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Tunisia

The cycle of injustice

“Whoever takes someone’s property, or uses him for forced labour, or presses an unjustified claim against him, or imposes upon him a duty not required by the law, does an injustice to that particular person ... Since injustice calls for the eradication of the species leading to the ruin of civilization, it contains in itself a good reason for being prohibited”

Ibn Khaldun (Tunis, 1332 - Cairo, 1406)

Introduction

In Tunisia, people suspected of opposing or even being critical of the government continue to be arbitrarily arrested, detained incommunicado – without access to lawyers or family members, tortured and imprisoned after unfair trials. Several hundred political prisoners, most of them prisoners of conscience, have been subjected to discriminatory and arbitrary treatment over the past decade. Even after release they face measures aimed at preventing their reintegration into society. They may have restrictions placed on their movements, be arbitrarily rearrested, or denied access to health care, education and jobs. Arbitrary measures are often extended to the families of both current and former political prisoners.

The judiciary’s lack of independence and resulting failures in the administration of justice allow these practices to continue unabated. A general climate of impunity makes it almost impossible for members of the security forces responsible for unlawful arrests, torture and other violations to be brought to justice. Families of prisoners who have died in custody, and prisoners ill-treated or deprived of their basic rights, have little chance of seeing full and impartial investigations of their cases. Former prisoners have scant opportunity to seek redress for past or current injustices, and face obstacles when they attempt to challenge measures taken against them through the courts.

This report traces the different phases of this cycle of injustice and identifies human rights patterns and developments over the past decade. It draws on the observation of trials, on analysis of legal texts and other documentary evidence, on meetings and communications with government officials and on scores of first hand testimonies from former political prisoners and the families of those still imprisoned. It analyses law and practice in light of international human rights standards, in relation to detentions, political trials and the treatment of political prisoners and former prisoners. The report finds that the recognition of rights in law has been consistently undermined by failures to put reforms into practice:

- Although Tunisian law has progressively provided more human rights guarantees, other legal changes, such as a vague definition of the offence of “terrorism”, undermine basic human rights, including the rights to freedom of expression and association;
- Mass arrests are no longer the norm, yet arbitrary arrests and detention continue in violation of Tunisian and international human rights law;
- The rights of prisoners have improved in law, but are widely violated by prison officials who discriminate against political prisoners;
- The authorities are required by law to facilitate the reintegration of former prisoners into society, yet former political prisoners face instead further arbitrary measures once they have left prison;
- Despite a few perpetrators of human rights violations being brought to justice, the vast majority of those responsible for torture and other ill-treatment have not been held accountable for their acts.

The report concludes with recommendations to the Tunisian authorities to bring its practices into line with Tunisia's obligations under national and international law. Tunisia is state party to United Nations (UN) human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).¹ In addition, Tunisia is legally bound by Article 2 of the Association Agreement, which was signed on 17 July 1995 by the European Community and its Member States on the one hand and by the Republic of Tunisia on the other, and which came into force on 1 March 1998. Article 2 of the Association Agreement stipulates that relations between the parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which guide their domestic and international policies and constitute an essential element of the Agreement.

The political context

On coming to power on 7 November 1987, President Zine al-Abidine Ben Ali announced far-reaching reforms aimed at marking a change from his predecessor, President Habib Bourguiba, whose government had severely curtailed civil and political freedoms. Political prisoners were released under a general amnesty. The government ratified international human rights treaties, including the CAT. It reformed the Penal Procedure Code, abolished the State Security Court, authorized political parties and held legislative elections.

These positive developments were undermined by a rapid deterioration of relations between the government and the ruling party, the *Rassemblement Constitutionnel Democratique* (RCD) - Democratic Constitutional Rally - on one side, and some elements of the opposition, on the other. To prevent increasingly popular Islamist movements from growing in influence the authorities proscribed parties based on religion. The *Mouvement de la Tendance Islamique* (MTI) - Movement of the Islamic Tendency, the mainstream Islamist movement in Tunisia, attempted to form a political party, *Ennahda* (Renaissance), but was denied legal authorization in June 1989. A widespread clampdown on Islamist activists and sympathizers ensued.

In September 1990, the death of a student who was shot by police during a demonstration triggered a series of demonstrations, followed by large-scale arrests of Islamists which were followed in turn by protest demonstrations. During the following weeks and months hundreds of known or alleged Islamist activists were arrested. Dozens were held incommunicado for weeks. Many were tortured and some died in detention. Their deaths were not adequately investigated.²

Some Islamist activists committed isolated acts of violence. For example, on 29 January 1990, three Islamist activists threw acid in the face of Mohamed Salah Manai, a police officer, in Jendouba. On 17 February 1991, the RCD office in the Bab Souika district of the capital, Tunis, was set on fire, reportedly by Islamist activists. One security guard, 60-year-old Amara

¹ Tunisia ratified the ICCPR in 1969 and the CAT in 1988.

² For example, Tunisia has failed to implement the recommendations of the UN Committee against Torture in the case of Faisal Barakat, who died after torture in 1991. In November 1999, the Committee found that Tunisia had "breached its obligations under articles 12 and 13 of the Convention to proceed to an impartial investigation wherever there is a reasonable ground to believe that an act of torture has been committed" (Communication No. 60/1196: Tunisia. 24/01/2000. CAT/C/23/D/60/1996, Para.12). See Amnesty International, *Medical Concern: Tunisia Deaths in detention*, March 1992 (AI Index: MDE 30/03/1992). See also Amnesty International, *Tunisia: Deaths in custody during garde à vue detention*, October 1991 (AI Index: MDE 30/22/1991).

Soltani, died in the fire. Another, Lazhar Ben Rjeb, was burned so severely that he had to have both hands amputated.³

The leadership of *Ennahda* repeatedly condemned the use of violence. But, since the late 1980s the authorities have tried without success to provide evidence that *Ennahda* was an organization involved in attempts to overthrow the government by violence. For example, in July and August 1992, 265 defendants were convicted by military courts in the military compounds of Bouchoucha and Bab Saadoun in Tunis on charges of plotting to overthrow the government and belonging to an unauthorized association. Virtually the entire leadership of *Ennahda*, including those living abroad, were tried at the Bouchoucha and Bab Saadoun military courts.

Amnesty International observers at the trials concluded that basic standards for fair trial were violated, that there was insufficient evidence of a plot and that presumption of guilt prevailed over the principle of the presumption of innocence.⁴ 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. Ten years on, the Tunisian authorities continue to reject Amnesty International's findings.⁵ About 103 prisoners, sentenced after the 1992 mass trials, are still serving sentences of between 20 years' and life imprisonment. Most are prisoners of conscience, imprisoned solely for the peaceful exercise of their religious or political beliefs.

The authorities have since used "security" concerns as a pretext for repression of political dissent and critical discourse across the political spectrum. They have repressed members of organizations including members of the *Parti Communiste des Ouvriers Tunisiens* (PCOT) - Tunisian Workers' Communist Party - and the *Mouvement des Démocrates Socialistes* (MDS) - Movement of Democratic Socialists - as well as trade unionists of the *Union Générale des Travailleurs Tunisiens* (UGTT) - Tunisian Workers' General Union.⁶

Following the attacks in the USA on 11 September 2001, the Tunisian authorities reiterated that they had long warned of the "terrorist threat". Their report to the Counter-Terrorism Committee established under UN Security Council resolution 1373 (2001) stated that the "*Tunisian state did not wait for the events of 11 September 2001 before taking the necessary measures to combat the phenomenon of terrorism, as it had already proceeded to combat it within its borders and succeeded in countering it.*"⁷

On 11 April 2002, however, the explosion of a truck outside a synagogue in Djerba killed 21 people, including 14 German tourists. The Tunisian authorities initially declared that this was an accident before stating that it was a criminal attack by Islamist activists, the first of this scale. In June 2002, a spokesperson of *al-Qa'ida* publicly admitted responsibility for the attack, which had been carried out by a Tunisian national, Nizar Naouar, who reportedly died in the explosion.

³ During their visit in September/October 2002, Amnesty International delegates met Mohamed Salah Manai and Lazhar Ben Rjeb who were still suffering the consequences of the attack more than 12 years later.

⁴ See Amnesty International, *Tunisia: Heavy sentences after unfair trials*, October 1992 (AI Index: MDE 30/023/1992).

⁵ In October 2002, an official of the Ministry of Justice and Human Rights told Amnesty International delegates that he did not understand the organization's concerns as the 1992 trials were held in public.

⁶ See Amnesty International, *Tunisia: A widening circle of repression*, June 1997 (AI Index: MDE 30/025/1997) and a report produced in collaboration with other human rights organizations, *The continuing deterioration of the human rights situation in Tunisia*, 18 October 2001 (AI Index: MDE 30/031/2001). These and other Amnesty International reports are available at www.amnesty.org.

⁷ Report S/2001/1316, 26 December 2001.

Political and civil liberties remain severely curtailed. One opposition party, the *Forum démocratique pour le travail et les libertés* - Democratic Forum for Labour and Freedom - was legalized in October 2002, eight years after its formation bringing to seven the number of authorized political parties. However, other parties, including the PCOT, *Ennahda* and the *Congrès pour la République* (CPR) - Republican Congress - continue to be denied authorization. The press is largely controlled by the authorities. Journalists in the privately owned news media who criticize government policies are harassed and intimidated.

According to widely disputed official figures more than 99 per cent of voters approved constitutional changes in a referendum in May 2002. The revised Constitution provides some additional guarantees for the protection of human rights, including a ban on arbitrary detention (Article 12). The revisions to the Constitution removed restrictions preventing the head of state from serving more than three terms in office and granted the head of state immunity from prosecution even beyond his term in office.⁸ President Ben Ali will now be able to seek a fourth term of office in elections in 2004.

Harassment of human rights defenders

While political repression was increasing in the early 1990s a number of official human rights institutions were formed including the *Comité Supérieur des Droits de l'Homme et des Libertés Fondamentales* - the Higher Committee for Human Rights and Basic Freedoms - created by presidential decree in January 1991.⁹ This body, as well as human rights units attached to the Presidency, the Ministry of Justice and the Ministry of the Interior, worked primarily to improve Tunisia's human rights image at the international level.¹⁰

Since then the authorities have attempted to silence with a policy of harassment and obstruction independent and non-governmental human rights organizations such as the *Ligue Tunisienne de Défense des Droits de l'Homme* (LTDH) - the Tunisian Human Rights League - the oldest human rights body in the region, the *Association Tunisienne des Femmes Démocrates* (ATFD) - Tunisian Association of Democratic Women - and the Tunisian section of Amnesty International.

Some were refused official authorization in recent years: the *Conseil National pour les Libertés en Tunisie* (CNLT), National Council for Liberties in Tunisia; the *Centre de Tunis pour l'Indépendance de la Justice* (CTIJ), Tunis Centre for the Independence of the Judiciary, and the *Association Internationale de Soutien aux Prisonniers Politiques* (AISPP), International Association for the Support of Political Prisoners. Among the growing community of human rights defenders in Tunisia, who include lawyers, medical doctors and journalists, many have been harassed, threatened, detained without charge or trial by the security forces, or sentenced to prison terms after unfair trials.¹¹

Such measures flout the recommendations of the UN Human Rights Committee, which monitors states parties' compliance with the provisions of the ICCPR, and which recommended as early as in 1994 that "a better balance is needed between State and private

⁸ Article 41, revised by Constitutional Law 2002-51 of 1 June 2002.

⁹ Decree 1991-54 of 7 January 1991. The Higher Committee for Human Rights and Basic Freedoms is an advisory body attached to and funded by the Presidency and composed of officials from various ministries and others nominated by the President. It was subsequently conferred powers to conduct prison visits by Decree 1992-2141 of 10 December 1992.

¹⁰ See Amnesty International, *Tunisia: Rhetoric versus reality: The failure of a human rights bureaucracy*, January 1994 (AI Index: MDE 30/001/1994).

¹¹ See Amnesty International, *Tunisia: Human rights defenders in the line of fire*, November 1998 (AI Index: MDE 30/020/1998).

institutions concerned with human rights,” and suggested that “steps be taken to provide more encouragement to human rights non-governmental organizations in Tunisia.”¹²

In February 2002, the United Nations Special Representative of the Secretary-General on human rights defenders expressed concern “*about the situation of human rights defenders and the conditions under which they are exercising their activities in Tunisia*”. The Special Representative further stated that the violations targeting human rights defenders “*are believed to consist mainly of illegal searches, confiscation of property, anonymous and threatening telephone calls, surveillance by unidentified individuals, the cutting of phone lines, arbitrary detention, confiscation of passports, legal proceedings, physical violence, defamation in the media, and other acts which might constitute a pattern of intimidation against human rights defenders.*” The Special Representative noted that “*according to the information received, a significant portion of those acts of harassment and intimidation have been marked by impunity as, even in the rare instances where incidents have been investigated by the judicial authorities, those responsible have not been brought to justice.*”¹³

The Tunisian authorities have also obstructed the work of international human rights organizations. Representatives of Amnesty International and the *Fédération Internationale des Droits de l’Homme* (FIDH) - International Human Rights Federation – were prevented from visiting the country between 1994 and 2000. The International Commission of Jurists (ICJ) was also repeatedly denied access to the country.

