

TUNISIA:
Human Rights Crisis of 1987

A report of the
Minnesota Lawyers International Human Rights Committee
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PREFACE

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

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

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

The third reason was to investigate allegations that the protection of

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

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

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

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

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

John Borman

Inger Tangborn

I. INTRODUCTION

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

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

Habib Bourguiba led the struggle for independence and ruled the country until he was removed from power in a constitutional coup on November 7, 1987.¹ While the Constitution calls for the president to be elected for a five-year term and permits unlimited reelection, Bourguiba had made himself President-For-Life by means of a constitutional amendment in 1974. In the early years of his rule, President Bourguiba was responsible for significant reforms that led the former colony on the road to significant economic

¹ See Part VII., Epilogue.

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

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

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

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

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

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

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

credibility.

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

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

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

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

II. OFFICIAL RECOGNITION OF HUMAN RIGHTS IN TUNISIA

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

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

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

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

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

⁴ Ibid.

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

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

In addition, the report states that:

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

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

B. Constitutional Proclamations of Human Rights

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

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

⁶ Ibid., para. 45.

common heritage of peoples attached to human dignity, justice and liberty."⁷

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

Article 5

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

Article 6

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

Article 7

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

Article 8

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

The right of unionization is guaranteed.

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

⁸ Ibid.

Article 9

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

Article 12

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

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

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

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

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

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

violation of these rights.⁹

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

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

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

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

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

¹⁰ *Ibid.*, para. 20.

¹¹ *Ibid.*, para. 57.

¹² *Ibid.*, para 58.

¹³ *Ibid.*, para. 59.

3. Article 9: Liberty and Security of Person

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

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

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

4. Article 10: System of Detention

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

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

¹⁵ *Ibid.*, para. 69.

¹⁶ *Ibid.*, para. 70.

the inherent dignity of the human person.¹⁷

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

5. Article 14: Safeguards for the Administration of Justice

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

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

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

¹⁸ *Ibid.*, para. 81.

¹⁹ *Ibid.*, para. 90.

than the law."²⁰

6. Article 17: Privacy

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

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

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

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

²¹ *Ibid.*, para. 109.

²² *Ibid.*, para. 112.

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

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

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

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

8. Article 19: Freedom of Opinion and Expression

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

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

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

²⁴ *Ibid.*, para. 114.

²⁵ *Ibid.*

view to making others aware of them.²⁶

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

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

9. Article 21: Right of Assembly

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

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

²⁷ *Ibid.*, para. 119.

²⁸ *Ibid.*, para. 121.

Constitution.²⁹

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

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

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

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

³⁰ *Ibid.*, para. 128.

form and join trade unions."³¹

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

11. Establishment of a Tunisian League for Human Rights

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

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

³² *Ibid.*, para. 131.

³³ *Ibid.*, para. 12.

III. THE HUMAN RIGHTS SITUATION IN TUNISIA

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

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

1. The Absence of Constitutional Safeguards

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

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

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

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

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

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

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

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

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

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

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

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

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

³⁸ See: The case of Tammaam al-Uсбуai, *infra*.

The State Security Court was created in 1968³⁹ during a Government attempt to suppress certain leftist movements in Tunisia. It is composed of five judges, over whom presides the Tunisian *procureur général* or attorney general. The president of the court is assisted by four *assesseurs* (assistant judges), two of whom are judges of the *Cour de Cassation* (Supreme Court) and nominated with recommendation of the Justice Minister. The other two are members of the National Assembly and nominated upon recommendation of the President.⁴⁰

Both the constitutionality and the impartiality of the State Security Court have been questioned by lawyers, law professors and legal writers in Tunisia. Considerable attention was paid to these questions by law professors and lawyers during the round-table arranged by the Tunisian Bar Association for the delegation.

One writer asserts that Article 65 of the Constitution guarantees the independence of the judiciary, yet the independence of the State Security Court is fictitious. Moreover, the selection of two members of the National Assembly by the President to serve on the State Security Court is in violation of the principle of separation of powers. Finally, the objectivity of the National Assembly members is questioned, since history has shown that members have normally been selected on the basis of their outspokenness against the alleged crimes.⁴¹

The exceptional jurisdiction of the State Security Court is also

³⁹ Law No. 68-17 of 2 July 1968.

⁴⁰ Chkir, Hafidha, *Quelques Réflexions sur la Cour de Sûreté de l'Etat*, 1980 Rev. Tunis. Dr. at 191.

⁴¹ *Ibid.* at 206.

questionable since the Court may not act except on the initiative of the Attorney General and by written order of the Minister of Justice. Furthermore, history has shown that, except for the trials of the labor leaders in 1978, the State Security Court has devoted itself exclusively to the trials of unrecognized political movements. Moreover, the law creating the State Security Court does not define what constitutes internal state security. The Tunisian Penal Code enumerates the various crimes which constitute a threat to the country's external security, but there is no reference to internal security. As a result, most crimes charged as being threatening to internal security are of a political nature.⁴²

The difficulty of representing defendants before the State Security Court is also a matter of concern. Article 17 of the Law of July 2, 1968 provides that any attorney who oversteps "the limits of his obligation" may be cited immediately by the court's presiding judge for contempt of court. These sanctions may be imposed by the judge without the attorney being allowed to plead in his own defense.⁴³ This aspect of the State Security court was of particular concern to the lawyers and law professors who presented their views to the delegation at the round-table arranged by the Bar Association.

The State Security Court was convened on April 15, 1987 for the first time in seven years with the arrest of scores of Islamic fundamentalists accused of attempting to overthrow the Tunisian Government with the

⁴² Chkir, Hafidha, *Quelques Réflexions sur la Cour de Sûreté de l'Etat*, 1980 Rev. Tunis. Dr. at 205.

⁴³ *Ibid.* at 206.

assistance of the Government of Iran.⁴⁴

Subsequent to the mission, 90 alleged members of the Islamic Tendency Movement (MTI) (40 in absentia) were brought before the State Security Court in a trial that began on August 27, 1987. Reports of the proceedings have indicated that the proceedings were characterized by allegedly aggressive conduct towards the defendants by the presiding judge and that efforts by defense lawyers to intervene and question their clients were frustrated by the Court.⁴⁵ At the conclusion of a four-week trial, 56 MTI members were sentenced to prison, two members were hanged, and MTI leader, Rachid Ghannouchi, was sentenced to life imprisonment. Thirty-seven of the defendants were tried in absentia and five of them were sentenced to death.⁴⁶

4. The Press Code and The Law of Defamation

The Tunisian Press Code, enacted in 1975, is primarily devoted to enumerating procedures, prohibited acts and sanctions related to freedom of the press.

Although the Government reports that neither the Press Code nor applicable legislation contains any provisions restricting the freedom to seek,

⁴⁴ The last time proceedings were brought before the State Security Court was on the occasion of the Gafsa uprising in April 1980 when allegedly Libyan-backed insurgents mounted an attack on the town of Gafsa in an apparent attempt to overthrow the Tunisian government.

⁴⁵ Urgent Action, Amnesty International, DOC UA 121/87 (18 September 1987, 16 October 1987).

⁴⁶ *The New York Times*, September 28, 1987, at 4, col. 6.

receive or disseminate information of any kind,⁴⁷ the Press Code institutionalizes a system of prior authorization for publications. Preliminary copies of each publication must be submitted to the Ministry of Interior, who will forward a copy to the Ministry of Information and to the office of the Public Prosecutor. Publication without due authorization is a punishable offense. Without the authorization of the Ministry of Interior, the owner, publisher or director of the periodical may incur a fine of 120 to 1,200 dinars (Tunisian)⁴⁸. Once the authorization for the publication is granted, the Press Code requires that a specified number of the first printed copies of every book, brochure, periodical or document be submitted to the authorities, apparently for the purpose of keeping a record of all published material in Tunisia.⁴⁹

The Press Code does not specify a remedy for the failure of the Ministry of Interior to authorize publication of a document. The only available remedy appears to be that, under Tunisian law, an appeal may be made to the Administrative Tribunal for abuse of authority.⁵⁰ The Law of the Administrative Tribunal, however, includes an additional requirement. Before an appeal to the Administrative Tribunal is made, an administrative request for review must be made to the authority which performed the act complained of; in this case, the Ministry of Interior.⁵¹ The delegation received no indications that such a recourse was actually allowed by the

⁴⁷ U.N. doc. CCPR/C/28/Add. 5/Rev. 1, para. 119.

