The Administration of Justice in Tunisia:
Torture, Trumped-Up Charges and a Tainted Trial

I. Summary

The trial of Tunisia's most outspoken human rights lawyer, Radhia Nasraoui, and twenty co-defendants was attended by jurists representing Amnesty International, Human Rights Watch, the Observatory for the Protection of Human Rights Defenders (a joint program of the International Federation of Human Rights [FIDH] and the World Organization Against Torture [OMCT]), and other organizations. Nasraoui and all of the other defendants, most of them students, were convicted and sentenced to prison terms on charges related to membership in or activities on behalf of an unauthorized left-wing political association, the Tunisian Communist Workers Party (*Parti communiste des ouvriers tunisiens*, PCOT). No evidence was introduced during the trial to indicate that any of the defendants had committed, conspired to commit, or incited others to commit acts of violence.

The charges on which the defendants were found guilty included maintaining an association that incites hatred, defaming public authorities and judicial authorities, distributing leaflets and spreading false information capable of disturbing public order, inciting the public to violate the country's laws, and hosting, holding, or participating in unauthorized meetings.

Responding to the charges, some of the defendants maintained they had no link whatsoever to political activities. Others admitted to involvement in student or opposition political activities that they claimed were protected under international human rights treaties that Tunisia had ratified. All of them denied the charges against them. All of the seventeen who signed police statements categorically repudiated their contents, the vast majority claiming they had been tortured into signing.

Nasraoui, the only defendant whose prison sentence was suspended, has long been subjected to harassment for her vigorous defense of political opponents of the government and for publicly criticizing the government's human rights record, including before international audiences. Police have kept her and her office under visible surveillance and questioned her clients about their relationship with her. Her office was the target of a suspicious and still-unsolved burglary in 1998 in which case files were systematically removed. Her eleven-year-old daughter Oussaïma and her seventeen-year-old daughter Nadia have also been tailed by plainclothes police in a manner intended to terrorize them.

Nasraoui's indictment in this case, delivered weeks after she had already begun representing the other defendants, seemed calculated to impede her human rights work. It forced her to withdraw as counsel for the others, and led to a pretrial judicial order confining her to greater Tunis and thus preventing her from representing clients who were imprisoned or being tried elsewhere in the country.

This trial dramatized many aspects of Tunisia's human rights situation. In addition to government measures to harass and impede the work of human rights defenders like Nasraoui, the case illustrated the use of repressive laws to imprison Tunisians who engage in peaceful political activity deemed critical of the country's present government. It also demonstrated the commonplace nature of torture during interrogations in Tunisia and the judicial system's disregard of this abuse and its failure to provide defendants with basic guarantees of a fair trial. The court refused all requests submitted by the detainees to exercise their right to a medical examination to document the alleged torture, and then in the official summary of the trial did not reflect the defendants' graphic testimonies of torture before the court, alluding to them in a euphemistic or cursory manner.

Other common abuses observed in this case include police holding detainees beyond the legal limit of incommunicado detention and then falsifying arrest records to cover it up; and the lengthy pretrial detention—in this instance for more than one year—imposed on detainees being held for nonviolent acts of speech and association.

The trial constitutes only one recent chapter in the government's persecution of the PCOT, a small, unrecognized party which employs a militant left-wing discourse but which has not been linked to acts or incitement of violence. Scores of its actual and suspected members and supporters were tried and imprisoned during the 1990s.

The party spokesperson, Hamma Hammami, who was sentenced in absentia in this trial, is married to attorney Nasraoui. Hammami, forty-seven, has served time in prison for his political activities both under President Zine el-Abidine Ben Ali and his predecessor, Habib Bourguiba. Nasraoui has often represented defendants charged with PCOT activities before the courts but has denied belonging to the party or performing illegal activities on its behalf.

As a result of the prosecution of suspected political opponents that is the focus of this report, six young Tunisians remained in prison from the time of their arrests in February 1998 until November 1999, when they were conditionally released as part of a wide scale presidential amnesty.[1] Ten others had been released in July and August 1999 after serving the full term of their sentences. One, Fahem Boukaddous, remains in prison: he had been charged at the same time as the others but went into hiding and was not taken into custody until February 1999. Meanwhile, three other defendants remain in hiding after having been sentenced in absentia to nine years and three months in prison. For a list of the charges and sentences, see Appendix A.

II. Recommendations

Amnesty International, Human Rights Watch, and the Observatory for the Protection of Human Rights Defenders urge that all convictions be voided in this case on the grounds that the defendants were detained, prosecuted, and convicted solely on the basis of alleged actions that are within the bounds of freedom of expression and association that are protected by international treaties to which Tunisia is a party. Fahem Boukaddous should be released from prison and all of the others who were released from prison should have their civil and political rights restored to them. The warrants for the arrest of those convicted in absentia should be canceled.

The undersigned organizations urge the government of Tunisia to:

- Conduct an impartial investigation into each allegation of torture made by the defendants in this trial and into the failure of judges hearing the case to accede to defense requests for medical examinations of the defendants, in apparent violation of Tunisia's code of criminal procedure. The results of these investigations should be made public and if they confirm that acts of torture or ill-treatment occurred, the government should identify those responsible and bring them to justice.

- Put an end to the intimidation of lawyer Radhia Nasraoui and other Tunisian human rights lawyers and activists, and comply with the Declaration on Human Rights Defenders, adopted by the U.N. General Assembly on December 9, 1998, by ensuring that human rights defenders can freely carry out their activities and enjoy the right to freedom of expression, association, and movement;

- Review Tunisia's penal code and other legislation, as recommended by the U.N. Working Group on Arbitrary Detention in its opinion issued in May 1999, so as to "adapt it to the [Universal] Declaration [of Human Rights] and other relevant norms of international law that [Tunisia] has accepted."

- Implement reforms to ensure in practice the independence of the judiciary and that "every accused person shall be presumed innocent until his guilt be proved in accordance with procedure offering him necessary guarantees for his defense" as provided by Tunisia's constitution. Judges must ensure that all confessions obtained through torture or ill-treatment are excluded as evidence in trials, except when used in proceedings brought against the suspected perpetrators; and that defendants are granted a fair hearing, including the opportunity to present or have presented on their behalf testimony, witnesses, and material evidence under the same conditions as testimony, witnesses and material evidence against them.

- Monitor and ensure compliance by law enforcement officers with legal reforms that took effect after the verdict was reached in this case; these reforms shorten the maximum duration of garde à vue detention, require law enforcement officers to inform detainees of the reasons for their arrest and their right to request a medical examination, and require law enforcement officers to inform the detainees' families of their arrest (see Appendix C).

III. Introduction

In February and early March 1998, after student demonstrations in protest at the conditions of study at universities, a wave of arrests in Tunis set in train the events witnessed over a year later by numerous national and international observers at the Sixth Correctional Chamber of the Tunis Court of First Instance. Those arrested included twelve university students: Taha Sassi, Ali Jallouli, Rachid Trabelsi, Ridha Oueslati, Habib Hasni, Qais Oueslati, Lotfi Hammami, Haikal Mannai, Imen Derouiche, Noureddine Benticha, Jalal

[1] Human Rights Watch, "Political Prisoners Released in Tunisia," November 11, 1999. Amnesty International, "Tunisia: Hundreds of Prisoners Released," November 11, 1999, Public Document MDE 30/99.

Bouraoui, and Najib Baccouchi. Aged between twenty-three and twenty-nine, most of them were or had been members, or close to members, of the National Union of Tunisian Students (*Union générale des étudiants tunisiens*, UGET), a legal organization recognized by the Tunisian authorities. Also arrested were Hinda Aaroua, the owner of a photocopy and information services outlet; Chedli Hammami, a postal worker and trade union activist; and Bourhan Gasmi, unemployed.

Plainclothes police picked the detainees up from the street, student hostels, cafes, and other places, showing no warrants, and took them to the Ministry of the Interior headquarters in downtown Tunis. Their families were not notified, and in some cases it was by pure chance that lawyers learned they were in detention days after their arrest. Amnesty International issued Urgent Action appeals on February 24 and 26, 1999 and on March 6, 1999 expressing concern that the above-named individuals were being held in secret detention and were at risk of torture or ill-treatment.[2] On April 23, a thirteenth student, Afef Ben Rouina, was arrested.[3]

The failure to acknowledge the arrest of a person and the placing of detainees in secret detention in the Ministry of the Interior or in police and National Guard stations for several days after arrest is widespread in Tunisia. The first acknowledgment of arrest usually comes only after detainees have been brought before the judicial authorities.[4]

[2] See Amnesty International, Urgent Action 59/99, AI Index MDE 30/05/99, February 24, 1999, and follow-ups MDE 30/06/99, February 26, 1999, and MDE 30/07/99, March 13, 1999.

[3] See Amnesty International, Urgent Action 59/99, AI Index MDE 30/12/99, April 30, 1999.

[4] In November 1999 the U.N. Committee against Torture noted that "... arrests are very often made by plainclothes agents who refuse to show any identification or warrant" (paragraph 11), and expressed concern that "... many of the regulations existing in Tunisia for arrested persons are not adhered to in practice, in particular: ... the immediate notification of family members" (paragraph 10). U.N. Committee against Torture, Conclusions and Recommendations, November 19, 1999, CAT/C/TUN.

During the detainees' unacknowledged and incommunicado pre-arraignment (*garde à vue*) detention, Radhia Nasraoui, who had not yet been indicted, acted as lawyer on their behalf. She wrote to the state prosecutor general (*procureur de la république*) requesting that eight of the detainees be given a medical examination in accordance with article 13bis of the code of criminal procedure (*code de procedure pénale*),[5] in view of concerns that they may have been mistreated during interrogation.[6] These requests were not met and no explanation for the refusal was provided by the authorities until the written judgment of the trial, in which the court said it had refused the requests that had been resubmitted during the trial on the grounds that they "came a year and-a-half after the date of detention, and the court saw no visible signs or traces of external violence."

In March 1999, the above detainees were charged under the penal code (*code pénal*), the press code, the Law on Associations, and the Law Regulating Public Meetings with offenses that included belonging to a criminal and terrorist gang, holding unauthorized meetings, distributing leaflets capable of disturbing public order, inciting rebellion, defamation of the judiciary, spreading false information capable of disturbing public order, inciting citizens to break the law, and defamation of the public order.[7] The charges revolved around alleged activities of the detainees with and on behalf of the Union of Tunisian Communist Youth, described as the student wing of the Tunisian Communist Workers Party (*Parti communiste des ouvriers tunisiens*, PCOT).

Authorities have consistently refused legal registration to the PCOT, and since the early 1990s have prosecuted scores of suspected members on such charges as belonging to an "unauthorized" association, participating in illegal meetings, and distribution or possession of tracts deemed to be "defamatory," "inciting," or to contain "false" information capable of disturbing "public order." In 1991 authorities banned the party's unofficial publication, *Al-Badil* (The Alternative).

In the statements attributed to the detainees by their interrogators, a number of other persons were implicated who were subsequently charged in the same case. These include: Radhia Nasraoui, one of their lawyers, who was charged on eleven counts: Hamma Hammami, spokesperson of the PCOT, director of *Al-Badil*, and Nasraoui's husband, who in November 1995 was released after serving almost two years in prison on political charges: Samir Taamallah and Fahem Boukaddous, both students: Abdeljabbar Maddouri, unemployed: and Abdel Majid Sahraoui, a trade union activist.

