

Published by the Euro-Mediterranean Human Rights Network, the Kurdish Human Rights Project and the Observatory for the Protection of Human Rights Defenders (a joint program of the FIDH and the OMCT) the Bar Human Rights Committee of England and Wales and the Union Internationale des Avocats

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**TRIAL OBSERVATION:
FREEDOM OF EXPRESSION, FREEDOM OF
ASSOCIATION AND UNFAIR TRIALS IN TUNISIA**

*A report of the trials of Dr Moncef Marzouki, Attorney Nejib
Hosni and the Tunisian League for Human Rights*

Euro-Mediterranean Human Rights Network
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March 2001

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FOREWORD

On 9 December 2000 President Zine El Abidine Ben Ali of Tunisia gave an address at Carthage to mark the 52nd anniversary of the Universal Declaration of Human Rights. He spoke of how Tunisia had applied itself, since the ‘Change’¹, to supporting every effort made for the protection and defence of human rights. He stated how human rights principles “are principles that have to remain constantly above political outbidding and narrow interests, since they are inseparable from national constant values and they unite all parties and make no discrimination among them whatever their tendency”.

Yet in the months preceding this address, a number of incidents had taken place which seriously challenge the values espoused by President Ben Ali, and which are the subjects of this report. In October 2000 Dr. Moncef Marzouki (spokesperson of the Conseil National pour les Libertés en Tunisie (CNLT)² and former President of the Tunisian Human Rights League, see below) presented a paper at a conference for human rights defenders in Rabat, Morocco in which he criticised President Ben Ali’s government, and its human rights record. This paper, which was not published or brought to Tunisia nevertheless led to charges being brought against him for maintaining an illegal association under Article 30 of the Law on Associations, and spreading false information liable to disturb public order contrary to Article 49 of the Press Code. In November, Maître Nejib Hosni, a prominent human rights lawyer, was brought before the Prosecutor of El Kef province to answer criminal charges pursuant to Article 315 of the Tunisian Penal Code relating to his continuing to practice as an advocate, despite a court order made in 1996 which purports to ban him from exercising his profession. The administrative authority responsible for the regulation of the Tunisia Bar is the Conseil d’Ordre, the Tunisian Bar Council. There is no legislation which allows the courts to make an order which bans lawyers from practice. Thirdly, as a result of elections which took place at the 5th Congress of the Ligue Tunisienne des Droits de l’Homme (‘LTDH’) in October, a civil case was brought against the LTDH by supporters of the Government (and members of the LTDH) in order to declare the election results invalid. The purpose was simple – the newly elected committee was headed by a well-known human rights lawyer, Mohktar Trifi, and made up of similarly independent minded individuals. Since the LTDH is one of the main human rights associations in Tunisia, the Government was very concerned to find that it had lost all control over the activities of the LTDH with the new committee in power and wanted a new election, with its supporters in place.

These examples of restriction of freedom of expression and of association are, unfortunately, not unusual in modern day Tunisia. There are still hundreds of political prisoners detained in poor conditions³. Thousands of former political prisoners, mainly Islamists, continue to be subjected to restrictions and intimidation. Trials of political and human rights activists often fall below international standards for fairness. Examining magistrates and courts refuse to investigate allegations of torture or to call defence witnesses. The defence lawyers are frequently prevented from cross-examining prosecution witnesses. Human rights defenders, government opponents and critics continue to be falsely accused of “subversive activities” both within Tunisia and abroad. As a result they are subject to harassment in the form of surveillance, restrictions on

¹ The overthrow of the previous government and coming to power of President Ben Ali in 1987

² See further in background below.

³ See *Témoignage sur la réalité des prisons tunisiennes*, “Nous n’avons pas le droit de nous taire”, Khémaïs Ksila, an FIDH, EMHRN CRLDH-Tunisie report, June 2000

movement, intimidation and disconnection and interception of their telephone and fax lines. Foreign media and publications critical of the government are banned in Tunisia.

The issues raised by these three trials reflect the wider situation of human rights standards within Tunisia. This report aims to document the specific events relating to the trials in question and also to raise awareness of the wider issues of the rule of law and freedom of expression in Tunisia.

The Bar Human Rights Committee, the Euro-Mediterranean Human Rights Network, the Kurdish Human Rights Project, the Observatory for the Protection of Human Rights Defenders and the Union Internationale des Avocats extend their thanks to all those who participated in the delegation and who subsequently assisted in the writing, editing and publishing of the report.

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INTRODUCTION

During December 2000 and January 2001, members of a trial observation mission observed three trials in Tunisia all of which concerned violations of international human rights standards. :-

- ◆ The criminal trial of Dr Moncef Marzouki which was listed for hearing on the 15 December 2000 before the Tribunal de Premiere Instance in Tunis. Dr Marzouki was charged with “maintaining an illegal association” under Article 30 of the Law on Associations, and “spreading false information liable to disturb public order” contrary to Article 49 of the Press Code. These charges carried a potential sentence of up to 10 years.
- ◆ The criminal trial of Maître Nejib Hosni, which was listed for hearing on the 18 December 2000 before the District Court in El-Kef. Nejib Hosni was charged with “non-compliance with a judicial decision” contrary to Article 315 of the Penal Code. This carried a sentence of up to 15 days. However, the subject matter of the judicial order in question, which purported to ban Nejib Hosni from practising his profession as a lawyer, raised fundamental issues about the independence of the judiciary within Tunisia.
- ◆ The civil trial in which four pro-Government members of the League Tunisienne des Droits de l’Homme (‘LTDH’) challenged the election results of the 5th congress of the LTDH which was listed for hearing on 29th January 2001. This is an attempt to have the election results declared invalid, and accordingly to get rid of the newly elected committee which did not include any Government supporters. By forcing the LTDH to hold new elections, the Government hopes to regain control of the committee.

This report describes the background, the progress and the results of these trials. It also reports on meetings which were held with various organisations in Tunisia, including the Young Bar Association, the Association Tunisienne des Femmes Démocrate (ATFD), the CNLT, and with foreign diplomats.

The members of the mission were:

Andrea Hopkins, a barrister working at the Kurdish Human Rights Project who participated in the missions of 15 to 19 December 2000 and 28 to 31 January 2001.

Rajesh Rai, Christopher Jacobs, Bill McGivern barristers from 10-12 Grays Inn Square who participated in the mission of 15 to 19 December 2000.

Eric Plouvier, a French lawyer for the International Federation For Human Rights in practice in France who attended the mission on 25 to 31 December 2000. M. Plouvier also attempted to attend the mission from 28 to 31 January 2001 but was refused entry to Tunisia by the Tunisia authorities on his arrival at Carthage airport.

Nigel Wray, barrister of 10-12 Grays Inn Square, who participated in the mission of 25 to 31 December 2000.

The Bar Human Rights Committee of England and Wales

The Bar Human Rights Committee of England and Wales is an independent body primarily concerned with the protection of the rights of advocates and judges around the world. It is also concerned with defending the rule of law and internationally recognised standards relating to the right to a fair trial.

The Euro-Mediterranean Human Rights Network (EMHRN)

The EMHRN is a network of human rights organisations, including KHRP, based in more than 20 countries from the Euro-Mediterranean region. Its objectives are to support and publicise universal principles of human rights and expressed in the Barcelona Declaration of November 1995; to strengthen, assist and coordinate the efforts of its members to monitor the partner states' compliance with the provisions of the Declaration; and to support the development of democratic institutions, promote the rule of law and strengthen civil society in the Euro-Mediterranean region.

The Kurdish Human Rights Project (KHRP)

KHRP is independent, non-political human rights NGO founded and based in Britain. It is committed to the protection of the human rights of all persons with the Kurdish regions of Turkey, Iran, Iraq, Syria and the former Soviet Union, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its projects include human rights advocacy and training, trial observations and fact finding missions, research and publication and public awareness, education and communication strategies. It has assisted applicants in a large number of cases brought against Turkey before the European Court of Human Rights.

The Observatory for the Protection of Human Rights Defenders

The Observatory is an action programme operated jointly by the International Federation of Human Rights (FIDH) and the World Organisation Against Torture (OMCT). It is based on the conviction that strengthened co-operation and solidarity among defenders and their organisations, will contribute to break the isolation of the victims of violations. The Observatory consists in a system of systematic alert on violations of rights and freedoms of human rights defenders, through the publication or urgent appeals sent out to around 90 000 recipients worldwide. It also organises observation of judicial proceedings, and whenever necessary, direct legal assistance. It reports on violations of human rights targeting individuals, or their organisations, that work for human rights around the world and conducts sustained lobby with different regional and international intergovernmental institutions.

Union Internationale des Avocats

The UIA an association of international lawyers with an interest in defending the profession and its future in the national and international context. The core objectives of the UIA are the promotion of legal knowledge and practice, to contribute to the establishment of an international legal order based on the principles of human rights and justice and to defend the interests of members of the legal profession.

