



‘WE WANT AN END TO THE FEAR’

ABUSES UNDER TUNISIA’S STATE OF EMERGENCY

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Cover photo: A member of the Tunisian security forces stands guard outside the Bardo museum in Tunis on 18 March 2016, during a memorial ceremony marking the first anniversary of an armed attack on the museum.
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1. EXECUTIVE SUMMARY

Since the 2010-2011 popular uprising against the repressive rule of former president Zine El Abidine Ben Ali, Tunisia has faced growing security threats from armed groups that seek to implement Shari'a law across the country. Police stations, the National Guard and army, particularly in areas near the Algerian and Libyan borders, have often been targeted with bombings and armed attacks. In 2015, Tunisia was catapulted into the international spotlight after three major attacks that were claimed by the armed group calling itself the Islamic State (IS) shook the country and shocked the world. In March, gunmen shot dead 22 people, most of them foreign tourists, outside the Bardo museum in Tunis. In June, 39 people, mostly European tourists, were killed in broad daylight at a beach resort in Sousse. In November that same year, a suicide bombing killed 12 members of the Presidential Guard in an attack that targeted the symbol of the state, in downtown Tunis. In March 2016, armed men believed to be affiliated with IS carried out an unprecedented attack targeting military bases and a police station in the southern town of Ben Guerdane, on the border with Libya. The attack, which was believed to be launched in retaliation for a US air strike on an IS training camp in the Libyan city of Sabratah, and ensuing clashes killed around 68 people, including at least seven civilians and 12 security officers.

In response to the armed attacks, the Tunisian authorities have stepped up security measures, declared a state of emergency and relied on emergency laws. Amnesty International condemns unreservedly all attacks by armed groups that target civilians and recognizes the duty of the Tunisian authorities to protect the population from such actions. However, its research reveals that the implementation of these measures has often been arbitrary, discriminatory and disproportionate, and has led to a range of human rights violations increasingly reminiscent of the practices under Ben Ali's rule.

Despite the positive steps that have been taken in Tunisia over the past six years and the public commitment to human rights made by the authorities, human rights violations persist. The reality is that not enough has been done to break with the patterns of violations that were common under the Ben Ali regime to make Tunisia the success story it is often portrayed as. Many repressive laws still remain unchanged and enable continuing violations. Efforts to deal with past violations by providing victims with access to truth, justice and reparation have been slow and flawed.

This report examines the human rights violations that have been committed in the context of the security measures taken by the Tunisian authorities in the aftermath of four major armed attacks since March 2015, whether through legal amendments or in practice. It relies on information gathered through 84 interviews conducted since November 2015 with victims of human rights violations and family members of victims, lawyers, judges, civil society activists and journalists. The interviews were conducted in person in Tunis and Ben Guerdane during fact-finding visits to Tunisia in November and December 2015 and in August 2016, and remotely, over the phone. The report details the impact security measures have had on the ability of people to lead normal lives and the lack of accountability for the violations that have been committed within this context. In particular, it documents cases of unlawful house searches, arbitrary arrests, torture and other ill-treatment and restrictions on movement through assigned residence orders and border control measures.

Amnesty International communicated its research findings to the Tunisian authorities in February and November 2016. The organization sent a memorandum summarizing its concerns and raising a number of questions seeking clarity on issues of policy and practice to the ministries of interior, justice and foreign affairs. The organization received a response on 16 December 2016 from the Ministry of Interior which provided some legal context for the measures taken, but did not address the organization's concerns on the violations committed in practice. The Tunisian Minister of Justice Ghazi Jeribi received Amnesty International on 23 December 2016, reiterating his government's commitment to reform while admitting that abuses continue to take place. He spoke of some of the legislative reforms that are needed to protect due process

rights and of proposed amendments on restrictions to freedom of movement that his ministry had put forward.

Tunisia has been in a state of emergency for prolonged periods of time since the 2010-2011 uprising. The measure has only been lifted for one and a half of the past six years. The Tunisian authorities initially imposed a state of emergency on 15 January 2011 and repeatedly renewed it until March 2014. A regional two-week state of emergency was announced in Douz in south Tunisia on 8 May 2015. The Tunisian authorities reinstated a nationwide state of emergency on 4 July 2015 following the armed attack in Sousse. Although they lifted it in October that year, they reinstated it again on 24 November 2015, immediately after the attack on the Presidential Guard in Tunis. Regulated by a 1978 decree, the state of emergency, which remains in force today, gives the Minister of Interior the power to restrict certain rights such as the rights to freedom of expression, association, movement and liberty.

The Tunisian Constitution also allows the President to take exceptional measures in case of imminent danger threatening the territorial integrity, national security or independence of the country. However, while the Constitution acknowledges the overall protection of rights and freedoms from restrictions except when necessary to protect the rights of others, general security, national defence and public health and morals, it fails to explicitly recognize the non-derogability of certain rights in times of emergency, a principle that is part of Tunisia's international obligations.

Since the state of emergency was reinstated in November 2015, the Tunisian authorities have carried out thousands of raids across the country, in which they have often used excessive and unnecessary force, and searched houses without judicial authorization, causing great fear and anxiety among residents, including children. Thousands of individuals have been arrested. While Amnesty International cannot comment on the overall proportion of arrests that were lawful or unlawful, it is concerned that, in the 19 cases it documented, the arrests were carried out without judicial warrants and were therefore arbitrary.

The authorities have also used emergency measures to impose night-time curfews in areas of unrest, and to detain and pass harsh sentences against those accused of "breaking the curfew". They have placed hundreds under assigned residence orders, amounting at times to house arrest, banned hundreds of others from travelling abroad, and arbitrarily applied border control orders inside Tunisian borders. In the cases documented by Amnesty International these measures have often been applied arbitrarily and have had a hugely detrimental impact on people's everyday lives, affecting their right to health, employment and family life.

The authorities have claimed that such measures are necessary to monitor the movements of individuals suspected of involvement in armed attacks, including those who have travelled to conflict areas such as Libya, Syria, Iraq and Algeria. However, many individuals who have had their rights violated as a result of these measures have told Amnesty International that they have never travelled to any of these countries. Indeed, in some cases, it appears that they were targeted on the basis of their perceived religious beliefs, for growing beards and wearing religious clothing, in a manner resembling the discriminatory policies adopted under former president Ben Ali.

In a positive move, the Ministry of Justice submitted a draft law to parliament in September 2016 that would amend the 1975 Law on Passports to provide safeguards against the arbitrary use of the Passport Law by requiring justified court decisions for travel bans and the withdrawal of passports, giving those affected the right to appeal travel ban decisions and limiting travel bans to a maximum of 14 months. However, if these safeguards are to be effective, the authorities should put in place a number of additional measures, in Amnesty International's view. In particular, all individuals affected must be able to challenge, with suspensive effect, measures taken against them before an independent and impartial judicial body and have the possibility to be represented by a lawyer of their own choosing at all stages of the process.

In their search for individuals suspected of involvement in armed attacks, security forces have also frequently harassed and intimidated families of suspects by carrying out house searches without judicial warrants, using excessive force during the searches and arbitrarily arresting individuals to try to coerce them into giving information about their wanted relative. Security forces have also subjected family members to ill-treatment during interrogations as a means to pressure them into revealing information. Some have also had their movements monitored or restricted under border control orders.

The prolonged duration of the state of emergency, the manner of the implementation of the emergency measures and their impact on the human rights of those targeted raise serious questions about the extent to which they have been necessary and proportionate and have complied with international obligations for a state of emergency to be exceptional and temporary and limited to the exigencies of the situation.

In addition to the abusive use of emergency laws, the Tunisian authorities have also brought in new laws in their efforts to combat security threats. In July 2015, parliament speedily passed a new counter-terrorism law to replace a 2003 law that had often been used by the Ben Ali regime to repress peaceful opposition and criticism. Between 2003 and 2011, according to United Nations estimates, around 3,000 people had been tried and sentenced under the 2003 law, often based on confessions extracted under torture, and for “offences” such as “growing beards, wearing specific clothing and consulting prohibited sites”. The new counter-terrorism law includes an overly broad definition of terrorism, increases surveillance powers of security forces and proscribes the death penalty for certain offences. Lawyers and activists have raised concerns that it could endanger human rights in a similar way to the 2003 law.

To deal with the rapid increase of terrorism-related cases, a specialized judicial unit was created in the Tunis Court of First Instance, as required by the counter-terrorism law. As a result, all cases of individuals suspected of terrorism offences are dealt with in Tunis and those arrested outside the capital are transferred there. Two security force units are generally responsible for investigating such cases, including the questioning of suspects, namely the al-Gorjani counter-terrorism brigade and the al-Ouina investigating brigade, both of which operate under the Ministry of Interior. Many detainees have alleged being subjected to torture and other ill-treatment while in their custody.

This report includes details of 23 cases of torture and other ill-treatment perpetrated since January 2015 by the police, National Guard and counter-terrorism brigades. Victims and their families told Amnesty International that they were subjected to torture and other ill-treatment to coerce them into giving “confessions” or to implicate others, or as punishment in detention centres. The most common torture methods reported by victims were beatings with objects such as sticks and rubber hoses, threats of sexual assault of detainees or their family members, the use of stress positions such as the “roast chicken” or being forced to stand up for prolonged periods, as well as electric shocks, sleep deprivation and having cold water poured on them. Amnesty International has documented one case of rape and an allegation from a former detainee who said he witnessed another man being raped.

In one example “Ahmed”, an imam, was arrested from his home in Ben Guerdane on 14 March 2016 in the wake of armed attacks on military and police targets. He said that a large number of security officers stormed into his family house and conducted a search without a warrant while using excessive force. They terrified his family, beat his wife leading her to miscarry, and arrested his two brothers to put pressure on him, beating and insulting them in detention. “Ahmed”, who was detained five days later, said that he was tortured and raped with a wooden stick at the police station in Ben Guerdane. He said, “I still get nightmares from the torture I endured. They beat me until some of my toenails came off.” He told Amnesty International that he was further beaten during interrogation at the premises of the al-Ouina investigating brigade and in Mornaguia prison where he was placed in solitary confinement until his release on bail on 31 July 2016. “Ahmed’s” ordeal continues to this day, banned from returning to his job as an imam and frequently stopped and questioned by police officers in Ben Guerdane.

In 2015, the al-Gorjani counter-terrorism brigade came under the spotlight after allegations of torture by its officers in two terrorism-related cases were widely publicized. The first involved a group of 23 detainees who were arrested in March 2015 in relation to the armed attack on the Bardo museum and who alleged that the al-Gorjani counter-terrorism brigade had tortured and otherwise ill-treated them. The second involved a group of five men who were arrested in July 2015 on terrorism-related charges and who, upon their release on 4 August 2015, filed complaints in which they claimed they had been tortured by the al-Gorjani counter-terrorism brigade. They were rearrested by the brigade the following day but were provisionally released on 10 August following an outcry by media and Tunisian civil society about their rearrest.

The authorities announced investigations into these allegations and say they have made personnel changes to the al-Gorjani counter-terrorism brigade as a result. In October 2016 an investigating judge questioned officers from the al-Gorjani counter-terrorism brigade as part of the ongoing investigation into the allegations of torture raised by one of the group of 23 people. According to information available to Amnesty International, some of the complainants have been summoned to give statements, but other complainants and witnesses have not been and the authorities have not announced further developments in the investigations since. Amnesty International has continued to receive allegations of torture committed by both the al-Gorjani counter-terrorism brigade and al-Ouina investigating brigade. Victims of torture and other ill-treatment have reported harassment and intimidation by security forces aimed at pushing them to drop their complaints or deterring them from pursuing justice at all.

More broadly, the security forces are rarely held to account in Tunisia. Only a very small number of officers have been charged with offences related to torture or other ill-treatment and of those cases only a handful have reached a conclusion. In Tunisia’s report to the UN Committee against Torture, the authorities said that out of 230 allegations of torture and other ill-treatment that were brought before the courts between January

and June 2014, only two cases reached a conclusion and in these the accused received suspended prison sentences.

In June 2016, changes to the Code of Criminal Procedures came into force that strengthened safeguards for detainees against torture and other ill-treatment, such as by reducing the time allowed for pre-charge detention to a maximum of four days and ensuring immediate access for detainees to their families and lawyers and to medical care. These changes are positive, but it is too early to assess the effect they have had in practice. Furthermore, they do not apply to those detained on terrorism-related charges, who can still be kept in pre-charge detention for up to 15 days and have their access to a lawyer delayed, increasing the risk of torture and other ill-treatment.

The Tunisian government must ensure that respect for human rights is at the core of any security measures it takes to protect the population. The methods used to combat security threats must not violate the prohibition of torture and other ill-treatment and they must not restrict people's rights to liberty, movement, privacy, family life and employment in an unlawful, arbitrary, discriminatory or disproportional manner.

Amnesty International is calling on the Tunisian authorities to undertake, among others, the following key measures:

- End the impunity of officials who engage in torture and other ill-treatment by independently and fully investigating and, if there is sufficient admissible evidence, prosecuting and punishing those found responsible. This should include those who have committed, ordered, solicited, commissioned, authorized, facilitated, aided and abetted torture and other ill-treatment, as well as officials in position of command and authority.
- Ensure the treatment of those held in pre-charge detention on suspicion of terrorism-related offences fully complies with international law and standards. In particular, the period of pre-charge detention should not exceed 48 hours without judicial authorization. People suspected of any crime, including terrorism-related offences, should be promptly informed of the reason for their arrest and should immediately have access to a lawyer and a medical professional, if they wish. Their families should be immediately informed of their detention
- Ensure that any limitations on the exercise of human rights imposed as part of a state of emergency, including restrictions on movement such as assigned residence orders, are prescribed by law, are temporary and are consistent with the principles of necessity and proportionality, as required under international human rights law. People subjected to those measures should have full access to legal due process and must be able to challenge the lawfulness of those measures before independent and impartial courts, including on appeal.
- Fully implement the Concluding observations of the UN Committee against Torture adopted on 6 May 2016 in relation to the third periodic report of Tunisia and, as requested by the Committee, report to it by 13 May 2017 on the measures undertaken.

2. METHODOLOGY

This report is based on research carried out by Amnesty International between November 2015 and September 2016. The research focused on violations perpetrated by security forces within the context of security measures taken by the Tunisian authorities following four major armed attacks claimed since March 2015 by militants apparently affiliated with the group calling itself the Islamic State (IS), which prompted Tunisia to declare a state of emergency and renew it a number of times since then. The four attacks were the shootings at the Bardo museum in Tunis which killed 22 people in March 2015, the shooting of tourists at a beach resort in Sousse in June 2015 that killed 38 people, the suicide bombing on a Presidential Guard bus in Tunis which killed 12 officers and injured 20 others on 24 November 2015, and the assault on a number of positions of security forces in Ben Guerdane, near the Libyan border, in March 2016, which led to clashes in which 68 people were killed.

The report details 23 cases of torture and other ill-treatment of individuals arrested on terrorism-related charges and the harassment and intimidation that they have endured following their release. It also focuses on the impact of emergency measures on the everyday lives of those subjected to them, and includes cases of arbitrary arrests, house searches without warrants, assigned residence orders and travel restrictions imposed in an arbitrary and discriminatory manner based on appearance, religious beliefs or previous criminal convictions.

Amnesty International researchers conducted two fact-finding missions to Tunisia in November and December 2015 and in August 2016, during which they visited Tunis and Ben Guerdane. They also conducted additional interviews by phone with victims throughout 2015 and 2016. They interviewed 73 victims and witnesses of human rights violations. Some reported several human rights violations. Of those interviewed, 23 alleged they had been subjected to torture and other ill-treatment, 19 had been subjected to arbitrary arrest, 35 had witnessed house searches, 15 had been subjected to assigned residence orders and 40 had travel bans issued against them. During their visits to Tunisia, Amnesty International also interviewed family members of individuals detained on terrorism-related charges, lawyers, judges, members of human rights organizations and activists throughout 2015 and 2016. In total, Amnesty International researchers conducted 84 interviews.

Amongst those interviewed were residents of Tunis, Ben Guerdane, Medenine, El Kef, Jendouba, Kasserine and Kairouan. In some cases, Amnesty International researchers were able to visit areas which had been subjected to arbitrary and abusive night-time raids such as the La Goulette district of Tunis immediately following the armed attack in November 2015. The organization has had access to court documents, in particular statements by detainees relating to allegations of torture during interrogation, and has reviewed complaints against assigned residence orders submitted to the Ministry of Interior by victims. In cases which related to allegations of torture, Amnesty International researchers observed marks on people's bodies which were consistent with the allegations. Amnesty International's research also relied on publically available information including reports published by Tunisian and international civil society organizations, statements made by the Tunisian authorities, media reports and social media posts.

All interviews were conducted in Arabic or French with no interpretation. Some interviewees have chosen to be identified by their real names while others have been assigned pseudonyms to protect their identities. Other identifying details such as dates, names of places and occupation have in some cases also been withheld at the request of interviewees.

Amnesty International sought clarification on the concerns highlighted in this report from the Tunisian authorities in two pieces of correspondence sent respectively in February and November 2016. The Ministry of Interior provided a written response in December 2016, included in Annex 1 of this report, in which it

outlined some of the legal provisions that provide for the measures the Tunisian authorities have taken. However, the response failed to address Amnesty International's concerns on the impact these measures were having on the ability of people to lead normal lives or the lack of accountability of the violations that were being committed within this context. Amnesty International had a brief meeting with the Ministry of Interior spokesperson in December 2015 in which it was able to raise only some of its concerns related to the use of excessive force during house raids and searches. Amnesty International's requests to visit places of detention have gone unanswered. However, the organization was able to meet with the Ministry of Justice in December 2016 and raise some of the concerns detailed in this report and seek clarification on some of the procedures followed by the judiciary.

The organization is very grateful to human rights defenders and lawyers who not only provided information for this report, but also facilitated some of the meetings with victims and eyewitnesses of violations. Amnesty International also wishes to express its deep gratitude to all victims and eyewitnesses who agreed to share their experiences.

