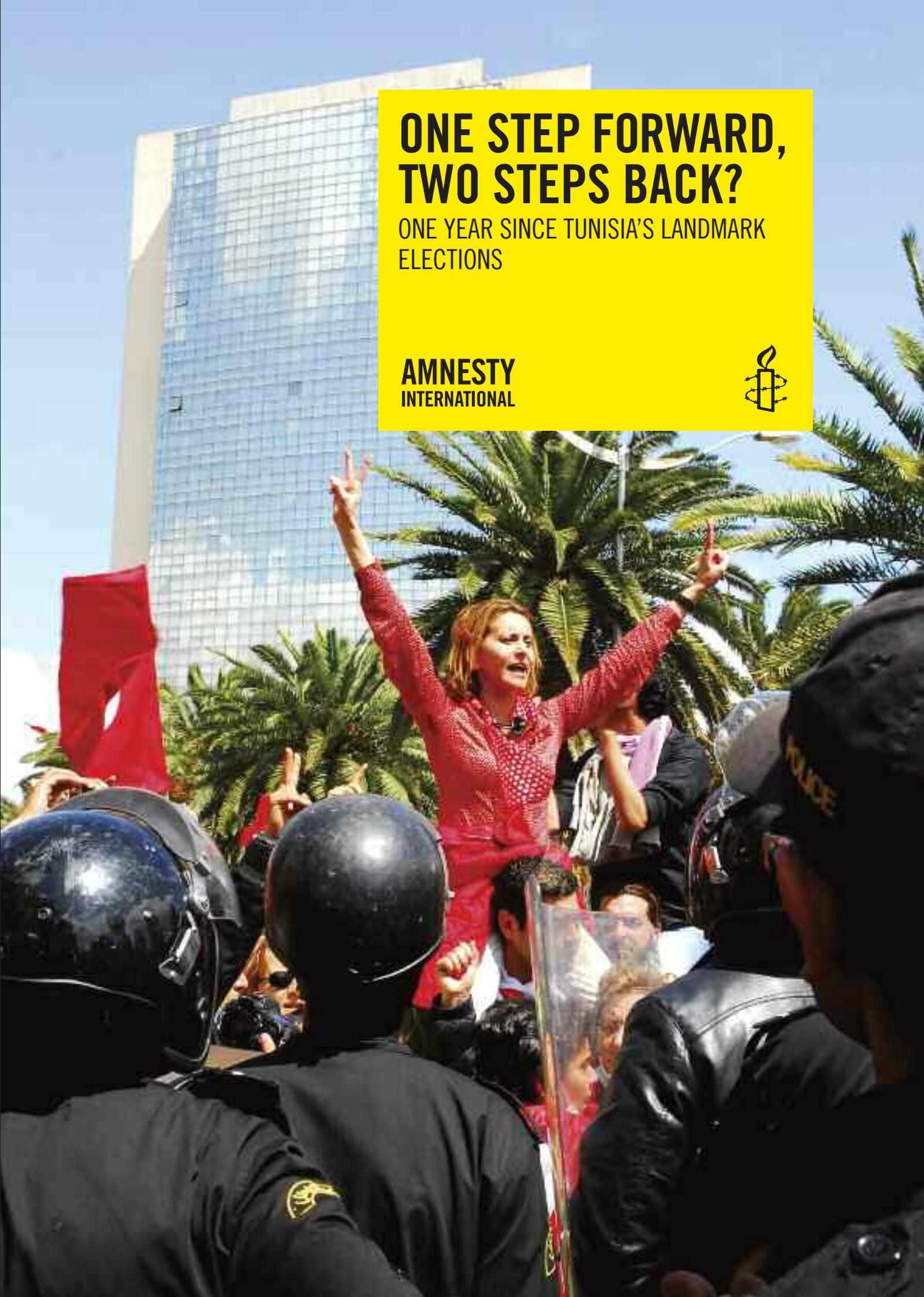


# ONE STEP FORWARD, TWO STEPS BACK?

ONE YEAR SINCE TUNISIA'S LANDMARK  
ELECTIONS

**AMNESTY**  
INTERNATIONAL



Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

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**AMNESTY**  
**INTERNATIONAL**



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*Cover photo:* A woman protester makes the sign for 'peace' during a demonstration in Tunis to celebrate the anniversary of the Festival of the Martyrs, 9 April 2012. Arrests were reported and police used tear gas against demonstrators.

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# 1. INTRODUCTION

**‘Nothing can replace my son, but I want to know who killed him and I want to see them in prison. What we want is justice, fair justice. The judicial system is hiding the truth.’**

Alia Lajimi, mother of Souhail Riyahi, who died after reportedly being thrown from a window by a police officer during the uprising in Tunisia.

One year after the landmark elections in October 2011 for the National Constituent Assembly (NCA), considered by international observers as the first free and fair elections for decades, the Tunisian authorities have taken a number of steps towards much-needed reform. On 23 October 2011, Tunisians elected 217 members to the NCA. During its opening session on 22 November, the NCA appointed a new President and Prime Minister who took office in December, and a Speaker for the Assembly, who took office in November.

The NCA was tasked with drafting a new constitution. The 1959 Constitution had been suspended on 23 March 2011 by interim President Fuad Mbazaa pending the election of the NCA, and replaced temporarily with provisional directives on the organization of public authorities. Work on the new constitution was divided between six committees within the NCA. An initial draft was made public in August 2012, but the committees have been unable to meet the one-year deadline for finalizing the text, postponing it until February 2013.

The elections were the direct result of a mass popular uprising that ousted the old regime, triggered protests across the region, and promised greater respect for the rights and freedoms of all Tunisians. However, the very bodies associated with repression, in particular the police, continue to commit human rights violations. Furthermore, commitments made following the uprising have yet to be fulfilled, and there have been some human rights setbacks.

## PROGRESS CHALLENGED

In the months following the ousting of Ben Ali, the caretaker government ratified a number of key international human right treaties. These included the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), the First Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), the International Convention for the Protection of All Persons from Enforced Disappearance (CED), and the Rome Statute of the International Criminal Court. All were published in Tunisia's Official Gazette on 22 February 2011 (CED was ratified on 29 June 2011). The caretaker government also withdrew Tunisia's

reservations to the Convention on the Elimination of All Forms of Discrimination against Women.

New national laws were introduced and old ones amended. For example, articles on torture in the Penal Code were amended in an attempt to bring them more in line with international standards, and new laws were passed on freedom of the press and use of audiovisual media. However, repressive laws remain and more needs to be done to fully incorporate Tunisia's international obligations into national law. For instance Article 226 of the Penal Code provides a punishment of six months' imprisonment and a fine for attacking sacred values through words or actions; Article 128 of the Penal Code provides up to two years' imprisonment and a fine for defamation of a civil servant; and Article 91 of the Code of Military Justice provides up to three years' imprisonment for "undermining the reputation of the army".

In March 2011 the feared Department of State Security (DSS), responsible for years of human rights abuses under Ben Ali, was abolished. However, there are fears that members of the DSS were integrated into other security bodies without any vetting mechanism to ensure that officers involved in human rights violations were not simply moved around, despite claims by the new authorities of progress in reforming the state security apparatus.

Other positive developments include the release in February 2011 of political prisoners and prisoners of conscience detained before the uprising. A draft law includes a reparation programme for former political prisoners but as yet no comprehensive reparation and rehabilitation scheme has been set up.

In the months after the uprising, many organizations that had for years faced severe restrictions on their registration and activities under Ben Ali, found that they were able to operate more freely. Control over associations and restrictions on their activities were lifted; the Minister of Interior said that over 1,300 new organizations had been registered by September 2011. Human rights organizations are now able to meet freely. The Tunisian League for Human Rights held its first congress for more than a decade in September 2011, an event attended by the interim Prime Minister.

In addition to ratifying several international human rights treaties, the Tunisian authorities co-operated with the UN and the African Union human rights mechanisms. The UN Special Rapporteur on torture and the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism both visited Tunisia in May 2012.

Despite the positive steps, there were also a number of setbacks which cast a shadow on the future of Tunisia. The UN Human Rights Council reviewed the human rights record of Tunisia during the 13<sup>th</sup> session of the Universal Periodic Review in May 2012. Although the Tunisian government accepted and supported many of the recommendations made by the Human Rights Council, it resisted key recommendations to decriminalize defamation and same-sex relations, to fully outlaw discrimination against women and to abolish the death penalty.

Journalists, artists, government or religious critics and writers have come under attack by both the authorities and non-state actors, including Salafist groups. Torture, which was the

hallmark of the rule of Zine El Abidine Ben Ali, has not been eradicated and security forces continue to act as if they're above the law, confident that they can act with impunity. Indeed, those injured and the families of those killed during the uprising, are still awaiting justice and reparation, including adequate medical care. In the face of continuing protests, and against a backdrop of a state of emergency repeatedly renewed, the security forces are still resorting to unnecessary and excessive use of force. A number of draft laws aiming at restricting rather than protecting human rights are under discussion, such as a draft bill presented to the NCA by the Ennahda party in August 2012 which proposes a punishment of up to two years' imprisonment or a fine for offences against "the sacred".

Protesters, especially in Tunisia's interior regions, have repeatedly taken to the streets to voice their dissatisfaction with the slow pace of reform and harsh living conditions, for example, due to poverty and unemployment.

On several occasions, protests have turned violent. A state of emergency in place since 14 January 2011 has been repeatedly renewed, most recently until the end of October 2012. In Kasbah (Tunis) three people were reported to have died during a protest in February 2011, when security forces used force to disperse a peaceful sit-in, and again in May 2011 when security forces beat journalists and prevented them from filming the forcible dispersal of protesters. Security forces also used violence in Kasbah on 15 July 2011 against protesters who tried to join a sit-in.

On 9 April 2012, security forces used tear gas and batons to disperse protesters marking Martyrs' Day as they sought to enter Bourguiba Avenue in the centre of the capital, Tunis. The demonstrators were defying a 28 March 2012 decision by the Minister of Interior banning demonstrations in the area. Scores of people were injured in the incident, including members of the security forces.

Angry protesters clashed with security forces different parts of Tunisia, including in Sidi Bouzid where the uprisings began in December 2010. For instance, on 26 July 2012, protests by workers over unpaid wages and loss of jobs erupted in Sidi Bouzid. The protests turned violent, with the local office of the Ennahda party reportedly ransacked, and the police using tear gas to disperse protesters.