This report was written by Andrea Hopkins with assistance from Rajesh Rai, Bill McGivern, Chris Jacobs, and Nigel Wray on behalf of the Bar Human Rights Committee, Euro-Mediterranean Human Rights Network, the Kurdish Human Rights Project, and the Observatory for the Protection of Human Rights Defenders.

BACKGROUND

Tunisia is a Republic that is dominated by one political party, that of President Zine El-Abidine Ben Ali, the Rassemblement Constitutionnel Démocratique Party ('RCD'). Although there are seven official political parties in Tunisia the RCD has dominated government since 1978. In October 1999 presidential and legislative elections took place. According to official statements, President Zine El 'Abidine Ben 'Ali was re-elected with 99.44 per cent of the votes. The six legal opposition parties were allocated 34 of the 182 seats in Parliament, regardless of their performances in the legislative elections.

The means employed by the RCD in its control of any opposition has come under some scrutiny including its close relationship to opposition parties and its undue control over the judiciary, political parties, the media, human rights organisations and lobby groups. For instance, the executive branch appoints, assigns, grants tenure to, and transfers judges. In addition the President is head of the Supreme Council of Judges. This situation renders judges susceptible to pressure in politically sensitive cases.

Furthermore, the Special Rapporteur to the United Nations in his report on his mission to Tunisia in December 1999 states,

" .. many political trials have reportedly taken place with no regard for the rights of defence and due legal process. The Special Rapporteur heard allegations that the judiciary is not entirely untouched by influence exerted by the executive branch. In addition the task of lawyers specializing in the defence of human rights is made increasingly difficult by the restrictions imposed on their activities in the defence of their clients... the special Rapporteur considers that the harassment of lawyers and impeding their freedom to pursue their profession constitute violations of the principle of equity of the judicial system and of the right of the accused to a fair trial. He considers it useful to mention these cases of judicial dysfunction because they often concern lawyers defending persons who have been prosecuted for having expressed divergent opinions. Such transgressions of human rights require informed and careful examination of the facts and merit correctives lest they lead to dilution of confidence in the judicial system and the due process of the law"

Although the State of Tunisia ratified unreservedly the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1988, the practice of torture remains widespread. The United Nations Committee Against Torture expressed "concerned over the wide gap that exists between law and practice with regard to the protection of human rights". It was "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. Furthermore, it is concerned over the pressure and intimidation used by officials to prevent the victims from lodging complaints"⁴. Individuals arrested for common crimes are subject to beatings by the police, and often appear before the courts with obvious injuries. In the case of people arrested on political grounds by the political wing of the police, the police premises of the Criminal Investigation Department of the State of Tunisia (*Direction de la Sûreté de l'Etat* (DSE)) is known to be a place where extensive torture sessions take place. It appears that torture is used in order to 'punish' the prisoners and also to ensure that they sign confessions dictated by their torturers, confessions which can then be used to convict them at

⁴ See Concluding observations of the Committee against Torture on Tunisia, ref. A/54/44, paras.88-105 A/54/44 paras. 96, 19 November 1998).

trial. Mission participants were told that when allegations of torture are made during a trial, judges refuse to investigate and have been known to exclude defence lawyers from the court who persist in mentioning the fact of torture.

In a 30-page report presented by the International Federation for Human Rights (FIDH) to the United Nations Committee against Torture in November 1998 detailing the practice of torture in Tunisia, the examples cited incontestably exceed the limits of what is admissible under International standards⁵.

Many human rights defenders and activists in Tunisia, including Dr Marzouki, are prevented from travelling abroad. For many years, the right to obtain a passport and the right to travel have been subject to severe restrictions. The law of 1975 governing passports grants the Minister of the Interior absolute discretionary powers to refuse to issue passports, especially if he judges that 'the presence abroad of the interested party (the applicant) would be of a nature liable to cause public disorder or damage to the prestige of Tunisia.' In the last 25 years, and in the light of this law, thousands of people, notably members of the political rank and file, trade unionists and human rights activists have been 'forbidden to travel' in a completely arbitrary fashion, often for many years.

The right to freedom of expression is constantly violated in Tunisia. Although this right is formally guaranteed by the Constitution and the International Covenant on Civil and Political Rights which has been ratified by Tunisia, it is compromised by the existence of a political system which continues to be based on the one-party system. Critical or conflicting opinion in the political realm, but not exclusively, is considered suspect. It is dangerous to hold or to express opinions contrary to those held by the Government. The image of Tunisia presented by the authorities is that of 'a people totally mobilised and united behind their president and his party'. The opposition which is tolerated, notably the parties represented in Parliament since 1994, does not go outside this consensus. Divergent opinion is not tolerated. Critical opinions, even moderate ones, are not allowed. This is most evident in the Tunisian media, and indeed in the degree of foreign media which is permitted in Tunisia. On 30th December, the day when Dr Marzouki was convicted to one year of imprisonment, the daily "La presse de Tunisie" was publishing on its headlines a picture of President Ben Ali under the title "Serving the rule of law and freedom".

Al Jazirah (a channel from Qatar) is the only independent television broadcast source of information in Tunisia. It is not possible to find a newspaper which publishes critical opinions or questions. Many laws, including those governing and regulating the exercise of liberties, together with the Press Code, the Law of Associations and the Law on Passports, run contrary to the Constitution. The Press Code is extremely repressive. A great many clauses of this Code list bans and penalties. The Press Code poses a constant threat to journalists, those in charge of the newspapers and advertising executives, together with all those who write, publish or state their opinions at meetings, conferences, lectures, symposia and seminars. It is the Press Code which has constituted the necessary tool for repression and condemnation by the courts of those who disrupt the consensus.

In the same vein, freedom of association is heavily restricted in Tunisia. The legislation in this area is composed of two texts: the Law on Political Parties (*Loi sur les Partis Politiques*, 1988)

⁵ See FIDH report "Tunisie : des violations caractérisées, graves et systématiques", Rapport alternatif au deuxième rapport périodique de la Tunisie au Comité contre la torture de l'ONU, rapport FIDH n° 267, novembre 1998.

and the Law on Associations (*Loi sur les Associations*) decreed in 1959 and amended many times since then. The Law on Political Parties gives discretionary rights to the Minister of the Interior to approve or refuse a certificate. The Law on Associations has a long history in Tunisia, in particular during the conflict of 1992/1993 in which the government clashed with the LTDH, attempting to muzzle the League by introducing an amendment to the existing law. No longer can an association in practice be set up by citizens who do not belong to the RCD and the civil service. In recent times, requests to set up associations have been rejected by the Minister of the Interior on grounds which are always the same: 'the statutes of the association do not conform to the Law on Associations'. This was the case when an attempt was made in 1998 to formally register the CNLT.

Existing independent associations (both legal and 'illegal') carry out their activities under difficult conditions. The LTDH, the Tunisian Association of Young Lawyers, the Association of Women Democrats, the Tunisian Section of Amnesty International, the General Union of Students in Tunisia (*Union Générale des Etudiants Tunisiens*) may be legally recognised and highly respected, but they are under permanent surveillance, they have their phone lines tapped, and are harassed by the police. Their meetings are often disrupted, or people are physically prevented from entering the building where the meeting is taking place. Their activities are disrupted and sometimes banned, their positions completely ignored by the media.

Human rights defenders are particularly targeted by the authorities and denied most of the rights enshrined in the United Nations Declaration for the protection of human rights defenders⁶, such as freedom of association or freedom of expression. Actors within independent civil society, as well as their relatives, are increasingly targeted and repressed. Such harassment aims to silence and punish human rights defenders and to deprive victims of human rights violations of any defence. In a press release dated 7 December 2000, the United Nations Secretary-General's Special Representative on human rights defenders, Hina Jilani, called on the Tunisian Government to end the harassment of human rights defenders in the country.

The Tunisian State boasts of having ratified a great number of international conventions relating to human rights. It prides itself in being committed to improving the situation of human rights. However the evidence confirms the reality which is that the gap between the speeches on democracy and human rights and what is actually experienced by citizens in their everyday lives remains extremely wide.

⁶ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

TUNISIA'S HUMAN RIGHTS OBLIGATIONS

International Obligations

Tunisia has signed and ratified a number of international human rights treaties. Of particular significance to the rights allegedly violated in the trials under consideration, are the International Covenant on Civil and Political Rights 1977⁷ ('ICCPR') and the African Charter on Human and Peoples' Rights⁸ ('ACHPR'). By virtue of Article 55 of the ACHPR, an individual or NGO may communicate a complaint to the African Commission on Human Rights in respect of a violation of the Convention. It is of note, however, that Tunisia has not signed the First Optional Protocol to the ICCPR. This enables those who claim to be victims of a violation of the ICCPR to file "individual" communications or complaints with the Human Rights Committee. Accordingly, whilst Tunisia is bound by the reporting mechanism enshrined in the ICCPR and therefore subject to scrutiny in this way from the Human Rights Committee, there is no recourse for an individual in respect of a specific violation. Under article 32 of the Tunisian Constitution, international conventions that have been duly ratified are granted legal precedence over domestic laws. As a result of this principle, in cases where there is a contradiction between a treaty and domestic legislation, the treaty has the force of law. Likewise, treaties may be applied directly in domestic courts by the magistrates and authorities responsible for their application.