3. BACKGROUND

Tunisia has long been hailed as the only success story of the “Arab Spring” in the Middle East and North Africa following the uprising that ousted the repressive government of former president Zine El Abidine Ben Ali in January 2011. Indeed, the country seemed to be steaming ahead with a successful transition to the rule of law following the uprising as Tunisian authorities ratified important international treaties and made positive legislative changes aimed at breaking with abuses of the past, while Tunisia’s Truth and Dignity Commission started its work.

The adoption of a new constitution in 2014 which guarantees key human rights was a major achievement of Tunisia’s transition. Since then, Tunisians have been able to vote in parliamentary and presidential elections that were considered the first free and fair elections in decades.

Tunisia ratified the Optional Protocol to the Convention against Torture (OPCAT) in June 2011, which provided a real opportunity for change as it required Tunisia to set up a national preventive mechanism to monitor places where people are deprived of their liberty. A 2013 law created the National Body to Prevent Torture, but its establishment was repeatedly delayed until members were finally appointed in March 2016.¹ The Body has the power to visit places of detention unannounced and can be denied entry only in exceptional circumstances. The Body is yet to become fully operational as it has been struggling with securing financial backing from the government, and its members are yet to decide and clarify the Body’s exact role.

In 2011, amendments were made to the Penal Code to bring the definition of torture closer to that found in international law. However, the definition was still inconsistent with Tunisia’s international obligations and the law contained a 15-year statute of limitations which was later removed by the constitution.²

New members of the Supreme Judicial Council, which is responsible for the selection, appointment, transfer, removal, discipline and training of judges and public prosecutors, were announced in October 2016. The development will finally allow for the establishment of the Constitutional Court, which was created by the 2014 constitution, as the newly configured Council is responsible for appointing a third of the Court’s members. The Court should help ensure the rights guaranteed in the constitution are adhered to and protected.

Despite the positive steps that have been taken and the public commitment to human rights made by the authorities, human rights violations persist. The reality is that not enough has been done to break with the patterns of violations that were common under the Ben Ali regime to make Tunisia the success story it is often portrayed as. Many repressive laws still remain unchanged and enable continuing violations. Efforts to deal with past violations by providing victims with access to truth, justice and reparation have been slow and flawed. There has been little accountability for unlawful killings of protesters in response to the 2010-2011 uprising and a failure to reform the police and security apparatus. Impunity has also persisted for torture and arbitrary and incommunicado detention, which were systematically practised under Ben Ali rule, especially in terrorism-related cases. A transitional justice law passed in 2013 allowed for the creation of a Truth and Dignity Committee, which was finally formed in 2014 and began to receive cases in May 2015.³ However, its work has been overshadowed by the resignations of some of its members, lack of co-operation by the authorities and media criticism. To date, the Committee has received over 62,000 complaints and began its

¹ Law 43 of 2013 on the National Body to Prevent Torture.

² Decree 106 of 2011 on Amending and Completing the Penal Code and the Code of Criminal Procedures.

³ Law 53 of 2013 on Establishing and Organizing Transitional Justice.

first public hearings on 17 November 2016, but it is yet to be seen whether the information received will be used to hold those responsible to account.⁴

Since the 2010-2011 uprising, protests and strikes have been frequent, at times immobilizing the country, as people have gone out onto the streets to express their dissatisfaction with the lack of reforms and continuing high rates of unemployment, particularly in Tunisia's interior regions. Continuing protests have at times paralysed the country's political institutions, leading to repeated reshuffling of government positions.

As a result, the use of excessive force during demonstrations, including assaults on journalists, and torture and other ill-treatment, especially in pre-trial detention and during interrogations continue to be reported. Investigations into such abuses since the uprising have been slow and have rarely resulted in criminal convictions.

What achievements have been made since the uprising have faltered in the face of the security challenges that Tunisia has had to face. Often overlooked in the first years after the uprising, Tunisia has struggled from the start with an increasing security threat that has led the authorities to impose the state of emergency for prolonged periods since then.

Tunisia's state of emergency has only been lifted for one and a half of the past six years. The Tunisian authorities initially imposed a state of emergency on 15 January 2011 and repeatedly renewed it until March 2014. A regional two-week state of emergency was announced in Douz in south Tunisia on 8 May 2015. The Tunisian authorities reinstated a nationwide state of emergency on 4 July 2015 following the armed attack in Sousse. Although they lifted it in October that year, they reinstated it again on 24 November 2015, immediately after the attack on the Presidential Guard in Tunis. Regulated by a 1978 decree, the state of emergency, which remains in force today, gives the Minister of Interior the power to restrict certain rights such as the rights to freedom of expression, association, movement and liberty. The Tunisian Constitution also allows the President to take exceptional measures in case of imminent danger threatening the territorial integrity, national security or independence of the country. However, while the Constitution acknowledges the overall protection of rights and freedoms from restrictions except when necessary to protect the rights of others, general security, national defence and public health and morals, it fails to explicitly recognize the non-derogability of certain rights in times of emergency, a principle that is part of Tunisia's international obligations.⁵

The authorities have also used emergency measures to impose night-time curfews in areas of unrest, and to detain and pass harsh sentences against those accused of "breaking the curfew".⁶ They have placed hundreds under assigned residence orders, amounting at times to house arrest, banned hundreds of others from travelling abroad, and arbitrarily applied border control orders inside Tunisian borders. Such measures have had a hugely detrimental impact on people's everyday lives, affecting their right to health, employment and family life. They have also carried out thousands of raids across the country in which they have used unnecessary force and carried out house searches without judicial authorization. Thousands of individuals have been arrested. While Amnesty International cannot comment on the overall proportion of arrests that were lawful or unlawful, it is concerned that, in the 19 cases it documented, the arrests were carried out without judicial warrants and were therefore arbitrary.

Since 2011, armed groups affiliated with al-Qa'ida, Ansar al-Shari'a and, more recently, the armed group calling itself the Islamic State (IS) have conducted a series of attacks against individuals, cultural events, businesses and Sufi shrines they deemed offensive to their religious beliefs. On 12 September 2012, protesters who identified themselves as Salafists attacked the US embassy in Tunis after a US film depicting the prophet Muhammad, deemed to be offensive, was posted on the internet. Protesters threw rocks at the embassy, burned US flags and looted a US school. In late 2012 clashes began to regularly occur between armed men and security forces in the Mount Chaambi area close to the Algerian border.

Two assassinations of prominent opposition politicians in February and July 2013, later claimed by Ansar al-Shari'a, shook the country and led to the resignation of the government led by the ruling Ennahda party later in the year. The authorities designated Ansar al-Shari'a as a "terrorist group" in August of that year.

⁴ The Truth and Dignity Committee's website provides a count of 62,250 cases, available at www.ivd.tn/ar/

⁵ Article 4 of the International Covenant on Civil and Political Rights (ICCPR) prohibits derogation from, amongst others, the right not to be arbitrarily deprived of life, the prohibition of torture, the prohibition of retroactive criminal laws, and the right to freedom of thought, conscience and religion. The UN Human Rights Committee has highlighted additional non-derogable aspects of other rights (such as aspects of the right to fair trial under Article 14 and the prohibition of arbitrary detention under Article 9) in its General Comment 29, *Article 4 (Derogations during a State of Emergency)*, CCPR/C/21/Rev.1/Add.11, available at www.refworld.org/docid/453883fd1f.html (General Comment 29).

⁶ On 10 February 2016, the Gabes Court of First Instance sentenced around 37 men to prison terms ranging from one to three years on charges of "breaking the curfew". See Amnesty International, *Tunisia: Arrests and prison sentences show disproportionate use of emergency laws* (Index: MDE 30/3459/2016), February 2016, available at www.amnesty.org/en/documents/mde30/3459/2016/en/

Many see a threat of spillover into Tunisia from the ongoing armed conflict in Libya, particularly given the porous border between the two countries. In addition, differing statistics suggest that between 3,000 and 6,000 Tunisians have travelled to join IS in Libya, Syria and Iraq.

4. HOME RAIDS AND SEARCHES

“My life is destroyed, and there are many like me. We are all against terrorism and want to help but fighting terrorism isn’t an excuse to violate people. This is injustice. What do you expect people to do? They’re either going to try to leave or commit suicide.”

“Sofien”, a former detainee, speaking to Amnesty International, 10 August 2016

Since March 2015, Tunisian security forces have carried out thousands of home raids and searches across the country, according to announcements made on a weekly basis by the Ministry of Interior.⁷ In many cases, there may have been legitimate reasons why the authorities might have wanted to question individuals whose homes have been searched. However, in many cases researched by Amnesty International, the reasons for the raids and searches seemed questionable and the manner of their implementation unlawful. Many house searches have taken place without a warrant, on the one hand, and with the use of unnecessary and excessive force, on the other.

Amnesty International has documented 35 cases of house searches since March 2015. Some of the searches were conducted during neighbourhood sweeps in Tunis following the armed attack on a Presidential Guard bus in November 2015 and in Ben Guerdane following the armed attack in March 2016. Other cases included repeated targeted raids of houses in Tunis and in El Kef belonging to relatives of individuals suspected of involvement in attacks or membership in armed groups. Others still involved searches of houses of former prisoners convicted of terrorism charges under Ben Ali’s rule and individuals perceived to be “radicalized” based on their religious beliefs and practices and physical appearance.

Under Tunisian law, the search of a house must be authorized by an investigating judge. House searches can only take place after 6am and before 8pm except in special circumstances such as the search for fugitives and individuals who have been caught committing a crime.⁸ Article 102 of the Penal Code provides a maximum one-year prison sentence for a public official who enters the house of another person without observing the official procedures and without the latter’s consent. However, under the state of emergency, a search can take place during the day or at night and can be authorized by the Minister of Interior or a mayor.⁹ The 1978 decree regulating the state of emergency does not provide details on how such searches should be conducted.

⁷ See for example from the Tunisian Ministry of Interior’s official Facebook page, “Announcement” (title translated from Arabic), 31 May 2016, available at [goo.gl/PN7Rp7](https://www.facebook.com/MinistereInterieurTunisie/).

⁸ Code of Criminal Procedures, Articles 94-96.

⁹ Decree 49 of 1978 on the State of Emergency, Article 8.

In the cases documented by Amnesty International, home raids and searches were carried out at different times of the day or night by a large number of armed officers. The officers in question usually belonged to the local police or National Guard, the al-Gorjani counter-terrorism brigade or the al-Ouina investigating brigade, both of which operate under the Ministry of Interior, and in some cases anti-drug brigades as well. Some areas appear to be particularly targeted, such as El Kef, because of its proximity to the mountainous border area with Algeria, where many clashes have taken place, Ben Guerdane and the surrounding area, due to their proximity to the Libyan border and the March 2016 attacks, and some lower-income areas in Tunis such as the al-Tadamon or Douwar Hicher neighbourhoods, due to their perceived support of armed groups or organizations affiliated to them. In many of the cases documented by Amnesty International, security forces were masked and armed with rifles, and used excessive and unnecessary force. They broke doors down and pointed rifles at residents, including in the presence of children, and in some cases opened fire into the air.

In a letter to Amnesty International in December 2016, the Ministry of Interior claimed that all searches took place with authorization from the public prosecution and under the supervision of judicial authorities.¹⁰ Yet in the cases documented by Amnesty International, hardly any were shown authorization for the searches from the Ministry of Interior or relevant mayor nor did the authorities provide them with information about the specific reasons justifying the search of their homes. It appears that, in many cases, house searches were arbitrary and discriminatory, based on little evidence pointing to the involvement of the residents in activities that would warrant a search.

NEIGHBOURHOOD SWEEPS

In one example documented by Amnesty International, residents of Ben Guerdane said that large numbers of security officers from the local National Guard station and from the anti-terrorism brigade carried out neighbourhood sweeps throughout the days following the attack on military bases and a police station on 7 March 2016. Residents said the officers used excessive force, breaking down doors and destroying furniture, as they searched houses for suspects and weapons, at times arresting women and men from the same family, and subsequently releasing them a few hours later.

Several of “Mohamed’s” family members were arrested in the days after the attacks, including two brothers who were arrested on 10 and 15 March.¹¹ “Mohamed” described the search to Amnesty International:

“They came at about 3 or 4pm. There were a lot of officers. My mother came to the door but they broke all the doors anyway even though she gave them all the keys. They destroyed all the furniture. One of my brothers lives in a separate part of the house with his family and normally locks his door. They broke down the door and the locks of all the inside doors. He wasn’t at home and they arrested him later. They also took his wife to the station and threatened to take their daughters away to pressure them into talking. They made my other brother go out of the house crawling.”

Amnesty International documented a series of night-time house raids in the La Goulette district in Tunis on 27 November 2015 in which security forces used excessive force.¹² According to residents, groups of about 10 members of a counter-terrorism brigade wearing balaclavas and carrying rifles stormed many homes at about 2am in La Goulette, arrested between 50 and 70 residents and threatened others, including children and elderly people suffering from chronic diseases. Shocked eyewitnesses said that security forces conducted door-to-door searches storming into most homes in the area, breaking down doors without identifying themselves or presenting warrants and pointing guns at residents, including some who were still sleeping. Many of those arrested were taken away while still wearing their nightclothes and slippers. Some were beaten during transfer to the police station for questioning. They were released several hours later and told they would be contacted for a follow-up interrogation.

A woman resident of La Goulette described to Amnesty International how her house was raided and her family threatened:

“At around 1.30am we heard a loud noise in a small alley behind us. We thought that it was a big brawl at first or smugglers as we live near the port. My husband was sleeping and I was scared for my children. I told them not to turn on the light and not to come close to the windows. Then at around 2am, we heard a loud banging on the wall as if it was a bomb. Armed men entered with a bright flashlight. We were terrified and thought that they might be

¹⁰ See Point 1 of the Ministry of Interior’s response to Amnesty International, 16 December 2016, in Annex 1.

¹¹ Interview with “Mohamed”, 11 August 2016. Real name has been withheld for security reasons.

¹² See Amnesty International “Tunisia: Sweeping crackdown signals abuse of emergency measures”, 2 December 2015, available at www.amnesty.org/en/latest/news/2015/12/tunisia-sweeping-crackdown-signals-abuse-of-emergency-measures/

terrorists. They asked who was there, and I asked them who they were. They did not answer, and went straight to my sons' room. They were wearing balaclavas and there were about 10 of them. They pointed their gun at my husband, and then started searching the house. They also pointed their gun at me, and at my son, making him hold his hands up and get down on his knees. After they searched our house, they said that they would be going to the neighbours'. This is when it occurred to me that it was a raid, and that they were doing a house-to-house search. He asked my sons for their phones and then took them away. They said that if they weren't involved in anything they would be released soon. They released my older son 15 minutes later, but then took the younger one to the al-Gorjani counter-terrorism police brigade. They left at about 2.30am, and then my neighbour called crying. She told me that they went into their bedrooms with guns and took away her husband, who had suffered a stroke in the summer. Fifteen minutes before the end of the curfew they brought my son back. They wrote down his name, phone number and took all his phone contacts off his mobile."

TARGETED HOME RAIDS

FAMILIES OF SUSPECTS

The homes of families of individuals wanted for their suspected involvement in armed attacks have also been raided and searched in an apparent attempt to pressure them into revealing the whereabouts of their relative. Amnesty International spoke to families who reported repeated arbitrary detentions, multiple house searches without a warrant, and the use of excessive and unnecessary force during night-time house raids such as breaking doors and opening fire into the air. In most cases, security officers who entered homes without presenting search warrants failed to explain why the searches were necessary, who had authorized them and what they were looking for. For some families the searches and harassment have been going on for periods ranging from nine months to nearly three years, and have had a huge psychological impact on the wellbeing of family members including children and individuals suffering from chronic diseases. Some were so traumatized by the repeated raids that they were forced to seek medical care to deal with the shock. Others felt forced to leave their homes to bring an end to the raids and harassment.

Mohamed Sahraoui Slimi, a resident of El Kef aged 66 whose son is wanted by the authorities for suspected terrorist activities, reported to Amnesty International that, since his son had left home in 2013, security forces had repeatedly harassed and intimidated him and his family in an apparent attempt to coerce them into revealing the son's whereabouts.¹³ Even though the family has consistently maintained that they do not know his whereabouts, they have faced regular raids on their house and arbitrary detention by officers from the Barnousa police force and the National Guard. Mohamed Sahraoui Slimi reported to Amnesty International that security officers regularly enter the house by force in the middle of the night and perform house searches without a search warrant. On many occasions, according to Mohamed Sahraoui Slimi, they have stayed in the house for several hours and prevented the family from sleeping during this time. Such raids have reportedly taken place on a weekly basis since 2013, and their frequency seems to have increased following the declaration of the state of emergency on 24 November 2015. In the period between 24 November and 1 December 2015, house raids took place every night.

Mohamed Sahraoui Slimi described the family's experience:

"They've told me several times that my son is dead but they keep asking about him. They come at different times of the day and night. Sometimes they come at night and keep us until noon, and take me to question me about my son. Once they came into the house and found bread and accused us of feeding terrorists. They also took my wife. Once they took her to Tunis to al-Ouina [investigating brigade] on the same kind of accusations about feeding terrorists. They took her to the court the same day but the judge released her. She didn't have anywhere to go so the al-Ouina officers let her spend the night there but kicked her out the next morning. She's old and didn't know what to do and sat in the street crying until a passing woman helped her get back to El Kef.

"Yesterday, six police officers came with weapons to the house. They broke down the door even though I was going to let them in. They stayed from 10pm until 11pm. They searched the house and left. My grandchildren are terrified of the police now because of all the night-time visits. My son can't work because he's afraid to get arrested if he leaves the house and people are too afraid to deal with him anyway. We're tired. They really exhausted us. Last time they came, we told them to just throw us into the sea and not take us to Tunis any more. They laughed. Every day, every day, they want to detain us and take us. We're not running away. I just want them to leave us alone."

¹³ Interview with Mohamed Sahraoui Slimi on 1 December 2015.

When Amnesty International spoke to him in November 2016, he said that his house was still raided on a weekly basis by police officers who come at night, usually around 2am, search the house without a warrant and take him to the police station for questioning, releasing him around 10 or 11am. He has received no response to his written complaints to the Ministry of Interior and public prosecutor on the continuing harassment.

