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SUBMISSION TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE

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INTRODUCTION

Amnesty International is submitting this briefing in advance of the United Nations (UN) Committee against Torture's (the Committee) review of Tunisia's third period report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention). The following submission outlines a number of key issues of concern to Amnesty International about Tunisia's implementation of the Convention, in particular under Articles 1-4 and 11-16.

The submission is not an exhaustive account of Tunisia's violations under the Convention but highlights concerns Amnesty International has based on the organization's research. In particular, the submission highlights concerns with respect to the definition of torture under Tunisian law and its continuing inconsistency with the definition found in the Convention. The document also highlights the continued use of torture and other ill-treatment in detention; sexual and gender-based violence by state and non-state agents and the state's failure to duly investigate such violence; the harassment and intimidation of family members of individuals suspected of terrorism offences and concerns relating to extradition and possible refoulement. In addition, the submission addresses concerns in relation to investigations into torture complaints and the lack of accountability.

Since 2011, the Tunisian authorities have taken a number of positive steps aimed at breaking with abuses under President Zine El Abdine Ben when the use of torture was both widespread and systematic. However, their implementation has been slow and inadequate, and more reforms are urgently needed. Tunisia's ratification of the Optional Protocol to the Convention (OPCAT) in June 2011 provided a real opportunity for change. Yet, the formation of the National Body for the Prevention of Torture has been continuously delayed, and new cases of torture and other ill-treatment in detention, particularly in the first few days following arrest, continue to be reported. In a welcome move, the Tunisian authorities have recently amended the Code of Criminal Procedure to address some of these concerns. Changes to Tunisian legislation, which will come into force in June, provide for access to a lawyer in pre-charge detention, amongst other improved fair trial guarantees and safeguards against torture and ill-treatment. Yet this landmark achievement is weakened by provisions which still allow the incommunicado detention of terrorism suspects. More changes are needed to ensure Tunisian legislation is in line with international standards and that there are no gaps that will allow security officers to get away with acts of torture and other ill-treatment, and to protect all detainees regardless of the nature of the accusations made against them. Families of suspects and former prisoners and detainees as well as victims reporting torture must also be protected from harassment and intimidation.

Amnesty International is also concerned at renewed allegations of sexual harassment and cases of sexual violence by state agents since the 2011 uprising. The organization's research has found that the criminalization of same-sex relations, sex work and adultery continues to put LGBTI individuals and sex workers at high risk of abuse and violence at the hands of the police.

This submission also outlines Amnesty International's concern in relation to the lack of formal legal framework for recognizing or determining the status of refugees and asylum seekers and assessment of the risks they may face leaving individuals at risk of being expelled, returned or extradited to states where they may be at risk of torture.

Despite the continuing allegations of torture and other ill-treatment, investigations and accountability for such crimes lag behind.

The review of Tunisia's periodic report by the Committee provides an opportunity for the authorities to demonstrate their determination to implement, without delay, the obligations under the Convention.

DEFINITION OF TORTURE (ARTICLE 1, QUESTIONS 1 & 2 OF THE LIST OF ISSUES)

Despite amendments made to Tunisia's Penal Code in 2011 and recommendations by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in 2012, 2014 and 2015, the definition of torture continues to be inconsistent with the definition found in Article 1 of the Convention.¹ The definition provided in the new Article 101*bis* is restrictive in comparison to that found in the Convention in that it lists two prohibited purposes, namely confession and racial discrimination.² 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.

Article 5(4) of Decree 106 adopted in 2011 which introduced changes to the Code of

¹ Decree 106 of 2011 amending the Penal Code and Code of Criminal Procedure, 22 October 2011 available at: <http://www.legislation-securite.tn/ar/node/30460>

Special Rapporteur's recommendations: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez Addendum Mission to Tunisia, A/HRC/19/61/Add.1, 2 February 2012, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/103/22/PDF/G1210322.pdf?OpenElement>

Tunisia: More than political will is needed to eradicate torture – UN rights expert, 6 June 2014, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14671&LangID=E#sthash.mEmntpYL.dpuf>

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Addendum, Follow up report: Missions to the Republic of Tajikistan and Tunisia, A/HRC/28/68/Add.2, 27 February 2015, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/038/66/PDF/G1503866.pdf?OpenElement>

² Article 1, Decree 106 of 2011 amending the Penal Code and Code of Criminal Procedure, 22 October 2011, available at: <http://www.legislation-securite.tn/ar/node/30460>

Criminal Procedure contains a 15 year statute of limitation on torture.³ This is incompatible with other Tunisian legislation which clearly states that crimes of torture are not bound by a statute of limitation. Article 23 of Tunisia's 2014 Constitution explicitly bans torture and stipulates that crimes of torture are not bound by a statute of limitation.⁴ Likewise, Article 8 of Law 53 of 2013 on Transitional Justice eliminates the statute of limitation for serious human rights violations amongst them torture, as does Law 43 of 2013 on the Creation of a National Body for the Prevention of Torture under OPCAT which stipulates the removal of Article 5(4) of the Code of Criminal Procedure.⁵ However, recent amendments to the Code of Criminal Procedure did not include the removal of the Article and the Tunisian authorities must ensure that their national legislation is in line with the Constitution and international law.

USE OF TORTURE AND OTHER ILL-TREATMENT DURING DETENTION (ARTICLES 1, 2, 11, 12, 15, 16)

Although not as systematic as it had been under the rule of former President Zine El Abidine Ben Ali, the use of torture and other ill-treatment is still prevalent in Tunisia, especially in pre-charge detention. Amnesty International has continued to receive reports of torture and other ill-treatment, including at least six suspicious deaths in custody. Tunisian human rights organizations claim there have been hundreds of cases of torture and other ill-treatment since the 2010-2011 uprising.⁶ The most commonly reported forms of torture and other ill-treatment include beating, insults, threats of sexual assault of detainees or their family members, the use of stress positions and sleep deprivation, most often to extract "confessions" or as punishment in police stations and detention centres.

According to testimonies collected by Amnesty International between 2011 and 2016, torture usually occurs during the first few days of pre-charge detention, before a detainee is brought before an investigating judge. Until recently, arresting officers were allowed to keep detainees incommunicado for up to six days. However, Law 2013-13 which was adopted on 2 February 2016 by Parliament and will come into force in June, includes positive changes to the Code of Criminal Procedure, including shortening the pre-charge period to a maximum of four days and granting suspects access to a lawyer and their families from the

³ Ibid, Article 3.

⁴ Tunisian Constitution, a copy is available at:
http://majles.marsad.tn/uploads/documents/TnConstit_final_1.pdf

⁵ Law 43 of 2013 on the Creation of a National Body for the Prevention of Torture and Law 53 of 2013 on Transitional Justice, copies available at: <http://www.legislation-securite.tn/ar/node/32693> and <http://www.legislation-securite.tn/ar/node/32960>

⁶ Interview with human rights defender Radhia Nasraoui, *Torture continues in Tunisia*, Al-Araby, 28 January 2015 <http://www.alaraby.co.uk/society/2015/1/27/> - راضية-النصر اوي-التعذيب-مستمر-في-تونس

beginning of their detention.⁷ Crucially, the amendments will allow detainees access to lawyers during interrogation sessions. Other changes include the requirement for prosecutors to authorise an arrest, whereas currently they need only be notified. Law 2013-13 also obliges prosecutors and judicial police to provide access to medical services and doctors for detainees should they, their lawyers or their families request it.

