

fidh

International Federation for Human Rights



THE CONVICTION OF KHALED BEN SAÏD

A victory against impunity in Tunisia

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security

Tunisia

Land of tourism

Land of Torture

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I. The Ben Saïd case, the first trial in France of a Tunisian civil servant accused of torture

Five years after Ely Ould Dah's conviction, a Mauritanian officer convicted on July 1, 2005, by the Nîmes Criminal Court, to ten years of imprisonment for torture, the recent conviction in appeal of Khaled Ben Saïd by the Nancy Criminal Court, on September 24, 2010 to twelve years imprisonment, became the second case in France to be based on the universal jurisdiction mechanism, which allows the court of any country to try perpetrators of serious international crimes regardless of the location of the crime and irrespective of the nationality of the victim or the perpetrator. It is based on the recognition that certain crimes are so horrific – genocide, crimes against humanity, war crimes, torture and enforced disappearances – that they affect the international community as a whole. This mechanism, which is contained for the crime of torture within the United Nations Convention against Torture in 1984 (article 7), was later included in the French Code of Criminal Procedure. The conviction of Khaled Ben Saïd - which took place after the Prosecutor had lodged an appeal against the conviction of Khaled Ben Saïd in first instance to eight years imprisonment, issued by the Strasbourg Criminal Court on December 15, 2008 - confirms the efficiency of universal jurisdiction as a tool benefiting the victims of the most serious international crimes.

It is also the first time a diplomat is tried in France on the basis of universal jurisdiction.

Allegations made by the plaintiff, Mrs. Gharbi, and opening of the proceedings in France.

On October 11, 1996, Mrs. Zoulaikha Gharbi, of Tunisian nationality, was taken in for questioning by agents of the Tunisian Directorate of Territorial Security (DST) and transferred to the Jendouba (Tunisia) police station. The goal of this arrest was to gather information pertaining to several individuals suspected of belonging to a religious circle, including Mrs. Gharbi's husband, Mr. Mouldi Gharbi, who had been detained and tortured in the same police station in 1991 and later obtained the status of political refugee status in France in May 1996.

Mrs. Gharbi was detained for two days during which time she was subjected to acts of torture as well as inhumane and degrading treatment (multiple blows to the face, suspension on an iron bar between two tables, subjected to beatings with sticks, physical abuse to her genitals and insults...). Among her torturers was Khaled Ben Saïd, a police superintendent. She was then allowed to leave and summoned to appear at the police station the following Monday. There was no follow-up to the arrest after this first summoning.

In October 1997, Mrs. Gharbi decided to leave Tunisia and went to the police station in order to get her passport. On this occasion, she recognised Khaled Ben Saïd, who was delivering her passport.

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

On May 9, 2001, having learned that Khaled Ben Saïd was on French soil in the capacity of Vice-Consul at the Tunisian Consulate in Strasbourg, Mrs. Gharbi, with her lawyer, Eric Plouvier, decided to file a complaint against him.

A preliminary enquiry was initiated following this complaint, after which the superintendent in charge of the investigation contacted Khaled Ben Saïd on November 2, 2001 in order to inform him that a complaint had been filed against him and to summon him to a hearing. Khaled Ben Saïd never complied.

In February 2002, the FIDH and its member organisation in France, the *Ligue des droits de l'Homme* (LDH), represented by Patrick Baudouin, lawyer and Honorary President of the FIDH, became *parties civiles* in the proceedings.

On February 14, 2002, the judge in charge of the preliminary investigation attempted to contact Khaled Ben Saïd and was told by the Tunisian Consulate in Strasbourg that the Vice-Consul had returned to Tunisia.

That same day, the judge issued an international arrest warrant against Khaled Ben Saïd, which was never enforced, similarly to the letter rogatory issued a few weeks later.

In spite of these obstacles, and after seven years of investigation, the indictment before the Criminal Court was finally issued on February 16, 2007.

The testimony of Mrs. Gharbi

“On October 11, 1996, four men in civilian clothes came to my home and took me to the “torture” police station in Jendouba. Everyone gives it that name (...) Four other women were waiting in the hallway (...). These women had all been brought there and interrogated by the DST earlier, they were crying and were in despair. We were immediately separated. It was only until the next morning, when we were locked up in a room with two DST agents, that I learned from them that they had been tortured even more than I was. They told me that they had been suspended by their feet, undressed and hit.

They were dressed by the time we were reunited and so I was unable to personally witness the wounds. These women are traumatised by what they have been put through. They still live in Tunisia.”

Portrait of Khaled Ben Saïd

Khaled Ben Saïd was born on October 29, 1962, in Tunis. He joined the police in 1991. He worked as a superintendent at the Jendouba police station from 1995 to 1997. In August 2000, he was appointed Tunisian Vice-Consul in Strasbourg, where he lived until early 2002, at which time he fled to Tunisia, after learning that a complaint had been filed against him. According to information gathered by the FIDH, he continued to hold a post in 2010 within the Tunisian Interior Ministry.

Judicial Proceedings

Legal basis for the complaint filed in France against Khaled Ben Saïd

ARTICLE 222-1 of the French Penal Code: *“The subjection of a person to torture or to acts of barbarity is punished by fifteen years of criminal reclusion.”*

Article 689-1 of the French Code of Criminal Procedure: *“In accordance with the international Conventions quoted in the following articles, a person guilty of committing any of the offences listed by these provisions outside the territory of the Republic and who happens to be in France may be prosecuted and tried by French courts. The provisions of the present article apply to attempts to commit these offences, in every case where attempt is punishable.”*

Article 689-2 of the French Code of Criminal Procedure: *“For the implementation of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on December 10, 1984, any person guilty of torture under article 1 of the Convention may be prosecuted and tried in accordance with the provisions of article 689-1.”*

Article 7 of the United Nations Convention against torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by France on February 18, 1986: *“1. The State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.”*

2001

May 9: Eric Plouvier, Mrs. Gharbi's lawyer, files a complaint with the Prosecutor in Paris against Khaled Ben Saïd and others.