The Tunisian authorities have been accused of failing to protect individuals from attacks by groups of individuals believed to be affiliated with Salafist groups.<sup>1</sup> On 12 September 2012, protesters attacked the US embassy in Tunis after a film depicting the prophet Mohammed, deemed to be offensive, was posted on the Internet. Protesters reportedly threw rocks at the embassy, burned US flags and looted an American school. Four people among the protesters were reportedly killed and dozens injured.

Attacks by such groups have targeted individuals, cultural events and hotels. In June 2012, an art exhibition in Tunis was attacked because people who appeared to belong to Salafist groups believed that some of the artworks were offensive to Islam (see "5. Freedom of expression"). The attacks sparked larger protests in several cities in Tunisia. In August, a French regional Counsellor of Tunisian origin was attacked while on holiday with his family in Bizerte, reportedly because of the way his wife and daughter were dressed. The same month, protesters were said to have attacked a cultural event in Bizerte with swords and sticks before

eventually being dispersed by security officers. Other cultural events planned for August were cancelled because of the fear of such attacks. In other instances, hotels and restaurants have been attacked for selling alcohol.

Many in Tunisia accused the government of failing to take meaningful action against those suspected of inciting or participating in such violence. Arrests in response to the attack on the US embassy in Tunis contrast with the typical reaction of the state to attacks on individuals and places they consider to have offended Islam.

The UN and African Union Special Rapporteurs on human rights defenders visited Tunisia in September 2012. They called for better inclusion of human rights defenders in the process of drafting the new constitution, for "attacks on the sacred" not to be criminalized, and for full equality between women and men in the constitution. They also called on the government to ensure the independence of the media and the judiciary, and for the police to respond to attacks on and harassment of human rights defenders. The Special Rapporteurs expressed concern at excessive use of force by police and the National Guard. In the context of ongoing demonstrations, they expressed concern at the lack of protection against counter protests, arbitrary arrests and allegations of torture in detention. They also called for an effective remedy, including full medical rehabilitation, for victims of the uprising.

The concerns over the draft constitution epitomize the state of human rights in Tunisia. Amnesty International believes that the draft made public in August 2012 does not fully protect human rights. A commitment to universal human rights was questioned by Article 5.20, which provides that the constitutional court examines the constitutionality of international treaties before signatures, which contradicts the principle of supremacy of international law over national law. Ambiguous wording in Article 28 relating to the family does not guarantee full equality for women, though this wording may now be amended. Provisions allowing for the death penalty fail to protect the right to life. The draft fails to fully uphold freedom of expression as it includes provisions criminalizing attacks against religion and "sacred values", though in October 2012 the speaker of the NCA reportedly announced that the constitution would not include such clauses. It also perpetuates impunity for human rights violations by providing immunity for all acts committed by government authorities, including the President and members of parliament during their term in office.

Despite some progress, efforts towards transitional justice and to guarantee the independence of the judiciary have yet to come to fruition, and insufficient steps have been taken to bring law and practice in line with international human rights standards.

The task before the Tunisian authorities has been huge, from demands for social justice to reform of the security sector. The country has also been faced with a volatile security situation, including the instability in neighbouring countries, and the authorities have been unable or unwilling to address attacks on individuals by groups believed to be affiliated to Salafist groups.

However, statements by some government officials have caused concern that the current authorities may not be fully committed to human rights.

Today, Tunisia is at a crossroads. This briefing concludes that urgent steps are needed to

realize the rights and freedoms for which Tunisians fought so tenaciously and bravely in late 2010 and early 2011. The Tunisian authorities must not miss an unprecedented opportunity to fully address a legacy of abuse and transform institutions that were instruments of repression.

The authorities have taken the first positive steps to reform, including ratifying a number of human rights treaties, releasing political prisoners, pardoning prisoners on death row, and setting down a new press law. Yet, at the same time, other bills were tabled which aimed at restricting freedom of expression in the name of religion, or undermined the cornerstone principle of the independence of the judiciary, such as a draft bill on a Temporary Judicial Council put before the NCA in August 2012 (see "3. Independence of the judiciary"). Some political leaders associated with the ruling political parties have made troubling statements which put into question the authorities' commitment to human rights. In February 2012 the Minister of Human Rights and Transitional Justice said during a television interview that homosexuality is not a human right; that it is a perversion that needs to be treated medically.<sup>2</sup> This position contravenes the cornerstone principles of equality and non-discrimination. In September 2012 Mohamed Abou, Minister of Administrative Reform, speaking on a radio interview of potential attempts to overthrow by violence after 23 October 2012 (one year since the election of the NCA), stated that attacks aiming to change the form of government are punished by the death penalty under the Tunisian Penal Code. In January 2012 Sadek Chourou, a member of the NCA belonging to the Ennahda party, when speaking about ongoing protests and attacks on public property, stated that according to the Qur'an people who commit such acts should be killed or crucified.

To move forward, the authorities must first lift any ambiguity on their commitment to universal human rights. To set Tunisia irrevocably on the path to the rule of law, the authorities must close off any avenue for further setbacks. The rule of law in Tunisia will not prevail unless the constitution to be adopted in the coming months fully guarantees human rights for all; torture is eradicated and no members of the security forces are above the law; an independent judiciary offers an effective remedy for victims of abuse; and freedom of expression, including a free press, thrives.

## ABOUT THIS BRIEFING

This briefing is based on ongoing monitoring of the human rights situation in Tunisia by Amnesty International since the uprising, including its most recent fact-finding visit to Tunisia between 17 and 28 September 2012. It examines the human rights developments in the country since the election of the National Constituent Assembly in October 2011. Amnesty International delegates interviewed many families of people killed during the uprising, and those injured during protests, in Kasserine, Regueb, Thala and greater Tunis. They included some of the same families and individuals Amnesty International had interviewed in January 2011 in the midst of the uprising. Delegates also spoke to lawyers, representatives of Tunisian and international human rights NGOs, journalists, government officials and diplomats.

## 2. ACCOUNTABILITY FOR VIOLATIONS DURING THE UPRISING



Mothers of those injured or killed during the 2011 uprisings in Kasserine © Amnesty International

The mass demonstrations in December 2010 and January 2011 that led to Ben Ali's flight from Tunisia on 14 January 2011 were met by serious human rights violations by the security forces. According to the National Fact Finding Commission on Abuses Committed from December 17, 2010 to the End of its Mandate (Commission nationale d'établissement des faits sur les dépassements commis entre le 17 décembre 2010 et la fin de son mandat), headed by Taoufiq Bouderbala and mandated to investigate human rights violations during the uprisings, 338 people were killed in the weeks before and the days immediately after Ben Ali's departure, and more than 2,000 people were injured, some seriously.

An Amnesty International fact-finding visit to Tunisia from 14 to 23 January 2011 documented unnecessary and excessive use of force, at times lethal, by security forces against demonstrators and others.<sup>3</sup> Some of those killed and injured were not involved in demonstrations when they were shot by security forces, and some were killed while attending funerals. The number and circumstances of the killings and injuries across the country pointed to a pattern of excessive use of force, in violation of human rights law and standards, by the security forces in order to quell the revolt.

Relatives of those killed and some of those injured expressed to Amnesty International their

need for truth, justice and reparations for the violations they experienced during the uprising. A year and a half later, their demands are far from being realized, despite some gestures by the authorities. Indeed, some of the same families interviewed by Amnesty International during the uprising told the organization not only of their anger for being targeted for repression, but also of how their hopes have been crushed after the uprising and their feelings today of frustration, anger and exclusion. Though only a selection of the interviews conducted are reflected in this briefing, those that are included are representative of the situation the victims' families and the injured described.<sup>4</sup>

## THE RIGHT TO A REMEDY

**Under international law, states have an obligation to uphold the right of victims of human rights violations to an effective remedy.<sup>5</sup> This obligation includes three elements:**

Truth: establishing the facts about violations of human rights that occurred;

Justice: investigating past violations and, if enough admissible evidence is gathered, prosecuting the suspected perpetrators; and

Reparation: providing full and effective reparation to the victims and their families, in its five forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Principle VII of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law states:

“Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law: (a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered; and (c) Access to relevant information concerning violations and reparation mechanisms.”<sup>6</sup>

This obligation extends to past human rights violations committed under previous governments. States must ensure that the truth is told, that justice is done and that reparation is provided to all the victims without discrimination.

## TRIALS FOR THE KILLINGS AND INJURIES DURING THE UPRISINGS

### CONCERNS ABOUT THE USE OF MILITARY COURTS

Although the judicial complaints lodged by relatives of those killed and persons injured during the uprisings were initially dealt with by the civilian justice system, the cases were transferred to military courts in May 2011, on the basis of Law 70 on the Basic Status of Internal Security Forces of 1982, which stipulates that offences by internal security forces during the course of their duty should be dealt with by military courts.

The three first instance military tribunals in Tunis, Kef and Sfax – as well as a military appeals court in Tunis – dealt with a number of cases related to the uprising. Military tribunals grouped different incidents in multi-trial cases. For instance, the Tunis Military Tribunal grouped the cases involving 43 killings and injuries to 96 people in different cities including Bizerte, Monastir, Nabeul, Sousse and Tunis, in relation to which 43 people were

standing trial. The Kef Military Tribunal grouped 23 killings and hundreds of cases of people injured by security forces in Thala, Kasserine, Kairouan and Tajerouine, for which 23 people were standing trial.

Some people initially welcomed the use of military courts because of the widespread mistrust of the ordinary justice system that had built up under Ben Ali, and because military courts were thought to have greater access to resources and expertise than civilian courts, for instance ballistic expertise.

Amnesty International is concerned, however, by the use of military courts to try such cases. Although the military justice system was reformed by decrees 69 and 70 on 29 July 2011,<sup>7</sup> these reforms only came into force on 16 September 2011, after the investigations into cases under the jurisdiction of the Tunis and Kef military tribunals were completed. This means that although the reforms allow victims to participate in the proceedings – previous legislation precluded the use of civil action proceedings (“constitution en partie civile”) –, the victims and their lawyers were in fact excluded from the investigation by the military investigative judges in the Tunis and Kef cases, during which evidence was collected and alleged perpetrators identified.

Concerns are compounded by the real or perceived lack of independence and impartiality of the military justice system, as the appointment, dismissal, discipline and promotion of military judges is overseen by the High Council of Military Judges, which is headed by the Minister of Defence. Some of the relatives of those killed cast further doubts upon the impartiality of military courts, as in some cases elements within the military were accused of killings during the uprising.

