

# Amnesty International

## Tunisia – Briefing to the Human Rights Committee

AI Index MDE 30/002/2008

INTERNAL

### Introduction

Amnesty International submits this briefing for consideration by the Human Rights Committee in view of its forthcoming examination of Tunisia's fifth periodic report on measures taken to implement the provisions of the International Covenant on Civil and Political Rights (ICCPR). This briefing summarizes Amnesty International's main concerns on Tunisia, as documented in a number of the organization's reports. The organization highlights in particular its concerns about the failure of the state party to fully comply with its obligations under Articles 2, 3, 6, 7, 9, 10, 14, 15, 16, 17, 18, 19, 21, 22 and 26 of the ICCPR. These concerns relate broadly to the failure of the state party to provide an effective remedy to victims of human rights abuses, continuing restrictions against human rights defenders and organizations and a persistent pattern of prolonged incommunicado detention and torture.

Tunisia submitted its fifth periodic report CCPR/C/TUN/5, 25 April 2007 to the Human Rights Committee in December 2006, more than seven years late. Tunisia's fourth periodic report to the Human Rights Committee was considered in 1994. At the time, the government's crack down on members of the banned *Ennahda* organization had started to ease following trials of many before military courts on charges of plotting to overthrow the government and belonging to an unauthorized association. Virtually the entire leadership of the organization were imprisoned and many were ill-treated in prison. Most have since been released, but continue to be subjected to measures which prevent their reintegration into society. They are subject to restrictions on movement, access to health care, education and jobs, and are also subject to arbitrary arrest.

The authorities continued to use "security" concerns as a pretext for repression of political dissent and critical discourse across the political spectrum. This security discourse became more pronounced following the attacks in the USA on 11 September 2001 and 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." Report S/2001/1316, 26 December 2001.

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.

In December 2003, Law No. 2003-75 (10 December 2003), concerning support for international efforts to combat terrorism and prevent money-laundering (hereafter the anti-terrorism law) was adopted. It contains a vague definition of terrorism that has been used to imprison people seeking to exercise their right to freedom of expression. Since the entry into force of the anti-terrorism law, hundreds, and possibly thousands, of youths have been arrested in connection with terrorism-related offences. Virtually all of them have been

convicted on charges of planning to join *jihadist* groups abroad or inciting others to join, but never on having planned or committed specific acts of violence, with the exception of the case known as the “Soliman Case” (see below).

Notwithstanding the threat posed to Tunisia by terrorism, serious violations of the rights enshrined in the ICCPR continue, including secret detention and torture by the Department of State Security (DSS) of the Ministry of Interior, in the context of the government’s counter-terrorism operations. Legal provisions introduced in national law in 1999 criminalizing torture, reducing the *garde à vue* detention to a maximum of six days and providing further protection in pre-trial detention, while welcome, have not been matched by what happens in practice, nor have they put an end to persistent allegations of torture by members of the DSS.

Rather than addressing these and other violations in conformity with their obligations under the ICCPR, the Tunisian authorities have endorsed impunity through having systematically failed to effectively and independently investigate these violations, thus depriving victims of their right to obtain justice and reparation. The almost complete *de facto* impunity enjoyed by members of the security forces have perpetuated the violations that happen against people in pre-trial detention, including torture and other ill-treatment and the systematic falsification of arrest dates, as well as later in prisons.

In addition, the government severely curtails political and civil liberties. The Tunisian authorities continue to undermine freedom of expression, including press freedom, and editors and journalists continue to operate in a climate of intimidation and fear. Foreign publications are censored and journalists who criticize the government are subject to dismissal or threats of dismissal from their newspapers or are harassed using smear campaigns in the official press or by being targeted through judicial proceedings using criminal libel laws. Journalists have been prevented, including by force, from holding meetings or attending and reporting on events organized by independent human rights organizations or meetings that may be critical of the authorities.

The Tunisian authorities also undermine freedom of expression of religious beliefs. Harassment of women wearing the *hijab* (Islamic headscarf) and men wearing beards and the *gamis* (knee-length shirts) is on the increase following the authorities’ calls in 2006 for a strict implementation of a 1980s ministerial decree banning women from wearing the *hijab* at educational institutions and when working in government.

While new independent human rights organizations have been established since the Committee last examined Tunisia in 1994 and aim to contribute to the promotion and protection of the human rights enshrined in the ICCPR, the government routinely blocks their legal registration by preventing them from submitting their applications to register or by refusing to provide them with receipts to prove they have submitted an application. Human rights defenders and organizations alike operate in a climate of harassment, intimidation, interference, constant surveillance and sometimes physical violence by the authorities.

Although the authorities allowed the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to visit the country in 1999, this remains a notable exception. Indeed, apart from this visit, the Tunisian government has not agreed to other requests to visit the country made by the UN Special Rapporteur on Torture, Special Rapporteur on the Independence of Judges and Lawyers, the UN Special Representative of the Secretary General on Human Rights Defenders and the Special Rapporteur on human rights and counter terrorism.

Structural changes are needed if Tunisia is to overcome the consequences of the human rights crisis which has characterized the country, in particular changes in practice and in law which reflect Tunisia’s obligations under the ICCPR. In this respect, we are concerned that while some recommendations of the Human Rights Committee to the Tunisian authorities in 1994 have been implemented in law, others have not been adequately addressed. The fact

that gaping discrepancies between law and practice continue to persist despite legal reforms introduced with a view to providing further safeguards against human rights violations may signal a lack of political will on the part of the Tunisian authorities to fully subscribe to their obligations under international human rights law.

## **Article 2: the right to an effective remedy**

Article 2.3 of the Covenant lays down the obligations of state parties to provide an effective remedy to persons whose rights, as enshrined in the ICCPR, have been violated. Article 2.3 insists that victims should have a judicial remedy.

Recent years have seen widespread violations of human rights in Tunisia, including torture and other cruel, inhuman or degrading treatment (Article 7), and violations of the right to liberty and security (Article 9), to be treated humanely in detention (Article 10), to receive a fair trial (Article 14), and to recognition as a person before the law (Article 16), as well as to freedom of expression, association and assembly (Articles 19, 21 and 22). The Tunisian authorities have largely failed adequately to investigate alleged human rights violations and to bring to justice those responsible for torture and other abuses.

The individual cases highlighted in this briefing also illustrate the failure of the Tunisian justice system to provide an effective remedy for human rights violations and to protect the rights guaranteed in the ICCPR.

## **Article 6: right to life**

### ***The death penalty***

Under Tunisian law, the death penalty can be imposed for a wide range of offences, including attacks against state security, murder and rape. The courts continue to impose death penalties, although infrequently and sometimes *in absentia*, but the authorities have maintained a *de facto* moratorium on executions, apparently since 1991. Amnesty International welcomes the government's policy in this regard. In March 2007, in response to a parliamentary question, the Minister of Justice and Human rights stated: "in practise we have not implemented the death penalty [...] except in a few very exceptional cases." He did not give details of these "exceptional" cases or disclose the criteria on which they were considered to be so.

In March 2008, a cross party group of 25 members of parliament submitted a draft law to the President of parliament proposing the abolition of the death penalty, but it has yet to be placed before the full body of parliament for consideration.

At least four people have been sentenced to death in the last two years, including one *in absentia*. In April 2007, **Hassen Fkiri**, 39, who is resident in France, was reportedly sentenced to death *in absentia* by a court in Kef after he was convicted of the murder of his wife. The French authorities have agreed to extradite him to Tunisia on condition that he is given full access to a judicial appeal in Tunisia and that his death penalty is not carried out. He remains in detention in France. **Jalloul Khalfi**, 36, was reportedly sentenced to death in April 2007 after being convicted of the rape and murder of a British woman.

While Amnesty International welcomes the continuing moratorium on executions and notes that Tunisia did not vote in December 2007 against the UN General Assembly resolution in favour of a worldwide moratorium (Resolution 62/149), it remains concerned that Tunisian courts have continued to impose death sentences, including in cases where they have failed to ensure that fundamental fair trial safeguards are applied at all stages of the process, including pre-trial investigation.

**CASE:** On 30 December, the Tunis Court of First Instance sentenced **Saber Ragoubi** and **Imed Ben Amar** to death on terrorism-related charges. The 28 other defendants in the same

trial were convicted and sentenced to prison terms ranging from five years to life imprisonment. On 21 February 2008, the Tunis Court of Appeal, following lengthy and overnight sessions that started on the morning of 19 February, confirmed the death sentence against Saber Ragoubi and commuted Imed Ben Amar's sentence to life imprisonment. Both the trial and the appeal in this case breached a number of fair trial safeguards guaranteed under the ICCPR (see below: Articles 9, 10, 14, 15 and 16).

## **Article 7: the right not to be tortured, or subjected to cruel inhuman or degrading treatment**

Throughout the period under review, there has been a continuing pattern of torture and other cruel, inhuman and degrading treatment (hereafter ill-treatment) of persons arrested and detained by Tunisian security forces. Those subject to torture and other ill-treatment include both criminal suspects held in police stations and political and security suspects who are detained by officials of the DSS of the Ministry of Interior.

### ***Methods and purpose of torture***

The most commonly reported methods of torture used against detainees are beatings on the body and especially the soles of the feet (*falaka*); suspension by the ankles or in contorted positions (such as the *poulet rôti*, in which the victim is trussed up and tied to a horizontal pole by hands and feet bound in front, *avion*, in which hands and feet are bound behind, and which is often accompanied by beating, and *baño*, in which the victim is suspended on a pulley by the ankles and has their head plunged into a bucket of dirty water); electric shocks, and burning with cigarettes. There are also reports of sexual abuse, including the insertion of bottles or sticks into the rectum of the victim, and threats, both of such abuse and of the sexual abuse of female relatives, and mock executions.

