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RIGHTS  
WATCH

# CRACKS IN THE SYSTEM

Conditions of Pre-Charge Detainees in Tunisia



# **Cracks in the System**

**Conditions of Pre-charge Detainees in Tunisia**

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# Cracks in the System

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## Summary

In Tunisia, as in many other countries, suspects taken into police custody are at risk of abuse. What happens in the first hours and days after arrest can determine the outcome of the rest of the judicial process. This report looks at the treatment of detainees, gaps in the system of legal safeguards against mistreatment, and conditions of detention in the period between a suspect's arrest and the initial judicial review of their detention.

When officers of the Tunisian police or National Guard arrest people, they generally interrogate them at police stations before transferring them to pre-charge detention centers (*centres de garde à vue*) located either inside big police compounds or in separate facilities. Under Tunisian law, following arrest a detainee can remain in pre-charge detention for up to six days, until they are either released or charged.

Unlike regular prisons, which fall under the control and administration of the Ministry of Justice, pre-charge detention facilities are controlled and administered by the Ministry of the Interior. In February and September 2013, Human Rights Watch visited four of these detention centers run by the Ministry of the Interior to investigate detention conditions.

Until the January 2011 uprising in Tunisia that led to the overthrow of President Zine el Abidine Ben Ali, it was virtually impossible for human rights organizations to conduct first-hand investigations of conditions in any Tunisian detention facilities. But the new authorities in Tunisia have proved far more open. And while, as we found, conditions in the pre-charge detention centers we visited are far from ideal, there is an opportunity both to improve conditions and to reform a flawed legal framework that too often gives rise to mistreatment and abuse of pre-charge detainees.

Based on our analysis of the legal framework, visits to the four detention centers, and interviews with detainees and detention centers staff, Human Rights Watch found serious gaps in Tunisian laws and policies governing pre-charge detention; poor physical conditions of detention; frequent violations of due process rights; and several cases of mistreatment during arrest and interrogation.

## Legal and Policy Framework

### *The New Constitution*

The fourth draft constitution, presented on June 1, 2013 for debate within the National Constituent Assembly, sets the framework for the protection of people deprived of their liberty. It provides various guarantees for detainees, including the presumption of innocence, a prohibition of torture, and the rights to a lawyer, to be informed of rights upon arrest, and to be treated humanely and in a way that preserves dignity. However, the draft constitution does not provide for a time limit before a detainee is brought before a judge, nor does it state that the right to a lawyer begins at the moment of detention.

### *Separation between Investigative and Custodial Functions of the Police*

The policy of the Ministry of the Interior in the regions we visited appears to be to separate the investigative and custodial functions of the police. Detention centers are run by the Administration of Public Roads of the Ministry of Interior in each region while interrogations and investigations are conducted by the judicial police in police stations. Some police stations and detention centers are completely separate, while others are located in the same compound. While this separation between investigative and custodial functions is a good practice, Human Rights Watch was unable to assess whether it is implemented throughout the country and whether it is applied by the National Guard, which also carries out arrests and runs its own pre-charge detention centers.

### *Prolonged Period in Custody*

Police can arrest persons on suspicion of an offense and hold them in detention for up to six days under Tunisian law before they release them or transfer them following the indictment of the prosecutor to an investigative judge, who will order their release or detention in prison, pending trial. This period of detention is inconsistent with the right under international law to be brought promptly before a judge. In addition, Human Rights Watch found that, of the 70 detainees interviewed, ten had remained in police custody for a period of more than six days. Human Rights Watch received contradictory information on the reasons for this prolonged period in police custody. Detaining authorities said this was in conformity with a procedure under the Code of Criminal Procedures (CCP) allowing the initial pre-charge detention to be prolonged for a period of up to six more days if the investigative judge orders the judicial police to conduct further investigations under a

process known as “rogatory commission.” However, the Ministry of the Interior denied this was allowed by the CCP.