International human rights standards are clear that cases involving civilians, and human rights violations, should be tried in civilian courts rather than in military courts. As stated in the Updated Set of principles for the protection and promotion of human rights through action to combat impunity: “The jurisdiction of military tribunals must be restricted solely to specifically military offences committed by military personnel, to the exclusion of human rights violations, which shall come under the jurisdiction of the ordinary domestic courts or, where appropriate, in the case of serious crimes under international law, of an international or internationalized criminal court.”<sup>8</sup> This principle is also reflected in the Draft Principles Governing the Administration of Justice through Military Tribunals, which refer to a “growing tendency” not to try human rights violations in military tribunals, as reflected in the jurisprudence of several international human rights bodies.<sup>9</sup>

#### SHORTCOMINGS IN INVESTIGATIONS AND EVIDENCE-GATHERING

Amnesty International is also concerned at victims and victims' lawyers' complaints about shortcomings in the gathering of evidence and the conduct of investigations.

Some victims have criticized the grouping of their cases, which appeared to be sometimes random, and not to pertain to the same cases or the same alleged perpetrators. Some were concerned that this would affect the depth of investigations and pointing out that those responsible for firing on protesters in different locations were not necessarily the same personnel. For instance, relatives of the three people killed in Degueche on 11 January 2011 demanded that the Degueche cases be examined independently of other cases before the

Sfax military tribunal. On 1 October 2012, the Sfax military court finally accepted to disassociate the Degueche cases from the others. However, the relatives of those killed asked for the investigations into the killings in Degueche to be reopened; the court said it would give an answer on 22 October.

Relatives of those killed and people who have been injured told Amnesty International how they co-operated with the investigations and handed over witness testimonies, tear gas canisters, bullet casings and medical certificates and when they were done, the result of forensic examinations. These were transferred by civilian judges to military investigative judges.

In some cases, investigations included on-site examinations, including in Thala, Kasserine and Regueb. In other places, however, relatives told Amnesty International that no on-site examination was conducted.

During the court proceedings, lawyers representing the victims called on the authorities several times to release information to help establish facts and responsibilities. Among other things, they requested:

- the record of telephone communications from the central operations unit of the Ministry of Interior, from where orders are believed to have been transmitted to different units of the security forces;
- records showing which security units and members of security forces were deployed and when in the locations where protesters and others were killed and injured;
- records of arms, munitions and other equipment, such as tear gas, given to units and members of the security forces deployed when and where there were shootings.

Lawyers for the victims told Amnesty International that most of these requests were not met. For example, even though such demands were reiterated three times during the Kef military trial, the court summarily disregarded the requests. The investigative judge stated that no orders to fire live ammunition at protesters or other elements of proof could be found in the communication records of the central operations unit of the Ministry of Interior.

Some of the victims and their lawyers expressed concern that evidence may be concealed or destroyed by the authorities. Lawyers representing some of the victims noted that during one military trial, defence lawyers for some of the accused produced a record of telephone communications and a record of the arms and munitions given to a member of the security forces, leading them to believe that such records exist or have existed.

Victims and their lawyers suspect that the authorities, in particular the Ministry of Interior, are not being transparent about the involvement of the security forces in human rights violations during the uprising. In a meeting with Amnesty International delegates on 28 September 2012, Interior Ministry officials stated that the Ministry did not receive requests from the military courts for such evidence and that the Ministry had not refused any request for co-operation from the judiciary.



The mother of Manal Boualagui, a woman killed on 9 January 2011 in Regueb © Amnesty International

Some hopes were raised when, on 28 September 2012, during the first session of the military appeal tribunal in the Kef multi-trial, the court asked lawyers for the victims to submit a new list of requests for evidence.

There are also concerns that the ballistic analysis conducted by the military courts in some cases was superficial. Victims and their lawyers believe that the type of bullets and weapons used in the killing and injuring of protesters could provide useful information about the security force units involved.

A few of the bodies of those killed were exhumed, for instance in June 2011 in Thala, in order to conduct forensic examinations and extract bullets. Some of the bullets retrieved from bodies of those killed correspond to weapons whose use, according to regulations in force at the time, was prohibited or would need to receive prior authorization. Victims and their lawyers would like further analysis to help identify the perpetrators.

### SHORTCOMINGS IN JUDICIAL PROCEEDINGS

Victims and their lawyers told Amnesty International that as victims they didn't feel that their pain and sufferings were sufficiently taken into account, and they were not sufficiently considered in the proceedings. The victims and victims' relatives regretted that only one

relative of each person killed could be admitted in the court sessions, due to how small the courtrooms were, while other relatives had to watch the proceedings in tents on video.

People injured in Thala and Kasserine and relatives of those killed there said they felt intimidated by those accused in the trials. They described how Moncef Laajimi, head of the anti-riot police (Brigade d'Ordre Public, BOP) in Thala from 10 to 12 January 2011 and one of the accused in the Kef military tribunal, arrived at the court escorted by four anti-riot police cars. When he left the courtroom, the accompanying anti-riot police officers reportedly spat and threw stones at relatives of the victims.

Victims and their lawyers also complained that some suspects were not arrested during the judicial proceedings, or were arrested only after an outcry by the victims.<sup>10</sup> For instance, a member of the security forces suspected of killing three people in Degueche was only arrested in September 2011, several months after the start of the investigation. The military court judge had summonsed him for interrogation several times but the police reportedly did not carry out the summons. Relatives of victims in Thala and Kasserine said that some of the defendants in the Kef military court cases, although they were suspected of serious human rights violations, were not detained during the trial, reinforcing the sense of impunity for the security forces.

According to the information received by Amnesty International, some of the accused were not suspended from their posts in the security forces, and some were even promoted during trial. For instance, Moncef Krifa, the director of the anti-riot police in the Kasserine region and one of the accused in the case heard by the Kef military tribunal, was promoted to director of the Presidential Guard in March 2011. Another defendant, Moncef Laajimi, was promoted to director general of the anti-riot police by the transitional government. He was removed from this position on 10 January 2012, but was then appointed as adviser at the Ministry of Interior following protests by the anti-riot police union, which reportedly threatened to stop providing security should Moncef Laajimi be suspended.

Amnesty International is also concerned at the lack of a specific legal framework in Tunisia to protect witnesses of human rights violations. Relatives of victims reported some intimidation by the security forces during trial proceedings, which raise serious concerns about the ability of the courts to protect witnesses and victim's families.<sup>11</sup>

Many victims of the uprisings expressed to Amnesty International their anger and disappointment at the judgements issued in The Tunis and Kef military tribunals in June and July 2012 respectively. Appeals were lodged by both the plaintiffs and the defendants, which are ongoing.

While some former high-ranking officials, including former President Ben Ali, tried in absentia, received long prison sentences, only a few low- and middle-ranking officials were found individually responsible and sentenced for shooting at protesters and others. Many relatives of people killed told Amnesty International that they wanted to know who had shot at their loved one and wanted to see them being punished.

On 13 June 2012, the Kef military tribunal sentenced former President Ben Ali to life imprisonment and former Minister of Interior Rafiq Haj Kacem to 12 years' imprisonment for

complicity in murder. It also sentenced four former high-ranking officials in the Department of State Security to 10 years' imprisonment each for the same offence. Six middle-ranking officers were also sentenced to prison terms for murder. Only four members of the security forces were found guilty of killing protesters in Thala and Kasserine, where the number of killings during the uprisings were among the highest.<sup>12</sup>

The Tunisian authorities must ensure not only that justice is done, but is also seen to be done for the victims of the uprisings. The Tunisian authorities should suspend all those suspected of human rights violations during the uprisings and ensure that victims and witnesses are protected from any act of intimidation. They must urgently pursue reforms of the justice system and introduce guarantees to ensure its independence and impartiality from the executive branch. Amnesty International also urges the Tunisian authorities to fully cooperate with investigations into human rights violations committed during the uprisings, to reveal the truth and ensure that all perpetrators, up and down the chain-of-command, are made accountable.

## **KILLINGS IN THALA**

**Marwan Jamli, 19, was shot dead on 8 January 2011 as he took part in a protest in Thala. He was shot at about 8pm near Habib Bourguiba Avenue, the city's main street. According to witnesses, he had not been involved in any violent behaviour when he was shot. One bullet hit him in the chest and another in the back.**

Marwan's father, Hassan Jamli, told Amnesty International that he did not feel justice had been done, despite the families of those known as the "martyrs of Thala" having co-operated with and provided evidence to the military court in charge of the case. Hassan Jamli said the families had provided a CD with the circumstances of each death, as well as a document they found in Thala police station after police abandoned it which detailed the operations of BOP units in Thala during the uprising. Six months after the events, Marwan's body was exhumed, as were the bodies of others killed in Thala. Hassan Jamli said that the bullets extracted from Marwan's body should have led to the identification of the perpetrator.

"We all gave proof that the BOP was involved. I want this truth to be written down so that my great grandchildren may know the truth", said Hassan Jamli. "In these cases the investigations led to nothing."

**Wajdi Saihi was shot in Thala on 12 January 2011 and died of his wounds the same day. His brother Ramzi told Amnesty International that five witnesses, including one of his brothers, had seen the man who shot Wajdi. At 10am that day the Minister of Interior had ordered the security forces to end the shooting, but at 11.45am Wajdi was shot in his right thigh. He was bleeding heavily, but it took 45 minutes to find a car to take him to hospital. The hospital did not have the equipment to treat him, so Wajdi was taken by ambulance to Al Jahaoui Hospital in the Kef. He died on the way. Six months after his death, Wajdi Saihi's body was exhumed and a bullet was extracted. The bullet was presented as evidence before the military court examining his death.**

Ramzi Saihi told Amnesty International that the Public Prosecutor had requested life imprisonment for the head of the BOP, Moncef Laajimi, for the killings in Thala, but he was acquitted. However, another officer, Lieutenant-Colonel Bechir Bettibi, was convicted of murder (Article 205 of the Penal Code) in relation to the killing. On 8 January 2012, President Moncef Marzouqi and Prime Minister Hammadi Jebali told the Thala families there would be accountability for abuses during the uprising. Despite this, Ramzi Saihi told Amnesty

International that he felt the state was not listening to the victims' families and that all those who committed, ordered or condoned the human rights violations have not been held accountable.



