

PUBLIC

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UA 241/05 Forcible return/fear of torture or ill-treatment

TUNISIA Hussein Sumaida (m), Iraqi/Tunisian national

Hussein Sumaida, who has dual Iraqi/Tunisian nationality, has not been seen since he was forcibly returned from Canada to Tunisia on 6 September. He is believed to be held in secret detention at the headquarters of the Ministry of the Interior's State Security Department in the capital Tunis. Amnesty International believes that he is at risk of torture or ill-treatment.

Hussein Sumaida made a refugee claim upon arrival in Canada in April 1990. A 1991 decision by the Canadian immigration authorities concluded that he had a well-founded fear of persecution in both Iraq and Tunisia. However, he was not granted refugee status as he was deemed to have committed crimes against humanity during his work for an Iraqi intelligence organization, the Mukhabarat. Even though Amnesty International had identified Hussein Sumaida as being at risk of persecution in Tunisia, the Canadian authorities concluded in December 2004 that due to perceived changes in Tunisia, he would no longer be at risk there.

On 6 September 2005, Canadian immigration authorities forcibly removed Hussein Sumaida to Tunisia where they reported they handed him over to the Tunisian authorities upon arrival at Tunis airport. However, Hussein Sumaida's father, who was waiting to greet him at the airport, was told by security officers that nobody had seen him. There has been no news of his whereabouts since then.

The reason for the possible "disappearance" of Hussein Sumaida is not known. However, in addition to his intelligence work, he is the co-author of a book entitled *Circle of Fear: My Life as an Israeli and Iraqi Spy*, which refers to international state secrets.

BACKGROUND INFORMATION

In Tunisian law, under Article 13 *bis* of the Code of Penal Procedure, detainees may be held without charge (*garde à vue*) and incommunicado for up to three days, extendable for a further three days by order of the public prosecutor. After these six days the detainee must either be brought before the examining judge or released. During *garde à vue* detention, their family must be informed and they have the right to a medical examination.

In practice, the security forces routinely ignore these requirements. For years, Amnesty International has received numerous reports of torture and ill-treatment by the security forces, including by agents of the State Security Department at the Ministry of the Interior in Tunis. In virtually all cases, allegations of torture are not investigated and the perpetrators not brought to justice.

Another Tunisian national, Adil Rahali, aged 27, was deported from Ireland in April 2004 after his application for asylum was refused. He was arrested on arrival in Tunisia and taken to the State Security Department of the Ministry of the Interior where he was held in secret detention for several days and reportedly tortured. Adil Rahali, who had worked in Europe for more than a decade, was charged under the 2003 "anti-terrorism" law with belonging to a "terrorist" organization operating abroad. The organization was not named and no details were provided about the exact nature of its activities. His lawyer filed a complaint about the allegation of torture, but to Amnesty International's knowledge, the authorities have not investigated it. On 5 March, Adil Rahali was sentenced to ten years' imprisonment. His appeal hearing is scheduled to be held on 22 September.

Canada is prohibited under international law, including the 1951 Convention Relating to the Status of Refugees (the 1951 Convention), the International Covenant on Civil and Political Rights (ICCPR) and Article 3 of the Convention against Torture (CAT), from forcibly returning anyone to a country or territory where they would be at risk of serious human rights violations, including torture or other ill-treatment. Under article 1F of the 1951 Convention, individuals who are believed to have committed crimes against humanity can be excluded from the protection of the Convention; however, under the ICCPR and the CAT, such individuals would still be protected from being forcibly sent to any country where they would be at risk of torture or ill-treatment.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in Arabic, French, English or your own language:

- expressing concern at the possible "disappearance" of Hussein Sumaida, and calling on the authorities to reveal his whereabouts immediately;
- expressing concern that he may have been held in secret detention since 6 September 2005, in violation of Tunisian law and international standards which Tunisia has ratified;
- calling for his immediate release unless he is charged with a recognizable criminal offence and presented before a judge;
- calling for assurances that he is being humanely treated in detention, and not tortured or ill-treated;
- urging the authorities to grant him immediate access to his relatives, lawyer and any medical treatment he may require.

APPEALS TO:

Minister of the Interior

M Rafik Belhaj Kacem

Ministère de l'Intérieur et du Développement Local

Avenue Habib Bourguiba

1000 Tunis, Tunisia

Fax: + 216 71 340 888

E-mail: mint@ministeres.tn

Salutation: Monsieur le Ministre / Your Excellency

Minister of Justice and Human Rights

M. Bechir Tekkari

Ministère de la Justice et de Droits de l'Homme

31 Av. Bab Benat

1006 Tunis, La Kasbah, Tunisia

Fax: + 216 71 568 106

E-mail: mju@ministeres.tn

Salutation: Monsieur le Ministre / Your Excellency

COPIES TO:

Official human rights body, reporting to the President

Comité supérieur des droits de l'homme et des libertés fondamentales

Zakaria Ben Mustapha (Président)

85 avenue de la Liberté, 1002 Tunis-Belvédère, Tunisia

Fax: + 216 71 796 593 / 784038

and to diplomatic representatives of Tunisia accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 27 October 2005.