⁴⁸ One dinar equals approximately 1.42 U.S. dollars.

⁴⁹ Article 19, *Freedom of Information and Expression in Tunisia*, (1987) pp. 14-15, 19-20.

⁵⁰ U.N. doc. CCPR/C/28/Add. 5/Rev. 1, para. 119.

⁵¹ Act No. 72-40 of 1 June 1972.

Government to be used as a remedy for the denial of the right to publish a periodical.⁵²

On Friday, July 31, 1987, the delegation met with journalists Siham Ben-Sedrine and Rachid Khechana,⁵³ who were writers for the opposition paper, *Al-Mawqif*. The two journalists described Government tactics designed to prevent publication of newspapers such as *Al-Mawqif*. Rather than banning the newspaper altogether, Interior Ministry officials would demand that the first copy of each edition of the newspaper be submitted to the Ministry's office. Week after week, the Interior Ministry would censor the edition just as it was about to be published. Finally, the costly and demoralizing effects of the Government's practices forced the newspaper to cease operations, despite never having been officially banned. As a result of Government censorship, there were no opposition newspapers being published in Tunisia in July 1987. Moreover, the French daily, *Le Monde*, was banned on one occasion while the delegation was in Tunisia.

The law of defamation is also frequently used by the Government to suppress the exercise of freedom of expression. The law of defamation can be found both in the Penal Code and the Press Code. Under the Penal Code, defamation "consists of any public allegation or imputation concerning a fact which impunes the honor or reputation of a person or an established body."⁵⁴

⁵² See also, *Freedom of Information and Expression in Tunisia*, Article 19 (1987) p. 14-16.

⁵³ Rachid Khechana had just been released from prison. He had been arrested only weeks before and held in preventive detention for possession of a banned book entitled "Wa Yahdathu fii Tunis" by the Syrian author, Mahmoud Darawiche.

⁵⁴ Tunisian Penal Code 1985, Article 245.

The definition of defamation in the Press Code is more extensive: defamation consists of an allegation or imputation, either directly or by reproduction, even if the defamation is expressed with a certain doubt or if it is directed against a person or an established body not explicitly named but identifiable by imputation.⁵⁵

The delegation found that the provisions of the Penal Code and the Press Code pose potentially insurmountable problems for any public criticism of the work of governmental organizations or agencies.⁵⁶

A good example is the case of Khemeis Chamari, the Chairman of the Tunisian League for the Defense of Human Rights, who was arrested on April 28, 1987 and held *garde-à-vue* until May 11, 1987 for allegedly making defamatory statements to the foreign press. Mr. Chamari was charged with: 1) "propagation of false information"; 2) "defamation of the public order"; and 3) "defamation of the person of the Prime Minister" after he gave interviews to Radio France International and the London-based magazine *Al-Majallah*. The interviews were not in conjunction with Mr. Chamari's position as Chairman of the Tunisian League for the Defense of Human Rights, but rather as a member of the governing bureau of the Movement of Social Democrats (MSD), a recognized opposition party. He was released for reasons of poor health on May 20, 1987 pending trial. His trial was postponed indefinitely on

⁵⁵ Tunisian Press Code, Article 50.

⁵⁶ In addition to defamation, the offenses of libel, insult, slander and slanderous allegation seem to present opportunities for the suppression of criticism of the authorities. Article 50 of the Penal Code deals with the offense against the Head of State: "any insulting expression uttered against the President of the Republic, the President of Assembly, a member of the Government" is a punishable offense. Article 54 of the Penal Code defines libel as "any offensive expression, term of contempt or invective which does not involve an imputation of a specific fact."

May 23, 1987 pending the accumulation of further information. At a similar hearing approximately one month later, the trial was postponed until October 7, 1987. On October 7, 1987, it was again postponed until January 1988.

Another example of how the law of defamation is used to suppress freedom of expression is the case of Ismail Bou-Lahia, who is the editor of a newspaper named *Al-Mustaqbal*.⁵⁷ On Wednesday, July 20, 1987, the delegation attended the trial of Mr. Bou-Lahia, who was charged with violations of the Press Code and defamation. Attorney Abdel Wahab Behi, a member of the Tunisian Bar Association, presented oral arguments for the defendant. Mr. Behi argued that the charges of defamation were unfounded. Since *Al-Mustaqbal* had been suspended six months, the alleged defamatory article had never appeared in publication. A judge declared a "non-lieu," which in the penal law signified a declaration that the evidence presented was insufficient.⁵⁸

5. The Law of Association and the Law On Public Gatherings

The Law of Association, which was enacted in 1959, governs associations and provides restrictions on any association that is perceived to be contrary to the law or to morals, likely to disrupt public order, or detrimental to the integrity of the state.⁵⁹ The formation of an association

⁵⁷ Translation: "The Future."

⁵⁸ At that point, the indictment was dismissed. After the judge made the declaration of "non-lieu," all of the attorneys in the courtroom responded with great astonishment. There was speculation that the presence of the delegation in the courtroom, which was made known to the judge prior to the opening of court that day, may have been a factor in the court's determination.

⁵⁹ Act No. 59-154 of November 7, 1959.

is subject to the completion of a number of formalities such as the filing of a declaration indicating the name, purpose and headquarters of the association; the full name, date of birth, and nationality of each of its officers; and the submission of copies of its regulations. Its legal existence is subject to authorization by the government.⁶⁰

The Law on Public Gatherings (*Loi contre l'attroupelement sur la voie publique*) of July 24, 1969, is frequently used by the Tunisian Government to limit freedom of expression.⁶¹ Article 29 stipulates a punishment of one month to one year in prison for an unarmed participant who continues to participate in an armed or unarmed demonstration after a single warning and an order to disperse. The punishment is six months to three years in prison if the dispersion of the demonstration necessitates the use of force.⁶²

On Wednesday, July 20, 1987, the delegation attended the trial of 39 young men and women, who were described as Islamic fundamentalists.⁶³ The

⁶⁰ U.N. doc. CCPR/C/28/Add. 5/Rev. 1, para. 131.

⁶¹ Article 29 of the Law of July 24, 1969.

⁶² O. Sidem-Poulain, *Rapport de Mission - Procès de M. Ahmad Mestiri* (Fédération Internationale des Droits de l'Homme, La Lettre de la FIDH Hors Serie) June 4, 1986.

⁶³ The accused persons in Case No. 2935/6 were: El Hamel Ben Mohamed El Miftahi; Mongi Ben Otmen El Ayadi; Mohamed Ben Said Ainoubli; Abdelhamid Ben Rabah Kchini; Salah Eddine Ben Hafnaoui Kalifi; Naji Ben Ali El Merdassi; Tarek Ben Mohamed Moumni; Mouldi Ben Mohamed El Garbi; El Azhar Ben Mohamed Ennafti; Abdellatif Ben Mamadi Ouislati; Mohsen Ben Etetabi El Garbi; Aissa Ben Klipha El Amri; Amhed Echerif Ben Mohamed Salah Hamdi; Mounir Ben El Bahri El Abidi; Adel Ben Ahmed Manai; Mongi Ben Mohamed Ali El Abidi; Abdessatar Ben Bechir Essidani; Tawfik Ben Ali Essidi; Chafik Ben Amor El Mejri; Chaker Echarfi; Malik Ben Brahim Touihri; Abdessatar Ben Jabeur El Amraoui; Ridha Ben Ahmed Mezni; Samir Ben Ali El Ayadi; Ahmed Cherif Ben Med Salah Homdi; Mounir Ben Bahri

trial was held in Chamber 6 of the Correctional Court in the Ministry of Justice, which is located in Tunis. The case had been moved from another district because of the political nature of the charge. All 39 were tried at once by a substitute judge.⁶⁴

The various charges against the 39 Islamic fundamentalists were as follows: (1) membership in an illegal association in violation of the Law on Association; (2) violation of the Law on Public Gatherings; and (3) defamation of the President of the Republic.

