



Great Challenges Ahead for Tunisia

Submission to the list of issues in view of Tunisia's 3rd periodic review by the Committee against Torture

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Alkarama recalls that it concentrates its work on four priority areas: arbitrary detention, enforced and involuntary disappearances, torture, and extrajudicial executions. We base our work primarily on the documented individual cases we submit to UN Special Procedures and Treaty Bodies, as well as our contacts with local actors including victims, their families, lawyers and human rights defenders.

[Translation of original report in French]

1. Will Tunisia know how to respond to the aspirations of the revolution?

Since 17 December 2010 Tunisia has been in a process of transformation, which the Tunisian people are describing as "revolutionary". Following the immolation of a young unemployed graduate in the town of Sidi Bouzid, from 17 December 2010, the protest movement became entrenched and bit by bit spread throughout the entire country. Finally, this movement provoked the flight of President Ben Ali to Saudi Arabia on 14 January 2011.

It is important to emphasize that these protests cannot simply be qualified as "food riots" - people of all social standing have participated in these popular protests. The demonstrators called for the departure of a President who personified the dictatorship that they had experienced for 23 years - an evolved system of corruption protected by a strong police state. The system, despite being well-known to Western and Arab governments, was never-the-less celebrated as 'Tunisian Democracy'.

However, the warning signs of this revolt had been present in Tunisia for some time. Over the last few years, several protests have taken place, such as the events which happened in the mineral basin of Gafsa in 2008. After the announcement of the results of a recruitment competition by the Gafsa Phosphates Company, the principle economic driver of the region, the inhabitants of the region (Redayef, Metlaoui, Oumlarès, M'dhilla...) began a peaceful protest movement to contest fraud in their region on 5 January 2008. The movement transformed into a general demonstration against the economic marginalization of the region where the unemployment rate is two times the national average. This peaceful movement, well-organized and supported by a large portion of public opinion and by local and national organisations, lasted almost 6 months. It consisted of demonstrations, sit-ins, and strikes. Several negotiations between the leaders of the movement and representatives of the local and national authorities failed. This triggered a brutal repression that resulted in the arrests of a number of people, particularly among the leaders of the social movement. These people were severely tortured despite the degree of visibility they enjoyed.

One year earlier, at the end of 2006 and early 2007, in the coastal town of Soleiman (30 km from Tunis) armed clashes took place between the police forces, the army, and an armed group. Officially, 12 armed men and two members of the security forces were found dead. After the armed men were neutralized, massive arrests took place, in particular among the young people who frequented mosques in various towns in Tunisia. More than a thousand people without any links to the events were arrested, illegal searches took place night and day, the families of suspects were harassed, and hundreds of people were severely tortured resulting in permanent damage to some. Some of those abducted were killed or died under torture. Their bodies were discreetly buried without their families being able to intervene in the process.

The "Ben Ali System" was in the end so hated that the protestors no longer feared facing up to the police. The Tunisian people have shown a large degree of political maturity by first seeking the departure of the "despot" and then by refusing the replacement of the previous government with a provisional government composed in large part of cronies from the former President's party, the Democratic Constitutional Rally (DCR). It was only when the majority all of the party members retired and the party was dismantled that the protests stopped. Throughout these events, the army, which was traditionally hostile to the former President, oscillated between neutrality and protecting the demonstrators, before it finally positioned itself in support of the provisional government. The police were forced to retire from the public sphere, discredited for the role they had played as part of the "Ben Ali System."

The current situation is fragile and the true democratisation of Tunisian political life has yet to be achieved. The media and certain Western governments continue to raise fears of Islamism, in contrast to the Tunisian political opposition which does not fear the participation of the Al-Nahda party, which was finally authorised after nearly two decades of being banned from politics. Vincent Geisser, a specialist on Tunisia, elegantly explained the real dilemma: "the West in general and the Americans in particular wish for a 'stable regime,' at once democratic and secure. The USA truly desires the departure of Ben Ali, but they do not want a radical democratic revolution. The US project is to favour the emergence in Tunisia of a pro-Western democracy that contributes to the fight

against terrorism. This is why the USA is content with a hybrid regime, authoritarian and democratic at the same time, with the participation of the old members of Ben Ali's party (ACD) and a few independent opponents."¹

We insist on the fact that while a "slide backwards" seems improbable, it is risky to speak of "controlled democracy". The old system is still very much entrenched, particularly in the police, the administration, and the justice system. UN institutions have a role to play in the democratisation process and the restoration of the rule of law. They must remind the government of its responsibilities regarding the serious human rights violations which were systematically covered up in the past. In terms of its law, Tunisia is in a phase that is particularly conducive to the creation, for example, of a new constitution and of legislation that is more respectful of international law.

2. What concrete measures are needed to achieve the authorities' promises?

2.1 Political Transition

On 17 January 2011, the Tunisian Prime Minister Mohamed Ghannouchi announced the composition of a "national unity government" that will remain in place while new elections are organised. However, 24 hours following their nomination, a number of ministers resigned because thousands of Tunisians in Tunis and in cities in central Tunisia demonstrated their discontentment with the omnipresence of the DCR (Democratic Constitutional Rally, the former President's party) in the "new" government. Failing this, the Tunisian establishment tried to buy time. However, the population would only accept radical change. Thus the new provisional government was not named until 27 January and it again maintained Mr. Mohamed Ghannouchi and many other ministers close to the old regime in their former positions.

