

A recent case in which the detention exceeded the statutory time limits involved the arrest of over 10 young men from Siliana and their detention in garde à vue, without access to lawyers or families, for over 20 days. Mustapha Jlasi, Tawfiq al-Manoubi, Shoukry Tarchoun, Mohamed Jlasi, Fawzi Atiya, Rachid Zarghbi, Aissa Zannagi, Hassane Husni, Ali Jlasi, Muhsin Majri and Rachid Hassane Bou Jamaa, were arrested in Siliana on 18 or 19 May 1990 after a demonstration against unemployment in that town on 17 May 1990. As two are soldiers, the cases of all those arrested fell under military jurisdiction (under a statute providing that if one of a group of defendants is a soldier all defendants are subject to military jurisdiction), but even in such circumstances the time limits regarding garde à vue detention remain the same.

Parents of those arrested have informed Amnesty International that the only news they had obtained concerning the whereabouts of those held was through unofficial reports from members of the police, or others who had been arrested and were later released. They made a number of attempts to see or gain news of those held, sometimes accompanied by their lawyer, but without success.

1.3 Torture and Ill-Treatment in Custody: Specific Cases

Amnesty International has welcomed the ratification by Tunisia in July 1988 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). However, although the Tunisian Government has repeatedly expressed, in public statements, the desire to eradicate all abuses, allegations of torture and ill-treatment in contravention of the Convention against Torture as well as Article 7 of the ICCPR continue to be made. There have also been a number of deaths in custody in suspicious circumstances. Though the Convention against Torture was incorporated in national law as Law 88-79 with the power to override any provisions of national law contrary to its articles, Tunisian lawyers have expressed concern that, as no penalties were decreed for the infringement of any article, its practical use in the courts is limited.

In November 1987, shortly after the change of government and the coming to power of President Ben Ali, about 150 people, mostly former army or police officers, were arrested. Known as the "security group", they were held in prolonged garde à vue in the cells of the Sûreté nationale in the Ministry of the Interior where many of them alleged that they were tortured. They were all released; without trial, in presidential amnesties in November 1988 and March and May 1989. One detainee, Captain Mohamed El-Mansouri, died in custody in November 1987; the autopsy is said to have found only that he died of cardiac arrest. Amnesty International is concerned that no full investigation was carried out into allegations that his death resulted from torture. In addition, the organization is concerned that the serious allegations of torture during the period of garde à vue detention made by several members of this group appear never to have been officially investigated. One of them, Sayyed Ben Burawi Ferjani, is still, according to a report made after interview and examination by the London-based Medical Foundation for the Care of Victims of Torture on 3 January 1990, suffering from the effects of torture inflicted on him at that time. These included suspension in the "poulet rôti" position (when the subject is trussed like a chicken, his arms held behind his knees by means of ropes and an iron bar), beatings in this position with an iron bar or plastic hose, falaga (beating on the soles of the feet) with blocks of wood studded with nails, and burning with lighted cigarettes. Lutfi Zaitoun, another member of the same group, alleges that he was beaten on the head for three hours, losing a portion of the outer flesh of his head as a result. Other members of the same group have also made detailed allegations of torture to Amnesty International, including Mohsin Habouria, who alleges torture by suspension in the "poulet rôti" position, and Taoufik Mejri, who alleges that he was beaten, suspended in the "poulet rôti" position, given electric shocks, and had ether applied to sensitive areas of his body.

Lawyers representing these and other detainees from the same group submitted formal complaints alleging torture to the Ministry of the Interior and the Ministry of Justice, but no investigation appears to have been held.

