

**Media Kit**

# FIDH Legal Action Group

## The Ben Saïd Case

Article premier : Les hommes naissent et demeurent libres et égaux en droits. Les distinctions sociales ne peuvent être fondées que sur l'utilité commune. Article II : Le but de toute association politique est la conservation des droits naturels et imprescriptibles de l'homme. Ces droits sont la liberté, la propriété, la sûreté et la résistance à l'oppression. Article III : Le principe de toute Souveraineté réside essentiellement dans la Nation. Nul corps, nul individu ne peut exercer d'autorité qui n'en émane expressément. Article IV : Nul ne sera tenu en esclavage ni en servitude; l'esclavage et la traite des esclaves sont interdits sous toutes leurs formes. Article V : Nul ne sera soumis à

**Tunisia**

**Land of Tourism**

**Land of Torture**

# Torture, a system in Tunisia?



Mrs. Gharbi, seen here with her lawyer, Mr. Plouvier, during a press conference at FIDH headquarters, February 2007

## The facts

On October 11, 1996, Mrs. Gharbi was arrested by Tunisian Intelligence officers (DST).

The purpose of the

arrest was to obtain information concerning several individuals suspected of belonging to a religious circle, among them her husband,

Mr. Mouldi Gharbi, who was detained and tortured in the same place in February 1991. A few months before his wife's arrest, Mr. Gharbi had obtained refugee status in France.

While detained in the Jendouba police station, Mrs. Gharbi was subjected to repeated acts of torture and other inhuman and degrading treatments (multiple blows, being suspended from an iron rod placed between two tables, being beaten with a stick, etc...). Khaled Ben Said was one of her torturers.

## The first trial in France of a

**Khaled Ben Said, the presumed author of crimes of torture in Tunisia, will be judged by the Bas-Rhin Cour d'Assises. This will be the second trial in France based on the universal jurisdiction mechanism. Three years after the sentencing for crimes of**

## What is universal jurisdiction?

Under the universal jurisdiction principle national courts can prosecute presumed authors of the most serious crimes (genocide, crimes against humanity, torture, certain war crimes, apartheid, slavery...) regardless of where they were committed and regardless of the nationality of the authors or the victims. Universal jurisdiction therefore makes it possible to prosecute a criminal, wherever he or she may be, after having being arrested by chance, or following a complaint or a denunciation. In practice a connexion criterion, such as the presence of the author of the crime on the territory where the complaint was lodged, is often required.

Mrs. Gharbi was released two days later, but was given a summons to report to the police station the next Monday. She did so, and her arrest had no further consequences.

On October 22, 1997, Mrs. Gharbi left Tunisia with her children to join her husband and settle in France.

## Chronology

### 2001

**May 9:** On learning that Khaled Ben Said was vice-consul in the Tunisian consulate in Strasbourg, Mrs. Gharbi, represented by her lawyer, Mr. Eric Plouvier, lodged a complaint against him.

**June 25:** Mr. Eric Plouvier sent a letter to the Prosecutor of the Colmar Court of Appeal drawing his attention to the obvious risk of the suspect absconding.

**November 2:** The police superintendent in charge of the preliminary enquiries initiated following the lodging of the complaint contacted Khaled Ben Said informing him of the complaint and summoning him for a hearing. Khaled Ben Said never answered the summons.

### 2002

• **January 16:** The Prosecutor's office of the Strasbourg tribunal de Grande Instance opened a preliminary investigation into acts of torture committed by a person representing public authority in the exercise or on the occasion of the exercise of his functions.

• **February 4:** FIDH and LDH, represented by Mr. Patrick Baudouin, lawyer and FIDH President of Honour, declared themselves "parties civiles" to the case, i.e. they joined their demand for compensation to the criminal action.

• **February 14:** The examining magistrate in charge of the preliminary investigation tried

## presumed Tunisian torturer

torture of Ely Ould Dah, a Mauritanian officer, the new trial confirms that the mechanism has a future as an effective instrument at the disposal of victims of the most serious crimes. It is the first time that a diplomat is tried in France on the basis of universal jurisdiction.

### Mrs. Gharbi's evidence

**“On October 11, 1996, four men in plainclothes came to fetch me at my home to take me to the Jendouba “torture” police station.**

That is what everyone calls the police station. (...) Four other women were waiting in the corridor (...). These women had been fetched and interrogated before me by the DST, they were in tears, completely distraught. We were immediately separated.

It was the next morning, when they locked us up in a room in the presence of two DST officers, that they told me that they had been tortured more than I had been. They then told me that they had been suspended by the feet, undressed, then beaten. They had their clothes on when I saw them, so I was not able to see their injuries.

These women were terrorised by what they had been subjected to. They are still in Tunisia.”

### Khaled Ben Saïd

#### The career of a diplomat accused of torture

Khaled Ben Saïd was born on October 29, 1962 in Tunis.

He joined the police in 1991 and was police superintendent in Jendouba from 1995 to 1997.

In August 2000 he was appointed Tunisian vice-consul in Strasburg. He fled to Tunisia early in 2002, when he learnt that a complaint had been lodged against him.

According to information obtained by FIDH, he is still serving in the Tunisian Ministry of the Interior.

to contact Khaled Ben Saïd and was told by the Tunisian consulate in Strasburg that the vice-consul had left for Tunisia. He issued an arrest warrant against Khaled Ben Saïd and ordered a search of the Ben Saïd family's residence.