Hayat and Hassan Jamli, the parents of Marwan Jamli © Amnesty International

The Tunis Military Tribunal hearing the case of 43 defendants accused of killing 43 protesters in Ariana, Ben Arous, Bizerte, al-Manouba, Monastir, Nabeul, Sousse Tunis, and Zaghouan and injuring others issued judgments on 19 July 2012. Former President Ben Ali, the former Minister of Interior and other high-ranking security officials, as well as some security forces personnel, were convicted and sentenced to prison terms.<sup>13</sup>

## SOUHAIL RIYAH

**When Amnesty International met with Souhail Riyahi's mother, she described what had happened to her son. Alia Lajimi said Souhail Riyahi, 22, died after being thrown out of the fifth-floor window of a building in Rades (Ben Arous) on the night of 14 January 2011.**

She said that earlier that evening Souhail had been outside their apartment building with friends. She said that a black car with policemen wearing balaclavas arrived and fired at the youths, who fled inside buildings to hide. Alia Lajimi said that a police officer fired tear gas inside the building into which Souhail had fled and he was struggling to breathe. She said Souhail knocked on doors inside the building but no one let him in. When he reached the fifth floor he opened a window so he would be able to breathe. Alia said that one of the police officers fired towards him, which caused the wall of the building to crumble. She said the police officer then went up to the fifth floor approached Souhail and threw him out of the window. He landed on his head. He died a few hours later in hospital.

Alia Lajimi told Amnesty International that the wali (governor) came to her house twice and that she was invited to meet President Moncef Marzouki in Carthage. On 14 January 2012, the governorate of Ben Arous erected a monument in the town centre to commemorate the “martyrs of Ben Arous”, including Souhail.

“Nothing can replace my son”, Alia Lajimi told Amnesty International. “But I want to know who killed my son and I want to see him in prison. What we want is justice, fair justice. The judicial system is currently hiding the truth.”



Alia Lajimi © Amnesty International

Several high-ranking security officials were acquitted in the Kef trial, including Ali Seriati, former head of the Presidential Guard,<sup>14</sup> Moncef Krifa and Moncef Laajimi. The court concluded that there was insufficient evidence to show that they had been involved in the handling of events in the region or that they had given orders to the security forces to shoot at protesters. In the case of Moncef Laajimi, the judgment said that he was only appointed head of the BOP in Thala from 10 to 12 January 2011, and that all but one killing in Thala occurred before then.

Lawyers representing the victims' families, as well as some lawyers for the defendants, point to inconsistencies in the court verdicts. For example, some high-ranking officials convicted of complicity in murder received longer prison sentences than some lower-ranking defendants convicted of murder. The military courts' judgments also demonstrate the difficulties of holding high-ranking security officials criminally accountable in decision-making positions without material proof that they had knowledge of crimes committed by those under their command and that they gave orders to use lethal force. Tunisian law does not include the

concept of command responsibility, which under international law makes commanders or superiors liable for crimes committed by those under their command if they knew, or had reason to know, such crimes had been or were going to be committed and failed to prevent or punish them.

## MEASURES TAKEN FOR THE VICTIMS OF THE UPRISINGS

### THE NATIONAL FACT FINDING COMMISSION ON ABUSES COMMITTED FROM DECEMBER 17, 2010 TO THE END OF ITS MANDATE (THE BOUDERBALA COMMISSION)

Soon after Ben Ali fled to Saudi Arabia, the Tunisian authorities established the "National Fact Finding Commission on Abuses Committed from December 17, 2010 to the End of its Mandate".<sup>15</sup> The commission was headed by Taoufiq Bouderbala, a Tunisian activist and former President of the Tunisian League for Human Rights. It was mandated to collect information on abuses by interviewing victims or relatives of those killed or injured, and gathering documents as evidence from relevant institutions. The commission issued its final report of more than 1,000 pages on 4 May 2012.

Although the report provided a useful description of the events, as well as a list of those killed and injured in the different governorates, and included medical certificates and other documents, several victims and families told Amnesty International they were disappointed that it did not identify individuals responsible for the use of lethal force. Taoufiq Bouderbala was quoted as saying that the commission was not a substitute for justice and that it had established institutional responsibilities for the human rights violations.<sup>16</sup> The report addressed a series of recommendations to the state, including legislative reform for greater guarantees of human rights, reform of the security sector and judicial system, and specific recommendations to bring about transitional justice, including the creation of a truth commission.

### COMPENSATION

The authorities distributed financial compensation to the victims of the uprising. Relatives of those killed received 20,000 dinars (around US\$12,750) in February 2011 and a further 20,000 dinars at the end of 2011, while those injured received two instalments of 3,000 dinars each (US\$1,900). Most families criticized the absence of official explanations as to how the amount was calculated; in some cases the families were told it was an "advance" before the full amount of compensation was decided by the courts.

Several families of people killed during the uprising in Kasserine, El Kram and Thala told Amnesty International that they had refused to accept the second instalment until the full truth behind the deaths of their loved ones was established and justice done. Several felt that compensation, in the absence of adequate official explanations, was an attempt to appease them and prevent them from pursuing a judicial remedy. This feeling was reinforced by the fact that some were told by people they believed were linked to the authorities, or by judicial officials, that they should think about reconciliation.

Hassan Jamli, the father of **Marwan Jamli** who was killed on 8 January 2011 in Thala (see above), told Amnesty International:

"My son had just obtained his diploma when he was killed. First they gave us 20,000 dinars and then a further 20,000, which we refused. The government wanted to buy our children.

We said to them: use the money to find those responsible.”

Hayat Jamli, Marwan Jamli's mother, shared her husband's feeling that there had been no accountability for their son's killing. She told Amnesty International that she felt insulted by the money offered to them by the state as the money was given without truth or justice being provided. “We want justice for our son,” she said. “Nothing in the world can replace him.”

According to Article 20 of the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

- physical or mental harm;
- lost opportunities, including employment, education and social benefits;
- material damages and loss of earnings, including loss of earning potential;
- moral damage;
- costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

#### MEDICAL TREATMENT AND CARE

International law and standards require that people injured by state agents are given adequate, effective and prompt reparation for the harm suffered, including adequate medical care and rehabilitation. According to Article 21 of the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, rehabilitation should include “medical and psychological care as well as legal and social services”.

Financial compensation was also awarded to those injured. Although the authorities have taken a number of measures to provide medical treatment and care, some have felt insufficiently supported. Injured people with whom Amnesty International met said that they were concerned that the compensation did not necessarily take into account the severity of the injuries, some of which left people disabled, and, as such, need continuing medical treatment and care. Some of those injured told Amnesty International that they have had to pay for private medical treatment when public hospitals could not provide specialized or timely treatment. In addition, some of those severely injured have been unable to work or continue studying, and the amount of compensation does not provide for lost wages. Several of those injured regretted that it was only after they staged protests that the state agreed to bear the costs of their medical treatment and care in state medical institutions.

The families interviewed by Amnesty International said they had not received any psychological support despite the clear need for such care in many cases. They generally lacked sufficient financial resources to cover the costs themselves.

**Moslem Azdallah** was shot in the leg on the evening of 15 January 2011 in Ouardanine. He too was 22 years old at the time. He lost a lot of blood and spent three and a half months in a coma. After 14 operations, his leg was amputated in September 2012. Moslem Azdallah told Amnesty International that a member of the security forces had fired directly at him from a car. The officer was sentenced to five years' imprisonment by the military tribunal of Tunis.

In 2012 the authorities gave victims of the uprising cards that provide them with free health care and transport, and announced that one member of each family of an injured victim would be offered employment in a state institution according to skills and experience. Hassan Jamli, the father of Marwan Jamli, who was killed in Thala, said he did not feel comfortable using the transport card because he felt there was a stigma attached to using it. He said this was because when the cards were provided, the number and identity of those injured were not fully known and that some people received them when they were not entitled to them. He told Amnesty International that as a result, there was a perception that some of those using the cards were not "genuine" victims.

**Walid Kasraoui** was shot in the right leg on 13 January 2011 in El Kram. He was 22 years old at the time. He told Amnesty International that he had gone out to demonstrate at around 5pm that day during the curfew. He said the street lights were turned off, but tear gas and live bullets were being fired, and that the shooter's face was covered and he therefore could not identify who had shot him.

Walid lost a lot of blood as a result of the gunshot. He was operated on for 12 hours, and remained in a coma for three days. He told Amnesty International: "They tried everything and couldn't save [my leg]. There was a gap in my leg bone caused by the bullet. There were six or seven bits of the bullet scattered in my leg. The wound got infected."

He went to France to receive treatment but his leg eventually had to be amputated. The costs of the amputation were covered by the Presidency of Tunisia. The costs of further operations in France, and a prosthesis, were covered by a Tunisian businesswoman.

In July 2011 Walid Kasraoui went on hunger strike for a week to raise awareness of the plight of people injured during the uprising. He told Amnesty International that he felt there was no recognition by the new authorities of the sacrifices that he and the other injured protesters had made.



Walid Kasraoui © Amnesty International

All the victims and relatives interviewed by Amnesty International described some feeling of mistrust of the authorities and said that their suffering and the sacrifices they had made were not adequately recognized by state authorities. Amnesty International also found that many victims and their families who were suffering from trauma were not receiving psycho-social support.

Wajdi Saihi's brother, Ramzi, said he wanted justice first:

"We do not trust the state, not the Ministry of Defence, not the military court. What can help ease our pain is a fair judgment and the development of the town of Thala. The young people of Thala went out in the streets [during the uprisings] because of unemployment, but nothing has changed."

Marwan Jamli's father called for long-term reforms to be implemented:

"Our children told the security forces: 'We are also fighting for your rights, you work in the cold while the ruling family enjoys privileges.' I would like to see the day when the police will protect people's rights and will protect the law and citizens."

## TRANSITIONAL JUSTICE INITIATIVES

A decree of January 2012 created a Ministry for Human Rights and Transitional Justice.<sup>17</sup> It is tasked with developing strategies to deal with human rights violations committed in the past "based on searching for the truth, judgment and reconciliation in accordance with the principles of transitional justice as adopted at the national level in order to reinforce the democratic transition and contribute to national reconciliation", as well as guaranteeing and promoting human rights.

In April 2012, the Ministry of Justice launched a consultation with civil society and created a Technical Committee including civil society representatives. The Technical Committee undertook a consultation in Tunis as well as in the different regions of Tunisia on the issues of truth, reparations, trials and reforms. The Committee was also tasked with drafting a law on transitional justice to be presented at the NCA by the end of October 2012. It will set out the principles and process for transitional justice in Tunisia.