Even if numerous reforms, notably those linked to state institutions, cannot be implemented in the space of a mere few weeks, it is necessary to note the absence of decisions clearly indicating a break with the old regime. It is curious that the head of the executive, Mr. Mohamed Ghannouchi, was not only maintained at his post for as long as is possible, but that among the 24 new governors he appointed, 19 were members of, or had ties to, the DCR. An opposition party, which considers this government to be "the primary factor of instability,"² has continued to protest and demand the resignation of the provisional government (particularly of its leader), the election of a constituent assembly, and a parliamentary system.³ Mohamed Ghannouchi finally resigned on 27 February under pressure from the biggest demonstration organised since the beginning of the protests (during which many died); many ministers also resigned. On 3 March, the interim President of the Republic announced that elections for a constituent assembly would be held on 24 July 2011.

Despite the arrests of certain people from the entourage of the ousted president, it is still feared that the old "Benalists," who have retreated over the last few weeks, will return to the political scene. The population is still mobilised and the country is shaken by daily protests and strikes by employees and the unemployed who have not abandoned their claims.⁴ Hoping to contain these challenges, the Parliament and the Senate already in place voted to grant exceptional powers to the Prime Minister and to permit him, according to article 28 of the Constitution, to issue "decree-laws."⁵ However, at the same time these votes were being held, demonstrators were outside demanding the dissolution of Parliament.

¹ Vincent Geisser, *Les autorités françaises sont restées aveugles à propos de la Tunisie* (The French authorities have remained blind to Tunisia), El Watan, 7 February 2011

² Dominique Lagarde, Moncef Marzouki *Il faut une assemblée constituante en Tunisie*, (Tunisia Needs a Constituent Assembly) L'Express, 9 February 2011

³ Rédaction internationale, *Tunisie : Manifestation pour réclamer la démission du gouvernement* (Tunisia: Protestors demand resignation of government), El Watan, 21 February 2011 ; and Agence TAP, *Des juristes demandent la mise en place d'une Constituante pour élaborer une nouvelle Constitution du pays* (Jurists seek the creation of a Constituent Assembly to write new Constitution), 23 February 2011

⁴ AFP, *Les Tunisiens pourraient « redescendre dans la rue », le gouvernement joue l'apaisement* (Tunisians could "take to the street again," the government attempts appeasement), 11 February 2011

⁵ Law No. 5/2011 of 9 February 2011, Official Gazette of 10 February 2011.

It is important to emphasize that while the current government has suspended the DCR, lifted the prohibition of certain parties, and permitted the creation of others in view of future legislative and presidential elections, in the transitional phase this opposition is not being included in the discussions. As diverse as it is, the opposition's principle representatives have managed to agree on a certain number of indispensable measures to allow for democracy to be established in Tunisia. However, to date this political force is still being marginalised.

The new government will find it difficult to earn the confidence of its citizens if its decisions indicate a clear continuity with the Ben Ali regime. The population remains on alert and reactive, as events such as the demonstrations in El Kef on 5 February 2011 indicate. The demonstrators demanded the departure of the local police chief who was accused of corruption. Clashes with the police resulted in four deaths and a dozen injured. The next day, the El Kef police station was lit on fire.

For the moment, and despite some fatal police interventions, repression is contained, but the exceptional powers represented by the "decree-laws" raise fears that they could also be used to repress the social protests.

Another fundamental critique of the opposition concerns the justice system. According to the opposition, reform of the justice system has been halted and the judicial apparatus is "plagued by corrupt magistrates, particularly at the level of investigation or trial judges." This corruption continues despite the fact that the Ministry of Justice is in possession of a list of the names of corrupt judges or those strongly implicated in the repression.⁶

Confusion persists regarding the mission and prerogatives of the Commission responsible for reforms of the political system. In the absence of legislation, it is difficult to distinguish whether political leaders' opinions are personal or interpretations of political decisions. Some affirm that the commission is charged solely with the reform of the electoral system but others give it a much broader mission encompassing "reforms and amendments of the laws in relation to the organisation of the political and public spheres, notably laws concerning journalism, political parties, and terrorism."⁷

Questions:

1. What practical measures have been advised to indicate a break with the old regime, in particular the practices of the police force? Do the authorities aim to implement measures to combat impunity of those who commit grave violations, including violations committed during the recent demonstrations?

2. What are the exact aims and prerogatives of the Commission charged with political reform? Is it responsible for the legislative reform of the justice system?

2.2 Creation of a fact-finding commission

Following its establishment in mid-January 2011, the first government announced the appointment of a "national fact-finding commission on abuses committed during the recent uprising."⁸ On 1 February, the UN had identified 219 people killed and 510 injured but certain human rights defenders place the

⁶ Dr Lamjed Bensedring, *A ceux qui s'inquiètent (pour l'avenir)...* (For those who worry (about the future...), Radio Kalima Tunisie website, 10 February 2011, <http://www.kalima-tunisie.info/fr/News-sid-A-ceux-qui-s-inquietent-pour-l-avenir--506.html> (accessed on 4 March 2011).