June: The case is transferred from Paris to the Strasbourg Prosecutor.

June 25: The Plaintiff's lawyer addresses a letter to the Chief Prosecutor of the Colmar Court of Appeals with regard to the risk of flight of the suspect.

November 2, 2001: The police superintendent in charge of the investigation informs Khaled Ben Saïd of the complaint filed against him and verbally summons him to a hearing.

2002

January 16: The Prosecutor of the Tribunal de Grande Instance in Strasbourg opens a preliminary investigation about the alleged perpetrator's acts of torture that took place while he had his special status of public authority figure.

February 4: FIDH and the LDH, represented by Patrick Baudouin, join the proceedings as parties civiles.

February 6: The investigating judge hears Mrs. Gharbi.

February 14: The investigating judge is informed that Khaled Ben Saïd has left France. Accordingly, he issues a writ of summons against Khaled Ben Saïd and orders that the Ben Saïd family home be searched.

February 15: The investigating judge delivers an international arrest warrant against Khaled Ben Saïd.

2003

July 2: An international letter rogatory is issued by the investigating judge of the Tunisian judicial authorities. It will never be enforced.

2004

February 4: Open letter to Jacques Chirac, President of the French Republic, in his capacity as guarantor of international treaties ratified by France, that the international letter rogatory be enforced with the Tunisian authorities.

June 21: First notice of completion of the investigation.

2005

March 9, 2005: The civil party's lawyer asks the investigating judge to deliver his closing order.

March 10, 2005: The investigating judge indicates that he "*will deliver the closing order as soon as possible, after receiving the instructions of the Prosecutor.*"

September 29, 2005: Notice by the civil parties, in order to refer Khaled Ben Saïd to the Bas-Rhin Criminal Court (first, because the charges against him are sufficient and second, because the conditions for the application of universal jurisdiction in the French courts are fulfilled for this particular case.)

2006

June 16, 2006: The Prosecutor issues his closing observations calling for a dismissal of the case against Khaled Ben Saïd.

June 21, 2006: Observations by the civil parties' lawyers confirming the request for a referral to the Strasbourg Criminal Court.

July 27, 2006: Anonymous testimony corroborating Mrs. Gharbi's allegations, as requested by the civil party's lawyer.

October 5, 2006: Second notice of completion of the investigation.

2007

January 17, 2007: Second closing speech calling for a dismissal of the case.

February 16, 2007: An arraignment order is issued against Khaled Ben Saïd before the Strasbourg Criminal Court for acts of torture and of barbarity on October 11 and 12, 1996, at the Jendouba police station.

2008

September 30, 2008: Date set for the hearing on December 15, 2008, with the attendance of a lawyer from Colmar appointed by Khaled Ben Saïd to defend him.

December 15, 2008: Following the claim by Khaled Ben Saïd's lawyer that the court was incompetent, in particular on the basis that the accused was not present on French soil at the time of indictment, the Strasbourg Criminal Court declares itself with sufficient jurisdiction. The court specifies that universal jurisdiction requires –in accordance with the United Nations Convention against Torture of 1984 – ascertaining the presence of the defendant on French soil at the start of the suit, in our case at the opening of the preliminary investigation.

December 15, 2008: The Criminal Court finds Khaled Ben Saïd guilty of complicity in acts of torture and of barbarity and sentences him to eight years of imprisonment.

December 29, 2008: The Prosecutor appeals the Criminal Court's decision.

2010

September 24, 2010: After having declared itself with sufficient jurisdiction in response to a petition for lack of jurisdiction filed by the defense, the Criminal Court of Nancy confirms the conviction of Khaled Ben Saïd, sentences him to twelve years imprisonment and issues an international arrest warrant against him.

The order handed down by the Strasbourg investigating judge is exemplary in several ways:

- Regarding recognition of the principle of universal jurisdiction, it acknowledges that *“articles 689-1 and 689-2 of the Code of Criminal Procedure make provision for the prosecution and trial by French courts of a person guilty outside the territory of the French Republic of an offence with regard to article 1 of the aforementioned Convention (United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted on November 10 1984 - Editor's note)”*

- Regarding the facts, the order concludes that *“the facts denounced by Mrs. Gharbi appear to come under the arrangements provided for by article 1 of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted on November 10, 1984 which defined torture, as well as the arrangements provided for by articles 222-1 and 223-7 of the penal code, which incriminate acts of torture or of barbarity committed by agents of public authority. The presence of Mr. Ben Saïd in Strasbourg at the start of the prosecution makes the latter possible on the basis of the arrangements provided for by articles 689, 689-1 and 689-2 of the Code of Criminal Procedure.”*

FIDH Press Release - 14 June 2006: Khaled Ben Saïd Case - When France Protects Tunisian Torturers

Pending instructions from the public prosecutor, a complaint regarding torture has been blocked for two years... FIDH and LDH condemn what equals a denial of justice.

For two years, Mrs. Z. – supported in her action by FIDH and LDH, also civil parties in the proceedings – has waited for wrongs to be righted and for an order of referral before the Strasbourg Criminal Court to be issued against her torturer, the Tunisian national Khaled Ben Saïd.

Going back to June 21, 2004 – the investigating judge considers the enquiry to be over. Since then, the civil parties have been writing to the investigating judge asking him to refer the accused before the Criminal Court. Almost a year later, on March 10, 2005, the investigating judge refused to make a decision without the instructions of the Public Prosecutor. Thus, for close to two years, the right to a trial of a victim was suspended as long as it pleased the Strasbourg Prosecutor and the Ministry of Justice. Facing the serious allegations of torture against him, Khaled Ben Saïd, at the time Tunisian Vice-Consul in Strasbourg, fled for Tunisia in order to take shelter from the French courts.