Most detainees are tortured or otherwise ill-treated while detained incommunicado during the period of *garde à vue*, pre-arraignment detention. Arrest dates are frequently falsified by police, particularly in political and security cases, in order to suggest that the detainee was arrested days or even weeks later than was actually the case; in this way, the security authorities create an illusion of operating within the law whereas, in practice, initially they hold detainees illegally. It is often in this period of illegal, pre-official *garde à vue* detention that detainees are tortured and ill-treated. This is a longstanding practice that has previously been exposed, by Amnesty International and others, yet it is still tolerated by the Tunisian authorities, and those who carry out such detentions and torture do so with impunity.

Political detainees and terrorism suspects are commonly detained by the DSS officers, and tortured and otherwise ill-treated to extract "confessions" or other statements that are later submitted as evidence at trial, and to punish and intimidate. Many defendants have subsequently retracted such "confessions" at trial, contending that they were obtained under torture or other ill-treatment, but the courts routinely fail adequately to investigate such allegations and accept such contested statements as evidence for conviction.

Prisoners sentenced for terrorism-related offences are also reported to have been tortured or otherwise ill-treated in prisons while held in pre-trial detention or when serving their sentences (see Article 10 below).

### ***Safeguards against torture not respected***

Article 101bis of the Tunisian Penal Code stipulates prison sentences of up to eight years for "any public servant or officer of similar category who subjects, in the exercise of or during the exercise of their duties, an individual to torture".

Public Prosecutors (*procureurs de la République*) oversee the period of *garde à vue* detention and under Article 26 Code of Penal Procedure (CPP) are responsible for investigating all complaints brought before them, including torture allegations. They are also

required to order a medical examination if the detainee or a close relative requests this during or immediately after the period of *garde à vue* (Article 13bis CPP). The purpose of such examination is to assist in determining whether the detainee has been the victim of violence.

An additional safeguard is provided by the first hearing before the investigating judge, where the detainee has an opportunity to inform the judge if he has been tortured or otherwise ill-treated or held in breach of the law on *garde à vue* detention. If such allegations are made, the investigating judge is required to listen to the detainee, record his claims, and refer them to the Public Prosecutor for the latter to open an investigation (Article 14 CPP). In practice, however, these safeguards are not effective. In virtually all relevant cases known to Amnesty International, the Tunisian authorities have failed to respect these requirements and to undertake adequate investigations into allegations of torture and other ill-treatment, and to bring alleged perpetrators to justice.

In no case known to Amnesty International in recent years have detainees been permitted access to medical examinations while being detained in *garde à vue* detention by the DSS, or been examined by forensic medical doctors at the end of their DSS detention. When detainees have expressly requested medical examinations when they first appeared before an investigating judge, such requests have either been dismissed by the judge (see below) or received no or inadequate follow-up when the investigating judge referred the matter to the Public Prosecutor.

Lawyers and detainees' relatives have told Amnesty International that when they have submitted requests to the Public Prosecutor for the detainee to be medically examined, or have filed complaints about torture and other ill-treatment, these have been consistently ignored. In some cases, the Public Prosecutor has agreed to register the complaint but no investigation is known to have been opened. In the rare cases where investigations were opened into alleged torture or other ill-treatment, the investigations were without outcome.

In some cases, investigating judges have failed to refer torture allegations to the Public Prosecutor even when the detainee appeared before them bearing obvious signs of possible torture. Detainees' lawyers maintain that investigating judges will register torture allegations only if they are extremely persistent in requesting this but even then avoid using the term "torture" or any description of the methods of torture alleged, preferring to record it only as "physical pressure" (*contrainte physique*) so that it need not be referred to the Public Prosecutor for investigation.

In its reports to the African Commission on Human and Peoples' Rights and the UN Human Right Committee in April 2007, the Government of Tunisia stated that "between 2000 and 2005, 104 police officers had been brought to justice and convicted with penalties of up to 10 years in jail". However, the government has not disclosed further information indicating the offences of which these police officers were convicted and whether any arose from prosecutions for torturing or otherwise ill-treating prisoners.

**CASE: Fouad Cherif Ben Fitouri** was expelled from Italy to Tunisia on 4 January 2007 because of his alleged association with Islamic groups planning terrorist acts. He was arrested and detained upon arrival in Tunisia. He was held in incommunicado *garde à vue* detention for 12 days, twice the maximum legal limit, during which he was tortured, including by being beaten and suspended upside down. His lawyer observed wounds on his head when he first gained access to the detainee. The official police report stated that he was arrested on 14 January 2007, apparently in an effort to mislead and conceal the fact that he had been held illegally for some 10 days. He was taken before an investigating magistrate on 16 January 2007 and charged under the anti-terrorism law with sponsoring a terrorist organization operating abroad. His lawyer asked that he undergo a medical examination, as required by Tunisian law, but this request was ignored by the investigating judge. His lawyer filed a formal complaint of torture with the Public Prosecutor in February 2007 but to date, more than one year later, there has been no response. His case files do not include any document indicating that he was returned involuntarily to Tunisia from Italy. He was sentenced to one

year's imprisonment on 3 March 2008 and should have been released as he had already been held for more than one year in pre-trial detention; however, the Public Prosecutor has appealed against that sentence and he remains in detention.

## **Article 9: right to liberty and security**

Persons detained by DSS officers are routinely denied the protections provided in the ICCPR.

Tunisian law empowers the Public Prosecutor to supervise the judicial police and to oversee and visit places of pre-trial detention. According to Article 13bis of the CPP, suspects may not be detained by the police or the National Guard for more than three days; the Public Prosecutor must be informed of each detention and is empowered to authorize continued *garde à vue*, by written order and "in cases of necessity" for a further three days, allowing a total of six days. The detaining authorities are required to notify detainees of the procedures taken against them, the reason/s and duration, and of the guarantees provided to them by law, including the right to medical examination during or after the detention. They must also notify a member of the detainee's immediate family of the arrest and detention. During or after the *garde à vue* period the detainee or any member of his or her immediate family may request that he be given a medical examination. The dates and times of the beginning and end of *garde à vue* detention, and the dates and times at which each interrogation starts and finishes must be noted in a register kept in each police station. Article 13 of the CPP states that officers of the judicial police must inform the Public Prosecutor of any actions they take or crimes they discover.

Amnesty International welcomes these safeguards, which were introduced in 1999 and should have served to afford effective protection to detainees during *garde à vue*. In practice, however, they have been routinely flouted by Tunisian detaining authorities and have not served as an adequate safeguard against torture and other abuses.

Since the entry into force of the anti-terrorism law in December 2003, hundreds, possibly thousands, of people have been detained on suspicion of involvement in terrorism-related offences. Many such arrests have been carried out by security officials in plain clothes, generally believed to be DSS officers who have failed to produce arrest warrants and have conducted house searches without identifying themselves or presenting search warrants. Often, such arrests and house searches have been carried out in the middle of the night in breach of Article 95 of the CPP. In other cases, arrest warrants have been issued after arrests were made.

Those arrested, including after being forcibly returned to Tunisia from European and other countries, have frequently been subjected to enforced disappearance for weeks or months and held in illegally prolonged incommunicado detention by the DSS, including at a detention facility within the Ministry of Interior building in Tunis. Subsequently, the detaining authorities have denied holding the detainees concerned or have refused to disclose information about them and their circumstances to their families and lawyers. The case files of those returned from abroad and detained generally include no documentation indicating or acknowledging their return and police reports include no or only vague information indicating that the detainee was arrested in Tunisia. (See, for instance, the case of **Fouad Cherif Ben Fitouri** under Article 7 and the case of **Taoufik Salmi** under Article 14).

This use of enforced disappearance is deeply worrying as it inevitably puts those who experience it outside the protection of the law and exposes them, through the secrecy surrounding their situation, to a serious risk of torture and other abuses at the hands of officials who are able to evade accountability and act with virtually total impunity.

Families and lawyers who have sought information from the Ministry of Interior and Public Prosecutor about relatives who they believed were being held by the DSS, even when accompanied by a lawyer, report that the authorities have refused to confirm that the

individuals in question have been taken into custody or to divulge other information, such as the reason/s for arrest or place of confinement. Such families have been able to obtain news of their loved ones only through unofficial sources within the police or from other detainees following release or after they were moved to prisons and permitted to receive visits. Requests by lawyers and families for information often remain without answer by the authorities until after the detainee's interrogation has been completed and the detainee has appeared before an investigating judge; in some cases, detainees' whereabouts have remained undisclosed for several days even after they appeared before an investigating judge. This suggests that the Public Prosecutor may not be informed immediately about certain arrests carried out by DSS officers, in breach of Article 13bis of the CPP and Article 33 of the anti-terrorism law.

In many cases, the full six-day period of *garde à vue* has been used but detainees were not permitted access to a medical doctor when requested, as stipulated by law. In such cases, in fact, detainees frequently have been detained incommunicado well in excess of the legal time limit set out in Article 13bis of the CPP. As well as the Ministry of Interior building in Tunis, detainees are also held incommunicado for prolonged periods in police stations, and National Guard centres in Tunis apparently without their arrests being formally reported to, and registered with, the Public Prosecutor.

Tunisian law does not guarantee the right of detainees to have access to legal counsel promptly after arrest; this is a major deficiency that further exposes detainees to risk of torture and other ill-treatment.