In September 2001, two Amnesty International delegates, in Tunis for meetings with officials and to observe appeal hearings in the cases of human rights defender, Dr Moncef Mazouki, and trade unionist, Lotfi Idoudi, were assaulted by members of the security forces.¹⁴ Less than 48 hours after their arrival, they were stopped at night by the uniformed traffic police, forced into an unmarked car by plain clothes officers one of whom claimed to belong to the ‘political police’ (*police politique*). They were driven to a dark street where they were assaulted and robbed. Some of their property, but not their documents, was later returned by the authorities. In a subsequent meeting with the delegates, the Human Rights Minister, Slaheddine Maaoui,¹⁵ justified the incident by referring to increased security measures needed in the aftermath of the 11 September attacks in the USA. No investigation is known to have been conducted into the matter. Individuals due to meet the delegates were threatened; at least one received a death threat. This incident was perceived as a message sent to human rights defenders that nobody was protected against intimidation by the authorities. Since then the campaign to silence and intimidate human rights defenders in the country has continued.

During a visit in September and October 2002 in which they met government officials and conducted research Amnesty International delegates were under constant police surveillance. Several human rights defenders they met, including lawyers, as well as victims or their relatives were subsequently harassed by the security forces.

¹² Concluding Observations of the Human Rights Committee: Tunisia, 10/11/94, CCPR/C/79/Add. 43. Para. 14.

¹³ Report submitted by Ms. Hina Jilani, Special Representative of Secretary General on human rights defenders, pursuant to the Commission on Human Rights resolution 2000/61, 27 February 2002, E/CN.4/2002/106, para.363.

¹⁴ See Amnesty International news releases, *Tunisia: Police assault on Amnesty International’s trial observers*, 29 September 2001 (AI Index MDE 30/026/2001); *Tunisia: Assault on Amnesty International’s delegates only strengthens resolve to assist human rights defenders*, 5 October 2001 (AI Index MDE 30/028/2001).

¹⁵ At the time of writing Slaheddine Maaoui is no longer Minister and the Ministry of Human Rights merged in September 2002 with the Ministry of Justice to become the Ministry of Justice and Human Rights.

Unfair political trials

At all stages of criminal proceedings, guarantees for fair trial under Tunisian and international law are disregarded: at the time of arrest; during pre-trial detention; and when the case comes to court. For many years, Amnesty International has documented a pattern of executive interference in the administration of justice. Numerous political trials, many of them monitored by Tunisian or international human rights organizations, failed to comply with international standards for fair trial as defined by the ICCPR.

Arbitrary arrest and incommunicado detention

Some legal reforms have made positive steps towards compliance with international human rights standards for arrest and detention. The Penal Procedure Code (Article 13 *bis*) was amended to reduce the maximum period that a suspect can be held in police detention (*garde à vue*) without access to their lawyer and family – in 1987 to 10 days and in 1999 to six days.¹⁶ The 1999 amendment allows detention by the police for three days and one extension of that period for a further three days on the written authority of the state prosecutor (*Procureur de la République*). The police have to inform the detainee of his or her rights, in particular of the right to medical examination, and to inform a relative chosen by the detainee of the detention.

However, the protection offered to the detainee remains below that required under international human rights standards. The Tunisian authorities have failed to implement the recommendations of the UN Committee against Torture which urged them to “*reduce the police custody period to a maximum of 48 hours*”.¹⁷

The security forces routinely breach the law. Detailed testimonies attest that they carry out arbitrary arrests without warrant and falsify dates of arrest in police records. They are reported to detain suspects beyond the legal maximum period, to deny their rights to medical examination and fail to inform relatives of their detention. The State Security Department (*idarat amn ad-dawla*) – responsible to the Ministry of the Interior – has consistently broken the law with impunity.

Salem Zerda, held in prolonged incommunicado detention

On 13 May 2002, **Salem Zerda**, a Tunisian national living abroad since 1991, was forcibly returned as an illegal immigrant from the USA and arrested on his arrival in Tunis. He was reportedly detained incommunicado, without access to medical examination and without his family being informed, for over three weeks by the State Security Department at the Ministry of the Interior. The State Security Department allegedly falsified his date of arrest changing it to 2 June on a *procès-verbal* (police report). On 4 June, he was reportedly questioned without a lawyer by a military examining judge and remanded in custody at the *9 avril* (9 April) civil prison to await trial apparently on charges of belonging to a “terrorist organization” operating abroad.¹⁸

Belgacem Naouar, denied access to a lawyer for several months

Belgacem Naouar, aged 39 married with four children and the uncle of Nizar Naouar – the key suspect who reportedly died in the April 2002 truck explosion in Djerba that killed 21 people – was arrested shortly after this incident. He was detained in an unknown location for several weeks and denied access to a lawyer for several months. When the head of the Bar Council notified in June 2002 the examining judge at the First Instance Tribunal in Tunis that he had been engaged by the family to act for Belgacem Naouar, he was reportedly told that

¹⁶ Law 87-70 of 26 November 1987; Law 99-90 of 2 August 1999.

¹⁷ Concluding observations of the Committee against Torture: Tunisia, 19/11/98, A/54/44, para.103 (a).

¹⁸ Article 52 *bis* of the Penal Code and Article 123 of the Military Justice Code (see page 15 below).

the prisoner had requested two other lawyers to defend him. However, in October 2002, when contacted by Amnesty International, both lawyers denied being engaged on the case. At the time of writing, nearly a year after the arrest, it appears that no lawyer had had access to the file or met the detainee.

These routine practices of denying pre-trial detainees their rights violate not only the provisions of Tunisian law but also international human rights standards. The ICCPR states that: “*Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention*” (Article 9). The UN Basic Principles on the Role of Lawyers calls on governments to “*ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention*” (Principle 7).¹⁹

The UN Special Rapporteur on torture has called for a total ban on incommunicado detention which facilitates torture and ill-treatment: “*Incommunicado detention should be made illegal and persons held incommunicado should be released without delay. Legal provisions should ensure that detainees be given access to legal counsel within 24 hours of detention.*”²⁰

Torture in detention

For more than a decade, hundreds of detainees have reportedly been tortured, usually in police custody. The Penal Code was amended in August 1999 to make torture a crime punishable by up to eight years’ imprisonment. According to Article 101 *bis* of the Penal Code, “*Any public functionary or similar who, in the exercise of their duties, subjects a person to torture, is punished by an imprisonment of eight years*” [Amnesty International’s translation]²¹. However, according to testimonies received by Amnesty International, the security forces continue to use torture in police stations and detention centres, including at the Ministry of the Interior in Tunis.

Prisoner of conscience Zouheir Yahiaoui, aged 34, former operator of the website TUNeZINE and nephew of Mokhtar Yahiaoui, a judge dismissed after writing an open letter to President Ben Ali in July 2001 (see page 18 below)
© private

Zouheir Yahiaoui was arrested on 4 June 2002 in Ben Arous and allegedly tortured by security officers at the Ministry of the Interior. He was beaten while suspended from the ceiling by his hands which were tied. He was reported not to have been examined by a doctor, despite written requests for medical examination submitted to the state prosecutors of Ben Arous and of Tunis on 5 June by lawyers acting on his behalf. The written requests were apparently later removed from his court file and the date of his arrest changed to the evening of 5 June on a *procès-verbal*. He was subsequently convicted on charges of “spreading false information” and “misuse of telecommunication lines” and sentenced to two years and four months’ imprisonment reduced to two years on appeal in July 2002. The court failed to order an investigation into the allegations of torture.

A senior Ministry of the Interior official told Amnesty International delegates in October 2002 that there were occasional cases of torture in custody but that this was not a deliberate policy. However, people detained by the security forces, notably the State Security

¹⁹ Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

²⁰ Report of the Special Rapporteur on torture, UN Doc. E/CN.4/1995/434, para. 926 (d).

²¹ Article 101 *bis* of the the Penal Code, as amended by Law 99-89 of 2 August 1999.

Department continue to be at risk of being tortured and allegations of torture fail to be investigated.

Arbitrary and incommunicado detention of 20 people arrested in Zarziz

Some 20 individuals were arrested at the beginning of February 2003 in the region of Zarziz, 380 kilometres south of Tunis. The arrest was believed to be in connection with accessing websites maintained by Islamist political groups. They were reportedly transferred to the Ministry of the Interior in Tunis where they were detained incommunicado by the State Security Department. Fourteen were released on 25 February.

Six of those arrested, Abderrazaq Ben Mohamed Bourguiba, aged 17, Hamza Mahroug, aged 20, Abdelghaffar Ben Guiza, aged 20, Ridha Ben Haj Brahim, aged 36, Omar Farouq Ben Mohamed Chelindi, aged 20 and Omar Ben Ali Rached, aged 20, were transferred around 25 February to the Bouchoucha military compound in Tunis, from where they were taken for further questioning to the Gorjani detention centre in Tunis. A few days later they were brought before an examining magistrate at the First Instance Tribunal and remanded to the 9 *avril* prison.

Whilst held at the Ministry of the Interior, the defendants were reportedly kept incommunicado for more than two weeks. In a possible attempt to conceal the unlawful detention the security forces allegedly falsified the arrest dates on the police reports.

Abderrazaq Ben Mohamed Bourguiba, Hamza Mahroug, Abdelghaffar Ben Guiza and Omar Ben Ali Rached alleged that they were tortured during the first 10 days of their detention. They claim to have been beaten on various parts of the body. Hamza Mahroug and Omar Ben Ali Rached specifically claim to have been suspended from the ceiling and beaten on their arms and legs. Omar Ben Ali Rached was reportedly threatened that his mother and sister would be brought in, stripped naked and tortured in his presence. Some of the detainees also alleged having been threatened with electric shocks.

At the Gorjani detention centre, the detainees said they were forced, under the threat of being sent back to the Ministry of the Interior, to sign police reports with “confessions” they had not been allowed to read. Even after their transfer to 9 *avril* prison, some detainees alleged that they were beaten by a prison officer, in a possible attempt to extract written “confessions” to substantiate the accusations against them.

The defendants were reportedly questioned on charges of belonging to a “criminal organization” under Articles 131, 132, 133 and 52 *bis* of the Penal Code and other associated charges. No information is available regarding the name or nature of the organization.

Tunisia is party to the CAT which requires prompt and impartial investigations into all allegations of torture (Article 12). Although there have been investigations in a few cases of torture (see the case of Mohamed Ali Mansouri, page 27 below), in hundreds of other cases of torture in the last decade there have been no investigations and no attempts to bring the perpetrators to justice.

In most cases, victims of torture, their families or even lawyers are subjected to intimidation and pressure if they call for an investigation and face obstruction if they attempt to lodge a complaint. Court officials and police officers told victims or their lawyers that they were instructed not to file complaints in specific cases. The CAT states that “*Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given*” (Article 13).

The Committee against Torture, which monitors adherence to the CAT, stated that it was “*disturbed by the reported widespread practice of torture and other cruel and degrading treatment perpetrated by security forces and the police [in Tunisia], which, in certain cases, resulted in death in custody.*” In addition, it was “*concerned over the pressure and intimidation used by officials to prevent the victims from lodging complaints.*”²²

The right to fair trial blatantly violated

The ICCPR upholds the rights of defendants to a “*fair and public hearing by a competent, independent and impartial tribunal established by law*” (Article 14). In Tunisia, these rights are frequently denied during court proceedings. In most instances, the rights of the defence are disregarded from the beginning of the judicial proceedings; during trials, the defence counsel and defendants have their rights curtailed and are sometimes even prevented from addressing the court. “Confessions” are admitted in evidence without investigation of allegations that they were extracted under torture. The presumption of innocence is routinely disregarded: the prosecution fails to produce evidence apart from “confession” statements or produces insufficient evidence for a safe conviction. There are numerous cases of defendants being subjected to “double jeopardy” – being put on trial for an offence for which they have previously been tried.