⁷ Agence TAP (Tunis Afrique Presse), *Press conference on the Commission to reform politics and the democratic transition*, 23 February 2011, <http://www.tunisiaonlinenews.com/political-reforms-and-democratic-transition-committee-meets-press/> (accessed on 4 March 2011).

⁸ www.marhba.tn, *Tunisie : composition du Gouvernement de l'Union nationale* (Tunisia: Composition of a National Unity Government), 17 February 2011, <http://www.marhba.com/actualite-en-tunisie/269-actualite-nationale/1229-tunisie-composition-du-gouvernement-de-lunionnationale> (accessed 4 March 2011).

number at approximately 400 deaths (including detainees killed in prison).⁹ At the time of the demonstrations, the security forces (particularly the police) intervened with particular brutality and live ammunition was used against protestors. A number of those arrested were victims of torture or ill treatment at the time of their arrest or detention. At a press conference on 22 January, the president of this commission, Mr. Taoufik Bouderbala indicated that it "will be charged with the assembly of documents and the transmission of these documents to the concerned parties." He added that "light will be shed on the cases of human rights violations, primarily concerning the right to life, the right to physical integrity, and the right to security."¹⁰ The Commission is composed of lawyers, judges, doctors, journalists, and experts. It will first look at the Interior Ministry and some of the agents responsible, for the most part, of the damages caused and the death of unarmed citizens.

The first Council of Ministers in its new composition was held 1 February 2011. According to its spokesperson, it decided *inter alia* "to develop drafts of decrees regarding the creation of national commissions which were recently announced, namely the High Commission for Political Reform, the National Fact-Finding Commission on the abuse made during the recent uprising, and the National Fact-Finding Commission on Corruption and Embezzlement."¹¹

According to Mr. Iyadh Ben Achour, president of the High Commission for Political Reform, these commissions had already started working on 26 January¹². Mr. Bouderbala, for his part, explained that the period examined by the commissions would begin as of "17 December 2010 (the date of the immolation of Mohammed Bouazizi, signalling the beginning of the Tunisian uprising), until the total appeasement of the situation, which is to say still, until today."¹³

Human rights defenders, judges, and lawyers have expressed fundamental criticism notably in relation to the composition of these commissions. Ahmed Rahmouni, president of the Association of Tunisian Magistrates (ATM), considers the commission relating to events over the recent period of uprisings and that on corruption "fall within the purview of the justice system and, consequently, their activities interfere with the prerogatives of the judicial authorities."¹⁴ Meanwhile, a member of the Fact-Finding Commission resigned for this very reason. He affirmed that the Commission has not commenced its work as it is waiting for a decree-law that will specify its mission.¹⁵ However, Mr. Bouderbala denied this, stating that now after almost three weeks, approximately "700 dossiers have already been received and the victims or their representatives have been interviewed."¹⁶

⁹ Samir Dilou, President of the *Comité de soutien aux prisonniers politiques* (Association for the Support of Political Prisoners – Tunisian NGO), interview with Alkarama on 17 February 2011.

¹⁰ Agence TAP, *Press conference on the commissions responsible for reforms*, 23 January 2011, <http://www.tunisiefocus.com/201101232910/politique/tout/conference-de-presse-des-commissions-chargees-des-reformes.html> (accessed 4 March 2011).

¹¹ Tunisian television, *Première* The first meeting of the council of ministers of the transitional government in its new form, 8 February 2011

¹² Website of the Prime Minister, *Three commissions set up by the provisional government settle in*, 26 January 2011, <http://www.pm.gov.tn/pm/actualites/actualite.php?id=2048&lang=en>, (accessed 4 March 2011)

¹³ Isabelle Mandraud, *A Tunis, une commission enquête sur les victimes de la révolution* (In Tunis, Commission of Inquiry Investigates Victims of the Revolution), *Le Monde*, 4 février 2011

¹⁴ Agence TAP, *Critique des procédures juridiques relatives à l'opération d'ouverture des coffres-forts du président déchu* (Criticism of Legal Proceedings to Open Fallen President's Safes), 21 February 2011, http://www.tap.info.tn/fr/index.php?option=com_content&task=view&id=33266&Itemid=43 (accessed 4 March 2011)

¹⁵ RBH, *Deux membres démissionnent de la commission d'établissement des faits de Taoufik Bouderbala* (Two members of Taoufik Bouderbala's fact-finding commission resign), www.businessnews.com.tn, 22 February 2011, <http://www.businessnews.com.tn/Deux-membres-d%C3%A9missionnent-de-lacommission-d%E2%80%99%C3%A9tablissement-des-faits-de-Taoufik-Bouderbala,520,23637,1> (accessed 4 March 2011)

¹⁶ RBH, Taoufik Bouderbala, président de la commission d'établissement des faits donne des précisions sur la démission de Mongi Khadhraoui (President of the fact-finding mission Taoufik Bouderbala gives details on Mongi Khadhraoui's resignation), www.businessnews.com.tn, 23 February 2011, <http://www.businessnews.com.tn/Taoufik-Bouderbala,-pr%C3%A9sident-de-la-commission-d%E2%80%99%C3%A9tablissement-des-faits-donne-des-pr%C3%A9cisions-sur-la-d%C3%A9mission-de-Mongi-Khadhraoui,520,23654,1> (accessed 4 March 2011).