As indicated above, police falsification of arrest dates is common and facilitates misuse of *garde à vue* for interrogation purposes and facilitates torture and other ill-treatment. In some cases, there have been very significant discrepancies between the actual date of arrest, as reported by the detainee, family members or other witnesses to the arrest and the official arrest date shown on the police report. Detainees' relatives and lawyers have sometimes sought to expose this by sending inquiries about detainees to the authorities using registered mail and have been able to show that these were sent, and predate by several days or weeks, the arrest date as officially recorded in the police report.

**CASE: Mohammed Amine Jaziri** was arrested on 24 December 2006 on his way to Sidi Bouzid Hospital, in Sidi Bouzid, 260 km south of Tunis. He had been responding to a text message sent from a friend's mobile phone, asking him to visit him there. His family later learnt that the friend had already been in police custody at the time the message was sent. His father inquired with the police in Sidi Bouzid and the Ministry of Interior in Tunis about him, but was repeatedly told that there was no record of his name. On 27 December, Mohammed Amine Jaziri's house was searched by a group of men believed to be police officers in plain clothes using Mohammed Amine Jaziri's own keys to open the door. Mohammed Amine Jaziri was one of scores of people who were arrested by police between late December 2006 and January 2007, following an exchange of gunfire between the security forces and alleged members of an al-Qa'ida-aligned armed group later named by the Tunisian authorities as the Soldiers of Assad Ibn Fourat. They were all held in incommunicado detention for several weeks at the DSS detention facility in the Ministry of Interior in Tunis, and allege that they were tortured or otherwise ill-treated there. Mohammed Amine Jaziri alleges that he was beaten all over his body, given electric shocks, suspended from the ceiling for several hours, doused with cold water, deprived of sleep and had a dirty hood placed over his head during interrogation. He was brought before an investigating judge for the first time on 22 January 2007, almost a month after his arrest. In December 2007, he was sentenced to 30 years' imprisonment after being convicted, together with 29 others, on terrorism-related charges in the "Soliman Case." His sentence was confirmed by the Tunis Appeal Court in February 2008.

## **Article 10: right to humane conditions of detention**

Amnesty International notes and welcomes reports that the Government of Tunisia signed an agreement with the International Committee of the Red Cross (ICRC) in April 2005 under which the ICRC will be given access to Tunisian prisons and detention centres. However, the organization remains concerned that prisoners serving sentences imposed for political or security reasons, who number several hundred, are subject to discrimination and abuse in prisons. The Tunisian authorities contend that they do not hold prisoners of conscience or other political prisoners, and that those sentenced under the anti-terrorism law are convicted criminals.

Amnesty International delegates who visited Tunisia in December 2007 met a number of families of such sentenced prisoners and received information that they were subject to various violations of their rights, including harassment, ill-treatment and even torture, being held in isolation beyond the legal 10-day limit prescribed under Article 22(7) of the law on prisons (Law No. 2001-52 of 14 May 2001); and denial of adequate medical care. In some cases, prison authorities had refused to allow visits by their families, saying that they were being punished, or to accept food and clothing brought for them by their families.

It was also reported that political prisoners are denied medical care arbitrarily and on a discriminatory basis. Medical doctors who had been among those imprisoned reported after their release that virtually all long-term prisoners are ill due to poor prison conditions, including inadequate hygiene and medical care, and sometimes as a result of torture or other ill-treatment.

Political prisoners have launched a number of hunger strikes to protest against their harsh conditions, to which prison authorities have sometimes responded with torture or other ill-treatment, as in October 2007 when defendants in the “Soliman Case” were tortured or ill-treated by guards at Mornaguia prison. In other cases, prisoners have been moved to remote prisons, hundreds of kilometres away from their family’s home.

**CASE: Ousama Abbadi, Ramzi el Aifi, Oualid Layouni and Mahdi Ben Elhaj Ali** are reported to have been punched, tied up and kicked by prison guards at Mornaguia prison on 16 October 2007, apparently because they had gone on hunger strike in protest against their conditions. Ousama Abbadi sustained a serious eye injury and a deep, open leg wound and was in a wheelchair, unable to stand, when seen by his lawyer on 20 October 2007. Ramzi el Aifi told his lawyer that he had been tied up with a rope, beaten up and that a stick had been inserted into his anus. Other inmates at Mornaguia prison were reportedly stripped naked by guards and dragged along a corridor in front of the prison cells. Lawyers for the prisoners submitted complaints to the authorities, but no investigation is known to have been initiated and those allegedly responsible for these abuses have not been brought to justice. Family members of some of the prisoners who went to visit them on the weekend of 20/21 October 2007 were told by prison guards that they were being punished for 15 days and were not allowed to receive family visits, food or clothes from outside the prison.

## **Article 12: Freedom of Movement denied to former prisoners**

The Tunisian Constitution provides in Article 10 that “every citizen has the right to move freely within the country, to leave it and to establish domicile within the limits established by law.” Tunisian law provides further elaboration of this in Law No. 75-40 of 14 May 1975 and Law 98-77 of 2 November 1998. However, former prisoners are effectively denied the possibility to obtain passports by the authorities using prolonged administrative delays; some have been waiting for ten years without ever having received a response.

**CASE: Houssine Jelassi** was released from prison in 2003 after serving a nine-year sentence and first applied for a passport on 16 March 2004. He applied again towards the end of the

same year after his first application received no response. When this application was refused, he filed a case before an Administrative Court which ruled in his favour on 3 May 2006. The Ministry of Interior appealed this decision but it was upheld by the Court of Appeal on 11 December 2007; even so, Houssine Jelassi, has yet to be issued with a passport.

Family members of political prisoners are also prevented from acquiring passports. For example, **Laila Almanssi**, wife of **Lassaad Jouhri**, has attempted to renew her passport since it was taken from her husband's office at the time of his arrest in 1991 but has yet to receive a response from the authorities. Lassaad Jouhri himself has neither a passport, nor a national identity card.

**CASE: Abdallah Zouari**, another former political prisoner, has had his freedom of movement within Tunisia restricted by the authorities. Formerly a journalist for the now-defunct Islamist newspaper *al-Fajr*, he was sentenced to 11 years in prison and 5 years of administrative control for membership of *Ennahda*, a banned Islamist organization. He was released from prison on 6 June 2002 and was informed on 2 August 2002 by the head of the police station to which he had to report under the terms of his administrative control that the Interior Ministry required him to serve his five-year administrative control term at Hassi Jerbi, a village near Zarzis, southern Tunisia, some 500km from his home in Tunis, where his wife and children live. He filed an appeal before the administrative court on 29 August 2002; the appeal was given a reference number, 11141, but the case was never heard. His five years of administrative control were due to end on 5 June 2007, but two days before this he was told by the head of the police station of Hassi Jerbi that his administrative control had been extended for a further 26 months; however, the police refused to give him this decision in writing and said they were merely following orders. On 16 June 2007, Abdallah Zouari filed a complaint before the Public Prosecutor's office in Médenine, arguing that the extension of his administrative control was arbitrary. Abdallah Zouari lives under constant police surveillance, with plainclothes officers stationed outside his house, and is followed when he leaves the house. He is not allowed to move more than 30km away from Hassi Jerbi without permission and his requests for permission to visit his wife and children in Tunis have routinely gone unanswered.

## **Article 14: right to a fair trial**

Tunisia's CPP and Constitution both include provisions that guarantee the right to a fair trial, including the right to legal counsel, the obligation to investigate allegations of torture and other ill-treatment and the right to be tried before an independent and impartial court of law. However, these safeguards have regularly been violated at all stages of the judicial proceedings, particularly in cases deemed by the Tunisian authorities to affect national security.

### ***Prompt access to lawyers***

Article 13bis of the CPP does not give detainees a right to have contact with their families or lawyers for the duration of their *garde à vue*. However, some detainees in terrorism-related cases appear also to have been denied the legal representation when brought before an investigating judge for the first time, in violation of Article 69 CPP; this provision requires that the investigating judge designate a lawyer to represent the detainee if he lacks the means to engage one. Article 70 of the CPP states that access to a lawyer should never be denied and the lawyer is also to be informed of any interrogation 24 hours beforehand (CPP 72). The investigating judge should not, except in specific cases prescribed in law,<sup>1</sup> proceed to further interrogate the detainee without the presence of legal counsel.

---

<sup>1</sup> These are (a) when the accused is facing imminent death, (b) is arrested in the commission of a *flagrant délit*, or (c) when there is risk of loss of evidence.

In many cases involving terrorism-related offences that were reported to Amnesty International between 2004 and 2005, no lawyer was present to assist the detainee during the first hearing before the investigating judge. Some detainees later told their lawyers that they were not informed of their rights by the investigating judge or that when they requested legal counsel it was not provided and the investigating judge continued with the interrogation. According to some detainees, they were asked by the investigating judge if they agreed to make a statement without the presence of a lawyer but were too afraid to insist on a lawyer's presence because they had previously been threatened with return to the Interior Ministry and further torture if they should retract statements that had been included in the police report on their case.

In some cases, detainees have been taken to the office of the investigating judge without their lawyer being notified by the authorities. In one such case, a lawyer found that his client was being questioned by an investigating judge without his presence although he had asked about the date of the hearing earlier that day and been told that there was no information. Detainees have also been taken before investigating judges outside normal office hours, late at night, apparently to prevent their being assisted by defence lawyers and to conceal evidence of their torture.

### ***Right of defence***

In terrorism-related cases, defence rights have been frequently disregarded in breach of Tunisian national and international law. Defence lawyers complain that they are not given adequate time and facilities to prepare the defence and are required to spend considerable time in seeking to obtain copies of case files, which are often incomplete and may lack key documents.