While these amendments are a significant improvement, more safeguards need to be put in place to ensure police custody conditions that would reduce the risk of torture and other ill-treatment. While detainees will gain access to their lawyers from the moment of their detention, as soon as Law 2013-13 enters into force, such access will be limited to a single 30-minute meeting for every 24 or 48-hour detention period (depending on whether the suspect is accused of a misdemeanour or a felony.) The Tunisian authorities must also ensure detainees must have prompt access to independent forensic doctors who can record any signs of torture or other ill-treatment and the outcomes of such visits must be shared with investigating judges, lawyers and family members. The Decree also allows prosecutors and investigating judges to delay suspects' access to a lawyer for 48 hours in terrorism-related cases and for suspects to be interrogated without a lawyer present. The Decree does not specifically limit the fifteen days allowed for pre-charge detention in terrorism cases to the four days allowed for other crimes.

Thousands of people are held in pre-charge detention in detention facilities that are overcrowded and lacking basic amenities. Prisoners also complain of overcrowding and poor conditions with little effort taken to separate different categories of detainees and prisoners, as prescribed under international standards.

In 2013, the National Constituent Assembly (NCA) adopted legislation to create a 16-member National Body for the Prevention of Torture, under the Optional Protocol to the Convention, empowered to inspect detention facilities without first obtaining consent, except when urgent or compelling reasons prohibit it. However, it remains inoperative as its members have yet to be appointed.

TERRORISM CASES

Over the course of 2015, Amnesty International has documented several cases of torture and other ill-treatment of individuals detained on terrorism-related cases, in the context of an escalation in armed attacks that have killed at least 68 civilians and numerous members of the security forces.⁸

In July 2015, the Tunisian parliament adopted a new counter-terrorism law following an 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 used under former President Zine El Abidine Ben Ali to repress opposition, is problematic, amongst other things, in its vague and overly broad definition of terrorism.⁹ It also gives security officers

⁷ A copy of the law is available here:

<http://majles.marsad.tn/2014/lois/5508a52812bdaa0d1d9d43fe/texte>

⁸ See Amnesty International, *Tunisia Evidence of torture and deaths in custody suggest gains of the uprising sliding into reverse gear*, 14 January 2015, available at:

<https://www.amnesty.org/en/latest/news/2016/01/tunisia-evidence-of-torture-and-deaths-in-custody/>

⁹ Amnesty International, *Tunisia: Counterterrorism law endangers rights, legislate safeguards against abuse*, 31 July 2015, <https://www.amnesty.org/en/documents/mde30/2195/2015/en/>

wide monitoring and surveillance powers and extends the period a terrorism suspect can be held incommunicado for interrogation to up to 15 days, 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. By December 2015, the government said it had handed down 28 sentences in terrorism-related trials, including three death sentence and that over 1000 detainees were being held on terrorism-related charges¹⁰.

Amnesty International has spoken to several people, including women, who were arrested on terrorism-related accusations in 2015 and who claimed they were tortured and otherwise ill-treated by the al-Gorjani counter-terrorism brigade in Tunis during interrogation sessions aimed at coercing them into giving a false confession. The detainees were subjected to electric shocks, including on the genitals, and a stress position known as the "roasted chicken" whereby their hands and feet were cuffed to a stick. Some were also slapped, deprived of sleep, forced to undress and threatened with harm and rape of a female family member in an effort to force them to sign a false confession. The individuals who Amnesty International spoke to were later released by an investigating judge for lack of evidence and after informing the judge that they had been coerced to sign the "confession." A judicial investigation was launched into the torture allegations but nothing has come out of the investigation and some of the individuals say they are being intimidated and harassed by security officers to stop them from seeking justice and accountability.

Five men arrested as terrorist suspects on 27 July 2015 alleged that interrogators from the al-Gorjani counter-terrorism Brigade based in Tunis beat and tortured them by waterboarding. They filed formal complaints after they were released on 4 August 2015. Counter-terrorism police rearrested them the same day from in front of the Court of First Instance in Tunis and returned them to their previous place of detention in al-Gorjani. On 5 August, they were taken for forensic medical examinations. They were provisionally released on 10 August. A special parliamentary committee was appointed to investigate their torture allegations but no findings have been made public.

NON-TERRORISM RELATED CASES

Amnesty International has also received reports of torture and other ill-treatment perpetrated during arrest operations and to extract confessions during interrogation in pre-charge detention in the context of other alleged offences or as punishment against individuals who question the authority of security officers. Torture allegations collected by Amnesty International included being slapped, being beaten with an object, punched, kicked, dragged on the floor or having the head banged against the wall and the use of stress positions.

In one such example, at about 5am on 11 November 2015, Mohamed Gharsallah, a 65-year old taxi driver, was assaulted by two passengers in Tunis as he was leaving the Bab Saadoun bus station towards El Kef. He reported to Amnesty International that the passengers were off-duty National Guard officers. After police intervened to stop the beating, Mohamed Gharsallah was taken together with his two assailants to the Bab Saadoun police station. Once they arrived at the police station, police officers accused him of physically assaulting the two passengers and then started beating him. At one point they pushed him against the wall, stepped on his wrist while lying on the floor with their boots, and repeatedly kicked him in his left thigh. At about 9am on 11 November 2015, he was eventually taken to Charles Nicolle hospital

¹⁰ *Revealing the number of prisoners on terrorism charges*, al-Chorouk, 23 December 2015, Available at: <http://goo.gl/47vJhi>

after his colleagues, who had followed him to the station, were allowed to call an ambulance. Mohamed Gharsallah suffered two fractures in his left leg, and had to undergo two operations, including a hip replacement operation. He was hospitalized for 17 days and, at the time of Amnesty International's interview on 28 November 2015, was still unable to walk. According to an initial medical report (CMI) issued by Charles Nicolle hospital, he was given 90 days of rest. He was forced to cover the costs of the prosthesis amounting to 1,850 Tunisian dinar (about \$917), as well as to cover the costs associated with the nurse. It is as yet unclear what steps the authorities have taken to investigate these allegations and to hold those responsible to account.

DEATHS IN CUSTODY

The Tunisian authorities have failed to conduct prompt, impartial, independent and effective investigations into at least six suspicious deaths in custody which took place since 2011. Where investigations have occurred, they have been grossly inadequate, and the authorities have failed to inform the families of the victims of the proceedings or outcomes.