At the trial, each of the 39 defendants was called before the judge who had before him the dossier containing the prosecutor's case. Many of the dossiers contained signed confessions by the accused to many or all of the charges against them. When the judge asked each of them about the confessions, nearly all of the accused responded that they had signed the confessions after being beaten by the interrogators or out of fear of further abuse. The presiding judge had no reaction to these statements. The trial lasted approximately one and one half hours. At the conclusion of the trial, all 39 were sentenced to prison terms of two to four years.

Labidi; Adel Ben Ahmed Manaie; Mokthar Ben Ali Inoubli; Kamel Ben Aisoï Atafi; Hamadi Ben Ali Boulafimi; Younes Ben Ali Atheminia; Abdel Wahed Ben Ismail Dressi; Mabrouk Ben Med Clinier; El Fadhei Ben Med Lamine Baldi; Med ElMancef Ben Lamine Kmiri; Med Ben Thorher Sbitli; Khaled Ben Ahmed Mezni; Adel Ben Chedli dKhili; Bader Edine Ben Ali ElMazni; Ridhir Ben Elhabio Med ElKamir; Monior Alias Faten Touifiri.

⁶⁴ The judge that usually presided in that chamber had been attacked in June by a young man, allegedly an Islamic fundamentalist, who threw acid in his eyes.

B. Human Rights Reports: Detention, Torture, Censorship, and Harassment

By means of interviews with acquaintances and families of current detainees and with former detainees who were jailed on account of their human rights activities or political activities, the delegation was able to substantiate accounts of illegal and prolonged detentions, torture, censorship, and harassment.

1. Interviews with Families and Acquaintances of Detained Religious and Student Activists

Mabruk Zran: On Friday, July 31, 1987, the delegation met with acquaintances and members of the family of Mabruk Zran, a 55-year-old high school religion teacher of 30 years. Mr. Zran was seized at his home in Tunis on March 12, 1987 by four policemen, who came to the Zran home late at night posing as acquaintances of Mr. Zran in order to gain entry.

Mr. Zran was dragged from his bed and accused of having subversive literature in his possession. The policemen searched the house and eventually seized several human rights documents and Islamic religious books. Mr. Zran was taken away to a police detention center and held *garde-à-vue* for over four and a half months until his interrogation before the investigating magistrate of the State Security Court on the evening of July 16, 1987.⁶⁵

The family was unable to visit Mr. Zran at the "Ninth of April" prison where he was held until July 24, 1987. Mr. Zran had been forced to shave

⁶⁵ See Urgent Action, Amnesty International, DOC UA 121/87 ("Further Information on UA 96/87") concerning the pretrial investigation and *incommunicado* detention of and reports of torture of Mabruk Zran and others.

(in an apparent attempt to humiliate him, as beards are a symbol of religious devotion in Islam) and was reportedly being held with common law prisoners.⁶⁶ To the family's knowledge, Mr. Zran had not been tortured, because there were no outwardly visible signs of mistreatment. The family members stated, however, that they were afraid to ask how he had been treated, because detainees who complain of torture are very often severely punished for it.

Mr. Zran, who suffers from various health problems and requires medication for high blood pressure, was unable to receive any clothes or medicine from his family for the first six weeks of his detention, and then only after going on a hunger strike.

Hashmi Hamdi: On July 31, 1987, the delegation met with family members and acquaintances of Hashmi Hamdi, a 37-year-old bank employee who was arrested at his place of employment on March 12, 1987. He was held *garde-à-vue* until his interrogation before the investigating magistrate on the night of June 20, 1987.⁶⁷ As of July 31, 1987, he had yet to be formally charged with anything. Mr. Hamdi's arrest and detention were carried out without the issuance of any kind of summons or warrant, and it was only through his co-workers that family members learned of his detention.

Mr. Hamdi was originally placed in the "Ninth of April" prison following his interrogation. During the second family visit in late June 1987, he asked

⁶⁶ Various victims of human rights abuses who have been detained in Tunisia complained to us about the refusal of the authorities to provide separate detention facilities for political detainees (i.e. violations of the Press Code, the Law of Associations, etc.).

⁶⁷ Many of the former prisoners, as well as families of the detainees, told of frequent all-night interrogations of the accused, a method intended to break down the morale of individuals and, hence, induce confessions.

to be allowed to hug his young daughter. When this request was refused by the prison guards, he began to shout in protest, which resulted in him being taken away. Because of his protest, Mr. Hamdi was transferred to Bourj ar-Roumi prison in Bizerte.⁶⁸ The transfer caused an extreme hardship and financial burden for Mrs. Hamdi and her five children, because she was forced to spend most of the family income for transportation expenses in order to visit her husband in prison.

Tammaam al-Usbuai: On August 1, 1987, the delegation met with a member of the family of Tammaam al-Usbuai, a 23-year-old university student activist studying computer science who was detained by Tunisian authorities on March 4, 1987.

Before recounting the brutal details of Tammaam's detention since March 1987, the individual told of Tammaam's first arrest on December 25, 1986. Police arrived at the al-Usbuai home at 2:30 a.m. and knocked at the door complaining of car trouble. When Mr. al-Usbuai asked them to come back the next morning, they broke down the door, grabbed Tammaam and began to kick him repeatedly. Tammaam was then detained for eight days, during which time he was tortured, beaten and continually kicked in the kidneys to the point at which he lost all control of his urinary functions. The torture consisted of chemicals being applied to his genitals, which resulted in painful burns. Upon Tammaam's release, both he and his father were told that the incident had been meant to serve as a warning and as a demonstration of the authorities' displeasure with Tammaam's membership and

⁶⁸ Bourj al-Roumi, the prison in which many of Tunisia's political prisoners are kept, is reportedly extremely damp, contributing to health problems of detainees. Amor Shashiya, who was director of Tunisian prisons in 1982, reportedly recommended to the authorities that the facility be closed due to the injurious health conditions that prevailed in it.

activities in the student union.

The al-Ushuai family's problems with the police had begun on April 18, 1986, the day Uthman Bin-Aamuud, a classmate of Tammaam's and a fellow activist, was shot while riding a motorcycle in Tunis. As a result of his son's association with Uthman Bin-Aamuud, Mr. al-Ushuai was accused of allowing his home to be used as a center for subversive activities.

On March 4, 1987, the authorities issued a warrant for Tammaam's arrest after they mistakenly broke into a neighbor's home the night before with the belief that it was the al-Ushuai home. After his detention, Tammaam was held *garde-à-vue* in the detention center of the Ministry of the Interior for a period of 15 days and then transferred to Abu Chuchua prison. The al-Ushuai family was never notified of their son's location by the authorities and was only able to receive information from released detainees who told of their son's whereabouts.

After 84 days of preventive detention, an acquaintance finally saw Tammaam at the hospital under what can best be described as extraordinary circumstances. Prison officials had taken him to the hospital for treatment of injuries sustained while in detention. Tammaam was still in the same clothes (unlaundered) that he had been wearing the day of his arrest and had not been allowed to bathe. The acquaintance gave Tammaam clean clothes and kept the soiled ones, which were later photographed.⁶⁹

Despite doctor's orders, Tammaam was apparently taken back to the detention center on June 6, 1987 after the police learned of the escape from the hospital of another young detainee named Mohammed Fawzi Chaabani.

⁶⁹ The delegation was provided with copies of the photographs.

The delegation was provided with a copy of an affidavit from Tammaam's physician in which the doctor attests that the police took Tammaam from the hospital despite the doctor's demand that treatment be completed.⁷⁰

The latest news concerning Tammaam came in the form of a telephone call on July 28, 1987 from an anonymous caller, who informed the family that Tammaam was in good health, that the police had completed their interrogation of him, and that he would soon be taken to prison and be allowed to make contact with his family.

Ali Fikih-Romdhane: Also on the morning of August 1, 1987, the delegation met with members of the family of Ali Fikih-Romdhane. The family's story was not only of arbitrary arrest and detention but of harassment and maltreatment by Tunisian authorities, with tragic consequences.