Lawyers complain also that they are sometimes denied access to their clients during pre-trial detention on the spurious grounds that their clients do not wish to see them and that when they do have access to them client-lawyer confidentiality may also be breached by the detaining authorities, in violation of international standards as well and Law No. 89-87 of 7 September 1989 concerning the legal profession.

The anti-terrorism law also undermines the confidentiality of client-lawyer communication. Article 22 makes it an offence punishable for up to five years in prison for anyone "even where bound by professional secrecy," to fail "to notify immediately the competent authorities of any acts, information or instructions which may have emerged concerning the commission of a terrorist offence". Article 23 penalizes all those who refuse to give testimony or respond to a request to testify concerning terrorist offences.

When lawyers have presented their defence in court, they have often been interrupted by trial judges when they have drawn attention to the illegally prolonged pre-trial incommunicado detention of defendants, allegations of torture and other ill-treatment, and called for their clients to be given medical examinations and for investigation of torture allegations. Defence lawyers have also been interrupted and prevented from continuing when they have questioned the constitutionality of the anti-terrorism law or sought to plead evidence about the socio-political conditions which may have contributed to the rise of *salafist* tendencies in Tunisia.

Lawyers representing detainees in terrorism-related cases are also routinely intimidated and harassed by state authorities, as in the case described below. When they file complaints about this harassment, interference and sometimes physical violence, their complaints remain without investigation (see section on Harassment of individual human rights defenders under Articles 21 and 22 below).

## ***Use of information extracted under torture or other ill-treatment***

Although article 155 of the CPP can be read to mean that statements extracted under torture can be rejected by the courts, there are no provisions in Tunisian law which expressly prohibit the use of evidence obtained under torture in court. Indeed, “confessions” are left to the discretion and appraisal of the judge to accept or reject as evidence, in accordance with articles 150 and 152 of CPP. Tunisian law has yet to be amended to ensure that no information obtained through torture can be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, in line with international standards and as recommended by the Committee Against Torture in 1998.<sup>2</sup>

Trial judges at every level have failed to ensure that defendants received medical examinations or that their torture allegations were properly investigated, even when there was visible evidence of physical abuse, and they have also accepted confessions that defendants had retracted in court as evidence in convicting defendants who have then be sentenced to lengthy prison terms or even to death.

**CASE:** Tunisian national **Adil Rahali** was deported to Tunisia from Ireland in April 2004 after his application for asylum was refused. He was arrested on arrival in Tunisia and taken to the State Security Department of the Ministry of the Interior, where he was held in secret detention for several days and reportedly beaten, suspended from the ceiling and threatened with death. Adil Rahali, who had resided and worked in Europe for more than a decade, was charged under the 2003 anti-terrorism law with membership of a "terrorist" organization operating abroad. Although his lawyer filed a formal complaint about his alleged torture the Tunisian authorities apparently failed to undertake an investigation. In March 2005, Adil Rahali was to 10 years' imprisonment after trial marked by procedural irregularities; his sentence was reduced to five years' imprisonment on appeal in September 2005.

**CASE:** In November 2007, 30 men stood trial before the Tunis Court of First Instance in the so-called Soliman Case. They faced an array of offences, including conspiracy to overthrow the government, use of firearms and belonging to a terrorist organization, charges which they all denied. All were arrested in December 2006 and January 2007 in connection with an armed clash between security forces and alleged members of a armed group that the Tunisian authorities later named the Soldiers of Assad Ibn al-Fourat. They were detained well beyond the legal six-day limit of *garde à vue* detention, and alleged in court that they had been tortured and ill-treated in pre-trial detention. Their lawyers asked both the investigating judge and, subsequently, the trial court to order that they be medically examined for evidence of torture, but these requests were denied. All 30 defendants were convicted. On 30 December 2007, the court imposed death sentences on two of the accused, **Saber Ragoubi** and **Imed Ben Amar**, sentenced eight other defendants to life imprisonment and the remaining 20 to prison terms ranging from five to 30 years. On 21 February 2008, the Tunis Court of Appeal, following lengthy overnight sessions that began on the morning of 19 February, commuted Imed Ben Amar's sentence to life imprisonment, confirmed the death sentence on Saber Ragoubi, and amended other sentences to prison terms ranging from three years to life imprisonment.

The Soliman Case trial, which was observed in part by Amnesty International, suffered from serious breaches of the right to fair trial. In particular, defence lawyers were allowed insufficient time to examine the court papers and prepare the defence case, and the court failed adequately to investigate defendants' allegations that they were tortured and forced to “confess” during pre-trial detention. Defence lawyers repeatedly urged the court to order that the defendants be medically examined for evidence of torture, but the court refused to do so without providing clear reasons for its decision. At one stage, the defence lawyers walked out

---

<sup>2</sup> See, Concluding observations of the Committee against Torture: Tunisia. 19/11/98. A/54/44, para. 103(c).

of the court in protest at the way the proceedings were being conducted; when they did so, the defendants were assaulted by security officials in full view of the court.

### ***Civilians before military justice***

The Tunisian Code of Military Justice (CMJ) places certain criminal offences within the jurisdiction of military courts – for example, undermining the internal or external security of the state (Article 5) – and permits civilians accused of such offences to be tried before military courts (Article 8).<sup>3</sup> The CMJ also empowers the authorities to prosecute Tunisian nationals who serve, during peacetime, in a foreign army or in a “terrorist” organization operating abroad (Article 123).<sup>4</sup>

The Tunisian authorities use these provisions to try civilians before military courts without providing an adequate justification for using military rather than ordinary civil courts. Trials before military courts fail to satisfy international standards of fair trial, notably the right to a public trial before an independent and impartial court, the right to prompt access to a lawyer, the right to prepare an adequate defence, and the right to appeal.

Trials in military courts are conducted before a presiding judge, who is a civilian, and four counsellors, all of whom are serving military officers. Military courts are located within military compounds to which public access is restricted, thus severely limiting public access to the court. Defendants, if convicted, have no right of appeal other than a right to seek a review before the military court of cassation. Civilian defendants often lack information about the proceedings and a number have reported that they did not realise that they were being questioned by an investigating judge during their pre-trial detention because he was wearing a military uniform. Defence lawyers complain that they are given only restricted access to their clients’ files and that the authorities obstruct them by withholding relevant information, such as the dates of scheduled hearings. Unlike the ordinary criminal courts, military courts do not allow lawyers access to a register of pending cases.

**CASE:** On 12 July 2006, the Tunis Permanent Military Court sentenced Tunisian-Bosnian dual national Taoufik Salmi to five years in prison on charges of belonging in time of peace to a terrorist organization abroad. He was expelled from Luxembourg on 4 April 2003 after the authorities there arrested him on suspicion of planning terrorist acts, and arrested on arrival at Tunis airport. He was detained incommunicado for more than a month, during which he says he was tortured by being beaten all over his body and suspended in the *poulet rôti* position. He did not have the assistance of a lawyer when he was taken before an investigating military judge for the first time, on 8 May 2003. He was unable to move his shoulder and still had visible injuries on his wrists and ankles, apparently the result of torture, when first seen by his lawyer in May 2003. The police report states that he was arrested in Tunisia on 5 May 2003 whereas, in reality, he had been detained one month earlier. The court is reported to have refused to allow the defence team to review the full case file but did permit the defendant to undergo a medical examination, which was undertaken, however, by a general practitioner rather than a doctor specialised in identifying injuries caused by torture. The general practitioner’s medical report stated that there were no signs of violence on Taoufik Salmi and that he had not reported having suffered any violence when first admitted to prison and examined by the prison doctor a few weeks earlier. No official investigations were carried out into his alleged torture and other ill-treatment or the falsification by police of his date of arrest.

---

<sup>3</sup> Amended by Law 2000-56 of 13 June 2000.

<sup>4</sup> “Every Tunisian who puts himself/herself, in peacetime, 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].

**CASE:** Abdellah al-Hajji, one of two Tunisians who were returned to Tunisia from detention at the US prison in Guantánamo Bay, Cuba, in June 2007, was retried before a military court in Tunis. This occurred after he challenged a 10-year prison sentence that had previously been imposed on him *in absentia* by a Tunisian military court in 1995. In November 2007, he was convicted of belonging “in time of peace to a terrorist organization operating abroad” and sentenced to seven years’ imprisonment. Both he and the other detainee who was returned by the US authorities, Lotfi Lagha, were arrested on arrival and detained at the State Security Department of the Interior Ministry, where they allege that they were ill-treated and forced to sign statements. According to Abdellah al-Hajji, he was deprived of sleep, slapped in the face and threatened that his wife and daughters would be raped in order to make him “confess.” Lotfi Lagha was convicted under the anti-terrorism law of associating with a terrorist organization operating abroad and sentenced to three years’ imprisonment in October 2007.

### ***Independence of the judiciary***

The Constitution states: “The judiciary is independent; the only authority to which judges are subject in the exercise of their functions is that of the law” (Article 65) and the Tunisian government contends that the judiciary is independent and free of state interference. In practice, however, the judiciary is not independent in Tunisia and occupies a position of subservience in relation to the executive branch of government.

The Supreme Council of the Judiciary (*Conseil Suprême de la Magistrature*, CSM), which has responsibility for the appointment, promotion, transfer and discipline, including dismissal, of judges, is headed by the President of the Republic and has the Minister of Justice as its vice-president. In all, no less than 11 of its 17 other members are representatives of the executive branch or appointed by it. The remaining six members are judges who are directly elected through a ballot controlled by the Ministry of Justice which lacks transparency. The voting is by post and the envelopes containing votes are opened and counted at the Ministry of Justice by a four member commission appointed by the Minister of Justice.