To date, the family of Sofiene Dridi are awaiting full details about the cause of his death in custody. Sofiene Dridi was arrested on arrival in Tunis airport on 11 September 2015 after being deported from Switzerland. The Tunisian authorities had an outstanding arrest warrant for him on charges of violent assault dating from 2011. He appeared in court on 15 September in good health and was transferred to Mornaguia prison after the hearing. On 18 September his family were informed that he had been taken to hospital but when they attempted to visit him medical staff denied knowing anything about him. When the family went back to the court to try to obtain more information, they were told that he had died of a cardiac arrest. When they saw his body in the morgue, the family reported that there were bruises on his face and body. Sofiene Dridi's death certificate was dated 17 September 2015. According to a forensics report reviewed by Amnesty International, Sofiene Dridi was transferred on 16 September 2015, to the emergencies department of Charles Nicolle Hospital in a state of "altered consciousness". He was diagnosed with ketoacidosis and renal failure. The report notes the presence of a bruise on the left side of the face caused by a blunt object, and determines that bruising precedes the moment of death by two to five days. The report failed to establish the cause of death but instead concluded that the bruising itself was not the sole cause of death, that death was not related to trauma and that further tests would need to be carried out to determine the cause of death.

There has been no information made available about investigations into at least five other suspicious deaths in custody that Amnesty International is aware of.¹¹

Mohamed Ali Snoussi was arrested from his home in Melassine area of Tunis on 24 September 2014. According to eyewitnesses, he was beaten and dragged naked into the street by police officers, and then taken to Sijoumi police station where he was held without access to a lawyer or his family. He was transferred to Charles Nicolle hospital on 1 October 2014 after Mornaguia prison authorities refused to accept him due to his poor medical condition. A medical report indicated that he died at 5:45am on 3 October 2014. Mohamed Ali Snoussi's relatives and lawyers told Amnesty International that they saw large bruises on his body, including on the back of his head, his back and on his legs. Ali Khemais Louati was a prisoner serving a three-year sentence in the Borj El Amri prison, West of Tunis. His lawyers said they wrote to the authorities in July 2014 to alert them to his complaints that he was in physical pain and was not being treated well in the prison. Their complaints were unanswered and Ali Khemais Louati died in

¹¹ See Amnesty International, *Tunisia: Torture and death in custody*, 17 October 2014, available at: <https://www.amnesty.org/en/latest/research/2014/10/torture-and-death-in-custody-in-tunisia/>

custody on 23 September 2014.¹² Walid Denguir, aged 34, died in police custody in Tunis an hour after he was arrested on 1 November 2013. According to eyewitnesses, he was arrested on Ali Trad Avenue in the area of Montfleury in Tunis by four police officers from the El Ouardia judicial police, and taken to the Sidi Bechir police station. His mother was told that her son had died of heart attack, but when she saw his body a few hours later at the Charles Nicolle hospital she said he appeared to have had injuries and extensive bruising on different parts of his body. She noticed an injury behind his ear, blood from his mouth and nose and broken teeth. Photos of the body post-autopsy seen by Amnesty International show injuries to an ankle, indicative of binding, and marks on a wrist showing evidence of restraint, possibly with handcuffs or other form of binding. These injuries raise questions as to the manner in which Walid Denguir may have been restrained and to what purpose this was done. The autopsy obtained by the family only mentioned that Walid Denguir had old scratches and made no mention of the injuries his family had seen or those visible on the photographs.¹³

SEXUAL AND GENDER-BASED VIOLENCE (ARTICLES 1, 2, 16, QUESTION 10 OF THE LIST OF ISSUES)

SEXUAL VIOLENCE BY STATE AGENTS

There is no information on the scale of sexual and gender-based violence perpetrated by state agents. However, from the time of the Ben Ali government, Amnesty International reported the torture and sexual assault of women by security forces (1987-2011). In 1993, Amnesty International published a report documenting a wave of arbitrary arrests of women relatives of political opponents of President Ben Ali, when scores of women, including some who were pregnant, were beaten, undressed, sexually abused, placed in contorted positions, or threatened with rape or prosecution for adultery.¹⁴

By July 2015, the Truth and Dignity Commission – established in 2014 to address political, social and economic crimes and investigate human rights violations since 1 July 1955 – had received some 13,278 complaints, including from 1,626 women. Of these women, 400 were former prisoners. According to the head of the Women's Commission within the Truth and Dignity Commission, many of the complaints related to sexual harassment, but only a few mentioned rape explicitly. However, she stated that the numbers did not represent the extent of past violations, and that more efforts were needed to encourage women to report

¹² Ibid.

¹³ See Amnesty International, *Tunisia: Investigation into death in custody must be independent and impartial and its findings made public*, (MDE 30/018/2013), 7 November 2013

¹⁴ See Amnesty International, *Women victims of harassment, torture and imprisonment*, June 1993, (Index: MDE 30/02/93), available at: <https://www.amnesty.org/en/documents/mde30/002/1993/en/>

them.¹⁵

Since the 2011 uprising, there have been renewed allegations of sexual harassment by police and some cases of sexual violence by state agents. Meriem Ben Mohamed accused two police officers of raping her in September 2012. In return, she was herself accused of “indecent” because the police officers had found her in a car with her fiancé in the middle of the night.¹⁶ After a drawn out trial, the two police officers were convicted of rape and received 15 year prison sentences which they are now serving. The case is now pending before the Cassation Court. Effective investigation and prosecution of gender-based violence, is an exception, and sexual violence, particularly by state agents, remains underreported for fear of repercussions and stigmatization.

LGBTI PEOPLE AND SEX WORKERS

The criminalization of consensual same-sex relations under Article 230 of the Penal Code, which imposes a maximum three year prison sentences and in itself violates human rights, makes LGBTI people vulnerable to violence and abuse by the police, who often exploit their fear of arrest and prosecution, and subject them to blackmail, extortion and, at times, sexual abuse. Gay men are forced to pay bribes to escape arrest, even though the police have no “proof” of same-sex relations. Transgender people face the additional risk of arrest and prosecution under laws that criminalize indecency and acts deemed to be offensive to public morals.¹⁷

Several gay men and transgender women told Amnesty International that police officers exploit their vulnerability to arrest and prosecution in order to harass and sexually abuse them.¹⁸ A 20-year-old student from Sfax was stopped in the street and asked for his ID by police officers. He said that because he was wearing makeup the police officers called him a “faggot”. One of the police officers took him to his car, asked him questions and then started searching him. The man said the police officer started to grope him and then asked him for his mobile number.

Fearing stigmatisation and violence, many LGBTI people choose to hide their sexual orientation from their families and communities. Another gay man described to Amnesty International how a police officer used his fear of exposure to blackmail him. The man said the police officer would call him regularly to harass and threaten him with exposure and would demand the man to perform “sexual favours.”

¹⁵ ¹⁵ See Ibtihel Abdelatif, *Présidente de la commission femmes à l’IVD*, July 2015, available at: <https://inkyfada.com/2015/07/ibtihel-abdelatif-commission-femme-ivd-tunisie/>. Amnesty International spoke to Ibtihel Abdelatif over the phone on 12 August 2015.