Two years of undue wait – All the efforts of the Strasbourg investigating judge (international arrest warrant, request for an international letter rogatory) were apparently not sufficient to convince the Prosecutor who seemingly prefers to maintain friendly relations with the Tunisian regime, rather than honour the right of victims to justice and reparation. FIDH and LDH recall France's obligation, in accordance with the NY Convention against Torture which it ratified, to judge or extradite any suspected torturer who is on its soil. This condition of presence refers to the time at which the complaint was filed. Moreover, article 6 §1 of the European Convention on Human Rights requires that those persons who are subject to trial have a fair and public hearing within a "reasonable time-frame."

Denial of justice? – On September 29, 2005, the civil parties intervened to request that the investigating judge pay no heed to the absence of instructions from the Prosecutor asking him to refer Khaled Ben Saïd to the Criminal Court for him to stand trial or risk a denial of justice. This is because first, the charges weighing against him are hefty, and second because the conditions for applying universal jurisdiction in the French courts have in this particular case been met.

We can only come to the conclusion that with this unacceptable inertia, the French authorities are breaching their international obligations and are playing into the hands of a country which is regularly denounced as violating the most fundamental human rights.

FIDH and LDH believe that, following this abnormal delay in the proceedings, the responsibility of the French State for denial of justice could be brought to bear.

The interference of the political and diplomatic spheres into that of the judiciary ruins the efforts of the international community to abolish the crime of torture. The FIDH and the LDH therefore ask that this serious case be taken up and that Khaled Ben Saïd be prosecuted in accordance with the law.

Press Release of the FIDH, LDH, LTDH (Ligue tunisienne des droits de l'Homme) - 22 February, 2007: Order of Referral of a Tunisian Vice-Consul, Mr. Khaled Ben Saïd, before the Criminal Court

The Strasbourg investigating judge ordered on February 16, 2007, the referral of Mr. Khaled Ben Saïd, former Tunisian Vice-Consul in Strasbourg, before the Strasbourg Criminal Court and maintained the standards of the international arrest warrant that had been issued against him on February 15, 2002, which had followed his escape.

He is charged with having subjected Mrs. Z. to acts of torture and of barbarity on October 11 and 12, 1996, in the police station of Jendouba in the North-West region of Tunisia.

This order puts an end to the impunity enjoyed by a person suspected of committing one of the most horrific crimes. In addition to the assessment of Mr. Khaled Ben Saïd's responsibility regarding his acts of torture for which he is charged and to the fact that he remains innocent until a judgement is handed down, this trial will shed light on the use of torture in Tunisia. Specifically, it will shed light on the use of torture that is institutionalised by the Tunisian regime, which carries full responsibility, as it has been documented by FIDH in its many reports. Unless Mr. Khaled Ben Saïd, currently on the run, gives himself up or is arrested, he may be sentenced in absentia. In that case, the Criminal Court will render a decision without the assistance of the jurors.

FIDH, LDH and LTDH stress the fact that the investigation has lasted six years. This abnormal delay can only be due to the deliberate attempt of the French State to obstruct the case in order to preserve its good relations with the Republic of Tunisia. This is to the detriment of the necessary primacy of the fight against impunity. In every respect, the order given by the Strasbourg investigating judge is a victory for the rule of law.



Press Release

Khaled Ben Saïd, Former Tunisian Vice-consul in France, Condemned for Torture by the Criminal Court of Strasbourg

Strasbourg, Paris, December 16, 2008 - FIDH and LDH welcome the decision delivered on Monday December 15, 2008 by the Criminal Court of Strasbourg, holding Khaled Ben Saïd criminally responsible for giving instructions to commit crimes of torture on the Plaintiff's person, Mrs. Gharbi. Mr. Ben Saïd was sentenced to serve eight years of prison.

Zoulaikha Gharbi, who currently lives in France with her husband, a political refugee, filed a complaint in May 2001 against the diplomat, whom she had recognized as the chief of the Jendouba police station, where she was tortured under his orders in October 1996¹. Informed about the procedure initiated against him, Khaled Ben Saïd immediately fled to Tunisia, where he allegedly continues to work for the Interior Ministry. In 2002, FIDH and LDH intervened as civil parties in support of Mrs. Gharbi.

"After more than seven years of investigation full of obstacles, mainly because of the lack of cooperation of the Tunisian authorities, the French justice has recognized the acts of torture perpetrated against Mrs. Gharbi as well as the guilt of Mr. Ben Saïd, who has fled to Tunisia, where he remains protected by the regime," declared Eric Plouvier, Mrs. Gharbi's lawyer.

The international arrest warrant, delivered against him by the investigating judge in 2002, remains in total effects.

"It is an additional positive development in the fight against impunity for perpetrators of torture, through the implementation of the universal jurisdiction mechanism, and a strong signal sent to the Tunisian authorities: the criminals, if they are safe in Tunisia, are not safe in other countries," declared Patrick Baudouin, FIDH and LDH lawyer.

This decision, rendered while the defendant was not present, followed the debates during which Mr. Ben Saïd was duly defended by a French lawyer. "This exemplary trial took place according to the rules of a fair trial, which are not applied in Tunisia, to the detriment of Tunisian victims who have no access to justice," declared Radhia Nasraoui, lawyer and President of *Association de lutte contre la torture en Tunisie* (ALTT).

This verdict, rendered while the diplomat claimed his innocence through his lawyer and after the General Attorney had required the acquittal, is a victory – not only for the intervention of the civil parties, but also beyond: for those who are deprived of an effective remedy for the injustices in their own countries.