The provisions of the ICCPR relevant to these trials are set out below.

Article 9 – The Right to Liberty and Security of Persons

- “ 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*
- 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*
- 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.*
- 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*
- 5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”*

⁷ Date of ratification 18 March 1969

⁸ Ratified 6 August 1982

Article 14 – The Right to a Fair Trial

“1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.”

Article 19 The Right to Freedom of Expression

- “1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For the respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order or of public health or morals.”

Article 21 The Right to Freedom of Association

- “1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize states parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise to take legislative measures which would prejudice or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.”

The following provisions of ACHPR are also relevant to the trials under consideration:

Article 6 – Right to Liberty and Security of Persons

“Every individual shall have the right to liberty and security and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained”

Article 7 – Right to Fair Trial

- “1. Every individual shall have the right to have his cause heard. This comprises:
 - (a) the right to an appeal to competent national organs against acts violating his fundamental rights as recognised and guaranteed by conventions, law, regulations and customs in force;
 - (b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
 - (c) the right to defence, including the right to be defended by counsel of his choice;
 - (d) the right to be tried within a reasonable time and by an impartial court or tribunal;

2. *No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provisions was made at the time it was committed. Punishment is personal and can be imposed only on the offender.*”

Article 8 – Freedom of Conscience, Practice and Religion

“Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.”

Article 9 – Freedom of Expression

“1. Every individual shall have the right to receive information.

2. Every individual shall have the right to express and disseminate his opinions within the law.

Article 11 – Freedom of Association

“Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided by law in particular those enacted in the interest of national security, the safety health, ethics and rights and freedoms of others.”

Constitution of Tunisia

Many of these rights are included within the Constitution of 1 June 1959.

Article 8

“The freedoms of opinion, expression, the press, publication, assembly and association are guaranteed and exercised under the conditions laid down by the law. The right to form trade unions is guaranteed”.

Article 10

“All citizens have the right to travel freely within the territory of the state, the right to leave and to make their domicile within the limits provided by the law”

Article 12

“Everyone shall be presumed innocent until proven guilty following a procedure in which he is guaranteed a right to a defence”

Article 13

“Punishment is personal and shall not be given without a law under which he may be punished.”

However, it is also important to note Article 7

“Citizens may exercise all of their rights in the form and within the conditions provided for in the law. The exercise of these right shall not be limited except in accordance with the law and for the protection of the rights of others, the protection of public order, national defence, and the development of economic and social process”

The Constitutional Council was established by decree of 16 December 1987, and its powers were subsequently included in chapter IX of the Constitution in 1995. This body is responsible for ensuring the constitutionality of the laws, and since 1998 its opinions have been invokable

against all the powers and all public authorities. Referral to the Council is compulsory for all bills concerning citizens' rights and fundamental freedoms. However, the Council remains an advisory body that can only be invoked by the Head of State, to the exclusion of other governmental or parliamentary bodies or Tunisian citizens.

Other relevant human rights commitments by the State of Tunisia include those under the Human Rights Defenders' Declaration and the Barcelona Process

Finally it is important to note that Tunisia has committed herself to respect the Human Rights Defenders' Declaration (The Declaration of the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, adopted by the UN General Assembly on December 9, 1998) article 5 of which states that:

Article 5

“For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully;

(b) To form, join and participate in non-governmental organizations, associations or groups;

(c) To communicate with non-governmental or inter-governmental organizations.”

Article 8

“1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

2. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.”

By adopting the Barcelona Declaration in November 1995, Tunisia also committed herself to act in accordance with the United Nations Charter and the Universal Declaration of Human Rights, as well as other obligations under international law, to respect human rights and fundamental freedoms and guarantee the effective legitimate exercise of such rights and freedoms, including freedom of expression and freedom of association for peaceful purposes.

In the legally binding Association Agreement with the European Union signed in June 1995 Article 2 states that:

“Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles which guide their domestic and international policies and constitute an essential element of the Agreement.”

THE MISSION

On arrival at the airport in Tunisia on 15 December the mission delegates were greeted by a number of human rights activists representing, amongst others, the CNLT, the Tunisian Association of Young Lawyers and the LTDH. We were informed that security forces had beaten up CNLT activists on the day of our arrival as they tried to hand in a petition to the Ministry of Health in relation to intimidation and harassment Dr Marzouki had undergone at the hands of the government and their agents. The petition had been signed by members of the academia. One of the activists was taken away and dropped some 30 km away. A knife and a letter of threat were left in the car of another activist.

THE LEGAL SYSTEM IN TUNISIA – INTERVIEW WITH THE PRESIDENT OF THE YOUNG BAR ASSOCIATION CHAWKI TABIB, TUNIS, 16 DECEMBER 2000.

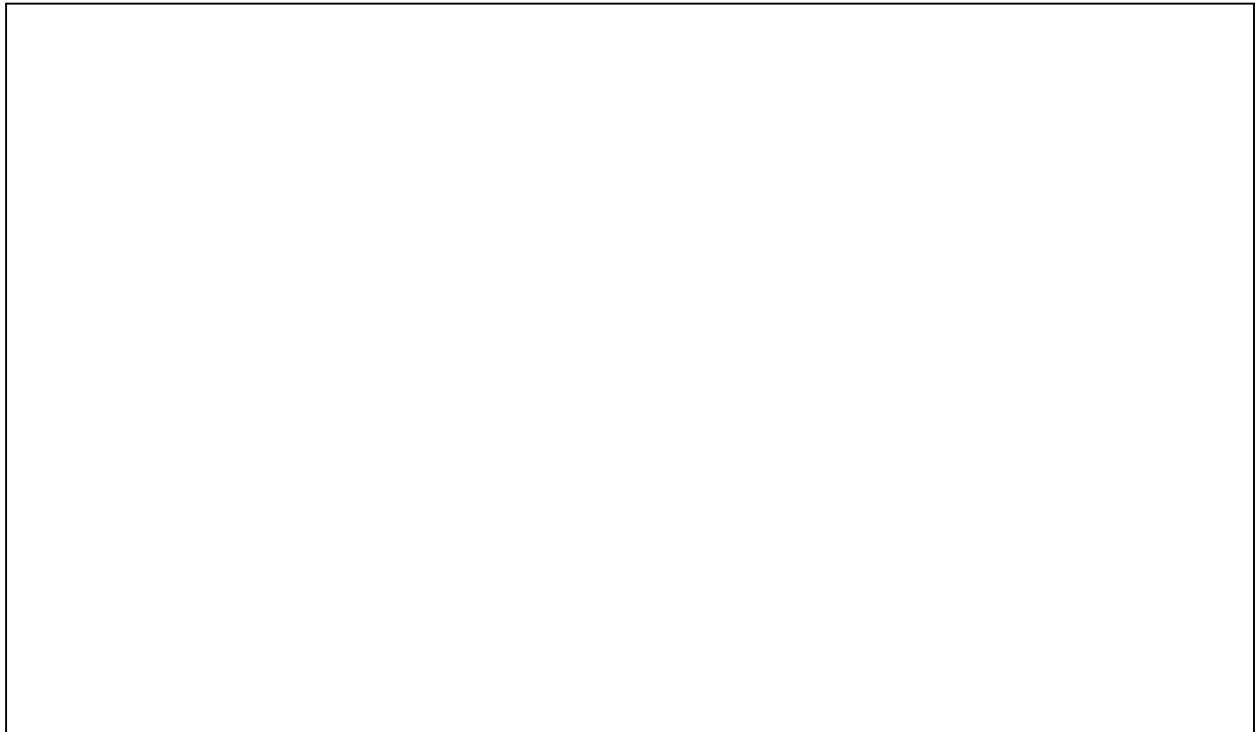
The Bar has existed in Tunisia for over 100 years. It is seen as historically important in the struggle for independence from France. Habib Bougiba, the first president of Tunisia, had been a lawyer himself and had used the Bar to intervene in the political process in order to defend human rights and pursue issues of public importance. The principle of interventions from the Bar remained in Tunisia after independence. When politicians, trade unionists or other groups considered that they were being oppressed, they would turn to the Bar for protection. It was considered that in these matters lawyers enjoyed a certain immunity. The practise continues today, where any lawyer may, on payment of a nominal fee to the Court, intervene in any case, even if not instructed by any party. The delegates noted the presence of over 40 members of the Bar in the trials of Dr Marzouki and Nejib Hosni.