### *Absence of Lawyer*

A serious gap in Tunisian law regarding safeguards against mistreatment is the absence of a right to legal counsel during the initial period of detention. The CCP allows the presence of a lawyer from the first appearance of the suspect before the investigative judge. By that time the suspect is likely to have signed, without a lawyer present, a police statement that may have been coerced and could be used against him or her during trial.

### *Monitoring Mechanisms*

Tunisia’s National Constituent Assembly on October 9, 2013, adopted a law to create a National Authority for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Tunisia is the first country in the Middle East and North Africa region to establish such an independent domestic mechanism to prevent torture, in line with provisions of the United Nations Optional Protocol to the Convention against Torture (OPCAT), which Tunisia ratified in June 2011. The body will consist of 16 full time experts who parliament will elect and who will have the authority to visit any site where people are deprived of their liberty to document torture and ill-treatment, to request criminal and administrative investigations, and to issue recommendations for measures to eradicate torture and ill-treatment. The law allows officials to refuse the authority’s request for access in certain broadly defined cases, making it inconsistent with the mechanisms the protocol envisaged.

## **Material Conditions**

### *Insufficient Food and Inadequate Nutrition*

Human Rights Watch found in the detention centers visited that detention authorities did not adequately feed detainees. The prisoners described the food as “insufficient,” and “food in name only.” Many reported feeling constantly hungry. In some detention facilities, detainees reported that meals were served only twice a day. Meals consisted of lettuce and sauce sandwiches, with, in the best cases, thin slices of luncheon meat; or a watery soup containing pasta or rice but no protein. Except for the lettuce found in the sandwiches, the detainees received no fruit or vegetables.



### *Poor Sanitary Conditions*

Hygiene and sanitary conditions appeared to be poor in the four detention facilities Human Rights Watch visited. Detainees described struggling to keep themselves clean, because of inadequate access to running water and cleansing agents, including soap. In some facilities the detainees did not have direct access to running water and had to ask the guards each time they wanted to turn on a faucet. In addition, the old structures of the detention facilities create problems with waste management. In every facility we visited, detainees said they have no access to showers.

### *Failure to Consistently Separate Minors from Adults*

Authorities did not always separate minors and adults, in violation of international norms, in the centers Human Rights Watch visited.

### *Smallness of Cells and Overcrowding*

International standards require that all police cells should be of a reasonable size for the number of persons they accommodate. Due to the constant influx and outflow of detainees, it is difficult to estimate overcrowding definitively. However, Human Rights Watch noticed that the number of detainees can swell during situations of unrest. For example, Human Rights Watch researchers visited Bouchoucha detention center three times, and counted on the first visit 21 detainees in one cell measuring nine meters long and six meters wide, 45 on the second visit, and 50 on the third visit. In Sfax detention center, which Human Rights Watch visited a day after riots in the city, several detainees reported that they had to sleep near the toilet because of the lack of space.

### *Arbitrary Prohibition on Activities*

During their custody, which can last as long as six days, and sometimes 12 days under the procedure known as “rogatory commission,” meaning a complementary investigation ordered by the investigative judge to the judicial police, detainees in the centers that Human Rights Watch visited have nothing to do all day long. Only one facility that Human Rights Watch visited provides the detainees with regular outdoor time.

### *Access to Healthcare*

Except for the detention center of the Tunis governorate, Bouchoucha, none of the detention centers that Human Rights Watch visited had a medical facility or a doctor on staff. In those facilities, detention authorities send detainees who need medical attention to nearby hospitals. However, detainees we interviewed said they were not informed of their right to see a doctor.

## **Insufficient Safeguards against Ill-Treatment**

### *Medical Examination and Recording of Injuries*

Detention authorities generally seem to conform to the requirement of not accepting suspects with visible injuries without a prior medical examination. However, in the detention centers visited, except for the one in Sfax, neither the general registers nor the medical registers noted the nature of the detainee's symptoms or diagnoses even when they underwent medical exams. They included only information about the date the detainee was seen by a doctor or sent to a hospital, and the nature of the treatment. These records are insufficient and fail to describe adequately the source of any injuries and the type, location and characteristics of all injuries, details that could serve not only to determine the consistency of complaints of torture but also preclude false allegations against the police. In addition, Human Rights Watch came across at least one case where injuries that a detainee sustained did not appear at all in the register.