"This holding represents the successful outcome of a huge work undertaken by the civil parties and by Tunisian human rights defenders. It sheds light on the use of torture as an instrument of power in Tunisia," said Sihem Ben Sedrine, spokesperson for the *Comité national des libertés en Tunisie* (CNLT).

A CNRS (French Scientific Research Committee) mission delegate, Vincent Geisser, summoned to appear as a witness, affirmed that General Ben Ali's police dictatorship had erected violence as a governmental tool, and said that torture was less used in order to obtain confessions or information than to terrorize the people.

Facing the French public authorities' lack of denunciation of the Tunis regime, this Court's holding sheds light on the reality of the regime, which is in opposition with France's official discourse. This gives an unequivocal answer to the question of the responsibility of Tunisian officials in the recurrent use of torture.

This verdict is the second decision rendered in France on the basis of the universal jurisdiction mechanism², which allows prosecution of a person who is on French territory and is suspected of having committed acts of torture, regardless of the place where the crimes were committed, and regardless of either the nationality of the perpetrator or the victims. The Criminal Court of Strasbourg has thus confirmed that the application of the universal jurisdiction principle merely requires the simple presence of the accused at the moment of the filing of the complaint by the victim.

1. See the media kit on the Ben Saïd case, December 11, 2008, on the FIDH website.

2. The first decision was the conviction, on July 1, 2005, of the former Mauritanian captain Ely Ould Dah to a 10-year imprisonment term for torture against Mauritanian citizens in 1990 and 1991. See FIDH website on the case.



PRESS RELEASE

Tunisia / France: Appeal trial of Khaled Ben Saïd, a Tunisian national: French justice system faced with the challenge of judging the most serious international crimes

Paris, 8 September 2010 – On 23 and 24 September 2010 the appeal trial of Khaled Ben Said will take place in Nancy. Ben Said is the former Vice-consul of Tunisia based in Strasbourg, and a former police superintendent in Jendouba, Tunisia.

On 15 December 2008, Khaled Ben Saïd was sentenced to eight years imprisonment by the Cour d'Assises (Criminal Court) of Strasbourg for complicity of torture. He was duly represented by a lawyer, even though he decided not to appear in Court. The Prosecutor General decided to appeal the Court's ruling, which is unprecedented in a matter of this gravity.

The plaintiff, Mrs. Gharbi, a citizen of Tunisia, who was a victim of torture in October 1996 in Jendouba, and who now resides in France, recognised the accused, who was working in Strasbourg at the time, as one of her torturers and filed a complaint in 2001. The International Federation for Human Rights (FIDH) and the French League for Human Rights (LDH) have been supporting her throughout this judicial marathon that has now lasted for over nine years.

Confronted with the failure of the French authorities to denounce the Tunisian regime, the decision of the Cour d'Assises (Criminal Court) of Strasbourg highlighted the reality and existence of human rights violations, in contradiction with the official line and unequivocally responded to the question of Tunisian officials' responsibility in the recurring practice of torture in a context of impunity.

On 9 August 2010 an implementing legislation of the Statute of the International Criminal Court was enacted in France. This law makes it almost impossible to initiate any further proceedings, on the basis of universal jurisdiction¹, against perpetrators of the most serious crimes such as genocide, crimes against humanity or war crimes. This recent development and the Prosecutor's appeal in this case illustrate the reluctance of the French government to act in compliance with its international obligations and to prosecute alleged perpetrators of crimes of torture and other international crimes who are present on the French territory.

In this regard, FIDH and LDH hope that the French justice system will overcome this reluctance and prosecute Khaled Ben Saïd, in total independence of political influence, for the serious crimes he is accused of.

Background on legal proceedings

After Mrs. Gharbi filed, on 9 May 2001, a complaint for torture, a preliminary investigation against Khaled Ben Saïd was opened on 16 January, 2002. FIDH and LDH immediately joined the proceedings as civil parties. The accused, who was at the time on the French territory where he was serving as Vice Consul of Tunisia in Strasbourg, hurriedly returned to Tunisia after being informed that legal proceedings had been initiated against him. Since 15 February 2002 an international arrest warrant has been delivered against him. The international rogatory commission issued by the investigating judge on 2 July 2003 was never executed by the Tunisian authorities. Back in Tunisia, Khaled Ben Said is said to have continued, unworried, to work in the Tunisian Ministry of the Interior. He had designated a lawyer to represent him during his first trial on 15 December 2008 before the Cour d'Assises of Strasbourg.

1. Mechanism enabling the prosecution of an alleged perpetrator of acts of torture who is present on the French territory, independently of the location where the crime was committed and of the nationality of the perpetrator or the victims.

Link to extracts of the FIDH-LDH report on the Khaled Ben Said case - March 2009: http://www.fidh.org/IMG/pdf/RappENG-Ben_Said_Final.pdf

PRESS RELEASE

Tunisian diplomat and torturer sentenced in appeal trial

30 September 2010 - In a historical sentence delivered on 24 September, the Criminal Court of Nancy sentenced Khaled Ben Saïd to 12 years imprisonment for having given instructions to commit crimes of torture on the person of the plaintiff, Mrs. Gharbi, on 11 and 12 October, 1996, at the Jendouba police station in Tunisia. The court thereby increased the sentence delivered in first instance by the Strasburg Criminal Court on 15 December, 2008.

“This emblematic sentence ends the circle of impunity for the crimes of torture committed in Tunisia. The Tunisian torturers are no longer safe from legal proceedings. This decision by the French judges ascertaining the guilt of Ben Saïd shows that political interests cannot supersede the victims’ right to justice” said Souhayr Belhassen, President of the International Federation for Human Rights (FIDH)¹.