¹⁶ See Amnesty International, *Tunisia: Woman allegedly raped by police faces prosecution*, 27 September 2012, available at: <https://www.amnesty.org/en/latest/news/2012/09/tunisia-woman-allegedly-raped-police-may-face-jail-time/>

¹⁷ Article 226 of the Penal Code imposes a six-month prison sentence on anyone found guilty of intentionally undermining public morals, while Article 226bis imposes the same punishment for intentionally disturbing others in a way that offends the sense of public decency and attracting public attention on an opportunity to commit debauchery.

¹⁸ See Amnesty International, *Assaulted and Accused: sexual and gender-based violence in Tunisia*, November 2015, (Index: MDE 30/2814/2015), available at: <https://www.amnesty.org/en/documents/mde30/2814/2015/en/>

Similarly, the criminalization of sex work and adultery under Article 231 and 236 of the Penal Code, which prescribe a maximum of two and five year prison terms respectively, renders sex workers at high risk of abuse by police and prevents them from denouncing violations and seeking judicial remedies.¹⁹ Sex workers working illegally are often raped or extorted by the police.²⁰ Amnesty International research has shown that some sex workers are afraid to report this abuse for fear that they might be prosecuted or that family members will find out about their sex work. Little protection is available to them if they work outside the regulations of the Ministry of Interior. Following the uprising, several official brothels were attacked by perceived Salafists reducing their number from 11 to 2 brothers in Tunis and Sfax. Since then, many sex workers have turned to illegal work.²¹

In one case, a 25-year-old married woman from Sfax told Amnesty International in March 2015 that she has been subjected to sexual abuse, blackmail and exploitation by the same police officer since 2012 when he found out that she worked as a sex worker. The police officer threatened to report her activities to her family, accuse her of prostitution and tell her husband that she had committed adultery (punishable by five years in prison and a fine). She explained to Amnesty International that she started working as a sex worker to support her family when her husband was imprisoned but that she kept her activities secret. The police officer initially stopped her while she was in a taxi and searched her bag. After he found condoms and a large sum of money, he concluded that she was a sex worker. He threatened her with prison if she did not go to his house with him and once there, he raped her. He has continued to sexually abuse her, threatening to expose her to her husband and family if she refuses to have sex with him and his friends.

Another woman working in sex work described to Amnesty International how she was raped police officers in the Bardo police station in Tunis in 2003. She was with her seven-year-old son in a café frequented by sex workers when she was told by police officers to go with them to the police station. Once there, police officers locked her son in a separate room and made her watch a video of a woman having sex with several men. The head of the police station then asked her to do the same, kicked her on the mouth and raped her. Two other officers then raped her while a fourth filmed her being raped. She was screaming the whole time and could hear her son screaming from the other room.

In addition to amounting to torture, acts of gender-based violence perpetrated by state

¹⁹ Under Article 236 of the Penal Code, adultery committed by either spouse is punishable by a five-year prison term and a 500 Tunisian dinar (approximately US\$255) fine. While the Penal Code does not discriminate against women with regards to the punishment, Amnesty International believes that adultery laws disproportionately impact women in practice, reinforce harmful gender stereotypes, and, in some cases, deter rape victims from reporting the crime due to fear of being prosecuted if they fail to prove rape.

²⁰ Women who want to work as sex workers must register with the Ministry of Interior. They must work in licensed brothels in specific areas which they cannot leave without police authorization. They are given six to 10 days of leave a month corresponding to their menstruation cycles. They have mandatory, bi-weekly medical checks for sexually transmitted infections. They pay taxes and are considered to be employees of the Ministry of Interior. Under the same regulations, those who wish to leave their jobs must demonstrate their ability to earn a living through “honest” means, and obtain authorization from the police, creating barriers to those who want to leave sex work. Sex work outside these regulations is criminalized under Article 231 of the Penal Code.

²¹ See Amnesty International, “5. Plight of sex workers”, *Assaulted and Accused: sexual and gender-based violence in Tunisia*. November 2015, (Index: MDE 30/2814/2015), available at: <https://www.amnesty.org/en/documents/mde30/2814/2015/en/>

agents, such as sexual assaults by police directed at women suspected of engaging in sex work, violate Tunisia's obligations under CEDAW, the ICCPR and other international human rights treaties.

COLLECTING EVIDENCE: VIRGINITY TESTS AND ANAL EXAMS

In order to establish proof of sexual or gender-based violence, survivors are required to obtain a medical certificate known as the CMI (certificat médical initial). The CMI, which is a forensic medical report, can only be obtained from a public institution, and must be requested by a police officer, judge or local authority representative such as a mayor or governor.

When examining women, forensic doctors are often required to assess whether the survivor is a virgin, if she is accustomed to sexual intercourse, and the types of physical wounds suffered. The World Health Organization (WHO) has clearly stated that virginity testing has no scientific validity and should not be used under any circumstance during the medical examination of victims of sexual assault. Amnesty International believes that such tests can lead to further stigmatization of survivors.

Meanwhile, men accused of engaging in consensual same-sex activity are routinely subjected to an anal examination by medical doctors. The test, which is usually ordered by a judge in an attempt to find "proof" of anal sex, involves penetration. Although detainees have a right to refuse the examination, activists say that most men are unaware of their rights and feel pressured to agree to the test or are threatened to do so. There is no scientific basis for such examinations and they violate the prohibition of torture and other ill-treatment when carried out involuntarily and involve penetration and forced anal exams as is the case in Tunisia. Amnesty International believes that forced anal examinations contravene medical ethics enshrined in the Geneva Declaration of the World Medical Association and the UN Principles of Medical Ethics Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

On 6 September 2016, a 22-year-old student known under the pseudonym "Marwan", was summoned by police in relation to the murder of a man in Sousse. When he denied any involvement in the crime, but admitted to having sex with the victim reportedly after the police threatened to bring a murder charge against him, he was charged with "sodomy" under Article 230 of the Penal Code. He was convicted and sentenced to one year in prison on 22 September 2015 after being forced to undergo an anal examination. He was later released on bail in December and in January 2016 his sentence was reduced on appeal to time already served and a fine.²²

In another case, six young men were arrested on 2 December 2015 at a gathering in the city of Kairouan. They were convicted on 10 December 2015 and given the maximum sentence of three years in prison. The court also banned them from residing in the city of Kairouan for five years after release.²³ The men were

²² See Amnesty International, *Challenging Tunisia's homophobic taboos*, 30 September 2015. Available at: <https://www.amnesty.org/en/latest/news/2015/09/challenging-tunisia-homophobic-taboos/>

²³ See Amnesty International, *Tunisia: sentencing of six men for same sex relations highlights state-entrenched homophobia*, 14 December 2015. Available at: <https://www.amnesty.org/en/latest/news/2015/12/tunisia-sentencing-of-six-men-for-same-sex-relations-highlights-states-entrenched-homophobia/>

released on 7 January 2016 pending the outcome of their appeal. During an appeal hearing on 3 March 2016, the men's sentence was reduced to one month in prison, which they had already served, and a fine. Their ban from Kairouan was overturned. Following their release on bail, the men described how they were made to undergo anal examinations against their will. According to their accounts, police took them to the hospital, and went with them into the examination room. The men were seen individually by the forensic doctor and, when each of them refused to be examined, were asked to sign a statement of their refusal. After they left the room, police beat the men, and forced to go back and undergo the test. Their refusals were torn up, and they were forced to sign an agreement to the test.²⁴

