



# **Tunisia**

## **Follow up to the Human Rights Committee's recommendations**

**Alkarama for Human Rights, 11 March 2009**

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## 1. Introduction

**During consideration of Tunisia's fifth periodic report (CCPR/C/TUN/5) at its 2512th, 2513th and 2514th meetings, on 17 and 18 March 2008, the Human Rights Committee requested in its concluding observations (CCPR/C/TUN/CO/5) that within one year the Tunisian Government provide information about four of its recommendations.**

Alkarama for Human Rights (Alkarama) concentrates its work on four priority areas, arbitrary detention, torture, enforced and involuntary disappearances and extrajudicial executions. We base our work primarily on the individual cases we submit to UN Special Procedures and Treaty Bodies, contacts with local actors including victims, their families, lawyers and human rights defenders and other relevant, reliable sources of information.

Alkarama wishes, with this contribution, to provide the Committee with details on two of the four recommendations for which follow-up was requested (Recommendations 11 and 20).

Our organisation takes this opportunity to bring to your attention voluntary commitments made by the Tunisian government during its Universal Periodic Review (UPR) in April 2008.<sup>1</sup>

These relevantly included its decision to receive Special Rapporteurs from the Human Rights Council, and its commitment to submit during 2008 its third periodic report on the implementation of the International Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment of Punishment (CAT).

Tunisia also announced its decision to create an institution related to the General Human Rights Coordinator in charge of the follow-up to treaty bodies' recommendations in order to promote their effective implementation.

However, it is useful to note that the Tunisian Government has not fulfilled these voluntary commitments. They have still not sent an invitation to the Special Rapporteur on Torture despite his request in 1998 and reiterated in 2005, 2006 and 2007. Nor did the Tunisian Government provide its 3<sup>rd</sup> periodic report to the CAT, which is 12 years overdue (since 1997).

Finally, the Tunisian Government has failed to publish and disseminate the Committee's concluding observations, let alone create an institution related to the General Human Rights Coordinator in charge of the follow up to treaty bodies' recommendations in order to promote their effective implementation, according to our information.

## 2. Recommendation 11(a) regarding torture

**Recommendation 11(a) states that "the State Party should ensure that all allegations of torture and cruel, inhuman or degrading treatment or punishment are investigated by an independent authority, and that the perpetrators of such acts, including their hierarchical superiors, are prosecuted and punished and that the victims receive reparation, including appropriate compensation."**<sup>2</sup>

Although the Tunisian authorities claim that some Government officials guilty of torture have been prosecuted and convicted, it must be noted, as **Human Rights Committee expert** Ms. Christine Chanet did, that the Tunisian delegation's responses to questions about torture during the periodic review were not satisfactory. As set out in the media record, "she also felt that the delegation was denying instances of torture and ill-treatment of detainees. Such denial gave no space for preventive measures..."<sup>3</sup> Indeed, the Tunisian periodic report only rarely uses the term "torture" and prefers the

<sup>1</sup> Report of the Working Group on the UPR: Tunisia, 22 May 2008 (A/HRC/8/21) at para 6(a), (b)(i), (b)(ii), and (i).

<sup>2</sup> Concluding observations of the Human Rights Committee: Tunisia, 23 April 2008 (CCPR/C/TUN/CO/5), para. 11(a).

<sup>3</sup> Media record of the Human Rights Committee's Ninety-second Session, 2513<sup>th</sup> and 2514<sup>th</sup> meetings, 18 March 2008 (General Assembly, HR/CT/694).

vague and undefined concept of "abuse of authority." Accordingly, some 400 officers who were disciplined between 1988 and 2005 may have been thus sanctioned for any number of reasons, as the charges were not mentioned in the report. Twenty of them were dismissed for "violence", a term which is just as vague.