However, it is unclear when a transitional justice mechanism will be put in place to deal with past abuses. Lawyers interviewed by Amnesty International expressed fears that the process was taking too long, and that the ongoing trials relating to violations committed before and during the uprising of December 2010 to January 2011 could be obstacles to the establishment of truth at a later stage.

As the NCA's first year drew to a close, there appeared to be growing frustration among victims of human rights violations and some members of civil society over a perceived lack of positive impact of transitional justice initiatives taken so far on the lives of victims. Justice and reparation need to be urgently provided to all victims of human rights violations, without any discrimination, or further delays. It is crucial that accountability for human rights abuses, whenever they occurred and whoever the perpetrator, is not just an empty promise.

## **BARAKET ESSAHEL CASE: TORTURED ARMY OFFICERS FIGHT FOR JUSTICE**

**In 1991, 244 army officers were arrested and accused of plotting a coup against then President Ben Ali in the village of Barakat Essahel, near Hammamet. Many of the officers were tortured at the Ministry of Interior and 171 of them were tried before the Military Court of Tunis on charges of conspiring against the security of the state. Some were sentenced to life imprisonment.**

In April 2011 a group of the officers who said they had been tortured brought a case before a civilian court against former President Ben Ali and a former Minister of Defence, as well as officials at the Ministry of Interior. The case was transferred to a military court, who sentenced former President Ben Ali and several former government and security officials to prison terms, ranging from three to five years, on 29 November 2011, on charges of "using violence against others either directly or through others". On 7 April 2012 the Military Court of Appeal reduced the sentences of former Minister of Interior Abdallah Kallel from four to two years' imprisonment, former Chief of National Security Mohamed Ali Ganzoui from three to two years, and upheld Ben Ali's sentence of five years' imprisonment. At the time of writing the case was pending before the court of cassation.

On 23 June 2012, President Moncef Marzouki officially apologized to the victims of Barakat Essahel.<sup>18</sup> The Ministry of Defence has reportedly calculated the amount of reparations to which the army officers are entitled, but so far those eligible have received no money. On 28 September, Minister of Human Rights and Transitional Justice Samir Dilou said that the "victims of the dictatorship would receive reparations very soon".<sup>19</sup>

### 3. INDEPENDENCE OF THE JUDICIARY

Concern over the independence of Tunisia's judiciary was prevalent during the Ben Ali era. Interference of the executive in the judiciary was compounded by a 1967 law which provided for the President to preside over the Supreme Council of the Judiciary (Conseil Supérieur de la Magistrature, CSM), a body tasked with appointing, promoting, transferring and where necessary, disciplining and dismissing magistrates. Security of tenure for judges (inamovibilité) has been a key demand of the Association of Tunisian Judges (Association des Magistrats Tunisiens, AMT), which sparked an open conflict with the authorities.<sup>20</sup>

In December 2011, a law adopted by the newly elected NCA on the temporary organization of public powers provides for the creation of an "interim representative body" to replace the CSM.<sup>21</sup> However, as of October 2012 no new mechanism was in place following a lack of consensus among NCA members in August 2012 about the nature of such a body. The disagreement was reportedly over whether the new body should be labelled "independent" and whether it would be financially and administratively independent. The draft law on the Temporary Judicial Council under debate in August was itself problematic as it lacked safeguards against the arbitrary dismissal or transfer of judges and granted the executive a significant role in the composition of the proposed new body (although not to the same extent as the CSM).<sup>22</sup> A new law must be enacted and it must address the shortcomings of that law and guarantee the full independence of the judiciary from the executive, security of tenure for judges and clarity as to what constitutes grounds for disciplinary proceedings and their right to a review of decisions that affect them in accordance with the UN Basic Principles on the Independence of the Judiciary.

The CSM currently remains the body in charge of supervising the judiciary. On 13 September 2012, Minister of Justice Nouredine Bhiri formally replaced former President Ben Ali as head of the CSM. The lack of independence of the judiciary from the executive, specifically the Ministry of Justice, has been repeatedly denounced by the AMT and by the National Observatory on the Independence of the Judiciary (Observatoire National de l'indépendance de la Magistrature, ONIM).

In May 2012 the Minister of Justice decided to revoke 82 judges accusing them of corruption, and a month later he allowed nine of them to return to their posts. In September 2012, the CSM carried out what is referred to as "the movement of magistrates", which led to over 700 judges being transferred, promoted or their functions changed. While processes to screen members of the judiciary who might have been involved in arbitrary detention and other human rights violations are welcome, such processes must be fair and transparent and those facing sanctions should be informed of the reason for the action, be able to challenge the decision and have the opportunity to defend themselves.

The Tunisian authorities must urgently address concerns over the independence of the judiciary and put in place a body that is independent in its composition, functions and funding. They must also guarantee, and respect, the principle of the independence of the judiciary and the security of tenure of judges. Without these reforms and their rigorous implementation in practice, the judiciary will be unable to perform its crucial role of

guaranteeing justice and protecting human rights, and the public's lack of trust in the judiciary as an institution will prevail.

## 4. TORTURE AND OTHER ILL-TREATMENT

Torture was rampant in Tunisia under Ben Ali, and still needs to be eradicated. Cases of torture and other ill-treatment by police reported in the year since the election of the NCA reflect the urgent need for clear instructions to all law enforcement officials that such abuses are unlawful and that those responsible will be brought to justice and receive appropriate sanctions. Many of the cases involve protesters who allege they were beaten during protests or arrest, or in detention.<sup>23</sup>

Although the incidence of torture and other ill-treatment appears to be lower than in the Ben Ali era, Amnesty International is concerned by the number of reported cases – a concern also raised by Tunisian and international NGOs in recent months.<sup>24</sup>

The UN Special Rapporteur on torture, during a visit to Tunisia in May 2011, noted that torture and other ill-treatment were continuing. The Special Rapporteur highlighted the need for in-depth investigations to be conducted without further delay into reported cases, for those responsible to be prosecuted, and for the victims to have access to effective remedies and reparation. The Special Rapporteur also called on Tunisia to put in place guarantees against torture and other ill-treatment through constitutional, legislative and administrative reforms.<sup>25</sup>

Following Tunisia's ratification of the Optional Protocol to the Convention against Torture in June 2011, a representative of the Ministry of Human Rights and Transitional Justice announced in August 2012 that the legislative and legal framework for the creation of a national authority for the prevention of torture had been completed and that a national consultation would take place before the project is validated and implemented.<sup>26</sup> The representative said that the main tasks of the new authority would be visiting detention centres, participating in developing draft laws and preparing annual reports, and that the authority would operate in line with international standards of functional and financial independence.

In 2011 the interim government amended the law on torture to bring it in line with international standards. However, the law includes a statute of limitations of 15 years, even though under international human rights law, torture is a crime for which the perpetrator can be tried and punished no matter when it was committed.<sup>27</sup> Despite the change in the law, in practice members of the security forces continue to believe that they can operate with impunity; a feeling strengthened by the fact that torture has been only rarely prosecuted.

### **ABDERRAOUF KHAMMASSI**

**Hours after 40-year-old Abderraouf Khammassi was arrested, he was taken to hospital and died ten days later, apparently as a result of torture or ill-treatment. He was arrested on the afternoon of 28 August 2012 outside the Salah-Aziz Institute in Tunis where he accompanying his wife who was**

**receiving chemotherapy. The policemen were reportedly accompanied by a woman who accused Abderraouf Khammassi of theft.**

Abderraouf Khammassi was taken to the police station of Sidi Hassine and at 6pm the same day he was admitted to the Charles Nicole hospital in Tunis. He died there on 8 September. According to the autopsy report which Amnesty International has seen, the police brought Abderraouf Khammassi for loss of consciousness ("altération de l'état de conscience") which "occurred brutally during the interrogation (according to the police)", and his death was the result of "a head trauma caused by the impact of a blunt object or a blunt surface". The report also states that injuries were found on Abderraouf Khammassi's buttocks.

On 10 September, the Ministry of Interior announced on its Facebook page that Abderraouf Khammassi had died and that it had opened an administrative investigation into the case. The Ministry also stated that on 30 August the Public Prosecutor's office had launched an investigation, and that the investigating judge had ordered the detention of four police officers involved in the arrest. According to the lawyer representing Abderraouf Khammassi's family, however, the investigation was solely looking into an allegation that Abderraouf Khammassi had fainted and against unknown perpetrators (contre x). On 31 August Abderraouf Khammassi's family brought a complaint on the aggression he suffered against the police officers of the Sidi Hassine police station.

On 9 September the public prosecutor's office brought charges against four police officers of the police station in Sidi Hassine on grounds of premeditated and voluntary homicide under articles 201 and 202 of the Tunisian Penal Code. On 12 September the family brought a new complaint as a civil party before the Court of First Instance of Tunis on the same grounds against the four police officers.

It emerged that at around the time that Abderraouf Khammassi was admitted to hospital, the chief of judicial police in Sidi Hassine sent a telegram to several officials, stating that before police were able to question Abderraouf Khammassi, he threw himself backwards while handcuffed to a chair, knocking himself unconscious. Such an account contradicted testimonies by two police officers on duty at Sidi Hassine Police Station while Abderraouf Khammassi was in custody. They testified that they had found Abderraouf Khammassi lying on the floor and a third police officer standing beside him holding a baton. It appears that both this police officer and the head of the Police Station were simply questioned as witnesses.

## 5. FREEDOM OF EXPRESSION

The new Tunisian authorities promised to uphold freedom of expression and improved legislation in this respect. In practice, however, they have resorted to old, repressive tactics to target journalists, bloggers, artists and critics under the guise of maintaining public order and public morals.

In the months following the uprising, Tunisians were hopeful that the ousting of Ben Ali would mean an end to long-established practices used to muzzle dissent. Under the previous constitution, freedom of expression was subject to limitations defined by the law. This clause was used to place severe restrictions on expression and to silence dissenting voices. Individuals, NGOs and professional bodies that criticized the authorities or reported human rights violations faced a constant risk of persecution, including threats, surveillance, harassment of family members and even physical assault, and arbitrary detention.

After the uprising, there were encouraging signs that the new authorities were breaking with past practices and turning their promises to respect freedom of expression into reality. Old institutions used to repress dissent were dismantled and replaced with new bodies tasked with enhancing freedom of expression in law and practice. Work began on new laws that would better protect freedom of expression.