In a similar case, “Lotfi”, a 61-year-old resident of Tunis whose son is wanted for his alleged involvement in the Bardo museum attack, described to Amnesty International the repeated harassment and intimidation by security forces in an apparent attempt to extract information from him and his relatives concerning his son’s whereabouts.¹⁴ Between 1 April 2015 and 1 November 2015, “Lotfi” was either called in for interrogation, or arrested at home and taken for questioning, at least nine times by different security forces, including the al-Gorjani counter-terrorism brigade and the al-Ouina investigating brigade, as well as several police units. His wife, daughters and three sons have also been detained with him at different times. On at least one occasion, security forces threatened to detain him and his family members until his son turns himself in.

Officers from the al-Gorjani counter-terrorism brigade and the al-Ouina investigating brigade raided “Lotfi’s” house three times between 1 April and 29 October 2015. In all three raids, which occurred in the middle of the night, they proceeded to a house search without presenting a warrant, and used excessive and unnecessary force.

In the first of these raids, approximately 12 to 15 masked armed men from the al-Gorjani counter-terrorism brigade entered “Lotfi’s” house at about 3am on 1 April 2015, and opened fire into the air. After they searched the house, they took “Lotfi” and two of his sons to the premises of the al-Gorjani brigade for interrogation. The men were released a few hours later after they gave their statements without a lawyer being present. At approximately 1am on 1 July 2015, a large group of armed security officers raided “Lotfi’s” house again. They opened fire into the house’s staircase and proceeded to search the house although they failed to show a warrant. “Lotfi’s” wife, who suffers from hypertension, was rushed to hospital because of the shock she suffered.

“Lotfi” described the third raid:

“At about 11pm on 29 October [2015], a large group of about 30-35 men stormed into the house, breaking down the metal entrance door. I didn’t hear them because I was in my room upstairs and was not wearing my hearing aid. Some of the men entered the room downstairs where my wife and daughters were. They turned the furniture upside down. They opened fire into the staircase. My wife had to be rushed to emergency, while they took me to al-Gorjani [brigade] for interrogation. They only showed me a search warrant after I arrived at the unit.”

The harassment of the family has continued since. The family were subjected to a further home raid in March 2016 and, once again, their house was searched without a warrant and the doors broken down, while “Lotfi” and his wife were taken in for questioning for several hours by the National Guard. “Lotfi” also told Amnesty International that they were arrested again in August 2016 and questioned for two hours before being released. One of “Lotfi’s” sons has been detained since July 2015 on charges of having communicated with his brother and remains in Mornaguia prison while investigations are ongoing.

Amnesty International raised its concerns about Mohamed Sahraoui Slimi and “Lotfi’s” cases in writing with the Ministry of Interior in February 2016 but has not received a response. The organization also raised the cases with the UN Committee against Torture in April 2016.¹⁵

TARGETING BASED ON APPEARANCE AND RELIGIOUS BELIEFS

The cases documented in this report show that house searches are often arbitrary and discriminatory and used as a form of intimidation and harassment of individuals perceived to be “radicalized” or suspected of belonging to armed groups merely on account of their religious practice and beliefs. Bearded men and those dressed in clothing such as a *kamis* (a long shirt usually worn in Tunisia by religious Muslims) and women wearing a *niqab* (a full-face veil) appear to be particularly targeted based on their physical appearance.

Mohamed Rezqui, a 21-year-old man who works in a sandwich shop in Tunis, told Amnesty International that even though he has not officially been charged with any crime, he has been facing constant harassment by the police in his neighbourhood of Bab Souika in Tunis since 2014, including at work, based on his appearance.¹⁶ He says that he is frequently taken to his local police station in Bab Souika and questioned without a lawyer being present. He believes that he is being targeted because of his beard. The questions

¹⁴ Interview with “Lotfi” on 1 December 2015. Real name has been withheld for security reasons.

¹⁵ See Amnesty International, *Tunisia: Submission to the United Nations Committee against Torture: 57th session, 18 April – 13 May 2016* (Index: MDE 30/3717/2016), March 2016, available at www.amnesty.org/en/documents/mde30/3717/2016/en

¹⁶ Interview with Mohamed Rezqui, 10 August 2016.

are always similar and focus on his hobbies and practices, such as what books he reads, what television shows he watches, where he prays and where he studied. Once the questioning is finished, he is usually asked to sign a statement. During one of these interrogations in July 2016, police officers took a saliva swab as a DNA sample and asked him to sign a paper stating that it was a DNA sample from a “bearded suspect”. Although he accepted that his DNA sample be taken, Mohamed Rezqui said the officers insulted him when he said he was “not a suspect” and refused to sign the paper. He was transferred to another nearby police station and the officers there said they wanted to visit his house and search it. Despite them not having a search warrant, he agreed but said he needed to inform his family first as he lived with his parents. He told Amnesty International that the officers swore at him angrily and kept him at the station for five hours instead.

A week later two officers from the al-Gorjani counter-terrorism brigade came to his neighbourhood. They called him and asked him to go to his local police station in Bab Souika and questioned him about how often and where he prayed, and looked at the data and numbers on his mobile phone. They again said they wanted to see and search his house, and once again Mohamed Rezqui agreed even though the officers failed to show a search warrant. When he said that he would need to inform his parents, the officers shouted at him and pushed him but did not go to his house. Two days later, on 27 July 2016, officers came to his neighbourhood asking about his house. He went out and invited them in but they refused. That same day at 10.30pm his house was raided. He told Amnesty International:

“There was a knock on the door and when I opened it, there were around 60 armed officers with cars and motorcycles. They were from the judicial police, al-Gorjani [brigade] and an anti-drug brigade. They barged in and searched the house. They didn’t have a warrant. My mother fainted from the sight. They didn’t find anything and said I had to go with them.”

The officers took Mohamed to Bab Souika police station in an unmarked car. He was then transferred with eight other men who had also been arrested that night to the premises of the al-Gorjani counter-terrorism brigade. One of the eight was a friend of his who refused to go to the al-Gorjani brigade’s premises, so the officers beat and verbally insulted him before placing him in the car. At the al-Gorjani brigade’s premises, Mohamed said he was handcuffed, insulted and questioned without a lawyer present and without food or water from midnight until 10.30am the following morning, when he was released.

He described the constant harassment he has been facing since 2014:

“I’m always being harassed. Sometimes I’m stopped in the street twice in the same day. They [the police] have come and tried to make the lady who owns the sandwich shop I work in fire me. All this and they’ve found nothing against me except the way I look.”

IMPACT OF HOME RAIDS AND SEARCHES

In many of the cases documented by Amnesty International, repeated house searches and raids have had long-term consequences on the mental and physical health of the entire family. In some instances, the affected individuals were rushed to hospital due to the shock they felt following the violent intrusion by armed security forces into their homes. Three men told Amnesty International that their wives had miscarried or were severely affected as a result of the fear and stress caused by forceful or repeated home raids. Many reported that they have been living in constant fear and anxiety as a result.

After his release from Bouchoucha prison in March 2015, “Sofien” (see below) has faced harassment and intimidation by security forces.¹⁷ He had been arrested the same month while driving through the Sijoumi neighbourhood in Tunis in a rented car with his friend. Police officers claimed it was because people from the area had called them and informed them that he was acting suspiciously. Since then, he has been repeatedly stopped and questioned, usually for several hours, and made to sign a statement which he is not allowed to read. In addition, security forces have raided his house on several occasions without warrants, sometimes using unnecessary force, terrorizing his family and affecting their health.

In December 2015, around 60 police officers and members of the al-Gorjani counter-terrorism brigade raided his house in Bab Souika unannounced at night, broke down the door and proceeded to search the house without a warrant. “Sofien’s” wife, who was two months pregnant at the time, had to be hospitalized as the shock had affected the foetus. A few weeks later she moved to her parents’ house as she was scared that her house would be raided again, and that the stress of the raid would have adverse consequences on her pregnancy. “Sofien” told Amnesty International that the stress caused by the house raids and harassment led to him and his wife filing for divorce in November 2016.

At the beginning of July 2016, “Sofien” was returning home in the evening when he saw that his street was blocked off and that around 60 masked and armed security officers were standing next to his house. A

¹⁷ Interview with “Sofien”, 10 August 2016. Real name has been withheld for security reasons.

neighbour told him that the police were looking for him, so instead of going home he went to the Bab Souika police station to ask about the reasons. He explained to Amnesty International that the police acknowledged that they did not have any specific reason that would warrant a raid:

“I told them, ‘I’ve left you my phone numbers so if there’s anything you need me for, you can call me and I will come. Why did you do this?’ And their response was ‘because we missed you’, and then they told me to go. It is purely to annoy me. I feel like choking. I can’t do anything, I can’t react or say anything because then they’ll come up with some accusations. It is unfair. They want to look like they’re doing their job at the expense of my rights.”

On 27 July, officers from the al-Gorjani brigade raided “Sofien’s” home twice on the same day. “Sofien” said that a large number of officers wearing white masks and military clothes filled his 200m long street. He described the raid to Amnesty International:

“They first came in the evening and I wasn’t there. My mother opened the door and asked them to wait because she was not properly dressed but they ignored her and came into the house anyway. The second time they came at 10pm. I was home and they took me with them. There were eight other men who they had arrested but I didn’t know them. They took us to al-Gorjani [brigade] and kept us handcuffed and didn’t let us speak. They asked me questions about my reading and television watching habits, my prayer and which mosque I went to. They didn’t let me read the statement before making me sign it.”

In the case described above, Mohamed Sahraoui Slimi told Amnesty International that the raids on his house had had a huge impact on the mental health of the entire family and that some family members had attempted to commit suicide as a result. He reported being arbitrarily arrested on multiple occasions from his home and taken to the police station for interrogation only to be released a few hours later. He also said that his wife, two sons – including one son who has a mental disability – and grandchildren aged five, eight and 10 have also been detained and have similarly been released after several hours at the police station.

The sweep on La Goulette on 27 November 2015 and the force and manner in which it was conducted had a strong impact on people of all ages. Officers burst into the rooms of sleeping families and some women said that they did not have time to get dressed even though they usually wear the veil and that their children were terrified. The raids had a particularly detrimental effect on the health of elderly people with chronic diseases such as diabetes and hypertension. Among the residents who had their home searched was a woman who had suffered a stroke, and was unable to speak or move. She was sleeping in the front room when a large number of masked police stormed the house. Another family whose home was raided as part of the sweep told Amnesty International that, as a result of the fright that their son suffered during the raids when their house door was forced open, he returned to a childhood stutter that he had managed to overcome as an adult with the help of treatment.

During these often arbitrary, unlawful and discriminatory raids and searches, Tunisian security forces violated the right to liberty and security of person and the right to private life, which are protected under Tunisia’s constitution.¹⁸ By arbitrarily targeting people for house searches and raids, frequently resorting to excessive and unnecessary force, and failing to obtain and show search warrants or follow any other due process guarantees required under both international and Tunisian law, security forces have shown their willingness to abuse emergency measures. They have failed to ensure that the manner in which house searches are conducted is limited to what the law allows them to do, is strictly necessary for the given situation and is proportionate to the objective it seeks to achieve. In acting in this manner they have violated domestic and international law and standards and effectively put themselves above the law.

¹⁸ Article 24 of the Tunisian constitution.

5. ARBITRARY ARRESTS

“We want an end to the fear. We no longer go out. I can’t take my child anywhere. I feel like I’m living in a cage and am always afraid, and I haven’t even done anything.”

“Meriem”, a victim of targeted harassment by security officers, in an interview with Amnesty International, 8 August 2016

Over the past two years, security forces have carried out thousands of arrests. Many people have been arrested following neighbourhood sweeps and home raids that have been carried out after one of the armed attacks. Others have been arrested for breaking one of the curfews that were imposed following protests that turned violent, particularly in the interior regions of Tunisia.¹⁹ Others still have been targeted for arrests as a method of intimidation and harassment to coerce them to reveal information about a relative suspected of terrorism-related activities. Often, people are not presented with an arrest warrant and they are not even informed of the reason for their arrest and whether there are any criminal charges against them. They are also not informed of their rights and are unable to access a lawyer.

The Tunisian constitution prohibits the arrest or detention of anyone unless they are caught committing a crime or a judicial order has been issued.²⁰ They must be immediately informed of their rights and the accusations against them. The Tunisian Code of Criminal Procedures allows local police and National Guard officers to temporarily arrest suspects and place them under their jurisdiction on the condition that they are transferred immediately to the closest court.²¹ Problematically, Tunisian law makes no mention of the need to show an arrest warrant or even proof of identity during an arrest. A warrant must be shown only when a summons is ordered by the investigating judge and should indicate the name, age, date and place of birth of the accused and the charges against him or her.²² Changes to the Code of Criminal Procedures that came into force on 1 June 2016 mean that those arrested can no longer be kept in detention without written permission from a public prosecutor. Although the pre-charge detention period was reduced, the maximum time allowed under the amendments is still extensive and beyond that permitted under international standards. In the case of serious crimes, pre-charge detention is limited to 48 hours, renewable once by a public prosecutor’s order, and, in the case of minor offences, it is limited to 24 hours, renewable once.²³ However, in the case of those arrested in relation to terrorism-related charges, the time allowed for pre-charge detention is 15 days and access to a lawyer and family can be delayed for up to 48 hours, which starkly contravenes international law and standards.

Different human rights courts and monitoring bodies on numerous occasions have stated that detention beyond 48 hours without judicial authorization is excessive and unlawful.²⁴ In 2016, The UN Committee

¹⁹ See Amnesty International, “Tunisia: Arrests and prison sentences show disproportionate use of emergency laws” (Index: MDE 30/3459/2016), 17 February 2016, available at www.amnesty.org/en/documents/mde30/3459/2016/en/

²⁰ Article 29 of the Tunisian constitution.

²¹ Article 12 of the Code of Criminal Procedures states that local magistrates, police and National Guard officers and others who have been given specialized investigating authority by law, are allowed to temporarily detain a suspect in the course of their investigations on the condition that the suspect is immediately transferred to the closest court.

²² Article 68, Code of Criminal Procedures.

²³ Previously, the time allowed for pre-charge detention in serious crimes was 72 hours, renewable once for a further 72 hours.

²⁴ UN Human Rights Committee, *Concluding observations on El Salvador*, CCPR/C/SLV/CO/6, para. 14, available at goo.gl/LrLDka; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Special Rapporteur on torture), *Report to the Commission on Human Rights*, E/CN.4/2003/68, para. 26(g), available at goo.gl/ouLgP3; Special Rapporteur on torture, *Report to the*

against Torture recommended that all detainees in Tunisia are brought before an independent judicial authority within 48 hours of their arrest.²⁵ On numerous occasions the UN Human Rights Committee (HRC) has clearly stated that the right to be brought promptly before a judge should not be restricted even in the times of emergency.²⁶

In its written response to Amnesty International's concerns in December 2016, the Ministry of Interior stated that all arrests and investigations took place within the framework of the law and with judicial authorization and that the Ministry of Interior had issued a number of circulars to the judicial police to raise awareness of the need to apply recent changes to the Code of Criminal Procedures.²⁷

Testimonies collected by Amnesty International from 19 people who were themselves arrested or who had family members arrested by police or National Guard officers or officers from counter-terrorism brigades in Tunis, Ben Guerdane and El Kef highlight the arbitrary manner in which arrests take place, with no arrest warrants shown and little evidence linking the accused to a crime. In many of the cases documented by Amnesty International, arrests were accompanied with the use of force, most often beatings, either during the arrest itself or at the police or National Guard station and during interrogation.

One man from Ben Guerdane told Amnesty International that, following the March 2016 attacks in the town, police and counter-terrorism officers carried out waves of arrests and in one case arrested over 10 men from his neighbourhood simply because they had the same family name and were distant relatives of one of the suspects.²⁸

In another case, 31-year-old salesman "Sofien" (see above) was arrested in the last week of March 2015, along with his friends who were with him in the car. He had rented a car and was driving through Sijoumi neighbourhood in Tunis when police officers stopped him saying civilians had called and described him as a threat. The officers found nothing in the car but took "Sofien" and his three friends to Sijoumi police station. From there they were transferred to the premises of the al-Gorjani counter-terrorism brigade. He described his ordeal to Amnesty International:

"They beat us with everything in al-Gorjani. I didn't know any more who or what was hitting me and just tried to protect my head with my hands. There were a lot of people arrested and in handcuffs. They insulted us and swore at our families and Tunisia to try to get us angry and say something so they could beat us more. Then they gave me a list of accusations and said 'pick one'. So I picked 'searching for antiques or treasures'. It was ridiculous because they had arrested me from a busy roundabout in a car. How could I have been looking for treasures? The counter-terrorism unit interrogated me but they found nothing, especially in relation to the accusation."

"Sofien" was kept in the al-Gorjani counter-terrorism brigade's premises from 11am to 11pm and was then transferred to Bouchoucha detention centre. He said that the detainees' hands were cuffed behind their backs and they were beaten in line by the guards as they walked into the detention centre. Three days later he was transferred before an investigating judge who dropped the accusations and ordered his release.

Derogation measures under states of emergency

While states are allowed to derogate from certain obligations under exceptional circumstances as set out in international human rights treaties, they are subject to strict conditions. Such derogations are only allowed when there is an officially proclaimed state of emergency that threatens the life of the nation.²⁹ States which decide to derogate from their international obligations should notify other states parties to the international treaties they are derogating from. In most cases they can do so by notifying the UN Secretary-General of this fact. Until that happens, and until other conditions for derogation are met, those derogation measures have no legal effect.

Any measures adopted must be exceptional and temporary and limited to what is strictly required by the exigencies of the situation.³⁰ Derogations from some rights such as the right to life, the prohibition

*General Assembly, A/65/273, para. 75, available at goo.gl/OONhWM; CAT, *Concluding observations on Venezuela*, CAT/C/CR/29/2, para. 6(f), available at goo.gl/HkuBeW; CAT, *Concluding observations on Mexico*, CAT/C/75, para. 220(b); European Court of Human Rights, *Kandzhov v. Bulgaria*, Application no. 68294/01 (Judgement), paras 66-67.*

²⁵ UN Committee against Torture (CAT), *Concluding observations on the third periodic report of Tunisia*, CAT/C/TUN/CO/3, paras 9- 10, available at goo.gl/9ic5D6 (CAT, *Concluding observations on the third periodic report of Tunisia*).