In May 2001, Zoulaikha Gharbi, who currently lives in France, together with her husband, a political refugee, filed a complaint for torture against Mr. Ben Saïd, a diplomat, whom she recognised as the chief of the Jendouba Police Station where she was tortured, under his orders, in October 1996. After being informed that legal proceedings had been initiated against him, the accused, Khaled Ben Saïd, immediately fled to Tunisia, where he is still working at the Ministry of the Interior.

“This trial has shown that torture has been institutionalized as a means to repress all opposition and as a tool of terror” said Omar Mestiri, of the Comité national des libertés en Tunisie (CNLT).

“This verdict, just at a time when France is restricting freedoms, shows that an independent judiciary also exists,” stated Mr. Eric Plouvier, Mrs. Gharbi’s lawyer.

“Accusations that the civil parties had manipulated the case for political purposes shot back like a boomerang against the defence whose strategy was shown to fail through this increased sentence”, said Patrick Baudouin, Honorary President of FIDH and lawyer for FIDH and LDH (Ligue des droits de l’homme et du citoyen), the two organisations that joined Mrs. Gharbi as civil parties in the proceedings.

This decision is a tribute to the courage of Mrs. Gharbi who has been fighting a legal battle for nine years so that, at last, the truth can be heard.

“Although France recently adopted a controversial law restricting the possibility to institute legal proceedings for war crimes, crimes against humanity and genocide, the judges thus reasserted the importance of universal jurisdiction as an indispensable instrument in the fight against impunity,” said Jean-Pierre Dubois, president of LDH².

1. For more information on this case: <http://www.fidh.org/-Affaire-Ben-Said->

2. See the Press release of the French Coalition for the ICC on this law: <http://www.fidh.org/Justice-internationale-La-CFCPI-consternee-par-le>

II. The Conviction of Khaled Ben Saïd in the Context of the Systematic use of Torture in Tunisia

Systematic use of Torture at the Time of the Ben Saïd Case.

Article 5 of the Universal Declaration of Human Rights: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”

Excerpt from a report of the Committee for the Respect of Freedoms and Human Rights in Tunisia (CRLDHT) in 2000: “Torture in Tunisia. 1987-2000, Plea for its Abolition and Against Impunity”

« (...) le CRLDHT considère que le nombre total de personnes victimes de la torture entre 1990 et 2000 se chiffre vraisemblablement autour de plusieurs milliers.

(...)

Actuellement, les tortionnaires, les agents de la force publique qui commettent des actes répréhensibles jouissent d’une totale impunité, ce qui ne peut que les inciter à recourir toujours plus à des pratiques violentes et dégradantes; ces pratiques leur valent, non pas des sanctions ou des poursuites, mais des primes, des promotions et, dans certains cas, les plus hautes décorations. »

On September 23, 1988, only a few months after General Zine El Abidine Ben Ali came to power, Tunisia ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Twenty years later, the United Nations Human Rights Committee continues to express its concern regarding “serious and substantiated reports that acts of torture and cruel, inhuman or degrading treatment or punishment are being committed in the territory of this member State.”

On November 19, 1998, having examined Tunisia’s second periodic report transmitted the previous year, the United Nations Committee against Torture declared 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. Furthermore, it is concerned over the pressure and intimidation used by officials to prevent victims from filing complaints.” The committee added that, “by constantly denying these allegations, the authorities are in fact granting immunity from punishment to those

who are responsible for torture, thus encouraging the continuation of these abhorrent practices.” Furthermore, the committee expressed serious concern about “abuses directed against female members of the families of detainees and exiled persons. It has been reported that dozens of women would have been subjected to violence and sexual abuses or threats in order to put pressure on or to punish their imprisoned or exiled relatives.”¹ The committee thus confirmed the use of torture by Tunisian authorities against families of exiled persons, as it was specifically the case of Mrs. Gharbi in October 1996.

The use of torture and inhuman and degrading treatment has since not diminished in Tunisia. Progressively, and in particular following September 11, 2001, the “war on terror” has been used and continues to be used as a justification for serious abuses of human rights, leading to the arrest and sentencing of thousands of citizens, many of whom were submitted to acts of torture or other forms of ill-treatment. On December 10, 2003 (International Human Rights Day), a law was passed in “support of the international effort to combat terrorism and money laundering.” This law gives exceptional powers to agents of the Department of State Security (DSE) and contains a very broad definition of what defines a terrorist act. It is specifically used against dissidents and members of the opposition and has been reported as such by the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. The Special Rapporteur, in addition to the measures permitting detention without charge or trial of persons suspected to threaten national security, specifically criticised articles 49 and 51 which guarantee anonymity to investigating judges. This criticism is justified because of the fact that a person who is ill-treated while being interrogated will find it much harder to make any complaint.

In May 2006, at the time a candidate to the Human Rights Council, Tunisia claimed to respect the following areas: human rights, the superiority of international law, particularly the United Nations Convention against Torture. It claimed that it respected these domains over any internal legislation all while remaining committed with regard to the presentation of periodic reports to international bodies. However, the Tunisian authorities ignore almost systematically the accusations relating to human rights violations formulated by national or international human rights organisations. Furthermore, they appear not to pay any real attention to the concerns of the international mechanisms protecting human rights, nor do they appear to carry out any of their recommendations, particularly about torture. Accordingly, Tunisia has not submitted a report to the Committee against Torture since 1998 and continues to ignore the frequent requests made by the Special Rapporteur on Torture to visit Tunisia.