DUTY TO PROTECT

Tunisia is also responsible for violence perpetrated by non-state actors, if it fails to "act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation".²⁵ This includes lack of due diligence in addressing violence in the family and home, other gender-based violence and homophobic and transphobic attacks carried out by non-state actors.²⁶

Tunisian legislation continues to fail to provide adequate protection to victims of sexual and gender-based violence. The definition of rape is inconsistent with international standards and does not include marital rape which means that acknowledging the crime in court is up to the judge's discretion. Article 227**bis** of the Penal Code allows rapists of girls and women aged under 20 to escape punishment if they marry their victim. Article 230 criminalizes consensual same-sex relations, which means that LGBTI survivors of sexual violence are less likely to report crimes or to seek justice. The CEDAW Committee has recommended that the Tunisian authorities adopt a comprehensive law on violence against women and girls.²⁷ An initial draft of such a law was leaked in December 2014 and appeared to reflect positive progress. However, the draft law was later stalled by the Council of Ministers and then sent back to be redrafted by the Ministry of Women's Affairs, Family and Childhood. A new draft, which provides for prevention and protection mechanisms for victims of violence, and aims to repeal Articles 227**bis** and 239, is currently being finalized.

Despite high levels of gender-based violence, police officers normally lack the training to deal with family violence and see it as a private matter. There are no specialized police units to deal with family and sexual violence, and survivors usually file complaints with branches of the National Guard or the judicial police. The number of women police officers is low, and they tend not to work in the evenings or at night. Some women interviewed by Amnesty International said that police officers either dismissed their reports or blamed them for the violence. In general, the police attempted to discourage them from filing a complaint,

²⁴ See Amnesty International, *Tunisia: Further information: Six men free on bail, but in grave danger*, 15 January 2016. Available at: <https://www.amnesty.org/en/documents/mde30/3216/2016/en/>

²⁵ 115 CEDAW Committee, General Recommendation No. 19, available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom12>

²⁶ See Amnesty International, "9. Tunisia's international human rights obligations", *Assaulted and Accused: sexual and gender-based violence in Tunisia*, November 2015, (Index: MDE 30/2814/2015), available at: <https://www.amnesty.org/en/documents/mde30/2814/2015/en/>

²⁷ Concluding observations of the Committee on the Elimination of Discrimination against Women Tunisia, CEDAW/C/TUN/CO/6, 22 October 2010, available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-TUN-CO-6.pdf>

convincing them not to break up the family and to put the interests of children first. Instead of enforcing the law and protecting women from further violence, police see their role as promoting mediation and reconciliation.²⁸

Homophobic and transphobic crimes are not investigated. Survivors interviewed by Amnesty International reported being assaulted in the street, in their homes and workplace, in some cases on multiple occasions by the same groups or individuals. They said that they were repeatedly beaten and verbally abused. In some cases, they were subjected to attempted strangulation and burned with cigarettes. Openly gay and lesbian individuals and LGBTI activists reported facing constant insults and harassment, and said that they received death threats and threats of harm either in person or through social media. When asked by Amnesty International if they complained about the abuses to the police, most explained that they were unwilling to report the homophobic or transphobic nature of the crime for fear of being arrested and prosecuted. Those who did report attacks to police were often further victimized by the police and told that they were responsible for bringing violence upon themselves. Indeed, police often tell LGBTI survivors to drop their complaints if they want to avoid being prosecuted themselves for engaging in same-sex sexual relations.²⁹

In 2015, a lesbian woman known as Sharky told Amnesty International that she sought asylum abroad after she was subjected to four separate assaults over the course of that year by men who attacked her on the street, beating her with their hands and feet and with broken bottles and on one occasion cutting her neck with a knife. She had been subjected to at least eight homophobic assaults over a period of nine years. She reported these assaults to the police but they failed to identify and arrest her attackers and warned her that, as a lesbian woman, she could face prosecution and imprisonment.³⁰

HARASSMENT AND INTIMIDATION OF SUSPECTS AND THEIR FAMILY MEMBERS (ARTICLES 1, 16, QUESTION 40 OF THE LIST OF ISSUES)

EMERGENCY MEASURES

The Tunisian authorities have stepped up security measures relying heavily on emergency

²⁸ See Amnesty International, "6. Obstacles to Justice", *Assaulted and Accused: sexual and gender-based violence in Tunisia*, November 2015, (Index: MDE 30/2814/2015), available at: <https://www.amnesty.org/en/documents/mde30/2814/2015/en/>

²⁹ See Amnesty International, "4. Violence against LGBTI People", *Assaulted and Accused: sexual and gender-based violence in Tunisia*, November 2015, (Index: MDE 30/2814/2015), available at: <https://www.amnesty.org/en/documents/mde30/2814/2015/en/>

³⁰ Ibid, p.38.

laws. The country has been in a state of emergency for prolonged periods of time since 2011, most recently since 24 November after an attack in central Tunis killed 12 members of the Presidential Guard. Governed by a 1978 Presidential Decree and under the Constitution, the state of emergency gives the Tunisian authorities broad powers to restrict the freedoms of movement, association and expression. Under these conditions, security forces have conducted thousands of arrests and raids including house searches without judicial warrants. They have also placed hundreds under house arrest or assigned residence, many in an arbitrary and discriminatory manner.

At least 1,880 raids were carried out across the country and at least 155 people arrested on suspicion of belonging to terrorist organizations in the week after the state of emergency was declared on 24 November, according to the Ministry of Interior. Amnesty International documented a series of night-time house raids in La Goulette district in Tunis on 27 November in which security forces used excessive force. According to residents, large groups of security forces belonging to a counter-terrorism brigade wearing balaclavas and carrying rifles, stormed homes in the La Goulette district of Tunis threatening residents, including children and the elderly suffering from chronic diseases, at gunpoint and arresting dozens of people in the early hours of 27 November. According to shocked eyewitnesses, security forces stormed into homes breaking down doors without identifying themselves or presenting warrants and pointing guns at residents. 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 follow up questioning.

Emergency measures have also been used to place dozens of people under house arrest or assigned residence in what appears to be a discriminatory and arbitrary manner, restricting their liberty and freedom of movement and interfering with their ability to earn a living. The latest available figures from the Ministry of Interior indicate that at least 138 people were placed under house arrest or assigned residence in response to the November attack. The Ministry claimed that all those placed under the measure were either fighters who had returned from conflict areas or belonged to the armed group Ansar al Shari'a which Tunisia has banned as a "terrorist" organization.