In their report to the Human Rights Council under the Universal Periodic Review which took place on 8 April 2008, the Tunisian authorities gave some more concrete examples by enumerating 205 procedures which have been instituted against officials from law enforcement and prison administration by the Tunisian courts for 2000-2007, including 8 for "use of violence against an accused to obtain confessions" and 2 for "arbitrary detention and abduction", the other 195 charges being imprecise.<sup>4</sup>

Since the adoption of the law against terrorism on 10 December 2003, cases of unfair arrests, arbitrary detentions and torture have increased. This law severely restricts freedom of expression, assembly and association and the legal definition of terrorism in reality allows for the prosecution of any peaceful political activity under this definition.

This law establishes the principle of "preventative justice". Officials of the Directorate of State Security (DES) have exceptional powers in matters of policing, on the entire territory. They can act anonymously, which makes identification by victims and the filing of complaints more difficult. Despite these enormous challenges, many torture victims testify about the torture that they have suffered and many perpetrators have been identified.

But it should also be noted that the judiciary does its utmost to conceal torture complaints. It is known to all judges that very often the confession recorded in the minutes of interrogation have been extracted under torture. The judges do not want to hear about torture, and during hearings, they prohibit suspects from speaking or showing signs of abuse. Judges refuse to acknowledge the victims' or their lawyers' statements and their testimony is not recorded in the minutes (procès verbale) of the hearing.

The defendants' complaints to the prosecutor at the time of submission are not taken into account, therefore no investigation is conducted.

It is also sometimes very difficult for a victim of torture to speak publicly in court about the abuse they have suffered. Agents of the Political Police are always present at the trial which increases the pressure on both the victims and the judiciary.

### **The case of Soliman**

The well-known "Soliman Case" highlights the problem of the widespread nature of torture in Tunisia. In late 2006 and early 2007 in the coastal town of Soliman, about thirty miles from Tunis, armed clashes took place between the police, gendarmerie and the army, and an armed group. Officially, 12 armed men and two members of the security forces were killed. After the neutralization of the armed men, mass arrests took place, particularly among young people who attended mosques in different villages and cities of Tunisia. Over a thousand people who evidently had no connection with these events were arrested, illegal searches took place during the day and at night, the families of suspects were harassed, hundreds of people were seriously tortured, which resulted in permanent consequences for some.

Some of those abducted were killed or died under torture. They were discreetly buried without their families being able to intervene. To date, the number of people summarily executed or who died under torture is not known. But especially, many of the people arrested before or after the clashes of Soliman have been implicated by the authorities in these, thus justifying their arrest or death: "Hassanin El Ifa, 26, was buried on 13 January at 5 o'clock in the morning. His family was invited by the police in Sousse Sud to come and identify the body in the city's cemetery where a significant number of police officers surrounded the tomb. Family members were able to see their son, whose

<sup>4</sup> <http://daccessdds.un.org/doc/UNDOC/GEN/G08/115/24/PDF/G0811524.pdf?OpenElement>, p. 14, pt 41.

body, sewed up vertically, appeared to have undergone an autopsy. And they were able to see traces of injuries on his legs. Hassanin El Ifa had been disappeared for a month and a half in obscure conditions and his family had not heard from him.”<sup>5</sup>

Thirty defendants were adjudged a year later. All had been held incommunicado for several weeks and brutally tortured. They all reported to their lawyers that the confessions had been extracted under torture and that they did not have the right to read the minutes (procès verbale) of the police. A few of them even had to sign blank sheets of paper. Some of them gave evidence of their torture at their trial. After their presentation before the judge, with their lawyers absent, they said they had been tortured, and that they still bore visible traces of this treatment. The judge refused to take into account their statements and furthermore to open an investigation. They were then imprisoned in the civil prison of El Mornaguia and subjected to special treatment: chained, deprived of a bed and blanket, subjected to daily violence in the form of beatings. The violence was so unbearable that on 15 October 2007 they began a hunger strike that ended in them being undressed and given a generalised beating.