Since August 2005, when the law on the judiciary was amended by the government, disciplinary decisions made by the CSM’s Disciplinary Board can only be appealed before the CSM’s Appeal Commission, whereas previously they could be appealed before the Administrative Court. This increases the vulnerability of judges to political interference by the executive powers.

Some judges and magistrates have spoken out in recent years and called for greater judicial independence. Prior to the August 2005 amendment of the law on the judiciary, the Association of Tunisian Judges (*Association de Magistrats Tunisiens*, AMT) publicly criticized government interference in the judiciary; this led the authorities in September 2005 to bar members of the AMT’s Executive Board from entering the AMT’s office at the Palace of Justice in Tunis. Some AMT members were also transferred to remote areas, distant from their homes and families, apparently to deter or silence them. Then, in December 2005, the government contrived to obtain the election of a new Executive Board at an extraordinary congress of the AMT which was apparently packed with judges acting on behalf of the Ministry of Justice and in breach of the AMT’s internal statute. This congress also called for the dismissal of the AMT’s existing Executive Board. Legal challenges to this take over of the AMT and to the transfer of some AMT members to distant areas were unsuccessful.

Judges known for their independence have also been prevented from travelling abroad; for example, in September 2006, Judge Wassila Kaabi, a member of the AMT’s ousted Executive Board, was prevented from travelling to Hungary to participate in a meeting of the International Union of Judges. In October 2007, president of ousted AMT’s Executive Board, Ahmed Rahmouni was prevented from travelling to Washington DC to speak in a conference about the independence of the judiciary in Tunisia. Under the law, judges are not permitted to leave Tunisia without first obtaining the express permission of the Secretary of State for Justice.

In July 2001, Judge Mokhtar Yahiaoui, issued an open letter addressed to President Ben Ali in his capacity as head of the CSM in which he 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 complained that judges were forced to comply with decisions made by the executive branch regarding the outcome of investigations and trials, and called for the constitutional principle of judicial independence to be applied and guaranteed. Following this public criticism, Mokhtar Yahiaoui was threatened with death, including by a high ranking security official, and dismissed from office in December 2001 by a Disciplinary Board which accused him of having failed in his professional duties as a judge.

## **Article 15: legality of criminal offences**

The definition of terrorism contained in Tunisian was significantly broadened through the introduction of the anti-terrorism law in 2003, replacing that previously given in Article 52bis of the Tunisian PC.<sup>5</sup>

Amnesty International acknowledges that there is no internationally agreed definition of terrorism. However, any definition must conform with established principles of criminal law, in particular the principles of legality and individual responsibility

The Tunisian anti-terrorism law’s definition of terrorism fails to respect these principles. It extends the notion of “terrorism” beyond conduct such as that prohibited under international conventions relating to terrorism<sup>6</sup> to include acts seen as illegitimately “influencing state policy” and “disturbing public order,” with possibly far-reaching consequences for the rights to freedom of expression, association and assembly. The UN SR on Terrorism and Human Rights drew attention to this in his 2005 report<sup>7</sup> and observed that the definition of terrorism contained in the anti-terrorism law is overly general and broad, and could be used as a repressive measure to curtail legitimate dissent.

The anti-terrorism law criminalizes certain acts and terrorist activities, as well as instigating, supporting and financing terrorist acts, and makes them punishable as separate offences distinct from the principal act or independently of any specific terrorist act. As a result, whenever an act is designated as having been a terrorist act, it automatically incurs the application of the most severe penalties for those convicted of it.

Many aspects of the anti-terrorism law are extremely worrying, notably its criminalization of acts of incitement; its ambiguous procedures for designating terrorist groups; the potential criminal liability it confers for unintentional conduct and unintended consequences that are deemed to fall foul of the law; the limitations it places on fair trial rights in respect to terrorism-related cases; and the potential it provides for indefinite pre-trial detention.

---

<sup>5</sup> Article 4 of Law No. 2003-75 (10 December 2003), concerning support for international efforts to combat terrorism and prevent money-laundering, provides that “An offence committed by a group or an individual, regardless of the motives, will be classified as an act of terrorism if it is capable of terrorizing a person or a group of people or creating terror among the population with the aim of influencing the politics of the State and forcing it to do something it had not intended to do or to refrain from doing something it intended to do, of disturbing public order, peace or international security, of harming people or property, of causing damage to buildings, housing diplomatic or consular missions or international organizations, of causing serious damage to the environment, which is likely to endanger the lives or health of residents, or of causing damage to essential resources, infrastructures, means of transport and communication, information technology systems or to public services.” [Amnesty International’s translation]

<sup>6</sup> See, SR Terrorism and Human Rights, E/CN.4/2006/98 at para. 42.

<sup>7</sup> See, E/CN.4/2006/98 Add. 1 at para. 15.

## **Article 16: enforced disappearance**

As stated above, political and security suspects are frequently detained incommunicado and held in secret, without official acknowledgement, for days or weeks before being moved into official *garde à vue* – during such periods, they are effectively victims of enforced disappearance. There is a longstanding pattern in this regard which has previously been exposed by Amnesty International and other human rights organisations, yet the Tunisian authorities have failed to take effective measures to enforce a cessation of such illegal practices or to bring to justice those officials responsible for such abuses.

## **Article 17: the right to privacy**

Article 17 provides for the right of every person to be protected against arbitrary or unlawful interference with his privacy, family, home or correspondence as well as against unlawful attacks on his honour and reputation.

Certain aspects of private life continue to be criminalized under Tunisian law. For instance, consensual sexual relations between adults outside of marriage are criminalized. Other sexual acts, including same-sex consensual conduct, are also criminalized under the Penal Code. Explicitly, Article 230 of the Penal Code provides for imprisonment of up to three years for acts of sodomy. Article 236 of the Penal Code criminalizes adultery committed by either husband or wife, and provides for imprisonment of up to five years with a fine of 500 dinars. The article further provides that the “accomplice” to an act of adultery is subject to the same penalties.

## **Article 18: Harassment and violence against women who wear the *hijab***

Article 5 of the Constitution states: “the Tunisian Republic guarantees the inviolability of the individual, freedom of conscience and freedom of religious worship, provided that it does not disturb public order.” However, despite this guarantee, many Muslim adult women who choose to wear the *hijab*, i.e. cover fully their hair with a headscarf, in accordance with their religious beliefs, are subject to restrictions, harassment and even violence.

Several ministerial decrees prohibit women from wearing the *hijab* in public. Decree 108, issued in 1981 at the time of a government crackdown on members of *Ennahda*, bans the wearing of the *hijab* in government offices; it states that women civil servants should “remain in the enlightened image as desired by their liberator President Habib Bourgiba.” Decree 102, issued in 1986, extended the prohibition to educational institutions, while Decision 70 issued in December 2002 by the Minister for Higher Education and Scientific Research, requires university principals to “prohibit the entrance into educational institutions of all those who wear clothing which has sectarian connotations.” In December 2006, an Administrative Court ruled against the Ministry of Education’s decision to suspend teacher Saida Adali from school for three months for wearing the *hijab*. The ruling was in response to a complaint lodged by her lawyer in 2002. However, in October 2007, the Ministry of Education appealed the administrative court decision and the matter currently is pending.

Senior government officials have spoken out against wearing the *hijab*. On 11 October 2006, President Ben Ali and the Ministers of Foreign Affairs and of the Interior publicly criticised the rise in the number of women and girls wearing the *hijab* and men wearing beards and *qamis* (knee-length shirts), with the President denouncing the *hijab* as a “garment of foreign origin having a sectarian connotation.” Foreign Affairs Minister Abdelwahab Abdallah called it a “political slogan used by a splinter group to hide behind religion in order to achieve political ends,” and Interior Minister Rafik Belhaj Kacem

described the *hijab* as “a symbol of belonging to a political group which hides behind religion.”<sup>8</sup>

In themselves, these statements are simply expressions of view but they take on a more worrying aspect in light of the degree to which women who wear the *hijab* and men who wear beards are targeted for harassment by state officials. Police frequently harass women who wear the *hijab* in the street, arresting them or ordering them to cease wearing the headscarf, particularly at certain times such as during the Muslim month of Ramadan in September 2007. In December 2007, Amnesty International delegates spoke to a number of women who had been stopped in the street by police for wearing the *hijab* and told to remove it or had it pulled off them by police in plain clothes. Others had been arrested, taken to the nearest police station and made to remove their headscarves.

**CASE: Amal Ben Rhouma**, a 24-year-old engineering student, has been stopped on the street by plainclothes policemen and told to remove her *hijab* and verbally abused when she refused. In May 2004 she was arrested and taken to a police station where she was questioned as to why she wore the *hijab* and told to sign a document declaring that she would no longer wear it. When she refused, she was slapped in the face and knocked to the ground, then kicked. When **Sonia Srasra**, a 25-year-old law student, went to the Dandan Police station in Manouba governorate to apply for a national identity card to replace the one she had lost, she was told by the policeman that he would only accept her application if she took off the *hijab* and sign a commitment to never wear it again.

Amnesty International believes that concern for the protection of the secular or theocratic nature of the state should not override the fundamental rights of women and girls to express their conscientiously held beliefs or identity.

## Article 19: Freedom of expression,

### *Legal Context*

The Constitution guarantees freedom of expression in Article 8: “liberty of opinion, expression, the press, publication, assembly, and association are guaranteed and exercised within the conditions defined by the law.” The Constitution does not further elaborate as to the nature of the conditions that may be “defined by law.”