At the time of his arrest in April 1987, Mr. Fikih-Romdhane was a 27-year-old student at the *Institut d'Électronique et d'Automatisme*. He was first arrested in 1981 during the period of widespread arrests of Islamic activists, but was not charged and was released.

The family told of some rather horrifying incidents that Mrs. Fikih-Romdhane had experienced even before Mr. Fikih-Romdhane's present detention. In November 1986, while travelling on a motorcycle near the city of Sousse in southern Tunisia, the couple and their young child were stopped by the police and their possessions searched. The police forced them to stop by surrounding the motorcycle and causing it to overturn. Mr. Fikih-

⁷⁰ The members of the mission were provided with a copy of the affidavit, which was written and signed by a physician. According to Mr. al-Usbui, Tammaam has also developed heart problems.

Romdhane was beaten in front of his wife and daughter by the police. Mrs. Fikih-Romdhane, who was pregnant with twins at the time, was physically and emotionally distraught as a result of the incident. Two days later, while shopping alone in the same area, Mrs. Fikih-Romdhane saw the same policemen coming toward her and ran. Two days later, she was hospitalized and was diagnosed as suffering from shock. Eleven days later, after her condition had worsened, she was advised that her unborn twins would have to be aborted. After these traumatic experiences, Mrs. Fikih-Romdhane went to stay with her parents in the south of Tunisia while her husband stayed in Tunis to attend school.

While his wife stayed with her parents, Mr. Fikih-Romdhane was living with six other students. Late one night in April 1987, the police came and arrested all of them. Mrs. Fikih-Romdhane was unable to learn where her husband was being held until late May 1987, when a friend was released from prison and told her that he had seen her husband at the Ministry of Interior detention center. Mrs. Fikih-Romdhane gathered some of her husband's clothes, went to the Interior Ministry and asked to be allowed to see him, but the police refused. When she insisted that someone listen to her, they took out their pistols and started shooting into the air. Her daughter, Tayseer, was with her at the time. The child has since become extremely frightened whenever she sees policemen. Mrs. Fikih-Romdhane nevertheless continued to go to the prison daily for a week and was finally allowed to bring clothes to her husband. She has never been able to see him and has never been given the first set of clothes to wash, which makes her suspicious that the police have retained them because they show signs of torture or other maltreatment.

Two days before the delegation interviewed the family, Mrs. Fikih-Romdhane learned that her husband had been interrogated by the

investigating magistrate on July 27, 1987. Although the family had retained an attorney to represent Mr. Fikih-Romdhane, another attorney was appointed by the court to represent him.

The family also told the delegation that Mrs. Fikih-Romdhane had been harassed by the police as recently as June 1987, when she was thrown off of a bus in southern Tunisia by police and forced to make her way home on foot.

2. Human Rights Leaders and Attorneys

Khemeis Chamari: Khemeis Chamari, the Chairman of the Tunisian League for the Defense of Human Rights, was interviewed on July 28 and 30, 1987. Mr. Chamari was detained by police on April 28, 1987 and held *incommunicado* until May 11, 1987, when he was interrogated by an inquiring magistrate. He was released for reasons of poor health on May 20, 1987 pending trial. His trial was postponed indefinitely on May 23, 1987 pending the accumulation of further information and then, at a similar hearing approximately one month later, the trial was postponed until October 7, 1987. On October 7, 1987, it was again postponed until January 1988.

Mr. Chamari was charged with: 1) "propagation of false information"; 2) "defamation of the public order"; and 3) "defamation of the person of the Prime Minister" after he gave interviews to Radio France International and the London-based magazine *Al-Majallah*. The interviews were not in conjunction with Mr. Chamari's position as Chairman of the Tunisian League for the Defense of Human Rights, but rather as a member of the governing bureau of the *Mouvement des Démocrates Socialistes* (Democratic Socialist Movement), a recognized opposition party led by Ahmed Mestiri.

Legal experts in Tunisia with whom the delegation spoke agreed that the charges against Mr. Chamari following the two interviews have no juridical basis and that the authorities have initiated the proceedings in an attempt to harass Mr. Chamari and the Tunisian League for the Defense of Human Rights in the wake of their increasing outspokenness about human rights violations in Tunisia. This harassment is evidenced in the fact that the authorities confronted Mr. Chamari during his detention with recordings of telephone conversations he had had with international human rights groups which could have only been obtained by means of wiretapping. Based upon the recordings, the authorities brought the charges of defamation.

Mr. Chamari himself attributes the arrest to certain positions taken by the Tunisian League for the Defense of Human Rights during the weeks prior to his arrest, such as: the continued disagreement between the League and the Minister of the Interior over the duration of *garde-à-vue* detention; negotiations over proposed reforms in detention procedures; a letter from the President of the League to the Government expressing concern over the continued imprisonment of labor leader, Habib Achour; and a communique issued April 3, 1987 by the League deploring the detentions of members of the Islamic Tendency Movement and the harassment of the families of suspected members.

Mohammed Nouri: Mohammed Nouri is a Tunisian attorney who has been active in the promotion of human rights and has participated in the defense of many of the Islamic fundamentalists arrested since March 1987. Mr. Nouri was interviewed by the delegation on July 31, 1987. On May 1, 1987, he was seized and held *garde-à-vue* by Tunisian police. At the time he was seized, Mr. Nouri's house was thoroughly searched by police, despite the absence of any search warrant. During his detention, Mr. Nouri was questioned about his defense of members of the Islamic Tendency Movement, about the actions of

his clients and about his knowledge of the organization. He refused to answer any of the questions and was released after four days.

3. Members of the Political Opposition

Ahmed Mestiri: On Thursday, July 30, 1987, the delegation met with Ahmed Mestiri, the Secretary General of the Movement of Social Democrats (MDS). Mr. Mestiri described events following a meeting on April 11, 1987 when leaders of five opposition parties⁷¹ met to discuss the serious implications of the widespread arrests and detentions of the Islamists. During the meeting, Tunisian police raided the premises -- the meeting was held at MDS headquarters -- and charged the participants with violation of the Law on Public Gatherings. In addition, Mr. Mestiri was charged with defamation arising out of the publication of a joint communique about the raid because of the allegedly "defamatory" contents of the communique. At the time the delegation met with Mr. Mestiri, he was awaiting further proceedings.

Siham Ben-Sedrine: On Saturday, July 31, 1987, the delegation met with a young woman named Siham Ben-Sedrine, who is a journalist, a member of the Progressive Socialist Union and a member of the Board of Directors of the Tunisian League for the Defense of Human Rights. Due to her membership in the Progressive Socialist Union, which is a tolerated but unrecognized political party in Tunisia, she was charged with membership in an illegal association in December 1983. She was not actually tried and sentenced, however, until April 23, 1987. Following sentencing, Ms. Ben-Sedrine was held in the Gorjani Detention Center for two days and nights before being transferred to a women's prison. She described the conditions

⁷¹ The MDS (Movement of Social Democrats), the MUP (Movement of Popular Unity), the PCT (Tunisian Communist Party), the RSP (Progressive Social Union), and the PUP (Popular Unity Party).

of the detention center to the delegation. She was held in a cell that was approximately three meters by five meters, with a number of women that ranged from eight to 30 women during the period of time she was detained. The floor was covered with dirt. The toilet facilities consisted of a stream of water coming out of the wall into a hole in the floor. No soap or toiletries were provided to the prisoners, nor were they allowed any change of clothes. There were no beds to sleep on, and the only sleeping materials provided were a limited number of dirty blankets and sleeping pads. Only one meal per day was served, and that meal consisted of a sandwich and three French fries.

Although Ms. Ben-Sedrine stated that the conditions at the women's prison were better, she described how several children were being held with their mothers in prison. The children, who ranged in age from infants to school age, were confined to their mothers' cells for 24 hours a day and were not allowed outside for any reason. Ms. Ben-Sedrine also reported bedbugs, and that requests for toiletries, publications and writing materials were denied.

4. Reports of Human Rights Violations

The following reports of human rights abuses came from a variety of sources. Unfortunately, the delegation did not have sufficient time to interview families or acquaintances of the victims during the fact-finding mission.