However, accounts of 11 men currently under house arrest or assigned residence, interviewed by Amnesty International, indicate that some have never travelled abroad or to conflict zones, and some believe they are being targeted for their religious beliefs or for their civil society activities. Others said they were being punished again for having been arrested previously under laws that had been used during the repressive rule of former President Zine El Abidine Ben Ali to silence opposition. None of the men had a written decision for their house arrest making it very difficult to challenge the decision. The men have been told that the house arrest will last for as long as the state of emergency remains and with its repeated renewal, it has had dire consequences on the men's lives as they are unable to work and some are separated from their families. According to Tunisian law, the state should provide compensation for those under house arrest or assigned residence, but the men Amnesty International spoke to all said they had received no state support.

Amnesty International has also received reports of violence at the hands of security officers against protesters and media professionals covering the protests as they were forcibly dispersed. Some journalists told Amnesty International they were punched or kicked by police officers or had their equipment broken. According to the Tunis Centre for Press Freedom, most journalists no longer report the violence against them as they have little faith their complaints will be investigated or those responsible held to account.

INTIMIDATION OF FAMILY MEMBERS OF “TERRORIST” SUSPECTS

Amnesty International has documented a pattern of harassment and intimidation by the security forces of family members of individuals suspected of terrorist offences apparently aimed at coercing them into providing information on the whereabouts of their relative.

Several families who reside in El Kef and Tunis reported repeated arbitrary detentions, multiple unwarranted house searches, and the use of excessive and unnecessary force during night-time house raids such as breaking doors and opening fire in the air. In most cases, security officers failed to explain why the searches were necessary and what they were looking for. In the cases documented by Amnesty International, the harassment has been taking place for periods ranging from nine months to nearly three years, and has had a huge psychological impact on the well-being of family members including children and individuals suffering from chronic diseases. Individuals interviewed by Amnesty International said that their family members were traumatized by the repeated raids, and were in some cases forced to seek medical treatment to deal with the shock.

Mohamed Sahraoui Slimi, a resident of Barnousa area of El Kef aged 66, whose son is wanted by the authorities for suspected terrorist activities, reported to Amnesty International continuous harassment and intimidation since his son left home in 2013, in an apparent attempt to coerce the family into revealing the son's whereabouts. Even though the family has consistently maintained that they do not know the man's whereabouts, they have faced regular raids on their house and arbitrary detention by the Ben Anen police officers and National Guard. Security officers regularly enter the house forcefully in the middle of the night and perform house searches without a search warrant. On many occasions, they reportedly have stayed in the house for several hours and prevented the family from sleeping during this time. Such raids have been reportedly taking 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 has also reported being arbitrarily detained 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 four, seven and nine, have also been detained, and have similarly been released after several hours at the police station. Mohamed Sahraoui Slimi told Amnesty International that the continuous raids and harassment have had a huge impact on the mental health of the entire family and that some family members have attempted to commit suicide.

INTIMIDATION OF INDIVIDUALS BASED ON THEIR APPEARANCE

Amnesty International has received reports of people being harassed apparently solely for their appearance. The organization spoke to men who have been repeatedly stopped by the police in the street or taken off public transport because they have beards or are dressed in a religious fashion. In the cases documented by Amnesty International, the men were detained for a few hours before being released. During this time, they were asked a series of questions about their religious beliefs, what television programmes they watch, what they read, and how long they have had beards for. Some have discovered that their names had been placed on a “travel ban” list, which means that they are stopped and questioned for hours in the same manner as described every time they travel outside their municipality or city.

HARASSMENT OF FORMER DETAINEES AND PRISONERS

Amnesty International has received reports from former detainees who were accused of

terrorism activities but who were released without charge. They have described being continuously harassed and intimidated by security forces following their release. Such harassment and intimidation included house raids and house searches without warrants; confiscation of personal documents and personal computers; detention and questioning for several hours without a warrant. A group of approximately 20 detainees who had been arrested following the deadly attack against the Bardo museum in Tunis on 18 March 2015 also faced harassment from their communities as their photos were published by the authorities and widely displayed on television as terrorist suspects following their detention.

Others have said they are also stopped and questioned because of their status as people who had been imprisoned during Ben Ali's rule for their alleged Islamist sympathies or for criticizing the authorities.

LACK OF ACCOUNTABILITY (ARTICLES 12, 13, 14, QUESTIONS 28-34 OF THE LIST OF ISSUES)

The Tunisian authorities have repeatedly voiced their commitment to upholding their human rights obligations and investigating all allegations of torture and other ill-treatment. 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 such report. However, in practice, the investigations into allegations of torture and other ill-treatment undertaken have fallen far short of international standards of prompt, thorough and impartial investigations and have failed to deliver justice. In fact, over the reporting period since 1998, only a small number of cases have been brought against members of law enforcement agencies for alleged torture or other ill-treatment and even fewer have reached their conclusion. Impunity for human rights violations by the police and security services, which include the National Guard, the judicial police and counter-terrorism units, including for torture and other ill-treatment, remains fundamentally unchallenged.

Article 101bis of the Code of Criminal Procedure which was added in 2011 provides for the punishment of state agents who are responsible for acts of torture and other ill-treatment.

However, according to information available to Amnesty International, there have been problems with the way investigations have been carried out. Lawyers have told Amnesty International that in some cases, a detainee has appeared before an investigating judge with visible signs of abuse and the judge did not ask how he or she was injured. Other times, the investigating judge has noted and launched an investigation, but the investigations have stalled and the perpetrators are not prosecuted. Investigations are normally undertaken by the judicial police who fell under the command of the Ministry of Interior, bringing into question the independence, impartiality and effectiveness of investigations. Some victims who filed complaints told Amnesty International that they were harassed and intimidated by police officers to coerce them into dropping their complaints. They reported being followed and threatened by police officers. In the handful of known cases that have seen officers

prosecuted for accusations of torture or other ill-treatment, they have been prosecuted on less serious charges which carry lighter reduced sentences.³¹

There is also a lack of accountability for crimes that were committed prior to the 2010-2011 uprising against former President Ben Ali. 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. However, its work was overshadowed by the resignations of some of its members, allegations of corruption against its head, lack of cooperation by the authorities and media criticism. The Committee has received thousands of complaints and it is yet to be seen how the information it has received will be used to hold those responsible to account.

The family of Faysal Barakat, a well-known student activist and member of the then-banned Ennahdha party, who died under torture in October 1991 when he was only 25, is still awaiting truth and justice 25 years after his death. Amnesty International has been campaigning for truth and justice for Faysal Barakat from the start and in 2013 attended the exhumation of his body which his family hoped would be the turning point in breaking the impunity that has shrouded his case.³² However, to date, there have been no further developments. On 8 March 1991, in an interview on Tunisian television, he criticized the government's handling of clashes between students and the police which had left several students dead. He went into hiding and was subsequently sentenced in absentia to six months' imprisonment for offences that included membership of an illegal organization. He was arrested on 8 October 1991 and on 11 October his dead body was brought into Nabeul Hospital. On 17 October, the authorities told Faysal Barakat's family that he had died in a traffic accident. However, marks on his body, an independent review of his autopsy report and the testimonies of witnesses indicated that Faysal Barakat had died of injuries resulting from torture at the hands of police officers. Despite the evidence, Faysal Barakat's family is still awaiting progress and those believed to be responsible for his death and others like him remain free.