²⁶ HRC Report (Volume I), Annex XI (1994) p. 119, para. 2 (also cited in footnote 9 of HRC General Comment 29); and HRC, *Concluding observations on Israel*, CCPR/C/ISR/CO/3, para. 7(c); *Concluding observations on Thailand*, CCPR/CO/84/THA, paras 13 and 15.

²⁷ See Point 3 of the Ministry of Interior's response to Amnesty International, 16 December 2016, in Annex 1.

²⁸ Interview with Amnesty International, 11 August 2016.

²⁹ Article 4 of the International Covenant on Civil and Political Rights (ICCPR).

³⁰ HRC, General Comment 29, paras 1, 2 and 4.

of torture and other-ill-treatment and the principle of non-discrimination are not allowed under any circumstances.³¹

The prolonged duration of the state of emergency in Tunisia, the manner of the implementation of the emergency measures and their impact on the human rights of those targeted raise serious questions about the extent to which they have been necessary and proportionate and have complied with international obligations for a state of emergency to be exceptional and temporary and limited to the exigencies of the situation.

ARRESTS BASED ON APPEARANCE

Several people interviewed by Amnesty International said they believed they were initially arrested because of the way they looked and then, as a result, faced trumped-up accusations and ongoing harassment following their release. From the testimonies gathered by Amnesty International, it appears that men with beards or dressed in a *kamis* are targeted because they are perceived to be “radicalized” or accused of being “Salafists”, and therefore perceived to be supporting armed groups that have claimed responsibility for attacks that have taken place over the past two years.

Noureddine Ayari, aged 29, was returning from afternoon prayer to his work in a marble factory in the Ben Arous district of Tunis on 25 December 2015, when he was stopped by a plain-clothes police officer who asked him if he knew a “terrorist suspect he was looking for”.³² He described his arrest to Amnesty International:

“The officer went and spoke to the administration of the factory and then came back and called me and told me to bring my identity card with me. He told me I was rude to him and took me to the Ben Arous police station with him. There he asked me why I had a beard and was wearing a *kamis*. He then accused me of being part of the attack on the Presidential Guard [in Tunis] and stuck two fingers in my eyes. I didn’t take it well and resisted so another officer came and beat me. They told me I was rude and handcuffed me. Then they lay me down on the floor and kicked me in the face. At night they took me to the hospital in Ben Arous and then questioned me for an hour, in the end accusing me of insulting a public official and joining a terrorist cell. I spent five days in detention in Bouchoucha before I was released and the accusations dropped because the judge saw there was nothing behind the accusations.”

The day after his release, on 29 December, Noureddine Ayari spoke publicly about his experience on the private Zitouna TV channel. The following day he saw an unmarked car following him and, suspecting it was security officers, went to the First Instance Court in Ben Arous to file a complaint. He was arrested again in front of the court and taken to Bouchoucha detention centre, where police officers threatened to beat him and accused him of “photographing security officers with the aim to kill them”, “being a member of a terrorist group” and defaming security officers. After five days he was transferred to the First Instance Court in Ben Arous, which referred his case to the al-Gorjani counter-terrorism brigade. Noureddine stayed there for 10 days. During that time he was questioned about what books he read, his thoughts on Syria, his Facebook page and his religious practices. He was not beaten although he said he saw others who had been severely beaten. The charges against him were eventually dropped and he was released.

Amnesty International spoke to several people who were arrested as part of neighbourhood sweeps. “Karim”, a 32-year-old father of two, currently working in a call centre in Tunis, told Amnesty International he was arrested as part of a sweep in December 2014 in the Douwar Hicher neighbourhood because he happened to be playing in an arcade centre there with friends when police officers raided homes and shops looking for individuals who had attacked a police station in the area.³³ He believes he was kept in custody because of his beard and overheard the head of the police station telling officers to “keep all the Salafists”. While many were arrested that day, most were released and police officers kept 32 men they believed were “Salafists” based on the fact that they had beards or were wearing a *kamis*. Eventually 10 men without beards were released a few hours later. The remaining 22 were transferred to Bouchoucha detention centre and six days later to Mornaguia prison. “Karim” was eventually released on bail on 16 January 2015. Throughout his time in detention “Karim” says he was subjected to torture, including by being badly beaten, in both Bouchoucha detention centre and Mornaguia prison. He told Amnesty International that he was stripped of his clothes and forced to remain in the cold, subjected to stress positions for long periods while being beaten by officers using their hands, feet and rubber hoses and threatened with a gun. “Karim” also said that he witnessed another man being raped with an object in Mornaguia prison. He told Amnesty International that he did not

³¹ Article 4.1 of the ICCPR and General Comment 29, para. 8.

³² Interview with Noureddine Ayari, 8 August 2016.

³³ Interview with “Karim”, 8 August 2016. Real Name has been withheld for security reasons.

file a complaint against his torture and other ill-treatment because he was afraid of the repercussions and having to face trumped-up charges. There has been no progress in the case opened against him, which makes him feel helpless and constantly under threat. He says he is constantly harassed by police officers but feels unable to challenge the harassment because of the case against him (see below).

TARGETING OF FAMILY MEMBERS OF SUSPECTS

Among those who are victims of arbitrary arrest are the family members of individuals suspected of involvement in armed attacks or of belonging to armed groups. Some appear to have been detained solely on the basis of their family connections and to have been used to put pressure on those targeted by the authorities. Amnesty International spoke to several families in El Kef, Tunis and Ben Guerdane who said that they were subjected to repeated arbitrary arrests with the aim of coercing them to provide information about their wanted relative, especially their whereabouts. The arrests have included elderly and disabled members of the family. In some cases, people have been transferred long distances to Tunis for interrogation. They have then been released several hours later and left to make their own way home with little or no money.

In one case, “Halim”, a 40-year-old resident of Ben Guerdane, told Amnesty International that security forces arrested him and his brother, aged 36, after they failed to find their other brother, “Ahmed”, a well-known imam, who they suspected of involvement in the March 2016 attacks, in the days following the attacks.³⁴ “Ahmed” was on holiday with his family on 9 March when police and National Guard officers came searching for him at their family home in Ben Guerdane. His brother “Halim” described the arrest to Amnesty International:

“They came in looking for ‘Ahmed’, who was a well-known imam in the area. They broke into the house, told me to get on my knees with their guns aimed at my head. They asked where ‘Ahmed’ was. I told them that ‘Ahmed wasn’t in right now and that I didn’t know where he was exactly. They didn’t believe me, and broke into ‘Ahmed’s’ room, which was locked, and searched it and the entire house.

“They dragged me out of the house and took me and my other brother to the police station in Ben Guerdane. There they started to threaten me and swear at me. They said they were looking for my brother and kept asking me where he was. They put me in a prison cell along with my other brother. I stayed there for two days. I wasn’t allowed to make any phone calls or do anything during this time. They beat me and swore at me all the time. One time they poured liquid detergent over me saying that I was filth and needed cleaning.”

“Halim” and his brother were released at night, which meant they had to travel home during the time of the curfew that was imposed following the attacks and therefore risked being rearrested or shot at.

“Ahmed” returned home from a family trip on 13 March. At 2pm on 14 March the house was surrounded by security officers once again. “Halim” described the raid and arrest to Amnesty International:

“I could hear the sound of car doors slamming outside. I heard someone say the name ‘Halim’ and, before I knew it, there was a police officer with a gun to my head behind me and I was on my knees. My two young children aged three and one-and-a-half years old were terrified. My wife was crying and scared too, when the police kicked her and told her to be quiet. There were so many police and security officers in the house: about 12 or 13, I can’t remember exactly. They tore the house upside down. They took me once again and found ‘Ahmed’ in the house too – the person they’d been looking for.”

“Halim” was kept overnight before being released. Security officers kept a car outside the house for several days even though “Ahmed” had been arrested.

In other cases, security officers have arbitrarily and repeatedly arrested family members of wanted individuals and kept them for hours or days for interrogation. They have faced trumped-up charges, ill-treatment and sexual assault.

In one case documented by Amnesty International, “Marouan”, aged 60, and his family, who live in Tunis, have faced harassment ever since his daughter married a Tunisian man, and travelled with him and her young daughter to Libya in 2012 without informing her family, apparently to escape an abusive ex-husband who works with the al-Gorjani counter-terrorism brigade.³⁵ “Marouan” believes that his daughter’s new husband is wanted for suspected terrorist activities.

In 2013, “Marouan” and his wife “Samira” travelled to Libya twice to convince their daughter to return. She refused because she was afraid that her ex-husband would accuse her of kidnapping their daughter. When

³⁴ Interview with “Halim” and “Ahmed”, 13 August 2016. Real names have been withheld for security reasons.

³⁵ Interview with “Marouan”, “Samira” and “Meriem”, 10 August 2016. Real names have been withheld for security reasons.

their attempts failed, they asked their other daughter, “Meriem”, to travel to Libya to convince her sister to return. “Marouan” and “Meriem” planned to travel to Libya by land in January 2015 but, when they reached the border crossing at Ras Jdir, they discovered that both of them had been subjected to a border control order. They were kept at the border from 10pm to 2am, during which time they were searched and questioned and eventually denied permission to leave Tunisia.

The following morning, officers from the National Guard came and seized “Meriem’s” husband in Tunis, saying he would be returned in an hour. Instead, “Meriem” received a call from the Manouba police station asking her to come in for questioning. She went with her brother “Hatem”, who was arrested on suspicion of “training terrorist cells”. Her father was also arrested. “Meriem” said that she faced insults and that officers tried to remove her *niqab* by force. All three were forced to sign statements without reading the contents. They were transferred the same day to Bouchoucha detention centre and from there to appear before an investigating judge in the Manouba Court of First Instance. The judge ordered “Meriem’s” release but her father and brother were kept in custody and transferred to the premises of the al-Ouina investigating brigade in Tunis.

At the premises of the al-Ouina investigating brigade, “Hatem” said officers told him to choose between himself or his father being beaten. When he chose himself, the officers beat him with a rubber hose, after which they handcuffed both men and forced them to stay standing all day. They were made to take an alcohol test that came back negative. Neither man was charged and they were released the following day by an investigating judge.

In August 2015, “Marouan’s” daughter sent the family money from Libya to help prepare for her brother’s wedding and home renovation. Her ex-husband found out about the transfer and the next day officers arrived at the parents’ house, and proceeded to a search without a warrant, while damaging property. They took 59-year-old “Samira” with them to the station, ignoring her request to show an arrest or search warrant. They also took what money they found in the house, around 940 Tunisian dinars (around US\$418), which they never returned. “Samira” was then taken to the premises of the al-Gorjani counter-terrorism brigade, where she was questioned about the money by seven officers. She told Amnesty international that, at night, one of the male officers who was left with her in the room tried to sexually assault her. When she pushed him away, he stopped and took her to Bouchoucha detention centre. She was held there for five days. During this time, she was transferred every morning to the al-Gorjani brigade’s premises for interrogation about her daughter and the money they had received and returned only late at night to Bouchoucha to sleep. She was not given any food and had to rely on another detainee to eat.

“Meriem” was called by the al-Gorjani counter-terrorism brigade and also asked to go in for questioning the day after her mother was arrested. She went to the al-Gorjani brigade’s premises in the morning and male officers there forced her to take her *niqab* off and asked her about her sister and the money she had sent. She said she was released at 10pm after signing a statement which she was not allowed to read and threatened with prison when she asked to see it.

Since then, officers at the al-Gorjani brigade have repeatedly called in different members of the family for interrogation for several hours to try and force them to make contact with “Marouan’s” daughter in Libya.

The continued harassment has completely disrupted the family’s ability to lead a normal life. “Meriem’s” husband was subjected to a border control order after he refused to report to the al-Gorjani counter-terrorism brigade in April 2016. He says that he needs to travel to different regions in Tunisia for work but is stopped and questioned repeatedly by police officers when he does so because of the border control order.

“Marouan”, who works as a driver, says that he has been stopped 12 or 13 times since January 2015, also because of a border control order, and held for up to four hours each time which results in him not being paid for that day because of the delays. He told Amnesty International they just want to see an end to the arrests and harassment:

“We just want an end to all of this harassment. If my daughter returns – if that’s what she wants – she should receive a fair trial if there are any accusations against her. We haven’t done anything and just want to have a normal life.”

The arbitrary and discriminatory manner in which arrests are being carried out have had a significant effect on dozens of people. The unsubstantiated manner in which arrests have been carried out are a clear violation of the constitution and of Tunisia’s international obligations to prevent arbitrary arrests and detentions. Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR) states: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

6. TORTURE AND OTHER ILL-TREATMENT

“I just want to live like a human. If they have anything against me then they can take me but I no longer want to live like this or with the effect that it’s having on my family. I would rather go to prison.”

“Omar”, arrested following the Bardo museum attack, August 2016

Torture and other ill-treatment is still widespread in Tunisian detention centres and prisons despite the promises and assurances made by the Tunisian authorities to address and bring an end to the patterns of violations that were systematically practised under former president Ben Ali before his ousting in the 2010-2011 uprising. Tunisian human rights organizations claim there have been hundreds of cases of torture and other ill-treatment since the 2010-2011 uprising.³⁶ Allegations of torture and ill-treatment are reported most often during arrest and pre-charge detention for those arrested on terrorism-related charges as well as ordinary criminal or drug-related cases. For the purpose of this report, Amnesty International has focused solely on acts of torture and other ill-treatment carried out in relation to counter-terrorism operations and emergency measures.

Amnesty International has documented the cases of 23 individuals – 21 men and two women – who were arrested on terrorism-related charges alleged that they were tortured and otherwise ill-treated. Most individuals said they were tortured during interrogation by officers belonging to the al-Gorjani counter-terrorism brigade or the al-Ouina investigating brigade in Tunis, both of which fall under the jurisdiction of the Ministry of Interior, or during detention in Bouchoucha detention centre or Mornaguia prison. Several of the people interviewed by Amnesty International sarcastically called their arrival at Bouchoucha detention centre or Mornaguia prison as a “reception party” where they were received with beatings by sticks, hands and feet. Some told Amnesty International they were tortured or otherwise ill-treated by police or National Guard officers at the station where they were held immediately following their arrest. By law, all terrorism-related cases must be transferred to specialized counter-terrorism courts in Tunis, and suspects are usually interrogated by officers from one of the two specialized counter-terrorism brigades in Tunis.³⁷ Although the two brigades are investigation units, detainees have, in some cases, been held in their premises.³⁸ The majority, however, are held in the Bouchoucha detention centre in Tunis and transferred daily to one of the brigades for interrogation.

³⁶ Interview with human rights defender Radhia Nasraoui, *Al-Araby*, “Torture continues in Tunisia” (title translated from Arabic), 28 January 2015, available at goo.gl/30fC54

³⁷ Law 26 of 2015 on Counter-terrorism and Preventing Money Laundering, Section 3.

³⁸ According to the Tunisian authorities, the Special Rapporteur on torture was denied access to the premises of al-Gorjani brigade because it is an investigation unit and not a place of detention. See UN Committee against Torture, *List of issues in relation to the third periodic report of Tunisia, Addendum, Replies of Tunisia to the list of issues*, CAT/C/TUN/Q/3/Add.1, para. 27.

Similar to the methods used under Ben Ali, the most commonly reported forms of torture and other ill-treatment used by the counter-terrorism brigades to extract “confessions” during interrogation include beatings with objects such as sticks and rubber hoses, threats of sexual assault of detainees or their family members, the use of stress positions such as the “roast chicken” or being forced to stand up for prolonged periods, electric shocks, sleep deprivation and having cold water poured on them. Some former detainees reported also being subjected to degrading or humiliating treatment including insults and forced nakedness. Amnesty International has documented one case of rape and an allegation from a former detainee who said he witnessed another man being raped. Former detainees also reported being slapped, beaten with objects, subjected to insults and stress positions, and having cold water poured on them as punishment in police and National Guard stations across the country, the Bouchoucha detention centre in Tunis, and prisons under the Ministry of Justice.

In July 2015, the Tunisian parliament adopted a new counter-terrorism law following the armed attack on the coastal city of Sousse in June and an alleged foiled attack in the city of Gafsa, in the south. The new law, which replaces a 2003 law that was often used under former president Ben Ali to repress peaceful opposition and criticism. Between 2003 and 2011, according to UN estimates, around 3,000 people had been tried and sentenced under the 2003 law, often based on confessions extracted under torture, and for “offences” such as “growing beards, wearing specific clothing and consulting prohibited sites”.³⁹ The new law is problematic because of, among other reasons, its vague and overly broad definition of terrorism.⁴⁰ It also gives security officers wide monitoring and surveillance powers and extends the period a terrorism suspect can be held incommunicado for interrogation, increasing the risk of torture and other ill-treatment. The law also imposes the death penalty for rape and for terrorist acts resulting in death, and allows courts to conduct closed hearings and withhold the identity of witnesses, thereby undermining defendants’ fair trial rights.

Under the counter-terrorism law, suspects can be held in pre-charge detention for up to 15 days, a practice which contravenes international law and standards, according to which pre-charge detention exceeding 48 hours is unlawful.⁴¹ At the end of the 15 days they must be seen by an investigation judge who may either drop the charges against them and release them, release them on bail or issue an arrest warrant ordering their continued detention and transfer to prison.

In June 2016, the UN Committee against Torture criticized the lack of independence of the judiciary resulting in investigating judges not always transmitting detainees’ allegations of torture during custody to the public prosecutor, as required by law. The Committee recommended that the authorities ensure that judges launch investigations on their own initiative whenever there are reasonable grounds to believe that an act of torture or other ill-treatment has been committed.⁴²

The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is absolute under international law. It is non-derogable even in states of emergency that threaten the life of the nation. The use of torture and other cruel, inhuman or degrading treatment to elicit information from detainees, including those held on suspicion of terrorism, is absolutely prohibited, as is the use in legal proceedings of evidence obtained by torture which would violate the principle of non-admissibility of evidence extracted by torture, contained in Article 15 of the Convention against Torture.