Unlike President Bourgiba, President Ben Ali does not have a legal background. He had been the General Director of the Ministry of Interior and, as such, had been prominent in the Secret Service until proclaiming himself President in 1987. From 1991 Ben Ali set about attacking the independence and freedom of the Bar. He particularly targeted those lawyers who defended Islamists and used the press as a means of attacking them. The next target became human rights lawyers. Many of the methods used to pressurise the Bar are of a more subtle nature. Economic pressure is widely used. Human rights lawyers are likely to have their offices raided at any time and have their files, containing privileged documents, inspected for taxation irregularities. They frequently have to pay taxes twice, as individuals and then as practitioners. Members of the Bar report that telephone lines are frequently disconnected.

A current concern is that the Government has attempted to weaken and destabilise the Bar Council, by replacing it with a series of small regional Bar Councils, in which prominent positions are filled by lawyers who are members of the RCD. Only lawyers who are members of the RCD can represent public companies. Effectively those members of the Bar who do not support the Government are prevented from undertaking all but the lowest paid work. The Young Bar Association believes that this is used as a disincentive to those seeking to practice in the field of human rights.

A further means of exerting pressure is to intimidate clients. In the case of Nejib Hosni, policemen were posted outside maître Hosni's office. Any clients attending the office were told that if they entered they would be taken to the police station and arrested. In the widely reported

trial of Raadia Nasraoui,⁹ a prominent lawyer was tried for conspiring with her clients, a number of students who had been tortured after having been arrested in connection with political activities. Raadia Nasraoui has been subjected to considerable harassment over many years. Her offices have been frequently ransacked and case files taken. Her family and clients have endured unrelenting police surveillance and intimidation by the police.



President of the Young Bar Association Chawki Tabib (sitting, left) at the trial of Dr Moncef Marzouki 16 December 2000.

⁹ Cf. Torture, Arbitrary Detention and Unfair Trial in Tunisia: The Trial of Radhia Nassraoui and Twenty Co-Defendants, EMHRN 1999. The Administration of Justice in Tunisia: Torture, Trumped-up charges and tainted trial, Amnesty International, FIDH and Human Rights Watch, 1999.

Article 12 of Tunisia's Constitution states that *"Every accused person shall be presumed innocent until his guilt be proven in accordance with procedures offering him necessary guarantees for his defence"*. 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, the Criminal Justice System and its operation raise grounds for concern. The following examples were given by Chawki Tabib, the President of the Young Bar Association:

- (a) A defendant is not entitled to representation at a police station. It is only after an Investigating Judge has issued a "decision d'inculpation", equivalent to a declaration of a case to answer, that a defendant may have access to a lawyer.
- (b) It is only when the family of the defendant is notified of an interrogation hearing by an Investigating Judge that they may arrange representation. No notice of any hearing is sent out. The lawyer may then ask to see the file and ask for a complimentary investigation. In reality requests for complimentary investigations are seldom granted.
- (c) Lawyers are entitled to request the attendance of witnesses, but it is extremely rare that such a request is granted.
- (d) In the Nasraoui case the Presiding Judge threatened to eject from the Court any person who mentioned torture or the name of any police officer alleged to have enacted any torture.
- (e) Requests for medical examinations are refused by the Court as a matter of course.
- (f) Lawyers are not permitted to cross-examine any witness. The President of the Court has a discretion to have written questions put to a witness. This discretion is rarely exercised.
- (g) Summary trials - "condemnations" - usually last for less than 1 minute. The Defendant will be asked by the Court if he wishes to contest the allegation. If s/he answers in the negative the sentence is pronounced. If a defendant does wish to contest the allegation, then s/he is informed by the Presiding Judge that s/he is guilty because the information on the police file is correct. The Court will then proceed to pass a heavier sentence than it would have passed if guilt was admitted. The Delegates observed such summary trials taking place prior to the hearings of Dr Marzouki and Nejib Hosni.

INTERVIEW WITH DR MONCEF MARZOUKI, TUNIS, 16 DECEMBER 2000

Dr. Moncef Marzouki is a professor of medicine who was formerly the president of the LTDH. He informed the Mission delegates that in 1994 he announced his resignation from the LTDH and his intention to stand as a candidate against President Ben Ali in the presidential elections. Shortly afterwards he began to be subjected to increased harassment by security agents and in March 1994, after the elections, he was arrested on charges of having questioned the independence of the Tunisian judiciary in an interview with a foreign newspaper. He was detained for four months without trial and was eventually released on bail in July 1994. Thereafter he suffered intimidation and harassment by Government agents. Having been Chairman of the Tunisian League, Dr Marzouki left that organisation in 1998 and formed the Tunisian National Council for Liberties (CNLT). Dr Marzouki was indicted in November and December of 1999 on charges of defamation, belonging to an unrecognised organisation, public disturbance, and dissemination of false information for publishing and distributing reports

critical of the government. Dr. Marzouki has been dismissed from his employment as a University lecturer in what is considered to be at the behest of the government, and his freedom to travel has been restricted even though he has had offers of employment from abroad.



Dr Moncef Marzouki at his trial in Tunis on 16 December 2000



THE TRIAL OF DR MONCEF MARZOUKI ON 16 DECEMBER 2000

Charges

Dr Marzouki had been charged on two counts:

1 - Spreading false information liable to disturb public order (contrary to Article 49 of the Press Code).

2 - Maintaining an unauthorised association (contrary to Article 30 of the Law on Associations)

1 - "Spreading false information"

In October 2000 Dr Marzouki attended a conference on Human Rights Defenders in Rabat, Morocco. He presented a paper at that meeting. In this paper Dr Marzouki criticised the Government in 3 ways:

(a) Dr Marzouki criticised the handling by the Government of the "26/26" fund. This is a National Solidarity Fund, named after the number of its bank account. It was introduced by the Government purportedly to raise money to support economically weak sectors of society. The fund is supposedly raised by voluntary contributions and not by taxation, yet there have been allegations of people being forced to pay by means of harassment or implied threats to their jobs and careers. In the paper Dr Marzouki accused the Government of corruption in the way that this fund is administered, particularly with regard to the fact that there are no accounts available in respect of the allocation of monies raised or the manner in which they are spent.

(b) Dr Marzouki spoke of human rights violations that are occurring in Tunisia at the hands of the State.

(c) Dr Marzouki criticised the lack of independence of the judiciary.

Spreading false information is an offence that, according to its definition, cannot be committed outside Tunisia. The news disseminated must be such as to be damaging to public security. Dr Marzouki did not at any stage have a copy in Tunisia of the paper he presented at the conference. However in the charges that have been brought against him it is alleged that a copy of this paper was found by a policeman on the floor of the Palais de Justice in Tunis. This policeman handed the paper to his senior officer in the same building. To date no statement has been taken from this officer, although his identity is known to the prosecutor.

2 - "Maintaining an illegal organisation"

This charge relates to CNLT, which, as mentioned above was formed by Dr Marzouki in 1998. Freedom of Association is provided for under Tunisian law, however the law requires that non-governmental organisations can only operate with prior authorisation from the Ministry of Interior. Several applications for authorisation were submitted to the authorities, but were not accepted by officials. An application for authorisation was, however successfully submitted on 15th December 1998 to the Regional Authority. This was refused by the Ministry on 26th February 1999 with no explanation. An appeal was lodged, but the result remains to be notified. In 1999 CNLT published a report on prison conditions and the widespread use of torture. In publishing such a report the CNLT acted in breach of the publications code which requires that

advanced copies be provided to the Government. CNLT remains an illegal organisation and continues to operate with the objective of cataloguing and publishing all unfair trials and human rights abuses since 1987. Members report continual harassment from the authorities. The paper presented by Moncef Marzouki at the conference in Rabat bore the name of the author - Moncef Marzouki - and the association he presented, namely the CNLT.

THE HEARING ON 16 DECEMBER 2000

The case was listed to be heard on 16th December 2000. A representative from each of the British, French and US Embassies attended. Trial observers from the Euro-Mediterranean Human Rights Network, The Bar Human Rights committee of England and Wales, FIDH and a Swiss parliamentary deputy were also present. Dr Marzouki was represented by some 50 lawyers. Prior to entering the court room, the lawyers representing Dr Marzouki had decided to apply for an adjournment to enable the defence team to be fully prepared. There was also to be an application that the prohibition on overseas travel previously imposed on an earlier occasion should now be lifted.

At the start of the trial Dr. Marzouki addressed the court, denouncing the trial as a political attack upon himself. He spoke of the persecution that he had suffered at the hands of the state, and of the need for an organisation like the CNLT. He made the point that the Government should respond to criticism by publicly stating its own case, rather than by bringing criminal prosecutions against those who express a different opinion.

The President of the Court then made a roll-call of the lawyers present in the court. (This is standard procedure at the start of a trial. Any lawyer is entitled to appear provided he pays a small fee to the court administration). When the President finished reading out the names, a collective cry went up from the defence lawyers in protest at the fact that Nejib Hosni, despite having signed on as member of the defence, had been left off the list. When the court questioned whether Nejib Hosni had been disbarred, written confirmation from the head of the Tunisian Bar Association that he had the right to practise as a lawyer was presented and the President of the Court appeared to inscribe Hosni's name formally on the list of defence lawyers.