IV. PRETRIAL PROCEDURE AND CONCERNS

Article 32 of the Tunisian Constitution states, "Treaties shall only have the force of law after being ratified. Duly ratified treaties shall have authority over and above [domestic] laws." Tunisia has ratified and published in its official gazette most of the major international human rights instruments, thereby giving them the force of law domestically. This includes the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the Convention against Torture).

Tunisia's legal system, and in particular its criminal justice system, is based on the French model. Serious criminal cases (including infractions potentially involving prison sentences) are in most instances brought by the state prosecutor general before an investigating judge (*juge d'instruction*), who examines the evidence brought before him or her, interrogates the defendants, and

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[5] Until 1999, the code of criminal procedure's article 13bis provided that suspects could not be detained incommunicado for more than four days. The *procureur de la république* had to be informed of any detention and could prolong garde à vue, by written order, for a further four days. Only "in case of absolute necessity" could garde à vue be prolonged for a further two days to a total of ten days. In 1999, an amendment was adopted at the initiative of President Ben Ali reducing the maximum duration of garde à vue detention to three days renewable but once. See Appendix C.

Article 13bis also stated that during or at the end of the garde à vue period the detainee or any member of his or her immediate family "may submit a request for a medical examination, a request that is to be recorded in the written statement for that defendant." The dates and times of the beginning and end of garde à vue detention and the dates and times at which each interrogation starts and finishes must be noted in a register kept in each police station.

[6] Nos. 31620/5 of February 23, 1999 with respect to Sassi, Bentcha, Lotfi Hammami, Qais Oueslati: and 31757/5 of February 27, 1999 with respect to Trabelsi, Bouraoui and Chedli Hammami.

[7] The latter three charges were brought the previous year against Khémais Ksila, vice-president of the Tunisian Human Rights League, who was sentenced to three years in prison but conditionally released on September 21, 1999 after serving eight months.

recommends whether to refer the case to trial. If the case goes to trial, the trial judge, who is a different individual from the investigating judge in the case, is required to newly examine the evidence. Article 50 of the code of criminal procedure states that judges "who handled cases as investigating judges cannot participate in deciding the verdict in those cases." Article 151 states, "The [trial] judge is to base his or her decision only on the evidence introduced during the proceedings and discussed before him orally and in open debate (*contradictoirement*) among the parties."

The case was transferred on March 3, 1998 to the chief investigating judge (*le doyen des juges d'instruction*) for the Court of First Instance of Tunis, Noureddine Ben Ayyad, who proceeded to question the accused. The detainees denied before him the contents of their purported confessions to the police, and stated that their records of interrogation (*procès verbaux*) had been signed under the duress of torture and without their knowledge of the contents. They detailed the methods of torture they said were used, methods that have been well-documented in Tunisia over a number of years.[9] Most also stated for the record that the dates of arrest recorded in the statements attributed to them were incorrect, their actual arrest having occurred anything from one day to nearly two weeks earlier. The majority were called to appear before the investigating judge only once, during the course of March 1998; a few had a second appearance in April 1998. They were without exception remanded in custody pending the outcome of the judge's investigation. This was to take over a year.

Radhia Nasraoui, who had been indicted in absentia (she was at the time traveling in Mali and France on a mission for Amnesty International), and Abdel Majid Sahraoui also appeared before the investigating judge and denied the charges against them. Both were released but subjected to restriction orders forbidding them to leave greater Tunis. Hamma Hammami, Samir Taamallah, Abdeljabbar Maddouri, and Fahem Boukaddous were in hiding. Boukaddous was arrested in February 1999 and joined the others in prison, where he remains as of this writing; the other three were tried in absentia with their codefendants.

From March 1998 till April 1999, when the investigating judge formally completed his investigation and transferred the accused for trial, the case received substantial international attention. Human rights organizations called for dropping all charges against the defendants and the release of those in detention. Amnesty International declared them "prisoners of conscience." During their pretrial detention the defendants staged a series of hunger strikes to protest their torture, their continued pretrial incarceration, and the conditions of detention, which included their being held with convicted prisoners and the obstruction of their efforts to continue their studies while awaiting trial. The group that remained in prison after the trial's conclusion staged additional hunger strikes.

Concern about the case revolved around four principal issues:

Torture and Ill-treatment

[9] See, for example, International Federation of Human Rights, *Tunisie: des violations caractérisées, graves et systématiques, Rapport alternatif au deuxième rapport périodique présenté par la Tunisie au Comité contre la torture des Nations Unies* (Paris: International Federation of Human Rights, November 1998), and Amnesty International, online at <http://www.amnesty.org>.

In November 1998, the U.N. Committee against Torture issued its Conclusions and Recommendations on the second periodic report of Tunisia under the Convention against Torture.[9] In this document the committee noted, among other things, that it was "particularly disturbed by the reported widespread practice of torture and other cruel and degrading treatment perpetrated by security forces and the police that in certain cases resulted in death in custody." The committee also expressed concern that the requirement of medical examinations in cases of allegations of torture was not adhered to (paragraph 10).

The allegations made by the detainees in this case were consistent with a pattern established in the reports of various human rights organizations and other parties in recent years. They described arrests by men in plainclothes, a failure to notify families of the arrests,[10] and a refusal during the first days of detention to acknowledge the detainees were in custody, the illegal prolongation of incommunicado detention beyond the period allowed by Tunisian law, and the subsequent falsification of arrest dates to cover this up.[11] Torture commonly occurs during the illegally extended garde à vue period, which in some cases allows time for the more obvious marks and scars to disappear before the accused appears before the judge.

The Convention against Torture in article 13 provides that any person who alleges that he or she was tortured has the right to have the case "promptly and impartially examined by...competent authorities." The government of Tunisia, in its 1997 report to the U.N. Committee against Torture, highlighted the safeguards provided by domestic law against torture, claiming "it is customary among the Tunisian judicial authorities to order a judicial investigation in all cases where the suspect is a public official, in order to provide every guarantee of due process and fair administration of justice."[12]

Article 15 of the Convention against Torture states, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." The government of Tunisia's report to the U.N. Committee against Torture states:

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[9] Summary record of the 363rd meeting of the Committee against Torture, held on November 20, 1998, CAT/C/SR.363, December 11, 1998. Tunisia's second periodic report to the Committee against Torture (CAT/C/20/Add.7) had been due on October 22, 1993. The committee expressed its regret that it was received only on November 10, 1997.

The U.N. Rapporteur on Torture, Nigel Rodley, wrote to the government of Tunisia in October 1998 requesting permission to conduct a working visit but had not received a reply as of December 19, 1999.

[10] In a speech on March 20, 1999, President Ben Ali proposed amending the penal code to make it compulsory to inform a detainee's family after he or she is taken into custody. This was subsequently adopted into law. See Appendix C.

[11] See Amnesty International, *State Injustice: Unfair Trials in the Middle East and North Africa*, April 1998, p. 21.

[12] See summary records of states parties due in 1993: Tunisia, CAT/C/20/Add.7, December 22, 1997, paragraph 62.

> Under Tunisian law, a confession obtained from a person against his will may not be used as evidence against him. Article 432 of the Code of Obligations and Contracts stipulates that confessions must be free and lucid; any factors that vitiate consent also vitiate the confession. Article 51 of the Code stipulates that any violence likely to induce either physical suffering or deep mental disturbance or fear of subjecting the victim's person, honour or property to appreciable harm constitute absence of consent. Accordingly, statements obtained from a person through the use of violence or torture may not be used as evidence against him.[13]

Tunisia also stressed in its report to the committee that article 13bis of the code of criminal procedure "*require[s]* officers of the judicial police to allow persons in custody to undergo a medical examination if they or one of their relatives so request and to note the request in the judicial record."[14] The government also noted that article 103 of the penal code provides:

> Any public official who...perpetrates or causes to be perpetrated violence or ill-treatment against any accused person, witness or expert in order to obtain a confession or statement from them shall incur a penalty of five years' imprisonment and a fine....If there were only threats of violence or ill-treatment, the maximum prison term is lowered to six months.

Official claims of institutional safeguards against torture are belied by the refusal of the investigating judge in this case to follow up on the complaints of torture or to order appropriate medical examinations. His conduct follows the pattern noted by the Committee against Torture and can only be seen as negligent in the extreme and a serious violation of defendants' rights.

On August 2, 1999—after the verdicts were reached in this case—new laws took effect in Tunisia that defined the crime of torture, shortened the maximum legal length of garde à vue detention from ten days to three days renewable but once, and enhanced the rights of defendants in garde à vue detention, particularly with respect to the right to request a medical examination and the requirement that the family be informed of the person's detention. If scrupulously enforced, these amendments to the penal code and criminal procedure code would go a long way toward safeguarding detainees from abuse and torture. (See Appendix C.)

Harassment of Human Rights Defenders

The indictment of Radhia Nasraoui in the affair appeared intended to intimidate her and other human rights activists and lawyers. Nasraoui, a prominent human rights defender, is described by the Lawyers Committee for Human Rights as "the victim of a long pattern of official harassment resulting from her position as an outspoken independent critic of the government's human rights record."[15] She has been subjected over recent years to suspicious thefts and vandalism of personal and professional property, including the ransacking of her office and theft of all her case files in 1998, unrelenting police surveillance, and harassment and intimidation by police of her clients and of her daughters Oussaïma and Nadia, aged eleven and seventeen respectively.[16] This harassment is in direct violation of the U.N. Basic Principles on the Role of Lawyers:

> Governments shall ensure that lawyers a) are able to perform all of their professional functions without intimidation, harassment or improper interference; b) are able to travel and to consult with their clients freely both within their own country and abroad; and c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any actions taken in accordance with recognized professional duties, standards and ethics. (Principle 16.)

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[13] Ibid., paragraph 140.

[14] Ibid., paragraph 141. Emphasis added.

[15] Lawyers Committee for Human Rights, *Lawyer-to-Lawyer Action Update*, April 1999. See also Observatory for the Protection of Human Rights Defenders, *Human Rights Defenders on the Frontline: Annual Report 1997-1999*, p. 207, and *Annual Report 1999*, p. 237.

[16] Radhia Nasraoui's and Hamma Hammami's third daughter, Sara, was born on the eve of the second hearing of the case; see below. The Lawyers Committee for Human Rights' *Action Update* of April 1999 called for an immediate end to the harassment of the children. Amnesty International also issued Urgent Actions on the same issue on June 12, 1998 (UA 49/98, AI Index MDE 30/16/98), August 3, 1999 (UA 194/99), and October 21, 1999 (AI Index 30/36/99).

Radhia Nasraoui was abroad when the criminal charges were filed against her in Tunis.[17] The subsequent judicial orders of March 10 and March 30, respectively prohibiting her from leaving the country and from traveling outside the district of Tunis and the suburban districts of Ariana and Ben 'Arous, impeded her ability to consult with and represent those of her clients and their families present outside the capital area. In January 1999, she left Tunis briefly to attend the funeral of her mother-in-law, after seeking permission to do so from the court and receiving no response. For this a Tunis cantonal court gave her on February 11 a suspended prison sentence of fifteen days and a fine.

