

**TUNISIA:**  
**Human Rights Crisis of 1987**

A report of the  
**Minnesota Lawyers International Human Rights Committee**  
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## PREFACE

This report gives an account of human rights conditions in Tunisia in July 1987. The report is based on information obtained by John Borman and Inger Tangborn (hereinafter "the delegation") of the Minnesota Lawyers International Human Rights Committee during a fact-finding mission in Tunisia from July 26 to August 1, 1987.

The fact-finding mission was authorized by the Minnesota Lawyers International Human Rights Committee for three reasons. The first reason was to investigate human rights abuses in Tunisia that were being reported to the Committee by Tunisians living or visiting Minnesota and confirmed by reports of human rights organizations such as Amnesty International and the world press.

The second reason was to examine the legal system in Tunisia that was reportedly allowing such abuses to take place, in many cases, under the color of law. There was a need to examine evidence of violations firsthand and to determine whether the reported violations of human rights had become institutionalized within the legal system such that no effective means of redress remained available to victims.

The third reason was to investigate allegations that the protection of

human rights in Tunisia was being jeopardized by the creation of an organization called the Association for the Protection of Human Rights and Public Liberties, which seemed to threaten the continued existence and independence of the internationally recognized Tunisian League for the Defense of Human Rights. Several reports indicated that the new human rights organization was nothing more than a creation of the Tunisian Government whose purpose was to discredit and destroy the independent League.

Prior to undertaking the fact-finding mission to Tunisia, the delegation conducted a study of the Tunisian Constitution and various Tunisian laws in conjunction with a review of materials issued by the United Nations, the United States Department of State, Human Rights Internet, Amnesty International, the International Federation of Human Rights, and various newspapers.

Once in Tunisia, the delegation established immediate contact with the Tunisian Bar Association, which arranged for the observation of trials and participation in a round table discussion of various aspects of the Tunisian legal system. The delegation was also able to arrange for interviews with leaders of the Tunisian League for the Defense of Human Rights and the Association for the Protection of Human Rights and Public Liberties. Finally, the delegation was able to meet with the families of several detainees, which allowed for the direct confirmation of human rights abuses and the receipt of additional unconfirmed reports concerning human rights abuses in Tunisia.

Although appropriate diplomatic requests for meetings were made, both before and after the delegation's arrival in Tunisia, the Tunisian Government did not provide an opportunity for the delegation to interview ministers or any other representative of the Government.



This report was edited by Barbara A. Frey, Wood R. Foster, Jr. and Arthur C. Benson of the Minnesota Lawyers International Human Rights Committee. The authors wish to express their appreciation to the law firm of Robins, Zelle, Larson & Kaplan for its generous support of pro bono work. Special thanks are given to Gerald Dillon, Jill Ostrowski, Vickie Inget, Carole Hansen, and Janet Liliemark for their assistance with this report. Finally, prior to departure, the delegation received sound advice from Steven Carlson, a former resident of Tunisia and current member of the Minnesota Lawyers International Human Rights Committee, which proved to be particularly helpful during the fact-finding mission.

John Borman

Inger Tangborn



## **I. INTRODUCTION**

The detention on April 28, 1987, of Khemais Chamari, the Chairman of the Tunisian League for the Defense of Human Rights, was one in a series of detentions of leaders and members of opposition parties, religious movements and trade unions in Tunisia. The arrest of Khemais Chamari, in particular, raised serious questions about the respect for human rights and the future of political stability in Tunisia.

Tunisia, the smallest of the North African countries (about the geographical size of Missouri), is located between Libya and Algeria. It gained independence in 1956 after 75 years as a French protectorate.

Habib Bourguiba led the struggle for independence and ruled the country until he was removed from power in a constitutional coup on November 7, 1987.<sup>1</sup> While the Constitution calls for the president to be elected for a five-year term and permits unlimited reelection, Bourguiba had made himself President-For-Life by means of a constitutional amendment in 1974. In the early years of his rule, President Bourguiba was responsible for significant reforms that led the former colony on the road to significant economic

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<sup>1</sup> See Part VII., Epilogue.

development. By adopting pro-Western policies, including the recognition of basic human rights, Bourguiba became a valuable friend of France and the United States. In recent years, however, Tunisia began to experience an economic downturn and political upheaval. In response, Bourguiba seemed to abandon his commitment to reform and, instead, adopted policies which led to allegations of widespread human rights violations.