Questions:

3. On what legal basis are these three Commissions based? What are their exact prerogatives? What is the exact relationship between the Fact-Finding Commission and the judicial system? How is the term 'abuse' defined? Is the mandate of this Commission limited in time, knowing that demonstrators are still being killed by the police at present?

4. Does the Commission plan to publish a list of names of all those who were/are still arbitrarily detained following the demonstrations?

5. Do the authorities plan to set up a "Truth and Justice" commission to establish all of the human rights violations committed during the era of President Ben Ali?

2.3 A campaign of reprisals in prisons?

It is necessary to revisit the bloody events that took place in several prisons following the flight of President Ben Ali on 14 January 2011. Events at the time remain particularly obscure, with prisoners killed by bullets, fires started, and mutinies followed by escape attempts taking place. There were scores of deaths and 12 000 prisoners escaped, representing a third of the country's prison population. According to the information we were able to collect on the ground, in at least four prisons (Monastir, Mahdia, Bourj er-Roumi close to Bizerte, and Gabès) inmates died by asphyxiation, burns, or bullet wounds following the intervention of security forces. In Monastir prison, on 14 January, 48 inmates were found dead; some of their families claim that the guards used teargas to asphyxiate them (Lofti Ben Hadi Maaoui, 23 years old, itinerant merchant living in Siliana, died due to the use of teargas according to his family; Kamel Al-Lawati, 32, a merchant, died of burns).

The inmates were assaulted by guards who forced them to strip and attacked them. Those injured did not receive medical care and some died of their wounds, such as Hassan Adakkani, an inmate at Ghannouchi prison in Gabès (southwest Tunisia), who died after having been attacked by the prison director on 16 January 2011 while trying to escape a fire that had been set in the prison. Severely injured, he was left alone for four hours before receiving first aid. His family has still not been able to obtain a death certificate establishing the cause of his death. Prison officials failed to inform certain families of what happened, so that in some cases, families did not learn of the death of their relative for several days, for example, Abdullah Ben Hassan Trabelsi, 25 was merchant from Bizerte, and an inmate at Borj Erroumi prison in Bizerte. He was killed by two bullets to the chest on 16 January 2011 at 22h30. His family was not informed of his death until 22 January and recovered his remains the next day without being told the exact circumstances of his death.

In Harboub Prison (Medenine, south Tunisia) inmates were mistreated by the guards on 23 January 2011 before being transferred to Gabès prison. According to their families, some were forced to sign blank documents without knowing what they contained. Many detainees were seriously injured, among them Omar Chaouat, born in 1982, condemned to five years in prison, serving a sentence of four years and four months. He was seriously injured in the leg. Fathi Ben Ali Khchira, born in 1985, condemned to 4 years of prison, was attacked by his jailers and injured on the head (an injury which required 7 sutures), the shoulder, and his hands.

Question:

6. Is the Fact-Finding Commission responsible for establishing the exact circumstances of what occurred in prisons during this period?

2.4 General amnesty for political prisoners

Since his nomination, the head of the government has announced his intention to issue a general amnesty for political prisoners, notably those of the Al-Nahda party. Ahmed Néjib Chebbi, former minister of local and regional development announced to Reuters on 19 January 2011 that all of the political prisoners, including the Islamists, had been set free: "There are no more prisoners of Al-

Nahda in prison.¹⁷ In reality, the amnesty law was only implemented on 19 February 2011 and at present, several hundred political prisoners are still in detention.¹⁸ The decree-law published on 24 February 2011 indicated that "all the people tried or prosecuted, before 14 January 2011, before tribunals of different degrees, for different crimes, can benefit from this amnesty." This concerns cases relative to "internal security," persons convicted under the terrorism law, the law relating to the Press, and laws regarding demonstrations, as well as other penal provisions such as the code of military procedure. In addition, those convicted of crimes when they were in fact prosecuted for political and union activism are also included in the amnesty. Reparations including compensation and reintegration into the work force are supposedly included in this decree-law.¹⁹

Question:

7. What are practical measures planned to reintegrate and compensate the people concerned by this decree-law?

3. Instrumentalisation of counter-terrorism legislation

Antiterrorist legislation was used by the former Tunisian authorities to persecute all opposition to the Government, real or supposed. This concerned both activists and simple citizens exercising their right to freedom of expression. The current government, breaking with the era of Ben Ali, has promised to repeal this legislation.

3.1 Article 52.2 of the Criminal Code

Tunisia's counter-terrorism legislation does not date from after 11 September 2001. In fact, the crime of terrorism was introduced in the Tunisian Criminal Code for the first time in November 1993 under article No. 52.2. Already at the time, the crime of 'terrorism' was only vaguely defined. From the early 1990s, the Tunisian authorities used this provision to equate "thought crimes" with "terrorist acts" and to prosecute political opposition, particularly members of the outlawed political party Al-Nahda.