This was followed by lengthy submissions by the lawyers representing Negib Hosni. The main arguments put forward in support of lifting the ban on overseas travel were:

(i) Tunisian law stipulates that a defendant can only be given such a *mesure conservatoire* (protective measure) to allow an enquiry (investigation) to take place in a regular fashion (Article 86 of the *Code de Procédure Pénale* ('CPP')). Dr Marzouki continued to be banned from leaving the country even though the investigation into this offence was complete. Article 106 of the CPP provides that the measure (banning the defendant from leaving the country) ends when the order referring him to appear before the court has been made.

(ii) The Investigating Magistrate had gone beyond his mandate, as stipulated in Articles 47-58 of the CPP.

(iii) There was no risk that Dr Marzouki would leave the country in any event since he had always had the courage of his opinions in front of the court.

In support of the application for an adjournment, the lawyers argued that the defence needed more time to organise itself since the time given to prepare the dossier (case file) had been insufficient. The lawyers also raised concerns that Dr Marzouki had been dismissed arbitrarily from his post as Professor of Medicine in Sous University arguing that the case file against him

was of a political nature, given the personality of the defendant and the charges against him. In effect this was a trial about civil liberties, not about Dr Marzouki. Finally, it was argued that Dr Marzouki had already been punished by losing his job and being unable to visit his family (who are living in France).

The Court, comprising three judges, granted the adjournment, re-listing the case for the 30th December 2000. The court then retired to consider the bail situation. The defence lawyers were concerned at the fresh date given. They believed it would be more difficult for international observers to attend due to its proximity to the New Year.

After the hearing the trial observers requested a meeting with the judges. The judges saw the trial observers in chambers, within half an hour of the case having been adjourned. Quite understandably the judges were not prepared to answer any questions about the trial, explaining that they could not do so until it had been concluded. They also declined to answer any general questions about the trial process or system of justice in Tunisia. They said this was because they were in the middle of determining the outcome of the bail application. What was particularly disturbing was that the State Prosecutor was present in the judges' chambers before the trial observers arrived and she remained there after they left. While it cannot be said that the prosecutor played any role in the deliberations, her presence clearly meant that justice was not seen to be done. According to the defence lawyers the prosecutor had no right to be present while the judges deliberated. Given the importance of the trial the Mission delegates were left with the suspicion of state interference at the very least.

THE HEARING ON 30 DECEMBER 2000

The Court reconvened on 30th December 2000. Representatives from the French and United States Embassies were present to observe the trial. The mission delegates were also present. Initially, the President of the Court agreed to a meeting with the lawyers who attended as trial observers. But when the lawyers went to the President's chambers (as agreed) the meeting was cancelled. It appeared that a higher authority had vetoed the meeting.

At the outset of the trial, Dr. Marzouki made it clear that he believed that the prosecution (and his subsequent "predetermined conviction") was being conducted "exclusively for political reasons". Dr. Marzouki was warned by the President of the Court "not to make any further political speeches". Dr. Marzouki then made it clear that he believed it was "futile" for any lawyer to make submissions on his behalf. Nevertheless, the lawyers who had registered to intervene on his behalf did make a series of submissions on the "procedural impropriety" of not being allowed either to examine the paper evidence which allegedly incriminated Dr Marzouki or to cross-examine the police officer who had "found" the incriminating document. However, the President determined that "it was pointless and not necessary" for the Court to accede to the lawyers' requests. Further, the President of the Court expressly condemned one lawyer for "repeating Dr. Marzouki's slander". At this point, the lawyers intervening on behalf of Dr. Marzouki withdrew in protest.

Dr. Marzouki was, therefore, very obviously denied any effective defence to the charges. Consequently, Dr. Marzouki was convicted on both counts on the indictment. He was sentenced to eight months imprisonment for "maintaining an unauthorised association" and to four months imprisonment (consecutive) for "spreading false information liable to disturb public order" (see above). Dr. Marzouki was surprised at the relatively light sentence: he had expected to have to

serve seven years in prison. Further, Dr. Marzouki was allowed to remain at liberty for the ten days in which he was entitled to lodge an appeal against his conviction. It was believed that this was deliberate action by the Tunisian authorities who did not wish to appear repressive, since Dr. Marzouki's trial and conviction had aroused considerable international concern. This suspicion was confirmed when Dr. Marzouki indicated that he would not appeal (on the basis that his conviction was "political" and it would therefore be "futile"), a circumstance which immediately led the prosecution to lodge an appeal against his sentence (as too light) within the ten day period. This was in order to avoid the attention of the international community which would be keenly focused on Tunisia as Dr. Marzouki would have begun to serve his sentence. Dr. Marzouki is therefore currently at liberty awaiting the appeal hearing.



THE TRIAL OF NEJIB HOSNI ON 18 DECEMBER 2000

Background

Nejib Hosni is a prominent Tunisian lawyer practising in the district of El Kef and who specialises in the defence of human rights. He has been persecuted by the Tunisian state authorities since the 1980's as a result of his activities in defending human rights activists and political prisoners. In June 1994 Nejib Hosni was arrested on charges of falsifying a land contract. Me Hosni had bought land from a man who was married with wife and children. After the sale of the land was completed, the vendor died. Upon his death, his widow claimed that Me Hosni had falsified his signature on the documents of sale. Me Hosni was charged with criminal offences as a result. Me Hosni, and many lawyers who support him, consider these charges to have been 'trumped up'. They refer to evidence of witnesses contained in the case-file which showed that the signature was indeed that of the vendor, including a statement from his own mother. Me Hosni was detained for a period of over 10 months without a trial, subjected to ill treatment and denied access to his lawyers for prolonged periods of time. In January 1996 he was tried and convicted for offences of falsification of documents, possession of false documents and use of false documents. He was sentenced to 8 years' imprisonment in an unfair trial, in which no convincing evidence was produced to substantiate the charges.

As part of his sentence the judge had ordered Me Hosni to stop practising as an advocate in the courts in Tunisia (a so-called 'complimentary punishment' or *peines complimentaires*) although the sentencing judge had no power to prevent Mr Hosni from practising as an advocate (the interdiction upon practising one's profession as an advocate is not included within Article 5 of the Penal Code which sets out the list of complimentary punishments)

The regulation of lawyers is a matter for the Tunisian Bar Association. The Tunisian Bar Association, after conducting its own investigation, decided to allow Mr Hosni to continue practising as an advocate. In addition, at the end of 1995 Mr Hosni was accused of terrorism in a separate case and was severely tortured in the Ministry of Interior. He was later acquitted of these charges in November 1996 and was finally released in December 1996 after strong international pressure. He continues to be harassed by the Government - his telephone and fax lines have been cut, he has been under permanent police surveillance, had his passport confiscated, and has been prevented from travelling within Tunisia.

In about April / May 2000, Me Hosni resumed practice as a lawyer, having received permission from the Tunisian Bar Council to do so. On 8 August 2000, the Tunisian Bar Council issued a written document in which they confirmed that Me Hosni was a lawyer and remained on the Council's register of advocates, had right of audience and was authorised to practice his profession.

On 4 September 2000, Me Hosni was representing a defendant in a trial. The judge, Merouane Tlili, gave a judgment stating that Me Hosni was not allowed to represent the defendant, because he was banned from practicing as a lawyer. On 16 November 2000, a letter was sent out to all tribunals in which Me Hosni was practising. The letter stated that Me Hosni had been tried and convicted on charges relating to falsification of documents, as a result of which he had been banned from practising his profession as a lawyer for five years. This punishment remained valid. The letter asked all prosecutors to work to ensure the implementation of his punishment.