In 1994 the U.N. Human Rights Committee had noted with concern "the reports on harassment of lawyers [in Tunisia] who have represented clients accused of having committed political offences and of the wives and families of suspects."[18] Recent incidents of persecution of lawyers and others active in the defense of human rights include the arrest in September 1997 of Khemais Ksila, vice-president of the Tunisian Human Rights League (Ligue Tunisienne des droits de l'Homme, LTDH), who was sentenced in 1998 to three years' imprisonment for issuing a communiqué criticizing the deterioration of the human rights situation in his country (he was released conditionally after two years' imprisonment);[19] the detention and questioning of a number of the founding members of the National Council for Liberties in Tunisia (*Conseil national des libertés en Tunisie*, CNLT), which has been refused recognition by the Tunisian authorities; and the denial of passports to lawyers Jameleddine Bida, Anouar Kusri, and Nejib Hosni, among others. These developments were protested by various international human rights organizations.[20] U.N. bodies have also expressed concern about the harassment of human rights defenders, notably the Committee against Torture, the Working Group on Arbitrary Detention (WGAD), and the 1998 and 1999 sessions of the U.N. Sub-Commission on Human Rights. The U.N.'s special rapporteur on torture and the Working Group on Arbitrary Detention have both requested permission from the Tunisian authorities to conduct visits to the country but have received no response as of this writing.

Limitations on Freedom of Expression, Association, and Assembly

[17] Radhia Nasraoui stated in court that she believed the indictment was timed with a view to pressuring her to seek political asylum abroad rather than returning to Tunis. The eleven counts on which she was originally charged entailed a potential maximum sentence of some twenty years.

[18] Concluding Observations of the Human Rights Committee: Tunisia, CCPR/C/79/Add.43, November 23, 1994, paragraph 9. The Committee's comments came in response to the fourth periodic report submitted by Tunisia (CCPR/C/84/Add.1) pursuant to article 40 of the International Covenant on Civil and Political Rights. Tunisia's fifth report to the Human Rights Committee, due February 4, 1998, has not yet been submitted.

[19] Observatory for the Protection of Human Rights Defenders, *Human Rights Defenders on the Frontline: Annual Report 1997-1998*, p.202, and *Annual Report 1999*, p. 238.

[20] See, for example, the numerous communiqués issued by the Paris-based Comité pour le respect des libertés et des droits de l'Homme en Tunisie, available online at <http: //www.maghreb-ddh.sgdg.org>, Amnesty International, *Human Rights Defenders in the Line of Fire* (London: Amnesty International, November 1998), AI Index: MDE 30/20/98, "Tunisia: Human Rights Defenders at Risk," a joint statement issued May 26, 1999 by Amnesty International, Committee To Protect Journalists, Human Rights Watch, Lawyers Committee for Human Rights, Reporters sans Frontières, and the Observatory for the Protection of Human Rights Defenders, and a joint letter, dated November 5, 1999, signed by Amnesty International, Human Rights Watch, and Reporters sans Frontières, and addressed to the E.U. foreign ministers on the occasion of the approaching E.U. Association Council meeting with Tunisia, available at <http://www.hrw.org/hrw/press/1999/nov/tunisia-ltr-eng.htm>.

Reports by human rights organizations document systematic restrictions on freedom of expression, association, and assembly.[21] Resolutions and recommendations by U.N. human rights bodies reaffirm these findings. The restrictions include laws that are frequently used against government critics and that provide prison sentences for defaming public authorities or "the public order," spreading "false information," and "inciting" the public to violate the laws; the refusal to grant legal recognition to independent organizations founded by potential critics of government policies, and obstacles placed in the way of public meetings and assemblies when the organizers are politically independent. In addition, all major print and broadcast media adhere scrupulously to the government line and avoid any criticism of it.

The rights of freedom of expression and association are guaranteed by the International Covenant on Civil and Political Rights and other human rights treaties that Tunisia has ratified and that have supremacy over national law. In this case, the detainees were arrested and detained on charges relating to the peaceful exercise of the right to freedom of expression and association. No evidence was introduced to show that any of them had practiced or advocated violence. But, in this and other political trials, the Tunisian courts failed to uphold the principles of international human rights treaties to which Tunisia is a state party when confronted with domestic laws and practices that contradict these principles.

The Judiciary's Lack of Independence and Denial of the Right to a Fair Trial

Tunisia's constitution affirms, in article 12, that "Every accused person shall be presumed innocent until his guilt be proven in accordance with procedures offering him necessary guarantees for his defense." Article 65 states, "The judicial power shall be independent: In the performance of their duties, judges shall be subject to no authority other than that of the law."

Despite these provisions, human rights experts and observers, including the U.N. Human Rights Committee,[22] have raised concerns about the influence of the executive branch over decisions by the judiciary, and the lack of respect given the right to a fair trial. In the case at hand, these issues were dramatized most clearly by the fact that neither the state prosecutor general nor the investigating judge responded, as required, to the repeated requests by the detainees and their lawyers for medical examinations[23] and for investigations into the allegations of torture and ill-treatment; nor did they allow the defense to present evidence that the arrest dates contained in the police record were false.

V. The Findings of the Investigating Judge

On April 3, 1999, the investigating judge formally concluded his investigation into the case, which was assigned docket number 1/7930l. His sixty-six-page decision (*la clôture de l'instruction*) uncritically reproduced the statements attributed by the police to the detainees in which they purportedly confessed to and implicated one another in activities of the Union of Tunisian Communist Youth and the PCOT. The activities described revolved around obtaining, reading, and discussing PCOT literature, recruiting others into the groups, and stimulating protest activities against the present government. There were no allegations of violent activities, actual or planned.

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[21] See Article 19, *Surveillance and Repression: Freedom of Expression in Tunisia* (London: Article 19, May 1998), Human Rights Watch, *Human Rights Watch World Report 2000* (New York: Human Rights Watch, December 1999), and Reporters sans Frontières, *Tunisie: Silence, on réprime*, 1999, online at <http://www.rsf.fr/carte/mo/rapport/tunisie/tunisie.html>.

[22] See, for example, the U.N. Human Rights Committee, comments on the fourth periodic report of Tunisia, cited above. For earlier reports of trial observations in Tunisia, see Middle East Watch (now Human Rights Watch) and the International Human Rights Law Group, *Tunisia: Military Courts That Sentenced Islamists Leaders Violated Basic Fair-Trial Norms* (New York and Washington: Human Rights Watch and the International Human Rights Law Group, October 1992); Euro-Mediterranean Human Rights Network, *Mission d'observation en Tunisie: Rapport à l'occasion du procès en appel de M. Khemais Ksila* (Copenhagen: Euro-Mediterranean Human Rights Network, 1998); International Federation of Human Rights and the Observatory for the Protection of Human Rights Defenders, "Une détention manifestement arbitraire: rapport d'observation judiciaire au procès de Khemais Ksila," *La Lettre de la FIDH*, July 30, 1998-August 13, 1998, no. 756-758, pp. 16-26.

[23] For example, lawyer Anouar Kusri submitted one such request for a medical examination in a letter dated April 25, 1998 to the investigating judge, on behalf of detainee Lotfi Hammami. It noted that Hammami had testified before the investigating judge on March 18, 1998 that he had been tortured into signing his police statement without reading it and was still suffering from injuries to his sexual organs sustained during the torture. The letter noted that Hammami had requested to be seen by a medical specialist, but the prison administration referred him instead to a general practitioner. It asked the investigating judge to order an examination by a specialist.

The investigating judge's report also noted that all of the detained defendants had repudiated before him the entire contents of those statements. It did not, however, record or give consideration to their claims of having been tortured and coerced into signing statements while under police interrogation, or the claims that the recorded arrest dates were false. It similarly made no reference to demands by the accused and their lawyers that these claims be investigated, by such means as medical examinations of the detainees, the examination of the police detention registers, and calling witnesses to the arrests to give statements.

The investigating judge appeared to rely primarily on the disputed statements attributed to the defendants by the police, and on the literature allegedly confiscated from some of the detained. That printed material, which formed the basis for the charges of incitement, spreading "false information," and defamation on which eighteen of the defendants were ultimately convicted, was never presented in court or shown to the defendants at any stage of the judicial process. The defense lawyers were permitted to view it in the chambers of the investigating judge but were not permitted to remove or photocopy it, and their requests that the court produce it for examination during the trial went unanswered.

The investigating judge's report gave no indication that, in the year that had passed since the accused had appeared before him, any further investigation had been conducted into the case. There was no record of efforts to corroborate information, summon witnesses for direct questioning, or any other procedure of establishing the veracity of statements denied by the accused on grounds of torture.

The detained accused were remanded in detention until trial. As for the two defendants who had been free pending trial, charges against Abdel Majid Sahraoui were dropped and the restriction order against him was lifted, and all of the charges against Radhia Nasraoui were dropped except that of "assisting in the holding of meetings of an association inciting hatred." The substance of that charge was an accusation that she had allowed her office to be used by certain of the accused (who happened to be her clients, individually, in other pending cases) to meet with her husband, Hamma Hammami, to discuss political matters relating to the PCOT and its student wing. (In her trial more than one year later, Nasraoui flatly denied the charge.) The investigating judge ordered that the travel restrictions imposed on Nasraoui one year earlier be maintained until her trial.

The case was transferred to the Tunis Court of First Instance's Correctional Division, as warranted by the investigating judge's decision to file the charges as *délits* rather than as more serious *crimes*, as they had been originally presented.[24] The charges, which are set out in Appendix A of this report, remained quite grave in that they entailed maximum sentences of between twenty and twenty-four years in prison for all but two of the defendants.

Under article 84 of the code of criminal procedure, pretrial detention (*détention préventive*) is an "exceptional measure," a notion consistent with international standards.[25] Article 85 states it is to be used only when it "seems necessary as a security measure to prevent new offenses, to guarantee execution of the sentence or as a means of ensuring the integrity of the investigation." President Ben Ali underscored this principle in a speech delivered on July 31, 1996 before the Higher Council of the

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[24] Tunisian law specifies three categories of offenses, which are, from the least to the most serious: *mukhalafa* (*infraction* in French), *junha* (*délit* in French), and *jinaya* (*crime* in French). The characterization of an offense affects, among other things, the jurisdiction in which the charges must be heard, the maximum penalty, and the length of pretrial detention permitted. Cases of *mukhalafa* or junha, which together correspond roughly to "misdemeanors" in English, are tried by the court of first instance and may subsequently go to the court of appeal and, in the last instance, to the court of cassation. The latter rules only on errors or misapplication of the law and does not reexamine the facts of the case. Cases of *jinaya*, the more serious category of offenses, are tried by the criminal chamber of the court of appeal; no appeal can be lodged but the defendants may seek a review of the case by the court of cassation.

[25] Article 9(3) of the ICCPR states that "it shall not be the general rule that persons awaiting trial shall be detained in custody..." Principle 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988)) provides:

> Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.

Magistracy, when he exhorted judges to "exercise greater attention before authorizing preventive detention of defendants, considering that it is an exceptional measure and that the rule should be freedom of the accused..."[26]

Under article 85 of the code of criminal procedure, the maximum period for which a person can be held in pretrial detention on charges limited to *délits* is nine months, and for a *crime* fourteen months. By the time the judge completed his investigation, the defendants had already been in detention for between eleven-and-a-half and thirteen-and-a-half months. Even though the charges had been reduced to *délits* and all of the defendants in custody had already spent well over the legal limit of nine months in pretrial detention for *délit* charges, the judge remanded them all back to custody pending their trial.