• **February 15:** the examining magistrate issued an international arrest warrant against Khaled Ben Saïd.

### 2003

• **July 2:** International letters rogatory were addressed by the examining magistrate to the Tunisian judicial authorities. The request for cooperation yielded no result.

### 2004

• **February 4:** A letter was sent to President Jacques Chirac, asking him to reiterate the request to the Tunisian authorities to implement the letters rogatory.

### 2005

• **September 29:** Memorandum by the “parties civiles” requesting the referral of the case to the Bas-Rhin Cour d'Assises.

### 2006

• **June 16:** Written statement by the Public Pro-

secutor recommending that the charges against Khaled Ben Saïd be dropped.

**June 21:** Observations by the lawyer of the “partie civile” confirming the request for referral to the Bas-Rhin Cour d'Assises.

**June 22:** Letter from Mr. Patrick Baudouin, representing FIDH and LDH, associating himself with the observations of the lawyer of the “partie civile”.

**July 27:** anonymous evidence corroborating Mrs. Gharbi's allegations, in accordance with a request by the lawyer of the “partie civile”.

### 2007

• **January 17:** Written statement by the Public Prosecutor recommending that the charges against Khaled Ben Saïd be dropped.

**February 16:** Despite all obstacles and after seven years' investigation, the committal to trial before the Bas-Rhin Cour d'Assises for acts of torture and barbaric acts committed on October 11 and 12, 1996 on police premises in Jendouba was at last issued.

### 2008

**December 15: Start of the trial of Khaled Ben Saïd, who will be represented by a member of the Colmar bar.**

## Practice of torture when the crime was committed

On 23 September 1988, Tunisia ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

In 1998, the UN Committee against Torture declared

«The Committee is particularly disturbed by the reported widespread practice of torture and other cruel and degrading treatment perpetrated by security forces and the police, which, in certain cases, resulted in death in custody (...) The Committee feels that, by constantly denying these allegations, the authorities are in fact granting those responsible for torture immunity from punishment, thus encouraging the continuation of these abhorrent practices (...) The Committee is particularly disturbed by the abuses directed against female members of the families of detainees and exiled persons. It has been reported that dozens of women were subjected to violence and sexual abuses or sexual threats in order to put pressure on or to punish their imprisoned or exiled relatives.

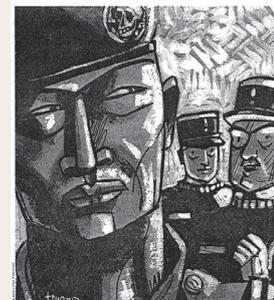
## En 2008, recourse to torture persists in Tunisia

Recourse to torture persists in Tunisia. Since 9/11 2001, the fight against terrorism has been the pretext for serious human rights abuse, in particular for the arrest of thousands of citizens.

Many of them have been subjected to acts of torture and/or other forms of inhuman and degrading treatment. On December 10, 2003 a law on “the support of international efforts against terrorism and the repression of money laundering” was promulgated.

The law grants exceptional powers to State Security Directorate (DES) agents, and contains a very broad and general definition of what constitutes a terrorist act; it can in particular be used against dissidents and members of the opposition. The law has been denounced by the UN Special Rapporteur on the protection of human rights defenders in the fight against terrorism; he specifically criticised the provisions under which persons suspected of threatening national security can be detained without charge or trial, and Articles 49 and 51 that guarantee anonymity for examining magistrates, thereby making any recourse on the part of the persons interrogated practically impossible in the event of ill-treatment.

**Contact presse :**  
**Gaël Grilhot/Karine Appy**  
**+33-1 43 55 90 19**  
**+33-1 43 55 14 12**  
**+33-6 72 28 42 94**



**Un officier mauritanien  
soupçonné de torture  
est arrêté en France**  
(in *Libération*, 6 July 1999)

## Universal Jurisdiction The Ely Ould Dah precedent

Ely Ould Dah, a Mauritanian captain, who was recognised when attending a course within the French Gendarmerie, was arrested in 1999 for acts of torture committed in the early 1990s.

He took advantage of being under house arrest to abscond. Thanks however to the determination of the plaintiffs and of the FIDH Legal Action Group, in 2006 he was prosecuted and sentenced in absentia to 10 years' imprisonment for torture by the Montpellier Cour d'assises.

This was the first trial based on universal jurisdiction to be successfully completed in France

## FIDH continues to denounce torture in Tunisia

In May 2006, Tunisia, then seeking membership of the Human Rights Council, was vaunting its respect for human rights, and the primacy of international law, in particular the Convention against Torture (CAT), over internal legislation. However, since 1998 Tunisia has sent in no report to the UN Committee against Torture and continues to ignore the repeated requests of the UN Special Rapporteur on Torture to visit the country. In fact, the Tunisian authorities almost systematically ignore the denunciations of human rights violations by both national and international human rights organisations. Despite the repeated statements by the Tunisian authorities that cases of torture are only isolated acts and that those responsible are prosecuted and punished, the human rights organisations note that recourse to torture is now becoming general practice at all levels of criminal procedure, and that the authors enjoy more or less total impunity.