



TUNISIA

Contribution under the Universal Periodic Review

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Abstract

On 7 November 1987, Zine el Abidine Ben Ali, Prime minister since 2 October 1987, removed the President of the Republic, Habib Bourguiba citing his “senility” as the reason, and installed himself as Head of State. Re-elected twice in 1994 and 1999, he amended the constitution in 2002 by referendum, which allows him to seek new mandates, thus remain President for life.

Ben Ali instituted a police state, closing all spaces of expression and banning all opposition. His power is characterised by systematic violations of human rights: arbitrary arrests and detentions; torture in the security forces’ centres and even in the Ministry of the Interior but also in prisons; unfair trials; harassing and criminalisation of political militants, human rights defenders and journalists.

The situation worsened considerably following the adoption of the antiterrorist laws in 2003. The definition of terrorism included in these laws is sufficiently extensive and vague to allow the prosecution of any members of the opposition for “crimes of opinion” but in particular important enshrined principals which the Tunisian government has pledged to respect are being seriously violated.

1. The “Counter Terrorism” laws

Already in 1993, the Tunisian Criminal Code was modified by the addition of Article 52 bis relating to crimes of terrorism. The definition adopted was so imprecise and extensive that it included the “crime of opinion”. Members of the non-recognised Ennahda (Al Nahda) party who never incited violent action, were accused in the past of “belonging to an unauthorized association”. This law also allows these categories of suspects to be brought before Military Tribunals.

On, 10 December 2003 a new law relating to the “support of the efforts of the international fight against terrorism and the repression of money laundering” entered into force. It is comprised of 103 articles based on an even more vague definition of terrorism which restrains in particular the rights of the accused. The court of 1st instance of Tunis is alone competent throughout the country to judge cases related to terrorism. In reality, it is a system of exceptional justice sitting behind closed doors which was instituted: limitation periods were extended; refusal to testify is punishable; judges protected by anonymity cannot be challenged; appeals are limited. It’s the principal of a preventative justice which is put in place. The political police received the exceptional powers of the judicial police, the rights of the defence are restricted and the functioning of independent associations controlled.

Dozens of young people from Gafsa and Ariana (suburbs of Tunis) were arrested during the summer and autumn of 2007 under this “counter-terrorism” law. These people were prosecuted for their commitment and participation in unions or as activists of the Progressive Democratic Party (PDP), the Communist Workers Party (PCOT) or of the unemployed graduates. Mohamed Yacine Jelassi was arrested on 26 September 2007 by policemen in civilian clothes without any warrant. After a week in an unknown location, he was presented on October 3 before the judge of the court of 1st instance of Tunis. He refused to speak without a lawyer, he was presented again on 15 October and accused of belonging to a terrorist cell. He will be judged by virtue of the law of 10 December 2003. Wahid Brahimi, a member of the PDP has been accused of terrorism for having expressed his opinions in the two opposition newspapers: *El Mawaqif* et *Attariq Al Jadid*.

2. Custody and Incommunicado Detention

The agents of State Security systematically violate the Code of Criminal Procedure regarding arrests, searches and taking into custody. The rights of defendants are violated throughout the legal proceedings. The hours to arrest suspects (between 06h and 20h) are not adhered to; agents act without arrest or search warrants; the duration of custody – set to six days in terrorism related cases – is not observed; but in particular, it has been noted on numerous occasions that minutes are post-dated in order to hide the excessively long periods of custody.

Those arrested in the fight against terrorism are often held in custody in the premises of the Directorate of State Security of the Ministry of Interior where they are systematically tortured in order to force statements used against them in their trials.

In the case of Khaled Arfaoui, Human Rights Associations had alerted the public of his arrest on 16 May 2005. The minutes of the preliminary investigation of the police states the date of 23 May 2005 as the date of arrest. During the 13 days in custody, he suffered severe torture at the headquarters of the Ministry of Interior.

When the police cannot find the suspect sought, it may take family members hostage, either to force the suspect to give himself up or to obtain information. During incursions by the police into private homes, family members are insulted and abused. Some family members of those indicted have their passports confiscated. The family of the accused is rarely informed of his arrest or the place of his detention. They are finally informed of his fate, not officially, but through the family of other defendants or by anonymous phone calls only once he is presented before a magistrate and transferred to prison.

The Political Police often acts without the “Commission Rogatoire” issued by prosecutors. During the armed clashes which took place between 23 December 2006 and January 3 2007 particularly in the southern outskirts of Tunis, raids were conducted by the police: nearly one thousand people were arrested. These arrests were announced on 3 January 2007 by a Ministry of Interior. The prosecutor’s “Commission Rogatoire” , however, dates from 9 January 2007. Dozens of people were held incommunicado for several weeks and brutally tortured. The dates of arrest contained in the minutes were falsified: thus the minutes concerning Mohamed Amine Jaziri, arrested on 24 December

2006 are dated 22 January 2007. Ali Arfaoui Hammam Shatt arrested on 23 December 2006 was officially arrested on 16 February 2007.