Despite repeated claims by the Tunisian authorities that cases of torture and ill-treatment represent only isolated acts and that those responsible of such acts are prosecuted and punished, human rights organisations have noted a generalised use of torture at all levels throughout the criminal proceedings. They also noted numerous obstacles encountered by victims when they attempt to register their complaints as well as the absence of any type of follow-up to these various complaints. For example, 30 people were accused in a case known as the armed gang of Soliman, and were condemned last January to sentences that included death. They confessed after being tortured to the charges brought up against them and to this date, this case has gotten absolutely no follow-up. Those suspected of terrorism are not the only ones subjected to acts of torture or who do not see any investigation open following their own complaints. Human rights defenders also are arrested, sexually harassed and threatened of rape, such as was the case of Mrs. Zakia Dhifaoui on July 27, 2008, by the Gafsa district police chief. She had participated in and spoken at a solidarity march in Redeyef

(South-Western Tunisia), in order to denounce the wave of repression against the inhabitants of the Redeyef mining basin and to request the freeing of all those in detention. Mrs. Dhifaoui's torturer was allegedly the same person recognized by other prisoners for having attempted to obtain confessions from them through the use of torture, so as to force them to sign an oral statement. The Gafsa's Magistrate Court of First Instance, which judged Mrs. Dhifaoui and her co-prisoners, did not take into account the accusations of torture and ill-treatment.²

Between 2006 and 2008, as much as three actual reports on torture in Tunisia have been published by human rights organisations, demonstrating that such practices do not only belong to the past but also repeatedly continue to this day.

1. Concluding observations of the Committee against Torture: Tunisia. 19/11/98. A/54/44, para.88-105.

2. See, for example, the press releases dated August 19 and September 16, 2008, from the Observatory for the Protection of Human Rights Defenders, (a joint program created in 1997 by the International Federation for Human Rights –FIDH-, the World Organisation Against Torture –OMCT-) and the Euro-Mediterranean Human Rights Network.

The impunity enjoyed by the perpetrators of torture

Excerpts from a FIDH report, “United Nations –Committee Against Torture-Tunisia: Blatant, Serious and Systematic Violations of Human Rights,” 1998.

-**Zoulikha Mahjoubi*** had her passport handed over to her and signed in October 1997 by Khaled Saïd, the police officer who had tortured her (suspension in a contorted position) on October 11 and 12, 1996, at the Jendouba police station, and who reminded her that they had “already met.”

-**Samira Ben Salah**, whose husband was in exile in Germany, was harassed and submitted to acts of torture on several occasions between 1993 and 1997 by the police, was sexually abused, and twice summoned by the police officer Mohammed Ennaceur to the Ministry of Interior; undressed and blackmailed in order to force her to divorce her husband, she was then harassed by officer Tahar Dakhila as well as his daughters. She was even ordered to marry him.

-On November 7, 1993, police officer Mohamed Naceur, known for his brutality and sadism, was awarded at the Carthage Palace with the famous Tunisian medal for the “November 7 Order.”

-**Mouldi Gharbi** was tortured in February 1991 by “Béchir,” *raïs el-mintaq*a (head of region) and “Abdelghani,” police officer demoted to Jendouba, having previously worked at Ariana, for the *Firqa el-moukhassa lichou’oun el-islamiyyin* (“special Islamist affairs squad.”)

The torturers of the Sfax central police station are respectively “Najib Bouhalila” of the political affairs bureau and “Najib Borgheroui,” of the passports office, who act under the responsibility of “Ridha Gafsi” and with the assistance of a torturer nicknamed “Qelb el Assad” and “Ammar.”

-**Zohra Hadiji** was the victim of sexual molestation and threats made against her and her daughter by the chief of the Sakiet Eddaïr police station, known as “Ayed” and his subordinates.

-**Aïcha Dhaouadi, Sihem Gharbi, Monia Jalladi, Leïla Driss, Souad Kchouk** as well as **Naïma Antar** detained in the Bizerte prison, were subjected to sexual molestation in the office of the director, Azzdine Nessaïba, in 1995. These prisoners were brought by guards Raja Hammami, Maryam Machfer and Leïla Kammachi.

Torture is practised in the Borj Erroumi prison under the supervision of the director, Belhassen Kilani and the officer in charge of torture, Zoghلامي, and at the April 9 Prison, under the supervision of chief of sector Nabil Aïdani, assisted in wing E by Belqacem Mahdhaoui. In June 1991, in wing E, a torturer named Tissaoui was cracking down, assisted by auxiliaries “Karim” and “Saïd,” and under the supervision of Belhassen Kilani. In 1993, again in wing E, the chief of sector was Nabil Aïdani. At the Messadine prison, in 1995-1996, under the supervision of Nabil Aïdani, and at the Grombalia prison, under the supervision of Hedi Zitouni, torture was perpetrated by Mohammed Zerli.

*In reality, it was Mrs. Gharbi, who had been interviewed by the representatives of FIDH (editor’s note).

The right to file a complaint is flouted

office, who act under the responsibility of “Ridha Gafsi” and with the assistance of a torturer nicknamed “Qelb el Assad” and “Ammar.”

Complaints are never followed up by impartial investigations. No convincing elements are made public regarding this issue. On the contrary, the authorities remain silent and a large number of people are pressured so as to prevent them from filing any type of complaint.

For example, the wife of Tijani Dridi, who died under vague circumstances in August 1998, while her husband was under administrative control (Ariana), was forced to sign an “agreement” to not look for her husband, whose body would be returned to her at a later date for burial under strict police scrutiny.

The complaint of a father of a minor beaten by the police in Ariana (Raouf Mathlouthi) led to a sentencing of a fine for libel against the police in 1991.

The complaints filed by prisoners are not transmitted and are thus even rarer.