Nabil Barakati: On May 1, 1987, Mr. Barakati, who was a teacher and trade unionist, was arrested for distributing labor leaflets in the City of Gaafour. On May 10, 1987, it was reported that Mr. Barakati had died while in detention as a result of being tortured during interrogation.

Ali Bourawi: On May 1, 1987, Mr. Bourawi, who is a journalist for the London-based Arab newspaper named *Al-Alam*, was detained in Tunis for allegedly writing pro-Iranian newspaper articles. It is reported that, while being held in detention, he suffered loss of memory as a result of being brutally beaten. Therefore, at the time he was interrogated by the investigating magistrate, he was unable to answer any of the questions presented to him. Despite his condition, he was forced to sign a confession.

Unidentified young man from Sousse. Approximately one week before the delegation arrived in Tunisia, a young man was shot and killed by a police officer. The young man had been singing Islamic songs on the beach with a group of young people when the police arrived. The young man panicked and started to run away, but then stopped and started walking back towards the police with his hands behind his head. As he walked back towards the police, he was shot and killed by a police officer, whose identity is known to many concerned with human rights because of his brutal activities. Despite the circumstances of the shooting and the reputation of the police officer involved, it was reported to the delegation that no investigation was being considered for the purpose of reprimanding or punishing the policeman.

IV. HUMAN RIGHTS ORGANIZATIONS IN TUNISIA

A. The Tunisian League for the Defense of Human Rights

The delegation was able to interview the following members of the Board of Directors of the Tunisian League for the Defense of Human Rights: Chairman Khemeis Chamari on Tuesday, July 28 and 30, 1987; President Saadeddine Zmerli, Vice-Chairman Slaheddine El Jourchi, and Director Serge Adda on Thursday, July 30, 1987.

1. Creation

The Tunisian League for the Defense of Human Rights (*La Ligue Tunisienne Pour la Défense des Droits de l'Homme (LTDH)*) was founded on May 7, 1977, in accordance with the Law on Associations.⁷² The League was formed only after an extended series of discussions with the Minister of Interior. As a result of a compromise, the first Board of Directors was comprised of 15 independents (non-members of governing Destourian party)

⁷² Ligue Tunisienne Pour la Défense des Droits de l'Homme, Report of the Second National Congress of the Tunisian League for the Defense of Human Rights, Tunis Amilcar (March 23-24, 1985) page 1.

and seven members of the governing Destourian Socialist Party.⁷³

2. Charter and Statute

The League's Charter, which was drafted at the first National Council in 1977, was the subject of considerable debate among its members. The Charter's preamble states the League's three overriding principles: (1) the liberating principles of Tunisia's Arab-Muslim civilization; (2) the freedoms proclaimed in the Tunisian Constitution; and (3) the international declarations and conventions pertaining to human rights.⁷⁴

The Statute of the League is composed of six titles, which relate to: the foundation and purpose of the League (Title I); its formation, fees/dues, exclusion of members and the use of resources (Title II); its administrative organization (Title III); the General Assembly (Title IV); procedures to be followed in the event of the dissolution of the League and the liquidation of its assets (Title VI).⁷⁵

3. Organizational Structure and Membership

The administrative organization of the League, which is set forth in Title III of the League's statute, calls for the administration of the organization to be directed by a 25-member unpaid Board of Directors ("Comité Directeur"), all of whom are elected by the General Assembly. The

⁷³ *Ligue Tunisienne Pour la Défense des Droits de l'Homme, Report of the Second National Congress of the Tunisian League for the Defense of Human Rights*, Tunis Amilcar (March 23-24, 1985) page 1.

⁷⁴ *Ibid.* page 41.

⁷⁵ *Ibid.* pages 18-25.

Board of Directors meets at least once a month and more often if deemed necessary by the President. All major decisions are made by majority vote, provided that at least half its members are present.⁷⁶ It is empowered to take all actions not expressly reserved to the General Assembly, and is specifically charged with bestowing membership in the League, renting premises necessary for the activities of the League, deciding the use of funds, buying and selling of furniture and disposition of the League's assets.⁷⁷

The composition of the current Board of Directors, elected on March 23-24, 1985 at the Second National Congress, is as follows:⁷⁸

President:

Saadeddine Zmerli (Professor of Medicine at the University of Tunis)

Vice-Presidents:

Hacheni Ayari (physician);

Mohammed Charfi (Professor of Law at the University of Tunis);

Mounir El Beji (attorney);

Ben Salah Midani (teacher)

Chairman:

Khemeis Chamari (administrator)

Vice-Chairman:

Slaheddine El Jourchi (journalist)

⁷⁶ Article 15 of the Statute of the Tunisian League of Human Rights (reprinted in the *Ligue Tunisienne Pour La Défense des Droits de l'Homme, Report of the Second National Congress*, Tunis-Amilcar, March 23-24, 1985).

⁷⁷ *Ibid.* Article 16.

⁷⁸ *Ligue Tunisienne Pour La Défense des Droits de l'Homme, Report of the Second National Congress*, Tunis-Amilcar, March 23-24, 1985, page 48.

Treasurer:

Dali Jazi (Professor of Law at the University of Tunis)

Vice-Treasurer:

Hela Abdeljawad (physician)

The members listed above constitute the "bureau," which governs the day to day operation of the League. The additional members of the Board of Directors participate in all policy decisions. Their composition reflects the diversity of the League.⁷⁹

In July 1987, all Tunisian political parties and movements were represented on the Board of Directors. Of its 25 members, 13 were of no political affiliation. Twelve belonged to the following political parties or movements:

- The Destourian Socialist Party (PSD) - 2 members;
- The Democratic Socialist Movement (MDS) - 6 members;
- The Tunisian Communist Party (PCT) - 1 member;
- The Socialist Progressive Union (RSP) - 1 member;
- The Islamic Tendency Movement (MTI) - 1 member;
- Baathist Nationalist Movement - 1 member.⁸⁰

⁷⁹ Abdelwahab Behi (attorney); Frei Fennich (administrator); Tawfik Bouderbala (attorney); Mohamed Salah Fliss (administrator); Mustapha El Filali (professor, administrator); Mustapha Ben Jafar (university physician); Abdelwahab Bouhdiba (professor); Serge Adda (economist); Mohamed Mahdi El Masoudi (teacher); Ali Najjar (teacher); Moncef Marzouki (university physician); Khedija Saadallah (teacher); Sihem Ben Sedrine (journalist); Hichem Gribaa (administrator); Sahnoun El Jouhri (teacher); Khedija Chérif (university instructor).

⁸⁰ "Remarks Concerning the Tunisian League for the Defense of Human Rights and the Proceedings against its Chairman" (document elaborated on the occasion of the visit of Mrs. Pierre Mendes France to Tunis May 21-24, 1987).

At present, the LTDH is made up of 32 local chapters which are headquartered in the various districts throughout the country and it claims a membership of more than 3,000 persons.⁸¹

4. Objectives

The Tunisian League for the Defense of Human Rights describes its objectives in the preamble to its Charter as being the defense of fundamental human liberties. It condemns, in all circumstances, all manifestations of oppression, violence, fanaticism and all forms of discrimination regardless of source or perpetrator.

On an international scale, the League is committed to the safeguarding of democratic freedoms and social justice, and endeavors to contribute to the search for just and lasting peace among nations.⁸²

5. Daily Activities

The daily activities and concerns of the Tunisian League for the Defense of Human Rights range from intervention on behalf of individual citizens who allege various violations of their individual and public liberties, to the issuance of formal communiques condemning human rights violations by the government or acts of violence by private individuals and groups.⁸³

⁸¹ Tunisian League for Human Rights Under Attack, HRI Rep. Win./Spr. 1987, at 47.

⁸² Preamble, Charter of the Tunisian League of Human Rights.

⁸³ For example, in June 1987, the League condemned the attack on Judge Ben Abid, who had been the principal magistrate presiding over the trials of the Islamic fundamentalists in the state "Correctional Court." In the attack, acid was hurled on his face by the assailant.