### *Right to Information*

Many of the detainees Human Rights Watch interviewed said that the police did not inform them of their rights during arrest and interrogation, such as their right to inform their family members and their right to have a medical examination.

### *General Respect for Pre-charge Deadline*

From interviewing inmates and reviewing the registers kept at detention centers, Human Rights Watch found that, in the detention centers visited and except for the procedure described above for complementary investigations ordered by an investigative judge, authorities generally complied with the time limit set by law for bringing persons placed in their custody before an investigative judge.

## **Mistreatment during Arrest and Interrogation**

While detainees rarely reported physical mistreatment by detention centers guards, 40 out of 70 of the detainees Human Rights Watch interviewed reported that police mistreated them during arrest and interrogation. This mistreatment included, variously, insults, humiliation, threats of rape, shoving, slaps, punches, kicks, and beatings with sticks and batons. In the 40 cases, the detainees said the police subjected them to such mistreatment while arresting them or while they were already in custody, but when they were offering no resistance to the police.

## **Forced Confession**

Twenty-seven of the 70 detainees Human Rights Watch interviewed reported that they signed statements prepared for them by the police without reading them, either because the police prevented them from reading them or because they said that they dared not ask to read them. Some reported that the police used physical violence when questioning them or when asking them to sign their statements.

## **Few Allegations of Physical Mistreatment in Detention Centers**

Except in Nabeul Jail, inmates in the facilities that Human Rights Watch visited did not report physical mistreatment by the guards, apart from occasional roughing up and insults. However, in Nabeul detention center, Human Rights Watch heard allegations of physical mistreatment and humiliation by guards on the night shift on more than one occasion.

Now that Tunisia is undergoing a transition to democracy, there is a wide window of opportunity to improve the safeguards for detainees and their protection from potential abuse by reforming the law and adopting a constitution guaranteeing due process rights from the early stages of arrest and detention. There is also scope to improve the material conditions in detention centers in order to respect the dignity, well-being, and safety of arrested persons. The international community can bolster this effort by supporting proposals for reform and providing assistance to improve material conditions and infrastructure in this particularly sensitive sector. The recommendations listed below are intended to help reform this sector in order to protect the rights of persons placed in custody.

# Recommendations

## To the Tunisian Government

### *On the Legal Framework*

#### **The Constitution**

- Ensure that the new constitution of Tunisia spells out the rights of persons deprived of their liberty, including the maximum length in police custody before judicial review and the right to a lawyer from the moment of arrest.

#### **Legislation**

- Revise the Code of Criminal Procedures (CCP) to reduce the maximum amount of time in police custody before judicial review to forty eight hours.
- Make clear in the CCP that even in cases when the investigative judge requires the judicial police to conduct further investigations, the latter cannot order the remand of the person in custody in a detention center, but, rather, must transfer him/her to a prison.
- Introduce legislation to ensure that all persons deprived of their liberty are entitled to the assistance of a lawyer from the outset of deprivation of liberty. Furthermore, if a detainee does not have a lawyer of their own choice, they should be entitled to have one assigned to them, and benefit from free legal assistance if they do not have sufficient means to pay.
- Revise the definition of torture in the Penal Code to include criminalization of all acts of instigation, consent, or acquiescence of torture by public officials or other persons acting in an official capacity, including those who order subordinates to torture or who cover up torture after the fact. The criminal act should include persons exercising superior authority over subordinates who commit torture where they knew or should have known that such conduct was, or was likely to occur, and they took no reasonable and necessary preventive measures.
- Amend the CCP to indicate that where there is an allegation of torture or ill treatment, the burden of proof lies on the prosecution to prove that any confession has been obtained by lawful means, pursuant to the recommendation made by the

UN special rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment in his February 2012 country report on Tunisia.