President Bourguiba's early recognition of basic human rights led to the creation of the Tunisian League for the Defense of Human Rights in 1977. A unique institution in the Arab world, the League has over three thousand members and receives approximately one thousand requests per year to intervene in human rights cases. Although the League has achieved success in working with the Government to resolve a number of domestic political crises, it has actively opposed the Government's policy of prolonged detention of dissidents without charge. It has also pressed the Government to revise restrictive laws regulating freedom of expression and association.

In an apparent reaction to recent League activities, the Government detained its Chairman, Khemais Chamari, on April 28, 1987. Although released for health reasons, he remained accused of "disseminating false information and defamation of public order and public institutions." The accusations appeared to be based on interviews given by Chamari to foreign journalists and his contacts with international human rights organizations.

The deterioration of the human rights situation in Tunisia appears to reflect an atmosphere of political uncertainty that stemmed from Bourguiba's advanced age, his leadership style and the restrictions placed on political parties. Prior to his removal, Bourguiba, who is well past 80 years old, had been declining in health and unable to practice the kind of personal rule that had marked his Presidency. As a result, political discussions in Tunisia began

to focus on who would succeed Bourguiba as President. Under the provisions of the Constitution, the Prime Minister automatically accedes to the Presidency in the event of death, resignation or absolute disability. Under Bourguiba, however, anyone who displayed independence or attracted too much popular support found themselves banished. For example, Prime Minister Mohammed Mzali was abruptly dismissed by Bourguiba in August 1986 and subsequently fled the country. His replacement was Rachid Sfar, a veteran of several Cabinet posts, but a man perceived as lacking in charisma and without a political base of his own.<sup>2</sup>

Not only did Bourguiba stifle the development of political leadership in recent years, he also suppressed political activity that appeared to threaten his continued rule. Although Tunisia is nominally a constitutional democracy, Bourguiba's Destourian Socialist Party (PSD) has always enjoyed political dominance. In order to preserve that monopoly, Bourguiba instituted a series of government crackdowns over the past several years that virtually decimated opposition parties, trade unions and student movements. The largest opposition party -- the Movement of Social Democrats (MDS) -- and two smaller parties -- the Popular Unity Movement (MUP) and the Popular Unity Party (PUP) -- have had their access to public media severely curtailed while party officials have been subjected to official harassment. For example, MDS leader Ahmed Mestiri was jailed in the spring of 1986 after a public demonstration opposing the United States bombing of Libya on charges that he was disturbing the public peace. As a result of his detention, he was effectively prevented from participating in the November 1986 elections. With the restrictions on public expression, none of the opposition parties have had the opportunity to distinguish their policies from the ruling PSD. Despite its overwhelming victory in November 1986, the PSD has lost much of its public

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<sup>2</sup> Prime Minister Sfar was replaced by General Zine el Abidine Ben Ali, the current President, on October 2, 1987.

credibility.

The General Union of Tunisian Workers (UGTT) has also had a troubled relationship with the Government. An umbrella labor organization, similar to the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), the UGTT once had a very close working relationship with the Government and held a number of seats in the National Assembly. Relations became strained after harsh Government suppression of labor riots in 1978 and as younger union activists asserted themselves within the union. In 1986, the Government launched a crackdown that resulted in the detention of virtually the entire UGTT leadership and its replacement by officials appointed by the Government.

The decline of political parties and labor unions has created an opening for the Islamic movement. It is important to note that the Islamic movement in Tunisia is distinguishable from that associated with the Shiite movement in Iran. The vast majority of Tunisians espouse, at least in principle, a moderate form of Sunni Islam. Many Tunisians, however, have reacted against the secularist implications of Bourguiba's policies and now emphasize the need to return to the teachings of the Koran in order to maintain organization and discipline in society. The Islamic Tendency Movement (MTI) is a leading force of Islamic thought in Tunisia at the present time, although the organization is semi-clandestine, not legally sanctioned and more conservative in its theology than the vast majority of Sunni adherents in the general population. The MTI has drawn an increasing amount of strength from university campuses, among faculty and students alike. Its several applications to the Government for official recognition as a political party have been rejected and the MTI's application for status as a "cultural association" has languished.