TORTURE AND OTHER ILL-TREATMENT DURING INTERROGATION

In a written response to Amnesty International’s concerns, the Ministry of Interior stated that all investigations in terrorism-related cases fell under the direct supervision of members of the public prosecution and investigating judges in specialized counter-terrorism courts and that this acted as a safeguard against any violations of human rights that Amnesty International had raised, especially torture, being committed.⁴³

Amnesty International interviewed four individuals – three men and one woman – who were part of a group of 23 detainees arrested in relation to the deadly attack at the Bardo museum in March 2015 and who claimed that members of the al-Gorjani counter-terrorism brigade were responsible for their torture and other ill-treatment. The group all lived in the al-Tadamon neighbourhood in Tunis, the same one in which one of the gunmen who was killed during the attack on the museum lived, but there appeared to be little evidence

³⁹ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, Addendum, A/HRC/20/14/Add.1, para. 13, available at [documents-dds-ny.un.org/doc/UNDOC/GEN/G12/120/08/PDF/G1212008.pdf?OpenElement](https://www.un.org/doc/UNDOC/GEN/G12/120/08/PDF/G1212008.pdf?OpenElement)

⁴⁰ Amnesty International, *Tunisia: Counterterrorism law endangers rights, legislative safeguards against abuse*, July 2015, available at www.amnesty.org/en/documents/mde30/2195/2015/en/

⁴¹ Law 26 of 2015 on Counter-terrorism and Preventing Money Laundering.

⁴² CAT, *Concluding observations on the third periodic report of Tunisia*, paras 18-20.

⁴³ See Point 6 of the Ministry of Interior’s response to Amnesty International, 16 December 2016, in Annex 1.

linking most of them to the attacker. The former detainees said they were tortured and otherwise ill-treated during interrogation to coerce them to give false “confessions”: some were subjected to electric shocks, including on the genitals, or a stress position known as the “roast chicken”, whereby their hands and feet were cuffed to a stick, while some were slapped, deprived of sleep, forced to undress or threatened with a female family member being raped or otherwise harmed.

“Oula”, a 20-year-old student, reported to Amnesty International that she was forced to undress twice during her interrogation by the al-Gorjani brigade.⁴⁴ “Oula” was arrested on 23 March 2015 from her house by four officers from the al-Gorjani counter-terrorism brigade and was one of the group of 23 detainees who were arrested in relation to the Bardo museum attack. She said that the second time that officers forced her to undress they tied her to a chair and threatened to rape her. She reported being pushed against a wall, having her hair pulled, having water poured on her body and being beaten with an object. No female officer was present during her interrogation, and there were no female guards in the facility. As she was the only woman detained in the facility at the time, she was forced to sleep on a couch in an office.

In another case, “Omar”, aged 27, was arrested on 20 March 2015, also in relation to the Bardo museum attack.⁴⁵ He was called by phone to summon him to the premises of the al-Gorjani counter-terrorism brigade and kept there for five days. He said that during that time he was repeatedly beaten, deprived of sleep and denied food and water. He was kept in a cell without access to daylight and did not know whether it was day or night. He described his experience to Amnesty International:

“Animals are treated better. They would beat me until I fainted and then they would throw water on me and start again. When they weren’t beating me they would make me stand up without sleeping and with no food or water. There were about 13 or 14 others arrested with me. They would take me to them and ask me if I knew them and I would say that, yes, they live in my neighbourhood and they would beat me and say ‘you know terrorists then’. At one point they took me to an office on my own with nine officers and they made me take off my clothes and beat me and hung me up in the chicken position. They beat me and used electric shocks and would ask me questions while they were beating me. Sometimes they would return me to the others and then call me back and beat me again. They beat me on my feet [*falaqa*]. They used electric shocks on my genitals. They beat me with sticks, rubber tubes and metal rods on my lower back and chests. They never let me rest.”

When the group of 23 was initially arrested in March 2015, the Ministry of Interior publicized their arrest, claiming it had arrested those responsible for the Bardo museum attack and shared the photos and names of those arrested on public television. The authorities reported the allegations as fact, in violation of the presumption of innocence.⁴⁶ However, lawyers and human rights organizations questioned this claim following the attack on the beach resort in Sousse in June 2015 and while the group was still in detention. In addition, members of the group reported to the investigating judge that they had been coerced to sign their “confession”. The judge launched an investigation into the allegations of torture and transferred the case from the al-Gorjani brigade to the al-Ouina investigating brigade. However, there have been delays in the investigations and while some officers and complainants have been summoned for questioning, most complainants and witnesses have not. Former detainees told Amnesty International that they were interrogated again by the al-Ouina brigade but were not tortured or otherwise ill-treated and most were released in July and August 2015 by the investigating judge for lack of evidence.

Amnesty International also interviewed three individuals who were arrested following armed attacks in Ben Guerdane in March 2016 as well as the family members of six people who had been arrested and who were still in detention at the time of writing. Former detainees described being subjected to beatings at the police station in Ben Guerdane as well as during interrogation by the al-Ouina investigating brigade in Tunis. Family members of those still in detention said that their relatives had briefly mentioned they had been beaten during interrogation by police or National Guard officers and by the counter-terrorism brigades or, in some cases, that they were able to see marks on their bodies consistent with torture and other ill-treatment but said that those still in detention were not able to give them full details of what happened because they were too afraid of being overheard by the guards and face repercussion for speaking out.

“Ahmed” (see above) was arrested from his home in Ben Guerdane on 14 March 2016. The house was stormed by a large number of security officers, terrifying his family and hitting his one-month pregnant wife leading her to miscarry.⁴⁷ He described to Amnesty International his transfer to the police station in Ben Guerdane:

⁴⁴ Interview with “Oula”, 1 December 2015. Real name has been withheld for security reasons.

⁴⁵ Interview with “Omar”, 11 August 2016. Real name has been withheld for security reasons.

⁴⁶ Webdo.Tn, “Minister of Interior Najem Gharsalli gives details of Bardo attack”, 27 March 2015, available at www.youtube.com/watch?v=QRQk8DMuMMM

⁴⁷ Interview with “Ahmed”, 13 August 2016. Real name has been withheld for security reasons.

“They started to beat me in the van itself. Then one of the policemen told them to stop hitting me in front of people. He said, ‘Once we get him to the station we can do what we like with him.’”

“Ahmed” said that at the police station he was stripped naked, tied up in the “roast chicken” position for around eight hours with his head covered with a cloth and left in the cold. He described police officers beating him repeatedly with a thick wooden stick and raping him by inserting a wooden stick into his anus:

“They beat me until I fell unconscious. In fact, I fell unconscious twice. Each time they would take me to the hospital, before taking me back [to the police station] again. They even inserted a stick into my rectum. I wasn’t able to stand for a week after this. They beat me on my legs and feet and my arms, which became bruised and inflamed. They poured cold water on my head. I still get nightmares from the torture I endured. They beat me until some of my toenails fell off.”

On 16 March, “Ahmed” was transferred to the al-Ouina investigating brigade in Tunis where he says he was also beaten. Ten days later an investigating judge extended his detention and ordered his transfer to Mornaguia prison where he says he was beaten on arrival and placed in solitary confinement in a cell measuring approximately 1.5m by 2m. He was not allowed out of the cell and had no access to his family or a lawyer until he was brought before an investigating judge on 6 April. It was only then that he was told that he was facing accusations of “terrorism”. The investigating judge ordered that he be placed in solitary confinement again, but he was taken to hospital for medical treatment for his injuries and his family were allowed to visit him soon after. “Ahmed” told Amnesty International he was too afraid to complain about the torture and other ill-treatment to which he had been subjected and the investigating judge did not open an investigation:

“They even gave me crutches so that I could walk when my family visited me. This was all to make me look presentable in front of my family and others... Once I was brought back to prison, there was no medical treatment for my injuries there; they would only change a bandage when they wanted to take me somewhere in front of people.”

“Ahmed” was eventually released on bail on 31 May 2016. His case is still ongoing.

ILL-TREATMENT IN DETENTION

Conditions in detention facilities and prisons are generally poor in Tunisia. Thousands of people are held in pre-charge detention in facilities that are overcrowded and lacking basic amenities. Detainees and convicted prisoners held in prisons under the Ministry of Justice also report poor hygiene standards and nutrition, and a lack of separation of adults from minors as well as suspects from convicted prisoners, as prescribed under international standards. In its review of Tunisia in May 2016, the UN Committee against Torture urged the Tunisian authorities to expand efforts to improve conditions to ensure that they meet international standards.⁴⁸ Individuals arrested on terrorism-related charges reported being subjected to particularly harsh conditions and ill-treatment in prisons and detention centres as punishment for their alleged involvement in deadly attacks.

“Monther”, a 31-year-old trader, was arrested in April 2015 after two Libyan friends he did smuggling deals with were arrested in Tunis.⁴⁹ He went to the premises of the al-Gorjani brigade to visit his friends and was arrested himself. “Monther” was accused of money laundering and “supporting terrorist groups”. The investigating judge released the two Libyan men but ordered “Monther” to remain in custody, following which he was transferred to Mornaguia prison. He described the treatment of those labelled as “terrorists” in the prison:

“The situation is generally bad. There were about 100-120 people in the small room; some were suspects and others [convicted] prisoners. It was difficult to sleep because of the overcrowding and there were not enough mattresses. You’re classified from the beginning into a criminal or a terrorist and then there are levels for terrorists – the most serious are placed in solitary [confinement]. Terrorists aren’t allowed to take a spot next to the door or the TV. They have to sleep next to the toilets in the room. People with [ordinary] criminal cases weren’t allowed to eat, talk or pray with those labelled as terrorists. If they did, they’d get moved to another cell or to solitary [confinement]. When families come to visit, those with [ordinary] criminal cases can go whenever there’s a request for them, but for those charged with terrorism offences you can only make a request at 11am, and then they group everyone together and wait until the end of the day. The guards will search each one and then take us to the interview room. There are 12 booths in the room but when it’s terrorism cases they only let four people in at a time so that no one sits next to each other. You

⁴⁸ CAT, *Concluding observations on the third periodic report of Tunisia*, paras 27-28.

⁴⁹ Interview with “Monther”, 14 August 2016. Real name has been withheld for security reasons.

can't speak about your case or if you've been beaten. Those who do get called into a separate cell and are then beaten.”

“Omar” (see above) also spoke about being subjected to ill-treatment because of the accusations against him. He was transferred about five days after his arrest on 20 March 2015 to Mornaguia prison following an order issued by the investigating judge, and was released on 25 July 2015 for lack of evidence. Upon transfer, he was placed in solitary confinement, but was not able to recall for how long when Amnesty International interviewed him, as he said that he had lost track of time in detention. He was then placed in a cell with around 120 other men, who were either charged with or convicted of terrorism-related offences. He said that he, and others who were arrested in relation to the Bardo museum attack, were treated differently and were constantly beaten, harassed and insulted by the guards. He was only allowed to receive a family visit after nearly two months in detention when signs of the beatings to which he had been subjected began to fade. He told Amnesty International:

“Every time I was taken to see my family the guards would put psychological pressure on me telling me I was going to get sentenced to death. They wanted to mentally destroy me.”

Another man who was arrested shortly after the Bardo museum attack told Amnesty International that the conditions in Bouchoucha detention centre were extremely harsh, and that those held on terrorism-related charges are singled out and subjected to degrading treatment and torture.⁵⁰ He described his experience to Amnesty International:

“They made us feel like animals. There was hardly any food and when there was they would only give us one minute to eat it from a plastic bowl, and then they would start insulting us. They were always insulting us and swearing at us especially terrorism suspects or men with beards. Once they were swearing at God and a bearded man responded and told them to stop. They hung him up in his underwear in the corridor for eight hours and beat him and threw water at him.”

LACK OF ACCOUNTABILITY AND CONTINUED HARASSMENT OF TORTURE VICTIMS

International law obliges states to investigate complaints of torture and other ill-treatment. The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires that each state party institutes a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed. Article 12 makes it clear that this duty is not dependent on a formal complaint being made by a detainee. Article 13 guarantees the right of any individual to “complain to and to have his case promptly and impartially examined by, its competent authorities.” Such investigations should be capable of leading to the identification and punishment of those responsible.

The Tunisian authorities have repeatedly voiced their commitment to upholding their human rights obligations and investigating all allegations of torture and other ill-treatment.⁵¹ The Tunisian constitution prohibits torture and removes any statute of limitations in cases of torture. Tunisia’s Penal Code provides for up to five years’ imprisonment for a public official who commits an act of violence and for up to eight years in prison for a public official who commits torture.⁵² Yet the definition of torture in Tunisia’s Penal Code remains inconsistent with international standards despite amendments to the relevant provisions.⁵³

In a meeting on 4 December 2015, a Ministry of Interior spokesperson told Amnesty International delegates that an internal investigation is launched into every single allegation of torture and other ill-treatment. However, this does not necessarily translate into a judicial investigation and, in practice, the investigations into allegations of torture and other ill-treatment undertaken have fallen far short of international standards for prompt, thorough and impartial investigations and have failed to deliver justice. In a written response to Amnesty International’s concerns in December 2016, the Ministry of Interior reiterated its readiness to investigate under judicial orders all allegations of torture, claiming that in 2015 and 2016 the General

⁵⁰ Interview with Amnesty International, 10 August 2016.

⁵¹ For example, see “Opening statement of Minister Kamel Jendoubi on the occasion of discussing Tunisia’s third review by the UN Committee against Torture, 20-21 April” (title translated from Arabic), available at goo.gl/SRfuCf

⁵² Article 101bis of the Penal Code provides up to eight years of prison for a public official who commits torture as part of, or because of, his or her duty.

⁵³ The definition provided in the new Article 101bis of the Penal Code is restrictive in comparison to that found in the Convention against Torture in that it lists two prohibited purposes, namely confession and racial discrimination. It no longer lists punishment as a prohibited purpose for torture ignoring the fact that torture is committed for reasons other than to extract information. The definition also restricts discrimination to racial discrimination not allowing for the fact that torture can be committed on the basis of other forms of discrimination. Changes were made by Article 1 of Decree 106 of 2011 amending the Penal Code and Code of Criminal Procedures on 22 October 2011.

Inspectorate for National Security had acted on one allegation of torture of an activist and found that, in this case, the allegations were not true.⁵⁴ Lawyers have told Amnesty International that victims of torture or other ill-treatment have complained that investigating judges do not always record their claims of torture.⁵⁵ In cases where victims are referred to a medical examination on the basis of torture allegations, lawyers have said that doctors often examine torture victims in the presence of police officers and that access to medical reports is difficult and dependent on permission from the investigating judge. Some have also said medical reports are either missing from their clients' case files or do not accurately reflect the injuries caused by torture. These reports were reaffirmed by the findings of the UN Committee against Torture in May 2016.⁵⁶

In May 2016, the UN Committee against Torture expressed its concerns about the slow pace of investigations into allegations of torture, the lack of due diligence exercised by judges and the judicial police in these investigations, and the very small number of criminal convictions.⁵⁷ The Committee also highlighted the dire need to put in place an independent mechanism to receive complaints of torture and other ill-treatment, as well as a system for the protection of victims and witnesses from harassment and reprisals when they do complain.⁵⁸

Amnesty International's own findings are consistent with the Committee's conclusions. In some cases documented for this report, investigating judges have dismissed the torture allegations made by detainees. In other cases, detainees did not report the abuse out of fear of reprisals. In some of the cases where judges have rejected statements extracted under torture, released suspects due to a lack of evidence and opened investigations into allegations of torture and other ill-treatment, there have been concerns that the investigations were not thorough and that victims and eyewitnesses have not been provided with protection and have faced harassment and intimidation by security officers to dissuade them from filing torture complaints. There is little information on the progress of investigations launched into allegations of torture and other ill-treatment which are yet to be concluded. At the same time, judges' decisions to release individuals where there is insufficient evidence to point to their involvement in any criminal activity have been met with strong public criticism and opposition from members of trade unions for security forces officers, which have accused judges of "releasing terrorists", thus affecting released detainees' ability to lead a normal life.⁵⁹ In some cases, security officers have not respected decisions made by judges and rearrested released suspects.

In one such example, five men arrested on terrorism-related charges on 27 July 2015 alleged that interrogators from the al-Gorjani counter-terrorism brigade beat them and subjected them to waterboarding. They filed formal complaints after they were released on 4 August 2015. Counter-terrorism police rearrested them the same day from outside the building of the Court of First Instance in Tunis and returned them to their previous place of detention in the al-Gorjani brigade's premises. However, lawyers and civil society found out about their rearrest and publicly campaigned for their release. On 5 August, they were taken for forensic medical examinations and were provisionally released on 10 August 2015. A special parliamentary committee was appointed to investigate their torture allegations but no findings have been made public.⁶⁰

Many of the people interviewed by Amnesty International who said they had been tortured or otherwise ill-treated in detention complained of ongoing harassment by security officers following their release. They said that they were being repeatedly rearrested or subjected to home raids and restrictions on their freedom of movement, which impeded their and their families' ability to lead a normal life.

For example, when the allegations of torture of the group of 23 people arrested in relation to the Bardo museum case were made public by civil society actors (see above), a judicial investigation was launched into the allegations but has yet to be concluded. In October 2016 an investigating judge questioned officers from

⁵⁴ See Point 6 of the Ministry of Interior's response to Amnesty International, 16 December 2016, in Annex 1.

⁵⁵ Interviews with lawyers from the Organisation Contre la Torture en Tunisie (OCTT) and Freedoms Without Borders, 5 August 2016.

⁵⁶ CAT, *Concluding observations on the third periodic review of Tunisia*, paras 13-14.