Since its inception, the League has dealt with: women's and children's rights; working conditions; unjust or illegal firings; the retention of passports; the safeguarding of the environment; and the safety of citizens in the petroleum industry. The League has also participated in all major debates concerning human rights in Tunisia. After the nationwide bread riots in January 1984, which claimed as many as 150 lives, the League created a special investigative commission which submitted a report on the riots to the Prime Minister. Observers credit that report and subsequent League interventions with moderating the Government's reaction to the crisis. The League also protested both the 1985 Israeli raid on the PLO headquarters at Hamman Chott and anti-Semitic attacks against the Tunisian Jewish community. In addition, the League has expressed its support for the harassed Algerian League for Human Rights, and protested the arrest of its president.⁸⁴

In addition, on December 10th of every year (International Human Rights Day), the League has organized public debates on the following topics of concern to the human rights community⁸⁵:

1977 - *Garde-à-vue* detention and the situation in the prisons;

1978 - Torture;

1979 - The Human Rights of the Palestinian people;

1980 - General Assembly [of political prisoners];

1981 - Freedom of Association in Tunisia;

1982 and 1983 - The Human Rights of the Palestinian and Lebanese peoples;

⁸⁴ "Human Rights Defenders," *Human Rights Internet Reporter*, Volume II, Nos. 5/6 (Win./Spr. 1987), at 47.

⁸⁵ Comité Directeur, *Ligue Tunisienne Pour la Défense des Droits de l'Homme*, Communiqué (May 7, 1987), page 4.

1984 - Freedom of Information;

1985 - The Current State of the Law and Public Institutions in Tunisia;

1986 - The Independence of the Judiciary.

As a result of public debates in 1978 and 1986, official inquiries were requested by President Bourguiba, but the results of those inquiries were never published.⁸⁶

In the field of legislation, the League has worked for reforms in laws regulating freedom of association and political parties, the press, the independence of the judiciary, and the State Security Court. In particular, the League has pointed out that Tunisian law, such as the Code of Criminal Procedure, is characterized by an absence of regulation of certain detention procedures (*garde-à-vue* and the process by which police interrogations are carried out on behalf of the judiciary) and other inadequacies (such as preventive detention and detention conditions in general.)⁸⁷

The League's efforts, however, are not limited to the domain of political rights and freedoms. They encompass, as well, the realm of economic, social, and cultural rights.⁸⁸

⁸⁶ Comité Directeur, *Ligue Tunisienne Pour la Défense des Droits de l'Homme*, Communiqué (May 7, 1987), page 4.

⁸⁷ Ibid., page 5.

⁸⁸ For example, in March 1986, the League sponsored a debate on racism at a public high school in Tunis, which was exceptionally well attended and earned the recognition of United Nations Secretary, General Javier Pérez de Cuellar. Unfortunately, a similar forum that was scheduled to take place this past spring was cancelled on the order of Tunisian authorities, according to members of the League's Board of Directors.

The League was to celebrate its 10th anniversary on May 7, 1987, but the arrest of its Chairman, Khemais Chamari, on April 28, 1987 and subsequent detention for 23 days cast a shadow on the League's planned commemoration of its founding.

Prior to the arrest of Mr. Chamari, the League had encountered a series of problems with Tunisian authorities, which resulted in the Government's absolute refusal to meet or communicate with any League members since April 7, 1987. According to members of the Board of Directors, a series of actions and communiques by the League prompted the Government's decision to discontinue the customary weekly meetings and daily telephone conferences the League officials had held with the Interior Minister. These contacts had often resolved reported human rights violations by Tunisian authorities. The actions and statements leading up to the rupture included: the continued disagreement between the League and the Interior Ministry over the duration of *garde-à-vue* detention; negotiations over proposed reforms in detention procedures; a letter from the President of the League to the Government expressing concern over the continued imprisonment of labor leader, Habib Achour; and, finally, a communique issued on April 3, 1987 by the League deploring recent detentions without charge, reports of torture and ill-treatment of members of the Islamic Tendency Movement and other reports of harassment to the families of suspected members.

On April 8, 1987, Minister of the Interior Zine el-Abidine Ben Ali sent a letter to Dr. Zmerli, the President of the League, complaining of some of its practices. The criticisms centered upon the League's affiliation with the International Federation of Human Rights (*Fédération Internationale des Droits de l'Homme*) in Paris, which the Minister of Interior said violated the Law on Associations. The letter was critical of the League's statute, which

specifies that all applications for membership in the League must be submitted to the Board of Directors for approval. The letter then went on to invite the League to modify its statute so as to allow for the automatic acceptance of any candidates.⁸⁹

When the delegation left Tunisia on August 1, 1987, there had been no contact between the Government and the League since April 1987 and no indication that the lines of communication would be reopened.

B. The Association for the Protection of Human Rights and Public Liberties

The delegation was able to obtain interviews on Friday, July 31, 1987 with two members of the Board of Directors for the Association for the Protection of Human Rights and Public Liberties: Dr. Dhaoui Hannablia, President, and Makhlouf Maaref, one of the Association's vice-presidents and a lawyer.

1. Creation

The new Association for the Defense of Human Rights and Public Liberties (*L'Association pour la Défense des Droits de l'Homme et des Libertés Publiques (ADDHLP)*) was officially created on May 5, 1987. Its creation was announced in the official government newspaper, *La Presse*, in an article authored by Dr. Dhaoui Hannablia, the President of the

⁸⁹ "Letter from the Minister of the Interior to the President of the LTDH," reprinted in *Dossier: Plaidoyer pour la Ligue*, (April 25, 1987).

Association.⁹⁰

According to Dr. Hannablia, the Association was created because there was a need to establish a humanitarian organization that would work for human rights without opposing the Tunisian Government. He felt that the Tunisian League for the Defense of Human Rights was operating more as an opposition group than as a humanitarian organization and that it was not necessary to oppose the Government in order to work for human rights.

Dr. Hannablia informed the delegation that he originally considered the idea of forming a human rights league in Tunisia back in 1966 when he participated in a United Nations Human Rights Commission meeting in New York. Also, according to Dr. Hannablia, the initial plans for the formation of a Tunisian human rights league were made by Tunisian ambassadors and delegates at the Teheran Human Rights Conference of 1968. The scheme, however, never took shape, since he and many other would-be founders were too occupied with other concerns.⁹¹

When Mr. Maaref was questioned about the circumstances surrounding the creation of the Association, he stated that he was not sure of any of the specifics.

⁹⁰ The title of the article was "L'Association pour la défense des droits de l'homme et des libertés publiques: Pour qui et pourquoi?" Translation: "The Association for the defense of human rights and public liberties: For whom and why?" *La Presse* (May 10, 1987).

⁹¹ A significant amount of Dr. Hannablia's life has been spent in service to the Tunisian Government. He served as Minister of Agriculture from 1971 to 1974 and as Minister of Interior from 1977 to 1979. It should be noted that as Minister of Interior, Dr. Hannablia would have been directly responsible for suppression of labor unrest and the imprisonment of union leaders in 1978.

2. Charter and Statute

When asked about the organizational structure and composition of the Association, Dr. Hannablia responded that the Association was required to comply with the Law of Associations. Dr. Hannablia was unable, however, to provide the delegation with a copy of the Association's statute setting forth its regulations at the time of the meeting with him, which is required by the Law of Associations.⁹² Dr. Hannablia stated that the statute was still in "draft form" and that since the Association had no permanent address yet, it was not possible to have official copies printed up. Although the Association was not in compliance with the provisions of the Law on Associations, Dr. Hannablia stated that the Association was fully authorized to operate as a human rights association.

Mr. Maaref possessed no knowledge about the Association's statute, except that the only draft available was in the possession of President Hannablia. Mr. Maaref did acknowledge that, under the Law of Associations, no organization can receive authorization to operate until it has submitted a copy of its statute to the Minister of Interior for approval.

3. Organizational Structure and Membership

According to Dr. Hannablia and Mr. Maaref, the Association has 15 members, all of whom serve on the Board of Directors.⁹³ The Association is

⁹² The delegation received a copy of the statute on December 7, 1987 from Dr. Hannablia.