On 21 November 2007, lawyers were told that the trial would take place without notice being given. On 15 December 2007, when lawyers asked for adjournments to allow them to prepare their clients’ defense, for whom they contested the dates of arrest contained in the records, the Rapid Intervention Brigade (Brigade d’intervention rapide) intervened and beat those charged in the middle of the courtroom in front of the Court. The Court did not intervene, it did not interrupt the hearing and no action was ordered by the president of the court.

In a trial qualified as unfair by lawyers and human rights defenders, all the accused were sentenced to severe penalties including several death sentences and life imprisonment. The convictions were based mainly on confessions extracted under torture. On appeal a few sentences were reduced but remained very heavy.

The case of Mr **Wael Ammami** is another example of these violations. Mr Ammami was arrested on 23 December 2006, but his legal file indicates the date of 19 January 2007, which allowed his direct involvement in the clashes of Soliman. He was taken directly to the Ministry of Interior in Tunis. Before his arrest he had been the subject of daily police harassment: he was arrested several times in the street because he wore a beard, abused, mistreated, and banned from attending the mosque. He prayed at home and shaved his beard, but the harassment continued. During his detention at the Ministry of Interior, he suffered for almost a month different torture techniques: hanging, the “roast chicken” position, blows with a rubber stick and a truncheon on all parts of his body, falaqa (blows from a stick or a rubber hose on the soles of the feet) ... A stick was put into his anus and he was burned with cigarettes on various parts of his body. Mr. Ammami was threatened with the rape of his mother and sister if he did not admit to his involvement in the Soliman confrontations! More than a year after his incarceration, he has lost hearing in his left ear and still bears the traces of burns and blows on his right arm. He never received treatment despite repeated requests. On 30 December 2007, he was sentenced to life imprisonment by the 4th Chamber of the Court of First Instance in Tunis, after being beaten in the middle of the hearing by agents from the Rapid Intervention Brigade at the hearing on 15 December. The date of his arrest was falsified and Mr. Ammami signed the minutes (procès verbale) of the police under threat and without being able to read it. His life sentence was upheld upon his appeal on 20 February 2008.<sup>6</sup>

### **The case of Gafsa**

One of the most illustrative court cases regarding the lack of independent investigation following allegations of torture was a response to events that took place in the Gafsa mining basin during 2008. Following the announcement of results of recruitment for the the main economic engine of the

<sup>5</sup> Association de lutte contre la torture en Tunisie (Association for the battle against torture in Tunisia) and Comité pour le respect des libertés et des droits de l’homme en Tunisie (Committee for the respect of freedoms and human rights in Tunisia): *La torture et la loi "antiterroriste" du 10 décembre 2003 en Tunisie, Faits et témoignages afin que cesse l’impunité (Torture and the anti-terrorist law of 10 December 2003 in Tunisia, facts and testimonies in order to bring an end to impunity)*, 2008, p. 34

<sup>6</sup> Summary of Wael Ammami’s mother’s testimony published in the report *Torture and the 'antiterrorist law' of 10 December 2003 in Tunisia*, op. cit., p. 100 and 101.

region, the Compagnie des Phosphates de Gafsa (The Gafsa Phosphate Company), beginning on 5 January 2008, the inhabitants of the region (Redayef, Metlaoui, Oumlarès, M'dhilla ...) triggered a movement of peaceful protest against the fraud that had been discovered, which turned into a general protest against the economic marginalization of the region where unemployment is twice that of the national average.

This peaceful movement, well organized and supported by broad public opinion and local and national organizations lasted almost 6 months, linking protests, sit-ins and strikes. Several negotiations with representatives of the local and national authorities failed. It unleashed a brutal crackdown resulting in the arrest of many people especially among the leaders of this social movement. Above all, these people, even though they enjoyed a degree of visibility, were severely tortured.

The intervention of the police and the army resulted in the deaths of three young protesters, including two by shooting and arrests of nearly 200 of people who suffered torture and were sentenced to heavy prison sentences.