Unlike nearby Egypt, which granted a limited voice to Islamic fundamentalists, the Government opted to accuse the MTI of promoting an Iranian-style movement in Tunisia. Under the direction of Zine el-Abidine Ben Ali, the former Minister of the Interior (now President), the Government carried out a massive crackdown against leaders, members and sympathizers of the MTI over the past year. After a four-week trial before the State Security Court that began on August 27, 1987, 56 MTI members were sentenced to prison, two members were hanged, and MTI leader, Rachid Ghannouchi, was sentenced to life imprisonment.

This report consists of a review of the Tunisian Government's official position regarding human rights and the current human rights situation in Tunisia, including specific reports of human rights violations. This report also discusses the human rights associations currently in existence in Tunisia and their efforts to safeguard human rights. Finally, this report presents a summary of findings and recommendations based upon information obtained during the fact-finding mission.





## II. OFFICIAL RECOGNITION OF HUMAN RIGHTS IN TUNISIA

### A. Ratification of the International Covenant on Civil and Political Rights

Tunisia is a party to a number of international human rights covenants and conventions, including the International Covenant on Civil and Political Rights (hereinafter, "Covenant").<sup>3</sup>

In accordance with Article 40 of the Covenant, the Tunisian Government has reported to the United Nations that international human rights treaties are fully implemented in Tunisia. In its second periodic report to the Human Rights Committee of the United Nations, the Government explained that:

Tunisian law has no particular procedure for incorporating a ratified convention into the political system, since the ratification by itself is equivalent to incorporation.<sup>4</sup>

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<sup>3</sup> U.N. doc. CCPR/C/28/Add. 5/Rev. 1, para. 11.

<sup>4</sup> Ibid.

The same report notes that duly ratified treaties shall take precedence over internal laws and explains that:

Once ratified by the Chamber of Deputies, these instruments are not only considered to be an integral part of Tunisian domestic legislation, but also to carry greater legal weight than laws. As a result, laws contrary to a duly ratified convention cannot be enforced. Similarly, domestic laws subsequently to the convention must conform to it. Tunisian judges are also required to apply the provisions of a duly ratified convention and to disregard any law contrary to it.<sup>5</sup>

In addition, the report states that:

[T]he rights recognized by the Covenant are prescribed by the Constitution, which is at the top of the hierarchy of legal rules, and consequently no provisions at the lower level, not to mention any interpretation, could violate the rights proclaimed by the Constitution.<sup>6</sup>

It follows therefore that the articles of the Covenant and the articles of the Tunisian Constitution constitute controlling legal provisions regulating fundamental human rights in Tunisia.

#### **B. Constitutional Proclamations of Human Rights**

The Preamble to the Constitution of 1 June 1959 proclaims the will of the Tunisian people "to remain faithful to human values, which constitute the

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<sup>5</sup> U.N. doc. CCPR/C/28/Add. 5/Rev. 1, para. 11.

<sup>6</sup> Ibid., para. 45.

common heritage of peoples attached to human dignity, justice and liberty."<sup>7</sup>

The fundamental rights and freedoms of the individual are set forth in Articles 5 through 17 of the Constitution.<sup>8</sup> Of particular relevance are the following:

Article 5

The Tunisian Republic guarantees the inviolability of the human person and freedom of conscience, and protects the free exercise of beliefs, with reservation that they do not disturb the public order.

Article 6

All citizens have the same rights and the same duties. They are equal before the law.

Article 7

The citizens exercise the plenitude of their rights in the forms and conditions foreseen by the law. The exercise of these rights cannot be limited except by a law enacted for the protection of others, the respect for the public order, the national defense, the development of the economy and social progress.

Article 8

The liberties of opinion, expression, the press, publication, assembly and association are guaranteed and exercised within the conditions defined by the law.