On 27 July 2004, the government promulgated the Law on the Protection of Personal Data, Law No 2004-63, which the authorities said was intended to protect personal privacy. In practice, however, it further restricts access to information by requiring journalists, writers and non-governmental organizations to obtain advance authorization from the National Commission for the Protection of Personal Data, established by Article 75, before they publish anything that could be considered personal data. This inevitably has a negative impact on press freedom and reduces the possibility that journalists can report, for example, on official corruption or other failures on the part of the authorities. Articles 75-85 set out the workings of the National Commission for the Protection of Personal Data; this is composed of appointed representatives from the executive, legislature and the judiciary, as well as one representative from the Higher Committee on Human Rights and Fundamental Freedoms.

---

<sup>8</sup> Amnesty International’s translation from the French: President Ben Ali : «d’inspiration sectaire importée de l’extérieur» ; Minister of Foreign Affairs Abdelwaheb Abdallah : «un slogan politique affiché par un groupuscule qui se dissimule derrière la religion pour réaliser des desseins politiques» and Minister of the Interior Rafik Belhaj Kacem : «symbole d’une appartenance politique qui se cache derrière la religion, qui en est innocente, et qui cherche à faire revenir la réalité de la société aux ères très anciennes» , AFP report 14/10/2006

Oversight of the law is in the hands of the Commission, which is accountable only to the Tunisian president and whose proceedings are not open to public scrutiny.

The definition of terrorism contained in the anti-terrorism law is so broad and vague, as stated above, that this law could be used to prosecute and imprison individuals for seeking legitimately to exercise their right to freedom of expression. Article 6 of the law criminalises as terrorist offences “acts of incitement to hatred or racial or religious fanaticism” but fails to elaborate further raising the possibility that this too could be used to prosecute legitimate expression.

## **Censorship**

### **- Internet censorship**

The production, provision, sharing and storing of information on the Internet are subject to the Press Code and a ministerial decree of 1997<sup>9</sup> but these are supplemented, in practice, by other measures which arbitrarily interfere with the right to seek, receive and impart information, such as by restricting access or hindering the sharing of information with others. With the increase in number of Internet users in Tunisia, the Tunisian authorities have conducted systematic Internet censorship outside of any legal framework. All Internet traffic on the various Internet Service Providers must pass through the Ministry of Communications’ Tunisian Internet Agency, which enables the authorities to block unwanted content. Websites of human rights organizations in Tunisia, or those which publish human rights-related information (such as *Tunis News* and *Kalima*) are permanently blocked. As well, websites of international organizations which publish information critical of Tunisia’s human rights record, including Amnesty International, Human Rights Watch and Reporters Without Borders, are also prone to be blocked by the authorities. Within Tunisia, national human rights organisations such as the National Council for Liberties in Tunisia (*Conseil National pour les Libertés en Tunisie*, CNLT) have had their email connections cut by the authorities without warning when publishing information deemed critical of the Tunisian authorities.

### **- Censorship of print media**

Under Article 13 of the Press Code, those seeking to publish a newspaper or periodical are required to register the publication with the Ministry of the Interior. Under the law, once the relevant information is submitted, the Ministry must automatically issue a receipt. In practice, however, the authorities have withheld such receipts for a number of independent or opposition publications, usually without giving reasons. As they are not officially registered, the publications cannot be printed in Tunisia, as printers are required by law to see the receipt delivered by the Ministry of the Interior before proceeding to printing.<sup>10</sup> Several publications associated with critics of the government have been denied proof of registration by the Interior Ministry, so preventing their publication in Tunisia. They include *Kalima* (Word), a magazine published by the CNLT; *Kaws el-Karama* (Arch of Dignity), edited by Jalel Zoghلامي, a known government critic; *La Maghrébine*, edited by journalist Noura Borsali; and *Alternatives Citoyennes*, edited by Nadia Omrane.

Under the Press Code, the authorities are able to regulate the conditions under which foreign newspapers and other publications are distributed in Tunisia. In practice, they exercise periodic censorship of foreign publications, by preventing the distribution in Tunisia of editions of newspapers which contain reports critical of the government. This occurs with newspapers such as the French dailies *Libération* and *Le Monde*, and Arabic-language dailies

---

<sup>9</sup> The use of the internet is governed by a decree of the Ministry of Communications of 14 March 1997, in addition to four ministerial decisions issued on 22 March 1997. See Ministry of Communications, decree No. 97-501 of 14 March 1997, concerning value added services of telecommunications.

<sup>10</sup> Press Code, Article 14.

*Al-Qods al-Arabi* and *al-Hayat*, when they contain critical reports on Tunisia. This also occurred with editions of *L'Expression* and *Historia Thématique*. In February 2007 the website of the French daily *Libération* was blocked seemingly because it included an article by Tunisian journalist Taoufik Ben Brik which was critical of the Tunisian authorities.

Issues of *Al-Mawkif*, the publication of the legal opposition Progressive Democratic Party (PDP), were banned because of articles they contained – for example on 24 March 2007 and 22 June 2007. In September the PDP was notified that they would have to vacate the apartment they had occupied for 23 years because the landlord considered that they had ‘misused’ the premises, and this was confirmed by a court decision on 1 October 2007. Two PDP leaders, Nejib Chebbi and Maya Jribi, launched a hunger strike in protest at the requirement to vacate, and later an agreement was reached under which the landlord withdrew their notice to quit and they ended their hunger strike.

### ***Use of criminal law to limit exercise of free expression by journalists and human rights defenders***

Journalists or activists perceived as critical of the government have been prosecuted on what appear to be trumped-up criminal charges which seek to discredit them.

**CASE:** On 4 December 2007, journalist **Slim Boukhdir** was sentenced to one year in prison by a court in Sakiet Ezzit (Sfax) on charges of “insulting a public officer during the performance of his duties” and “breaching public morality” and an additional fine of five dinars (approx. US\$ 4) for refusing to show his ID card. His trial was observed by an Amnesty International delegation, which noted a number of irregularities in the trial. The court declined to ensure that witnesses were called and cross-examined, in breach of the rights of defence, and failed to look into alleged irregularities in the police and interrogation reports to which defence lawyers drew the court’s attention. His sentence was upheld by the Court of Appeal in Sfax on 18 January 2008.

Slim Boukhdir had received death threats in May 2007 following an interview he gave to *al-Hiwar* (Dialogue), a London-based TV channel, in which he accused a relative of President Ben Ali of responsibility for a stampede at a concert in which seven people were killed. A freelance journalist, he was formerly employed by *Al-Chourouk*, a daily newspaper, but he was dismissed from his job after he used the Internet to publish interviews he had conducted with a number of government critics and opponents who launched a hunger strike during the World Summit on Information Society, which was held in Tunis in November 2005. Prior to his arrest in November 2007, Slim Boukhdir went on hunger strike for 15 days in protest at official delays in issuing him with a passport.

**CASE:** Lawyer and human rights defender **Mohamed Abbou** was arrested and detained on 1 March 2005 in connection with an article in which he denounced torture in Tunisia following the interest generated by images of torture and other ill-treatment of Iraqi prisoners by US forces at Abu Ghraib prison in Baghdad. On 29 April 2005, he was sentenced to three and a half years in prison – 18 months for the article denouncing torture in Tunisia and two years for allegedly assaulting Dalila Mrad, a female lawyer, a charge which eyewitnesses declared to be without foundation. The trial was unfair for a variety of reasons, including that the court refused to hear defence witnesses. The sentence was confirmed by the Court of Appeal in June 2005.

Mohamed Abbou was conditionally released on 24 July 2007 under a presidential pardon issued to mark the 50<sup>th</sup> anniversary of the Republic of Tunisia. He had served 28 months of his three-and-a-half-year sentence. He found out later, when attempting to take a flight to London, that he had been placed under a one-year travel ban because of the ‘conditional nature’ of his release, although no details were given as to what these conditions were.

## **Harassment of journalists**

Journalists who criticise the authorities in their writings risk not only prosecution but other forms of harassment and intimidation. Lotfi Hajji has been repeatedly summoned to the Interior Ministry and questioned about the activities of the Union of Tunisian Journalists (*Syndicat des Journalistes Tunisiens*, SJT) since it was established in 2004 and he became its president. In April 2007, he was assaulted by plainclothes police officers and barred from attending and reporting on a meeting of the Democratic Progressive Party at the time of the hunger strike of two of its leaders. This was the fifth time within a month that he had been barred from covering an event by the police.

## **Articles 21 and 22: Restrictions on freedom of Association and Assembly,**

Article 8 of the Tunisian Constitution provides that “1) Liberty of opinion, expression, the press, publication, assembly, and association are guaranteed and exercised within the conditions defined by the law. 2) The right of unionization is guaranteed.”

### **Restrictions on union activities**

Censorship is rife and it is believed that many journalists also feel obliged to exercise self-censorship, including both journalists working for state media and those employed in the privately-owned media. In March 2004, a group of journalists courageously drew attention to this in an open letter that they circulated among government officials and civil society organizations. The letter expressed concern at what the journalists described as excessive censorship of their reporting by senior managers overseeing their work, apparently due to pressure from state authorities. In May 2004, two months after this letter appeared, some 150 journalists got together to form a new professional association, the Union of Tunisian Journalists (*Syndicat des Journalistes Tunisiens*, SJT), as an independent body dedicated to defending journalists’ rights and promoting media freedom.

The SJT’s activities have been subject to numerous restrictions by state authorities and its president, Lotfi Hajji, has been repeatedly summoned for interrogation about the union’s activities by the Interior Ministry’s security department. When he was summoned in August 2005, he was interrogated for six hours and then informed by the authorities that the SJT’s first congress, due to be held on 7 September 2005, had been banned without explanation. In April 2006, the police prevented meetings of the SJT executive board taking place. A new syndicate, the *Syndicat National des Journalistes Tunisiens*, was established on 13 January 2008.