The trial of 38 persons opened on 4 December 2008, against whom serious charges were brought: "joining a gang to carry out attacks against persons and property, involvement in a rebellion triggered by more than ten people with use of weapons and involving an assault against an officer in the performance of his functions, distribution of leaflets to encourage public disorder..." Heavy penalties were imposed on some of them (10 years in prison for 7 people, 6 to 11 years for others, etc.).

On 11 December 2008, the judge concluded an unfair trial which lasted only a few hours and did not follow the basic rules of law in an expeditious manner. The accused's lawyers raised the systematic rejection of their requests for medical checks to record the tortures suffered by their clients, the refusals to hear witnesses, to check the dates of arrests that had been forged in the investigation by the police, etc.

The appeal hearing which was attended by many foreign observers was transformed into a trial on the torture by the accused. They described the abuse suffered during the hearing. As for their lawyers, they focused their arguments on the gross procedural irregularities (confessions extracted under torture for most of the accused, the obvious falsification of the minutes (procès verbale), the lack of calling the defendants' witnesses, the lack of confrontation with the accusation's witnesses, and so on) and the lack of actual charges being laid against the defendants. But the judge did not take these elements into account and the defendants had their sentences revised slightly downwards, two sentences amounting to 8 years in prison, two at 6 years, and so on.

### **3. Recommendation 20 regarding human rights defenders**

**Recommendation 20 states that "the State party should take steps to put an end to acts of intimidation and harassment and to respect and protect the peaceful activities of human rights organizations and defenders. Reports of acts of intimidation and harassment should be investigated without delay. The State party should ensure that any restrictions imposed on the right to peaceful assembly and demonstration are compatible with the provisions of articles 19, 21 and 22 of the Covenant."<sup>7</sup>**

As part of the Universal Periodic Review by the Human Rights Council, Alkarama submitted a report which noted serious attacks on freedoms. It noted that "human rights defenders suffer continual harassment, extending to physical attacks by the political police. Some human rights defenders and their families live under constant surveillance, with tapped telephone lines and internet connections disrupted or cut off. Their associations may not hold public meetings, people visiting their premises are intercepted and intimidated by police in civilian clothing etc.

Journalists, for their part, work in an atmosphere of fear. Foreign newspapers are censored and journalists criticising the Government are threatened with dismissal, harassment or the victims

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<sup>7</sup> Concluding observations of the Human Rights Committee: Tunisia, 23 April 2008 (CCPR/C/TUN/CO/5), para. 20.

of smear campaigns. They cannot hold meetings or cover the activities of independent organisations that might criticise the Government or the President.

Religious freedoms is also severely restricted. Women wearing the hijab and men with beards, dressed in Islamic clothing (qamis) are routinely harassed. A Ministerial decree of the 1980s banned veiled women from working in schools or the Government. It is still in force. Plainclothes police officers physically assault them, for example by tearing their veils off in the street.”<sup>8</sup>

Throughout 2008, the harassment of human rights defenders, journalists and peaceful political opponents have not stopped. Here are some examples:

On 3 March 2008, Mr **Omar Mestiri** and Mrs **Sihem Bensedrine**, both journalists and human rights defenders were arrested at customs at the port of Tunis upon their return from Europe. Agents of State Security demanded to check the contents of their laptops. Following their refusal in the absence of a mandate from the Prosecutor of the Republic, they were asked to follow customs officials for an administrative formality. Having entered an office, they were locked up. The police officers present beat them, tore their bags and clothes and grabbed their computers. The contents of their laptops were copied and many documents were confiscated. After 6 hours of detention, they were allowed to leave the customs offices.

In April 2008, Mr **Taoufik Ben Brik**, a journalist and founding member of the Conseil national pour les libertes en Tunisie (CNLT, National Council for Freedoms in Tunisia) continuously suffered from harassment from the officers of the Political Police. His wife, Mrs Azza Zarrad's car was ransacked, and he received threats against his family.