The right of unionization is guaranteed.

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<sup>7</sup> Constitution (la Constitution de la République Tunisienne) 1959, revised 1976, in *Constitutions of the Countries of the World* (English Translation) (A. P. Blaustein and G. H. Flanz, ed., Oceana Publications, July 1977.)

<sup>8</sup> Ibid.

**Article 9**

The inviolability of the domicile and the secrecy of correspondence are guaranteed, save in exceptional cases foreseen by the law.

**Article 12**

Every accused person is presumed innocent until his guilt is established in accordance with a procedure offering him guarantees indispensable for his defence.

**C. The Tunisian Government's Report to the Human Rights Committee**

Governments which have signed and ratified the International Covenant on Civil and Political Rights are required to submit periodic reports on measures they have taken to ensure that the wide range of rights guaranteed by the Covenant are in practice enjoyed by their citizens. These reports are reviewed by the Human Rights Committee of the United Nations, which is an elected body of eighteen experts who serve in a personal capacity and are nationals of states which have ratified the Covenant.

Tunisia submitted its second periodic report to the Human Rights Committee on February 27, 1986. The following extracts from the second periodic report gives the Tunisian Government's official view of the observance of fundamental human rights in Tunisia.

1. **Article 2: Respect for Human Rights and Guarantees  
Concerning Remedies**

In its periodic report, Tunisia recognizes that, in accordance with Article 2 of the Covenant, it is obligated to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, as well as remedies against any

violation of these rights.<sup>9</sup>

Tunisia reports that, by means of progressive development, it had introduced procedures to give full effect to human rights, whether provided for by the Constitution, by the International Covenant on Civil and Political Rights, or by the various human rights conventions which it has ratified.<sup>10</sup>

2. Article 7: Prohibition of Torture and Treatment Harmful to the Individual

Tunisia recognizes that Article 7 of the Covenant seeks to protect the individual from being subjected to any kind of violence, whether by a private individual or by a public official.<sup>11</sup>

Tunisia points out that the Penal Code of Tunisia prescribes severe penalties, including imprisonment and substantial fines, for the perpetration of violence upon any individual by a public official or similar person.<sup>12</sup> The report states that the Tunisian Government has tabled a bill amending some articles of the Code of Penal Procedure that would restrict police custody to a very brief period required for investigation and allow detainees the right to request a medical examination during or on the expiration of the period of detention.<sup>13</sup>

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<sup>9</sup> U.N. doc. CCPR/C/28/Add. 5/Rev. 1, para. 16.

<sup>10</sup> *Ibid.*, para. 20.

<sup>11</sup> *Ibid.*, para. 57.

<sup>12</sup> *Ibid.*, para 58.

<sup>13</sup> *Ibid.*, para. 59.

### 3. Article 9: Liberty and Security of Person

Tunisia recognizes that Article 9 of the Covenant prohibits any arbitrary arrest or detention.<sup>14</sup>

Tunisia reports that police officers are authorized, as a part of their function, to take any measures necessary in conducting inquiry proceedings. Article 12 of the Code of Penal Procedure, as interpreted in the case law and in practice, allows police officers to conduct inquiries within "a reasonable period" of the arrest or detention.<sup>15</sup>

Tunisia also reports, however, that there has been a problem with the interpretation of what "a reasonable period" means. In order to do away with all interpretations, a bill limiting to four (4) days the period of custody that can be imposed by judicial police officers was drafted by the Government and presented to the Chamber of Deputies. Under the bill, the period could be extended only on the express authorization of the Public Prosecutor to whom such officers are responsible. Only one such extension could be authorized and for the same period.<sup>16</sup> Unfortunately, the delegation learned that this bill has been tabled by the Chamber of Deputies.

### 4. Article 10: System of Detention

Tunisia recognizes that, under Article 10 of the Covenant, persons deprived of their liberty shall be treated with humanity and with respect for

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<sup>14</sup> U.N. doc. CCPR/C/28/Add.5/Rev. 1, para. 68.

<sup>15</sup> *Ibid.*, para. 69.