[26] "President Ben Ali Calls on Judges to Avoid Pre-Trial Delays," *Tunisia Online*, July 31, 1996.

A further point of concern was that the defendants were charged with "acts of incitement to hatred or to racial or religious fanaticism" under the penal code's article 52bis, which defines these as "terrorist" offenses and thus an aggravating circumstance for the other charges. A conviction under this article restricts the judge's discretion in sentencing and imposes on all offenders a mandatory five-year period of "administrative control" following their release from prison.[27] Since article 52bis was added to the penal code in November 1993, it has been used often to imprison suspected dissidents who have neither used nor advocated violence. Invoking article 52bis serves to taint as violent "terrorists" those imprisoned for activities relating to the exercise of freedom of expression and association. (The defendants in this case were all ultimately convicted, but not under the provisions of article 52bis.)

For a number of reasons, including the presence among the defendants of well-known human rights lawyer Radhia Nasraoui, the grave accusations against the accused, and the grossly unfair procedures, the trial attracted international attention. A wide range of human rights organizations and lawyers associations sent observers to attend the trial.[28] In addition, the president (*bâtonnier*) of the Paris Bar Council, Maître Dominique de la Garanderie, was mandated by the Observatory for the Protection of Human Rights Defenders to act alongside Tunisian defense lawyers on behalf of Radhia Nasraoui. Several members of the Moroccan and Algerian bars also came with the intention of joining in the defense but they, like Maître de la Garanderie, were prevented by the court from doing so, despite agreements on reciprocity and cooperation in judicial affairs between Tunisia and the other states. The court's justification for this refusal, which appears in its written judgment (see Appendix B), was assailed by defense lawyers. Representatives of diplomatic missions also attended various sessions of the trial, including representatives of Belgium, Canada, France, the Netherlands, Sweden, the United Kingdom, and the United States.

The trial also attracted attention in Tunisian civil society, although Tunisian media ignored it completely, in keeping with its approach to human rights violations at home.[29] The trial audience included members of the Tunisian Human Rights League, the National Council on Liberties in Tunisia, and the Tunisian Association of Democratic Women (*Association tunisienne des femmes démocrates*, ATFD). Over one hundred of Radhia Nasraoui's colleagues signed on as co-counsels in her defense. The Tunisian Bar Council officially assigned members to the defense team for Nasraoui, herself a council member. The Tunisian Association of Young Lawyers (Association Tunisienne de Jeunes Avocats) also officially provided lawyers to assist in the defense of Nasraoui and the other defendants.

For their part, various branches of the Tunisian security forces were tasked with the close and conspicuous surveillance of the international observers in addition to their ongoing surveillance of Tunisian human rights lawyers and defenders.

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[27] Article 52bis of the penal code states:

> The perpetrator of an offense defined as terrorist shall be subject to the penalties provided for the offense itself. The penalties cannot be reduced by more than one-half.
> Any offense connected to an individual or collective enterprise whose objective is to cause harm to persons or property, through intimidation or terror, shall be considered terrorist.
> Acts of incitement to hatred or to racial or religious fanaticism, regardless of the means used, shall be treated in the same way.
> The imposition of administrative controls for a period of five years is compulsory. The various penalties shall not be served concurrently...

[28] These included, besides the organizations issuing the current report, the Euro-Mediterranean Network for Human Rights, the Arab Organization for Human Rights, the International Commission of Jurists, the Swiss League of Human Rights, the Turkish Association for Human Rights, the International Bar Association, l'Association des Avocats Européens Démocrates, l'Union Internationale d'Avocats, l'Association des Juristes Progressifs, l'Association Libre d'Avocats, la Fédération Nationale des Unions de Jeunes Avocats (France), bar associations from Morocco, Barcelona and Madrid (Spain), and Agen, Haut-de-Seine, and Paris (France). The Euro-Mediterranean Human Rights Network issued a report on the trial, *Torture, Arbitrary Detention and Unfair Trial in Tunisia: The Trial against Radhia Nasraoui and Twenty Co-Defendants* (Copenhagen: EMHRN, November 1999). The Fédération Nationale des Unions de Jeunes Avocats (France) also issued a report on its trial observation. It may be obtained from the organization's web site, <http://www.fnuja.fr>, or from the author, Maître Laurence Morisset, 7 bd. Palissy, B.P. 166, 47300 Villeneuve-sur-Lot, France, fax 33.(0)5.49.63.69, e-mail: <laurence.MORISSET@wanadoo.fr>. French lawyer Daniel Soulez-Larivière, who observed the trial on behalf of Amnesty International, described the July 10 hearing in "Le 'Crime' de Radhia Nasraoui," *Le Nouvel Observateur*, July 22, 1999.

[29] In 1994, the U.N. Human Rights Committee criticized limitations of freedom of opinion and expression, noting provisions of the press code that give rise to self-censorship of the media. In June 1997 the Tunisian affiliate of the World Association of Newspapers (a trade association of publishers) became the first to be expelled from membership for having failed to work to defend freedom of the press. See Human Rights Watch, *Human Rights Watch World Report* (New York: Human Rights Watch, 1997), p.353.

VI. The Trial at First Instance

Environment and Response to Presence of Observers

On May 15, 1999 the trial opened in the Sixth Correctional Chamber of the Court of First Instance in Tunis. The presiding judge, Muhammad Faouzi Ben Amara, welcomed the foreign trial observers briefly in his office just before opening the hearing. Throughout the trial, foreign observers were required to leave their passports or other identification with the police upon entering the courtroom, and to collect them at the end of the hearing. Security officials refused to allow the president of the Paris Bar Council to enter the court as long as she was wearing her lawyer's robe. During the third session of the trial, the judge asked court security officers to inquire about the identity of certain persons taking notes in the courtroom (primarily the international observers).

Physically, the courtroom was noisy and uncomfortable for defendants, lawyers, and observers alike. The presiding judge sat behind an elevated table, with the two other members of the bench to his right and left. To the right of the judge as one faced the bench, at a detached desk, sat the prosecutor. To the left of the judge sat the court clerk, who wrote the minutes of the hearing as dictated to him by the judge. The defendants sat on backless benches in front of the judges' elevated bench, and behind the defendants, at the barre, stood and sat the defense attorneys. The barre physically separated the defense lawyers from their clients. The area between the attorneys and the judge's bench was filled with approximately a dozen uniformed security officers.

While the judge benefited from a microphone, there was no such provision made for the defense team, despite the fact that approximately ten meters separated them from the judge. The defendants, when called upon to speak, would walk to a stand located between their benches and the judges' bench. Audience members frequently had to strain to hear defendants and defense attorneys speak.

The interaction between the judge and the defense attorneys during the trial was tense. The judge frequently slapped his hand on the table and used his microphone to shout down defendants and lawyers, cutting them off after a few minutes and thereby preventing them from developing their defense as they saw fit. When some of the defendants sought to name their alleged torturers, the judge cut them off and then refused to enter those names into the summary of the proceedings. Frequent interventions by the judge, the defense attorneys' often frantic efforts to intervene on behalf of their clients during their examination, the lack of amplification of the defendants' voices, and the generally hostile and dismissive attitude of the presiding judge conspired to make the proceedings chaotic at times.

Hearing of May 15, 1999

In the first hearing, which opened late in the morning in a packed courtroom, the authorities failed to bring the three women defendants, Imen Derouiche, Afef Ben Rouina, and Hinda Aarova, to court. The presiding judge read into the record the names of over one hundred lawyers signed on as co-counsel for the defense, refused the request by the defense lawyers for their Moroccan, French, and Algerian colleagues to be allowed to plead in the case, and announced that the trial would be postponed due to the absence of the three above-named defendants. He made no attempt to query the representative of the state as to the reason for the absence of the three women, all of whom had been in custody for one year or longer, or to ascertain whether they might still be brought to the hearing.

Lawyers for the defense applied for bail for all the detained defendants, pending resumption of proceedings, and for lifting the travel restrictions against Radhia Nasraoui. The prosecution sought the continued detention of the defendants in custody and the maintenance of the restrictions on Nasraoui. The hearing was adjourned and one and-a-half hours later the defense was informed that their petitions had been refused and the hearing was postponed to June 19, 1999. The text of the judgment, issued on July 14,[30] records these decisions as they were transmitted to the lawyers, with no discussion of the arguments or justification for the court's rejection of the defense's petitions. This meant that seventeen persons as yet not convicted of any offense spent a further month in prison due to the court's acquiescence before the failure, wilful or otherwise, of the authorities to bring to court three of the defendants who were in their custody.

Hearing of June 19, 1999

[30] Criminal Judgment in case no. 21019/099/6, dated July 14, 1999, Tunis Court of First Instance. The judgment is thirty-three pages in length.

At the second hearing all the accused were present with the exception of Radhia Nasraoui, who the evening before had given birth to a daughter. The defense accordingly sought an adjournment. Interventions from certain of the accused, complaining that prison authorities were interfering with their preparation for university examinations, that they were being illegally held beyond the pretrial detention limits, and that their detention was on political grounds were cut short and were not recorded in the written judgment.

The defense lawyers made the same applications as in the first hearing, for the release on bail of all the detained defendants and for lifting the travel restrictions on Nasraoui, as well as for the intervention of the court with the prison authorities to enable the students among the detained to pursue their university study and examinations. Application was also made for medical examinations to be performed on Ali Jallouli, Lotfi Hammami, and Chedli Hammami, who said they still bore the traces of torture from their interrogation. The defense noted that previous written applications to this effect by Radhia Nasraoui had been refused by the prosecutor and the investigating judge. The defense counsel further requested that the court investigate the challenges to the veracity of the arrest dates as recorded in the statements attributed by the police to the defendants. The court sided with the prosecution in refusing all of these demands, and rescheduled the hearing for July 10.[31]

Hearing of July 10, 1999

The trial resumed at 11 a.m. on July 10 with the habitual roll call of the lawyers and the defendants. The session was to last through the night till dawn the next day, indicating the determination of the presiding judge to conclude the trial in this session no matter how long it would take.

The judge began his examination of the defendants, first the men and then the women. Throughout the judge's questioning, the defendants, almost without exception, alleged that the police subjected them to physical and psychological torture and ill-treatment while they were being interrogated in incommunicado detention.

The methods of torture described included tying the detainees' hands behind their back and hanging them from the ceiling by the wrists; tying the detainees' wrists together under their knees, passing a pole between the arms and the thighs and laying the pole on two tables (both are common methods of torture in Tunisia; the latter is known as the *poulet rôti*, chicken on the spit); sleep deprivation; beatings, including on sensitive parts of the body; sexual abuse and threats of rape; beating the detainees on the soles of the feet with sticks and then dousing them with cold water (known as *falaqa*); and hanging the detainee upside-down from the ceiling by the feet. Detainees said they had also been spat upon and insulted.

Najib Baccouchi stated in court that, while hanging upside down in this manner, his interrogators tied one end of a string around his sexual organs and tied the other end to the doorknob of the interrogation room, so that whenever a person came in or out of the room Baccouchi's entire body would be pulled by the string attached to his genitals.

Imen Derouiche stated in court that while under interrogation during incommunicado detention, she was injected with a blue liquid that caused her severe physical pain, and that one of her interrogators undressed in front of her and threatened to rape her in front of her fiancé (Noureddine Bentcha, a fellow detainee). When she complained that she had arthritis and a heart condition, she was referred to a doctor, whose response, she testified, was to advise her captors how to torture her in light of her medical condition.