At the end of January 2011 the Tunisian Agency for External Communication, which been used to heavily censor both national and international press and media, was dismantled.<sup>28</sup> The National Authority for the Reform of the Media and Communications (INRIC, Instance Nationale pour la Réforme de l'Information et de la Communication) was formed in March 2011 and by July 2011, the Ministry of Interior had granted licences to over a hundred newspapers and magazines.<sup>29</sup>

The INRIC drafted two new laws, one on the press and the other on audiovisual material, both of which were passed in December 2011, weeks after the election of the NCA. Decree 115 on press freedom and Decree 116 on audiovisual material protect journalists from violence and give them greater freedom to collect and publish information. Although the new laws maintained defamation as a criminal offence, it ceased to be punishable by imprisonment.

However, the elected government has failed to uphold these initiatives. Journalists and other media workers have accused the government of being unwilling to enforce the new laws. They have also accused the government of trying to take control of the media – a fear heightened by controversial government appointments of people to head state media organizations. For instance, the government's replacement in August 2011 of Kamal Sammari as Director General of Dar Assabah, a daily newspaper, by Lotfi Touati, a former police commissioner under Ben Ali, has provoked protests and strikes among the newspaper's journalists.

Announcements by members of the NCA added to the fears of a narrowing space for freedom of expression. In July 2012 Kamel Labidi, head of the INRIC resigned from his position and the INRIC announced it was terminating its work in protest against what it saw as the

authorities' lack of will to implement a genuine reform of the media. Meanwhile, the draft constitution – despite containing articles protecting freedom of expression, banning censorship and promoting artistic expression – criminalizes attacks on religious values and sanctities. Recent amendments to the draft reportedly removed such articles from the body of the constitution but maintained it in the preamble.

Amnesty International is also concerned about a draft bill presented to the NCA in August 2012 by the Ennahda party, which would criminalize defamation of religion. The bill proposes amendments to the Penal Code to add Article 165bis which would provide for a punishment of up to two years' imprisonment or a fine for offences against "the sacred". The bill describes "the sacred" as being God, His prophets, the sacred books, the Sunna (practices) of His final prophet (Mohammed), the Kaaba (Islam's holiest building, situated in Mecca), mosques and churches. One offence is described as swearing, insulting, ridiculing or mocking "the sacred" by word, image or act or depicting God or the prophets visually.

Even at an international level, the Tunisian authorities have proved unwilling to fully respect freedom of expression. In its presentation to the UN Human Rights Council during the 13<sup>th</sup> session of the Universal Periodic Review in 2012, the Tunisian delegation assured states of the great importance attached to freedom of expression in Tunisia,<sup>30</sup> yet Tunisia rejected recommendations from participating countries to decriminalize defamation, which raises further doubts about Tunisia's promises to respect freedom of expression.<sup>31</sup>

In addition, the Tunisian authorities have been unwilling or unable to protect artists, writers and journalists from attacks by groups of individuals believed to be affiliated with Salafists, and at the same time have repeatedly resorted to using articles 121 and 226 of the Penal Code to further repress freedom of expression. These articles, which date back to the Ben Ali era, prescribe punishments for the offences of "violating sacred values" and "disturbing the public order and morals" and have been used to stifle journalists, bloggers and artists.

Article 121(3) of the Penal Code criminalizes the publication, distribution or sale of information that disrupts public order or public morals. The punishment for such crimes is between six months' and five years' imprisonment and a fine. Meanwhile, Article 226 provides punishments for those who are accused of indecent behaviour or attacking sacred values or public order through words or actions. The punishment for such crimes is six months' imprisonment and a fine.

## **ARTISTS UNDER ATTACK**

**Artists Nadia Jelassi and Mohamed Ben Slama were charged by the Public Prosecutor with "disrupting public order and morals" in August 2012. Two months earlier, in June, both had participated in an art exhibition at the Printemps des Arts fair in Tunis. Among Nadia Jelassi's work were mannequins of women in black abayas (full-length robes that also covers the head, but not the face) and surrounded by stones. Mohamed Ben Slama's work included a depiction of ants spelling out the words "Glory to God" (Subhan Allah). On the last day of the exhibition, a man photographed some of the sculptures and then asked for them to be taken down as he thought they were offensive. The organizers refused, and the man is said to have later returned with others and attacked the gallery, destroying some of the art and writing "death to blasphemous artists" on the walls of the building where the exhibition was taking place.**

On 11 June, protests, some violent, across Tunisia believed to have been organized by Salafist groups in relation to the exhibition broke out in several parts of the country. Some protesters reportedly set fire to police stations, courts and other public institutions. The Minister of Interior said that about a hundred people, including 65 police officers, were wounded.<sup>32</sup>

The Tunisian authorities' initial response was to blame the artists. At a press conference, the Minister of Human Rights and Transitional Justice, Samir Dilou, announced that he found the art exhibition offensive and provocative, and the Minister for Religious Affairs, Noureddine Khadmi, said that violations against sacred Islamic symbols would be punished. Meanwhile, the Minister of Culture, Mehdi Mabrouk, stated, "In art, there is provocation. Art sometimes provokes, and this is its role. But there is a red line which separates provocation and the assault on sacred symbols."<sup>33</sup> He later played down his words against the artists and the exhibition.

Nadia Jelassi was accused of "exposing images that disturbed the public order" in reference to Article 121(3) of the Penal Code at the instigation of the public prosecutor. Nadia Jelassi returned to see the judge on 28 August with her two lawyers. She said the judge asked her about her intentions for doing her artwork. She was then taken for mug shots and her body measurements were taken.

As of 16 October 2012, Nadia Jelassi is unclear about what is happening with her case and her lawyer has been told that the investigation is ongoing.

Nadia Jelassi has described to Amnesty International how the incident has led to a climate of fear amongst artists in Tunis. "Usually in October there are many exhibitions, openings, but this year it is so quiet. Artists are afraid, we do not feel safe, we do not feel protected by the State", she said.

Other incidents have highlighted the use of articles 121(3) and 226 of the Penal Code to restrict freedom of expression on the Internet.

**Ghazi Beji** and **Jabeur Mejri** were prosecuted and fined in March 2012 after they published articles on and drawings of the prophet Mohammed on websites, including Facebook. A court in Mahdia deemed their online posts to be insulting to Islam and Muslims.

Jabeur Mejri was arrested on 5 March 2012 after a lawyer filed a complaint about his posts on Facebook. During interrogation, Jabeur Mejri mentioned that some of the images on his Facebook account had been given to him by a friend, Ghazi Beji. On 9 March, Ghazi Beji was charged in relation to articles he had shared online, also compiled in a book called "The Illusion of Islam", which expressed atheistic views and satirized Islam. He was summoned to appear in court on 12 March but he fled the country for his safety and sought asylum. The two men were charged not only under articles 121 and 226 of the Penal Code, but also under Article 86 of the Telecommunications Code, which criminalizes the use of telecommunications networks to intentionally harm others or disturb their peace.

Both men were found guilty (Ghazi Beji in his absence) and on 28 March were sentenced to seven and a half years' imprisonment and fines – the maximum punishment possible. Jabeur Mejri is in Mahdia Prison while Ghazi Beji remains abroad. On 25 June the Monastir Court of Appeal upheld the convictions and sentences. The men's lawyers took the case to the Court of Cassation and were awaiting a decision at the time of writing in October 2012.

Article 121 has also been used against journalists and the media. **Nabil Karoui**, head of

Nessma TV, was fined 2,400 Tunisian dinar (US\$1,500) in May 2012 after his station broadcast the animated French film *Persepolis* dubbed into Tunisian Arabic dialect in October 2011. Nadia Jamal, head of the organization that dubbed the movie, and Alhadi Boughanim, responsible for monitoring programmes at Nessma TV, were also fined. Groups believed to be salafists accused the film of being blasphemous because of a scene showing a representation of God. A complaint was filed by 144 lawyers against Nabil Karoui. Protesters attacked Nessma TV headquarters and Nabil Karoui's home was reportedly firebombed.

**Nasreddine Ben Saïda**, editor of the daily newspaper *Attounssia*, was found guilty in March 2012, under Article 121, of "spreading information which could disturb public order" and fined 1,000 Tunisian dinar (US\$650). *Attounssia* had published a photograph of a football player of dual German-Tunisian nationality and his naked girlfriend with his hand covering her breasts.

The new Tunisian authorities have also charged people with public morality offences in what appears to be attempts to stifle government critics. Activist and journalist **Sofiène Chourabi** was arrested on 5 August 2012 along with two friends while on a camping trip in Kelibia, north-east Tunisia. He and his friend, journalist **Mehdi Jlassi**, were charged with being "drunk in public" and "harming public morals". The day before his arrest, Sofiène Chourabi had called for a protest in front of the Interior Ministry against what he said were moves by the Ennahda party to impose an increasing number of restrictions on public freedom. He described what happened to Amnesty International:

"We were woken up in our tents at about 3am by around 10 police officers. They handcuffed us outside while they searched inside the tent. They found a bottle of alcohol inside the tent. I don't understand how that means we were drunk in public."

They were taken to a police station and released the following day. While the alcohol-related charges were later dropped, the first session of their trial for "harming public morals" was held in September.<sup>34</sup> The trial was postponed until 16 October and then again to 30 October.

On 21 September 2012, **Ayoub Massoudi** was handed a four-month suspended prison sentence after being convicted of "undermining the reputation of the army" and "defaming a civil servant" for having publicly criticized the extradition of former Libyan prime minister Al-Baghdadi Al-Mahmoudi from Tunisia to Libya in June 2012. Ayoub Massoudi resigned from his post as presidential adviser two days after the extradition and said that the President had not been adequately informed of the extradition by Tunisia's chief of the armed forces and Defence Minister. Ayoub Massoudi was charged by a military prosecutor using Article 98 of the Code of Military Justice and Article 128 of the Penal Code, and a travel ban was issued against him. He only found out about the charges and travel ban while trying to pass through airport customs on 16 August. He was officially notified of the charges and travel ban two days later.



Ayoub Massoudi © Amnesty International

## INTERNATIONAL OBLIGATIONS

**International human rights law protects the expression of ideas even if they may be considered offensive. The right to criticize religious and other beliefs and ideas is a vital component of the right to freedom of expression. Legislation such as blasphemy laws that criminalize criticism of, or insults to, religious beliefs violate freedom of expression.**

While religion and culture are centrally important to many people's lives, their protection cannot be a justification for arbitrarily restricting freedom of expression or otherwise abusing human rights. The only circumstances in which the state must prohibit such expression is when it is a form of incitement to discrimination, hostility or violence against members of a religious or other group. The violent reaction of those who have been offended must never be a factor in determining whether a form of expression constitutes incitement. Criticism, insults or mockery do not interfere with the individual believer's freedom of religion, however offensive they may find it.