<sup>16</sup> *Ibid.*, para. 70.

the inherent dignity of the human person.<sup>17</sup>

The Government reports that Tunisian law has taken account of these guarantees in the regulations that govern prison administrators concerning the conditions of prisons and the execution of sentences. The administration of prisons is organized under Decree No. 60-85 of March 16, 1960, which defines the competence of the prison's administration and grants a number of rights to detained persons, in particular, the right to receive visits, the right to confer with their attorneys, the right to medical care and the right to remuneration for the work that they perform while in prison.<sup>18</sup>

5. Article 14: Safeguards for the Administration of Justice

Tunisia recognizes that Article 14 of the Covenant provides for a set of safeguards for the administration of justice. One of those safeguards is the impartiality and the independence of the judiciary.<sup>19</sup>

Tunisia reports that the impartiality and independence of the judiciary are embodied in the Constitution and in legislation on the administration of justice. The Government also reports that the organization of the judiciary in Tunisia is based on the principle of "the separation of powers." Article 65 of the Constitution, which is found in the chapter entitled "The Judicial Power," provides that "[t]he judicial authority is independent; the magistrates in the exercise of their functions are not subjected to any authority other

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<sup>17</sup> U.N. doc. CCPR/C/28/Add. 5/Rev. 1, para. 80.

<sup>18</sup> *Ibid.*, para. 81.

<sup>19</sup> *Ibid.*, para. 90.

than the law."<sup>20</sup>

#### 6. Article 17: Privacy

Tunisia recognizes that, under Article 17 of the Covenant, no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to unlawful attacks on his honor and reputation.<sup>21</sup>

Article 9 of the Tunisian Constitution guarantees the inviolability of the home, except in special cases provided by law. Tunisia reports that this guarantee is insured by a number of legislative provisions. The Penal Code penalizes those entering or remaining on premises used for habitation against the will of the owner. The penalty is even more severe if the offense is committed during the night, in a group, by breaking and entering, or if the perpetrators are armed. Article 102 of the Penal Code prescribes penalties for public officials or persons in a similar capacity, who, without observing the required formalities or without any demonstrable need, enter the residence of a private person against the person's will.<sup>22</sup>

Tunisia reports, however, that the principle of the inviolability of the home is subject to a number of exceptions stipulated by law for the maintenance of public order, safety or for the enforcement of judicial decisions. One exception is set forth in Article 93 of the Code of Penal Procedure, which permits searches to be carried out in all places where there may be objects whose discovery would be useful in ascertaining the

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<sup>20</sup> U.N. doc. CCPR/C/28/Add. 5/Rev. 1, para. 92.

<sup>21</sup> *Ibid.*, para. 109.

<sup>22</sup> *Ibid.*, para. 112.



truth. All searches must be accomplished by day, except in the case of a gross crime or offense or when there are grounds for entry, even without the consent of the master of the house, for the purpose of apprehending an accused person or arresting an escaped prisoner.<sup>23</sup>

7. Article 18: Freedom of Thought, Conscience and Religion

Tunisia recognizes that Article 18 of the Covenant guarantees freedom of thought, conscience and religion.<sup>24</sup>

The Government reports, however, that there are limits to this guaranteed freedom set forth in Article 5 of the Constitution, which provides: "The Republic of Tunisia guarantees the dignity of the individual and freedom of conscience, and protects the free exercise of religion, provided that it does not disturb the public order" (emphasis added).<sup>25</sup>

8. Article 19: Freedom of Opinion and Expression

Tunisia recognizes that Article 19 of the Covenant guarantees freedom of opinion.

The Government reports that this freedom is guaranteed under Article 8 of the Constitution, which concerns not only the individual expression of opinions, but also their dissemination by all communications media, with a

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<sup>23</sup> U.N. doc. CCPR/C/28/Add. 5/Rev. 1, para. 112.

<sup>24</sup> *Ibid.*, para. 114.