In another case, Salih Abderrahmane El-Abidi was sent back from Algeria after being refused refugee status there in January 1988. He was arrested on arrival at the Tunisian border and reportedly held incommunicado for over 25 days. Through his lawyer he made specific complaints against named and unnamed members of the National Guard including the head of the police station at Agba. He alleges that he was beaten with canes, two of which were broken due to the violence of the

assault, and then tied to a table and punched on the head and stomach until he nearly lost consciousness. He was released without charge. On 14 February 1990 he was rearrested in the street in Tunis by members of the National Guard and held for a few hours during which time he alleges he was severely beaten by named members of the National Guard. A medical certificate states that on 14 February, the same day as the alleged assault, he was found to have several haematomas on the face, swellings and scratches to the left ear, extensive bruising on both shoulders and several wounds and scars on the lower part of his legs. Salih El-Abidi reportedly complained in writing to the Ministries of Justice and of the Interior, but without response.

Jamal Abdel Nasir El-Sayari alleges that he was tortured after his arrest on 14 October 1988 in Siliana; on 15 October he was transferred to El-Kaf where, he says, he was suspended in a contorted position by the police. A medical report dated 27 October 1988 lends credence to his allegations in identifying circulation problems which he was experiencing in both arms and bruising of the left shoulder-blade. In a separate case, Abdel Kadir Ben Omer Bouazizi has alleged that he was beaten and tortured by named members of the auxiliary police following his arrest in Siliana on 18 October 1988.

Habib Fqiri was arrested on 23 April 1989 by the police at Rades and died the same day. The police said that he committed suicide. His lawyer asked for an autopsy and an official investigation into this death in custody, but no inquiry is known to have been established.

Five supporters of al-Nahda - Moncef Matalla, Moulidi Abassi, Mohamed al-Tahir Hamouda, Mabrouk Abdeljaouad and Nouredine Brahim - were arrested by members of the National Guard in June 1989 in Hay El-Nasr and released seven days later. They alleged that they were severely tortured in the National Guard Station in Ariana by beating, falaga and suspension in contorted positions; in addition, Nouredine Brahim alleges that ether was poured onto his genitals. Detailed testimonies from the five together with doctors' certificates dated 24 June 1989, which confirmed the presence of contusions, ecchymoses and sores, were reportedly submitted to the Ministry of the Interior, but no investigation appears to have been initiated by the authorities.

Imed Ben Ahmed Amdouni, a trader, was arrested in the town of Beja on 18 July 1989 after a dispute with members of the Sûreté nationale. He says he was beaten with a truncheon so badly that he required admission to hospital the same day and four days' treatment. A medical certificate, issued by this hospital, on 17 August noted that he was suffering from concussion, contusion on the thorax and abdomen, a fractured rib, multiple haematomas, and a contusion of the right lung. On 18 September he was examined in Tunis by a forensic doctor on the orders of the jugé d'instruction and found not to have suffered any permanent injury. It is not known to Amnesty International whether those police officers allegedly responsible for causing his injuries have been brought to justice.

Ibrahim Rejichi was arrested on 19 August 1989 in Monastir by police who demanded to see his papers. He says he was beaten as he was getting into and out of their police car, and again at Monastir police station. That evening he was taken to the Bourguiba Hospital, Monastir, where he remained for four days; according to people who saw him at this time, the right side of his face was swollen and he was suffering from back pains. He was then transferred to the Centre de Santé Mentale et de Prévention; a

certificate dated 30 August 1989 states that he was suffering from insomnia and anxiety. He was later released without charge.

Fathi Ali Hachad was arrested by the Brigade de l'Ordre Publique (BOP), Brigade of Public Order, a paramilitary riot squad under the direction of the Sûreté nationale, on 6 September 1989 and thereafter transferred first to Bou Ja'far Centre and then to Sousse. He alleged that he was subjected to various forms of torture in detention, including suspension in the "poulet rôti" position, having lighted cigarettes stubbed on him and hot coffee poured round his eyes, and by being made to stand holding a chair for long periods. He says that he was stripped naked, subjected to sexual abuse, beaten, and that his naked body was drenched with cold water. While held in garde à vue detention he reportedly asked repeatedly to see a doctor but his request was refused by those in charge. On 12 September 1989 he was transferred to the cells of the Ministry of the Interior where, according to his testimony, he was again tortured. His wife made a request to the Ministry of the Interior on 16 September for him to be seen by a doctor, but this too was refused. He was eventually released without being charged on 23 September. His lawyer complained formally to the Ministry of the Interior but the authorities apparently took no action: those responsible for Fathi Ali Hachad's interrogation simply deny that he was tortured.