3.2 Problematic 2003 counter-terrorism law

Following the events of 11 September 2001, the Tunisian authorities passed a new counter-terrorist law on 10 December 2003 (Law No. 2003-75) relative to the "support of international efforts in the fight against terrorism and money-laundering." The principal problem with this law, known as the 'second criminal code' by Tunisian lawyers²⁰, is the blurry definition the crime of "terrorism" is given. According to this legislation, a terrorist act is considered to be "every infraction, whatever the motives, that consists of individual or collective projects aimed at terrorizing one or more persons, spreading terror among the population with the intention of bending the policy of the state..." (article 4) and "acts inciting hate or racial or religious fanaticism whatever the means used" (article 6). The terms of the infraction are not clearly defined and the use of violence is not expressly cited as a constitutive element of the crime. The counter-terrorism Law of 2003 also permits a broad application of the law and gives liberty to judges to interpret it extensively.

This imprecision, as Martin Scheinin emphasized during his visit to Tunisia in January 2010, is in contradiction of international norms that "require that all elements of a crime are in explicit and

¹⁷ www.businessnews.com.tn, *Tunisie – Reconnaissance de 3 partis d'opposition et libération des prisonniers politiques* (Tunisia – recognition of 3 political parties and release of political prisoners), 19 January 2011, http://www.businessnews.com.tn/details_article.php?a=23139&temp=1&lang=fr&t=520 (accessed 4 March 2011).

¹⁸ AFP, *Tunisie: amnistie générale en vigueur* (Tunisia: general amnesty in force), Le Figaro, 19 February 2011, <http://www.lefigaro.fr/flash-actu/2011/02/19/97001-20110219FILWWW00422-tunisie-amnistie-generale-en-vigueur.php> (accessed 4 March 2011).

¹⁹ Agence TAP, *Caretaker President signs general amnesty decree-law*, 19 February 2011, http://www.tap.info.tn/en/index.php?option=com_content&task=view&id=15150&Itemid=27 (accessed 4 March 2011).

²⁰ Conseil National pour les Libertés en Tunisie (National Council for Freedoms in Tunisia), *Procès jugés en vertu de la loi antiterroriste en Tunisie, Justice préventive et instrumentalisation politique* (Lawsuit judged under Tunisian anti-terrorist law, preventative justice and political instrumentalisation), Tunis, June 2005-March 2007, p. 10

precise terms encapsulated in legal definitions” and recommended that “the scope of application of the terrorism provisions has grown too wide and could be reduced.”²¹

According to the National Council for Freedoms in Tunisia (NCFT – the Conseil National pour les Libertés en Tunisie or CNLT), the counter-terrorist legislation permitted the Tunisian authorities to institute a “special justice system which takes place behind closed doors.”²² In effect, under this law, the Supreme Court of Tunis is the only authority competent to judge “terrorism” cases (article 43). The political police are attributed excessive powers equivalent to the judicial police with jurisdiction throughout the country, and the right to defence is extremely restrained. This legislation has been largely denounced by local and international human rights organisations on the grounds that it is unconstitutional contrary to fundamental principles of human rights.

The authorities of the National Unity Government have made multiple promises of a break with the repressive regime of Ben Ali since 14 January 2011. In an interview aired on Tunisian television on 21 January 2011, the former Prime Minister Mohammed Ghannouchi announced his wish to repeal all of the “anti-democratic laws,” particularly the 2003 counter-terrorist law.²³

Question:

8. Do the Tunisian authorities have the intention to repeal provisions contained in Law No. 2003-75 of 10 December 2003 relative to the support of international efforts to fight against terrorism and money laundering which are contrary to international law?

4. Arbitrary arrests and detentions under counter-terrorism legislation

Under the pretence of the “war against terrorism”, counter-terrorism legislation was used by former Tunisian authorities to persecute all opposition to the Government, real or supposed. This concerned human rights defenders, union leaders, and political activists, journalists and even regular citizens exercising their right to freedom of expression and opinion in a peaceful manner.

Since 2004, the year of entry into force of the legislation, estimates of the number of prisoners convicted under this law vary from 2000 to 3000 according to the Association for the Support of Political Prisoners.²⁴ The Tunisian authorities have not published official statistics on the number of persons arrested and convicted in the context of the fight against terrorism to date.

Since the adoption of the counter-terrorism law, the cases of arbitrary arrests and detentions counter-terrorism multiplied. In the overwhelming majority of so-called “terrorism” cases since 2004, no material proof could be brought forward and no evidence of any “terrorist act” was established during trials; the accused are condemned for “the planning of terrorist acts” or “belonging to a terrorist group” without the alleged terrorist organisation being precisely defined. In the name of ‘preventive justice,’ the authorities have convicted people without any material evidence constituting a criminal act being established. It must be emphasized that almost all of the inmates convicted for ‘thought crimes’ were convicted under the counter-terrorism law of 2003.²⁵

²¹ Martin Scheinin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *UN Expert on Human Rights and Counter Terrorism concludes visit to Tunisia*, Office of the High Commissioner for Human Rights (OHCHR), 26 January 2010, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9772&LangID=E> (accessed 12 February 2011).