Rights of defence disregarded

The rights to prepare a defence are routinely disregarded or curtailed at all stages of the judicial proceedings. Defendants brought before an examining judge are often not informed of their right to legal counsel. In many instances defence lawyers are not given the minimum amount of time required for the preparation of a defence and are sometimes denied access to their client before the trial. They may be given only limited access to the file or key documents may be missing. Lawyers representing political detainees are routinely intimidated and harassed, in violation of international standards upholding their right to be free from improper interference in the exercise of their professional duties.²³

The Tunisian authorities attempt to restrict the activities of the growing number of lawyers acting for the defence in political cases or in criminal cases where there is a human rights concern. Such lawyers are subjected to police surveillance and in some cases arbitrarily arrested or ill-treated by members of the security forces. Their offices may be ransacked at night, sometimes after warnings by the security forces. Such incidents are not fully investigated.

The clients of human rights lawyers are regularly harassed by the security forces resulting in a loss of business for the lawyers. The lawyers may have their mail opened and their fax and phone lines regularly tapped, cut or diverted. Internet access is routinely blocked and emails addressed to selected email accounts never reach the recipient.

²² Concluding observations of the Committee against Torture: Tunisia, 19/11/98, A/54/44, para. 96. The Tunisian authorities responded: “*The concern raised by the Committee against Torture over the alleged wide gap between law and practice with regard to the protection of human rights in Tunisia has no basis in fact*” (Concluding observations of the Committee against Torture: Tunisia, 19/11/98, A/54/44, para. 105).

²³ The Human Rights Committee has stated that lawyers “*should be able to counsel or represent their clients in accordance with their established professional standards and judgment without any restrictions, influences, pressures or undue interference from any quarter*” (Human Rights Committee General Comment 13, para. 9).



Saida Akremi is a human rights lawyer and member of human rights organizations such as the newly launched International Association for the Support of Political Prisoners (AISPP). Her office is under constant police surveillance. The security forces regularly question her clients and reportedly ask them to engage other lawyers. In June 2002, her office and that of her husband were ransacked. On 27 July 2001, eyewitnesses said that a police car had attempted to knock her down during a demonstration in front of the Manouba prison in Tunis protesting at the imprisonment of human rights defender Sihem Ben Sedrine.²⁴ She lodged a complaint of attempted murder but no investigation is known to have been carried out. On 13 December 2002, in front of her husband and children, she was forcibly dragged out of her car outside her office and beaten by members of the security forces. Having been taken to the Ministry of the Interior, she was questioned for several hours about her activities with the AISPP. © AI

During political trials, plain clothes security agents are present in large numbers in the courtroom, in addition to the uniformed police officers in charge of court security. The presence of this additional police force is widely perceived as intimidatory and undermines the impartiality and independence of the court.

During political trials, defence lawyers and defendants are often denied the right to address the court. For example, when the defence lawyers ask for a session to be postponed to give them time to prepare their case, the court suspends the session; however, instead of ruling on whether the session is adjourned or not the court occasionally pronounces a verdict the same day leaving no opportunity for the lawyers or the defendants to present their case.

The trial of members of the Tunisian Workers' Communist Party

In February 2002, Hamma Hammami, Abdeljabbar Madouri and Samir Taamallah, members of the Parti Communiste des Ouvriers Tunisiens (PCOT) - Tunisian Workers' Communist Party, appeared before the First Instance Tribunal in Tunis for retrial after four years of living in hiding. In July 1999 they had been unfairly tried in their absence, convicted of belonging to

²⁴ After journalist and publisher, Sihem Ben Sedrine, addressed the issue of independence of the judiciary in a debate on the London-based television channel *al-Mustakillah*, she was arrested on 26 June 2001 when she returned to Tunisia. Also spokesperson of the CNLT, she had drawn attention to the uninvestigated death in custody of Abderrahman Jhinnaoui in March 2001 (see page 28). She was freed on 11 August 2001 after a vigorous solidarity campaign but charges against her including defamation were not withdrawn. For further information on Sihem Ben Sedrine, see Amnesty International and other human rights organizations, *The continuing deterioration of the human rights situation in Tunisia*, 18 October 2001 (AI Index MDE 30/031/2001).

an unauthorized organization and sentenced to nine years and three months' imprisonment.²⁵ On 2 February 2002, before the retrial started, dozens of police officers entered the courtroom and forcefully removed the defendants from the courtroom without explanation and reportedly without the judge's permission. When the court convened in the late afternoon, only Hamma Hammami and Samir Taamallah were brought before the judge. Neither the defendants nor their lawyers were allowed to address the court. Within minutes the court confirmed the sentences on the two defendants present and increased Abdeljabbar Madouri's sentence by two years for contempt of court.²⁶ In a press conference held on 7 February, the Minister of Justice, Bechir Takkari, stated that the trial had been conducted "in line with the rules of the criminal procedures code". He justified the heavy police presence at the court and was reported to have said that "justice cannot be done in the context of insecurity for the public and the accused."²⁷

Hamma Hammami © private

Evidence elicited under torture

In scores of cases, courts have failed to investigate allegations of torture and have convicted defendants on the basis of statements allegedly obtained under torture. International human rights standards require that statements made as a result of torture must not be used in any proceedings except those brought against an alleged perpetrator of torture.²⁸

Lotfi Ferhat © private

Lotfi Ferhat is a prisoner of conscience imprisoned after an unfair military trial. Having lived in France since 1990, Lotfi Ferhat had regularly visited Tunisia. On 2 August 2000, he was arrested at *La Goulette* harbour in the suburbs of Tunis, and detained at the Ministry of the Interior until 15 August. His family, including his wife who had travelled to Tunisia with him, were not informed of his whereabouts. He was reported to have been suspended by the feet on a pulley and to having his head plunged into a bucket of dirty water, a form of torture known as the *baño*. He was beaten, made to stay in contorted positions for extended periods and told that his wife would be arrested and tortured, he said. He added that he was forced under duress to sign "confessions" admitting membership of a secret group linked to *Ennahda* and to receiving military training in Afghanistan. On 31 January 2001 a military court in Tunis convicted him and 11 others tried *in absentia*, of "terrorist" activities and membership of a "terrorist" organization operating abroad.²⁹ It appears that the court based its decision primarily on the basis of the statements allegedly extracted under duress. The court refused to take into consideration the fact that Lotfi Ferhat retracted his "confessions" and the court failed to investigate his torture allegations. He was sentenced to seven years' imprisonment and five years' administrative control. The sentence was confirmed by the Court of Cassation on 30 May 2001.

Syrine (on left) and Yassine, Lotfi Ferhat's children, waiting for their father's release © private

²⁵ See Amnesty International with Human Rights Watch and Observatory for the Protection of Human Rights Defenders, *The administration of justice in Tunisia: Torture, trumped-up charges and a tainted trial*, March 2000 (AI Index: MDE 30/004 /2000).

²⁶ See Amnesty International news release, *Tunisia: Prisoners of conscience should be released immediately*, 4 February 2002 (AI Index: MDE 30/005/2002).

²⁷ Source: *Minister defends trial, arrest of Tunisian opposition leader*. AFP, 7 February 2002.

²⁸ The CAT states: "Each State Party shall ensure that any statement which is established to have been 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).

²⁹ Under Article 52 *bis* of the Penal Code and Article 123 of the Military Justice Code respectively (see page 15 below).

Double jeopardy

In several cases, individuals have been charged and sentenced for activities for which they have previously been tried, convicted and sentenced. This is explicitly prohibited by the ICCPR: “No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country” (Article 14).

Abdallah Drissa, a 50-year-old teacher and father of three children, was sentenced to a total of more than 20 years’ imprisonment after being convicted twice for membership of *Ennahda*. In January 1996 he was sentenced to 17 years and six months’ imprisonment on charges of belonging to a “criminal organization”³⁰. While in prison, he learned that he had been sentenced to a further five years’ imprisonment after being tried in his absence by the same court on the same charges. He lodged an objection (*opposition*) but in September 2001 the court declared it was not competent to rule on the case and referred it to a court in Bizerte, northern Tunisia, which imposed an additional three-year prison sentence in December 2001. On 27 September 2002, when Amnesty International delegates attempted to present themselves to the president of the court in Bizerte to observe the court’s ruling on an objection by the defendant, the case was adjourned. On 3 November 2002 the appeal court in Bizerte confirmed the sentence of three years’ imprisonment on charges of belonging to a “criminal organization”.

Civilians tried before military courts

The State Security Court (*Cour de Sûreté de l’Etat*) was abolished by Act 87-79 of 29 December 1987. It had conducted unfair political trials under the government of President Bourguiba.³¹ This welcome move was followed, however, by increasing resort to the use of military courts in political cases. The Military Justice Code defines the criminal offences that come within the jurisdiction of a military court (Article 5) such as undermining the internal or external security of the state. It also stipulates that civilians are among those who may be prosecuted before a military court for these offences (Article 8).³²

Ten years after the 1992 mass trials before the military courts in Bab Saadoun and Bouchoucha, the authorities have failed to redress the injustices of the past and consistently ignored recommendations made by human rights bodies.

From 1992 to 1999 political cases were rarely referred to military courts. Since 1999 however, the practice has resumed and scores of civilians have been tried before military courts located within military compounds and sentenced to heavy prison sentences after unfair trials. They are often convicted on charges of “terrorism”, a term defined in broad and vague terms in Tunisian law. Many defendants are tried in their absence from the country and are liable to arrest on their voluntary or forcible return to Tunisia when they have the right to a retrial.

The Tunisian authorities have complained about the lack of cooperation from countries hosting Tunisian nationals including individuals protected by refugee status and have sought their extradition on charges of belonging to a “terrorist” organization. In December 2001, the Tunisian authorities reported to the UN Counter-Terrorism Committee: “Tunisia has approached a number of States with requests for the extradition of Tunisians involved in terrorist cases but has met with no response. It appears that a number of the requested

³⁰ Under Articles 52 *bis*, 131, 132 and 133 of the Penal Code (see page 15 below).

³¹ See, for example, Amnesty International, *Interview with researcher concerning recent trial of trade unionists leaders in Tunis*, 24 October 1978 (AI Index: AFR 48/005/1979).

³² Amended by Law 2000-56 of 13 June 2000.

persons have, in one way or another, enjoyed refugee status in these countries and that they have been involved in terrorist acts, with *al-Qa'ida inter alia*”.³³ Amnesty International is concerned that more Tunisian civilians living abroad may be arrested, tortured and unfairly tried by military courts when they return or are deported to Tunisia.

Civilians charged with ‘terrorism’

The current definition of “terrorism” in Tunisian law is already broad. A 1993 amendment to the Penal Code qualified as acts of terrorism “*all actions relating to individual or collective initiative, aiming at undermining individuals or properties, through intimidation or terror*” and “*acts of incitement to hatred or to religious or other fanaticism, regardless of the means used*” (Article 52 *bis*).³⁴

Amnesty International recognizes the responsibility of governments to protect their citizens from acts of violence on their territory and to bring to justice those responsible. However, investigations, legal proceedings and trials must always be in full compliance with international human rights standards.

The Tunisian authorities are casting the net of “terrorism” charges so wide as to include prisoners of conscience. Article 52 *bis* has been used to criminalize peaceful opposition activities (see for example the case of Lotfi Ferhat above, page 13). The charge of “terrorism” is brought against individuals not known to have used or advocated violence. Members of unauthorized movements such as *Ennahda*, who were previously charged with belonging to an unauthorized association, now frequently face a charge of supporting a “terrorist” organization which incurs a heavier sentence. The charge of “terrorism” is usually combined with other charges such as membership of a criminal organization (*association de malfaiteurs*) under Articles 131 to 135 of the Penal Code, which carries up to 12 years’ imprisonment.

Tunisian nationals living abroad may also be charged with “terrorist” activities under Article 52 *bis* and under provisions of the Military Justice Code. The Military Justice Code allows legal action against Tunisians who serve, during a period of peace, in a foreign army or in a “terrorist” organization operating from abroad (Article 123).³⁵

In August 2002, the Tunisian authorities confirmed to the UN Counter-Terrorism Committee that “*a comprehensive bill on the combating of terrorism*” had been submitted to the National Assembly.³⁶ Amnesty International is concerned that this law may further jeopardize the guarantee of fundamental human rights.³⁷

³³ Report S/2001/1316, 26 December 2001.

³⁴ Amended by Law 93-112 of 22 November 1993.

³⁵ “*Every Tunisian who puts himself/herself, in peace-time, at the service of a foreign army or a terrorist organization operating abroad, is punished by ten years’ imprisonment with deprivation of their civic rights and the confiscation of all or part of their possessions...* [This does not exclude additional] *penalties provided for attacks on the security of the state committed by the defendant acting on their own initiative or in response to directions given by this organization. Whoever incites these crimes or facilitates their implementation by any means is subjected to the same punishment.*” [Amnesty International’s translation].

³⁶ Report S/2002/1024, 30 August 2002.