On 24 November 2000, Me Hosni was acting as a lawyer in a case concerning hunger strikers. He intervened on their behalf, asking for an adjournment because of their failing health. During

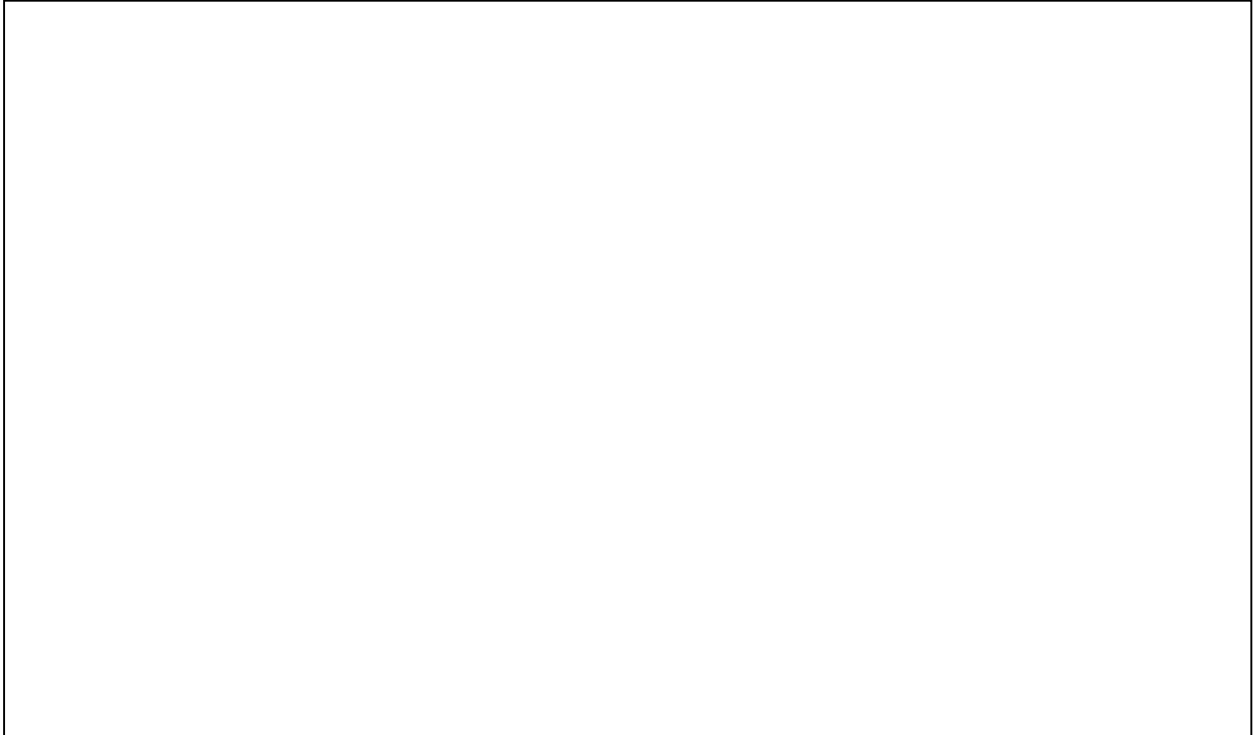
the trial, the judge asked Nejib Hosni if he was not suspended from practising law. The following day, he was ordered to appear before the State Prosecutor at the Cantonal Court of Kef on the 27 November, when he was asked to explain his intervention in favour of the hunger strikers. The State Prosecutor told both Me Hosni and the Tunis Section of the Bar Council that there would not be any proceedings against him in respect of the incident on the 24th. However, despite this, Me Hosni received a summons to appear before the district court of El Kef on 4 December, to be tried for “non-compliance with a judicial decision”, pursuant to Art 315 of the Tunisian Penal Code. The trial was postponed to the 18th December 2000. The judge hearing the case on the 4th December was also Judge Merouane Tlili.

THE HEARING ON 18TH DECEMBER 2000.

The Charges

On 18 December Me Hosni was charged in front of the Cantonal court of Kef with “non-compliance with a judicial decision”. This charge carries a maximum sentence of 15 days. This charge was based upon Article 315 of the Penal Code, which provides for a maximum of 15 days punishment for breach of a court order or regulation made by a competent authority. The trial judge was again Judge Merouane Tlili. He was sitting alone, with a court clerk present.

Some 40 lawyers were in court in support of Me Hosni. The majority of these lawyers had travelled from Tunis that morning (a drive of some two and half-hours). About 20 of the lawyers made representations on behalf of Me Hosni. A large number of plain clothes policemen were also in court, many of who had followed the Mission delegates from Tunis. A number of check points had also been set up on the road from Tunis to El Kef, apparently in order that the authorities could keep a check on which lawyers were appearing. One of the unmarked cars which followed the Mission delegates from Tunis attempted to avoid identification of the driver and passenger by placing newspapers in front of their faces as they were driving!



*Unmarked car driven by plain clothes policemen on the way to the trial of Nejob Hosni 18
December 2000.*

During the trial, the exchanges between the lawyers and the judge were often heated. The judge looked very uncomfortable, and did not interrupt them very often, except to state that these were only their interpretations of the law. The main arguments put to the judge on behalf of Me Hosni can be summarised as follows:

The order banning Me Hosni from exercising his profession was not in accordance with the law and was not valid

The basis for this argument was that:

- i) The only authority allowed to organise the profession is the Bar Council, which has sole power to say whether a lawyer can practice or not (Arts. 3 and 4 of the Bar Code). The court had no jurisdiction to deal with this.
- ii) It should first be proved that Nejib Hosni is not a lawyer if he is to be banned from practice by the courts.
- iii) The trial at which Hosni was convicted and sentenced to this “complimentary punishment” was a trumped-up charge and unfair. This was obvious on the face of the case file.
- iv) The list of ‘complimentary punishments’ in Art 5 of the Penal Code did not include banning a lawyer from practising his profession.
- v) Article 276 of the Criminal Procedure Code allows judicial authorities to quash a verdict if it is in violation of the law, even if time limit for appeal to the Court of Cassation has run and no party has appealed.

Independence of the judiciary

The importance of the independence of lawyers and the judiciary is paramount and this is compromised if the judges are able to ban lawyers.

The judge should take into account the personality of the accused

Art 54 of the Penal Code provides that the court can taken into account the character of the accused. Nejib Hosni is a well respected lawyer who had won many prizes for his work in human rights both in Tunisia and internationally. He represented all types of people, Islamists, political prisoners and human rights activists.

Impartiality of the trial judge

Judge Merouane Tlili had previously decided (in the September case) that Nejib Hosni was banned from practice. Accordingly, it was not appropriate nor in keeping with international and domestic fair trial standards that he should hear this case, where the issue was the validity of the order banning him from exercising his profession.

Nejib Hosni was being targeted because of his activities in defending human rights activists and political prisoners

He has suffered persecution over a considerable length of time, as set out in the background section above.

The last lawyer to plead on behalf of Nejjib Hosni was Raadia Nasraoui, herself the subject of long-term persecution by the state authorities. Me Nasroui was extremely outspoken and passionate in her address to the judge – an act of great courage as in previous cases lawyers have themselves been charged and convicted of the crime of ‘false news’ for things said in court.

Part of Ms Nasraoui’s speech is reproduced below (translation from Arabic)

“This is the first time we are publicly telling a judge that he is not allowed to judge. I feel that he has decided this case before he started it. We are playing in a theatre, as if he has already made his decision. Unless you are mad you cannot accept this. We know you are not partial. From the start you were against us.

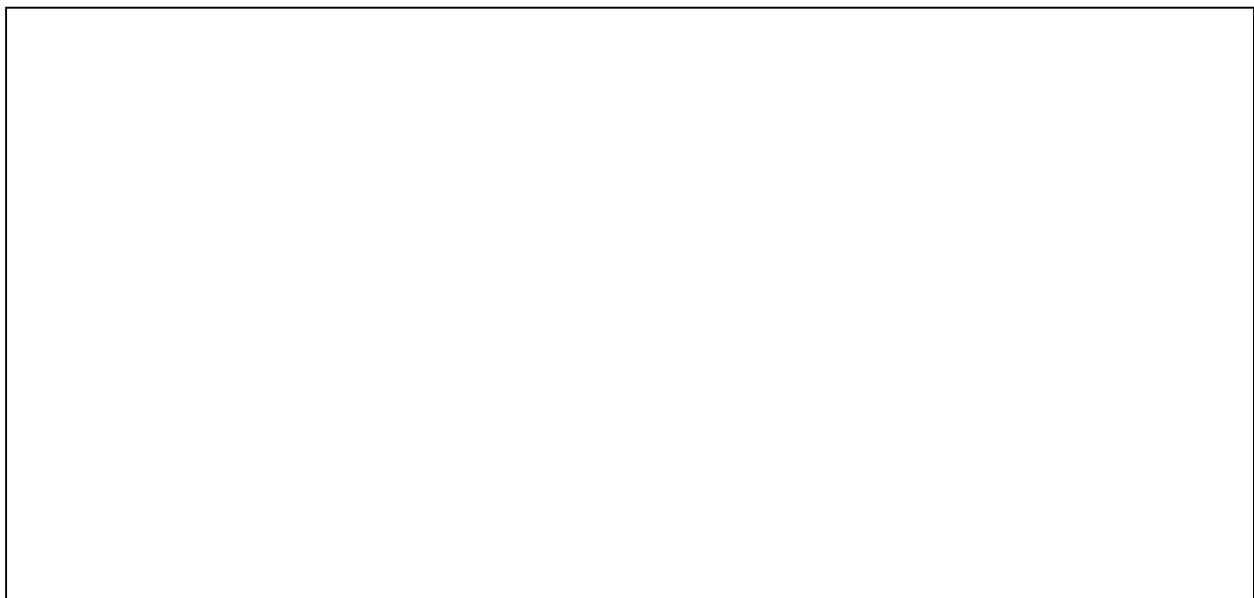
It is also a matter of logic and common sense. You must at least have common sense. The main problem is the independence of the judiciary. We know that they are not independent and do not abide by the law in all cases where there are political issues or human rights defenders. This is the beginning of a revolution in Tunisia. The system itself is not independent. It is not just that there are bad laws.