At the same time, Maitre **Radhia Nasraoui**, a lawyer and president of the Association de lute contre la torture en Tunisie (ALTT, Association against torture in Tunisia) was threatened by thirty police officers that they would "beat her up...once again". She was forced to climb into her car, which was damaged by their blows, and then was followed by motorcycle and car to her office.

On 8 October 2008, the site of the online newspaper *Kalima* was hacked and emptied of its contents. On 27 October, Mrs **Néziha Rjiba**, the editor of *Kamila* was summoned to meet with the Prosecutor of the Republic after accusing the Tunisian secret services of destroying the *Kamila* website. Mr **Dhafer Otay**, the coordinator of *Kalima Radio*, and Mrs **Faten Hamdi**, a journalist with *Kalima Radio* were also arrested and assaulted by police officers during November 2008. On 10 December 2008, Mr **Lotfi Hidouri**, managing editor of the written edition of the newspaper was arrested at Tunis airport on his way to the Forum for the Arab Press in Beirut.

On 19 December 2008, Alkarama also advised the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the arrest, on 3 December 2008, of Dr **Sadok Chourou**, chairman of the Al Nahdha political movement, who had just been released on 5 November after 18 years of prison. A particularly well-known political figure in Tunisia and the Arab world, Dr. Chourou had been approached by many media. He gave several telephone interviews, including one on the television channel Al Hiwar on 1 December 2008 during which he discussed the issue of civil and political freedoms in his country and the conditions of his detention.

Sentenced to life in prison in 1992, he was released on 5 November 2008 after 18 years' imprisonment, following a pardon granted by the Government to 21 members of the Al Nahdha movement on the 21st anniversary of President Zine Ben Ali in 1987.

On 21 November, his home in Mornag (30 km south of Tunis) was raided by police and Dr Chourou was questioned throughout the day because of the reception organised by his family to celebrate his release. The reception was banned by the police, who proceeded to take control of the whole

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<sup>8</sup> [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=68:tunisia-the-council-on-human-rights-will-examine-the-situation-of-human-rights&catid=37:communiqu&Itemid=204](http://en.alkarama.org/index.php?option=com_content&view=article&id=68:tunisia-the-council-on-human-rights-will-examine-the-situation-of-human-rights&catid=37:communiqu&Itemid=204)

neighbourhood and prevented the guests, including human rights activists, from attending, by the use of force and threats.

He was again arrested on 3 December 2008 at 4.30pm. A dozen officers from the services of the Ministry of Interior entered his home and took him to an unknown destination by force, without presenting a warrant or giving a reason for his arrest. Taken to the headquarters of the services of the Ministry of Interior, he was forced to remain sitting on a stool in a cramped cell, without any toilet facilities for two whole days. Questioned by the Security Services in the context of a preliminary inquiry, he was interrogated about his interviews and declarations made to the media.

He was presented to the Court of First Instance of Tunis on 5 December 2008 at the end of his pre-trial detention and accused of having resumed his political activities and for speaking on behalf of a banned movement. He was charged under Article 30 of the Associations Code, which punished "participation, retention and restructuring of non-approved organisations". Dr Sadok Chourou was sentenced to one year of imprisonment by a ruling rendered that same day.

#### **4. Conclusion**

Alkarama hopes that the information provided in this submission will be useful in the follow-up to Recommendations 11 and 20 of the Committee's concluding observations. We remain available should the Special Rapporteur on Follow-Up or the Committee request or require any further information relating to matters raised in this submission, or for any other matter.

Alkarama will continue to monitor compliance by the Tunisian government concerning its obligations under the ICCPR Convention, and specifically implementation of the Committee's concluding observations, as they relate to our areas of work. We will endeavour to continue submitting written information to the Committee in order to contribute to the implementation of human rights and the development of human rights measures in Tunisia.