### *On Material Conditions*

- Provide detainees with food of sufficient quantity and nutritional value to maintain their health and strength.
- Improve sanitary installations in detention centers so they are sufficient to enable every prisoner to comply with the needs of nature in a clean, timely and decent manner. Persons deprived of their liberty should be given regular access to shower facilities and, at night, to mattresses. The cells should be cleaned regularly by police station staff or by prisoners working voluntarily under the guards' supervision.
- Where possible, offer persons detained in police stations for more than 24 hours the opportunity to leave their cells for at least one hour daily, in a space large enough to permit exercise.
- Hold arrested or detained children—that is, all persons under 18—in cells separately from adults.
- Conduct a nationwide audit of the material state of police detention centers, and establish a plan of action for the upgrading of facilities, in order to bring them in line with international standards with regard to sanitation, bedding, nutrition, ventilation, running water, and possibility for exercise.

### *On Fundamental Safeguards*

#### **Monitoring Mechanisms**

- Ensure that qualified, independent experts are appointed to the National Body for the Prevention of Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.
- Endow the body with sufficient resources and grant it the political support it needs to carry out its mandate effectively.
- Ensure that the detaining authorities grant access to the body in all circumstances and do not interpret the clause on national security and defense in way that unduly limits access of the body to places of detention.

## **Medical Safeguards**

- Ensure that every routine medical examination is carried out using a standard form that includes (a) a medical history (b) an account by the person examined of any violence he or she recently experienced (c) the result of the thorough physical examination, including a description of any injuries. The medical record should be made available to detainees or to their lawyers if requested.

## **Police and Judicial Practice**

- Ensure that the existing practice of transferring arrested people to detention centers other than the cells administered by the judicial police is followed consistently and systematically in all regions and districts across the country and that it includes arrest and detention operated by the National Guard.
- Instruct police officers to inform detainees upon entering custody of their right to notify a third party and their right to undergo a medical examination.
- Produce a standard notice listing all the rights of persons deprived of their liberty and post it in places of detention where it can be read easily by persons in custody. Include the same information in a form to be signed by each person in custody, and give the detainee a copy of that form. Ensure that law enforcement officers exercise diligently their obligation to give such notification and to assist in the exercise of all such rights from the very outset of deprivation of liberty.
- Take steps to eliminate coercion during interrogation of suspects by the judicial police. Possible steps to ensure that such statements are voluntary include videotaping police interrogations.
- Encourage judges and prosecutors to routinely ask persons arriving from police custody how they have been treated, and to order an independent medical examination in accordance with the Istanbul Protocol if they suspect that detainees have been subjected to ill-treatment; an ex-officio investigation should be initiated whenever there are reasonable grounds to believe that a confession was obtained through torture or ill-treatment.

## **To Governments and Institutions that Provide Assistance to Tunisia**

As part of judicial and security sector reform and rule of law assistance programs now being considered or implemented, encourage Tunisia to implement the recommendations enumerated above, notably those designed to prompt authorities to:

- Ensure a prompt and thorough reform of the Penal Code and the Code of Criminal Procedures (CCP) to include the right of access to a lawyer from the time of arrest; explicitly exclude evidence obtained through torture and ill treatment and reduce the time limit for judicial review of the arrest decision.
- Support Tunisia in its effort to improve the material conditions in the detention centers.

## Methodology

This report is based on research Human Rights Watch conducted between February 8 and 18, 2013 and between September 21 and 28, 2013. Five researchers, including one doctor, carried out the research.

Prior to conducting the research for this report Human Rights Watch reached an agreement with the Ministry of the Interior that allowed the researchers to visit any of the 10 named places of pre-charge detention, to access all sites inside these facilities, to hold individual and confidential conversations with detainees who agreed to talk with Human Rights Watch, and to access the registers of each facility. With the exception of one facility, Human Rights Watch enjoyed rapid and unimpeded access to places of detention where we requested it, and found authorities ready to cooperate.