We always know the result – all judges will condemn the defendant. We never get a decision that is contrary to political opinion. We discussed before coming here whether to bother making any defence as we know that it is useless.

The target of this trial is the Bar. We will talk of laws, but I know they have no meaning for you.”

Many of the lawyers pleading on behalf of Nejjib Hosni spoke passionately about the need for an independent judiciary, and the protection of the freedom of lawyers. This is a matter which directly involves them all. It is of grave concern for the future of all human rights in Tunisia if lawyers can be prevented by the judiciary from practising their profession.

The judge retired at the end of the lawyers’ submissions. Judgment was not given until the following day. Nejjib Hosni was convicted and sentenced to the maximum of 15 days imprisonment. He was arrested and taken into custody on 21 December.



Nejjib Hosni at his trial in El Kef, 18 December 2000

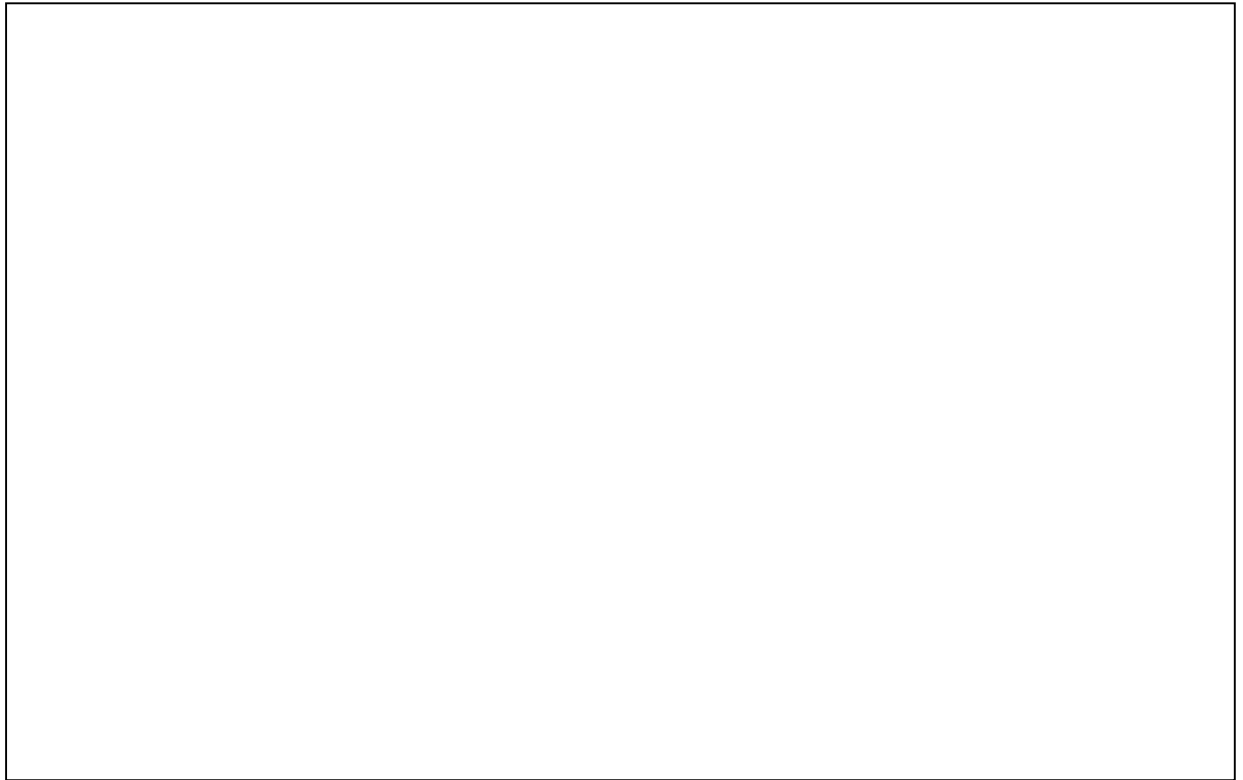
THE CONTINUING DETENTION OF NEJIB HOSNI.

The conviction following the trial on 18 December was a severe blow to Nejib Hosni, his family and the Tunisian Bar. The Bar of the Court of Appeal of Paris expressed its support to Nejib Hosni in a press release dated 9th January and denounced this “harassment of Human Rights Defenders”. It urged the Tunisian authorities to immediately release Nejib Hosni. However, matters have since deteriorated even further. When Nejib Hosni’s family and supporters went to the prison to meet him on the day of his release, they were told that the suspended sentence from 1994 had been re-activated, and he was to remain in prison for a further 5½ years. Since then, Nejib Hosni has been charged again with breaching the court order banning him from practising his profession, this time in a trial in Kebili. This trial took place on 16 January, and judgment was given on 23 January. He was sentenced again to 15 days imprisonment. Nejib Hosni was reported as looking tired and in poor health at this trial. A third trial has now been started – it seems that the authorities intend to prosecute him for all the trials in which he has appeared since he started to practice again in April 2000. The point of this is not clear, as each sentence can only be a maximum of 15 days, therefore it can only be with the intention of harassing Me Hosni. Now there is another case being brought against him. This appears to be a very personal vendetta.

Nejib Hosni has a wife and seven children, who are living in El Kef. While he is in jail they have no income, and life is very difficult for them too. It is important to recognise the effect that such persecution has on the wider family. Raadia Nasraoui has recently sent her youngest child (who is about 18months old) to live in France, following an incident in which she was being followed by secret police so closely that she had to brake suddenly to avoid an accident. Her daughter was in the car with her, and fell from her child seat, suffering a minor injury. This incident concerned Raadia enough that she does not feel it safe for her child to be living in Tunisia with her.

ATTEMPTED VISIT TO NEJIB HOSNI IN CUSTODY, 26 DECEMBER 2000

On 26 December 2000 a formal application was made (at Tunis Central Police Station to be referred to the Ministry of Interior) for Mission delegates be permitted to visit Me Hosni in El Kef Prison on 29th December 2000. The application was officially forwarded to the Ministry of Interior. Subsequently, Mission members Nigel Wray and Eric Plouvier attempted to gain entry to El Kef Prison on the morning of 29th December 2000. Plain clothes police officers, gendarmerie and prison security personnel immediately challenged the two lawyers on arrival at the security cabin a short distance from the main gate of the prison. The Deputy-Governor of the prison then came in person to inform the two lawyers that they would not be allowed entry to visit Mr. Hosni as (because of the Eid public holiday on 27th December 2000) documentation regarding the intended visit had not yet been forwarded from the Ministry of Interior in Tunis. It is unlikely that this was the actual reason, as the presence of the plain clothes police (with knowledge of the intended visit) indicated. It is also significant that the current Governor of El Kef Prison is one of "the five chief torturers in Tunisia" identified by Dr. Marzouki's proscribed CNLT. It must be remembered that Mr. Hosni had been a leading activist within the CNLT. On being refused entry, the two lawyers were followed by the plain-clothes policemen until they left El Kef.



Lawyers and supporters of Nejob Hosni outside the court in El Kef after his trial on 18 December 2000. (Nejob Hosni is in the centre)



THE TRIAL OF THE LTDH 29TH JANUARY 2000

Background

On 28 to 29 October 2000 elections took place at the 5th Congress of the Ligue Tunisienne pour la Defense des Droits de L'Homme (LTDH) as a result of which a new committee of the LTDH was elected. The new president of the committee is Mokhtar Trifi, a lawyer and human rights activist. The new committee did not include any persons sympathetic to the Government. This was a result unexpected by the Government, and one which it was not prepared for. It has been suggested that this result angered rather than threatened the Government. Others suggest that the Government is trying to undermine the power of the LTDH as it is the only real 'opposition' to the Government, and they want to prepare the way for a constitutional reform in the perspective of the presidential and legislative elections scheduled in 2004 with the purpose of enabling President Ben Ali to be a candidate for the third time.

On 14 November four members of the LTDH who were unlucky candidates (not elected) and who are known to be sympathetic to the Government, began a legal action challenging the results of the election. The four are Arbia Ben Ammar Bouchiha, (wife of the secretary general of one of the official opposition parties) Raouf Jmal, (member of the RCD), Kamel Ben Younes and Samir Sboui (RCD). These applicants claim that the elections were not valid as a number of the candidates had not paid their subscriptions to the LTDH, or had not had their membership cards renewed.

On 27 November an interim order of the court suspended the newly elected executive committee. This decision was confirmed on 30 November. A judicial administrator was appointed in the interim. This in effect has suspended all the activities of the LTDH. Since that date, attempted meetings of the LTDH have been disrupted, and its members harassed.