The detainees insisted that they had been forced to sign the police statements under duress without knowing their contents. They also requested that they receive medical examinations in order to document their torture and also to get treatment. Lotfi Hammami, for example, was at the time of his trial still complaining of genital dysfunction as a result of the torture. Some of the detainees, such as Ali Jallouli, asked that the state initiate proceedings against the persons who tortured them. The judge's response to Jallouli was that it was not the judge's role to do so. While it is not the role of a trial judge to file charges against presumed torturers—this is the responsibility of the prosecutor's office—the judge has a solemn obligation to try to establish whether a defendant has been tortured during interrogation, and thus, in accordance with Tunisian law and article 15 of the Convention against Torture, his or her statements are tainted and inadmissible as evidence.

Judge Ben Amara never questioned the prosecutor about these claims, and rejected once again all requests for medical examinations. The judge's behavior was all the more striking since, other than the written statements attributed to the detainees, no other evidence against them was presented to the court during the trial. Moreover, in its written judgment, the court justified the

[31] The written judgment notes the requests for examining the three detainees and the police records of detention, but gives no reason for rejecting these requests.

refusal to order medical examinations on the grounds that "a year and-a-half [had passed since] the detention and the court saw no visible signs or traces of external violence" on the defendants. This reasoning ignores the plight of defendants whose alleged injuries would be detectible only by a specialized examination. For example, Hafedh Mannai alleged injury to a kidney and Lotfi Hammami to his genitals.

Frequently, the judge interrupted the detainees during their explanations, requiring them to summarize their arguments or to focus on the merits of the accusations made against them instead of describing their treatment since arrest. When Imen Derouiche attempted to state the name of the police officer who had threatened her with rape, the judge intervened and prevented her from doing so. Taha Sassi's insistence, over the judge's objections, on speaking about his experience of torture and demanding that his complaint be investigated earned his ejection from the courtroom.

The defendants' testimonies of torture were omitted from the court's fourteen-page-long summary of the proceedings, which forms part of its written judgment. The judgment employs the word torture only rarely, often rephrasing the defendants' complaints of torture as "extremely difficult circumstances of detention" and "use of violence," sometimes adding "on sensitive areas of the body."

The fact that the summary contains even limited references to torture is exceptional in Tunisia. In most trials where defendants allege torture, their allegations simply do not appear in the official summary of the proceedings. In this trial, the references to torture were due most likely to the presence in court of a large number of Tunisian lawyers and foreign observers, and to the lawyers' insistence that when the judge read the detainees' claims into the record that "torture" be mentioned. With respect to the testimony by defendants Bentcha, Derouiche, Sassi, and Lotfi Hammami, the lawyers were able to ensure that the word was recorded.[32]

Challenges to the Recorded Dates of Arrest

[32] For example, in the summary of Hammami's court appearance on July 10, the written judgment notes, "Attorney [Mokhtar] Trifi intervened, asking the court to note [in the record] statements of his client regarding the torture he experienced, including that the investigator used violence on sensitive areas of the body."

Virtually all the detainees challenged the date of arrest recorded in their police statements, stating that they had in fact been arrested on earlier dates. A number of them stated that there were witnesses to their arrest or other means of corroborating the real date.[33] The court did not summon any of these witnesses or examine any of the exculpatory evidence that was proposed.

Repudiation of the Contents of the Statements to Police

Each of the detainees repudiated completely the contents of the statements *(procès verbaux)* attributed to them by the police. Almost without exception, they said that they had been forced to sign them under the threat or use of torture, and that they had signed them without knowing the contents. Lotfi Hammami noted that the police statement for him and two other detainees contained the same "confessions" verbatim. Rachid Trabelsi stated that he was forced to sign his police statement while hanging upside down from his feet in an interrogation room. He noted that though his purported statement included information used to bring charges against Imen Derouiche, he had not known her before the commencement of the trial and had never met her until being brought before the court during the hearing of June 19, 1999. Lotfi Hammami and Ali Jallouli, whose testimonies were used to implicate Radhia Nasraoui in the trial, denied having made the comments about Nasraoui in their police statements.[34]

The Detention and Interrogation of Hamma Hammami's Relatives

Three members of the family of Hamma Hammami were defendants in this trial, in addition to his wife: his brother, Chedli Hammami, and two of Hamma's nephews, Lotfi Hammami and Rachid Trabelsi. All three said they had been tortured during their police interrogation. Rachid Trabelsi said most of the questions during interrogation concerned the whereabouts of his uncle, who had been in hiding since the beginning of the case. In recent years the Tunisian authorities have often resorted to arresting, imprisoning, and otherwise harassing the relatives of human rights activists, political opponents, and government critics.[35] The court's judgment records the statement of Afef Ben Rouina in which she maintained that the purpose of her detention was to pressure her fiancé, student activist Taher Gargoura, to reveal the whereabouts of Hamma Hammami.

Denial of the Substance of the Charges

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[33] The written judgment cites Qais Oueslati stating that there were witnesses to his arrest; Habib Hasni naming three students who witnessed his arrest; Chedli Hammami naming five witnesses to his arrest; and Imen Derouiche referring the court to the records of Ar-Rabita Hospital to which she said she was taken during her incommunicado detention as a consequence of her ill-treatment by the police.

[34] Lotfi Hammami stated that during his interrogation police officers displayed to him portions of a legal file pertaining to a traffic accident involving his father a few years earlier. The elder Hammami had in this matter hired Radhia Nasraoui to represent him. Lotfi stated in court that the particular elements of the file that the police showed him during his interrogation could have come only from the file kept on the case by Nasraoui, his father's lawyer. This file had been among those stolen from Nasraoui's law office when it was ransacked by persons unknown on the night of February 11-12, 1999, ten days before Lotfi Hammami's arrest. His testimony about this incident lent credence to the suspicion that the police were responsible for carrying out or ordering the break-in at Nasraoui's office. The written judgment includes, at the insistence of the defense, an oblique reference to this, stating that the accused used go to the office of Radhia Nasraoui in regard to a case involving an accident in which his father was a victim and that "the investigator showed that file to him when he was about to question him." (See Appendix B.)

[35] Such practices have been used against the brother of former LTDH President Moncef Marzouki, Mohamed Ali Bedoui, who has served two six-month sentences since 1998 because he refused to submit to an extrajudicial requirement that he sign in daily with the police. In July 1999, Abderraouf Chammari, the brother of exiled human rights activist Khemais Chammari, received a twelve-month sentence for a remark he allegedly uttered in a private conversation that was deemed defamatory of high officials. He was released after serving two months. Scores of women have suffered harassment because of their marriages to Islamist opponents in jail or exile. See, for example, Amnesty International, *Tunisia: A Widening Circle of Repression* (London: Amnesty International, June 1997), AI Index MDE 30/25/97, and Comité pour le respect des libertés et des droits de l'Homme en Tunisie, *Otages et victimes* (Paris: CRLDH Tunisie, March 1999).

Many of the defendants challenged vigorously the substance of the charges made against them, some of them clarifying their relationships with the others in response to questions from their lawyers. Rachid Trabelsi, for example, denied any involvement in politics whatsoever, stating that his only contact with university student organizations occurred in 1992 when he sought the help of the General Union of Tunisian Students (UGET) in arranging for a scholarship. Imen Derouiche spoke proudly of her involvement with the UGET, but denied any activity with the PCOT or its youth organizations. Afef Ben Rouina denied any political activities. Others such as Haikal Mannai admitted to peaceful political activities, but declared that these were protected by the constitution. Ali Jallouli took a similar approach, noting that he had been imprisoned before on similar charges and, on those occasions, adopted as a prisoner of conscience by Amnesty International and supported by other international rights organizations.[36]

When it was Radhia Nasraoui's turn to respond to the charges against her, she denounced them as part of a pattern of state harassment against her and her daughters—the pattern of which she described—prompted by her defense of human rights. She vehemently denied that she provided her office as a space for meetings of any illegal associations, stating that, as a law office, it was wholly dedicated to serving her clients' legal interests. She further questioned how there could have been a secret meeting at her office involving her husband Hamma Hammami when it was well known that the premises were under twenty-four-hour police surveillance.

Aside from the "confessions" of the defendants themselves to the police during incommunicado detention, no physical evidence was produced or examined during the trial, and no other witness called. For example, the "inciting" and "defamatory" leaflets, whose alleged distribution and possession most of the defendants were denying, were never produced by the prosecution in the open courtroom, in spite of defense requests. (The defense team had been able to view the tracts in the court chambers when the case was before the investigating judge but was not permitted to photocopy them so as to examine them closely together with their clients.)

At 4:30 P.M., after the end of Radhia Nasraoui's interrogation, the judge adjourned the hearing for a recess. The hearing resumed at 6:00 P.M. with a roll call of the defense attorneys present. Approximately twenty attorneys, among the more than one hundred who had signed on as defense co-counsels, argued on behalf of the accused. The lawyers made several arguments attacking the procedural irregularities, the constitutionality of the laws under which charges were brought, and the lack of evidence to support the state's arguments.

The defense arguments can be summarized as follows:[37]

1. Almost all of the detainees maintained that the police had falsified the dates of their arrest and subjected them to ill-treatment and torture to secure their signatures on statements whose contents they did not know.

2. Although these detainees had registered these allegations before the investigating judge and requested medical examinations to document the abuse, those examinations had been refused without explanation, even though Tunisian law gives detainees the right to request and receive medical examinations.

3. Testimonies and confessions obtained under torture were being improperly used as evidence against the defendants.

4. International human rights treaties ratified by Tunisia take precedence over domestic law, in accordance with the Tunisian constitution. The defense lawyers referred in particular to the Convention against Torture's definition of torture and its affirmations that states must investigate torture allegations and that statements made as a result of torture are inadmissible in court.

5. The arrest and interrogation of Bentcha, Jallouli, Oueslati, and Sassi were illegal. Article 11 of the code of criminal procedure prohibits the arrest and interrogation of persons accused of offenses classified as *crimes* unless the state prosecutor general gives formal authorization for such actions (*commission rogatoire*), other than in cases of *flagrante delicto* (being caught in the very act of committing an offense). The defense argued that since the state was not alleging that these defendants had been arrested *in flagrante delicto*, and since their arrest and interrogation predated the prosecutor's authorization, their arrests were illegal and the statements attributed to them by the police were therefore inadmissible as evidence.

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[36] See Amnesty International Urgent Action 209/96, AI Index MDE 30/24/96, August 27, 1996.

[37] The arguments are also summarized in an eleven-page memorandum prepared by the defense, dated May 15, 1999 and addressed to the presiding judge. A French translation of the memorandum appears as an appendix to the report on the trial by the Euro-Mediterranean Human Rights Network (see footnote 1).

6. Procedural missteps rendered the police statements of Aaroua, Baccouchi, Derouiche, Gasmi, and Trabelsi inadmissible as evidence. Article 16 of the code of criminal procedure requires the police to hand over the suspect, the police statements, and any confiscated material to the state prosecutor general or the investigating judge as soon as either of these officials formally take up the case. The defense maintained that the police interrogated these suspects and issued *procès verbaux* in their regard *after* the investigating judge had taken up the case as of March 3, 1998, and that as a consequence these *procès verbaux* were therefore void and inadmissible as evidence.