### **Human rights organizations are unable to register**

The Tunisian law on associations requires that NGOs submit an application for official registration before they can operate legally. Under the law, once an NGO has filed an application it may operate freely while the authorities process the application, and if it is not rejected within 90 days, the NGO is automatically registered.

In practice, however, the authorities block the registration of certain new NGOs by refusing to accept their registration applications and providing a receipt as evidence that it has been received. When members of such new NGOs proceed to the offices of the governorate to deliver the application forms, they are physically prevented from entering by police and officials are unwilling to take the forms from them. Registration has been denied in this manner to most leading independent human rights organizations, including the International Association for the Support of Political Prisoners (*Association Internationale de Soutien aux Prisonniers Politiques*, AISPP), the Association Against Torture in Tunisia (*Association de Lutte contre la Torture en Tunisie*, ALTT) and, recently, the organization *Liberté et Équité*,

which attempted to register on 28 September 2007. Without such a receipt, NGOs are unable to counter the government's assertions that they have not applied to register and are effectively prevented from operating. Organizations which are not legally recognized are barred from seeking official authorization to hold public events or rent venues for such events, or to seek funds to support their work from within Tunisia. Their activities can be criminalized, with their officials and members open to charges of taking part in an unauthorized meeting or membership of an illegal organization.

The CNLT is one of the few organizations which managed to obtain a receipt when it first registered in December 1998. In March 1999, however, the organization was informed by the Interior Ministry that the application had been rejected. No reason was given. The founding members sought to challenge this decision in the courts and filed a claim at the end of March 1999. In August 2001, they were informed that the judge had completed the investigation and by November 2001 the case should have been transferred to the competent court. This did not occur, however, and there have been no further developments in the case since 2001. The organisation continues to operate but in a situation of legal limbo that inevitably constrains its activities.

### ***Human rights organizations are denied freedom of assembly***

Even where official registration and legal recognition are obtained, this provides no guarantee that an organization can operate free from arbitrary official interference, as evidenced by the experience of the Tunisian League for Human Rights (*Ligue Tunisienne des Droits de l'Homme*, LTDH), the Association of Tunisian Judges (*Associations des Magistrats Tunisiens*, AMT) and the Tunisian section of Amnesty International. All these NGOs have had meetings prevented or disrupted by the police.

Law No. 69-4 of 24 January 1969 stipulates that the authorities must be informed prior to a public meeting taking place. A circular issued in January 1997 by the Ministry of Higher Education requires that anyone organizing a meeting or conference in Tunisia must submit in advance to the Ministry of the Interior the list of participants, a copy of the agenda and details of the date, time and place of the meeting. Seemingly under the authority of this circular, even meetings taking place in private homes have been disrupted or banned.

A private meeting of members of the Tunisian Section of Amnesty International (AI-Tunisia) scheduled to take place in Sousse on 22 April 2007 at the home of one of the members, was prevented from taking place by local authorities who claimed that this meeting was unauthorized. Foreign Ministry officials informed an Amnesty International delegation in November 2007 that the nature of a meeting, as seen by the authorities, is determined by its objectives. On 14 June 2007, AI-Tunisia announced the formation of a Tunisian National Coalition against the Death Penalty together with a group of other independent organizations. The following day, the house of Habib Marsit, chairperson of AI-Tunisia, was searched by police who failed to produce a warrant and he was informed by Interior Ministry officials that section was to cease all activities related to this coalition if it wished to continue to operate.

Finding a hotel willing to rent its conference facilities to a human rights organization for an external event is another challenge, since the authorities often pressure the hotel into cancelling at the last minute due to "technical difficulties". A circular issued by the Ministry of Tourism in March 1997 requires hotel managers to inform the police of any meeting, seminar or other function to be held in their hotel. It instructs them to communicate to the police details including the name of the organizer, the number and nationality of the participants in the meeting, and specifies that police authorization is necessary in all cases. Human rights organizations have experienced last-minute cancellation of hired hotel halls, on the pretext of sudden repairs or unavailability and believe that this occurs because of pressure by the authorities on the hotel when they do not wish a particular conference or meeting to take place. This occurred, for example, in June 2007 when the Tunisian Association of Democratic Women (*Association Tunisienne des Femmes Démocrates*) was informed the day

before a youth seminar was due to take place that the hotel would not be able to provide them with the conference facilities they had reserved due to “technical problems.”

The premises of human rights organizations are under constant surveillance, as an Amnesty International delegation noted most recently in December 2007, and staff have become accustomed to having security officers in plainclothes stationed outside their offices. This presence can be dramatically increased at certain times. For example, on 8 March 2007 the office of the CNLT was surrounded by police officers who prevented people from accessing a joint press conference with Reprieve. The day before, two members of Reprieve were briefly detained by police and questioned about the purpose of their visit to Tunisia and their contacts. Later on 19 May 2007 the second day of a workshop on “Digital Security and Privacy” being run jointly by the CNLT and Frontline was prevented from taking place by a police who blocked access to the venue, the CNLT’s office. Security officials then allowed no one other than CNLT spokesperson, Sihem Bensedrine, in whose name the premises were leased, until 2 July 2007.

In other cases too, security officials have prevented members of human rights NGOs entering their offices to attend general meetings, as in September 2007 when **AISPP** members were prevented from holding a preparatory meeting for their general assembly. Since 7 May 2007, the offices of the **LTDH** have been inaccessible to everyone except the executive board due to the police stationed outside who prevent people from entering. In November 2007, Amnesty International delegates accompanied by a Tunisian colleague observed the presence of six or seven plainclothes police outside the LTDH’s office and were intercepted by these police who instructed the Tunisian that he could not pass.

### ***Harassment of individual human rights defenders***

Human rights defenders are subject to frequent harassment and intimidation, including physical attacks by police or plainclothes security officials or people acting on their behalf. In March 2005, lawyer and human rights defender **Radhia Nasraoui** was beaten up in the street by police officers while on her way to a demonstration being held to protest the government’s decision to invite Israeli Prime Minister Ariel Sharon to attend the World Summit on the Information Society. A founding member of the ALTT, she sustained a broken nose, cuts to her forehead and extensive bruising. No action is known to have been taken against those responsible. Some human rights defenders have recognized their attackers as individuals who have previously been among those keeping them under surveillance outside their homes or workplaces.

Amnesty International is aware of no cases in which attacks on human rights defenders have been investigated by the Tunisian authorities or have resulted in prosecutions of those who carry them out. On 31 August 2007 the office of lawyer and human rights defender **Ayachi Hammami** was damaged in a suspicious blaze a few days before he was due to attend a conference in Paris at which he was to provide information on the lack of independence of the Tunisian judiciary. He lodged a formal complaint and gave testimony before an investigating judge on 3 September 2007, but there have been no developments in the case.

The frequent police presence outside the offices of human rights defenders who are lawyers inevitably deters their clients and potential clients. On occasions, security officials have also assaulted human rights lawyers. On 14 April 2007, security officials physically prevented lawyer **Abdelraouf Ayadi** from entering the court-room in which he was defending several young men accused of terrorism -related offences. Earlier, human rights defender Ali Ben Salem had been expelled from the court while observing the trial. Later, Ayadi’s car was vandalized and in November 2007, police officers verbally abused him, threw him to the floor and dragged him when he sought to visit a human rights activist and journalist who were on hunger strike to protest against the authorities’ refusal to issue them with passports. On 7 December 2007, lawyer **Samir Ben Amor** was forced into a car by three

police officers and taken to Sidi Bechir police station where a DSS official questioned him and told him to cease allowing members of the AISPP to hold meetings in his office.

On 18 February 2008, **Samia Abbou**, a member of the *Association Tunisienne de Lutte Contre la Torture*, and **Fatima Ksila**, a member of the Paris-based Comité pour le Respect des Libertés et des Droits de l'Homme, visited the family of Imed Ben Amer, who had been sentenced to death on 31 December 2007 and later commuted to life imprisonment on 21 February 2008. When they arrived, however, they saw some 20 police and four police cars stationed outside and who then prevented them proceeding by force.

On 3 March 2008, human rights defenders **Sihem Bensedrine and Omar Mestiri** were detained and assaulted upon their arrival at La Goulette port. Both journalists and board members of the CNLT, they were returning from Germany by boat and were stopped by customs officers and detained for six hours. During this time they were searched and when they tried to resist having their laptops taken away from them by the police, they were roughly pushed aside and were hit. The police copied all of the information off their laptops, which includes case information, articles, accounts, password details and archives of communication with contacts, using USB keys to transfer it to the two police laptops. After 6 hours the police allowed them to leave, however they retained around 60 documents and refused to give them back. Sihem Bensedrine has requested a medical examination and has filed a complaint before the prosecutor.

## **Articles 3 and 26: Non-discrimination and equal rights of men and women**

According to Article 3 of the ICCPR, women and men have equal rights to enjoy the civil and political rights enshrined in the ICCPR. Article 26 recognizes that all persons are equal before the law and should be protected against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Amendments to the Personal Status Code (PSC) and the Nationality Code have much improved a situation of legal discrimination against women, but do not fully address it. Amendments to the Nationality Code provide that women married to non-nationals can now confer nationality to their children. However, despite important amendments to the Personal Status Code introduced in Law No. 93-74 of 12 July 1993, Tunisian law continues to discriminate against women in matters of marriage, divorce, child custody and guardianship, as well as inheritance, and nationality.