²² Conseil National pour les Libertés en Tunisie (National Council for Freedoms in Tunisia), *Procès jugés en vertu de la loi antiterroriste en Tunisie, Justice préventive et instrumentalisation politique* (Lawsuit judged under Tunisian anti-terrorist law, preventative justice and political instrumentalisation), Tunis, June 2005-March 2007, p. 10.

²³ Le Monde with Reuters and AFP, *Tunisie: le premier ministre quittera le pouvoir « après la transition »* (Tunisia: the Prime Minister will leave power “after the transition”), 21 janvier 2011, http://www.lemonde.fr/tunisie/article/2011/01/21/deuil-national-de-trois-jours-en-tunisie_1468473_1466522.html (accessed 14 February 2011).

²⁴ Samir Dilou, President of the *Comité de soutien aux prisonniers politiques* (Association for the Support of Political Prisoners – Tunisian NGO), telephone interview with Alkarama on 15 February 2011.

²⁵ Human Rights Watch, *Tunisia: Prison Visit Ends 20-Year Ban*, 4 February 2011, <http://www.hrw.org/fr/news/2011/02/04/tunisia-prison-visit-ends-20-year-ban> (accessed on 10 February 2011).

Alongside political prisoners, opponents (either real or alleged) of the ousted regime, and those persecuted for having exercised their rights to freedom of expression, the ALT (Association to Combat Torture in Tunisia) and the CRLDH (Committee to Respect Freedom and Human Rights in Tunisia) point out two other categories of persons convicted under the counter-terrorism law of 2003:²⁶ those prosecuted for their religious convictions ("salafists" or "jihadists") and those accused of having participated in clashes with the security forces in late 2006/early 2007 in the southern suburbs of Tunis and in the region of Soliman.

The majority of those arrested and convicted under the counter-terrorism legislation were subjected to arbitrary arrest and detention. Whether they were arrested at home, in the street, or at work, no arrest warrant was presented to them. They were often detained in secret and tortured prior to appearing before a judge. The dates of arrests that appear in the minutes of the preliminary hearing were falsified by agents of the judicial police.

The Directorate for State Security (DSS), also known as the "political police", figures prominently among those responsible for human rights violations perpetrated in the context of counter-terrorism legislation. According to Amnesty International, no public legal statute that defines the exact functions or the organisation of DSS appears to exist. The 2003 counter-terrorism law grants its agents exceptional powers similar to a judicial police. They may arrest and carry out searches throughout the country in an anonymous manner. They are also the first to interrogate suspects. The DSS are known for their brutal methods when carrying out arrests and operate with complete impunity. The opposition therefore demands that concrete, rapid, and efficient measures are taken so that this police apparatus is subordinated and controlled by the government and that the agents known to have committed torture are arrested and prosecuted.

Questions:

9. Do the authorities plan to publish statistics and a list of the names of prisoners detained under the counter-terrorism legislation?

10. Will the authorities provide reparation to the victims of arbitrary detention detained in the context of the 2003 law as well as to their families?

5. Complete impunity in view of systematic practice of torture

One of the major characteristics of the repression of the ousted regime was the general and systematic practice of torture by every branch of the police services carried out with complete impunity. According to the president of the Tunisian NGO the *Association for the Support of Political Prisoners*, victims of this practise number in the tens of thousands of inmates (political prisoners and those convicted of penal crimes). This in various detention centres throughout the country over the last 23 years.²⁷

5.1 Systematic torture from custody to detention

Torture was orchestrated by the Directorate of State Security under the authority of the Interior Ministry and practiced by all police forces, in particular the intelligence and state security services, police forces in big cities, the National Guard outside of the urban centres, and prison guards during the period of incarceration.

Acts of torture are committed during the period of custody and throughout the period of incarceration in every detention centre of the country without exception. In Tunis, victims are often kept in custody

²⁶ Association de lutte contre la torture en Tunisie/Comité pour le respect des libertés et des droits de l'homme en Tunisie (Association for the Prevention of Torture in Tunisia/ Committee for Freedom and Human Rights in Tunisia – or ALT/CRLDH), *La torture en Tunisie et la loi « antiterroriste » du 10 décembre 2003, Faits et témoignages afin que cesse l'impunité* (Torture in Tunisia and the 'anti-terrorist' law of 10 December 2003 – facts and testimonies to end impunity), 2008.

²⁷ Samir Dilou, President of the *Comité de soutien aux prisonniers politiques* (Association for the Support of Political Prisoners – Tunisian NGO), interview with Alkarama on 17 February 2011.

on the premises of the Interior Ministry on the third floor and are generally for periods extending well outside the legal limit of three days. In reality, the police keep the victim as long as possible to torture him or her to obtain a confession, and also to give time for injuries and other traces of torture to heal before the victim goes before an investigating judge.

During interrogations, methods of torture used by the agents are as follows: forced nudity, insults, threats of violence and death, long periods of sleep deprivation, beatings on different parts of the body with batons, electric shocks, *falaqa*, *farruj*, *balanco*, and sexual abuse. Victims report that doctors are present during these torture sessions throughout the period of custody.²⁸

5.2 The question of impunity

Despite the provisions in Tunisian legislation condemning the use of torture and providing penal sanctions for those who commit such acts, torturers enjoy near complete impunity for their acts with the complicity of the judicial system.