Murtada Labidi, an alleged member of the Parti communiste des ouvriers tunisiens (PCOT), was arrested on 16 September 1989 at Gafsa. During a search of his house by police he says he was struck in the face about ten times. Thereafter, at Gafsa police station, he alleges that he was kept chained to a chair for 48 hours, threatened with electric shocks and the insertion of bottles and sticks into his anus, suspended in contorted positions and subjected to falaga. Two women arrested at the same time, Fathia Hizem and Afifa Hizem, allege that they were insulted and threatened by police: one says she was stripped by police and threatened with rape. In October they were brought to trial with five other members of the PCOT, charged with belonging to an illegal organization and distributing illegal leaflets; Murtada Labidi was sentenced to thirteen months' imprisonment. On 20 December 1989, however, the defendants were acquitted on the grounds that the leaflets did not contain any defamation or false information and that membership of PCOT had not been proved. The court acknowledged that police had extracted statements from the defendants under torture but no official investigation of the torture allegations or other action appears to have been initiated by the authorities.

Mohamed Mezzi, a 20-year old, from Tebourba, was arrested on 26 December 1989, accused of having participated in disturbances in his lycée and of being a supporter of al-Nahda. He alleges that during the three days he spent in detention he was beaten over 100 times, that his clothes were removed and that he was suspended in the "helicopter" position.

Raouf Gritli, Tarek Sallami and Nizar Ouni alleges that they were arrested in Tunis after a protest demonstration outside a court in which alleged supporters of al-Nahda, were standing trial. According to their statements, they were beaten, kicked and struck with canes while in custody at the National Guard Station in Hay El-Tadamun. Two were knocked unconscious but revived by having water poured over them. When medically examined on 18 March 1990 Raouf Gritli was found to have ecchymoses on his right ankle, left forearm and left leg, Tarek Sallami had numerous ecchymoses and scars on his neck, shoulder, arm and both legs, and Nizar Ouni had swelling and ecchymoses on his face and arm, with a burn on the

palm of his hand. Their lawyers submitted a formal complaint to the Ministry of Justice but are not known to have received any response.

Hedi Ben Allala Bejami was reportedly arrested at 11am on 9 April 1990 when two members of the Sûreté nationale told him that he was wanted at Ariana Police Station for a "simple matter". There he says that he was beaten by police, sexually abused with a stick and had faeces forced into his mouth, before being taken to the Ministry of the Interior and tortured with electric shocks. He was released uncharged within hours. A subsequent medical examination noted the presence of numerous superficial contusions, an ecchymosis ten centimetres long below the shoulder-blade and other traumatic injuries including marked bruising of the buttocks.

More recently, Amnesty International has received information that PCOT members arrested for distributing stickers and leaflets during a peaceful demonstration in Tunis on 1 May were beaten up by police both at the time of their arrest and in custody at a police station in Tunis and in the cells of the Ministry of the Interior. Other PCOT members allege torture or ill-treatment by police who arrested them for distributing leaflets before the municipal elections on 10 June: one Monia Jouini, is said to have required hospital treatment for injuries sustained during interrogation at Boushousha Police Station following her arrest in Melassine on 8 June. Hammad Soltani, who was arrested 9 June, has alleged that he was tortured by various methods, including suspension in the "poulet rôti" position and falaga, in order to implicate a companion, Abdel Raouf Farzi, who, he says, was also tortured.

In another case, a number of young people, who were among 17 students arrested while celebrating the end of their baccalaureate exam in June, are said to have been stripped, burnt with cigarettes and beaten with plaited wires at Ariana Police Station in Tunis. Lawyers representing the students have lodged a formal complaint, but it is not known to Amnesty International whether this has led to an investigation or other action on the part of the authorities.