### ***Marriage***

The amended PSC sets out the same minimum age of marriage for both men and women, of eighteen years (Article 5). However, according to Article 8 of the Personal Status Code, it is only the closest male relative who may consent to the marriage of a minor. Implicitly, this reinforces the view that a female under the age of majority requires a male guardian to take important life decisions on her behalf, feeding into stereotypes of male dominance.

Important amendments were introduced to ensure that both spouses can equally enter into contracts and dispose of their property in marriage. Amended Article 153 of the PSC stipulates “a minor over the age of 17 shall become adult by marriage in regard to personal status and the management of his or her civil and business affairs”. This amendment ensures that both spouses, even where they are under the age of majority, currently set at 20 years old, can still dispose of their property on equal terms.

According to the amended PSC, a wife no longer has a legal obligation to obey her husband; this has been abolished in favour of an equal set of duties for both spouses. Article

23 sets out reciprocal obligations of spouses in marriage, however it continues to reinforce a stereotypical understanding of the husband as head of the household, as evidence in the text of the law.<sup>11</sup> Article 24 further makes explicit that the husband does not have any power to control the property of his spouse. Furthermore, under Article 11, any clause can be inserted into the marriage contract.<sup>12</sup>

## ***Divorce, Child Custody and Guardianship***

Women enjoy substantial rights in Tunisia. Article 31 PSC, as amended by Law n° 81-7 of 18 February 1981, states that a court may pronounce a divorce on three bases: (a) in the case of mutual consent of the spouses; (b) at the request of one of the spouses because of a prejudice they have suffered; and (c) at the request of either the husband or the wife.

The new provisions of Article 67 of the PSC allows equal rights of guardianship to a divorced mother, including new abilities to manage her children's education, civil and commercial affairs. Additionally, Article 67 now allows a judge to grant all the prerogatives of guardianship to the mother and fully attribute to her the function of "guardian" "if the father proves unable to exercise or transgresses such prerogatives or if he abandons the home and has no known address, or for any reason prejudicing the interests of the child". A divorced mother who has custody of her child now has a say in her child's affairs under Article 60 of the PSC, as amended by the Act of 12 July 1993, whereas this right was previously accorded only to the father or other guardian, who was necessarily male.

Article 58 of the PSC still provides for different criteria for the guardianship of children where this is done by a woman or a man.<sup>13</sup> The Article explicitly provides that a female guardian must be unmarried, except where the judge considers this to be contrary to the interests of the child, or where the husband is a relative or the child's tutor. No such requirement is present in the case of a male guardian, but rather Article 58 states explicitly

---

<sup>11</sup> PSC, Article 23, Modifié par la Loi n° 93-74 du 12 juillet 1993.

Chacun des deux époux doit traiter son conjoint avec bienveillance, vivre en bon rapport avec lui et éviter de lui porter préjudice.

Les deux époux doivent remplir leurs devoirs conjugaux conformément aux usages et à la coutume.

Ils coopèrent pour la conduite des affaires de la famille, la bonne éducation des enfants, ainsi que la gestion des affaires de ces derniers y compris l'enseignement, les voyages et les transactions financières.

Le mari, en tant que chef de famille, doit subvenir aux besoins de l'épouse et des enfants dans la mesure de ses moyens et selon leur état dans le cadre des composantes de la pension alimentaire.

La femme doit contribuer aux charges de la famille si elle a des biens.

<sup>12</sup> PSC, Article 11 :

Peut être insérée dans l'acte de mariage, toute clause ou condition relative aux personnes ou aux biens. En cas de non-réalisation de la condition ou d'inexécution de la clause, le mariage peut-être dissous par divorce.

Cette dissolution n'ouvre pas droit à indemnité si elle a lieu avant la consommation du mariage.

<sup>13</sup> Article 58 of the amended Personal Status Code states,

Le titulaire du droit de garde doit être majeur, sain d'esprit, honnête, capable de pourvoir aux besoins de l'enfant, indemne de toute maladie contagieuse. Le titulaire du droit de garde de sexe masculin doit avoir, **en outre, à sa disposition une femme qui assure les charges de la garde**. Il doit avoir avec l'enfant de sexe féminin une parenté à un degré prohibé. Le titulaire **du droit de garde de sexe féminin doit être non marié**, sauf si le juge estime le contraire dans l'intérêt de l'enfant, ou si le mari est parent à un degré prohibé de l'enfant ou tuteur de celui-ci. De même, si le titulaire du droit de garde s'abstient de réclamer son droit pendant une année après avoir pris connaissance de la consommation du mariage, ou que la femme soit nourrice ou à la fois mère et tutrice de l'enfant.

that a male guardian should have available a wife to discharge the duties of guardianship. Rather than reinforcing gender stereotypes and creating unequal rights and obligations in law, guardianship of children whether accorded to the mother or father should always be done on the basis of the best interests of the child, regardless of the personal status or sex of the guardian, rather than introducing any additional or distinctive criteria where guardianship may be given to the mother.

### ***Women and Nationality***

Until the reforms of 1993, a Tunisian woman married to a foreign national was not entitled to transmit her nationality to a child from the marriage, unless the child was born in Tunisia or submitted an application for nationality one year before coming of age. Under amendments to the Nationality Code made under Law No. 93-62 of 23 June 1993, mothers now have the ability to transmit nationality to their children on the basis of a joint declaration made by the mother and father of the child.

Article 12 of the Nationality Code now provides, “A child born abroad of a Tunisian mother and an alien father shall become Tunisian, provided that he claims that status by declaration within a year preceding his coming of age. However, before reaching the age of 19, the applicant shall become Tunisian upon joint declaration by his mother and father.” (cf. para. 34) However, Article 6 grants Tunisian fathers the right to pass their nationality to their children without any declaration or further requirements (Article 6(1) of the Nationality Code). The introduction of additional requirements where nationality is passed on through the mother reinforces perceptions of inferiority of women’s citizenship and creates an arbitrary legal distinction between men and women nationals and their rights as citizens.

### ***Unequal Access to Inheritance***

With regards to inheritance, Tunisia’s PSC continues to be based primarily on Islamic jurisprudence and governs personal issues for all Tunisians, regardless of their religion.

The system of inheritance continues to be founded on the underlying discriminatory principle where male heirs are entitled to a share double that of female heirs, as stated in article 192 of the Personal Status Code. The net effect of this rule is to create a significant disadvantage for the wife, mother, daughter and all other female relatives of the deceased. The law does provide for an exception where the parents are the only surviving relatives after the death of their child. In this case, both the mother and the father can inherit equally.

In cases where a surviving spouse is the sole heir, the widower is entitled to half of his wife’s estate, whereas the widow is entitled to only a quarter of her husband’s estate (PSC, Articles 101(1) and 102(1) respectively). In cases where the couple has descendants, the widower is entitled to a quarter of his wife’s estate, whereas the widow is entitled to only an eighth of her husband’s estate (PSC, Articles 101(2) and 102(2) respectively).

The systematic discrimination against women with respect to inheritance continues to other categories of relatives. For example, only the sons and daughters of the married couple’s son are entitled to inherit (Article 104). The sons and daughters of the married couple’s daughter are excluded.

### ***Violence against women and sexual harassment***

The Government of Tunisia has taken important steps to combat violence against women, including creating increased penalties for assault where the victim is the spouse of the assailant (Article 218 of the Penal Code, amended by Law No. 93-72 of 12 July 1993), and

explicitly criminalizing sexual harassment (Article 226, amended by Law no. 2004-73 of 1 August 2004).<sup>14</sup>

Important amendments in 1993 to the PSC as well as the Penal Code also removed gender-discriminatory language which had previously allowed for the reduction in sentencing for a man who had committed acts of violence against his spouse. Previously Article 207 of the Penal Code had allowed the reduction of a sentence to a simple misdemeanour where a man was convicted of murdering or injuring his wife and/or her partner, where they were caught in the act of adultery in *flagrant délit*.

However, problems still persist with regards to certain types of sexual violence against women, in particular, the failure of the Penal Code to criminalize marital rape. Also, the protection against domestic violence is severely weakened by the provision in Article 218 of the Penal Code which allows for the immediate termination of any proceedings, trial or enforcement of a penalty, where the spouse, victim of the assault, withdraws their complaint.

---

<sup>14</sup> **Article 226 ter.** - Est puni d'un an d'emprisonnement et d'une amende de trois mille dinars, celui qui commet le **harcèlement sexuel**.

Est considéré comme harcèlement sexuel toute persistance dans la gêne d'autrui par la répétition d'actes ou de paroles ou de gestes susceptibles de porter atteinte à sa dignité ou d'affecter sa pudeur, et ce, dans le but de l'amener à se soumettre à ses propres désirs sexuels ou aux désirs sexuels d'autrui, ou en exerçant sur lui des pressions de nature à affaiblir sa volonté de résister à ses désirs.

La peine est portée au double lorsque l'infraction est commise à l'encontre d'un enfant ou d'autres personnes particulièrement exposées du fait d'une carence mentale ou physique qui les empêche de résister à l'auteur du harcèlement.

**Article 226 quater.** - Les peines prévues aux deux articles précédents ne préjudicient pas à l'application des peines plus sévères prévues pour d'autres infractions.

Les poursuites ne peuvent être exercées qu'à la demande du ministère public sur la base d'une plainte de la victime.

Si une ordonnance de non-lieu ou un jugement d'acquiescement sont rendus, la personne contre laquelle la plainte a été dirigée peut demander, s'il y a lieu, la réparation du dommage subi sans préjudice des poursuites pénales du chef de dénonciation calomnieuse.