7. The detention of the defendants before their trial was arbitrary. Tunisian law clearly intends pretrial detention to be an exceptional measure, justified only by special considerations. Nevertheless, the judges handling this case kept sixteen of the defendants in custody for eleven months or longer before deciding to charge them only with misdemeanors (*délits*)—for which the maximum period of pretrial detention under the law is nine months—and then still refused to release them until the conclusion of the trial.

8. Article 52bis of the penal code was inapplicable. The defense asserted that the PCOT, while an opposition party, was not a terrorist group or one that advocated violence or incited racial or religious hatred.

9. Evidence to support charges of defamation was lacking. The investigating judge and the prosecutor relied on articles appearing in the October 30, 1996 edition of *al-Badil*, the banned PCOT newspaper, to support the charges of defamation. These articles criticized the "submission of the national economy to imperialist states and institutions," attacked state policies based on "the oppression of the people," and bemoaned "unjust trials" in the country including the "fabrication of a drug case against a professor." The defense claimed that these were criticisms of policies and could not be seen as attacks against the individuals behind the policies or against the institutions in question.

10. Evidence to support charges of "spreading false information capable of disturbing public order" and "inciting the public to break the law" was lacking. The state failed to specify which information was false, how it was false, which laws the defendants were inciting the public to violate, or which public authorities had been defamed.

11. The Law Regulating Public Meetings was inapplicable. This law by its own terms applies to public meetings, and therefore was wrongly applied to private meetings alleged to have taken place in a private house or office.

12. The statements by Ali Jallouli, Najib Baccouchi, and Lotfi Hammami implicating Radhia Nasraoui were inadmissible. In the police statements attributed to these defendants, they allegedly stated that when they were in the office of Radhia Nasraoui (who was their attorney in other cases arising prior to the present one), she had arranged meetings between them and her husband, Hamma Hammami, and offered her office as a site for these meetings. The lawyers claimed that the contents of the defendants' discussions with Nasraoui were privileged attorney-client communications and therefore inadmissible as evidence.

On the basis of their arguments, the attorneys petitioned the court, prior to concluding the trial, to release the detainees, refer them to medical examinations, correct the recorded dates of their arrest, and remove the travel restrictions on Radhia Nasraoui.

The defense pleas lasted from 6 P.M. until about 4:45 A.M., with a break between 11:30 P.M. and 1:00 A.M. The extreme length of the hearing limited the right of the detainees to adequate representation, as many of the attorneys' pleadings were abbreviated or rendered less effective due to their physical exhaustion. Additionally, in Tunisia, there is a tradition that, when several attorneys argue on behalf of the same client, they argue in decreasing order of age. This meant that the older, better-known lawyers, many of whom represented their colleague Radhia Nasraoui only, argued during the evening while many of the younger lawyers who were defending the other detainees, did not get their turn until the early hours of the morning. The lesser-known defendants were especially hurt by the fact that the trial was conducted in a marathon overnight session.

The state prosecutor said little during the hearing. When prompted by the judge to respond to legal arguments or requests of the defense attorneys, he would respond simply by requesting that the court "apply the law," without further elaboration. He behaved as if he felt that the disputed confessions would be sufficient to persuade the judge to convict and that no other evidence need be presented to the court.

At 4:45 a.m. on July 11, as the first rays of sun entered the courtroom, the trial came to an abrupt end, during the arguments of Jameleddine Bida, one of the lawyers representing several of the accused. Bida pointed out to the court that an article in the French weekly *Le Nouvel Observateur* that described Tunisia as a "police state" had been distributed in Tunis without the government lodging charges of defamation against it. (Labeling Tunisia a "police state" was one basis for charges against some of the defendants. For example, the written judgment states that Lotfi Hammami, in his disputed police statement, confessed to using this phrase as a slogan to stir up antigovernment activities on campus.) After Bida used the phrase to illustrate his point about selective enforcement of the law, the judge instructed the court clerk to record Bida's presentation as if the lawyer had himself characterized Tunisia as a police state, and prevented Bida from continuing his arguments. The defense team objected, and, after a heated exchange with the judge, withdrew en masse to protest the judge's actions toward their colleague.

The judge immediately ruled to refuse all the demands of the defense, including the release of detainees, referral to medical examinations, correction of the dates of arrest in the record, and removal of travel restrictions on Radhia Nasraoui. He announced the end of the trial and the reconvening of the court on July 14 to announce the verdict.

Verdict and Sentence

The court reconvened on the morning of July 14 and read its judgment. All of the defendants were found guilty—all except Nasraoui on multiple charges—and sentenced to prison terms. The defendants who had been in pretrial detention each received prison terms of between fifteen months and four years. The three sentenced in absentia each received nine years and three months in prison. Radhia Nasraoui was given a six-month suspended sentence. (See Appendix A for a chart of the sentences.) None of the defendants were found guilty under article 52bis of the penal code, and therefore were not subject to judicially mandated administrative control after their release. Both the prosecutor and the defense appealed the court's decision, and the appeal was scheduled for August 3.

The written judgment begins with a fourteen-page summary of the proceedings. The summary omits some of the key defense arguments, gives scant attention to the testimony to the court by the accused, and omits their graphic descriptions of torture. Coming to its own findings, the court summarized the case against the defendants as presented in the report of the investigating judge. Then, noting that the defendants stuck to their denials of culpability in court, the court held that the denials are refuted by "their explicit confessions, and their testimony implicating one another other which was supported by confiscated materials"—even though the printed materials were never introduced in court as evidence, in spite of defense requests that they be presented. The court then proceeded to consider the case presented by the defense. (This section of the judgment is translated in full in Appendix B.)

Rejecting the defense's arguments that the use of torture and procedural flaws rendered the police statements inadmissible, the court referred to article 154 of the code of criminal procedure, which provides that such statements are to be considered reliable unless evidence to the contrary is provided "in written form or in the form of witness testimony." The court dismissed the challenges made to the police statements by the accused, concluding that they could not be considered witnesses, but rather were looking to escape punishment and had moreover brought no successful challenge against the statements. It later repeated the same point in defense of its refusal to bring the arrest register into evidence, arguing that no proof of exceeding the limits of the duration of garde à vue detention had been offered except the unsupported statements of the accused themselves.

The court also found the claims of torture to be unreliable on the grounds that these claims related to events that had occurred a year and-a-half earlier, and the court had not seen any marks of violence or anything else to corroborate the claims. On the same grounds, the court considered it had acted correctly in refusing to order medical examinations.

The one argument on the merits that the court chose to address in its judgment was the challenge to charges based on the Law on Associations (Law 154 of 1959). It ruled that the defendants' activities were encompassed by the definition of association under the law, and that their purported statements to the police established that they had transgressed the law's prohibition of associational activities that "aim to violate the law or are of a nature to disturb the public order." Finally, the court addressed and dismissed the objections to its refusal to allow non-Tunisian lawyers to sign on as co-counsels for the defense.

The judgment did not deal with the remainder of the arguments raised by the defense, including the precedence of international human rights treaties over domestic legislation and the non-substantiation of charges related to defamation, spreading false information, and inciting the public to break the law.

By its cavalier dismissal of defense arguments regarding procedure, the court's judgment confirmed a series of violations of constituent elements of the right to a fair trial, as well as breaches of Tunisian law. Among the most serious was the court's refusal to investigate allegations of torture that had been made repeatedly by defendants before the prosecutor in the initial investigation, before the investigating judge, and before the court of first instance. Articles 12 and 13 of the Convention against Torture provide respectively that:

> Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.
>
> Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.

As noted above, the code of criminal procedure in Article 13bis provides the right to request a medical examination while in, or upon leaving, pre-arraignment detention, a period of heightened vulnerability to torture and ill-treatment. But these demands were consistently refused, and subsequent demands were denied by the investigating judge and the trial court. The details of torture were set before the "competent authorities," all of whom took no action. Thus the defendants were denied recourse to the means of challenging the sole piece of evidence presented in court against them, the statements attributed to them by the police, which they rejected as having been obtained under duress.

The refusal to seek or consider evidence that could substantiate the accused's claims of torture was echoed in its treatment of the defense claim that the dates of arrest had been falsified: Even when provided with the names of witnesses who could testify as to the real dates of arrest of various of the accused, or when asked to summon the arrest registers for examination, the court refused (as had the investigating judge) and then dismissed objections to the veracity of the records as uncorroborated by any other testimony. Overall, the court seemed to accept the report of the investigating judge unquestioningly, rather than fulfill its obligation under the code of criminal procedure's Article 151, which states, "The [trial] judge is to base his or her decision only on the evidence introduced during the proceedings and discussed before him orally and in open debate among the parties."

In view of the above, the trial violated international standards for a fair trial, including the right under article 14 of the International Covenant on Civil and Political Rights to be tried before a "competent, independent, and impartial tribunal." Among the court's gravest transgressions was to fail to uphold the principle in the Convention against Torture's article 15 that statements made as a result of torture are strictly inadmissible as evidence. The trial also violated Tunisia's obligations under the African Charter on Human and People's Rights, specifically Article 7(d), which affirms "the right to be tried within a reasonable time by an impartial court or tribunal." The year-long delay between the defendants' arrest and their trial—even though the investigation was apparently completed within a few weeks—violated the right to be tried "within a reasonable time," especially since the court kept them in detention until the conclusion of the trial.

VII. The Appeal

Introduction

The appeal was scheduled to take place on August 3, 1999 before the appeals court in Tunis. However, the written judgment issued by the court of first instance, finding the defendants guilty, was not made available until that day to the defense lawyers. Hence, on August 3, the defense lawyers requested and obtained a postponement of the appeal hearing so they could study the judgment and prepare the appeal. The defense on that date also renewed its requests that all the detainees be released on bail.

The appeals process was observed by representatives of several international organizations, including Bernadette Ficq on behalf of the organizations that produced this report. Mohamed Anik was mandated by the Euro-Mediterranean Human Rights Network and

the Casablanca (Morocco) Bar Association. Laurence Morisset attended the first appeal hearing on August 3 on behalf of the National Federation of Unions of Young Lawyers of France.

Two of the defendants, Ridha Oueslati and Habib Hasni, both sentenced to seventeen months imprisonment by the court of first instance, had already finished serving their sentences by July 23, 1999. However, they remained detained because of the appeal filed by the state prosecutor general seeking stiffer sentences.[39] The court refused to grant bail to all of the detained defendants and rescheduled the appeal for August 6. This gave the defense less than three days to prepare its case.

As with the trial before the court of first instance, the atmosphere surrounding the August 6 appeal hearing was not conducive to the fair administration of justice. Surveillance of Tunisian human rights activists and foreign observers was plainly visible, as was the presence of plainclothes security force officers in the courtroom. The telephone lines of Radhia Nasraoui and of some of the most outspoken defense lawyers in the case, as well the phones of members of the National Council on Liberties in Tunisia and other human rights activists, were disconnected prior to the trial and were not reestablished until after its conclusion.

Hearing of August 6, 1999

Ten defendants—Noureddine Benticha, Qais Oueslati, Ali Jallouli, Taha Sassi, Jalal Bourdoui, Haikal Mannai, Ridha Oueslati, Chedli Hammami, Lotfi Hammami, and Imen Derouiche—were called to answer the questions of the presiding judge, Farouk Gharbi. All of these defendants stated to the court that their dates of arrest as recorded in the police statements were two or more days later than the real arrest dates. All stated to the court that they had been tortured or ill-treated in police custody to force them to sign statements without knowing the content.