While protecting public morals or public order may sometimes be a legitimate reason for restricting freedom of expression, any such restriction may only be imposed if absolutely necessary, and even then the least restrictive measure should be taken. Article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Tunisia is a state party, protects peaceful expression, including of ideas and views on religion that might be considered offensive by some.<sup>35</sup> As stated by the UN Human Rights Committee, which oversees the implementation of the ICCPR, in its general comment on the right to freedom of expression: "All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature".<sup>36</sup> The Committee added that it "embraces even expression that may be regarded as deeply offensive".

The ICCPR also clearly provides that limitations on rights are permissible only when they are provided by law and are necessary, in a democratic society, for one or more of the following aims: respect of the rights or

reputations of others, or protection of national security, public order, public health or morals. The Human Rights Committee has clarified that this means that in any given instance the specific restriction must be limited to that which is necessary to achieve the legitimate aim and that the government has an obligation to apply the least restrictive limitation of the right from among a range of possible and effective restrictions. Restrictions must also be proportionate to the legitimate aim, and must not be so extensive as to undermine the right itself.

Authorities also have an obligation to protect individuals' (such as artists and writers) right to free expression from abuse by private individuals and groups – even when such expression is controversial or offensive to some members of society.

## 6. WOMEN'S RIGHTS

Following the uprisings of December and January 2011 the Tunisian interim government took a number of steps to ensure respect for women's rights. In April 2011 the High Electoral Commission adopted the principle of parity between women and men in elections, and by a decree of August 2011 it lifted Tunisia's reservations to CEDAW. In March 2012, following its review by the Universal Period Review Tunisia accepted important recommendations such as to put in place a comprehensive strategy to eliminate negative stereotypes of women, to ensure the principle of equality between men and women is clearly formulated in the new Constitution and to apply it in practice, and to take all necessary measures to eliminate violence against women.

Despite these positive steps, a number of provisions of Tunisian law continue to violate gender equality and women's rights. The draft constitution made public in August 2012 is ambiguous on the issue of equality between men and women. A statement on a radio debate by Souad Abderrahim, member of the NCA, in November 2011, that single mothers were "an infamy" and that they should not aspire to a legal framework that protects their rights, raises important questions as to the seriousness of the NCA when it comes to ensuring that women's rights are guaranteed in law and practice.

Indeed the Personal Status Code continues to discriminate against women in inheritance and custody of children. By rejecting recommendations to eliminate those provisions in September 2012 in the UPR, the Tunisian authorities showed the discrepancy between ostensible commitments to women's rights and the limited action they were prepared to take.

Although it lifted the reservations to CEDAW, Tunisia maintains its declaration that it will not take any organizational or legislative decision in conformity with the requirements of that convention "where such a decision would conflict with the provisions of chapter I of the Tunisian Constitution", which provides that the religion of the Tunisian state is Islam.

The Tunisian authorities have also failed to remove provisions of the Penal Code which allow for someone who raped or abducted minor to be exempt from prosecution if he marries her.<sup>37</sup> Similar legislation in Morocco created outrage following the suicide in March 2012 of a young woman who had been forced to marry the man who raped her. That such legislation is still in force in Tunisia puts in question the seriousness of efforts by the authorities to promote women's rights and must immediately be removed. Anyone found guilty of rape should be prosecuted and punished with a sentence that reflects the seriousness of the crime committed, and efforts should be directed at protecting women and girls from abuse and putting in place mechanisms to prevent such acts from occurring.

Another provision in the Penal Code has been used against a woman allegedly raped by two police officers, who now finds herself prosecuted after she reported the rape.

The young woman was with her fiancé in a car in Tunis late on 3 September 2012 when three policemen approached them. The young woman says that two of the police officers raped her in their police car while the third took her fiancé to a nearby ATM in an attempt to

extort money. The police officers involved were arrested and charged, two for rape and one for extortion, and are currently in detention.<sup>38</sup> On 26 September 2012 she was summoned to Court after the Public Prosecutor filed a complaint against her and her fiancé for “intentional indecent behaviour”. The policemen alleged that they had found the couple in an “immoral position” in the car – a claim later repeated in a statement by Tunisia's Ministry of the Interior. The young woman and her fiancé appeared before an investigating judge at the Court of First Instance of Tunis on 26 September but the hearing was postponed at her lawyer's request. On 2 October a second hearing took place.

At best, charging the victim of a rape by police officers instead of protecting her from intimidation and stigma highlights the deep flaws on Tunisian law and criminal justice system. At worst, it is an insidious attempt to discredit a rape victim and protect those she accused of raping her.

Amnesty International is also concerned that the treatment afforded to the young woman will deter other victims of sexual abuse from coming forward and as they may fear being treated as the accused rather than the victim.

The coming months will be crucial in determining whether the new Tunisia will guarantee women all the rights to which they are entitled. Amnesty International calls on the Tunisian authorities to seize this opportunity and ensure these rights are firmly enshrined in law, starting with the constitution, and to take concrete measures that will meet the expectations raised in the months following the uprisings.

## 7. CONCLUSIONS AND RECOMMENDATIONS

A year on from the election of the NCA, Tunisia is at a crossroads. Much work still needs to be done to address Tunisia's legacy of abuse and bring national laws in line with international human rights standards – despite the gains made since the uprising. Such measures are necessary to ensure that Tunisia's future is not marred by the abuses and injustices of the past. As Tunisia finalizes its Constitution, it must enshrine human rights guarantees that protect all Tunisians, and provides for means of enforcing rights and redressing violations.

This transitional period following the uprising provides a great opportunity to create a just and fair society where all rights and freedoms are respected, protected and fulfilled. So far, efforts towards change have been slow, and in some cases abuses of the past have been replicated.

Human rights change is crucial to ensure that all Tunisians can be proud of the legacy of the uprising. In the spirit of assisting the Tunisian authorities in this regard, Amnesty International puts forward the following recommendations to help bring about positive human rights change.

### RECOMMENDATIONS

Amnesty International calls on the Tunisian authorities to implement the following recommendations:

#### **Address impunity for human rights violations:**

- Ensure thorough, impartial and independent investigations into the human rights violations and abuses committed under the rule of Zine El Abidine Ben Ali;
- Co-operate fully with investigations into human rights violations, including by disclosing information as to the role and structure, including chain of command, of the security forces;
- Ensure that victims and witnesses of human rights violations, and their relatives and lawyers are protected from harassment and intimidation and investigate promptly any allegations of such harassment;
- Suspend, pending full investigations and the conclusion of judicial proceedings, all members of the security forces who are suspected of having committed or ordered the commission of human rights violations;
- Provide adequate, effective, and prompt reparation for the harm suffered by victims of human rights violations, including medical care and rehabilitation and psychological and social services;

- Ensure that the full details of investigations and other measures to provide truth, justice and redress, including criteria used to decide compensation and medical care, are communicated to victims of human rights violations and their relatives;
- Ensure that any transitional justice mechanism adopted puts at its heart victims of human rights violations and upholds their right to truth, justice and reparation.

#### **Guarantee the independence of the judiciary**

- Limit the competency of military tribunals to offences by military personnel of a purely military nature;
- Establish a Judicial Council tasked with appointing, promoting, transferring and where necessary, disciplining and dismissing magistrates that is independent in its composition, functions and funding;
- Guarantee and respect the principle of the independence of the judiciary, including the security of tenure of judges, from the executive branch of the government;
- Ensure that all allegations of intimidation, threats or harassment of judges are followed by an effective investigation and take appropriate sanctions against those responsible and measures to guarantee non-repetition.

#### **Eradicate torture and other ill-treatment**

- Amend the law on torture to bring it in line with international human rights law, including by repealing the statute of limitations;
- Issue clear instructions to law enforcement officials that torture and other ill-treatment are illegal and that those found responsible will receive a punishment proportionate to the seriousness of the crime committed;
- Ensure effective, independent and impartial investigations of all complaints of torture or other ill-treatment and that perpetrators are brought to justice in fair trials, without recourse to the death penalty, and that victims receive appropriate reparation;
- Put in place, without further delay, an independent national mechanism to prevent torture, in line with the Optional Protocol to the Convention against Torture.

#### **Reform the security forces**

- Ensure that all allegations of excessive use of force against peaceful protesters are investigated in a prompt, effective, and independent manner;
- Issue clear instructions on the use of force and firearms in policing, in line with international standards;
- Undertake a fundamental overhaul of the security apparatus and make public a clear structure of the security branches including chain of command;
- Establish an oversight body to hold security forces to account for any abuses.

### **Uphold freedom of expression**

- Ensure that the new constitution and any new law fully guarantee freedom of expression, including by removing articles that criminalize “attacks on religious sanctities” and defamation of religion;
- Ensure that any media-related offences are treated in the framework of Decree 115 on press freedom and Decree 116 on audiovisual material, adopted in November 2011, but ensure that these new laws are in full accordance with Tunisia's international obligations, and that they do not criminalize defamation;
- Amend or repeal laws that criminalize the peaceful exercise of the right to freedom of expression, in line with Tunisia's international obligations. These include articles in Penal Code that criminalize attacks on sacred values, offences to public order or public morals (articles 121(3), 128 and 226) and Article 98 of the Code of Military Justice;
- Protect journalists, artists, writers and academics from attacks by private individuals. This should include investigating such attacks and holding those responsible accountable.

### **Respect and protect women's rights:**

- Ensure that the new constitution prohibits discrimination and clearly identifies grounds for prohibition in line with international law. Gender equality must be guaranteed, and all must have equal rights in law and in practice and equal opportunities in the political, economic, cultural and social sphere;
- Amend provisions that discriminate against women in the Personal Status Code, as well as the Penal Code;
- Ensure that all international treaties ratified by Tunisia are enforceable in law by clearly stipulating the superiority of international law over domestic law in the new constitution, and by amending national legislation as necessary;
- Enact a law on violence against women, including on domestic violence and marital rape. Provisions for dropping proceedings or penalties where an assaulted spouse withdraws her complaint or, where the assailant marries the victim in rape or kidnapping cases, must be repealed (Penal Code articles 218, 227bis and 239).

# ENDNOTES

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<sup>1</sup> Salafists are Sunni Muslims who advocate a return to what they consider to be Islam's fundamental principles as practiced by the first Muslims.