The crime of torture is defined in article 101(b) of the Criminal Code, amended by Law No. 89/1999. This provision provides a prison sentence of eight years for an official or similar person who resorts to torture in the exercise of their functions. This provision uses the definition of torture that is elaborated in article 1 of the Convention against Torture but does not provide the possibility for the victim to make a claim against the committing officer's supervisor for responsibility for the act. Therefore, all responsibility for the act lies with those who perform it and the sponsors of acts of torture are rarely prosecuted.

During the period of custody, victims of torture have the possibility, under article 13(b) of the Code of Criminal Procedure to ask for a medical examination, but in reality this kind of request is systematically ignored. During the investigation by the investigation judge, the latter refuses to listen to the victim when they claim to have been tortured and in certain cases, pressures or threatens them. Even when signs of torture are apparent, the judge refuses "to act on the allegations of torture" and order the opening of an inquiry into the reported acts. Complaints lodged by victims to the prosecution are almost always dismissed immediately. At the time of judgment, judges generally refuse to register allegations of torture and broadly uses confessions obtained under torture as evidence against the accused.

It is clear that the complicity of the judiciary has contributed to the entrenchment of the impunity of torturers. This situation has been brought to light by the Committee of Human Rights which in 2008 demanded Tunisia "guarantee that all of the allegations of torture and cruel, inhumane, or degrading treatment are the subject of inquiries, carried out by an independent authority, and that those responsible for these acts, including their superiors, are prosecuted and sanctioned, and that the victims receive reparation including adequate compensation."²⁹

Questions:

11. What concrete measures do the authorities plan to put in place to end the systematic practice of torture? Do they plan to institute criminal responsibility of the superiors of officers or other similar actors?

12. Do they plan to allow the visit of the Special Rapporteur on Torture or other independent international organisations without any delay?

²⁸ ALT/CRLDH, *La torture en Tunisie et la loi « antiterroriste » du 10 décembre 2003, Faits et témoignages afin que cesse l'impunité* (Torture in Tunisia and the 'anti-terrorist' law of 10 December 2003 – facts and testimonies to end impunity), 2008, p. 49

²⁹ Human Rights Committee, 92nd Session, *Final observations of the fifth periodic report on Tunisia*, 28 March 2008, (CCPR/C/TUN/CO/5), para. 11(a).

6. Control of the judiciary by the executive

One of the major characteristics of the former President's regime was the total lack of independence of the judiciary which remained for many years under the subjugation of the executive, in particular the ministers of Justice and of the Interior. The subjugation of the justice system was made possible by a legal arsenal facilitating the control of the executive branch over the judicial, with the compliance of the prison and security administrations.

6.1 Legal barriers to the independence of the judiciary

Judges have no functional independence and are completely under the power of the executive. In fact, under Law No. 67-29 concerning judicial organization relating to the Supreme Council of Judges (SCJ) and to the stature of the judiciary, the SCJ is presided over by the head of State, the Minister of Justice, and the Vice-President. Furthermore, the principle of the tenure of judges is not set out in the Tunisian Constitution of 1959 and despite the reforms of 2005, it is still not outlined in legislation. According to amended Law No. 2005-61, nine of 17 members of the SCJ are named by the president of the republic.

Furthermore, the executive branch exercises disciplinary power over judges. For example, the Minister of Justice is given the power, without any discretion, to give warnings to judges under article 51 of Law No. 67-29.³⁰

Questions:

13. Do the Tunisian authorities plan to insert a clause relating to the tenure of judges in the Constitution?

14. Do they plan to repeal or amend Law No. 67-29 concerning judicial organisation, the Supreme Council of Judges and the statute of the judiciary?

15. Do they plan to repeal or amend Law No. 2005-81 that authorises the president to name nine members of the SCJ?

6.2 Administrative and political barriers to the independence of the judiciary

Judges regularly come under political pressure, and when they attempt to exercise their powers in an independent manner, they are victims of reprisals and can easily be dismissed from their posts.

In addition, the police and prison administrations play a preponderant role in the obstruction of the judicial branch's independence. Lawyers cannot work in a free and independent fashion: they are victims of harassment by the police, the penitentiary administration prevents them from visiting their clients even if they have a valid permit, and the principle of confidentiality is not respected during meetings with inmates. Furthermore, procedural rules are systematically violated: there are investigating judges who refuse to give lawyers any documents from a judicial file, in particular in "terrorism"- related cases.

In March 2008, the Human Rights Committee declared its concern over the question of "the independence of the judicial branch" and specifically recommended that provisions should be taken to reinforce the independence of the judicial branch, especially in face of the power of the executive.³¹

³⁰ FIDH/CNLT (International Federation of Human Rights/ Comité pour le respect des libertés et des droits de l'homme en Tunisie – Tunisian Committee for the respect of freedoms and human rights), *Instrumentalisation de la justice en Tunisie : ingérence, violations, impunité* (Instrumentalisation of the justice system in Tunisia: intrusion, violations, impunity) , January 2011, p. 9

³¹ Human Rights Committee, 92nd Session, *Final observations of the fifth periodic report on Tunisia*, 28 March 2008, (CCPR/C/TUN/CO/5), para. 17

Question:

16. What legislative, political, and administrative measures do the Tunisian authorities plan to adopt to assure a true independence of the judicial system with regards to the executive?