As happened in the trial before the court of first instance, the judge not only ignored the repeated requests by the defendants and their defense lawyers that medical examinations and investigations into the allegations of torture be ordered and promptly carried out, but he often interrupted the defendants and lawyers alike when they tried to detail the torture and ill-treatment. When some of the defendants persisted, the judge stressed that this was not the appropriate forum to deal with such matters. When defense lawyer Ayyachi Hammami asked the judge to enter into the record the torture testimony of Taha Sassi, who had been prevented from speaking about it during the trial before the court of first instance, the judge responded that it is not his task to do so and that other institutions existed for that purpose.

The courtroom grew more tense when Imen Derouiche was called to the barre. First the judge asked the clerk to note that lawyer Ayyachi Hammami had taken the floor without permission, even though other members of the Bar Council insisted to the judge that Ayyachi had asked for permission to speak. Imen Derouiche repeated what she had told the court of first instance, notably that she had been arrested earlier than the date recorded on her police statement, that during police custody she had been tortured and injected with a liquid that had caused her serious physical discomfort. She reiterated her request for a medical examination to establish the substance she had been injected with and reminded the court that her rheumatism and generally fragile health had deteriorated as a result of torture. When she then insisted on telling the court that she had been threatened with rape while in police custody, the judge ordered her removal from the courtroom. Her ejection prompted a walkout by the entire defense team.

The judge then proceeded to call to the barre the six other detained defendants—Najib Baccouchi, Rachid Trabelsi, Bourhan Gasmi, Afef Ben Rouina, Fahem Boukaddous, Habib Hasni, and Hinda Adroua—and finally, Radhia Nasraoui. When all of these defendants refused to answer the court's questions in the absence of their defense lawyers, the judge terminated the hearing. All the requests filed by the defense lawyers (for release on bail, medical examinations, and investigations into reports of torture and falsification of arrest dates for the majority of the defendants) were once again rejected by the court.

The verdict was issued the following day, confirming the judgment of the court of first instance.

[39] Article 214 of the code of criminal procedure states that if a verdict is appealed, "there is a stay of execution of the sentence. However, the remand order remains in effect until completion of the sentence handed down in the first instance, and, if the appeal was filed by the State Prosecutor General, until the appeals verdict is rendered."

ABOUT THIS REPORT

Over the period May–August 1999, a number of independent observers were sent by international human rights organizations to monitor the trial of Radhia Nasraoui and her co-defendants in Tunis.

Gamal Aboudi attended the May 15 hearing on behalf of Amnesty International, and the July 10 hearing on behalf of the Lawyers Committee for Human Rights (LCHR), Human Rights Watch, Amnesty International, and the Observatory for the Protection of Human Rights Defenders (a joint program of the International Federation of Human Rights and the World Organization against Torture). The Dutch Lawyers for Lawyers Foundation contributed to expenses in attending the July 10 hearing. Aboudi is a graduate of the Yale University Law School and is admitted to the practice of law in New York State. He interned at Al-Haq, a human rights organization in Ramallah, the West Bank, and was a Schell Fellow with Human Rights Watch. At the time of writing he was an associate in the Paris office of Clearly, Gottlieb, Steen & Hamilton.

Lynn Welchman attended the May 15 and June 19 hearings, mandated by Human Rights Watch, LCHR, and the Observatory. Lynn Welchman is currently the director of the Centre of Islamic and Middle Eastern Law at SOAS, University of London. She has worked with Palestinian and international human rights organizations since the early 1990s and has attended two previous trials in Tunisia as an observer.

The Observatory also mandated Mohamed Tahri, an Algerian lawyer who observed the May 15 session and signed on as co-counsel for the defense in the appeal, following up on French lawyer Dominique de la Garanderie's role in the trial of first instance.

The appeal hearing on August 6 was attended by Bernadette Ficq, a Dutch lawyer mandated by Amnesty International, Human Rights Watch, LCHR, the Observatory for the Protection of Human Rights Defenders, and the Dutch Lawyer for Lawyer Foundation.

This report is based on the notes furnished by all of the above-named observers. It was drafted by Aboudi and edited by Welchman and staff members at Amnesty International, Human Rights Watch, and the Observatory for the Protection of Human Rights Defenders. The sponsoring organizations are grateful to the observers for having donated their time to attend the trial and record their observations.

APPENDIX A

Charges, Dates of Arrest, Maximum Possible Sentences, and Actual Sentences

Defendant	Arrested	Charges	Max. Possible Sentence	Actual sentence
Mr. Taha SASSI	Feb. 1998	1	20 years	3.5 years
Mr. Ali JALLOULI	Feb. 1998	1	20 years	3.5 years
Mr. Ridha OUESLATI	Feb. 1998	1	20 years	17 mos.
Mr. Rachid TRABELSI	Feb. 1998	1	20 years	17 mos.
Mr. Fahem BOUKADDOUS	Feb. 1999	1	20 years	3.5 years
Ms. Hinda AAROUA	Mar.1998	2	20 years	17 mos.
Mr. Habib HASNI	Feb. 1998	3	5 years	17 mos.
Mr. Qais OUESLATI	Feb. 1998	1, 4	22 years	17 mos., 16 days
Mr. Lotfi HAMMAMI	Feb. 1998	1, 4	22 years	17 mos., 16 days
Mr. Haikal MANNAI	Feb. 1998	1, 4	22 years	17 mos., 16 days
Mr. Chedli HAMMAMI	Feb. 1998	1, 4	22 years	3 years, 9 mos.
Ms. Afef BEN ROUINA	Apr. 1998	1, 4	22 years	15 mos.,16 days
Ms. Imen DEROUICHE	Mar. 1998	1, 4	22 years	17 mos., 16 days
Mr. Noureddine BENTICHA	Feb. 1998	1, 4, 5	24 years	4 years
Mr. Jalal BOURAOUI	Feb. 1998	1, 4, 5	24 years	17 mos., 16 days
Mr. Bourhan GASMI	Feb. 1998	1, 4, 5	24 years	17 mos., 16 days
Mr. Najib BACCOUCHI	Feb. 1998	1, 4, 5	24 years	4 years
Mr. Samir TAAMALLAH	At large	1, 4, 5	24 years	9 years, 3 mos.
Mr. Hamma HAMMAMI	At large	1, 4, 5	24 years	9 years and 3 mos.
Mr. Abdeljabbar MADDOURI	At large	1, 4, 5	24 years	9 years and 3 mos.
Ms. Radhia NASRAOUI	No pre-trial det'n but prohibited from leaving Tunis area	6	6 months	6 mos. suspended

Codes for charges

(1) Maintenance of an association that incites hatred (art. 30, Associations Law)
Defamation of the public order and of judicial authorities (art. 50 and 51, Press Code);
Distribution of leaflets capable of disturbing public order (art. 49, Press Code);
Spreading false information capable of disturbing public order (art. 49, Press Code);
Inciting disobedience (art. 121, Penal Code);
Inciting the public to violate the country's laws (art. 44, Press Code).

(2) Maintenance of an association that incites to hatred (art. 30, Law on Associations); Complicity in the commission of the other crimes listed under (1).

(3) Maintenance of an association that incites to hatred (art. 30, Law on Associations).

(4) Holding unauthorized mtgs. (articles 2, 5, 23 and 24, Law Regulating Public Meetings).

(5) Hosting unauthorized mtgs. (articles 2, 5, 23 and 24 of Law Regulating Public Meetings).

(6) Aiding the holding of a meeting of an association that incites to hatred (art. 29, Law on Associations).

APPENDIX B

EXCERPTS FROM THE VERDICT IN CASE 21019/099/6

BEFORE THE TUNIS COURT OF FIRST INSTANCE,
JUDGE MOHAMED FAOUZI BEN AMARA PRESIDING, JULY 14, 1999

[PAGES 9–10]

UNDER QUESTIONING, LOTFI HAMMAMI SAID THAT, TO START WITH, INTERROGATION NO. 1/74591 WHICH PERTAINED TO HIM, WAS CARRIED OUT WHILE HE WAS IN CUSTODY. HE SAID THAT THE CIRCUMSTANCES OF HIS QUESTIONING VIOLATED THE LAW AND [LEGAL] PROCEDURES, GIVEN THAT THE INVESTIGATOR USED VIOLENCE AGAINST HIM AFTER TAKING HIM INTO CUSTODY AFTER FEBRUARY 21, 1998, CONTRARY TO WHAT IS RECORDED IN THE WRITTEN RECORD OF THE INVESTIGATION. HE ASKED TO BE MEDICALLY EXAMINED IN ORDER TO VERIFY THE TRUTH ABOUT WHAT HE TESTIFIED TODAY REGARDING THOSE CIRCUMSTANCES.

ATTORNEY [MOKHTAR] TRIFI INTERVENED, ASKING THE COURT TO NOTE [IN THE RECORD] STATEMENTS OF HIS CLIENT REGARDING THE TORTURE HE EXPERIENCED, INCLUDING THAT THE INVESTIGATOR USED VIOLENCE ON SENSITIVE PARTS OF HIS BODY. HE DENIED THAT THE INVESTIGATOR CAUGHT HIM ABOUT TO DISTRIBUTE THE CONFISCATED PAMPHLETS. HE ALSO DENIED STATING THAT THERE IS AN ORGANIZATIONAL RELATIONSHIP BETWEEN HIMSELF AND DEFENDANT RADHIA NASRAOUI. HE SAID THAT IN FACT IT WAS HIS INVESTIGATOR WHO HAD FURNISHED HIM WITH CERTAIN INFORMATION ABOUT DEFENDANT RADHIA NASRAOUI. HE ALSO DENIED STATING TO HIS INVESTIGATOR THAT HE USED TO MEET HAMMA HAMMAMI AT THE OFFICE OF DEFENDANT NASRAOUI. HE SAID THAT HE FREQUENTED THE OFFICE OF RADHIA NASRAOUI IN CONNECTION WITH A CASE INVOLVING A TRAFFIC ACCIDENT IN WHICH HIS FATHER HAD SUSTAINED INJURIES, AND THAT THE INVESTIGATOR SHOWED THAT FILE TO HIM WHEN HE WAS ABOUT TO QUESTION HIM. HE CONCLUDED BY REQUESTING AN ACQUITTAL ON ALL CHARGES AGAINST HIM THAT LINK HIM TO DEFENDANT RADHIA NASRAOUI.

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BASED ON INVESTIGATIONS CONDUCTED IN THE CASE BY OFFICERS OF THE STATE SECURITY DEPARTMENT ACCORDING TO THEIR MINUTES NO. 39, DATED FEBRUARY 21, 1998, AND UPON INVESTIGATION, THE OFFICERS, IN ACCORDANCE WITH THE DUTIES ASSIGNED TO THEM, WERE ABLE ON FEBRUARY 21 TO APPREHEND NOUREDDINE BENTICHA WITH TWO COPIES IN HIS POSSESSION OF A PAMPHLET ENTITLED *TWELVE YEARS OF SACRIFICE AND ENDURANCE*. THE CONTENTS OF THAT PAMPHLET INDICATE THE EXISTENCE OF A SECRET ORGANIZATION AND COLLECTIVE ACTIVITY. UPON INVESTIGATING THE ABOVE INDIVIDUAL, IT WAS FOUND OUT THAT HE IS ACTIVE IN A GROUP WHICH CALLED ITSELF THE *TUNISIAN ASSOCIATION OF YOUNG COMMUNISTS*, AN ASSOCIATION WHICH IS ACTIVE AS A STUDENT WING OF ANOTHER ORGANIZATION CALLED THE *TUNISIAN COMMUNIST WORKERS PARTY*. BASED UPON THAT, THE OFFICERS WERE ABLE TO IDENTIFY SOME OF THE MAIN INDIVIDUALS ACTIVE IN THESE TWO ORGANIZATIONS AND WERE ABLE TO DETAIN SOME OF THEM. AS SUCH, THE ABOVE-CITED MINUTES, THE STARTING POINT OF THE CURRENT CASE, WAS FILED.