-Mabrouk Qsir, tortured in July 1993 at the April 9 Prison, filed a complaint by letter to the director of prison administration. He had been summoned by his torturer, Nabil Aïdani. He attempted to have his complaint recorded by the Social Welfare Bureau where he was told they could only act with regard to his common rights. Finally, he unsuccessfully attempted to have his complaint recorded during his transfer to the Borj Erroumi prison, on October 25, 1993, but it was blocked at the administrative level by Belhassen Kilani.

(....)

Although confessions obtained under torture are commonplace, magistrates nevertheless return the following types of verdicts:

- **Morthada Laabidi**, arrested in September 1990 in Gafsa, will be tortured and sentenced in October.

- **Moncef Triki** was judged and sentenced by a magistrate who knew the torture he had undergone while in custody in 1991;

- **Touhami Ben Zeïd**, arrested in February 1992, was sentenced on the basis of a confession signed while being tortured, beyond the legal time frame to be in custody, by the Tribunal de Grande Instance of Grombalia, which didn't take any of these facts into account.

-The 279 people judged by the military tribunals in Bouchoucha and Bab Saadoun had signed their confessions while being tortured, and in some cases beyond the legal time period. When Chadly **Mahfoudh** complained, as well as his lawyer, before the Bab Saadoun tribunal, of undergoing acts of torture that led to rib and shin bone fractures, the judge responded that these were caused only because he simply had “fallen.”

-Mounir Bel Hedi Hakiri, arrested in April 1992, suffered broken ligaments during torture sessions in Bouchoucha in April 1992. He was unable to appear due to his health. He was sentenced in 1996 to 12 years in prison.

-Abdellatif El Mekki, tortured while in custody, was unable to obtain an order for investigation from the judge. He was sentenced to 10 years in prison.

-Hedi Akouri, arrested and sentenced in Gafsa, on the basis of the confession of another prisoner obtained after he had been tortured.

Torture continues to be practised in 2010...

Widespread use of torture

Excerpts from an OMCT report on the review of a report on Tunisia to the United Nations Committee for Human Rights, “*The Human Rights Situation in Tunisia*,” 2008.

In a report pertaining to the use of torture between 2005 and 2007, the Comité national pour les libertés en Tunisie (CNLT) lists nineteen cases of torture and ill-treatment¹ (...):

The case of Mohamed Amine Jaziri (trial n° 1/7717).

Amine Jaziri was arrested on December 24, 2006, in the town of Sidi Bouzid; he was kept in custody for 4 days at the district police station prior to being transferred to the Ministry of Interior in Tunis and before being kept in detention until January 22, 2007. At the Sidi Bouzid district police station, he was the victim of torture: beaten on every parts of his body, he was undressed, had his hands tied and his head placed between his knees. Then he was placed in a rope net and was hung from the ceiling for several hours. Now and again, officers would pour cold water on his head and back. He was beaten with electricity cables. Spread face down on the floor, he was splashed with cold water and the officers then trampled on him with their shoes which were covered with garbage. The interrogations were led by an officer named Salah Nsibi.

At the Ministry of Interior, he was constantly blind-folded and thus couldn't identify his torturers. He was forced to keep a bag full of stinking garbage on his head. He was only allowed to sleep for two hours per night in a small individual cell with humid floorboards. Prior to being brought before the investigating judge, he was deprived of sleep for three whole days.

The case of Mohamed Amine Dhiab (trial n° 1/7717).

Amine Dhiab was wounded by two bullets as he was coming out of his house in Hamma Chatt (southern suburb of Tunis) because he was to surrender to law enforcement officers. He was transported to the Interior Security Forces hospital in La Marsa. One bullet was extracted from his body and the other remained embedded in his spinal column. Three days later, he was brought to the Ministry of Interior to be interrogated. He stated to his lawyer that the police officers had deliberately inserted their pens into the wound where the bullet was embedded, while poking it so as to cause pain. Amine Dhiab was subjected to sessions of mock execution: officers would pull him from his cell, inform him that he had been condemned to death and gave him the choice of his death, either by hanging or by shooting. It should be noted that Mohamed Amine Dhiab suffers from mental disorder and underwent treatment in a psychiatric hospital in Tunis even prior to his arrest. His lawyers confirm that he was prone to having a psychiatric disorder and indicate that he had been released in a previous case due to «penal irresponsibility.»

Furthermore, the suspects arrested in case 1/7717 were similarly subjected to torture sessions in the central prison in La Mornaguia, where they were incarcerated. They were beaten and deprived of sleep upon their arrival and placed in isolation in freezing 2m by 2m cells, deprived of any blankets and warm clothes. The guards took them out now and again and made them run in the courtyard while repeating dirty jokes and imitating animal sounds. At times, the prison personnel would blind-fold them and then fire blank rounds. During any of the visits from their lawyers and family members, they were brought to them with their hands tied behind their backs and hooded.

(...)

Case of Ziad Ghodhbane (sentenced to 11 years in prison in case 11686/2).

Zied Ghodhbane was sentenced to 11 years in prison on January 11, 2007. He had claimed he was suspended by his hands to an elevator, the “Palanco,”² after having been undressed and beaten by several police officers all over his body. He was subjected to electric shocks under his left armpit. Thereafter, his head was immersed into a water-filled pool, in which a “pill” had been dissolved, until he fainted. He was also deprived of sleep for a whole night. His torturers used pseudonyms: two of them called themselves “El Haj,” and the other two “Fila” and “Chamakmak.” On June 25, 2005, Zied Ghodhbane was taken before the investigating judge. He was visibly worn, both physically and psychologically, barely managing to talk. He uncovered his knees in front of the judge, revealing his infected wounds in the presence of his lawyers Abderraouf Ayadi and Latifa Habbachi. The judge refused to write down official report of torture and refused to seize the Prosecutor as the law requires. The two lawyers and their client refused to sign the official report of the proceedings.

(...)

Case of Tarek Hammami (trial n° 9/72691).