<sup>25</sup> *Ibid.*

view to making others aware of them.<sup>26</sup>

Tunisia reports that the press represents the mainstay of the freedom of opinion and expression. Neither Act No. 75-32 of April 28, 1975, enacting the Press Code, nor applicable legislation contains any provisions restricting the freedom to seek, receive or disseminate information of any kind. The creation of a new periodical is subject to prior notification to the Ministry of Interior, and refusal of such a permit may be appealed to the Administrative Tribunal. The publication, introduction and circulation of foreign periodicals in Tunisia require no prior authorization. Foreign periodicals may be banned, however, by the Minister of the Interior, on the recommendation of the Minister for Information, where they present a danger to public order or national security.<sup>27</sup>

Tunisia also reports that national practice regarding the freedom of the press is increasingly liberal. Information, ideas and publications are reported to circulate freely. Some twenty (20) national publications belonging mostly to private persons or to publishing houses serve as a means of expression for the various trends of thought, including seven (7) publications belonging to opposition movements.<sup>28</sup>

#### 9. Article 21: Right of Assembly

Tunisia recognizes that Article 21 of the Covenant guarantees the right of peaceful assembly. Freedom of assembly is guaranteed by Article 8 of the

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<sup>26</sup> U.N. doc. CCPR/C/28/Add. 5/Rev. 1, para. 117.

<sup>27</sup> *Ibid.*, para. 119.

<sup>28</sup> *Ibid.*, para. 121.

Constitution.<sup>29</sup>

Although the freedom of association is guaranteed by the Constitution, Tunisia reports that it is to be exercised in the manner stipulated by law. Article 1 of Act No. 69-4 of January 24, 1969 relates to public meetings, processions, parades, demonstrations and assemblies. The law stipulates that public meetings may be held freely and without prior authorization, but that there are a number of formalities to be observed. Advance notice must be given for each meeting and there must be a committee responsible for maintaining order and preventing any breach of the law. The responsible authorities may prohibit, by decree, any meeting likely to be detrimental to public safety or to law and order. Such decrees are subject to appeal to the Administrative Tribunal on the grounds of Government misuse of power. The Government is authorized to assign an official to attend each public meeting. The official is authorized to declare the meeting dissolved at the request of the responsible committee or if clashes or acts of violence occur. Processions and parades may be held freely, but prior notice is required. The authorities may prohibit by decree any demonstration likely to be detrimental to public safety or law and order.<sup>30</sup>

10. Article 22: Freedom of Association and Freedom to Form  
and Join Trade Unions

Tunisia recognizes that Article 22 of the Covenant guarantees freedom of association and freedom to form and join trade unions. Article 8 of the Tunisian Constitution guarantees "freedom of association" and "the right to

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<sup>29</sup> U.N. doc. CCPR/C/28/Add. 5/Rev. 1, para. 128.

<sup>30</sup> *Ibid.*, para. 128.

form and join trade unions."<sup>31</sup>

The Government makes reference to Act. No. 59-154 of November 7, 1959, which defines the conditions in which the freedom of association may be exercised. Article 2 of the Act provides for restrictions similar to those referred to in Article 22(2) of the Covenant by stipulating that "the cause and object of such an agreement shall, under no circumstances, be contrary to the law or to morals, likely to disrupt public order or detrimental to the integrity of the national territory or to the republic form of the State." The formation of an association is subject to the completion of a number of formalities such as the submission of a declaration indicating the name, purpose and headquarters of the association; the full name, date of birth, and nationality of each of its officers; and, copies of its regulations. Its legal existence is subject to authorization by the authorities. The political parties permitted in Tunisia derive their authorization from this Act.<sup>32</sup>

#### 11. Establishment of a Tunisian League for Human Rights

In its periodic report, Tunisia made specific reference to the Tunisian League for the Defense of Human Rights and its establishment in 1977 for the purpose of defending human rights in Tunisia. The report states that the League collaborates with the public authorities on questions related to the defense of human rights.<sup>33</sup>

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<sup>31</sup> U.N. doc. CCPR/C/28/Add. 5/Rev. 1, para. 130.

<sup>32</sup> *Ibid.*, para. 131.

<sup>33</sup> *Ibid.*, para. 12.