The researchers visited four detention centers in four cities: Tunis, Sfax, Kairouan, and Nabeul. Human Rights Watch selected the facilities after dozens of preliminary interviews with former detainees and civil society groups that reported problems in these specific facilities. Human Rights Watch visited Bouchoucha detention center four times, on February 8, 9, 12, and on September 24, 2013. The team visited Nabeul detention center three times, on February 14 and 18, and on September 26, 2013. They visited Kairouan and Sfax detention centers twice each, on February 12 and 13, and on September 24 and 25.

Human Rights Watch also visited judicial police offices in Zahrouni area (Tunis suburbs), in the Sfax police district and in Kairouan police district.

The visits focused on conditions in detention centers under the authority of the Ministry of the Interior. Researchers also asked questions about police treatment of detainees and respect for their due process rights during arrest and interrogation.

Human Rights Watch conducted 66 interviews with detainees in Arabic and four others in French or in English. The interviews included ten women, nine children, and three foreigners. Most of those Human Rights Watch interviewed told us they had been arrested on suspicion of theft, drug consumption, or public drunkenness. Since they had not yet been brought before the investigating judge, it was not possible at the time to know what



formal charges, if any, authorities would file against them. Human Rights Watch does not draw general conclusions on the situation of pre-charge detainees in Tunisia, but only assesses through this sample the material conditions and humane treatment of the detainees in the detention centers visited.

The first round of visits we conducted from February 8 to 18, 2013 coincided with heightened political tensions due to the assassination of Chokri Belaid, the secretary general of the leftist Democratic Patriotic Party, on February 6.<sup>1</sup> Tunisians took to the streets to protest the assassination and in some instances the protests turned violent, as youths threw rocks or took advantage of the chaos to commit acts of theft and vandalism. Many of the detainees we saw in February in Bouchoucha (Tunis), Sfax, and Nabeul Jails had been arrested on suspicion of involvement in these acts.

Researchers questioned detainees about detention conditions and treatment as well as the conditions of their arrest and treatment during interrogations. Interviews varied in length from approximately 10 to 45 minutes.

Each morning during the research, the Human Rights Watch team showed up unannounced at a facility of its choosing from the list of 10 facilities previously agreed with the ministry. Detention authorities usually granted the team entry after waiting no more than a few minutes, and officials were available to answer questions.

In one instance, authorities denied the Human Rights Watch team access to a facility. On February 11, 2013 Human Rights Watch researchers went to Gorjani, a well-known police interrogation facility in Tunis, which houses the Anti-Criminal Brigade of the Judicial Police, which is in charge of investigating serious crimes. The team met with the director and explained the terms of the Ministry of the Interior's agreement, which included Gorjani among the places we were authorized to visit. While the director allowed us to visit administrative offices inside Gorjani, he denied access to the places of interrogation.

While Human Rights Watch knew that Gorjani was not formally a place of detention, we had included it in the list of places to visit because it is a major interrogation center. The

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<sup>1</sup> "Tunisia: Investigate Assassination of Opposition Figure," Human Rights Watch News Release, February 6, 2013, <http://www.hrw.org/news/2013/02/06/tunisia-investigate-assassination-opposition-figure>.

director claimed that granting us access to interrogation rooms would hinder the confidentiality of judicial proceedings.

The staff at detention centers allowed researchers to interview detainees one at a time, in private settings, such as in an empty office or in a corner of the compound. The detainees were informed of the purpose of the interview and its voluntary nature, and orally consented to be interviewed. As detainees sometimes revealed sensitive information regarding their charges or convictions, or were critical of the treatment during their arrest, we have given all detainees pseudonyms to protect their confidentiality.

Human Rights Watch researchers conducted interviews with members of the prison administration at every detention center they visited. Researchers also examined the detention center registers and the medical files.

Detention administration officials were cooperative with Human Rights Watch, restricting neither the time we wished to spend on the premises nor our access to the facilities and the detainees.

At the end of each visit, Human Rights Watch researchers shared their impressions with officials, and in some cases, made recommendations about immediate steps to improve the situation of detainees.