Meanwhile, investigations into the death in custody of Rachid Chammakhi, who died on 28 October 1991, three weeks after Faysal Barakat's death and after being detained in the same police station, continue slowly. The case is now in front of the Accusation Chambers at the Nabeul Court of Appeal.³³

In early November 1991 the investigating judge at Grombalia opened an investigation into Rachid Chammakhi's death and interviewed Rachid Chammakhi's father. The inquiry was closed after the

³¹ Figures provided by the Tunisian government in Tunisia's updated periodic report to the Committee in 2014, show the small number of cases that have resulted in prosecutions. Out of 230 cases head by courts between 1 January 2014 to 1 July 2014, six cases were dismissed for lack of evidence or legal grounds, three resulted in prison sentences and fines in absentia, two in suspended prison sentences and twenty 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. Available in: 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:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fTUN%2f3%2fAdd.1&Lang=en

³² Amnesty International, *Tunisia: When Bones Speak: The struggle to bring Faysal Barakat's torturers to justice*, October 2013 (Index: MDE 30/016/2013). Available at: <https://www.amnesty.org/en/documents/mde30/016/2013/en/>

³³ <http://goo.gl/QNCKYU>

investigating judge received a medical report claiming Rachid Chammakhi had died of natural causes. Not long after his death, the Tunisian authorities told Amnesty International that Rachid Chammakhi had been arrested on 22 October 1991 and died the same day as a result of kidney failure that had been “left unattended for a long time”. However, several people held at Nabeul police station with Rachid Chammakhi told Amnesty International that they had seen him there on the night of 27 October 1991 and that his body was covered with marks of torture. They said he had been taken to Nabeul hospital after he collapsed. A witness who saw him at the hospital also said that his body was covered with wounds and bruises, and that he was in great pain and struggling to breathe. He died in the early hours of 28 October.

Faysal Baraket’s family claim that individuals who are responsible for his torture and death are the same ones who killed Rachid Chammakhi. At least 20 officers were at the police station when Faysal Baraket and Rachid Chammakhi were tortured. They, have so far evaded justice, including some for whom arrest warrants were issued. Some appear to have fled or to have gone into hiding, including the former head of Nabeul Police Station where the torture took place. Arrest warrants were also issued against Abdallah Kallel and Saadok Chabaane, respectively former Minister of Interior and former Minister of Justice under Ben Ali, but these were overturned in January and February 2013 by the accusation chamber of the Nabeul Appeal Court.³⁴

Trials of officials accused of violations during the uprising that ousted former president Zine el-Abidine Ben Ali in 2011 saw the prosecution of 53 former officials in front of military tribunals and resulted in a life sentence for Ben Ali (who was tried in absentia), 27 sentences of three years or less; and 25 acquittals. However, lawyers and the families of victims felt that the lenient sentences did not reflect the seriousness of the crimes. On appeal, many of the sentences were further reduced and some defendants were released. Amnesty International has also criticized the use of military trials to try cases of serious human rights violations, contrary to international standards.

EXPULSION, REFOULEMENT, EXTRADITION (ARTICLE 3, QUESTIONS 14 AND 16 OF THE LIST OF ISSUES)

Tunisia is a state party to the 1951 Convention Relating to the Status of Refugees and its Protocol but has no formal legal framework for recognizing or determining the status of refugees and asylum seekers. Moreover, the 2014 Constitution only provides for the non-

³⁴ Abdallah Kellal was detained in 2011 and tried in various cases, including the case known as the “Baraket Essahel” case, which involved many army officers tortured in 1991. In November 2011, Abdallah Kellal was sentenced to four years’ imprisonment on charges of “using violence against others either directly or through others”. In April 2012, his sentence was reduced on appeal to two years’ imprisonment. He was released in July 2013. Saadok Chabaane spent a month in detention before his arrest warrant was overturned in February 2013.

refoulement of political asylum-seekers. The absence of a fair and transparent process in determining refugee status and assessing risk upon return may lead to individuals being expelled, returned or extradited to another state where they would risk being subjected to torture or other ill-treatment.

In a recent case, Amnesty International was informed that a group of around seven Syrian refugees, including two children, were deported from Carthage airport in Tunis to Lebanon on 19 February 2016. The group had reportedly travelled to Mauritania five days before on board a Tunisair flight but was denied entry. They were then sent to Tunis on the same plane they had arrived on. An audio and video recording made by the group in the airport and posted online expressed their fears of being returned to Lebanon. A local organization tried to intervene on their behalf the night before they were meant to travel but was unsuccessful and the group were all deported the following morning without any assessment of the risk of torture or other ill-treatment upon return.

In August 2015, the Tunisian authorities arrested 10 Sudanese, Nigerian, Kenyan and Liberian nationals, nine men and one woman, who mounted a protest in Tunis outside of the European Union Delegation asking for resettlement. They were initially taken to the Ouardia refugee reception centre in Tunis, and subsequently taken to the Bou Chebka border crossing with Algeria as part of an attempted expulsion with no assessment of risk that they may face in Algeria. When Algerian border guards threatened to shoot them if they crossed the border, Tunisian authorities allowed them back into Tunisia and eventually released them. UNHCR, the UN refugee agency, had rejected these individuals' asylum claims in 2012 but they had remained in the Choucha camp, established by UNHCR during the 2011 Libya crisis, despite its official closure in 2013. The individuals had all worked in Libya prior to the 2011 armed conflict there.

While the authorities generally allow Libyan nationals fleeing the ongoing armed conflict in Libya to enter Tunisia, other foreign nationals, including thousands of refugees and migrants from sub-Saharan African and the Middle East who reside in Libya, are only allowed entry if they possess valid travel documents and a visa. Those allowed in are required to depart from Tunisia and return to their home country after a short transit stay. Unable to leave Libya via land borders, thousands of undocumented migrants, asylum-seekers and refugees from sub-Saharan African and the Middle East who face serious human rights abuses in Libya and are affected by the ongoing armed conflict, choose to board unseaworthy boats towards Europe.³⁵

³⁵ According to UN estimates, there are currently approximately 250,000 foreign nationals from sub-Saharan African and the Middle East, including migrants, asylum-seekers and refugees in Libya who are in need of some form of assistance or protection. According to research conducted by Amnesty International, migrants, refugees and asylum-seekers, face abductions for ransom, torture and sexual violence by armed groups, criminal gangs and networks of human smugglers and traffickers. Many are systematically subjected to discrimination and exploitation by their employers; all are at risk of indefinite detention in sub-standard immigration detention centre where they face beatings with wooden sticks, hoses and rifle butts; electric shocks; and are deprived access to washing and sanitary facilities, or given insufficient quantities of food and water. Religious minorities, in particular Christian migrants and refugees, are persecuted and are at highest risk of abuse, including summary killings, from armed groups that seek to enforce their own interpretation of Islamic law. See Amnesty International, *'Libya is full of cruelty', Stories of abduction, sexual violence and abuse from migrants and refugees*, (Index: MDE 19/1578/2015), May 2015, available at:

Amnesty International is concerned that the lack of legal status for asylum-seekers and refugees as well as inconsistencies in policy and practice towards stateless asylum-seekers and refugees of different backgrounds increase the risk of refoulement of individuals in need of protection from torture or other ill-treatment.