Arrested on April 28, 2006, in Kasserine, Tarek Hammami was taken to Kasserine police station where he was undressed and spread on the floor with his hands tied behind his back. One officer inserted a broom handle into his anus. He spent the whole night spread out on the floor. On April 29, 2006, he was transferred to the Ministry of Interior, where he was interrogated by two police officers known under the pseudonyms “Zidane” and “Souraka.” He was beaten on his head and his ears to the point that he thought he had become deaf. This technique is known as the “slapping session.”³ He was also spread out on the floor and repeatedly kicked. He was deprived of sleep for two nights. His hands remained tied for 15 days, except during the meal times. On Sunday April 30, 2006, his hands were tied with a piece of fabric and he was suspended from the ceiling. Then his torturers inflicted on him the practice of “roast chicken,” and they violently beat him. He was subjected to this ordeal twice.

(...)

This list of cases is unfortunately not exhaustive. In a joint OMCT-CNLT press release issued on July 29, 2005,⁴ both NGOs denounced that there were five new judicial cases that accused over fifty people. In these cases, numbered 694, 721, 810, 997 and 998, both NGOs were able to establish that all the defendants who had met with their lawyers had complained of acts of torture to which they had been subjected so as to obtain from them signed confessions that they belonged to a terrorist group.

(...)

Far from being “punished by extremely severe sentences,” these practices are used in total impunity and, according to corroborating non-governmental sources, the perpetrators were not prosecuted at all nor were they sentenced or investigated. However, the Tunisian State claims that it has taken action, without referring to any precise cases or specifying the type of punishable abuses.⁵

In a ruling handed down on February 28, 2008, the European Court of Human Rights, before the Grand Chamber, refused the extradition of a Tunisian national from Italy to his home country, assessing that “the applicant belonged to the group at risk of ill-treatment.” As such, the Court considered that there were substantial grounds for believing that there was a real risk that the applicant would be subjected to treatment contrary to Article 3 (of the ECHR) if he were to be deported to Tunisia. The Court further noted that the Tunisian authorities had not yet provided the diplomatic assurances requested by the Italian Government, in May 2007.⁶

Since impunity is prevalent in Tunisia in cases of torture, which is systematically used, Mrs. Gharbi, a victim of torture, inevitably turned for help to the French courts in order to obtain justice.

1. CNLT report, *Justice préventive et instrumentalisation politique*, July 2005 – March 2007, pp 17 to 23.

2. The “Palanco” is a practice in which the victim is suspended upside down, his or her head is immersed in a tub full of water mixed with bleach until suffocation (Communication number 188/2001 M. Abdelli c/Tunisie: Tunisia. 20/11/2003. CAT/ C/31/D/188/2001, paragraph 2.10.).

3. The “slapping session” consists of hitting both ears of the victim at the same time until he or she faints. It is not uncommon that victims retain after-effects in terms of their hearing (Communication number 188/2001 M. Imed Abdelli c/ Tunisie: Tunisia. 20/11/2003.CAT/C/31/D/188/2001, paragraph 2.11.)

4. OMT-CNLT press release, Tunisia: New “terror cases,” acts of torture and restriction of defense rights, July 29, 2005.

5. Fifth periodic report, § 184.

6. Saadi v. Italy (application n° 37201/06), ruling handed down on 28.02.2008.

Presentation of the Legal Action Group (GAJ)

The FIDH Legal Action Group (GAJ) is a network of magistrates, lawyers and academics, who are either members of FIDH member organisations or of FIDH International Board.

The GAJ Mandate :

1. To provide support to victims: the GAJ provides legal assistance, advice, representation and support to victims of grave human rights violations in legal actions against the alleged perpetrators. Where necessary, assistance also includes material and psychological support.
2. To gather legal and factual elements required to initiate and contribute to judicial proceedings to ensure the investigation, prosecution and sanction of perpetrators of international crimes, including the preparation and submission of amici curiae, before national, regional and international tribunals.
3. To initiate legal actions before national and international tribunals: in order to contribute to strengthening victims' access to justice and to hold perpetrators of human rights violations accountable, the GAJ initiates legal actions at national level, implementing the principle of universal or extra-territorial jurisdiction, and at international level.

Presentation

Founded in France in 1898 during the Dreyfus case, the French League for Human Rights (LDH) defends the rights of the individual, fights against discrimination and undertakes the role of promoting political and social citizenship for all.

Currently, the LDH is campaigning for the abolition of restrictive laws relating to immigrants, for the regularisation of undocumented immigrants and for the right to vote in local elections for foreign residents. Along with the concept of social citizenship it fights against new forms of poverty and uncertainty. Attached to the defence of secularism against all fundamentalisms it defends the right to housing and healthcare for all and sexual equality. It denounces all forms of discrimination as well as police violence and fights for the observance of rights by the security forces.

With almost 9000 members and more than 350 departments, it operates using three complementary intervention methods : taking a stand and public actions; awareness, information and education ; discussions, research and expertise.

LDH - The French League for Human Rights

138 rue Marcadet - 75018 Paris

Tél: (33-1) 56 55 51 00 / Fax: (33-1) 42 55 51 21

ldh@ldh-france.org / Site internet : <http://www.ldh-france.org>



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FIDH - International Federation for Human Rights

17, passage de la Main-d'Or - 75011 Paris - France
CCP Paris: 76 76 Z
Tel: (33-1) 43 55 25 18 / Fax: (33-1) 43 55 18 80
www.fidh.org

Director of the publication: Souhayr Belhassen
Editor: Antoine Bernard
Authors: Clémence Bectarte, Marie Camberlin
Traduction : Jeremy Marnham
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of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest,

ABOUT FIDH

- FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

- A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

- A universal movement

FIDH was established in 1922, and today unites 164 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

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