³⁷ In 1999 Tunisia ratified the 1998 Arab Convention for the Suppression of Terrorism. In the absence of a clear legal definition of terms like “terrorism”, “violence”, “terrorist purposes” and “attacks”, there is a risk that the Convention will be abused to punish people for non-violent acts, including those related to freedom of expression and human rights work. For an analysis of the Arab Convention for the Suppression of Terrorism, see: Amnesty International. *The Arab Convention for the Suppression of Terrorism: A serious threat to human rights*, January 2002 (AI Index: IOR 51/001/2002).

Failure to guarantee fair trial

Civilians are denied their right to a fair trial when they are brought before a military court:

- *The independence of the court is undermined by the method of appointment of its members.* The military court is composed of a presiding judge and four counsellors. Only the president is a civilian judge. His appointment for a renewable one-year term, by presidential decree and on the basis of a proposal by the Minister of Justice and the Minister of Defence, does not provide sufficient guarantees of independence.³⁸ The four counsellors are armed forces officers appointed by the Minister of Defence.³⁹ The ICCPR provides that anyone charged with a criminal offence is entitled to a fair hearing by a competent and impartial tribunal (Article 14). The UN Basic Principles on the Independence of the Judiciary emphasize the absolute necessity of judicial independence and require that such independence be guaranteed by means such as proper selection procedures, training and guaranteed tenure.⁴⁰
- *Civilian defendants are deprived of their fundamental rights to defence.* Civilian defendants have frequently reported that they had not been informed of their right to legal counsel or, particularly in the absence of a lawyer, have not realized that they were being questioned by an examining judge as he was in military uniform. In violation of the UN Basic Principles on the Role of Lawyers, defence lawyers have restrictions placed on access to their clients' files and are obstructed by not being given information about the proceedings such as the dates of hearings.⁴¹ Unlike the ordinary criminal courts, military courts do not allow lawyers access to a register of pending cases [*al-daftar al-'amm*].
- *Restrictions on the right to a public hearing.* The location of the court in a military compound effectively limits access to the public. By law, and as in the ordinary criminal courts, sessions before military courts should be held in public. Verdicts must be pronounced publicly but the court may hold sessions behind closed doors when the court believes that the public nature of the trial could “*undermine the authority of the military*”.⁴² In practice military personnel authorizes or denies entry to members of the public. For example, an Amnesty International observer was allowed into the military compound of Bouchoucha for the trial of Mounir Ghaith and others on 31 January 2002 (see below) but a journalist was refused access.
- *Restrictions on the right to appeal.* Individuals convicted before a military court can seek review only before the Military Court of Cassation (*Cour militaire de cassation*), a court that examines procedural issues only and not the factual basis of the charges.⁴³ The right to appeal is available in the criminal courts in Tunisia but, in contravention of Article 14 of the ICCPR, defendants before military courts do not have this right. In addition, the maximum period in which the defendant can seek a review of the court's

³⁸ Article 11, Military Justice Code.

³⁹ Article 10, Military Justice Code.

⁴⁰ Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

⁴¹ “*It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.*” (Principle 21).

⁴² Article 40, Military Justice Code.

⁴³ Article 29, Military Justice Code.

judgment (*pourvoi en cassation*) is only three days in a military court as opposed to 10 days in criminal courts.⁴⁴

The conviction of 34 defendants by a military court

In January 2002, 34 defendants were convicted by a military court in Tunis on charges of belonging to *Ahl as-Sunna wa Djamaa*, considered by the authorities as a “terrorist” organization operating from abroad and allegedly linked with the Taliban movement in Afghanistan and Algerian Islamist groups. Only three of the accused – Mounir Ghaith, Abdel Basset Dali and Beshir Ben Zayed – were present in court, the others being tried *in absentia*. The rights of the defendants during the pre-trial detention were violated; the period of incommunicado detention (*garde à vue*) exceeded the maximum legal period; reportedly they had no right to legal counsel when they were brought before a magistrate and they alleged that they were forced to sign “confessions”.

Mounir Ghaith © private

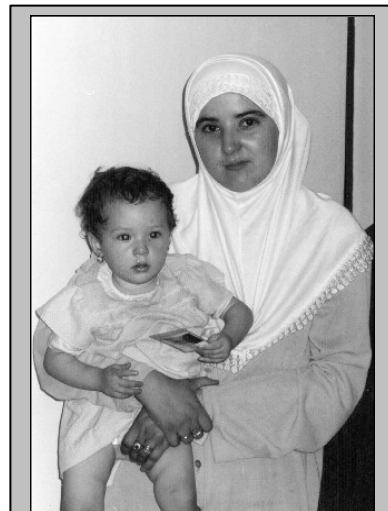
For example, **Mounir Ghaith**, a Tunisian national, who had lived abroad with his family since 1991, was summoned to the State Security Department at the Ministry of the Interior in Tunis on his return to Tunisia on 11 August 2001. His mother and other relatives were repeatedly told by officials at the Ministry that he was not there. Weeks later, in September, his family heard from another detainee’s family that he had been transferred to the *9 avril* civil prison in Tunis.

Mounir Ghaith later told a lawyer that he had been brought before a judge, interrogated without a lawyer and forced to sign a “confession”.

On 30 January Mounir Ghaith and Abdel Basset Dali were sentenced to eight years’ imprisonment each, Beshir Ben Zayed to 10 years and the remaining 31 defendants to 20 years each. In April, the Court of Cassation confirmed the verdicts on Beshir Ben Zayed, Mounir Ghaith and Abdel Basset Dali. In February 2002, one of the 31, **Jaber Trabelsi**, was arrested at Tunis airport on his return from Italy and reportedly tortured at the State Security Department of the Ministry of the Interior. The court failed to call for an investigation into allegations of torture. On 26 June he was sentenced to eight years’ imprisonment.

The defence sought a review (*pourvoi en cassation*) of the court’s judgment.⁴⁵

International human rights bodies have condemned the use of military courts to try civilians. In July 1993, in its review of Egypt’s record of implementing the ICCPR, the UN Human Rights Committee concluded that ‘*military courts should not have the faculty to try cases which do not refer to offences committed by members of the armed forces in the course of*



Mounir Ghaith's wife, Assia Mejbri, and daughter © AI

⁴⁴ Article 31 of the Military Justice Code and Article 262 of the Penal Procedure Code respectively.

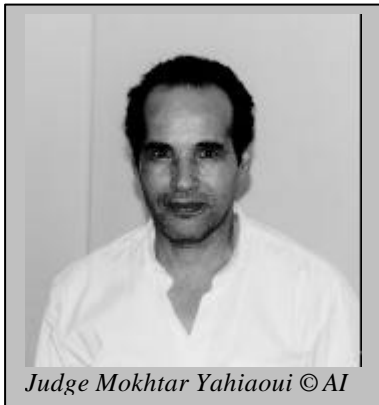
⁴⁵ On 22 February 2002 Essid Sami Ben Khemais, Mokhtar Bouchoucha and Tarek Charaabi, also among the 31, and another Tunisian national, Mohamed Ben Belgacem Aouadi, were reportedly convicted and sentenced to prison terms of between four and five years in Italy on charges of criminal association aimed primarily at forging immigration documents (BBC, *Four Tunisians convicted in Italian ‘terrorism’ trial*, 22 February 2002).

their duties'.⁴⁶ In April 1997, the Human Rights Committee called on Lebanon to transfer the competence of military courts in all trials concerning civilians to ordinary courts.⁴⁷

Attacks on the independence of judges

The Tunisian authorities continue not only to deny the existence of serious and structural irregularities in the administration of justice, but also to attempt to silence those who speak out about systematic political interference with the independence of the judiciary.

In October 2002, Hatem Ben Salem, General Coordinator for Human Rights at the Ministry of Justice and Human Rights, told Amnesty International delegates that judges in Tunisia are strictly independent. The Constitution stipulates, "*The authority of the judiciary is independent; judges, in the exercise of their functions, are accountable only to the law*" (Article 65) [Amnesty International's translation]. However, members of the judiciary who call for respect for the independence of the judiciary are likely to be disciplined and exposed to various forms of harassment.



Judge Mokhtar Yahiaoui © AI

In an open letter in July 2001 to President Ben Ali in his capacity as head of the Supreme Council of the Magistrature (*Conseil Suprême de la Magistrature*), **Judge Mokhtar Yahiaoui** expressed his "*exasperation at the dreadful circumstances of the Tunisian justice system, in which the judicial authorities and judges have been divested of their constitutional powers.*" He said that judges were forced to comply with decisions made by the executive on the outcome of investigations and trials and called for the constitutional principle of the independence of the judiciary to be applied and guaranteed⁴⁸.

For having expressed the widely shared criticisms of human rights defenders and members of the legal profession in Tunisia, Mokhtar Yahiaoui received death threats, including from a high ranking official of the security apparatus. He was dismissed in December 2001 by a Disciplinary Council (*Conseil de Discipline*) which reportedly found him to have failed in his professional duties. Since then he has also been arbitrarily arrested or beaten by plain clothes policemen on several occasions and prevented from travelling abroad or moving freely within Tunisia⁴⁹. His family has also been intimidated. In June 2002 an assailant beat his daughter with a stick on her way from school; according to lawyers, the authorities refused to register a complaint.

The Tunis Centre for the Independence of the Judiciary obstructed

⁴⁶ Comments of the Human Rights Committee, 48th session, Egypt, para 9.

⁴⁷ UN Doc. CCPR/C/79Add.77, April 1997, at para 13.

⁴⁸ The UN Basic Principles on the Independence of the Judiciary promote the principle of freedom of expression for members of the judiciary: "*In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary*" (Principle 8).

⁴⁹ In an apparent attempt to discredit him the Tunisian authorities claimed that his letter was motivated by a land case he had lost in the courts. See *Avocats sans Frontières* (with the Observatory for the Protection of Human Rights Defenders), *Tunisie: l'affaire Yahyaoui: Le combat d'un homme pour l'indépendance de la justice*, March 2002.

The Tunis Centre for the Independence of the Judiciary which Mokhtar Yahiaoui was to head has been denied legal authorization. When founder members attempted to register it in December 2001 at the Tunis District office (*Gouvernorat de Tunis*) an official reportedly refused to receive the file or to give them an official receipt in violation of the law.⁵⁰ Members of this association have since been subjected to measures of intimidation and harassment. The UN Basic Principles on the Independence of the Judiciary state that “*Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence*” (Principle 9).

Discrimination and arbitrary measures in prison

In Tunisia, what takes place behind prison walls is hidden from public scrutiny. No comprehensive report on prisons is made public and even the total number of prisoners remains secret. No independent human rights or humanitarian non-governmental organizations, national or international, have access to prisons or detention centres in Tunisia.

Tunisian officials continue to deny that there are any political prisoners or prisoners of conscience, describing them as ordinary criminal prisoners. In violation of international human rights standards requiring that different categories of prisoners be kept separate, the Tunisian authorities continue to hold political and criminal prisoners together.⁵¹

Letters standing for sibgha khasa (?? ? ????), special (political) character, are used to identify a political prisoner. They appear for example on a card issued on 5 April 2001 by the administration in Borj Erroumi prison, on the outskirts of Bizerte, to allow visits by relatives.

Although there is no physical separation, the prison administration differentiates between criminal and political prisoners, apparently so as to inflict harsher treatment on the political prisoners. Two Arabic letters, ? ? (*sad kha*), often circled, appear on the prison documents of hundreds of political prisoners. They apparently stand for *sibgha khasa* (?? ? ????), special (i.e. political) character, and are used to indicate to the prison warders that the prisoner should be treated differently from other inmates.

After the release of about 600 political prisoners in November 1999, mass hunger strikes by prisoners in protest at their conditions and increased pressure from human rights organizations, the treatment of political prisoners has improved somewhat in recent years with the restoration of some basic rights, for example to communicate with each other or to practice their religion.

- *The right to communicate.* In some prisons political prisoners reported that, for years, they were forbidden from talking to each other or to ordinary prisoners, to share their meals or to pray collectively, even while held with other prisoners in a cell. They called this form of enforced isolation “*mobile solitary confinement*” (“*cachot mobile*”). Breach of this arbitrary and discriminatory measure, which is reportedly no longer applied, was punishable with solitary confinement.

⁵⁰ Law 59-154 of 7 November 1959, as amended by Law 88-90 of 2 August 1988 and Law 92-25 of 2 April 1992.

⁵¹ The ICCPR states: “*Accused persons shall, save in exceptional circumstances, be segregated from convicted persons...*” (Article 10). The UN Standard Minimum Rules for the Treatment of Prisoners provides for the separation of civil and criminal prisoners: “*The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment*” (Rule 8).