⁹³ Members of the Tunisian Bar Association revealed to the delegation that certain members of the Bar Association had been made members of the Association for the Defense of Human Rights and Public Liberties and appointed to its Board of Directors without their knowledge or approval.

governed by a "bureau" of five: the President, Dr. Hannablia; two Vice-Presidents, Mr. Maaref himself and Habib Achour;⁹⁴ Treasurer, Aziza Ouahchi,⁹⁵ and Chairman, Moncef Belkheia.

Other than the composition of the governing bureau, Dr. Hannablia and Mr. Maaref were unable to provide any specific information about the membership except to state that all 15 members were of good reputation.⁹⁶ Mr. Maaref was able to confirm, however, that the only political party represented in the Association is the Destourian Socialist Party (PSD). He went on to point out, though, that none of the PSD members of the Association were currently active in political activities.

Both Dr. Hannablia and Mr. Maaref were critical of the Tunisian League for the Defense of Human Rights membership policy, which requires that a prospective member pledge that he or she is committed to human rights. They stated that no pledge was necessary for membership in the Association. Because its members are of good reputation, it was implicit that they would follow the law. Both Dr. Hannablia and Mr. Maaref made reference to persons who had been denied membership in the League, but then stated that there was no immediate plans to invite those persons to become members of the Association.

⁹⁴ Mr. Achour is no relation to the trade union leader Habib Achour, who was held under house arrest until December 1987.

⁹⁵ Mrs. Ouahchi, a pharmacist and active member of the Pharmacists' Association in Tunisia, was a member of the founding Board of Directors of the Tunisian League for the Defense of Human Rights and served from 1977 to 1982.

⁹⁶ On December 7, 1987, the delegation received a list of the members of the Board of Directors from Dr. Hannablia which described their professions but made no reference to political affiliation, past or present.

4. Objectives

Both Dr. Hannablia and Mr. Maaref spoke of the twofold focus of the Association: (1) the reform of certain laws concerning *garde-à-vue*, preventive detention and freedom of expression; and (2) the intervention on behalf of individual victims of human rights abuses.

5. Daily Activities

Dr. Hannablia and Mr. Maaref stated that the primary work of the Association has been directed towards the revision of certain laws concerning *garde-à-vue* and preventive detention. Dr. Hannablia provided the delegation with a copy of legislation proposed by the Association that would limit the time a detainee could be held without being interrogated or charged with a crime. Dr. Hannablia and Mr. Maaref also made reference to assistance being given to persons denied passports and persons victimized by employment discrimination.

Mr. Maaref stated that the Association had already been responsible for certain improvements in detention procedures. According to Mr. Maaref, parents and families of detainees are now being informed of the whereabouts of their detained family members and are being allowed to bring clothes to them in the detention centers. Mr. Maaref also claimed that many detainees, who were formerly held for weeks or months without any charges being brought against them, were now either being liberated or formally charged with an offense and interrogated.⁹⁷ According to Mr. Maaref, he himself was constantly being contacted by families of detainees who are in search of their

⁹⁷ Mr. Maaref's statements were contrary to the findings of the delegation. See Part III., B., Human Rights Reports.

kin.⁹⁸

Both Mr. Hannablia and Mr. Maaref claimed that the Association, through negotiations with the government, had been able to obtain the release of certain political detainees. In particular, they claimed that the Association was directly responsible for the transfer of labor leader Habib Achour from prison to house arrest.

The delegation asked Mr. Hannablia and Mr. Maaref what they, as members of a human rights organization, thought about the recent break in communications between the Tunisian League of Human Rights and the Tunisian Government, and whether they knew of the reasons behind the rupture. Both stated that they were entirely unaware of the problem and that the delegation was actually the first to tell them of such a break in communications between the Government and the League. Dr. Hannablia speculated that, if there were such a problem, it was probably because the

⁹⁸ To illustrate his human rights activities, Mr. Maaref went out to the lobby of his office and ushered in a woman in traditional Islamic dress who looked to be in her fifties. The woman appeared to be very distressed and was speaking to Mr. Maaref about her son, who had been in detention for one month and 11 days. The woman had no idea where her son was, which would seem to contradict the improvements of which Mr. Maaref had just spoken. The woman said that her son was 24 years old, that his name was Abd El Jlid Rizq li-Klaa'i [sic], and she had been to the Abou Choucha detention center near Bardo, but had not found him. When we asked the woman what her son's name was and how old he was, she burst into tears.

When we asked Mr. Maaref what was going to be done about the situation, he said he would probably look into it one more time. Mr. Maaref said it was not easy to communicate with the Ministry of the Interior, and that they just have to keep calling.

It should be mentioned that as we were leaving Lawyer Maaref's office, we saw four or five women in traditional Islamic dress, all looking very distressed, including the woman who had come in about her son. As we got to the door of the main office, he nodded toward the women in the waiting room and whispered to us: "Khomeinistes," which is French for "Khomeiny-ites."

League was engaging in political activities and no longer operating as a human rights organization.

Finally, the delegation asked Dr. Hannablia and Mr. Maaref whether they had any intention of making contact with the Tunisian League of Human Rights. They responded that, at this point, they felt that it was more important for each group to do its own work and that they did not anticipate working with the League in the future on human rights cases.⁹⁹

⁹⁹ Chapter 3 of Title I to the Statute of the Association for the Defense of Human Rights and Public Liberties, which was received by the delegation on December 7, 1987 in a letter from Dr. Hannablia, states that the Association intends to work with international human rights organizations as well as those operating in Tunisia.

V. SUMMARY OF FINDINGS AND RECOMMENDATIONS

A. The Recognition of Human Rights Standards in Tunisia

In its report to the Human Rights Committee of the United Nations, Tunisia has recognized that the International Covenant on Civil and Political Rights provides the controlling norms on fundamental human rights in Tunisia.

The Tunisian Government also recognizes the fundamental rights and freedoms of the individual in its Constitution. Article 8 of the Tunisian Constitution specifically states that "[t]he liberties of opinion, expression, the press, publication, assembly and association are guaranteed and exercised within the conditions defined by the law."

In its report to the Human Rights Committee, the Tunisian Government describes at great length the measures it has taken to ensure that the wide range of rights set forth in its Constitution and guaranteed by the International Covenant on Civil and Political Rights are enjoyed by its citizens.

The delegation found that Tunisia's report to the Human Rights Committee presented an inaccurate picture regarding the government's

protection of human rights in Tunisia. Instead, the delegation observed specific violations of rights and freedoms guaranteed under the Tunisian Constitution and the International Covenant on Civil and Political Rights. The delegation also received numerous reports of other widespread abuses of human rights throughout the country.

B. The Human Rights Situation in Tunisia

The delegation found that the Tunisian Government has fallen short of its obligation not only to comply with the International Covenant on Civil and Political Rights but, indeed, in its obligation to comply with its own Constitution. The Government's failure to comply with both its constitutional proclamations of human rights and recognized international human rights standards is attributable to institutional flaws within the Government itself.

The most significant problem for the protection of human rights in Tunisia is the total absence of institutions for implementing constitutional safeguards. Although a wide range of rights and liberties are guaranteed by the Tunisian Constitution, there is no effective means by which an individual may challenge the constitutionality of the Government's actions. Therefore, the Tunisian Government is unrestrained from engaging in activities that are clearly unconstitutional and in violation of internationally recognized human rights standards. To remedy this situation, the Minnesota Lawyers Committee recommends that a bill be presented by the Government to the Chamber of Deputies providing a means by which an individual may challenge the constitutionality of Government action in order to insure the effective protection of individual rights and freedoms guaranteed by the Tunisian Constitution.

From the reports of inhumane treatment by detainees and families of detainees, it is clear that the treatment of the detainees in prisons and detention centers was in violation of Articles 7 and 10 of the Covenant and in violation of Tunisian laws and regulations governing the rights of detained persons.

The Minnesota Lawyers Committee recommends that the Government heed Tunisian laws which already guarantee the humane treatment of detained persons when in custody or when confined in prisons and detention centers.