[PAGE 24]

AND UPON QUESTIONING [BY THE POLICE], DEFENDANT LOTFI HAMMAMI CONFESSED TO BELONGING TO THE SECRET ORGANIZATION *TUNISIAN ASSOCIATION OF YOUNG COMMUNISTS* SINCE 1990 AND TO ACTIVELY PROMOTING IT THROUGH HOLDING REGULAR MEETINGS WITH INDIVIDUALS BELONGING TO THE SAME ORGANIZATION. HE AFFIRMED THAT HE REGULARLY MET BOTH FAHEM BOUKADDOUS AND ALI JALLOULI DURING FEBRUARY 1997. THESE MEETINGS WERE HELD IN THE FRAMEWORK OF ORGANIZATIONAL MEETINGS IN WHICH THE TWO PAMPHLETS *VOICE OF THE PEOPLE* AND *FORWARD* WERE GIVEN TO THE PARTICIPANTS. HE ADDED THAT DURING APRIL OF THE SAME YEAR, HE MET A LEADER NAMED HAMMA HAMMAMI AT [HAMMA HAMMAMI'S] REQUEST. THEY MET AT THE OFFICE OF HAMMA'S WIFE RADHIA NASRAOUI. [HAMMA HAMMAMI] INFORMED HIM AT THAT TIME THAT HE HAD BEEN SELECTED TO SUPERVISE THE PLANNED STRUCTURE OF THE SECRET ORGANIZATION *TUNISIAN ASSOCIATION OF YOUNG COMMUNISTS* AT THE APRIL 9 COLLEGE OF LITERATURE, AND URGED HIM TO RECRUIT NEW INDIVIDUALS AND TO WORK ON COUNTER-PROPAGANDA AGAINST THE POLICIES OF THE REGIME ON ALL LEVELS. HE URGED HIM TO CALL BOYCOTTS OF CLASSES, TO ISSUE CRIPPLING DEMANDS TO THE SCHOOL ADMINISTRATION, TO SHAPE THE ATMOSPHERE AT THE UNIVERSITY IN SUCH A WAY AS TO BRING IT UNDER THE SWAY OF THE SECRET ORGANIZATION, TO SPREAD SLOGANS CHARACTERIZING THE RULING REGIME AS "A POLICE AND FASCIST STATE," AND URGE PEOPLE, ESPECIALLY YOUNG PEOPLE, TO OPPOSE THE AUTHORITIES. HE ADDED THAT, IN ORDER TO ACHIEVE THESE RECOMMENDATIONS, HE REGULARLY MET THE OTHER INDIVIDUALS WHO WERE SUPERVISING THE CENTRAL STRUCTURE WHICH HAD BEEN SET UP AT THE UNIVERSITY LEVEL AT SEVERAL ORGANIZATIONAL AREAS LOCATED IN NAHJ SAIDI AL-KASHBATTI IN BAB AL-KHADRA AND HAI AL-TAIRAN IN MALLASEEN. THE LEADER HAMMA HAMMAMI WAS ALSO THERE TO DISCUSS THE STATUS OF THE ORGANIZATION AND DRAW ACTION PLANS INSIDE AND OUTSIDE THE UNIVERSITY THROUGH THE PUBLICATION OF PROPAGANDA PAMPHLETS AGAINST THE REGIME AND DISTRIBUTING THEM TO THE PEOPLE TO URGE

them to confront the authorities on all levels. [Lotfi Hammami] said that his activity toward that goal continued until he was detained. But when he was brought before the investigative judge, he denied all the things attributed to him and maintained his innocence at the hearing.

[Page 28]

[The court] responds as follows to the defense arguments:
With respect to violations of basic procedures related to the welfare the defendants, Article 154 of the code of criminal procedure stipulates that the written records issued by the police are authoritative unless proven inaccurate by written evidence or by the testimony of witnesses or show of coercion.

Since the only defense in this context came from the testimony of the defendants who seek to escape punishment and accountability in any way possible, and since the status of defendants is not the same as the status of witnesses, their defense cannot be accepted given that they are defendants. In addition, they did not refute the written records with written evidence or show of coercion. Those written records are authoritative unless proven unequivocally and without doubt to be otherwise in accordance with the above-mentioned article.

And since the defendants' statements regarding their torture was in the form of an uncorroborated defense and since the events took place a year and-a-half ago and the court did not see any evidence that could corroborate this defense, such as marks resulting from violence or other evidence to substantiate it, it could not be relied upon.

Regarding the defense argument that the [police] investigator detained and carried out investigations without prior permission from the state prosecutor general and the investigative judge, this defense is also uncorroborated since by examining the certified and legally uncontested minutes, it becomes clear that the preventive detention notices were timely and the prosecutor general was informed of them in a timely fashion. He gave them the permission and renewed the detention periods in accordance with the law.

As for the defense argument that the interrogation was carried out by the investigator without summons warrants having been issued by the investigative judge, and even assuming that that was what took place, the investigative judge corrected these procedures, involved himself in the investigation, and conducted the questioning anew, depriving this defense argument of factual and legal grounds.

In regard to the defense argument about the court's refusal to order a medical examination, the court's refusal was based on legal and practical issues; among them the fact that this request came a year and-a-half after the date of detention, and the court saw no visible signs or traces of external violence. It was therefore refused due to the length of the period and the pointlessness of carrying out the examination.

The Court's decision not to request the detention register was based on factual and legal grounds, given the unavailability of any evidence proving that violations in the duration of detention took place except the statements of the defendants which continued to be uncorroborated as outlined above.

With respect to the defense argument about applying the Law of Associations instead of the Parties Law, this defense is not relevant to the current case since the crimes attributed to the defendants are crimes against the public in accordance with Law No. 154 of 1959. That law stipulates in its first article, "An association is an agreement upon which information is gathered or an activity carried out for non-material objectives." Its second article also stipulates, "The purpose of the agreement reached shall not aim to violate the laws or be of a nature to disturb the public order." With respect to the defendants, the contrary was proven beyond doubt through the charges filed against them, their explicit confessions, and their testimony implicating one another which was supported by confiscated materials. This defense argument is therefore unacceptable and is rejected.

As for the argument that defense rights were violated when foreign attorneys were not allowed to argue before the court, the French-Tunisian treaty in this area, in accordance with the third chapter and article 44 thereof, stipulates that, "Tunisian citizens in France and French citizens in Tunisia may seek the assistance of an attorney of their nationality to defend them. Such attorney shall obtain the approval of the chief of the court having jurisdiction over the case."

Since it is clear that Tunisian citizens are not allowed to seek the assistance of an attorney to defend them unless that attorney is of their nationality, this was a clear basis for denying the French attorney's representation of the Tunisian citizens. In addition, these foreign attorneys did not obtain the approval of the chief of the court having jurisdiction over the case; the case files show no indication of this having taken place.

The court's refusal to let the Algerian attorneys represent the Tunisian defendants was also in accordance with the law. The Treaty Concerning the Exchange of Assistance and Judicial Cooperation between Tunisia and Algeria clearly stipulates in article five, "Attorneys who are allowed to defend Tunisian citizens and vice versa shall be registered with the Bar Council whether of Tunisia or Algeria," something of which the files show no record. In addition, this treaty stipulates that attorneys registered with the Bar Council of Tunisia may defend and represent the parties before criminal courts..." [sic] It could be understood from the term 'parties,' which appears ambiguous here, that it is related to their subjects in Tunisia and not to a Tunisian; therefore, this request was denied as lacking merit.

Given the above, the guilt of the defendants has been proven vis-à-vis the charges. The crime of maintaining an association that preaches hatred shall be considered as maintaining an unlicensed organization [sic]; therefore, all defendants must be held criminally responsible, each to what he/she is charged with, a deterrent must be imposed, and the confiscated material must be destroyed.

APPENDIX C

Highlights of New Tunisian Laws Protecting the Rights of Persons in Detention

Published in the Official Gazette of the Tunisian Government, August 6, 1999

Law No 89/1999 of August 2, 1999 amending provisions of the code of criminal procedure

Article 101bis

A public servant or an equivalent who during the performance of his duties or by reason of performing such duties submits a person to torture shall be punished with imprisonment for a term of eight years.

Torture means any act that results in causing physical or mental pain or extreme suffering willfully inflicted on the concerned person with the aim of obtaining information or a confession from him or from another; or to punish him for an act he or another committed or are suspected of having committed; or to intimidate him or another; or when the infliction of pain and extreme suffering occurs for any reason related to discrimination of any kind.

Law No 90/1999 of August 2, 1999 amending provisions of the code of criminal procedure

In the name of the People, and following the approval of the Parliament, the President of the Republic hereby promulgates the following Act:

Chapter One

The provisions of article 13bis and paragraph 2 of article 57...of the code of criminal procedure are hereby repealed and replaced by the following:

Article 13bis

1. In cases where the needs of investigation require the detention of the suspect, including arrest during the commission of the offense or misdemeanor, law enforcement officials indicated in sections 3 and 4 of article 10, and law enforcement officials attached to custom officials within their powers provided for under the customs act, shall not detain the suspect for a period exceeding three days. They shall inform the attorney general about such a detention.

2. The attorney general may only once extend the detention in writing for the same duration.

3. The law enforcement official shall inform the suspect in a language that he understands of the measure taken against him, its reasons, and its duration. The law enforcement official shall read to the suspect his entitlement under the law to have access to medical examination during the period of detention.

4. The law enforcement official shall inform a direct or indirect family member, or a brother, or a spouse of the suspect, as chosen by him, of the measure taken against him and its duration.

5. The detainee or any of the persons indicated in the precedent article may ask that he undergo a medical examination during the detention period or after its expiration.

6. The record written by the law enforcement official shall register the following information:

- That the suspect was informed of the measure taken against him and the reason for it.
- That the detainee was read his entitlements under the law.
- Whether the family of the suspect under detention was informed or not.

- If applicable, the request for medical examination submitted by the suspect or a member of his family.

- Date and hour of the beginning of the detention and end thereof.

- Signature of the law enforcement official and the detainee. In case the latter refuses to sign the reason shall be recorded.

7. Law enforcement officials indicated under article one of this chapter shall keep at places of detention a special register with numbered pages that shall be signed by the attorney general or his assistant. Such register shall record the following information:

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- Identity of the detainee.

- Date and hour of the beginning of the detention and end thereof.

- The informing of the family of the measure taken.

- If applicable, request for a medical examination made either by the detainee, a direct or indirect family member, or brothers, or spouse.

Article 57 (new second paragraph)

When a suspect who was not heard by an investigating judge as a defendant is detained by a law enforcement official, such detention shall not exceed three days after informing the acting investigative judge. The acting investigative judge may extend the detention only once in writing.