- *The right to practice one's religion.* Prayers were frequently banned outside the working hours of the prison administration. According to testimonies by former prisoners, Muslim prisoners who were found praying *al-fajr* (the first of the five daily prayers) at dawn, before offices opened at 8am, were placed in solitary confinement. This practice has also apparently ceased.

However, a policy of discrimination has continued to expose political prisoners to arbitrary measures such as prolonged solitary confinement and the arbitrary denial of basic rights such as access to medical care. The cycle of injustice continues in silence behind the prison walls.

Prison administration in law and in practice

In recent years, partly in response to pressure exerted by Tunisian human rights organizations, some positive measures have been announced, including the 2001 law on prison administration. However, to achieve improvements in practice, implementation of the law needs to be monitored and all prisoners granted equal rights as defined by law and international standards.

Prisoners' rights in law

A new law on prison administration in May 2001 increased rights for prisoners⁵². The law guarantees basic rights, including free medical care (Article 17-2), a shower at least once a week (Article 17-4) and visits by a lawyer for a detainee whose sentence has not been confirmed (Article 17-5). Under the law, a prisoner may be granted special permission to visit a relative in case of serious illness or death (Article 18-1) and has the right to family visits (Article 18-2) and correspondence (Article 18-3).

The law defines the responsibilities of the prison administration. It requires that the detainee or prisoner be medically examined on arrival in the prison (Article 13) and that relatives of their choice are informed of their arrival (Article 14). Cells must be adequately furnished and equipped with ventilation and lighting and the inmate given a bed (Article 15). In the case of a death in custody the prison director must inform the relevant judicial authorities, the prison administration and the prisoner's family (Article 43).

The previous rules governing prisons provided guarantees of improved hygiene and visiting rights but had been largely disregarded in practice. Similarly, many of the rights defined by the new law have continued to be violated.

In 2000 a law amended the Penal Procedure Code and established the function of *juge d'exécution des peines* (judge responsible for overseeing the implementation of prison sentences) to ensure that prison conditions complied with the law.⁵³ A judge of the First Instance Tribunal must visit the prison or prisons under his jurisdiction at least once every two months to study the conditions of detention of convicted prisoners.⁵⁴ The judge may

⁵² Law 2001-52 of 14 May 2001 "*concerning the administration of the prisons*" replaced Decree 1876 of 4 November 1988. Another law transferred responsibility for prisons from the Ministry of the Interior to the Ministry of Justice (Law 2001-51 of 3 May 2001). However, prison officers remain under the authority of the Ministry of the Interior if they are called, in exceptional circumstance, to serve as part of the security forces to keep order on Tunisian territory.

⁵³ Law 2000-77 of 31 July 2000 incorporated this provision in the Penal Procedure Code (Articles 342 *bis* to 342-5).

⁵⁴ Law 2001-52 of 14 May 2001 stipulates that a prisoner has the right to request a meeting with the *juge d'exécution des peines* (Article 17-7). It appears that uncharged detainees under *garde à vue*, those most at risk of torture or ill-treatment, and prisoners awaiting trial do not fall under the jurisdiction of this judge.

authorize a prisoner to visit his family in cases of serious family illness or to attend funerals.⁵⁵ The prison doctor and prison administration report to the judge who submits annual reports to the Ministry of Justice of his observations, conclusions and recommendations.⁵⁶

The Ministry of Justice and Human Rights did not respond to a request by Amnesty International delegates, during their visit to Tunisia in September and October 2002, for a meeting with the judge responsible for overseeing the implementation of prison sentences of the jurisdiction of Tunis to better understand his role and capacity to ensure compliance with legal provisions.

This new function can be instrumental in ensuring that the prison administration complies with the law and therefore that the basic rights of prisoners are respected. However, the prison administration seems to have no obligation to implement the judge's recommendations. These should be legally binding and a mechanism should be established to ensure that the prison administration complies with them. Those suspected of deliberately violating the law and refusing to comply with a judge's ruling should be held to account.

Poor prison conditions

Although conditions vary from one prison to another the vast majority of both political and ordinary prisoners suffer poor conditions in violation of Tunisian law and international human rights standards.

In October 2002 a former prisoner, one of those released in November 1999, expressed his anger to Amnesty International delegates about prison conditions in 1997 in Gabes prison. He was with some 65 to 80 prisoners in a cell just 48m x 48m. Because of overcrowding, he said, *"the prisoners sleep in front of the toilet door... Even animals don't live like that"*.

Former prisoners and prisoners' relatives confirm the concerns expressed by Tunisian human rights organizations of widespread overcrowding and lack of hygiene, resulting in epidemics of diseases such as scabies.⁵⁷ As many as 150 detainees may have to share one toilet and as many as 50 a water tap. Before 1997, the prison administration reportedly used the same syringes without sterilization on several prisoners. A directive to use disposable syringes has reportedly been disregarded in some prisons, putting prisoners at continued risk of HIV or hepatitis B.

Overcrowded cells

"In December 1997 I was moved to the People's China", the prisoners' name for one of the most overcrowded cells in the 9 avril prison, a former prisoner of conscience told Amnesty International delegates in September 2002. Released in 2001, he recounted spending 10 years in a cell designed for 98 but at times holding 330 prisoners. In many cases three prisoners had to sleep in two beds placed side by side or even on the concrete floor under other prisoners' beds, a position described as "the position of the mechanic under a truck".

⁵⁵ Article 342-3 of the Penal Procedure Code.

⁵⁶ Article 342-4 of the Penal Procedure Code.

⁵⁷ Recent analyses include: CNLT, *Rapport sur la situation dans les prisons en Tunisie*, Tunis, 20 December 1999; FIDH, EMHRN and CRLDHT, *La réalité des prisons en Tunisie*, June 2000; Solidarité Tunisienne and the Comité de Défense des Prisonniers Politiques en Tunisie (CDPPT), *Les prisonniers à 'caractère spécial' ou La tragédie des prisonniers politiques en Tunisie*, February 2003.

Medical facilities in prison appear to be restricted to a basic clinic providing a limited range of medication. Those receiving treatment in prison are usually held in one cell, facilitating the spread of infectious illnesses. Treatment is sporadic and prisoners are rarely seen by medical specialists.

The need for reform in practice

The Tunisian authorities have recently announced some measures to address the problem of prison conditions. However, adequate concrete steps are required to make these a reality.

A journalist forced to resign after writing about prison conditions

On 12 December 2002, in an unprecedented move, the Tunisian weekly magazine, *Haqa'iq* (Realities), published an article about Tunisian prisons that gave figures on overcrowding. It reported that the *9 avril* prison, built in 1909 to house 1,500 prisoners, now holds as many as 6,000, and described a pattern of sexual violence between inmates. The title asked whether prison administration should be reformed (*Hal yajib islah as-sujun fi tunis?* " in *Haqaiq*, no. 885). Two days after publication, the author, journalist Hedi Yahmed, was summoned before the state prosecutor in Tunis. A few days later, he resigned from his position, reportedly under pressure from the magazine's management.

On 13 December 2002, President Ben Ali announced a commission of inquiry into conditions in Tunisian prisons to be led by Zakaria Ben Mustapha, head of the Higher Committee for Human Rights and Basic Liberties.⁵⁸ The Higher Committee for Human Rights and Basic Freedoms reports confidentially and directly to the President on visits to prisons and detention centres, but publicly discloses scant information. In its last public report made available to Amnesty International, covering 1997 to 1999, it reported *ad hoc* visits to some 12 prisons and detention centres but neither its findings nor recommendations were made public.⁵⁹ It says that it intervenes in each case brought to its attention. According to families of prisoners interviewed by Amnesty International such intervention produces however little or no result that is apparent to them.

In a press conference on 17 December 2002, the Minister of Justice and Human Rights refuted allegations of grave human rights violations in prisons. He was reported as acknowledging that the commission of inquiry could identify "a few irregularities" that could be "useful" to prison administrations. The Minister announced that the *9 avril* prison would be demolished in the foreseeable future and replaced by a new facility on the outskirts of Tunis.⁶⁰

The commission reported to the President on 10 February 2003. According to media reports it identified prison overcrowding as a serious problem.⁶¹ In response, President Ben Ali recommended that preventive detention should be an exceptional measure; that detainees be released, with or without bail, for minor offences; and that the law on community service (*travail d'utilité général*) should continue to be used to provide an alternative penalty to

⁵⁸ Text of report in Arabic by Republic of Tunisia radio, reported by the BBC, "Tunisia: President orders committee to examine conditions in prisons", 13 December 2002; *Point de Presse du Ministre de la Justice et des Droits de l'Homme*, 18 December 2002, available at www.infotunisie.com

⁵⁹ Comité Supérieur des Droits de l'Homme et des Libertés Fondamentales, *Les droits de l'Homme en Tunisie, Rapport national, 1997-1998-1999*, Tunis, pp 15-16. In March 2003 the Committee issued a report covering the years 2000 and 2001 (*Publication du Rapport national sur les droits de l'Homme en Tunisie*, TAP, 20 March 2003).

⁶⁰ Associated Press, "Programme de rénovation des prisons tunisiennes", 17 December 2002; Agence France Presse, "Tunis réfute les allégations de graves violations dans ses prisons", 17 December 2002. And also: *al-Sabah*, 18 December 2002.

⁶¹ "Situation dans les prisons", *La Presse*, 18 February 2003.

imprisonment.⁶² He also recommended that sufficient beds be provided in prisons and detention centres.

On health in prisons, the commission concluded that existing provisions for prevention and treatment were effective in preventing contagious disease but that equipment and qualified personnel were needed to reinforce certain areas. President Ben Ali responded by directing that medical structures in prisons be strengthened and necessary X-Ray equipment installed in prisons located far from hospitals. He also recommended that all detainees should be given breakfast.

On literacy programs, professional training, cultural and sports activities, the President recommended that these should be facilitated; that the *grace rehabilitative* benefit a larger number of detainees; and that training for prison officers be improved. He urged judges responsible for overseeing the implementation of prison sentences to focus on their main functions including the monitoring of prison conditions and the conditional release of prisoners.

These announced measures are welcome, but the challenge remains in their implementation which must be closely monitored. So far, the right for all prisoners to an environment that respects their human dignity is far from being guaranteed. Additional discriminatory and arbitrary measures such as prolonged solitary confinement continue to worsen the conditions of political prisoners and prisoners of conscience. For years, a policy of discrimination has been tolerated, even condoned, at the highest level in the state. Prisoners have faced obstructions when they have sought redress.

Prolonged solitary confinement

Several political prisoners have been held in prolonged solitary confinement for months or even years.⁶³ The prisoner is usually kept in a narrow cell, often with limited lighting and ventilation. When he is allowed to leave the cell to walk in the open air – a right that is often denied – the prison warders who accompany him usually choose a time when other inmates are in their cells, preventing all communication.

More than a decade in solitary confinement

Several political prisoners convicted in mass trials in 1992 have been in solitary confinement for more than a decade. **Sadok Chourou**, a lecturer at the Faculty of Science of Tunis University and the former President of *Ennahda*, was sentenced after unfair trial to life imprisonment by the military court in Bouchoucha on 28 August 1992. He has reportedly been kept in solitary confinement since his arrest in December 1990.

Sadok Chourou © private

Hamadi Jebali, former editor of the Islamist publication *al-Fajr* (Dawn), was sentenced to 16 years' imprisonment after an unfair trial before a military court. He is believed to have been kept in solitary confinement throughout the whole period, since 1995 in a dark cell with only a small window in the Nadhour prison in Bizerte. When his mother died in August 2000, he was reportedly not allowed to attend the funeral. His wife and daughters are allowed to visit for 15 minutes, once a week. Visits are arbitrarily denied without reasons being given to the family.

Hamadi Jebali ©private

⁶² Law 99-89 of 2 August 1999 adding Article 15 *ter* to the Penal Code.

⁶³ According to reports, prisoners on death row are also believed to be kept in solitary confinement in the *9 avril* prison in Tunis and deprived of family visits.

They speak to him through two grilles but requests for contact visits have been denied, depriving both the prisoner and his family of the comfort of physical contact. In January 2003, he staged a five and a half week hunger strike in protest at his prison conditions, but the authorities have apparently failed to improve them and he is reported to be extremely weak.

In an appeal on 10 December 2002, international human rights day, the AISPP highlighted the cases of 23 political prisoners believed to be held in prolonged solitary confinement. The following day, security agents reportedly assaulted Mokhtar Yahiaoui who had signed the text on behalf of the AISPP.⁶⁴

Such use of prolonged solitary confinement violates Tunisian law as well as international human rights standards. Under the new law on prison administration of May 2001, “confinement to an individual cell” was retained as a sanction to be used for “a period not exceeding 10 days” (Article 22-7). The UN Human Rights Committee has stated that “prolonged solitary confinement ... may amount to acts prohibited by [the ICCPR]”⁶⁵. Forced solitary confinement for a prolonged period may amount to cruel, inhumane and degrading treatment or indeed torture.