Also in June 1990, Raouf Mthlouti, an 11-year old boy accused of theft, alleges that he was beaten while in police custody in Ariana. A subsequent medical examination apparently lends credence to his allegation and his lawyer has made a formal complaint to the procuracy.

Amnesty International has written to the Tunisian Government to express concern about the use of incommunicado detention and reports that detainees have been subjected to torture and ill-treatment in police custody. Amnesty International has urged the government to ensure that all such allegations are thoroughly and impartially investigated, and that those officials found responsible for the torture or ill-treatment of detainees should be brought to justice.

1.4 Failure of the Government to Take Effective Action to End Torture

Information reaching Amnesty International suggests that the torture and ill-treatment of political detainees is widespread and is used both to extract confessions from suspected government opponents and generally to intimidate. Many alleged victims of torture were later released uncharged. Allegations that detainees have been tortured within the headquarters of the Ministry of the Interior suggest that such human rights violations may effectively be condoned at a senior level by the authorities.

According to Tunisian lawyers, many torture allegations go unrecorded as victims are effectively dissuaded from making complaints by general inaction on the part of judges in the Tribunaux de Première Instance (Courts of First Instance) when complaints have been raised. Lawyers complain of similar inaction on the part of the Procureur générale de la République and the Ministries of Justice and the Interior, inasmuch as complaints of torture rarely receive a response.

In April 1990 the Ligue tunisienne des droits de l'homme (Tunisian Human Rights Organization) publicly drew attention to 23 cases of alleged torture and three suspicious deaths in custody, calling for a government inquiry. The allegations were rejected by the Ministry of the Interior. In July the LTDH reiterated its concern at the increased evidence of torture; the Ministry of the Interior denied the allegations.

In April, in reply to a communique of al-Nahda, the Ministry of the Interior undertook to investigate torture allegations made by Hedi Ben Allala Bejami, who had been detained in Ariana police station and the Ministry of the Interior. By August, however, it remained unclear when the investigation would take place.

Amnesty International has noted that the Tunisian Government informed the Committee against Torture in April 1990 that it investigated 16 allegations of torture between September 1988 and April 1990, seven of which were found to be substantiated. The Tunisian Government was asked to give details of these cases, but no details have yet been received. In July the Tunisian delegation to the Human Rights Committee of the United Nations, in answer to questions concerning torture and ill-treatment, said that many printed instructions and administrative circulars were sent out warning officials not only against the use of ill-treatment but even against bad language. All cases of torture brought to the government's attention were fully investigated and appropriate penalties, including imprisonment, were imposed. The delegation insisted that documents showed that the three cases of violent death while in police custody were suicides.

In June, Amnesty International asked the Tunisian Government for information on a number of cases of torture which had been brought to its attention; no response has yet been received. The organization, therefore, remains concerned that torture and ill-treatment are still taking place in certain police stations and even in the Ministry of the Interior and regrets the Tunisian Government's apparent failure to hold a full investigation into the allegations brought to its notice.

2. LAWS WHICH LIMIT THE RIGHTS TO FREEDOM OF ASSOCIATION AND EXPRESSION

In several cases, non-violent critics and opponents of the government have been imprisoned on vague charges involving "defamation" of public order or criticism (atteinte) of the Head of State.

Under Articles 50 and 51 of the Press Code "defamation" is defined as any public allegation or imputation attacking the honour or reputation of a person or body; under Article 57, amended by Act 88-89 of 2 August 1988, truth cannot be used as a defence when the imputation refers to any member of the government. A number of prisoners of conscience and possible prisoners of conscience have been arrested for contravening the press code.