6.3 Systematic violations of fair trial norms throughout the legal process

Prosecutors in Tunisia exercise *de facto* no supervision over the custody of inmates, abstain from recording claims of torture, and refuse to allow medical examination of the victims when such allegations are made.

Investigating judges are equally passive with respect to allegations of torture. They refuse to order the opening of inquiries when they themselves see evidence of torture on the accused. No medical expertise is provided despite repeated demands of lawyers. The passivity of the judicial branch regarding torture creates impunity for torturers. Additionally, these judges systematically use confessions obtained under torture as evidence against defendants, particularly in cases of "terrorism".³² During court appearances, political police are always present in the courtroom creating a climate of tension and preventing the judge from exercising his or her power impartially and in good conscience.³³

Defendants are also deprived of the assistance of a lawyer of their choice even though this right is guaranteed by Tunisian legislation. During the investigative period, judges generally omit to explain defendants their rights, particularly that of the assistance of a lawyer. Additionally, lawyers are commonly prevented from attending trials. The CNLT (National Council for Freedom in Tunisia) notes that lawyers are present in less than 1/5 of cases.³⁴

In early February the provisional government emphasised the importance of reforming the justice system as one of the measures to be taken during the transitional period. The Minister of Justice Lazhar Karoui Chebbi affirmed his desire to "establish the independence of the judiciary during this transitional period" recalling that "magistrates must be elected and the judiciary must be independent," specifying that "the president of the republic cannot also be the president of the Supreme Court or the magistrates."³⁵ The National Bar Association has also called for the "overall and complete reform of the judicial system" and has put forth a motion to the government.³⁶

Regarding the current reforms, the government has set up three commissions. The Supreme Commission for Political Reform is specifically responsible, according to its president Iyadh Ben Achour, for "presenting proposals for the reform and the promotion of legal texts, to begin with the Constitution (...) with a view to establishing a new judicial system"³⁷ in the context of the current political reforms being carried out by the transitional government. Nevertheless, the commission is

³² Conseil National pour les Libertés en Tunisie (National Council for Freedoms in Tunisia), *Procès jugés en vertu de la loi antiterroriste en Tunisie, Justice préventive et instrumentalisation politique* (Lawsuit judged under Tunisian anti-terrorist law, preventative justice and political instrumentalisation), Tunis, June 2005-March 2007, p. 26

³³ ALT/CRLDH, *La torture en Tunisie et la loi « antiterroriste » du 10 décembre 2003, Faits et témoignages afin que cesse l'impunité* (Torture in Tunisia and the 'anti-terrorist' law of 10 December 2003 – facts and testimonies to end impunity), 2008, p. 62

³⁴ Conseil National pour les Libertés en Tunisie (National Council for Freedoms in Tunisia), *Procès jugés en vertu de la loi antiterroriste en Tunisie, Justice préventive et instrumentalisation politique* (Lawsuit judged under Tunisian anti-terrorist law, preventative justice and political instrumentalisation), Tunis, June 2005-March 2007, p. 27

³⁵ Agence TAP, *Le président de la République ne peut pas être aussi le président du Conseil supérieur de la magistrature* (The President of the Republic cannot also be the head of the High Judicial Council), 5 February 2011, http://www.tap.info.tn/fr/index2.php?option=com_content&do_pdf=1&id=32061 (accessed 18 February 2011).

³⁶ Agence TAP, *Les avocats appellent à une réforme totale du système judiciaire* (Lawyers call for total reform of justice system), 5 February 2011, http://www.tap.info.tn/fr/index2.php?option=com_content&do_pdf=1&id=32089 (accessed 18 February 2011).

³⁷ Leaders, *Iyadh Ben Achour installe sa commission au siège de la LTDH en hommage* (Iyadh Ben Achour sets up his commission at the headquarters of the LTDH In tribute), 8 February 2011, <http://www.leaders.com.tn/article/iyadh-ben-achour-installe-sa-commission-au-siege-de-la-ltdh-en-hommage> (accessed 16 February 2011).

not specifically mandated with the reform of the judicial system and no specific legal texts have been identified as being in need of revision.

Questions:

17. Can the authorities specify the role and the attributes of the Supreme Commission of Political Reform in the reform of the justice system?

18. Do the authorities plan to establish a commission whose mandate will exclusively focus on reforming the justice system and which would work with judges and members of the Bar?

19. What concrete measures do the authorities plan to implement in order to guarantee the right to a fair trial for defendants?

7. Conclusion

Tunisia is currently facing the challenge of marking a real break from years of human rights violations under a dictatorship. The National Unity Government has made multiple promises: general amnesty, overturn of anti-democratic laws, ratification of international human rights treaties, establishment of three commissions...

Some of the announcements made were quickly followed by concrete measures such as the ratification of several important conventions and in particular the Rome Statute. We hope that these promises are kept and that that current and future governments will launch reforms within a reasonable period in order to end two decades of human rights violations. If the system is to be reformed, then these reforms must be accompanied by the establishment of a Truth and Justice Commission mandated to bring light to the massive abuses which took place during the Ben Ali era.