3. Unfair trials

The anti-terrorism law of 10 December 2003 has been applied to facts going back to March 2003, therefore violating the fundamental principle of the non-retroactivity of criminal law. The accusations made by the magistrates mainly refer, in cases of terrorism charges, to the opinions of the defendants, their beliefs and their religious practises, and not to material acts which could be qualified as criminal.

Very few defendants are assisted by a lawyer during hearings and in particular at the first appearance. They are not informed of this right. They are often subject to pressure and threats from the magistrates not to retract statements made under torture. The rights of defence have also been seriously affected since the enactment of the anti-terrorism law in 2003. Lawyers can no longer rely on professional confidentiality, under threat of being criminalized. Access to the criminal file of their client is also limited.

The judge offers the defense a copy of the file in which does not contain all the documents, notably the minutes of preliminary investigations which will then be used as evidence. Those accused of terrorist activities are very often sentenced to long prison sentences following unfair trials which take place notably before military tribunals or before the court of first instance of Tunis. Human rights defenders who have observed a great number of these trials have found that the accusations of terrorism were not founded on criminal acts, but essentially on statements and confessions obtained by the police through torture. Despite the fact that the accused withdraw their 'confessions' before the tribunal and declare having been subjected to abuse and torture, these never take their statements into account, nor have they ever ordered medical controls or requested investigations being opened.

4. Torture in prison

Hundreds of political or "opinion" prisoners accused of links with terrorism are still languishing in prisons where they continue to suffer abuse and ill-treatment as well as degrading and inhuman detention conditions. The torture continues even for prisoners definitively condemned. Alkarama for Human Rights submitted a communication to the High Commissioner for Human Rights and the President of the International Committee of the Red Cross on 10 July 2007 asking them to intervene on behalf of Sayfallah Ben Hassine, detained at Mornaguia Prison (Tunis). Mr. Ben Hassine fled Tunisia in the wake of the wave of arrests in 1987 of the militants of the student movement. He was sentenced in absentia by the Tunis military court to two years imprisonment for his involvement in the Tunisian student protests. Arrested in Turkey in February 2003 he was extradited to Tunisia during the same year. Brought before the military court in Tunis, he was sentenced to 46 years imprisonment after a grossly unfair trial. He is detained since, according to his family, under extremely difficult conditions and is subject to particular detention conditions: he is held in a 4 square meter cell, without sanitation, without ventilation or natural light and has, on numerous occasions, been subjected to torture and ill-treatment for protesting against these inhuman conditions of detention.

Most recently, on 16 October 2007, also at Mornaguia prison, thirty prisoners arrested following armed clashes in late December 2006 - beginning of January 2007 (see above) and detained under the anti-terrorism law of 2003, were tortured by prison officials to compel them to end an unlimited hunger strike. The strike was launched on October 13 to demand an end to ill-treatment and respect for their rights, including the right to a fair trial.

These defendants are subject to special treatment. They are chained, have neither beds nor covers and are victims of violence on a daily basis. They are regularly threatened with transfer to the Ministry of Interior if they deny the statements they made during their custody spent in these premises. On 16 October 2007, the 4th day of their strike, they were removed from their cells, stripped of their clothing and severely beaten. Jamel Mellakh was suspended from the ceiling and raped by inserting a baton into his anus. An execution was simulated. Ifa Ramzi was tied with a rope and blindfolded, with his head in a black bag he was dragged on the floor of the prison.

5. Persecution against defenders of human rights and journalists.

The defenders of human rights are under continual harassment and physical attacks from the political police. Some of them live with their families under constant surveillance, listened to telephone lines and internet connections cut off or disrupted. Their associations can not hold public meetings, people visiting their premises are intercepted and intimidated by police in civilian clothes, etc.

Journalists work in an atmosphere of fear. Foreign newspapers are censored and journalists criticizing the government threatened with dismissal, harassed or are victims of smear campaigns. They cannot hold meetings or cover the activities of independent organizations and may not criticize the government or the President.

Freedom of religious expression is also severely restricted. The women wearing the hijab and bearded men, dressed in Islamic clothing (qamis) are routinely harassed. A ministerial decree of 80 years had banned veiled women from working in schools or the government. It is still in force. Police in civilian clothes attacked them physically by tearing off the veil, for example in the street.

Conclusion

In 1998, the UN Committee against Torture stated during the examination of Tunisia's periodic report "the wide gap that exists between law and practice regarding the protection of human rights". The Tunisian government simply responded that the allegation "has no foundation. All the abuses reported have been followed administratively and judicially in accordance with the law. "

10 years after these statements, it is clear that not only grave violations of human rights have not ceased but that an entire legal arsenal was established and developed to cover and guarantee the impunity of their leaders. As noted by many national and international human rights organisations, the situation has even seriously deteriorated after the attacks of 11 September 2001 in the United States and especially since the enactment of the Terrorism Act of 10 December 2003 (the anniversary of the adoption in 1948 of the Universal Declaration of Human Rights by the United Nations).