On April 10, 2013, Human Rights Watch sent a letter to the head of government, Ali Laariadh, explaining the preliminary findings and seeking answers to some questions. On May 31, Human Rights Watch met with the new minister of interior, Lotfi Ben Jeddou, who handed us the government's official answer (see Annex). The document, dated May 30, 2013, addresses Human Rights Watch's questions on food, hygiene, and mistreatment in detention facilities. The ministry's answers are reflected in the relevant parts of this report.

On September 27, Human Rights Watch sent a second letter to the ministry of interior inquiring about allegations on the use of "electro-shocks" by policemen. The ministry sent an answer dated November 11 denying having received any complaint about such mistreatment.

## I. Background

For decades, Tunisian prisoners and detainees were largely invisible to the outside world. Human rights organizations issued reports documenting the use of torture and ill-treatment in Tunisian prisons and detention centers against political dissidents, but officials routinely denied such organizations access to these facilities.<sup>2</sup> The government of then President Zine el Abidine Ben Ali promised on April 19, 2005 to give Human Rights Watch prompt access to prisons. By the time a popular revolt ousted Ben Ali nearly six years later, Human Rights Watch had still not visited because the authorities had not agreed to terms Human Rights Watch deemed necessary to guarantee that the organization could collect accurate information without putting detainees we might speak to at risk of retaliation and mistreatment.<sup>3</sup>

The only organization to visit prisoners after 1991 was the International Committee of the Red Cross (ICRC). The group began visits in 2005, after signing an agreement with the Tunisian authorities that gave ICRC delegates access to prisons to make regular and repeated visits, and to hold private interviews with detainees of their choice.<sup>4</sup> However, the ICRC does not publish its findings; rather, it submits them privately to the authorities.

Shortly after Ben Ali fled the country on January 14, 2011, Human Rights Watch asked for and received immediate access to prisons. On February 1, 2011 Human Rights Watch visited Mornaguia Prison in Tunis, Tunisia's biggest facility, and on February 2 we visited Bourj er-Roumi Prison, a large prison complex near the city of Bizerte where inmates had mutinied as the Ben Ali government fell.

These visits ended a de facto 20-year ban on access to Tunisian prisons for human rights organizations.<sup>5</sup> The Ministry of Justice continued to grant prison access to various national

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<sup>2</sup> Human Rights Watch, *Tunisia- Crushing a Person, Crushing a Movement, April 2005*, <http://www.hrw.org/reports/2005/04/19/tunisia-crushing-person-crushing-movement-o>.

<sup>3</sup> "Tunisia: Honor Pledge on Prison Access," Human Rights Watch news release, April 17, 2009, <http://www.hrw.org/news/2009/04/16/tunisia-honor-pledge-prison-access>.

<sup>4</sup> "Tunisia / ICRC resumes visits to detainees," International Committee of the Red Cross press release, January 31, 2011, <http://appablog.wordpress.com/2011/01/31/tunisia-icrc-resumes-visits-to-detainees/>.

<sup>5</sup> "Tunisia: Prison Visit Ends 20-Year Ban," Human Rights Watch news release, February 4, 2011, <http://www.hrw.org/news/2011/02/04/tunisia-prison-visit-ends-20-year-ban>.

and international organizations, and on December 11, 2012, nine Tunisian NGOs signed an agreement with the ministry to visit its prisons.<sup>6</sup>

However, the government granted fewer organizations access to visit detention centers under the control of the Ministry of the Interior. Human Rights Watch visited these Ministry of the Interior centers to conduct the research for this report.

Torture and other ill-treatment were rampant under the Ben Ali government and were an important cause of popular discontent. In the two years since the ouster of Ben Ali, there have been persistent accounts of excessive use of force during arrest and mistreatment during interrogation, ranging from slaps, punches, and kicking, to severe beatings.<sup>7</sup>

During a visit to Tunisia in May 2011, the UN special rapporteur on torture noted that torture and other ill-treatment were continuing. The special rapporteur highlighted the need for in-depth investigations of reports of torture and ill-treatment to be conducted without further delay, for those responsible to be prosecuted, and for the victims to have access to effective remedies and reparation.