Jalloul Azzouna, a lecturer at the University of Tunis and leader of a non-registered political party, the Parti de l'unité populaire (PUP), Popular Unity Party, was arrested in July 1989 and sentenced in August to one year's imprisonment on charges of distributing unauthorized communiques and spreading false information likely to defame public order. He had issued a leaflet critical of the present government and the methods of the Sûreté Nationale; however he was pardoned in an amnesty by the Head of State in November. In late October 1989, six PCOT members including three who allege they were tortured after their arrest in September 1989, received sentences of up to 18 months' imprisonment for distributing a leaflet criticising price rises: they were released on bail, however, and were acquitted on appeal in December 1989. Professor Moncef Ben Salem was sentenced to three years' imprisonment for disseminating false information and defaming public order in May 1990. He had given an interview to an Algerian magazine in which he criticised the "secularism" of the Tunisian Government and made various allegations of torture. In June 1990 the editor of the Islamist weekly al-Fajr, Hamadi Jbali, was charged under Article 44 of the Press Code, which prescribes up to three years' imprisonment incitement to disobey the country's laws. The article in question, written by Rached Ghannouchi, leader of al-Nahda, criticized the Tunisian Government for acting against the interests of the people.

Article 22 of the ICCPR guarantees the right of the individual to freedom of association with others, with no restrictions "other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of health or morals or the protection of the rights and freedoms of others". Liberty of opinion, expression, press, publication, assembly and association are guaranteed in Article 8 of the Tunisian Constitution "exercised under the conditions defined by law".

Yet, certain laws in Tunisia in practice are used to limit these rights to freedom of association and expression. The Law of Political Parties (Law 88-32) introduced in 1988 provided for the emergence of a multi-party system. However, since its introduction certain provisions of the new law have been used to deny official registration and thereby render unlawful certain political parties opposed to or critical of the government. Article 6 of the Law of Political Parties states that a political party cannot be constituted unless its principles, options and programmes can be distinguished from another.

This article has been used to refuse registration to three leftist opposition parties, the Rassemblement unioniste démocrate (RUD), (considered similar to the Rassemblement démocrate unioniste (RDU)); supporters of the RUD claim that the RDU was founded solely in order to prevent the registration of their party), the Parti de l'unité populaire, (considered similar to the Movement de l'unité populaire, from which it broke away), and the Parti communiste des ouvriers de Tunisie, (because of the existence of the Parti communiste tunisien, PCT). Article 3, which forbids parties basing their principles, activities and programme on a particular religion, language, race, sex or region, has also been used to refuse registration to Hizb al-Nahda, on the grounds that it is an overtly religious party. Article 26 of the Law of Political Parties prescribes a sentence of up to five years' imprisonment for persons convicted of membership of an unlawful political party and a number of persons have been charged under this law. Amnesty International is concerned that articles under the press law have been used to arrest and imprison leaders of those unregistered political parties mentioned above. Me Essid, leader of the

RUD, has now been in preventive detention without trial since September 1989 charged with conspiracy, defamation of the Head of State and distribution of illegal leaflets; the charges are partly based on a leaflet which he denies writing. The arrest of Jalloul Azzouna, leader of the PUP, considered by Amnesty International at the time as a prisoner of conscience, has already been mentioned. Hama Hammami, secretary-general of PCOT, was arrested three times in 1989, charged with distributing unauthorized leaflets. Ali Aridh and Abdel-Fattah Mourou, two leaders of al-Nahda have also been arrested on several occasions, charged with offences against public order.

3. UNFAIR TRIALS

Amnesty International remains concerned about four people imprisoned before November 1987 following an unfair trial. Mohamed Charrada, Fawzi Sarraj, Fethi Jebrani and Bou Abdallah Bou Abdallah were convicted before the State Security Court in September 1987 of participating in acid attacks or causing bomb explosions. Amnesty International believes that this trial, part of which was attended by an Amnesty International observer, contravened Article 14 of the ICCPR which establishes the standards for fair trials. The Court, which has since been abolished, did not constitute an independent and impartial tribunal: a number of the defendants made allegations of torture which were not investigated; the defendants, including the four still imprisoned, were convicted despite the failure of the prosecution to lay before the court convincing evidence to substantiate the charges; and there was no legal possibility of appeal from the decisions of the State Security Court. Although most of those convicted at the time have since been released, these four remain in prison. Amnesty International has urged the Tunisian Government to review the cases of the four and to give them the benefit of a fair trial.