⁵⁷ Figures provided by the Tunisian government in Tunisia's updated periodic report to the UN Committee against Torture in 2014 show the small number of cases that has resulted in prosecutions. Out of 230 cases of torture heard by courts between 1 January 2014 and 1 July 2014, six were dismissed for lack of evidence or legal grounds, three resulted in prison sentences and fines in absentia, two in suspended prison sentences and 20 cases were transferred to the Permanent Military Court in Tunis. The remaining 165 cases were still under investigation at the time the report was written. UN Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention, Third periodic reports of States parties due in 1997, Tunisia, Addendum, Additional updated report*, 13 October 2014, available at goo.gl/sNFTJg

⁵⁸ CAT, *Concluding observations on the third periodic review of Tunisia*, paras 19-22.

⁵⁹ Several trade unions for members of the security forces were formed in Tunisia following the 2010-2011 uprising. They have staged protests asking for better working conditions and have responded against criticism and the arrest of colleagues verbally and physically usually by attacking courts. Some of the unions have been particularly critical of the judiciary in its role in investigating terrorism-related cases. See, for example, *Nawaat*, "The battle between security officials and the judiciary: Overlapping powers or political conflict between the two?" (title translated from Arabic), 18 February 2016, available at goo.gl/6IEBEI

⁶⁰ For example, Judge Ahmed Rahmouni, head of the Observatoire Tunisienne de l'Indépendance de la Magistrature, publically condemned the actions of the al-Gorjani counter-terrorism brigade, see Almadina, "Judge Ahmed Rahmouni: al-Gorjani brigade falsified files and committed torture", 8 October 2015, available at www.youtube.com/watch?v=3PUnzi8jpZ4

the al-Gorjani counter-terrorism brigade as part of the ongoing investigation into the allegations of torture raised by one of the group of 23 people.⁶¹ However, members of the group have told Amnesty International that too little has been done since they first filed complaints and not all witnesses or victims have been summoned or questioned. Some of the individuals say they are being intimidated and harassed by security officers to stop them from seeking justice and accountability.

“Wassim”, a 27-year-old PhD student and his brother, aged 21, were both arrested from their home on 18 March 2015 in relation to the Bardo museum attack and taken for interrogation at the al-Gorjani counter-terrorism brigade’s premises.⁶² “Wassim” said that they were arrested because his brother, who is a mechanic, had been in touch with one of the perpetrators of the attack, who lived in their neighbourhood and asked him to fix his motorcycle. During their detention they were both beaten but “Wassim” said his brother was treated much worse; he was beaten, electrocuted and placed in the “roast chicken” position. Officers also threatened to bring in and rape their sisters in front of them. They were eventually both released for lack of evidence. “Wassim” was released a week after his arrest while his brother was freed in January 2016. Both have, however, continued to face intimidation and harassment from security forces, which has deterred “Wassim” from filing a complaint against his arrest and treatment in detention. Although his brother filed a complaint following his release, there appears to have been little progress in the investigation in his case. “Wassim” told Amnesty International that he and his brother live in constant fear of being rearrested. He said:

“We haven’t done anything but we feel like criminals, we always make sure to avoid the police to avoid having any problems.”

After his release, “Wassim” installed cameras in the family house to protect his family and to document any harassment they face from security forces, particularly house raids and arrests. He told Amnesty International that others who were part of the group of 23 people initially arrested had been picked up for questioning more than once. Amnesty International reviewed some of the recordings, which showed a large number of officers arriving at the house and taking “Wassim’s” brother away on 21 February 2016. “Wassim” described the incident to Amnesty International:

“It was the day before the state of emergency was renewed again on 22 February [2016]. They came at around 12.45am. They saw the camera and you can see them trying to avoid being on tape. They took my brother. It terrified my family. My grandfather who is an old man was visiting us at the time. He started shouting and my mother fainted. We were lucky, ‘Mohamed’ was back in an hour. But last week they took about seven or eight people from the neighbourhood saying ‘it’s orders’. We’re always afraid we’ll be next. It’s affected all of us, my father’s business, everything.”

Although most of the group of 23 people who were arrested in relation to the Bardo museum attack were later released for lack of evidence, the publishing of their names and photos at the time of their arrest, and the authorities’ reporting of the allegations as fact, have had dire consequences on their lives. In one example, “Wassim” has been unable to retrieve his computer, which was taken by security forces when he was arrested. As a result, he has lost all of his PhD research. He told Amnesty International that his professors became less understanding once they found out that he had been detained in relation to the Bardo museum attack. He has also been unable to retrieve his passport, which was confiscated at the time of his arrest.

The allegations have also affected the family’s social life. “Wassim” said his family is no longer invited to social events including weddings within their extended family. Despite the fact that he was cleared of all charges and released due to a lack of evidence, “Wassim’s” name continues to be brought up in televised discussions in relation to the Bardo museum attack.

“Oula”, likewise, says her social life has been destroyed since her arrest. She is still unsure why she was arrested other than for living in the same area as one of the believed perpetrators of the Bardo museum attack. Despite the lack of evidence linking her to the attack, the Ministry of Interior publicly denounced her and others as a “terrorist” at the time of arrest even though the investigations had not been completed yet. “Oula” told Amnesty International:

“They showed photos of us on television when we were arrested and the Minister of Interior made a statement saying we are the terrorists responsible for Bardo. It’s ruined my life and reputation. People avoid me and don’t want to have anything to do with me because of it.”

⁶¹ *Kapitalis*, “Officers from the al-Gorjani counter-terrorism brigade under investigation for allegations of torture” (title translated from Arabic), 10 October 2016, available at goo.gl/PkHxO3

⁶² Interview with “Wassim” on 30 November 2015 and 6 August 2016. Real name has been withheld for security reasons.

Even though “Omar” (see above) was released by the investigating judge on 25 July 2015 because of a lack of evidence linking him to the Bardo museum attack, he has been subjected to repeated home raids, arrests and restrictions on his movement. He told Amnesty International that the home raids began in December 2015 shortly after the November attack on the Presidential Guard in Tunis. In total, his house has been raided four times since then, each time with around 50 armed officers from his local police station and al-Gorjani counter-terrorism brigade storming his house, searching it, and taking him in for questioning.

He told Amnesty International that the first home raid in December 2015 took place at approximately 2am. He was released from the local police station in the district of Omran in Tunis at 6am. The last home raid took place in July 2016 at 4pm. He was taken to the police station for questioning and was only allowed to leave at 5am the next day. On the other two occasions, he was called and asked to report to the police station where he said he was verbally insulted and then allowed to leave without being asked any questions.

The repeated home raids have taken their toll on “Omar’s” wife as well. The fear and pressure caused by the home raids led her to miscarry in January 2016, and she was forced to have an operation to have the foetus removed.

In August 2016, “Omar” discovered that a border control order had been issued against him, restricting his movements inside Tunisia. As a result, he has been repeatedly questioned by the police following identity checks in the street. The constant delays caused by the questioning have led him to lose his job in the clothes store he worked in.

“Ahmed”, who was alleged tortured by the police in Ben Guerdane, by officers of the al-Ouina investigating brigade during interrogation and in Mornaguia prison following his arrest in March 2016 (see above), says that his movements are also still monitored in Ben Guerdane. He has also been unable to return to work. The local authorities in Ben Guerdane prohibited him from returning to work at the mosque stating it was necessary for them to do so for security reasons following his prolonged absence and detention. As a father of two and the main breadwinner in the family, “Ahmed” needs to go back to work to be able to support his family.

LEGISLATIVE CHANGES

Changes to the Code of Criminal Procedures that came into force on 1 June 2016 are an important improvement in protecting detainees but fail to provide sufficient safeguards against the torture and other ill-treatment of individuals accused of terrorism-related offences. Law 2016-5, which was adopted by parliament on 16 February 2016, amends Articles 13 and 57 of the Code of Criminal Procedures by shortening the pre-charge detention period from a maximum of six days to a maximum of four days and granting suspects access to a lawyer and their families from the beginning of their detention.⁶³ However, this still contravenes international law and standards, according to which pre-charge detention exceeding 48 hours without judicial authorization is unlawful and excessive.⁶⁴ Crucially, the amendments allow detainees access to lawyers during interrogation sessions. Other changes include the requirement for public prosecutors to authorize an arrest, whereas before they only needed to be notified. Law 2016-5 also obliges public prosecutors and judicial police to provide access to medical services and doctors for detainees should they, their lawyers or their families request it.

It is too early to tell how these amendments will be applied in practice and whether they will help reduce the number of cases of torture and other ill-treatment. Furthermore, the improved safeguards do not apply to individuals arrested on suspicion of terrorism. The law allows public prosecutors and investigating judges to delay suspects’ access to a lawyer for 48 hours in terrorism-related cases and permits suspects to be interrogated without a lawyer present. The 15 days allowed for pre-charge detention in terrorism-related cases continues to be applicable, rather than the maximum of four days allowed for other crimes.

⁶³ The amended Article 13bis allows a period of pre-charge detention of 48 hours for serious crimes, renewable once by a public prosecutor for 48 hours on the condition that a legally justified reason is provided. Previously, a period of pre-charge detention of 72 hours was allowed for serious crimes, renewable once for 72 hours.

⁶⁴ See HRC, *Concluding observations on El Salvador*, CCPR/C/SLV/CO/6, para. 14; Special Rapporteur on torture, *Report to the Commission on Human Rights*, E/CN.4/2003/68, para. 26(g); Special Rapporteur on torture, *Report to the General Assembly*, A/65/273, para. 75; CAT, *Concluding observations on Venezuela*, CAT/C/CR/29/2, para. 6(f); *Concluding observations on Mexico*, CAT/C/75, para. 220(b); European Court of Human Rights, *Kandzhov v. Bulgaria*, Application no. 68294/01 (Judgment), paras 66-67.

7. RESTRICTIONS ON MOVEMENT

“The policeman at the checkpoint told me that I had an S17 on my name.⁶⁵ This was the first time I’d heard about it. He told me that it was a border procedure. I told him that I wasn’t at the border, and that I was travelling to the beach with my family. Whenever I go from one town to another the police stop me and harass me even though I am a Tunisian citizen with my full rights... Why do they treat me like this? Just because of my beard?”

Anwar, a factory worker subjected to a S17 order, in an interview with Amnesty International, 14 August 2016

In response to the growing threat from armed groups that operate in Tunisia and in neighbouring Libya since the ousting of former president Ben Ali, the Tunisian authorities have gradually introduced tighter restrictions on freedom of movement. They have imposed bans on foreign and internal travel on thousands of individuals, and placed hundreds of people under assigned residence orders, particularly since the declaration of the state of emergency on 24 November 2015. The stated aim of these measures is to prevent thousands of Tunisians from joining armed groups operating in the Middle East and North Africa and to monitor the movements of those who had returned from conflict zones.

While Tunisia has an obligation to protect the population under its jurisdiction and the right to prevent its nationals from engaging in criminal activity abroad, research conducted by Amnesty International and other human rights organizations shows that restrictions on movement have been applied in a discriminatory and disproportionate manner. Such measures have had a significant impact on a wide range of human rights of those targeted, including the right to a family life and employment, and have had adverse consequences on their health with individuals reporting high levels of stress and anxiety.

BORDER CONTROL ORDERS

In a television interview in December 2014, then Minister of Interior Lotfi Ben Jeddo stated that the authorities had been enforcing the 1975 Law on Passports to prevent hundreds of youths from travelling to

⁶⁵ S17 refers to a border control order normally used to restrict individuals’ movement outside of Tunisia’s borders but which is currently being used internally.

conflict areas such as Syria and Iraq via Turkey and joining armed groups there.⁶⁶ In April 2015, then Minister of Interior Najem Gharsalli announced to a parliamentary session that 12,000 people had been prevented from travelling to conflict areas.⁶⁷ According to official statistics, approximately 3,000 Tunisian nationals had travelled to Syria, Iraq and Libya to join the group calling itself the Islamic State (IS), though some believe that the number may be as high as 6,000.⁶⁸

The 1975 Law on Passports allows the Ministry of Interior to prevent a person from travelling if it decides the travel could undermine public order and security.⁶⁹ To do so, a court order from the president of the Tunis Court of First Instance must be obtained specifying the length of the ban. Travel can also be banned by a public prosecutor's office for up to 15 days if someone is caught in the act of committing a crime. The authorities are also allowed to prevent people from travelling abroad or withhold their passport if they are part of an ongoing criminal case.⁷⁰ In addition, judges may impose administrative control orders as part of a sentence to allow law enforcement officials to monitor the movement of former prisoners for a set amount of time following their release.⁷¹

In a meeting with Amnesty International in December 2016, Minister of Justice Ghazi Jeribi expressed his concern about the arbitrary application of the 1975 Law on Passports and stated that his ministry had submitted amendments to the law to parliament in September 2016.⁷² If passed, the amendments could provide individuals with greater protection of their right to travel within and outside of Tunisia.⁷³ The proposed amendments include safeguards to ensure that decisions to impose travel bans or withdraw passports are fully justified and that those affected are informed of the decision in writing within three days. They also grant individuals the right to appeal courts' decisions to impose travel bans on them or to refuse to lift them and limit travel bans to a maximum of 14 months.

The proposed amendments are positive, but, to be effective, the authorities should guarantee a number of additional safeguards. All individuals affected must be promptly informed of any procedure initiated against them. They must be able to effectively access and challenge any evidence against them, which includes the possibility to be represented by a lawyer of their own choosing at all stages of the process. They must be able to challenge, with suspensive effect, measures taken against them before an independent and impartial judicial body. All individuals affected should have access to an effective remedy leading to full redress and reparation for any harm they have suffered as a consequence of unlawful measures, acts or omissions.

In its written response to Amnesty International in December 2016,⁷⁴ the Ministry of Interior stated that Decree 342 of 1975 on Defining the Prerogatives of the Ministry of Interior allows the Ministry of Interior to monitor the movement of individuals throughout the country, particularly at its land, air and sea borders, as part of its role in protecting public security.⁷⁵ The Ministry also said that, when it had subjected individuals to border control orders, it had done so based on serious information it possessed on them and in order to protect Tunisian democracy and society, and that such procedures respected the principles of proportionality and necessity.

However, by April 2015, following the attack on the Bardo museum, it appeared that bans on foreign travel were being applied in an arbitrary manner and without the necessary judicial authorization as proscribed in the 1975 Law on Passports. Tunisian authorities began to ban a growing number of Tunisian men and women aged under 35 from travelling abroad without their fathers' authorization claiming that the bans were introduced to prevent people from joining "extremist armed groups" abroad, particularly in Syria, Libya, Algeria and Iraq.⁷⁶ There is no legal basis for such bans, leaving those targeted with few options to challenge

⁶⁶ *Akhbar al-An*, interview with Minister of Interior Lotfi Ben Jeddo, 24 December 2014, available at www.akhbaralaan.net/news/arabs/2014/12/24/tunisia-interior-minister-talks-about-travel-ban-isis-members

⁶⁷ *Elkhabar*, "Prevention of 12,000 Jihadi from travelling abroad" [translated from Arabic], 17 April 2015, available at goo.gl/3iie1C

⁶⁸ See International Crisis Group, *Jihadist Violence in Tunisia: The Urgent Need for a National Strategy*, Briefing paper Nr 50, 22 June 2016, available at www.crisisgroup.org/middle-east-north-africa/north-africa/tunisia/jihadist-violence-tunisia-urgent-need-national-strategy

⁶⁹ Article 15 of Law 40 of 1975 on Passports as amended by Law 77 of 1998.

⁷⁰ Article 15 of Law 40 of 1975 on Passports as amended by Law 77 of 1998.

⁷¹ Articles 23 and 24 of the Tunisian Penal Code. Violating an administrative order can incur a one-year prison sentence under Article 150 of the Penal Code.

⁷² Amnesty International meeting with the Tunisian Ministry of Justice on 23 December 2016.

⁷³ Draft 69 of 2016 on amending the 1975 Law on Passports, 27 September 2016, available at www.arp.tn/site/servlet/Fichier?code_obj=94884&code_exp=1&langue=1

⁷⁴ See Point 4 of the Ministry of Interior's response to Amnesty International, 16 December 2016, in Annex 1.

⁷⁵ Article 5(3) of Decree 342 of 1975 on Defining the Prerogatives of the Ministry of Interior.

⁷⁶ See Human Rights Watch, "Tunisia: Arbitrary Travel Restrictions: Apparent Effort to Prevent Recruiting by Extremists", July 10 2015, available at www.hrw.org/news/2015/07/10/tunisia-arbitrary-travel-restrictions

them. National and international organizations in Tunisia criticized the arbitrary application of the bans and launched a campaign called “Leave the Green Alone”, referring to the green colour of Tunisian passports.⁷⁷

Amnesty International has found that border control orders have also been used to restrict travel within Tunisia. The organization spoke to 40 people in Tunis and Ben Guerdane – 35 men and five women – who said they were subjected to a border control order known as “S17”, which was being used to limit their travel between governorates. Lawyers interviewed by Amnesty International said there is no basis for using such border controls inside the country and it is unclear how such orders can be challenged. Some of those affected have filed complaints with the Ministry of Interior. In a handful of cases, people told Amnesty International that they were contacted about their complaint by officers who said they were from the Ministry of Interior and who asked to meet them at their local police station. There they were questioned again and told that the orders would be lifted but received no confirmation in writing and in practice continue to be stopped and questioned because of the S17 orders to which they are subjected.

In the cases documented by Amnesty International, people were not officially informed of the border control order against them, nor told the specific reasons justifying the order, nor given an opportunity to challenge it. They said that they usually found out that they were being subjected to the restrictive measure by chance, after being repeatedly stopped and questioned by security officers during identity checks, usually because of their appearance. Since the deterioration of the security situation, police or National Guard officers have intensified random identity checks in the street. Likewise, public buses and taxis are often stopped at checkpoints between cities and people are asked to give their personal documents for identity checks. In cases where officers find a border control on someone when running a check on their documents, they will remove them from public transport or transfer them to a nearby police station for questioning which can last up to several hours.

Men who have beards or wear the *kamis* and women who wear the *niqab* appear to be particularly targeted. Those interviewed by Amnesty International spoke of being stopped in the street or taken off public transport by security forces and then transferred to police stations where they were kept for several hours and questioned about their reading habits, what television shows they watched, where they had studied and how often and where they prayed. They told Amnesty International that they were usually made to sign a written statement recording their answers to questions but often were not allowed to read the contents. Once at the police station and informed of the border control order, they were not shown a written decision, but only informed that the measure was based on orders from the Ministry of Interior. Most of the people interviewed by Amnesty International said that they were never accompanied by a lawyer and were not aware that they could request one. Only one man told Amnesty International that he makes sure that he is always accompanied by a lawyer during the questioning.