### **III. THE HUMAN RIGHTS SITUATION IN TUNISIA**

#### **A. Features of Tunisian Law That Allow for the Violation of Human Rights**

The delegation's examination of the Tunisian legal system was greatly facilitated by the Tunisian Bar Association. A three-hour round-table presentation by lawyers and law professors was arranged by the Bar Association on July 29, 1987. Presentations were made on various aspects of the Tunisian legal system, with a question and answer period following each presentation. The Bar Association also arranged for the observation of two separate trials by the delegation: one involving the trial of 39 young people and another involving the trial of the publisher of a banned newspaper, both of which will be reported below.

##### **1. The Absence of Constitutional Safeguards**

One of the topics of discussion by members of the Tunisian Bar Association at the round table was the absence of constitutional safeguards in Tunisia. Although the Tunisian Constitution contains guarantees of numerous civil and political rights, which may be asserted on behalf of an individual, the enforcement of those rights is solely within the discretion of the judge

or magistrate presiding over the case. Government actions may be reviewed by the Administrative Tribunal in certain limited circumstances, such as cases involving a refusal to allow the publication of a new periodical or the prohibition of a public meeting, but the review is limited to determining whether the Government misused its authority.<sup>34</sup> There exists in Tunisia no judicial body such as the French Constitutional Council or the U.S. Supreme Court which makes final determinations regarding the constitutionality of actions by the Government. As a result, individual Tunisians theoretically enjoy a wide range of liberties set forth in the Constitution, but in practice have no effective means of seeking enforcement of those constitutional rights.

## 2. Pre-Trial Detention (*La Détention Provisoire*)

The Tunisian Code of Criminal Procedure contains no provisions whatsoever pertaining to the maximum duration of pre-trial or even pre-indictment detention. As a result, suspects are often held for periods of weeks or months without the right to contact their families or lawyers. Most of the reported incidents of torture occurred during either *garde-à-vue* (*incommunicado*) detention, *préventive* detention, or *le rasle* detention (the detention of large groups of demonstrators or the detention of families and friends of suspects without probable cause).

*Garde-à-vue* detention, an institution inherited from the penal law system in France, is wholly unregulated in Tunisia. Suspects may be apprehended in their homes, at their place of employment, or elsewhere and detained for long periods of time with no obligation on the part of the authorities to notify the detainee's family or lawyer. Whereas in France the period of *garde-à-vue* detention is limited to 48 hours, the delegation found

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<sup>34</sup> U.N. doc. CCPR/C/28/Add. 5/Rev. 1, paras. 119, 128.

that certain Tunisian detainees were seized and held during the spring and summer of 1987 for periods of two to four months without their families or lawyers being notified of their whereabouts.<sup>35</sup> It is reported that Rachid Ghannouche was arrested on March 9, 1987 and held *garde-à-vue* until August 13, 1987, when he was finally brought before the investigating magistrate.<sup>36</sup>

*Détention préventive*, or preventive detention, is much like *garde-à-vue* in that it can last for months, but is preceded by the issuance of a warrant by the presiding magistrate in an investigation. Normally, it is to be invoked for specific reasons, such as to prevent the fleeing of suspects before formal charges can be brought, to prevent threats to witnesses from being carried out, and other such reasons.<sup>37</sup> The delegation found one instance, however, where preventive detention was used as a justification for an earlier arrest attempt that went awry.<sup>38</sup>

### 3. The State Security Court (*Cour de Sûreté de l'Etat*)

The State Security Court is an institution of grave concern to human rights in Tunisia.

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<sup>35</sup> See: The cases of Mabruk Zran, Hashmi Hamdi, Ali Fikih-Romdhane, *infra*. See also: O. Sidem-Poulain, *Rapport de Mission des 24-28 Avril 1987 à Tunis* (Fédération Internationale des Droits de l'Homme), at 19.

<sup>36</sup> O. Sidem-Poulain, *Rapport de Mission du 31 août au 7 septembre et des 14-21 septembre, 1987* (Fédération Internationale des Droits de l'Homme, Procès des Islamistes Tunisiens devant la Cour de Sûreté de l'état).

<sup>37</sup> Round-table discussion of July 29, 1987, with members of the Tunisian Bar Association.

<sup>38</sup> See: The case of Tammaam al-Ussuai, *infra*.