The delegation also found widespread violations of Article 9 of the Covenant caused by abuses of *garde-à-vue* and *préventive* detention. All of the arrests and detentions reported to the delegation by families of the detainees followed improper procedures. Detainees were not advised of the reasons for their arrest or the charges against them. Furthermore, detainees were not promptly brought before inquiring magistrates for interrogation. Such detentions were also in violation of Tunisian law because inquiries were not conducted within "a reasonable period of time," regardless of the interpretation given to "reasonable period of time."

The Minnesota Lawyers Committee recommends that the Government draft and submit to the Chamber of Deputies a bill specifically limiting the period of custody that may be imposed before charges are brought against a detainee.

The delegation found the existence of State Security Court to be in direct violation of Article 14 of the Covenant, which guarantees the independence and impartiality of the judiciary. The delegation cannot comprehend how the Tunisian Government can report that the organization of the judiciary in Tunisia is based on the principle of "the separation of

powers" and yet allow the Security Court to be presided over by the State Prosecutor and comprised of members of the *Cour de Cassation* (Supreme Court) and the National Assembly.

The Minnesota Lawyers Committee recommends the abolition of the State Security Court or the restructuring of the institution so as to conform to international human rights standards and the Tunisian Constitution.

The delegation found numerous violations of the guarantees against arbitrary or unlawful interference with a person's privacy, family, home or correspondence as set forth in Article 17 of the Covenant. Reports by the families of detainees make it clear that the guarantee of inviolability of the home under Article 9 of the Tunisian Constitution is so riddled by exceptions under the law that it is rendered meaningless.

The Minnesota Lawyers Committee recommends that Tunisia recognize the inviolability of the home guaranteed by Article 17 of the Covenant and the Tunisian Constitution.

The delegation found that individual freedom of opinion and expression and the right to seek, receive and impart information and ideas, which are guaranteed by Article 19 of the Covenant, are not enjoyed in Tunisia. The delegation found that provisions in the Press Code and the Penal Code allow for Government suppression of political opinion and criticism. The suspensions and seizures of newspapers and other publications and the arrests and prosecutions of individuals for offenses involving defamation and the dissemination of false information amount to a policy of denial of freedom of information by the Tunisian Government.

The Minnesota Lawyers Committee recommends that the Tunisian

Government review and abolish the provisions of the Press Code and the Penal Code that enforce censorship contrary to the requirements of the Covenant.

The delegation found direct violations of the freedoms of thought, conscience and religion guaranteed by Article 18 of the Covenant. The vast majority of human rights violations observed by and reported to the delegation arose out of Government suppression of the Islamic Tendency Movement (MTI). While the Government undoubtedly relies upon the caveat contained in Article 5 of the Constitution (freedom of conscience and religion guaranteed, provided that it does not disturb the public order), such a caveat does not allow for the violent suppression of a religious group.

The Minnesota Lawyers Committee recommends that Tunisia recognize the freedom of thought, conscience and religion guaranteed by Article 18 of the Covenant.

The delegation found that the right to peaceful assembly and the freedom of association guaranteed by Articles 21 and 22 of the Covenant were openly violated by the Tunisian Government. Although these rights and freedoms are guaranteed by Article 8 of the Tunisian Constitution, the various "formalities" imposed by the Law on Public Gatherings and the Law of Association make the guarantees meaningless.

The Minnesota Lawyers Committee recommends that the Tunisian Government review and abolish the provisions of the Law on Public Gatherings and the Law of Association that stifle the rights and freedoms of expression guaranteed by the Covenant and the Tunisian Constitution.

C. Human Rights Organizations in Tunisia

Based upon the findings of the delegation and the numerous reports of human rights abuses throughout Tunisia received by the delegation during its mission, the Minnesota Lawyers Committee finds that Tunisia is in a critical human rights situation. The situation is aggravated by the Government's decision to cut all lines of communication to the Tunisian League for the Defense of Human Rights, an internationally recognized human rights organization.

The Minnesota Lawyers Committee is critical of the Government's decision to consult with the Association for the Defense of Human Rights and Public Liberties, a 15-member human rights group with extremely limited capabilities, to the exclusion of the Tunisian League for the Defense of Human Rights, a 3,000-member organization with the capability of obtaining extensive and accurate information about human rights abuses from all parts of the country. Furthermore, the Minnesota Lawyers Committee is concerned that the Government may be attempting to supplant the Tunisian League for the Defense of Human Rights with the new Association for the Defense of Human Rights and Public Liberties in the same manner that it supplanted the leadership of the General Union of Tunisian Workers (UGTT) with government officials in 1986. If the Tunisian Government is truly interested in rectifying the critical human rights situation, it must engage the assistance of all human rights organizations in Tunisia.

The Minnesota Lawyers Committee recommends that the Tunisian Government open lines of communication with the Tunisian League for the Defense of Human Rights immediately in order to obtain complete and accurate information about human rights abuses throughout Tunisia.

VI. CONCLUSION

This report by the Minnesota Lawyers International Human Rights Committee has raised a number of significant human rights concerns which deserve further attention. The Minnesota Lawyers Committee wishes to establish a dialogue for the appropriate resolution of these issues. In light of the recent events in Tunisia concerning the change in government, the Minnesota Lawyers Committee wishes to request an opportunity to send another fact-finding mission to Tunisia within the next twelve (12) to twenty-four (24) months to discuss, with the highest levels of the Government, the issues raised in this report and the full range of human rights concerns of the Minnesota Lawyers Committee, as they become evident in the future.

VII. EPILOGUE

On November 7, 1987, at 6:30 a.m., Prime Minister Zine el-Abidine Ben Ali announced in a state radio broadcast that he was replacing Habib Bourguiba as President of the Republic of Tunisia. Citing the constitutional provision allowing for the Prime Minister to take over in the event the President becomes "absolutely disabled," Mr. Ben Ali announced that, on the basis of a medical report signed by seven prominent Tunisian doctors, Habib Bourguiba was mentally unfit and incapable of undertaking the duties of the presidency.¹⁰⁰

In a later statement, Mr. Ben Ali promised a new era in which political life would be based on a multi-party system and a plurality of mass organizations. He also promised changes in the Constitution that would no longer permit a presidency for life nor automatic succession which excluded a vote by the people.¹⁰¹

Since assuming power, Ben Ali has encouraged the passage of new laws easing restrictions on political parties and the press. He has postponed

¹⁰⁰ *The New York Times*, November 8, 1987 at 1, col. 1.

¹⁰¹ *Ibid.*

indefinitely a new trial of Islamic fundamentalists that was scheduled to start on November 9, 1987, and he has ordered the release of Habib Achour, the 77-year-old labor leader. Finally, he has appointed Mr. Heddi Baccouche, former Social Affairs Minister, as Prime Minister, which is seen by authorities familiar with the situation in Tunisia as a positive sign. In his initial press conference, Mr. Baccouche stated that a review of political prisoners will be done on a "case by case" basis.¹⁰²

Mr. Ben Ali is a 51-year-old French and American trained Army officer. Although he prefers civilian dress and not to use his rank of General, it should be noted that enforcing law and order has been the key to his success both in and out of uniform since 1958, when he was appointed to his first security post as Director of Military Security. For much of the period from the late 1970's to the present, he played an increasingly important role in coordinating military and police actions, particularly during the rise of Islamic fundamentalism in recent years. It was because of his central role in the crackdown of the MTI that he was elevated from Interior Minister to Prime Minister by President Bourguiba on October 2, 1987, only one month before assuming the Presidency.¹⁰³

Despite encouraging statements by Ben Ali regarding political pluralism and constitutional changes allowing for the popular election of the President, the Minnesota Lawyers Committee will continue to closely monitor the human rights situation in Tunisia.

¹⁰² *The Christian Science Monitor*, November 12, 1987, at 7; *The Economist*, November 14, 1987, at 50.

¹⁰³ *The New York Times*, November 8, 1987 at 12, col. 5.

The New York Times, November 8, 1987.

- O. Sidem-Poulain, *Rapport de Mission des 7-10 juillet 1986* (Fédération Internationale des Droits de l'Homme La Lettre de la FIDH hors serie, 1986).
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