The authorities have told those subjected to such measures that they are necessary for security reasons. However, those targeted believe that they have been subjected to such restrictions on their liberty in a discriminatory manner because of their perceived religious beliefs and practices based on their appearance, or for previous convictions, particularly ones under the 2003 counter-terrorism law introduced during the rule of former president Ben Ali. In some cases, border control orders have been used as a method to harass family members of people suspected of involvement in armed attacks as a way to pressure them into giving information about their relative.

For example, “Souha”, a 31-year-old shop owner who lives in the city of Ariana, near Tunis, described the restrictions she has faced since her husband travelled to Syria in October 2013.⁷⁸ She has repeatedly been stopped and questioned – she believes because her movements are monitored and she wears the *niqab* – as have her father and younger sister. She filed for divorce in September 2015 and was told by her lawyer that the process was completed in January 2016. However, a few months later in July, she found out that her lawyer had lied to her and that she was still legally married to her husband.

“Souha” has repeatedly been taken off public transport and taken to police stations in Ariana or Tunis, depending on where she is stopped, for questioning about her husband. She found out by coincidence, when she was asked to report to a police station in March 2016, that she was being stopped and questioned because there was an S17 travel border order against her. The authorities had failed to inform her about the order or the reason behind it.

⁷⁷ See for example: www.facebook.com/Sayeb-Lakdher-%D8%B3%D9%8A%D9%91%D8%A8-%D9%84%D8%AE%D8%B6%D8%B1-158157784218553/ and *Annaharnews*, “Introduction to the ‘Leave the Green’ campaign supported by many civil society organizations” (title translated from Arabic), 23 April 2015, available at goo.gl/P0rvFa

⁷⁸ Interview with “Souha” on 10 August 2016. Real name has been withheld for security reasons.

She has also been summoned by phone for questioning several times. Each time police or National Guard officers look at her Facebook page and ask her whether she is sending money to her husband and who their friends are. In one incident she was forced to remove her *niqab*.

“Souha” explained that she has had to deal with the effects of the harassment on her work and social life. Security forces have come to question her at both her house and in the shop where she works selling clothes. People now avoid interacting with her and are afraid of coming to the store which is the family’s main source of income. “Souha” says she and her father have been falsely accused of making rifles after officers found her father’s hunting rifle at home and detained him in January 2016. During her father’s four days in detention, “Souha” says their house was searched twice a day by a large number of armed officers, breaking her belongings. The security officers terrified her four-year-old daughter, who, according to “Souha”, is still suffering emotionally as a result.

“Souha” feels she is always being monitored. She explained to Amnesty International that police officers regularly visit and search her house. She said:

“I didn’t open my shop today so I could come meet you but I know that they will come to the house to ask where I was. They usually do and when they come they search the house and break things.”

Her repeated questioning at police stations has also meant that her parents are always worried about her whereabouts and wellbeing. Her sister, who is often with her, is also harassed and questioned. The police regularly call “Souha” on her mobile number. Whenever they are unable to reach her, they call her sister instead. “Souha” also told Amnesty International that both she and her sister have been sexually harassed by officers. They have asked “Souha” to reveal her face to them in private and for photos of her and her sister.

After each of the armed attacks that took place since 2015, “Souha” has been called in for questioning and has had to have a photo taken with and without the *niqab*. She is asked the same questions about her habits and hobbies and has to sign statements that she is not always allowed to read. She said:

“I’m always careful now, I always avoid any kind of security officers. My daughter is terrified of the police. I want to get on with my life. I’m going to proceed with the divorce again. I first requested it when my husband first went to France in 2013 before going to Syria. I want a new identity card that won’t say I’m his wife so I’m not always stopped and questioned. I just want to do anything to be able to live like a normal person.”

Amnesty International has also spoken to several people who have found themselves subjected to border control orders after having faced criminal accusations even when the accusations were not terrorism-related and the judge ordered their cases be closed.

A couple of months after he was released from the premises of the al-Gorjani counter-terrorism brigade and accusations against him were dropped completely, Nouredine Ayari, who had been arbitrarily arrested and accused of “belonging to a terrorist group” (see above), discovered that he was subjected to an S17 order. On 18 March 2016, Nouredine was stopped by a police officer in civilian clothes in the street in the Ben Arous neighbourhood of Tunis where he lives and asked for his identity card. He was asked to report to the police station, where he was questioned about his religious practices, which mosque he prays at, what he reads and what television station he watches. He told Amnesty International that police officers took his phone and looked through his contacts and Facebook profile. They also asked him who he had voted for in the last presidential elections, but he refused to answer saying it was confidential. Nouredine was made to sign a statement without being allowed to read it. Since then, he has been summoned for questioning at several police stations near the Ben Arous neighbourhood but says he always goes with a lawyer. He told Amnesty International that he is always asked the same questions and made to sign a commitment at each station stating that he “will not join a Salafist group”, “own a black flag” [a symbol normally associated with groups such as al-Qa’ida and IS] or read “suspicious books” and that he will not use violence. Nouredine submitted a complaint to the Ministry of Interior to lift the S17 order in April 2016, but was not provided a means to challenge the order. He explained:

“I handed my complaint to the public relations office at the Ministry of Interior and they told me there’s nothing they can do and that I just had to be careful and stay away from police officers. It’s ridiculous to go to the Ministry of Interior to complain about this. Police at the entrance of the Ministry stop people and if they have an S17 take them to a nearby police station. You have to try three or four times before you’re actually able to submit the complaint.”

“Lamia”, a 44-year-old divorced teacher with three children, and her 37-year-old brother, “Hedi”, who works as a driver, were falsely accused by their brother of having gone to Syria.⁷⁹ “Lamia” explained that the three

⁷⁹ Interviews with “Lamia”, her daughter and “Hedi” on 8 and 10 August 2016. Real names have been withheld for security reasons.

of them were having family disputes over inheritance after their father passed away. As a result, “Lamia’s” older brother went to a police station in Jendouba in December 2015 and accused her of wearing the *niqab*, which she does not do, and having travelled to Syria to join fighters there. He accused his brother “Hedi” of attempting to kill him.

“Lamia”, who normally lives in Tunis, travelled to Jendouba on 21 December 2015 for questioning at the police station. The police officers asked her whether she had travelled to Syria and where her *niqab* was. They also searched the family house in Jendouba with her consent. They then told her to report to the specialized counter-terrorism judicial unit in Tunis the following day. There, a public prosecutor asked her the same questions and did not question “Hedi” at all. He eventually closed the case against them without pursuing any charges against them.

The two found out a few months later by coincidence that they were subjected to a border control order. At the end of February 2016, “Hedi” tried to travel to Algeria by land to visit a friend. Officers at the border at Sakiet Sidi Youssef took his passport from him at 8.30am and only allowed him to leave the border police station at 11pm. During that time, “Hedi” said three officers took all his belongings, including his money, and made him take off his top and shoes despite the cold. He said that, when he told them that he had a heart condition, the officers beat him, kicking him and punching him on his chest and directed verbal insults at him. They gave him no food or water. At 11pm they told him he was denied entry into Algeria and that he was free to go, leaving him on his own in the deserted area with no money. As a result of the incident, the family found out that “Lamia”, her eldest daughter, aged 19, who is in her first year of university, and “Hedi” were subjected to the S17 border control order.

The order has had a dire impact on the family’s ability to lead a normal life. Since then, “Hedi” has been stopped repeatedly on public transport and taken to a police station where he is asked the same questions relating to his religious practice – how often he prays, what mosque he goes to, what books he reads and what television stations he watches. He has also been unable to obtain official documents on his criminal record necessary for him to be able to continue in his job. He said that, as a result of the order, he avoids certain areas of Tunis and no longer takes public transport, adding considerably to his expenses, and refuses to go out with his wife so he is not stopped and insulted in front of her.

“Lamia” said the fear of being stopped and questioned stopped her eldest daughter from visiting her sick father in Jendouba because she was afraid she would be taken off the bus at a checkpoint and questioned.

“Lamia” filed a complaint at the Ministry of Interior in April 2016 to challenge the order but received no response. Her brother “Hedi” did the same in August 2016.

Others have found themselves under such restrictions after being arbitrarily arrested. For example, Hatem, a 21-year-old student, says his problems began in June 2015 when police officers came to his neighbourhood, al-Tadamon in Tunis, and randomly took him and his younger brother from the street to the station without an arrest warrant.⁸⁰ They took their photos, names and date of birth. When the two brothers asked about the reasons, they were told it was a routine procedure. Two weeks later police officers conducted a night-time raid of their house. They searched the house without a warrant and took the two brothers to the police station, where they searched their phones. When the officers found nothing they let the two brothers go. However, both brothers are now subjected to a border control order as a result of their arrest. Hatem says he has been taken off public transport and questioned for hours so many times he has lost count. When he asked for the reason for the order, a police officer told him, “We’ve given you a number and you’ll always be identified by it. There’s no solution, we’ll stay with you all your life.” The officer also told him that it would be difficult for Hatem to find work in the public sector because the order would prevent him from obtaining the necessary documents. Hatem is very worried that the questioning will make him miss an exam. He also no longer travels to avoid being stopped.

The arbitrary restrictions on liberty and freedom of movement have had serious consequences for those subjected to border control orders and have impacted their ability to enjoy other rights such as the right to a private and family life and to employment.

“Karim” is a 32-year-old father of two currently working in a call centre in Tunis. He says that it is the latest in a series of jobs he has had to find because of constant police harassment.⁸¹ “Karim” was arrested as part of a neighbourhood sweep and charged with attacking a police station in the Douwar Hicher neighbourhood. He alleged that he was tortured and otherwise ill-treated during his detention. Following his release on bail on 16 January 2015, he has had trouble finding a job after he was fired from his first job at a call centre because of his detention. Since then, he has been stopped several times by police officers in the street and

⁸⁰ Interview with Hatem, 10 August 2016.

⁸¹ Interview with “Karim”, 8 August 2016. Real name has been withheld for security reasons.

kept for hours of questioning about his habits and hobbies, his education and religious practice. He only found out in November 2015 that he was being stopped because he was subjected to an S17 order. He told Amnesty International that the constant delays caused by the questioning made it difficult to keep a job, and eventually he borrowed money to buy a motorized tricycle to sell sandwiches from the street. He said that he tried different areas to see where he could sell more, but that he was constantly stopped by police officers, who would often take him to a police station in the middle of the day – from around 11am to 3pm – which was when he would attract more business. By the time he was released his food was often ruined. The officers would tell him not to come back to the area. He sold the tricycle two months later.

In early 2016 “Karim” was able to obtain a job in another call centre. However, he has not been able to overcome the social implications of being constantly stopped by police officers in the street. He says he is no longer able to enjoy outings with his family as he tries to avoid exposing them to constant harassment.

ASSIGNED RESIDENCE ORDERS

The 1978 decree regulating the state of emergency allows the Minister of Interior to place under assigned residence anyone who is deemed a danger to public security and public order while ensuring they are fully financially provided for during that time.⁸² Although they have not received written confirmation, those under assigned residence have been told by police officers that their assigned residence will last as long as the state of emergency is in place.

Since the armed attack on the Presidential Guard in Tunis in November 2015, the Tunisian authorities have placed at least 138 people under assigned residence orders. Such orders permit those targeted only to move within a designated area, require them to report to a police station several times a day, or prohibit them from travelling outside a specific municipality.⁸³ In some cases, assigned residence orders have been used to completely ban people from leaving their house, amounting to house arrest.

The Ministry of Interior claims that all those subjected to assigned residence orders or house arrest were either fighters who had returned from conflict areas, such as Syria or Iraq via Turkey, or belonged to the armed group Ansar al-Shari’a, which Tunisia has banned as a “terrorist group”.⁸⁴ The Ministry of Interior reiterated this reasoning in its written response to Amnesty International in December 2016, claiming that it had placed a number of individuals who had returned from conflict areas under assigned residence after investigations proved these individuals were a danger. The Ministry further claimed that those subjected to assigned residence orders were allowed to travel for study or work and did not deny them these rights.⁸⁵ However, Amnesty International has spoken to 15 men who have been placed under assigned residence since December 2015 and say they have either never travelled abroad or never travelled to a conflict zone. Those interviewed said that they believe they were being targeted for their religious beliefs or as punishment for previous convictions under Ben Ali’s rule.⁸⁶

In one such case, Abdulmajid al-Bijaoui, a 35-year-old driver who usually works in Saudi Arabia, has been placed under assigned residence since December 2015.⁸⁷ On 1 December, police officers visited his house and told him they had received orders from the Ministry of Interior that he was not to leave his house and that officers should always be able to find him there. He was not given a written copy of the orders. When the state of emergency was extended repeatedly, he was not given any further information, but police officers have continued to harass him so he has assumed that the assigned residence order is still in place.

Abdulmajid has had trouble travelling abroad since 2013 after he discovered that he was subjected to a S17 border control order, which meant that he was questioned and delayed by border control officers at the airport, missing many flights, every time he travelled abroad. After the 2010-2011 uprising, Abdulmajid travelled to Saudi Arabia repeatedly to work as a bus driver for people making the pilgrimage to Mecca. He had no problems travelling back and forth between Saudi Arabia and Tunisia until February 2013 when he was stopped by border control officers at the airport in Tunis on his return from Saudi Arabia. He was questioned about why he had returned to Tunis and held until midnight. On attempting to travel back to

⁸² Article 5 of the Law 49 of 1978 on the State of Emergency.

⁸³ On 28 November the Ministry of Interior announced that it had placed 138 people under assigned residence orders following the attack on the Presidential Guard on 24 November in central Tunis, claiming they were individuals who had returned from conflict areas or who belonged to groups such as Ansar al-Shari’a. See *Annaharnews*, “Ministry of Interior: 138 Assigned residence orders” (title translated from Arabic), 28 November 2015, available at goo.gl/g5alfL

⁸⁴ Prime Minister Ali al-Arayedh announced the classification of Ansar al-Shari’a as a “terrorist group” in a televised speech on 27 August 2013, available at goo.gl/Ps4ExE

⁸⁵ See Point 5 of the Ministry of Interior’s response to Amnesty International, 16 December 2016, in Annex 1.

⁸⁶ See Amnesty International, “Tunisia: Severe restrictions on liberty and movement latest symptoms of repressive emergency law”, 17 March 2016, available at www.amnesty.org/en/latest/news/2016/03/tunisia-severe-restrictions-on-liberty-and-movement-latest-symptoms-of-repressive-emergency-law/

⁸⁷ Interview with Abdulmajid al-Bijaoui, 8 August 2016.

Saudi Arabia a few weeks later he was told by border control officers that he had been subjected to a border control order. Although he was never told the reason, he believes that is due to a previous conviction under Ben Ali's rule. Abdulmajid said that in 2007 he was given a one-year suspended prison sentence on terrorism-related charges because police officers found his number on the mobile phone of a friend of his who they had arrested. At the time he had to report to the police station in his area every day for three years. After the uprising, he was able to renew his passport and travelled to Saudi Arabia. Tunisian law allows for individuals convicted on terrorism charges to be placed under administrative control for up to 10 years following their release from prison.⁸⁸

Abdulmajid returned to Tunisia on a visit from Saudi Arabia in September 2015. A few weeks after the armed attack in Tunis in November 2015, police officers came to his house in the Ibn Khaldoun neighbourhood and informed him that he was subjected to assigned residence. They did not give him any specific reason to justify the assigned residence order and instead made him sign a statement without allowing him to read its content. Since then, Abdulmajid has been without work as he has not been able to travel back to Saudi Arabia. In addition, he has not been able to move freely inside Tunisia, as he is allowed only to go to the mosque in front of his house. He told Amnesty International that he is forced to report to the police station on a monthly basis, and police officers have come to his house three times since December 2015 to make sure he is there and to question him. He said that his written complaint against the assigned residence with the public prosecutor in the Tunis Court of First Instance has led nowhere.

None of the men Amnesty International spoke to had received notice of their house arrest in writing, making it very difficult for them to challenge the decision.

In another case, Hedi al-Hammami, an ambulance driver and a former detainee of the US military prison in Guantánamo Bay, has had to move house several times in Tunis since he returned to Tunisia in 2012 because of constant harassment from security forces.⁸⁹ Following his release from Guantánamo in 2010 he was sent to the US state of Georgia, where he remained until he was able to return to Tunisia in 2012, after benefiting from a public amnesty issued by the Tunisian authorities in January 2011. He told Amnesty International that he had no problems in his first year back but in 2013 began to be harassed by counter-terrorism officers. For example, on 20 October 2013 counter-terrorism officers raided his house, breaking down the door. They blindfolded him, made him crawl to their car and took him to the police station in the al-Zuhour neighbourhood of Tunis. They released him 30 minutes later saying they only wanted to meet him and ask him if he was a member of the Ennahda political party. Since then, he has had repeated problems with renting a house. His landlords are either afraid after he is taken in for questioning, or are pressured directly by police officers not to rent their house to a "terrorist". He is currently looking for a new house again.

In August 2015 Hedi tried to go to Algeria with his children and wife, who is Algerian. He was returned from the Sakiet Sidi Youssef border crossing and told that he was not allowed to leave the country. Around the same time he was also stopped in the street twice in Tunis while driving with his family. He does not know why he was stopped but each time he was kept in the street with his family for two to three hours while the officers made calls. He now avoids leaving the area he lives in as he is too afraid he would be stopped again.