Medical neglect

Testimony of Dr. Mohamed Mahjoub, a medical doctor and former prisoner:



Dr Mohamed Mahjoub released from prison in July 2002 after more than 11 years' imprisonment © AI

“In addition to dermatological problems and infections, detainees develop diabetes, high blood pressure, eye problems, heart diseases or asthma and other illnesses of the respiratory tract ... Infectious diseases spread very quickly ... Treatment may be provided for a few days in an emergency, but is usually discontinued very soon afterwards. For diabetes or high blood pressure there is at best sporadic medication ... Another problem is that doctors readily give out tranquillisers if a prisoner is unwell instead of establishing a diagnosis. If treatment in hospital is needed the Islamist [political] prisoners are usually the last to get it. I myself have had numerous medical problems – for example, I was diagnosed with diabetes in 1996 after repeated demands to see a doctor ... I was given some pills but there was no continuous treatment, let alone a special diet. By the time I was released my condition was much worse.”

According to testimonies, political prisoners are denied medical care on an arbitrary and discriminatory basis. Doctors who were themselves recently released from prison have reported that virtually all long-term prisoners are ill as a consequence of bad prison conditions, sometimes aggravated by torture, poor hygiene and lack of medical care.

Uninvestigated deaths in custody

No one has been held to account for the deaths of prisoners sentenced after the unfair mass trials of Bouchoucha and Bab Saadoun in 1992. Among them was **Sahnoun Jouhri**, a former member of the directing committee of the LTDH and a leading figure in *Ennahda*, who died in 1995, aged 42. Medical neglect may have been one of the factors leading to his

⁶⁴ See Amnesty International, *Tunisia: Violent assault on Mokhtar Yahiaoui, founding member of a new association for the support of political prisoners*, 11 December 2002 (AI Index: MDE 30/027/2002).

⁶⁵ General Comment 20 on Article 7 of the International Covenant on Civil and Political Rights.

death. Arrested in 1991, he had been severely tortured during illegal, prolonged and incommunicado detention, and was sentenced to 15 years' imprisonment by the military court in Bab Saadoun. On 17 January 1995 he was taken to hospital with a haemorrhage and diagnosed as suffering from a lymphoma, but died before he could be given chemotherapy. The family lodged a formal complaint but as in many other cases the cause of death was not independently or impartially investigated.

Sahnoun Jouhri © private

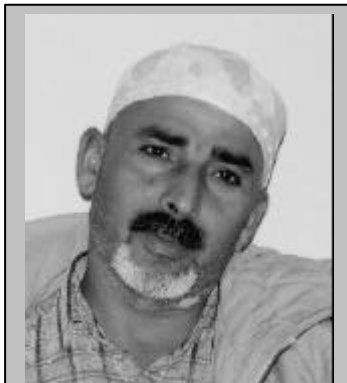
Many former political prisoners and relatives of prisoners interviewed by Amnesty International have reported that medical care is not generally granted on request. The family or lawyer may need to make additional requests and prisoners frequently resort to hunger strikes in a bid to receive treatment.

Mourad Boughanmi, aged 32, a member of *Ennahda* sentenced to a long prison term in the early 1990s for taking part in an unauthorized demonstration, was diagnosed with hepatitis B in 2001. He told his family that he might have contracted the disease from infected syringes. The authorities at Borj Erroumi prison, near Bizerte, refused to transfer him to hospital, despite appeals from his family. After appeals to the authorities in April 2002, he received treatment for a period of three months which was then halted. The family reported that he was to receive a medical check-up only once every six months and that the prison director attempted to make his mother sign a document stating that her son was well treated. On 18 September 2002, he was transferred to *9 avril* prison where he is held, according to his family, with about 300 prisoners and pre-trial detainees in a cell that has only two toilets and three windows.

Medical neglect in prison is a violation of Tunisian law and also of the UN Standard Minimum Rules for the Treatment of Prisoners which stipulate: "*Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers*" (Rule 22).

In some cases, the denial of medical care is believed to have been one of the factors leading to the development of serious illnesses and even deaths in custody.

Abdelmajid Ben Tahar, conditionally released with a brain tumour



Abdelmajid Ben Tahar ©AI

Abdelmajid Ben Tahar, a 42-year-old father of two, was sentenced in December 1993 to 12 years and nine months' imprisonment for belonging to *Ennahda*. On 1 April 2002, he was conditionally released from prison with a brain tumour. He had reportedly complained of severe headaches for a year beforehand but had been denied necessary medical examination, surgery and radiotherapy until he collapsed. He told Amnesty International delegates in September 2002: "*During the weeks after I was released the police came to my house several times a week, walking into my bedroom and up to my bed to see if I had died yet...*" On one occasion, officers forced him to leave the house and report to an officer outside, despite his weak condition.

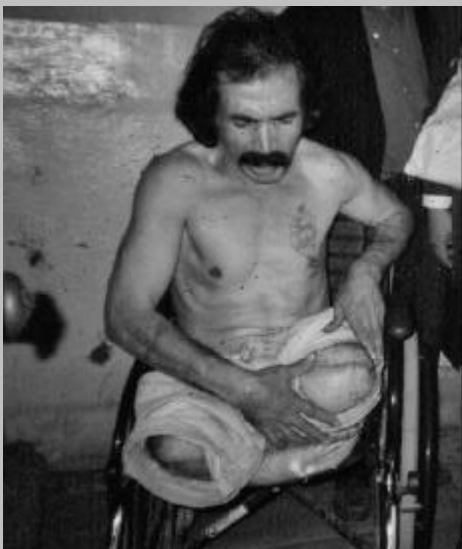
Habib Raddadi, conditionally released whilst on his deathbed

Habib Raddadi, married with four children, died on 22 March 2003 reportedly after he was denied adequate medical care. He was serving a 17 year prison sentence on charges of belonging to *Ennahda*. After his transfer on 9 February from *9 avril* prison in Tunis to al-Haouareb prison, he was reportedly denied the necessary medical treatment and specific diet for hypertension. This is believed to have continued even after a request for adequate medical care from his wife to the General Directorate of Prison Administration in Tunis. On 11 March he suffered a brain haemorrhage and was hospitalized first in Kairouan and then in Sousse. It is believed that he was not given adequate treatment. According to the family, the prison warders in charge of his surveillance at the hospital prevented his transfer to Tunis as recommended by medical doctors. On 19 March, President Ben Ali was reported to have announced his conditional release on the occasion of the anniversary of Independence Day. At this stage Habib Raddadi was already in a coma. When his family last saw him on 21 March, one of his arms and both his legs were still chained to the bed. He died the following day.

Torture, ill-treatment and humiliation

In the 1990s many prisons had become lawless zones ruled arbitrarily by prison directors and their officers, former prisoners told Amnesty International. Although the situation varied and some prison directors and warders showed humanity towards prisoners, such cases appear to have been the exception. Numerous prisoners have been tortured, ill-treated or humiliated by prison warders.

Tunisian law upholds the right to seek redress, strengthened by the 1999 amendment of the Penal Code that made torture punishable by up to eight years' imprisonment.⁶⁶ However, few of those suspected of torturing or ill-treating prisoners have been brought to justice.



*In an unprecedented ruling in July 2001, the First Instance Tribunal sentenced four prison warders to four-year prison terms for torturing **Mohamed Mansouri**, a common law prisoner, at the 9 avril prison in Tunis. The court ruled that the Tunisian state should pay 300,000 dinars (approximately 227,130 US\$) compensation to the victim. It found that, in an apparent attempt to force him to end a hunger strike, on 27 March 2001, warders chained and beat him. On 8 April, he was hospitalized and had both legs amputated. In January 2002, the Appeal Court in Tunis confirmed the sentence on two of the warders, acquitted a third and reduced to two years' imprisonment the sentence of a fourth. ©AI*

The reality for most political prisoners, as well as ordinary criminal prisoners, is that accountability is the exception and impunity the rule. Prisoners who suffer human rights violations are largely denied access to justice. Dozens of complaints by prisoners and their families – including of unexplained deaths in custody, ill-treatment by prison officials and medical neglect – remain without investigation.

⁶⁶ Law 99-89 of 2 August 1999.

Abderrahman Jhinnaoui died reportedly after torture in prison. Two years after the death in custody of 25-year-old Abderrahman Jhinnaoui on 9 March 2001, the case has not been fully and impartially investigated. Arrested on 12 January on suspicion of theft, he was reportedly tortured by the police to make him confess. After 54 days on hunger strike to protest his innocence, he was allegedly tortured by prison warders. He died a few days later. The authorities denied that his death was a result of torture, and exerted intense pressure on his family to take legal action to stop a campaign by Tunisian human rights defenders for an investigation into his death.

Abderrahman Jhinnaoui
© private

Abdellatif Bouhajila
© private

Abdellatif Bouhajila, a political prisoner aged 33, has been repeatedly ill-treated by prison warders since he was remanded in custody. In November 2000, he was sentenced to 17 years imprisonment after unfair trial on charges of setting up an Islamist criminal organization, *al-Ansar* (The Partisans), to undermine state security. Abdellatif Bouhajila is asthmatic and suffers from severe kidney disease. In May 2001 he started a hunger strike in protest at extremely poor prison conditions as he had been placed in a cell in Borj Erroumi Prison in Bizerte, without a bed and with other prisoners smoking. In July 2001, when he was transferred to the *9 avril* prison in Tunis, Abdellatif Bouhajila was reportedly ill-treated as he refused to enter the new cell because of the bad conditions causing him to fall and lose consciousness. He was admitted in a reportedly critical condition to the cardiology department of a Tunis hospital. Although he lodged a formal complaint, his allegations of ill-treatment are not known to have been fully and impartially investigated.

When the Appeal Court reviewed his case in June 2002, it rejected the defence plea that Abdellatif Bouhajila was recovering from surgery and too weak to be interrogated: he had undergone kidney surgery in May 2002. The prosecution produced a medical certificate from the *9 avril* prison doctor testifying to the prisoner's good health. Without hearing the plea of the defence lawyers or the defendant, the court issued its verdict and reduced Abdellatif Bouhajila's sentence to 11 years' imprisonment. A court official reportedly refused to register a formal complaint against the prison doctor, in which the defence challenged the validity of the doctor's opinion. On 10 November 2002 Abdellatif Bouhajila was reportedly beaten by prison warders in the face and area of his body where surgery had taken place. Complaints lodged to the State Prosecutor, the Ministry of Justice and Human Rights and the judge responsible for overseeing the implementation of prison sentences have yielded no response.

The failure of judges to investigate allegations of torture and ill-treatment and, in some cases, the refusal by court officials to even receive complaints are in breach of Tunisia's obligations under Tunisian law and international human rights standards including the UN CAT.⁶⁷

It is believed that prison warders have threatened political prisoners, especially Islamists, with sexual abuse or harassment. According to one former prisoner, in March 1994, he and four other prisoners in al-Haoureb Prison near Kairouan were forced to strip in front of a prison officer who taunted them by ordering them to commit sexual acts.

⁶⁷ The CAT states: "Each State Party shall 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. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation" (Article 14).

The failure of the prison authorities to separate political from ordinary criminal prisoners, in violation of international standards, exposes political prisoners to an unsafe environment where they are at risk of ill-treatment including sexual abuse or humiliation by other inmates.

Abdelwahab Boussaa, a political prisoner aged 34, detained at Borj Erroumi prison near Bizerte, died on 23 March 2002, according to official sources, of kidney failure in hospital. While a student, he had been sentenced in 1991 to 16 years in prison for belonging to *Ennahda*. In December 2001, he started a hunger strike to protest at his prison conditions particularly after he was transferred to a cell with prisoners convicted of sexual offences, a move he had reportedly opposed on moral grounds. He was thereafter reportedly refused family visits until his death.

The denial of other basic rights

According to testimonies by former prisoners, the prison administration continues to deprive political prisoners of basic rights including the right to work and to study in prison. Political prisoners reportedly do not enjoy the opportunity to work allowed to ordinary prisoners, in violation of international standards.⁶⁸ In meetings in September and October 2002, the Tunisian authorities emphasized to Amnesty International delegates the opportunities offered to all prisoners to prepare them for reintegration into society, including to work. However, scores of former political prisoners and prisoners of conscience have testified that they were never given the right to work in prison.