EXTRADITION OF FORMER LIBYAN PRIME MINISTER AL-BAGHDADI AL-MAHMOUDI

Amnesty International raised its concerns to the Tunisian authorities both privately and publicly on the extradition of former Libyan Prime Minister al-Baghdadi al-Mahmoudi from Tunisia to Libya in June 2012. Based on its monitoring of the human rights situation in Libya at the time, the organization was of the opinion that al-Baghdadi al-Mahmoudi would face a real risk of torture, extrajudicial execution and unfair trial.³⁶

On 8 November 2011, the Tunisian Court of Appeals decided that the Tunisian authorities could extradite al-Baghdadi al-Mahmoudi to Libya and required only the final consent of the Tunisian President. When al-Baghdadi al-Mahmoudi was eventually extradited, there were claims that the Tunisian President had not been adequately informed of the extradition by Tunisia's chief of the armed forces and Defence Minister and had, in fact, not given his final consent. A presidential advisor, Ayoub Massoudi, was prosecuted for criticizing the extradition. Following his extradition, al-Baghdadi al-Mahmoudi was held in al-Hadba prison, a high-security prison in Tripoli, and placed on trial for alleged crimes committed during the 2011 uprising in Libya and ensuing armed conflict, along 36 other former al-Gaddafi officials. In the trial's last session on 20 May 2015, al-Mahmoudi alleged he had been tortured following his extradition from Tunisia. On 28 July 2015 al-Baghdadi al-Mahmoudi was sentenced to death. The proceedings were deeply flawed during the investigation phase and at trial. In particular, the authorities failed to ensure the defendants' fair trial rights, including the right to legal counsel, to remain silent, to be promptly informed of the charges against them and to be present at trial. In some cases, detainees were held in unofficial detention places and detained incommunicado for extended periods. The authorities also failed to investigate defence lawyers' allegations that the men had been tortured and otherwise ill-treated.³⁷

RECOMMENDATIONS

Amnesty International calls on the Tunisian authorities to:

Definition of Torture

- Bring national legislation in line with the Convention, in particular by ensuring that the definition of torture complies with Article 1 of the Convention, including: an

<https://www.amnesty.org/en/documents/mde19/1578/2015/en/>

³⁶ Amnesty International, *Tunisia: Former Libyan minister at risk if extradited*, 9 November 2011, Available at: <https://www.amnesty.org/en/documents/mde30/021/2011/en/>

³⁷ Amnesty International, *Libya: Flawed trial of al-Gaddafi officials leads to appalling death sentences*, 28 July, 2015. Available at: <https://www.amnesty.org/en/latest/news/2015/07/libya-flawed-trial-of-al-gaddafi-officials/>

explicit prohibition of all cruel, inhuman or degrading treatment and punishment, including corporal judicial punishments; specifying that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, nor any order from a superior official or officer, justify any such act; and to guarantee that no information of any kind obtained through torture or other cruel, inhuman or degrading treatment may be admitted in evidence in any proceedings of any nature, except against a person accused of torture as evidence that the statement was made.

- Remove any mention of statutes of limitation in national legislation, particularly Article 5(4) of the Code of Criminal Procedure

Use of torture and other ill-treatment during detention

- Strengthen changes to the Code of Criminal Procedure by:
 - o Removing limitations to detainees' access to lawyers
 - o Ensuring detainees have access to independent forensic doctors
 - o Clarifying the grounds of arrest including the degree of suspicion necessary for making an arrest and that detention begins from the moment of arrest
 - o Removing the ability of prosecutors to delay access to lawyers for suspects in terrorism-related cases

Lack of accountability (Articles 12, 13, 14, Questions 28-34 of the list of concerns)

- Thoroughly investigate all allegations of torture and other ill-treatment, including rape and other sexual assault.
- End the impunity of officials who engage in torture and other ill-treatment by prosecuting and punishing those found responsible and by implementing the necessary institutional reforms to ensure effective enforcement of existing laws prohibiting torture; and provide proper redress and compensation to victims.
- 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 prosecuted in civil courts in accordance with international standards of fairness and without resorting to the death penalty

Sexual and gender-based violence (Articles 1, 2 & 16, Question 10 of the list of issues)

- Publicly condemn all forms of sexual and gender-based violence against women, girls and LGBTI people, and sex workers, whether committed by state or non-state actors in the home, the community or public sphere; and ensure effective investigation and prosecution of these crimes.
- Adopt a comprehensive law on violence against women and girls that includes the provision of a wide range of remedies, including protection orders, appropriate penalties, and make orders for compensation of victims of violence.
- Define rape and sexual assault as a violation of an individual's bodily integrity and sexual autonomy rather than an assault on "decency". Make laws on rape or sexual assault gender-neutral and premised on the absence of consent rather than use of force or violence. The laws should explicitly recognize marital rape as a crime and be consistent with international human rights law and standards.

- Repeal or amend problematic articles in national legislation, such as Articles 227bis and 230, in line with Tunisia's international obligations.
- End "virginity tests" during medical examinations of survivors of sexual assault and in cases of elopement.
- Ensure that laws and regulations related to sex work are developed in consultation with sex workers, respect the agency of sex workers, and guarantee that individuals who undertake sex work do so voluntarily and in safe conditions, free from exploitation, and are able to stop engaging in sex work when and if they choose. In particular, regulations requiring registered sex workers to demonstrate capacity to make an "honest" living should be repealed on the basis that they are discriminatory and place unreasonable requirements on those wishing to leave sex work.
- Ensure that law enforcement officers are trained (as part of their basic training and as ongoing professional training) in best practice methods of interviewing and supporting victims who have been subjected to family, sexual and gender-based violence.

Harassment and intimidation of Suspects and their family members (Articles 1&16, Question 40 of the list of issues)

- Immediately halt all policies and practices of harassment and other ill-treatment of suspects and their family members, investigate all such cases, prosecute suspected perpetrators, including persons in places of authority who may have ordered, instigated or were otherwise involved in torture, as well as in at least deliberate acts of cruel, inhuman or degrading treatment or punishment.

Expulsion, refoulement, extradition (Article 3, Questions 14 and 16 of the list of issues)

- Stop forcibly transferring, either directly or indirectly, any individuals to a country where they would be at real risk of persecution, torture or other ill-treatment, or other serious human rights violations.
- Refrain from the use of and reliance on diplomatic assurances to circumvent this obligation and extradite or otherwise return persons to places where they would be at risk of torture and other ill-treatment;
- Where it is proposed to return a person to any country, whether by extradition or otherwise, ensure that the person has an effective opportunity to seek a review of that decision. This review must include a full consideration of the risks they would face in the country of return. Ultimately, they must be able to appeal to the courts against a decision to return them. No one should be returned in a way which circumvents such procedures;
- Ensure that international human rights obligations are reflected in, and prevail over, bilateral and regional security and other criminal justice cooperation agreements.