On 3 December 2015 he was called to the police station in the al-Zuhour neighbourhood of Tunis and asked to sign a paper which he was not allowed to read. He was told he had to stop work and report to the station twice a day. He was not given a copy of the assigned residence order. As a result, he was dismissed from his work as an ambulance driver with the Ministry of Health. A month and a half later he was told that he no longer had to report to the police station and was able to convince his former employers to accept him back in his job without waiting for a written permission to do so. Two months later, police officers told him that they knew he had returned to work and that he was only able to do so because they allowed him to continue. The assigned residence order has had a huge impact on Hedi's mental health. He described to Amnesty International his ordeal:

"I'm still in a prison and now dealing with depression, financial problems and issues in the family as a result. They want to cut you off from society... people are too afraid to contact me. I've even thought of committing suicide. The only way to escape is by sea or by committing suicide. They've left no other option. I'm not allowed to live with dignity."

The restrictions on Hedi have had implications for his wife as well. As an Algerian, she tried to renew her residency in 2015 with a view to applying for Tunisian citizenship. However, her request was refused although she had had no problems with her initial residency application in 2012. Hedi has sent letters of

⁸⁸ Articles 6 and 8 of the 2015 counter-terrorism law allows the administrative control of former prisoners for a period from three to five years and for those involved in terrorism activities who inform of and prevent a terrorist act for up to five years.

⁸⁹ Interview with Hadi al-Hammami, 8 August 2016.

complaint to the General Prosecutor and the Ministry of Interior to challenge his assigned residence order and the harassment he and his family are facing.

The arbitrary and discriminatory manner in which assigned residence orders have been used and the lack of a means to challenge them has meant the measure has been abused. The assigned residence orders have also disproportionately restricted the rights of people subjected to them to liberty, freedom of movement, private and family life and employment. Article 5 of the 1978 emergency law stipulates that those who are placed under assigned residence must be provided with financial support for them and their families. However, none of the people Amnesty International has spoken to have received any such support and have rather described their inability to provide for their families for months because of the restrictions on their movement and their ability to carry out their work.

8. CONCLUSION AND RECOMMENDATIONS

Amnesty International's research provides strong indications that, on many occasions, Tunisian security forces have abused emergency measures adopted by the authorities in their fight against terrorism leading to the violation of the human rights of those affected. By arbitrarily and discriminatorily arresting people, restricting their movement and subjecting them to repeated home raids and unwarranted searches, security forces have gone beyond the requirements of necessity and proportionality needed when derogating from key human rights at times of emergency.

The Tunisian authorities' acts under emergency laws have shown their disregard for their international obligations by violating the absolute prohibition of torture under any circumstances as a non-derogable right. The authorities' actions have violated people's rights to liberty and to a private life, hindering their ability to lead a normal life, and have targeted individuals on the basis of their perceived religious beliefs and physical appearance with no evidence linking them to specific crimes.

The treatment meted out against those arrested on terrorism-related charges, including allegations of torture and other ill-treatment, is reminiscent of the tactics used under the rule of former president Zine El Abidine Ben Ali. Investigations of torture allegations are marred by similar challenges and have very rarely resulted in any accountability.

The Tunisian authorities must act now to show their will to break with the past to end violations and practices that represent an eerie reminder of the Ben Ali period. In particular, Amnesty International makes the following recommendations to the authorities:

HOME RAIDS

- Ensure that security forces do not use excessive and unnecessary force during house searches.
- End the harassment and intimidation of family members of individuals suspected of terrorism offences and protect individuals from house searches conducted without judicial warrants.

ARBITRARY ARRESTS

- Ensure that no one is arbitrarily arrested or otherwise deprived of liberty, including by ensuring that:
 - all individuals are deprived of liberty only on the basis of clearly defined, internationally recognizable offences defined in laws, that are themselves consistent with international human rights law and standards,
 - all detainees are brought before an independent judicial authority within 48 hours of their arrest;
 - no one is arrested without a written arrest warrant, the only exceptions to this rule being in situations where a person is caught committing a crime or is arrested in "hot pursuit" while escaping from a crime scene after having committed a crime;

- anyone deprived of liberty should be immediately informed of their rights, including the right to legal counsel;
- all detainees have the right to challenge the lawfulness of their detention before a regular, independent court authorized to order their release if the detention is found to be unlawful.
- Ensure that all persons deprived of liberty, including on grounds of suspected involvement in acts of violence, promptly and in full equality receive a fair and public hearing by a regular, independent and impartial court in accordance with international human rights standards, with an effective opportunity to exercise their rights of defence and appeal.

ALLEGATIONS OF TORTURE AND OTHER ILL-TREATMENT AND ONGOING HARRASSMENT BY SPECIALIZED COUNTER-TERRORISM BRIGADES

- Thoroughly, promptly, effectively and impartially investigate all allegations of torture and other ill-treatment.
- End the impunity of officials who engage in torture and other ill-treatment of suspects and their family members by investigating and, if there is sufficient admissible evidence, prosecuting and punishing those found responsible. This should include officials in the position of command and authority as well as those who committed, ordered, solicited, commissioned, authorised, facilitated, aided and abetted torture and other ill-treatment.
- Implement the necessary institutional reforms to ensure effective enforcement of existing laws prohibiting torture; and provide full remedy and reparation, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition to victims and their families.
- Ensure that law enforcement officers suspected of torture and other ill-treatment, are suspended from active service until the investigation is complete. This measure must not prejudice their right to a fair trial.
- Ensure that all law enforcement officers against whom charges have been laid regarding torture and other ill-treatment are investigated and, if there is sufficient admissible evidence, prosecuted in independent and impartial, civil courts in accordance with international standards of fairness and without resorting to the death penalty.
- Ensure the pre-charge detention period for terrorism-related cases is in line with international standards and that it does not exceed 48 hours without judicial authorization. People suspected of any crime, including terrorism-related offences, should be promptly informed of the reason for their arrest; they should immediately have access to a lawyer and a medical professional, if they wish. Their families should be immediately informed of their detention
- Remove the ability of public prosecutors to delay immediate access to lawyers and medical professional for suspects in terrorism-related cases.
- Ensure judges open investigations on their own initiative whenever they become aware of or receive reasonable information that torture or other ill-treatment has been committed.
- Ensure the National Body to Prevent Torture is able to function fully and independently.
- Fully implement the Concluding observations of the UN Committee against Torture and report to the committee on the measures undertaken by 13 May 2017, as requested by the committee.

RESTRICTIONS UNDER EMERGENCY MEASURES

- Ensure that any limitations on the exercise of human rights imposed as part of a state of emergency are prescribed by law, are temporary and are consistent with the principles of necessity and proportionality, as required under international human rights law. Measures imposed under emergency powers must not have a disproportionate impact on the human rights of those subjected to such measures or of others affected by them.
- Clearly define in law the criteria on the basis of which an individual may be subjected to emergency measures, including house searches or assigned residence orders.
- Ensure judicial authorization is obtained prior to issuing or enforcing any decision to subject an individual to an emergency measure such as a search or assigned residence order. That should include the right to appeal any such decision before an independent and impartial judicial body.

- Clearly define the legal justification for the use of border control order S17 and the legal criteria on the basis of which individuals may be subjected to such an order.
- Amend or repeal provisions of the 1975 Law on Passports to provide effective safeguards against its arbitrary and discriminatory use.

9. ANNEX

INFORMATION CARD RESPONSE TO AMNESTY INTERNATIONAL'S MEMORANDUM ON HUMAN RIGHTS VIOLATIONS IN THE CONTEXT OF EMERGENCY SECURITY MEASURES

1. Grounds for house searches in the context of emergency measures:

House searches under the state of emergency are carried out according to the following legal provisions:

- Applicable international treaties: these include the ICCPR where article 4 provides that "States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin".
- The Constitution, particularly article 24 which provides that the state shall protect private life and the inviolability of the home, and article 49 which states that the limitations that can be imposed on the exercise of the rights and freedoms guaranteed in the Constitution will be established by law, without compromising their essence. Any such limitations can only be put in place for reasons necessary to a civil and democratic state and with the aim of protecting the rights of others, or based on the requirements of public order, national defense, public health or public morals, and provided there is proportionality between these restrictions and the objective sought.
- Applicable legislation currently regulating the state of emergency:
 - Order No. 50 of 1978 dated on 26 January 1978 on regulating the state of emergency.
 - Presidential Order No. 25 of 2015 dated on 24 November 2015.

The state of emergency was declared for one month in Tunisia on 24 November 2015 by virtue of Presidential Order No. 251 of 2015. The state of emergency has been in place since after the initial period was extended on numerous occasions, most recently for a further three months from 19 October 2016 until 16 January 2017 by virtue of Presidential Order No. 119 of 2016 on Extending the State of Emergency. Such orders have been issued pursuant to articles 77 and 80 of the Tunisian constitution on the powers of the President of the Republic. Based on Order No. 50 of 1978 on Regulating the State of Emergency, and after consultations with the Prime Minister and House Speaker, the state of emergency was declared for numerous considerations, most importantly the security threats our country faces.

It should be noted that house searches are carried out according to authorizations issued by the Public Prosecution to this effect, and they are implemented in line with the procedures provided for in the applicable laws, particularly the Code of Criminal Procedures and Law 26 of 2015 issued on 7 August 2015 on Counter-terrorism and Preventing Money Laundering. They are carried out with judicial oversight (as all outcomes of such actions including arrests and detentions are subject to the public prosecution's oversight) since it is deemed the protector of rights and freedoms pursuant to articles 49 and 102 of the constitution.

2. Measures adopted to ensure force is used only when absolutely necessary and in accordance with international standards:

Use of force by internal security officers is subject to provisions in internal regulations, circulars and directives issued to this effect and which are in accordance with international treaties, particularly the UN Code of Conduct for Law Enforcement Officials, adopted and published by virtue of the UNGA Resolution 34/169 of 17 December 1979. In particular, article 3 of the code prohibits the use of force by law enforcement official except when absolutely necessary and within the limits needed for them to perform their duties.

In this regard, the Ministry of Interior also issued a manual in 2014 on “Human Rights Standards for Internal Security Forces in Tunisia” that includes rules and regulations based on human rights standards related to law enforcement officials’ performance of their duties to protect lives and properties. These include, in particular, procedures and restrictions pertaining to the use of force and firearms, as well as the cases for its permissible use under exclusive circumstances. They also provide for the need to hold to account security forces responsible for the arbitrary use of force.

3. On arbitrary arrests and detentions:

Individuals can be arrested and detained pursuant to the following legal considerations:

- The constitution: article 29 provides that no person may be arrested or detained unless apprehended while committing a crime or on the basis of a judicial order. The detained person must be immediately informed of their rights and the charges under which they are being held. The detainee has the right to be represented by a lawyer. The periods of arrest and detention are to be defined by law.

- The Code of Criminal Procedures, as amended and completed by Law no.5 of 2016 dated 16 February 2016, particularly articles 13bis., 13 (iii), 13 (iv), 13 (v), 13 (vi) and 13 (vii) that provide for a group of key safeguards for suspects such as having to obtain a written authorization from the Public Prosecutor before taking the decision to detain a suspect, the reduction of the detention period, ensuring a lawyer is present when a suspect appears before the investigating judge, the right for a suspect to meet the lawyer in private and have access to investigation procedures during detention, and the need to refer a detainee for a medical examination immediately upon his request.

- Circular No.1, dated 30 May 2016, on requirements to enforce the new provisions of Law no. 5 of 2016 dated 16 February 2016 that amend and complete the Code of Criminal Procedures.

The Ministry of Interior also ensures that all arrests and investigations occur within the framework of the law and with judicial authorizations. In this regard, the Ministry issued a number of circulars and administrative orders to raise awareness among the judicial police about understanding the new provisions pertaining to amending and completing the Code of Criminal Procedures adopted in the above-mentioned Law no.5 of 2016. This has been done through committing to prepare minutes on observing formal and substantial procedures, and constantly coordinating with the Public Prosecution to ensure the legal safeguards of suspects particularly those related to the right to defense, fair trial, and physical and moral protection.

4. On the border control procedures undertaken by the Ministry of Interior:

The application of the Ministry of Interior of border control measures to prevent a group of Tunisian and foreign nationals from entering or leaving the country is considered a preventive and precautionary security measure inherently pertaining to the state of emergency and the war on terror. These measures necessitate a group of extraordinary procedures to address an imminent danger that threatens the nation and the security and stability of the country in a way that might render it implausible to continue doing state business as usual as provided for by the constitution.

This procedure falls under the tasks assigned to the Ministry of Interior under article 4 of Decree 342 of 1975 dated 30 May 1975 on Defining the Prerogatives of the Ministry of Interior as the entity responsible for maintaining security and public order in the country by monitoring the movement of all persons inside the country, and particularly at its land, air and marine borders.

The border control measures also fall under the provisions of the Emergency Law on preemptive and precautionary actions to prevent terrorist acts, and are also an implementation of Tunisia’s international obligations on combatting foreign fighters and preventing their travel to hotspots to protect national and international security.

In this regard, the Ministry of Interior has deemed, in light of available serious and consistent data on the status of certain individuals, that they should be subjected to this discretionary detention measure in order to maintain the entity and sustainability of the civic democratic state in Tunisia and to protect the Tunisian society against this declared and serious threat. This measure observes the safeguards related to appropriateness, proportionality and necessity needed to render it factually and legally legitimate.

5. On assigned residence orders:

Decisions on assigned residence orders are subject to the following legal considerations:

- The constitution: the provisions of article 24 enshrine the right to move inside the country and the right to leave it taking into account the legal controls necessitated by the need to maintain public order or national defense (article 49).
- International treaties: of particular reference here is the ICCPR that guarantees the freedom of movement (article 12) and allows for derogation from such freedoms in extraordinary emergencies under article 4 mentioned above.
- Applicable legislation related to the state of emergency: Article 5 of Order 50 of 1978 dated 26 January 1978 on Regulating the State of Emergency authorizes the Minister of Interior to place under assigned residence persons residing within the jurisdiction where the state of emergency is declared if they constitute a threat to public order and security. The administrative authorities are bound to take all procedures to ensure livelihood of these persons and their families.

Assigned residence decisions have included a number of individuals returning from hotspots and according to security inquiries to this effect and which have proved that these individuals are dangerous. Such measures are regarded as temporary ones that will end once the state of emergency is lifted.

It should be noted that these decisions are only a way to enable the administration to put these individuals under surveillance as they are allowed to move around for study or work; therefore, the measure does not deny from their civic rights like the right to study and work.

6. On allegations of torture and other forms of ill-treatment and on harassment:

- Units mandated with investigating terror crimes are subject to law 5 of 2016 dated 16 February 2016 on amending and completing some provisions of the Code of Criminal Procedures, on procedures during the period of detention. However, Tunisian legislators have dedicated special provisions to terror crimes (Law 26 of 2015 on Counter-Terrorism and Preventing Money Laundering). These include allowing the Public Prosecutor and investigating judge, when necessary for the investigation, to prevent a lawyer from visiting a suspect, meeting with the suspect in private or attending the hearing or defense of the suspect after referring to the case file, provided that the period of denying the lawyer access to the suspect does not exceed 48 hours from the start of detention.
- All searches in terrorism-related cases conducted by units mandated with investigating terrorism crimes are subject to direct oversight by members of the public prosecution, and investing judges at the specialized judicial unit for counter-terrorism and organized crime, and upon obtaining a written authorization from it. This in itself constitutes a safeguard as it prevents the committing of the alleged human rights violations, particularly those pertaining to torture.
- The public prosecution is in charge of looking into torture allegations; it is also the entity mandated with receiving complaints and witness testimonies. The public prosecution can contact the inspection units of the security agencies who would then carry out the needed administrative inquiries.
- In the context of enhancing the monitoring of detention facilities and activating the external monitoring mechanism to monitor treatment and conditions of persons deprived of their liberty, the Ministry of Interior through its human rights unit, continues to respond to societal monitoring mechanisms and to coordinate with the competent national and international bodies and organizations to strengthen procedural safeguards, and limit the risk of torture and other forms of ill-treatment. It achieves this by allowing "visits to detention facilities", where the regional mission of the International Committee of the Red Cross (ICRC) in Tunisia, the Office of the High Commissioner for Human Rights, and Higher Commission on fundamental human rights and freedoms can, by simply informing and without applying for permission, visit detention facilities and meet and talk to the detainees in private, taking advantage of the official records kept at all detention centers that fall under the Ministry of Interior.

- Specialized security structures continue to carry out announced and surprise inspection visits to judicial units in order to identify professional errors, conduct administrative inquiries, and impose disciplinary penalties on violators or referring them to court when necessary. The Ministry of Interior expresses its constant readiness to investigate, under judicial orders, all torture allegations, and is prepared to receive administrative complaints in this respect. The Inspectorate General for National Security in 2015 and 2016 acted on one torture complaint of torture filed by a female activist in El Kef province. Upon due inquiry and field investigation, the complaint was closed on grounds that the allegations were incorrect.

- To further enshrine the rule of law and incorporate human rights values and thought within its security policies, the Ministry of Interior continues to work on building the capacity of security officers through teaching and embedding human rights material within the training curricula of security personnel and doubling training hours dedicated for dealing with torture as a crime, abuse of power, community police, and civilized behaviour. In addition, training and rehabilitation training programs will be adapted to improve the professionalism of judicial investigation officers with regards to discovering criminals and referring them to courts based on sound and convincing evidence that benefit from the technical and scientific capacity available within the police force.

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'WE WANT AN END TO THE FEAR'

ABUSES UNDER TUNISIA'S STATE OF EMERGENCY

In response to a series of armed attacks in 2015 and 2016 that shook the country, the Tunisian authorities have stepped up security measures and relied on emergency laws. Tunisia has been in a state of emergency for much of the six years since the 2010-2011 uprising that ousted former president Zine el-Abidine Ben Ali.

The authorities have the right and a duty to protect the population from violence, but should respect human rights enshrined in the Tunisian constitution and international law while doing so. Cases documented by Amnesty International show that individuals have been arbitrarily arrested, without judicial warrants. Some have been subjected to torture and other ill-treatment in custody. The authorities have applied arbitrary restrictions on individuals' movement inside the country. Security forces have often used excessive force when searching homes. They have also harassed the families of suspects to try to coerce them into giving information about their wanted relative.

The Tunisian government must ensure that the methods used to combat security threats do not lead to backsliding on commitments to uphold human rights or a return to practices of the past, such as torture and arbitrary and discriminatory restrictions on people's rights to liberty and movement.