The right of prisoners to education has also been undermined since 1987. At least until the mid-1990s, political prisoners were denied the right to pursue their education in prison, a particularly severe punishment for those arrested as students. It is believed that many political prisoners continue to be denied their right to education required under international standards.⁶⁹

Political prisoners are routinely transferred between prisons, measures which they believe are to prevent solidarity among prisoners or to impose further punishment by locating them long distances, sometimes hundreds of kilometres, from their families. The authorities do not always inform prisoners' families of transfers. Families of modest means often cannot afford to travel such long distances regularly, especially if prisoners from the same family have been dispatched to different prisons in remote areas. Families have sometimes made the journey only to be refused a visit, for example because the prisoner is undergoing punishment. These measures are part of a pattern of additional punishment of prisoners and of harassment and intimidation of their families.⁷⁰

⁶⁸ The UN Standard Minimum Rules for the Treatment of Prisoners state: "*All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer... Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day*" (Rule 71).

⁶⁹ The UN Standard Minimum Rules for the Treatment of Prisoners state: "*So far as practicable, the education of prisoners [under sentence] shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty*" (Rule 77).

⁷⁰ See Amnesty International, *Tunisia: Women victims of harassment, torture and imprisonment*, June 1993 (AI Index: MDE 30/002/1993).

The case of Maher and Ramzi Khalsi

Maher and Ramzi Khalsi, twins aged 31, were arrested in connection with student demonstrations in the early 1990s, tried several times on charges of membership of an

unauthorised association and sentenced to 39 years' imprisonment each. They have been held in separate prisons most of the time and transferred from prison to prison at least five or six times. In September 2002, Ramzi Khalsi was reported to be in Messaadine prison, approximately 20 kilometres from Sousse. On 22 September 2002, his brother Maher was transferred to Bellaregia prison near the north western town of Jendouba. Their 54-year-old mother told Amnesty International delegates how difficult it was for her to visit her sons, each

Maher Khalsi, before imprisonment © private

Ramzi Khalsi, before imprisonment © private

about 170 kilometres from her home in Tunis but in opposite directions. Repeated requests made to the authorities by their lawyer to allow them to be closer to their family have yielded no response.

Harassment of prisoners after release

“The duty of society does not end with a prisoner’s release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of prejudice against him and towards his social rehabilitation.”

UN Standard Minimum Rules for the Treatment of Prisoners (Rule 64)

“Social assistance for the detainees has the aim of 4) monitoring the situation of the detainee after his release and aiding his reintegration into the society he belongs to, and this in coordination with the specialized structures concerned”. [Amnesty International’s translation]”

Law 2001-52 of 14 May 2001 on prison administration (Article 37-4)

Despite legal obligations to help released prisoners reintegrate into society, the Tunisian authorities fail to meet the requirements of international human rights standards to rehabilitate and compensate prisoners who have suffered human rights violations.⁷¹ Instead, arbitrary and discriminatory measures may be inflicted on former political prisoners from the day of their release. The cycle of injustice continues after release.

Scores of former political prisoners have been arbitrarily rearrested. Hundreds have been forced to report regularly to the security forces. Many have been deprived access to adequate health care, to resume their studies or to practice a profession. These means of repression disrupt the lives of thousands of Tunisians affecting not only former prisoners but also their families.

Administrative control: a pretext for persecution

On the day of release, political prisoners are often taken for questioning to a security forces centre. Officers ask why the former prisoner was arrested and convicted, sometimes going back over events that occurred more than a decade earlier. In most cases they take a statement and order the former prisoner to report regularly to the security forces. For years the Tunisian authorities have forced hundreds of former political prisoners to report to one or several centres of the security forces including police stations and offices of the National Guard (*Garde Nationale*). In some cases former political prisoners have been required to report and register several times a day.

The authorities have presented this practice as a part of a supplementary sentence called administrative control (*contrôle administratif*).⁷² The Penal Code stipulates that *“the effect of the discharge under administrative control is to give the administration the right to choose the place of residence of the prisoner on completion of his sentence and to change it, if it is judged appropriate”*, and that *“the prisoner cannot, without authorization, leave the residence to which he has been assigned”*. [Amnesty International translation].⁷³ Administrative control requires a former prisoner to seek authorization to travel outside his area of residence. It has been used by the security forces as a form of harassment and intimidation.

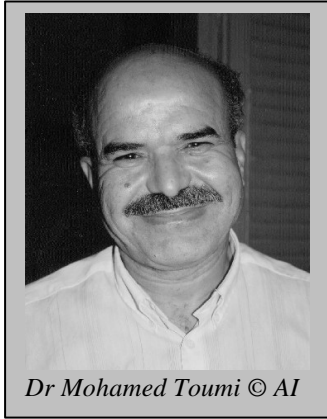
⁷¹ The ICCPR and CAT require that those found by an independent and impartial body to have been victims of torture, ill-treatment, arbitrary detention or imprisonment after an unfair trial are entitled to receive reparation including rehabilitation and compensation.

⁷² Administrative control was introduced by Law 66-63 of 5 July 1966 and incorporated into the Penal Code as a supplementary sentence (*peine accessoire*) for those convicted and sentenced under Articles 60 to 79 and 231 to 235 of the Penal Code. When written into the judgment, it may also be imposed on prisoners convicted of “terrorist” offences (Article 52 *bis*) or membership of a criminal organization (Article 131 to 135).

⁷³ Under Articles 23 and 24 of the Penal Code.

Reporting to the police 28 times a week

Dr Mohamed Toumi Ben Nejma, a psychiatrist aged 55, was arrested on 17 January 1991 in Tunis and sentenced to five years' imprisonment and five years' administrative control after an unfair trial by the Bouchoucha military court in August 1992. After his release in 1997, he



Dr Mohamed Toumi © AI

was ordered to report to the police on a daily basis (except on Saturdays and Sundays) at 9am and 3pm at Gorjani police station, and at 10am, noon and 5pm at Sidi Beshir police station. In addition, he had to report on Mondays at 11am to the *Garde Nationale* in Bardo and twice a week to Ibn Khaldun police station – totalling up to seven times a day at different locations. After two years it was reduced to five times a day until 2000, then to three times a day and finally to once a week. These measures have prevented him from resuming his professional life. In addition to this, he was refused authorization to open a private medical practice.

Most reporting regimes have not been as draconian as in the case of Mohamed Toumi Ben Nejma, but scores of former prisoners have been unable to undertake paid employment as a result of similar measures. Even when they only had to report once a day the journey could take several hours. This was especially so in the countryside or when there was no public transport or they had to walk several kilometres for lack of alternative means of transport, or as a result of being kept waiting at the police station.

In recent years, a number of former prisoners, encouraged by Tunisian human rights lawyers and organizations, have refused to report to the police station. Some have faced retaliatory measures by the security forces (see below). However, the situation has improved generally with only a few former prisoners now required to report daily although scores still have to report once a week.

While these improvements are welcome, further steps need to be taken. Prisoners of conscience should be released unconditionally and not subjected to additional punitive measures. The security forces should stop using administrative controls to harass and intimidate and prevent the rehabilitation of former political prisoners.

Arbitrary rearrest and detention

After their release, former political prisoners are frequently arbitrarily rearrested. The practice of rounding up former prisoners has become the norm in certain locations: every year, the day before the commemorations of 15 October in the town of Bizerte, northern Tunisia⁷⁴ and of 8 February in the town of al-Kef in the north east of the country⁷⁵, all former political prisoners are reportedly arrested and spend the night at the police station or in prison before being released the following day. According to testimonies of former prisoners, when President Ben Ali visits Bizerte on 15 October, the security forces round up all former political prisoners; those under administrative control are put in jail while the others are forced to sleep in the corridors of the police station.⁷⁶

⁷⁴ The commemoration is known as *Eid al-jala'*, to celebrate the evacuation of the last French soldier leaving Tunisian territory in 1962.

⁷⁵ The 8 February commemoration marks the 1958 bombing of Sakiet Sidi Youssef, a village on the border between Algeria and Tunisia, by the French authorities in their war against the Algerian National Liberation Front.

⁷⁶ Such detention is so routine, some former prisoners bring their own mattresses.

Former political prisoners may also be rearrested for resuming peaceful political activity or criticizing the government in public. In most cases they are released without charge often following national and international pressure.

Redetained within days of release

Samir Dilou, aged 36, was allegedly tortured in 1991 following student demonstrations and sentenced to a lengthy prison term for belonging to an “unauthorized association”. On 18 July 2001, the day of his expected release, he was questioned at police headquarters in Tborba and told to contact the police at Raf Raf near Bizerte where his family lives. The court had not imposed a supplementary sentence of administrative control and he did not contact the police. Shortly afterwards, he was summoned to the police station in Bizerte. He was again questioned, including about his views on international politics, then arrested and the next day transferred to the police station in Sousse. He started a hunger strike to protest at his detention and was released without charge after eight days.



Samir Dilou © AI

Illegal detention of former political prisoners

Zouhayer Makhlouf and **Chadli Turki** were arrested on 4 September 2002 by the State Security Department and questioned at the Ministry of the Interior in Tunis. Zouhayer



Zouhayer Makhlouf © AI

Makhlouf, a former political prisoner released in 1993 after serving a prison term of one year and eight months, was asked to give up his membership of Amnesty International’s Tunisian Section. Chadli Turki, imprisoned in the early 1990s for belonging to an unauthorized organization, was allegedly detained because of links with government opponents. However, unable to resume his professional life after his release in 1993 because of administrative measures against him, he was rearrested only a few days after he had reopened his medical practice and was questioned about the funding of the practice. Both men were reportedly arrested without warrant and their families were not notified of their detention. Their *garde à vue* exceeded the lawful period of three days. Zouhayer Makhlouf

and Chadli Turki were released without charge on 8 September.

Former political prisoners are routinely accused of breaching the conditions imposed by their conditional release and are returned to prison to serve the remainder of their sentence, yet they are often not informed of those conditions. They are sometimes brought before a court and sentenced after an unfair trial.

Mohamed Mouadda, former leader of the opposition party *Mouvement des Démocrates Socialistes* (MDS) - Movement of Democratic Socialists - was imprisoned on 11 October 1995, after he made public his letter to President Ben Ali criticizing the deterioration of the human rights situation in Tunisia. In February 1996, after an unfair trial, he was sentenced to 11 years’ imprisonment principally on charges of threatening the external security of the state and exchanging intelligence with foreign powers. In December 1996, he was conditionally released. On 19 June 2001, he was rearrested apparently because of continued opposition activities. He had signed a joint manifesto with Rached Ghannouchi, leader of *Ennahda*, to set up a “*patriotic and democratic front based on the defence of public freedoms*” and to reject the candidacy of President Ben Ali for the 2004 presidential election. On 31 January 2002, Mohamed Mouadda was conditionally released. He benefited from a presidential pardon in March 2002.

Denied health care, education and work

Numerous former prisoners are prevented from access to health care and further education or from starting or resuming a profession.

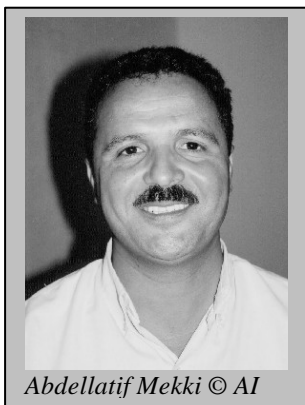
Many former political prisoners may not be allowed a medical card (*carte de soin*) or a disability card (*carte d'handicappé*) that gives access to medical care for those who do not have a source of revenue or are disabled, and their families. In some cases this may deny them treatment for injuries or conditions caused or aggravated by torture or poor conditions in prison.

Ali Salem Hidri, aged 45, from Sers (governorate of al-Kef) was conditionally released in November 1995 from the *9 avril* prison where he was serving a four and a half year sentence on charges of belonging to an unauthorized association. He suffers from asthma and also has a disability. Despite repeated requests, including a letter sent in November 2000 to President Ben Ali, he has reportedly not been provided a medical card nor a disability card.

Hedi Jebali, a political prisoner married with two children, released in January 2003, is believed to suffer from throat cancer. After his release, he has faced obstructions in his application for a medical card. When he went to the police station of Hay Tadamun in Tunis to get a certificate of residence necessary to obtain an identity card he was told that the police had first to get clearance from the Ministry of the Interior, whereas normally such a certificate is easily obtained. When he went to the local administration to apply for the medical card he was told that he had to produce his identity card for the application to be processed. It is believed that the authorities, as in many other cases, deliberately obstructed the application for a medical card and therefore deprived Hedi Jebali of a basic right.

Many prisoners of conscience and political prisoners were students at the time of their arrest in the early 1990s. In most cases they were not allowed to study in prison. After their release hundreds were reported to have been denied the right to resume their studies.