In another case, 17 people were arrested on 29 December 1989 during a demonstration around Manouba Mosque and charged with gathering on the public highway and assault on the security forces. Amnesty International is concerned that their trial, which took place on 4 January 1990, was held late in the evening without the presence of defence lawyers who had apparently been told that the sitting was to be postponed. Twelve of the accused - several of whom, including Wannas al-Ghazwani, Sassi el-Boukari, Mourad Naga, Fathi Ghabchouki and Hussein el-Ayyari have alleged that they were tortured and were refused medical attention while in garde à vue detention - were sentenced to eight months' imprisonment and four received four months' imprisonment. One other defendant was acquitted. At the appeal on 16 March defence lawyers questioned the legality of the trial, referred to the allegations of torture and criticised the general nature of the charges. The sentences were subsequently reduced.

Amnesty International considers that certain articles of the CPP contravene international standards. Article 154 of the CPP states that the procès verbaux or reports established by officers of the police judiciaire or officials or agents are sufficient proof if there is no contrary evidence. This proof should be brought in writing or by witness. Amnesty International considers that such a law, which allows an unsigned procès verbale or an unsupported police statement to be used to convict a person, contravenes the standards of fair trial set forth in the ICCPR.

4. DEATH PENALTY

The death penalty is still retained in Tunisia but no death sentences have been carried out since President Ben Ali has come to power. The President has stated his personal opposition to the death penalty and has said that he will not sign any death warrant. Amnesty International has welcomed these statements but remains concerned that the death penalty exists in Tunisia for a wide range of offences.

Besides cases of wilful homicide, cases which may incur the death penalty include crimes committed by military personnel, namely treason, espionage, violation of duties of command, surrender or desertion in war, cowardice in face of the enemy; crimes committed against the State, including recruitment and arming of gangs to plunder State goods, setting fire to or use of explosives to destroy buildings, ammunition stores or other state property; crimes against magistrates using or threatening the use of weapons; rape of those under 10 years of age. Amnesty International is concerned that as long as the death penalty remains on the statute book there is always a danger that it may be used and has called on the Tunisian Government at least to reduce the list of crimes carrying the death penalty as a step towards its complete abolition.

5. RECOMMENDATIONS

Amnesty International recommends the Tunisian government to:

- (i) limit the period under which a suspect may be held incommunicado in garde à vue detention in accordance with the recommendation of the Special Rapporteur on Torture that, given the high incidence of torture in incommunicado detention "any person who is arrested should be given access to legal counsel no later than 24 hours after his arrest". Amnesty International urges the Tunisian Government to extend that period only in very exceptional circumstances;
- (ii) allow all those detained prompt communication with family and access to independent medical examination.
- (iii) 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;
- (iv) extend the scope of the training of all law-enforcement personnel in practical respect for human rights and the application of international instruments;
- (v) indicate to all law-enforcement personnel that torture will not be tolerated under any circumstances and that they are obliged to refuse to obey any order to torture;
- (v) ensure that thorough, impartial investigations are conducted whenever procedural irregularities and torture and/or other forms of ill-treatment are alleged to have taken place;
- (vi) ensure that a prompt and impartial investigation is made whenever there is reasonable ground to believe that acts of torture or ill-

treatment have taken place, even if no formal complaint has been lodged;

- (vii) bring to justice and punish those responsible for torture and give the victims medical treatment and compensation;
- (viii) revise Article 154 of the Code de Procédure Pénale whereby a suspect can be convicted on the basis of a single unsigned and unsupported police statement;
- (ix) free all prisoners of conscience; revise those articles which have allowed prisoners of conscience to be detained, particularly articles 50 and 51 of the Press Code which allow penalties of up to three years for "defamation" of public order.
- (x) reaffirm the personal commitment not to sign any death warrant undertaken by President Ben Ali by ratifying the second Optional Protocol to the International Covenant on Civil and Political Rights which states that no one within the jurisdiction of any states party should be executed.