<sup>2</sup> The Minister of Human Rights and Transitional Justice also stated that "freedom of expression has limits and that [gay, lesbian and bisexual people] must respect the red lines that are defined by Tunisian culture, religion and heritage."

<sup>3</sup> Amnesty International, *Tunisia in revolt: State violence during anti-government protests* (MDE 30/011/2011), March 2011, <http://www.amnesty.org/en/news-and-updates/report/security-forces-tunisia-must-be-held-accountable-killing-protesters-2011-03->

<sup>4</sup> Amnesty International delegates visited families in greater Tunis, Thala, Kasserine and Regueb in September 2012.

<sup>5</sup> The right to an effective remedy for victims of human rights violations and serious violations of international humanitarian law is guaranteed in international law. It is enshrined in Article 2 (3) of the ICCPR and further expanded in the Human Rights Committee General Comment No.31 on the "*Nature of the General Legal Obligation imposed on States Parties to the Covenant*", adopted on 29 March 2004 at its 2187th meeting. It is also recognized in Article 8 of the Universal Declaration of Human Rights, Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 39 of the Convention on the Rights of the Child, Article 3 of the 1907 Hague Convention concerning the Laws and Customs of War on Land, Article 91 of the Protocol I Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), Article 75 of the Rome Statute of the International Criminal Court, Article 7 of the African Charter on Human and Peoples' Rights and Article 23 of the Arab Charter on Human Rights.

<sup>6</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles on the Right to a Remedy and Reparation), adopted and proclaimed by UN General Assembly Resolution 60/147 of 16 December 2005 (UN Doc. A/RES/60/147).

<sup>7</sup> The reforms introduced military appeals courts, stipulated that all stages of the military court proceedings follow the Criminal Procedure Code, and allowed military courts to comprise both military and civilian judges.

<sup>8</sup> Updated Set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1, para. 29.

<sup>9</sup> Draft Principles Governing the Administration of Justice through Military Tribunals, E/CN.4/2006/58, Principle 9. See also African Commission on Human and People's Rights, Principles and Guidelines on the right to a fair trial and legal assistance in Africa, Principle G(A) [http://www.achpr.org/english/declarations/Guidelines\\_Trial\\_en.html](http://www.achpr.org/english/declarations/Guidelines_Trial_en.html) .

<sup>10</sup> See Amnesty International Public Statement, "Tunisia, one year on: no justice for victims of the uprising" (Index: MDE 30/024/2011), 16 December 2011: <http://www.amnesty.org/en/library/info/MDE30/024/2011/en>

<sup>11</sup> See Amnesty International Public Statement, "Tunisian authorities must protect victims and their families in former officials' trial" (Index: MDE 30/003/2012), 12 February 2012: <http://www.amnesty.org/en/library/info/MDE30/003/2012/en>

<sup>12</sup> Youssef Ben Abdelaziz, a former brigadier general in the BOP, and Bechir Bettibi, a lieutenant-colonel, were sentenced to 10 and eight years' imprisonment respectively for their involvement in killings in Thala. Two other members of the security forces – Wissem El Quartatani, former police chief in Kasserine; and Mohamed Benhoula, a captain in the BOP – were sentenced respectively to 15 years in prison for premeditated murder and 10 years' imprisonment for murder for the killing of two men in Kasserine.

<sup>13</sup> Former President Ben Ali was also sentenced to 20 years in prison for incitement to use arms and provoke sedition in June 2012 in the case of the town of Ouardanine, where four people were killed on 15 January 2011 when security forces shot at members of neighbourhood defence committees. Several members of the security forces were sentenced to prison terms ranging from 5 to 10 years.

Two members of the security forces were also sentenced in April 2012 to 20 years' imprisonment and a fine of 80,000 dinars for the killing of Slim Hadri in Sfax on 14 January 2011.

<sup>14</sup> Ali Seriati was later sentenced in July 2012 by the Tunis military tribunal to 20 years' imprisonment for "complicity in murder" in relation to the killings of 43 protesters.

<sup>15</sup> The commission was created by Law No. 8 of 18 February 2011.

<sup>16</sup> Interview of Taoufik Bouderbala, Radio Express FM, 17 May 2012: <http://www.radioexpressfm.com/news/show/taoufik-bouderbala-en-tunisie-il-n-existe-pas-un-corps-special-de-tireurs-d-elite>

<sup>17</sup> Decree No. 2012-22 of 19 January 2012, « portant creation du Ministere des droits de l'Homme et de la justice transitionnelle et fixation de ses attributions ».

<sup>18</sup> See TAP, "Marzouki: 'Nous oeuvrerons à lever prochainement l'état d'urgence'", 23 June 2012: <http://www.tap.info.tn/fr/politique/300-politique/28109--marzouki-qnous-oeuvrerons-a-lever-prochainement-letat-durgenceq-.html>

<sup>19</sup> See Tunisie Numerique, "Tunisie: Samir Dilou annonce l'indemnisation prochaine des victimes de la dictature", 29 September 2012: <http://www.tunisienumerique.com/tunisie-samir-dilou-annonce-lindemnisation-prochaine-des-victimes-de-la-dictature/147272>

<sup>20</sup> See Amnesty International reports *Independent voices stifled in Tunisia* (Index: MDE 30/008/2010), July 2010 and *Tunisia: Cycle of injustice* (Index: MDE 30/001/2003), June 2003.

<sup>21</sup> Loi constituante n. 2011-6 du 16 decembre 2011 relative a l'organisation provisoire des pouvoirs publics, Art 22.

<sup>22</sup> See Human Rights Watch, "Tunisia : Revise Judiciary Bill", August 2012: <http://www.hrw.org/news/2012/08/06/tunisia-revise-judiciary-bill>

<sup>23</sup> See "Tunisian authorities must investigate new torture allegation" (Index: MDE 30/006/2012), 16 May 2012: <http://amnesty.org/en/library/info/MDE30/006/2012/en>; and "Tunisia urged to investigate police violence against protesters", 10 April 2012: <http://www.amnesty.org/en/news/tunisia-investigate-police-violence-against-protesters-2012-04-10>

<sup>24</sup> See the report by Action des chrétiens pour l'abolition de la torture (ACAT-France) in collaboration with Liberté et Équité and the Organization against torture in Tunisia (OCTT): *Vous avez dit justice? Etude du phénomène tortionnaire en Tunisie*, June 2012.

<sup>25</sup> Report by the Special Rapporteur on torture and cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, following his visit to Tunisia in May 2011, A/HRC/19/61/Add.1

<sup>26</sup> See TAP, "Parachèvement du cadre juridique de l'instance nationale de prévention contre la torture", 10 August 2012: <http://www.tap.info.tn/fr/fr/politique/300-politique/30954-parachevement-du-cadre-juridique-de-linstance-nationale-de-prevention-contre-la-torture.html>

<sup>27</sup> Decree 106 of 2011 passed on 22 October stating the amendment of articles in the Penal Code that relate to torture.

<sup>28</sup> See Reuters, "Tunisia dissolves foreign media censor - minister", 26 January 2011: <http://af.reuters.com/article/tunisiaNews/idAFLDE70P2GP20110126>

<sup>29</sup> See La Tunisie Vote, "Revolution results in surge in Tunisian media", 20 July 2011: <http://www.latunisievote.org/fr/politics/item/143-revolution-results-in-surge-in-tunisian-media>

<sup>30</sup> A/HRC/21/5, paragraph 8.

<sup>31</sup> A/HRC/21/5, paragraph 117.3 (recommendation by Czech Republic).

<sup>32</sup> See Tunisia Live, "Interior Ministry spokesperson calls Salafist riots terrorist acts, threatens use of live ammunition", 12 June 2012: <http://www.tunisia-live.net/2012/06/12/interior-ministry-spokesperson-calls-salafist-riots-terrorist-acts-threatens-use-of-live-ammunition/>; France TV, "La violence salafiste s'intensifie en Tunisie", 13 June 2012: <http://www.francetv.fr/geopolis/blog/tunisie-la-democratie-en-marche/la-violence-salafiste-sintensifie-en-tunisie-5919>; *Le Monde*, "Couvre-feu en Tunisie après une vague de violences", 13 June 2012: [http://www.lemonde.fr/tunisie/article/2012/06/13/couvre-feu-en-tunisie-apres-une-vague-de-violences\\_1717465\\_1466522.html](http://www.lemonde.fr/tunisie/article/2012/06/13/couvre-feu-en-tunisie-apres-une-vague-de-violences_1717465_1466522.html)

<sup>33</sup> See UNCUT, "Tunisian Ministry of Culture closes art gallery", 13 June 2012: <http://uncut.indexonensorship.org/2012/06/tunisian-ministry-of-culture-closes-art-gallery/>

<sup>34</sup> See Euronews, "Charged Tunisian journalist Sofiane Chourabi describes fears for his life", 18 September 2012: <http://prod-euronews.euronews.net/2012/09/18/charged-tunisian-journalist-sofiane-chourabi-describes-fears-for-his-life/>

<sup>35</sup> Article 19 of the ICCPR states: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

<sup>36</sup> UN Human Rights Council General Comment No.34 on Article 19, CCPR/C/GC/34, 12 September 2011, para9

<sup>37</sup>Articles 227bis and 239 of the Penal Code.



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## ONE STEP FORWARD, TWO STEPS BACK? ONE YEAR SINCE TUNISIA'S LANDMARK ELECTIONS

In the months following the ousting of Zine El Abidine Ben Ali on 14 January 2011, Tunisia's caretaker government made important progress towards human rights reform by ratifying a series of international human rights treaties, releasing political prisoners, enacting new laws on freedom of the press and allowing independent organizations to operate more freely.

However, one year after the election of the National Constituent Assembly on 23 October 2011, a number of setbacks raise doubts as to the authorities' genuine commitment to human rights: freedom of expression is at risk with Tunisians, including journalists and artists, under attack from state and non-state actors; torture and other ill-treatment continue to be reported, including unnecessary and excessive use of force against protesters; those injured and the families of people killed during the uprisings are still waiting for truth and justice; and the government is unwilling to lift remaining provisions in Tunisian law that discriminate against women.

This briefing examines human rights developments in the country since the election of the National Constituent Assembly in October 2011. It concludes that initial progress made on human rights has not gone far enough, and that ongoing human rights violations highlight the urgent need for radical human rights reform. Amnesty International urges the authorities to put human rights at the heart of a new Tunisia which lives up to the expectations of those who fought hard for freedom.

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