Not allowed to study



Abdellatif Mekki © AI

At the time of his arrest in 1991, **Abdellatif Mekki** was a medical student and Secretary General of the *Union Générale Tunisienne des Etudiants* (UGTE) - General Tunisian Students Union. He was released in July 2001 after serving a 10-year prison sentence pronounced in 1992 by the Bouchoucha military court⁷⁷. He was not allowed to study in prison or even to receive books. A few weeks after his release, he was approached by a security officer who had arrested him in 1991, who reportedly warned him, “*You will never study again. If you do not keep quiet, I will arrest you again.*” After his release, he was indeed not allowed, despite repeated requests, to resume his medical studies. Instead he registered at the Faculty of Sciences in Tunis to study Biochemistry and passed the first year in 2001. On 13 December

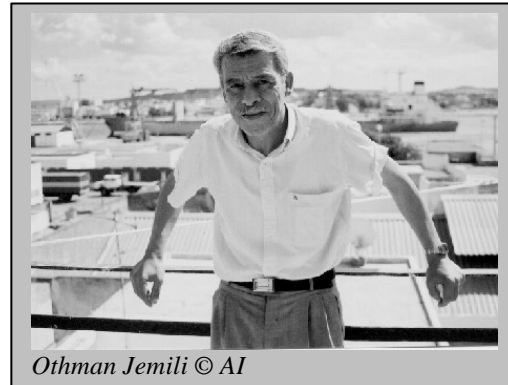
2002 he was summoned by an official of the Faculty of Medicine and two days later he was reportedly prevented by the security forces from entering the campus. In February 2003, he wrote a letter to the Minister of Higher Education in which he complained about the deliberate obstructions from the University administration and called for his right to education to be restored.

⁷⁷ He told the court that he had been tortured while in prolonged incommunicado detention at the Ministry of Interior. See Amnesty International, *Tunisia: heavy sentences after unfair trials*, October 1992 (AI Index: MDE 30/023/1992).

Some former prisoners may face difficulties finding a job because they lack the appropriate qualifications or experience or because of high unemployment. However, the security forces are reported to prevent scores of former political prisoners from resuming a profession or even making a living.

Banned from teaching

Othman Jemili, aged 56, a secondary school teacher of French from Bizerte, was arrested in 1993 and released in December 1996 after serving a three-year prison sentence on charges of membership of an “unauthorized association”. On the day of his release from Sousse prison, he was interrogated by the police in Sousse. He was later told that he was subject to indefinite administrative control even though it was apparently not part of his sentence. In June 2000 he stopped reporting to police stations despite attempts to intimidate him. He was reportedly prevented from resuming his employment as teacher in a secondary school and appealed against this decision before the Administrative Tribunal. There has been no ruling in this case. Aware that the state would no longer employ him, he gave private lessons until two policemen were reportedly posted outside his house to question all visitors. He applied for early retirement but was refused despite suffering heart problems. He told Amnesty International that his wife and children are also denied social security benefits and passports.



Othman Jemili © AI

Former prisoners standing up for their rights

Fear of reprisals has forced many former political prisoners to comply with the set of arbitrary measures imposed on them. In recent years, however, many have dared to stand up for their rights. Tunisian human rights organisations such as the LTDH and the CNLT have supported their demands.

Refused treatment for injuries by the police

After his release from prison in September 1999, former prisoner of conscience Hedi Ben Allala Bejaoui had been denied a medical card, a disability card and his passport. As a result he had to pay for medical care in Tunisia and could not go abroad for treatment. He still has a bullet in his knee after being shot and arrested by police in 1991. In constant pain, forced to walk with crutches, he could not take up regular work, yet had to report to the local police station every day. The doctor in his village of Sidi Thabet near Tunis reportedly refused to treat him for fear of “problems with the police”. He went on hunger strike in May 2001 in protest and on 2 September 2001 was informed by Ministry of the Interior officials that he would be allowed surgery. After a medical assessment, it was decided not to remove the bullet but he had an operation to follow up earlier surgery on a fracture reportedly resulting from a police beating some three years before. Hedi Bejaoui was granted his medical and disability cards only after months of campaigning and facing increased police surveillance and harassment.

Some former prisoners have resorted to the courts to challenge arbitrary measures. If an administrative body misuses its powers, Tunisian law provides the right to appeal to the Administrative Tribunal (*Tribunal Administratif*), a court which may confirm or annul the decision. With the help of human rights lawyers, many former prisoners, including those who had previously brought their case to the attention of the highest state authorities, have initiated legal action. Numerous cases are pending. In a few cases, the Administrative Tribunal has ruled in favour of the defendant. However, rulings by the Administrative Tribunal have

sometimes been ignored by university administrations in cases in which former students have sought to return to their studies.

Mohamed Yassin Ben Amor was a first year student in Arabic studies at the University of Tunis when he was arrested in November 1990. Sentenced to seven years and two months' imprisonment, he was released on 30 January 1998. The University failed to respond to his repeated applications to resume his studies. In January 1999 he took his case to the Administrative Tribunal, arguing that the University's lack of response was effectively a decision that denied his constitutional right to education. On 14 April 2001, the Tribunal annulled the decision and called on the state to cover the complainant's legal costs.

Samir Taamallah © private

After his conditional release from prison in September 2002, **Samir Taamallah**, a member of the PCOT, faced obstructions as he attempted to resume his studies at the Faculty of Literature and Human Sciences at Kairouan University. On 27 November 2002 he and two others started a hunger strike which they stopped eight days later after receiving guarantees from the Ministry of Higher Education that they would be allowed to register. The two others were indeed able to register but at the time of writing, Samir Taamallah remains denied his right to study. In March 2003, he expressed his frustration in relation to what he felt was a politically motivated refusal. He intends to bring his case before the Administrative Tribunal.

Some former prisoners refused to comply with orders to report to the security forces. Many of them, and sometimes their relatives, have been threatened, harassed and intimidated as a result.

Assaults and threats

Las'ad Jouhri, a former prisoner of conscience and human rights defender aged 44, was released from prison in March 1998 after more than six years' imprisonment for membership of *Ennahda* and related charges. He was tortured on several occasions between 1991 and 1994 and had difficulty to walk following his release from prison, reportedly as a consequence of injuries inflicted under torture. He agreed to remain at a fixed home address but refused to report at police stations because of his physical disability. He was frequently harassed and interrogated by the police and refused identification papers. In late 2000 he was threatened with physical attack by security agents if he did not stop human rights work on behalf of political prisoners and former prisoners. He was assaulted four times in 2001 by security force officers and five times in 2002. His wife, the family breadwinner, has reportedly faced pressure to resign from her post. She and their children have been denied passports.

Las'ad Jouhri © private

Imprisoned for challenging internal ‘exile’

Abdallah Zouari, a journalist for the Islamist publication, *al-Fajr* (Dawn), who was convicted in the 1992 mass trial before the Bab Saadoun military court, was released on 6 June 2002. He was re-arrested on 19 August after he filed an appeal before the Administrative Tribunal (*Tribunal Administratif*), challenging the Ministry of the Interior’s order that he leave his home in Tunis for the village of Hassi-Jerbi, 210 miles south, near the coastal town of Zarziz. On 4 September he was convicted of failing to comply with an administrative control measure, after a trial which failed to respect his rights to defence, and sentenced to eight months’ imprisonment.⁷⁸ Following a national and international campaign on his behalf, he was released on 5 November 2002. Since his release Abdallah Zouari has been subjected to police surveillance and harassment.

Abdallah Zouari © private

⁷⁸ This verdict was announced on the day that the authorities released prisoners of conscience Hama Hammami and Samir Taamallah (see page 13), a decision apparently motivated by health considerations. See press release: *Tunisia: Two prisoners released and one convicted. Arbitrary decisions versus the duty to see justice done*. 4 September 2002, AI Index: MDE 30/018/2002. The release of the two PCOT members occurred only two days after the Court of Cassation rejected their appeal, therefore missing the final opportunity to right the injustice. See: *Tunisia: Trial of three PCOT members - The Court of Cassation misses the final opportunity to right an injustice*. 3 September 2002, AI Index: MDE 30/017/2002.

Conclusion

“Human rights are our choice and our policy.”

President Ben Ali, in a speech on 12 May 1992.

“Human rights being among the basic values in our republican government, we have worked hard at including them in the text of the Constitution and increasing their scope of protection, so that the Constitution reflects our noble civilizing project.”⁷⁹

President Ben Ali, in a speech on 10 December 2002, presenting Tunisia’s achievements since the change of government in 1987.

More than ten years after the mass trials of Bouchoucha and Bab Saadoun, the gap remains between the principles proclaimed by the authorities and the reality experienced by Tunisian citizens. International human rights treaties ratified by Tunisia, as well as the Tunisian Constitution and law, continue to be deliberately violated by the authorities themselves – members of the security forces, the judiciary and other state institutions.

The authorities reject criticisms and recommendations by human rights organizations, accusing them of focusing on civil and political rights and ignoring the government’s achievements in defending social and economic rights. This report shows that those whose civil and political rights are violated are also likely to be targeted and deprived of fundamental economic and social rights.

It is encouraging to note that, within the institutions of the Tunisian state, some civil servants continue to work to apply the law and ensure that human rights are respected. Some judges among the newly appointed judges responsible for overseeing the implementation of prison sentences or within the Administrative Tribunal give rulings according to the law and annul decisions made by official institutions such as prison or university administrations, despite political pressures. However, in Tunisia, those who work for the respect of the rule of law remain at risk of harassment, intimidation or even losing their post.

The general climate of impunity implies that arbitrary measures are tolerated or condoned at the highest levels of the state. To break the cycle of injustice the Tunisian authorities should send a clear message to all officials that those suspected of unlawful decisions and actions will be brought to justice and held responsible for their acts. The Tunisian authorities must provide redress and remedies for those whose rights have been violated and must ensure that justice and the rule of law become a reality for all in the country. In Tunisia, the choice is not between security and human rights. Only by ensuring the fair administration of justice can the objective of security for all and the obligation to respect human rights for all be met.

⁷⁹ Amnesty International’s translation of text published in *La Presse*, 11 December 2002.

Recommendations

Amnesty International recommends that the Tunisian authorities take the following steps:

- Release all prisoners of conscience immediately and unconditionally;
- Retry, promptly and according to international standards for fair trial, all political prisoners convicted and sentenced after unfair trials in the past or release them;
- Stop the practice of trying civilians before military courts where procedures fall short of international standards for fair trials;
- Launch new trials in criminal courts for all civilian prisoners who have been convicted by military courts, and ensure that the new trials in civilian courts provide all internationally recognized guarantees of fairness;
- Amend the law to end the practice of incommunicado detention;
- Ensure that the security forces, especially the State Security Department, do not detain individuals in incommunicado detention; that all detainees are brought before an independent judicial authority without delay and that they are given access to relatives, lawyers and doctors without delay and regularly thereafter;
- Ensure that all deaths in custody and all allegations of torture and ill-treatment are promptly, thoroughly and impartially investigated and that the full findings of such investigations are made public;
- Ensure that those responsible for torture and other human rights violations are brought to justice;
- Repeal or amend all laws, including Article 52 *bis* of the Penal Code and Article 123 of the Military Justice Code, which facilitate the imprisonment of prisoners of conscience;
- Ensure that all prisoners, without discrimination, are granted their rights as defined by law and international standards and that they are given every opportunity to seek redress if their rights have been violated;
- Stop the use of solitary confinement and ensure that any prisoners who have been subjected to this treatment are provided with the means to seek redress, including by appropriate medical care;
- Ensure that independent bodies are allowed to inspect detention centres and prisons;
- Ensure that no arbitrary measure is imposed on former prisoners under the cover of administrative control and put an end to the imposition of administrative control on prisoners of conscience upon their release;
- Ensure that those who are found by an independent and impartial body to have been victims of torture, ill-treatment, arbitrary detention or imprisonment after a trial which failed to meet international standards for fairness receive reparation including rehabilitation and compensation.

Amnesty International is convinced that allowing the members of the legal profession to exercise their duties without interference is fundamental to guaranteeing a real improvement in the human rights situation:

- Lawyers should be free from improper interference in the exercise of their professional duties, including by having access to their clients and having the right to defence;
- Lawyers should be free from harassment and intimidation;
- The independence of the judiciary from executive intervention or influence should be made absolute, not only in law but also in practice;
- Members of the executive who intervene unlawfully in the functioning of the judiciary should be punished;
- Judges and magistrates should ensure that all allegations of torture and ill-treatment are promptly, thoroughly and impartially investigated;
- No confessions or other evidence obtained under torture should be admissible in court;
- Judges should be encouraged to ensure the full application of international human rights treaties ratified by Tunisia which, in accordance with the Tunisian Constitution, supersede Tunisian law.