The first hearing date was listed for the 25th December 2000. This hearing was adjourned. It is apparently common in civil actions for there to be many hearings before a substantive hearing takes place. Each party must submit to the court a dossier setting out their case, and the evidence in support. These are exchanged at the hearing itself, and then it is usual for the parties to request an adjournment to consider the other side's dossier. A further hearing took place on 15th January 2001, with the same result. Also on this date it was suggested to the defendants that if two members of the committee stood down, in place of two of those not elected, it would be possible to compromise the action. The LTDH were not agreeable to this proposal.

THE HEARING ON 29TH JANUARY 2001

The hearing on 29 January 2001 was attended by Mission member Andrea Hopkins. She was to have been accompanied by Eric Plouvier. Following attempts of the Tunisian authorities to dissuade him from going to Tunisia, Eric Plouvier was refused entry at Tunis Carthage Airport on Sunday 28th as he tried to enter the country. The French Ministry for Foreign Affairs expressed “its strong regrets” (press release of the Ministry dated 30th January 2001). Also present at the hearing were representatives of the embassies of France, USA, Belgium, Switzerland, the Netherlands, and Sweden (who also represented the EU). It was apparently unusual to see so many foreign government officials present. Journalists were present from Algeria, France, Tunisia and the UK. Lawyers from Algeria, Morocco and Egypt all attended intending to plead in support of the LTDH, a display of solidarity for their Tunisian colleagues.

The hearing started at about 11am. The president of the court sat with three other judges. The courtroom was very full, with about 40 lawyers present on behalf of the LTDH, but only one appearing on behalf of the four applicants. The judge began by stating that he would only hear arguments on the facts of the case, in other words, that he would not accept political declarations. As usual, the judge read out the names of the lawyers present. This led to argument about the rights of audience of the lawyers from Algeria, Morocco, and Egypt. The first two should have automatic rights in Tunisia courts, whereas the latter need special authorisation. However, the judge did not wish to allow any of them to plead. He heard considerable argument from the lawyers on behalf of the LTDH, then consulted with the other judges. Finally the Court decided not to allow these foreign lawyers to plead.

At this, the lawyers representing the LTDH decided to withdraw en masse. The plaintiff’s lawyer remained, and continued to plead his case (as he is entitled to do.) This continued for about 15 minutes. His main arguments seemed to be that the LTDH members who voted had not paid their subscriptions, and that some had not renewed their memberships.

The judge then summarised the arguments of the defence which countered these submissions. Presumably he must have based this on the dossier submitted by the defence, as there had been no substantive argument during the hearing. He then announced that judgment would be given on 12 February 2001. On 12 February judgement was given against the LTDH, with an order that new elections should now take place.

FREEDOM OF ASSOCIATION AND THE LTDH

Another important aspect of the harassment of the LTDH that has been taking place since the 5th congress, is the case against Slaheddine Jourchi (Vice-president of LTDH). Slaheddine Jourchi is a journalist, although he lost his job with the journal ‘Realite’ in 1994, and has had to work freelance since then. He has been accused of ‘dissemination of false news likely to disturb public order’ and ‘contravening a legal decision’. Both charges relate to his signing of a communiqué of the LTDH on 11 December 2000, in the absence of the president, Mohktar Trifi. The most recent hearing in M. Slaheddine Jourchi’s case took place on 18th January. On this day all the lawyers also withdrew, in protest at another charge being added to the indictment. If he is found guilty of these charges, M. Slaheddine Jourchi faces up to ten years in prison.

The same procedure has been use a few weeks later against Mokhtar Trifi, President of the LTDH. First, he was be convoqué to the Premier substitut du Procureur de la République on 23 February 2001. Then he was called to appear before the juge d'instruction on 4 March 2001.

Mission delegates found that discussing the trial with the various diplomats present was very interesting. The unanimous view was that although in theory they would like to create a dialogue with the Government over these matters this was, in practice, impossible. They said that while it is possible to meet with Government officials, the officials are unwilling to discuss these matters and simply get very angry and go on the attack, stating that the West is only interested in civil and political rights, not in looking at the progress made in other areas such as social, economic rights. One commented that the way the Tunisian Government behaves is rather 'childish'; whereas it would be easier for them to talk, agree to take on board concerns, then do nothing, they do not adopt this approach.

Finally, on 30 November, the Tribunal des référés decided to appoint of an administrateur judiciaire replacing the Committee of the LTDH. The LTDH appealed against this decision. The hearing for the appeal, intially scheduled on 6 February was potspone to 13, to 20, to 27 February, and then to 13 March.

THE MEETING OF THE ASSOCIATION TUNISIENNE DES FEMMES DEMOCRATIQUE ON 29 JANUARY 2000

On the evening of 29th January, a meeting was held by the Association Tunisienne des Femmes Démocrate, to demonstrate their solidarity with the LTDH. The civil police were present, with a number of plain clothes officers stationed at both ends of the street and outside the apartment where the meeting was taking place. They tried to prevent anyone from entering who was not a member of the association. Mission delegate Andrea Hopkins attempted to enter the meeting together with Sihem Ben Sedrine, Omar Mestiri, Mohammed Beshiri and some others. They were refused entry by the plain clothes officers. When they tried to insist, the police started pushing them physically away. There were probably about 15 plain clothes police officers. Sihem was insistent that she should be allowed in, and two other women came out of the meeting to assist her. After a lot of argument, and pushing, she was able to enter.

After about one hour the group returned to attempt to enter the meeting again. This time there were even more police, at either end of the street, and they were quite aggressive. Two female lawyers came out of the meeting and assisted Andrea Hopkins to enter. There was a prolonged argument with a senior officer, who tried to say that it was against the law for this meeting to take place, however he could not quote any legislation or article that he relied on. Eventually he let them pass. Another of the party, Omeyya Seddik, who is from an organisation called Comité de Soutien aux Luttes Civiles et Politiques en Tunisie based in Paris, was beaten up by the police for trying to enter the meeting.

CONCLUSIONS

It is clear that all human rights activists within Tunisia are subjected to systematic harassment and repression by the state authorities with the intention of preventing them from speaking out against the Government. It is particularly shocking that a Government which purports to be a democracy and to promote human rights employs such dictatorial methods to silence its opponents. The case of Nejb Hosni shows just how far the Government is prepared to go – trumped up charges, punishment imposed contrary to the law, enforcement of a sentence for which there was no legal basis, telephone and fax lines cut, constant surveillance and torture.

It is the view of the mission members that these trials and the circumstances surrounding them demonstrate violations of the right to freedom of expression, the right to a fair trial, and the right to freedom of association. The criminal charges faced by Dr Marzouki were clearly an interference with his right to freedom of expression as protected by the ICCPR and the Tunisian Constitution. No doubt the Tunisian Government would seek to rely upon the limitation clause contained in Article 19 of the ICCPR and Article 8 of the Tunisian Constitution. However, it is difficult to see how the paper given by Dr Marzouki posed a threat to public order, and secondly how the measures taken in response are proportional or necessary in a democratic society. The measures taken against Nejb Hosni, namely the interdiction on practising his profession and the criminal charges to enforce that, were not in accordance with the law, and further not justified by any of the limitations in Article 19. The manner of the two trials was unfair, in terms of the independence and impartiality of the trial judge, the failure to examine witnesses and the restrictions placed upon the legal representatives. The civil action taking place against the LTDH, and the experience of those trying to attend the meeting of the AFDT are examples of the violation of the right to freedom of association enshrined in the Article 21 ICCPR.

It is also the opinion of the mission members that the observed trials are clear examples of violations of the Human Rights Defenders Declaration as well as of Article 2 of the Association Agreement between Tunisia and the European Union, hence violating the spirit of the Barcelona process.

RECOMMENDATIONS

The Bar Human Rights Committee, the Euro-Mediterranean Human Rights Network, the Kurdish Human Rights Project, the Observatory for the Protection of Human Rights Defenders and the Union International des Advocats call upon the international community put pressure on the Tunisian Government to :

- (i) Immediately stay all further proceedings against Nejb Hosni and release him from custody;
- (ii) Pronounce the convictions of Nejb Hosni and Dr Moncef Marzouki to be invalid and contrary to international standards;
- (iii) Declare the order which purports to ban Nejb Hosni from practice as a lawyer to be invalid and contrary to the law;
- (iv) Reinstate the committee of the LTDH legitimately voted in at the 5th Congress in October 2000;
- (v) Ensure that all legitimate prosecutions are instituted in accordance with the law and are brought before fair, independent and impartial tribunals prescribed by law and that the conduct of such proceedings be in accordance with internationally recognised standards governing fair trials, including the United Nations Basic Principles on the Independence of the Judiciary;
- (vi) Cease to bring criminal prosecutions in respect of the legitimate expression of ideas and opinions contrary to those held by the Government;
- (vii) Sign and ratify without delay the First Optional Protocol to the International Covenant on Civil and Political Rights.

In particular they call the European Union to take urgent and appropriate measures within the framework of the Association Agreement with Tunisia with the aim of bringing human rights violations in Tunisia to a halt.