The special rapporteur also called on Tunisia to put in place guarantees against torture and other ill-treatment through constitutional, legislative, and administrative reforms.<sup>8</sup> Since the election of the National Constituent Assembly, human rights organizations reported at least one incident of a suspicious death in police custody, which occurred in August 2012.<sup>9</sup>

Under former President Zine el Abidine Ben Ali, the activities of thousands of associations were largely limited to social, cultural and economic issues; few ventured in areas related

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<sup>6</sup> Tunisie: Signature d'un accord en faveur des droits de prisonniers," *Tunisie Numerique*, December 11, 2012, <http://www.tunisienumerique.com/tunisie-signature-dun-accord-en-faveur-des-droits-des-prisonniers/156716>.

<sup>7</sup> Action of Christians Against Torture France, "Vous avez dit justice ? Etude du phénomène tortionnaire en Tunisie", June 2012. For examples of people beaten up by police forces, please see the case of Zakaria Bouguerra, assaulted and severely beaten by police in Tunis airport on November 13, 2011 see, Action of Christians Against Torture France, "Tunisie : Intimidation d'une victime de torture," February 9, 2012, [http://www.acatfrance.fr/appele\\_urgent\\_detail.php?id=376](http://www.acatfrance.fr/appele_urgent_detail.php?id=376).

<sup>8</sup> UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E/ Méndez, Mission to Tunisia, A/HRC/19/61/Add.1 February 2, 2012, <http://www.ohchr.org/Documents/Issues/SRTorture/A-HRC-19-61-Add-1.pdf>

<sup>9</sup> Abderraouf Khammasi was arrested on August 28, 2012 and transferred to Sidi Hassine police station. He was admitted later that day to the hospital and died from severe injury to the head on September 8, 2012. On September 9, the public prosecutor's office brought charges against four police officers of the police station in Sidi Hassine on grounds of premeditated and voluntary homicide under articles 201 and 202 of the Tunisian Penal Code.

to human rights, judicial reform ,or the security sector, as their work was heavily constrained by the government’s repressive apparatus. In the same vein, international donors focused on economic and social funding, mostly avoiding more controversial issues such as human rights, governance and institutional reforms.

Following the January 2011 revolt against Ben Ali, Tunisia started a process of democratic transition and welcomed the international community’s support.<sup>10</sup> Donors have actively supported security sector and judicial reforms in Tunisia. For example, the European Union provides assistance for a wide range of programs for institutional reforms, including for the judiciary and the security sector. In October 2012, the EU approved €25 million (\$32 million) to aid strengthening the independence of the judiciary.<sup>11</sup> In July 2011, the Office of the High Commissioner for Human Rights opened a country office in Tunisia.<sup>12</sup> It has since provided training, technical advice and support for institutional reforms in these two key sectors. In addition, a variety of international NGOs developed partnerships with the Tunisian government in those areas.

The International Committee of the Red Cross and the Ministry of the Interior started in October 2012 a new project on “improving the treatment of persons during pre-charge detention.” The project aims at developing and implementing a strategy for improving the conditions of pre-charge detainees in accordance with international standards. The project will run until 2016 and entails proposals for new laws incorporating more guarantees and greater safeguards against mistreatment of suspects during pre-charge detention, drafting a code of conduct for law enforcement agents, and training more than 3,000 security forces personnel across the country.

The window of opportunity for change in Tunisia regarding the security sector is thus now wide open and offers a real opportunity to address the problems outlined in this report.

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<sup>10</sup> United Nations agencies provide funding, capacity building, and technical assistance in the field of security sector reform. For example, UNDP has dedicated a budget of US\$1, 775, 000 for 2013-2014 and US\$2,690,000 for 2013-2016 for a partnership program with the Ministry of the Interior focused on building capacities for crisis management and community based policy. OHCHR’s program is more focused on training police forces and National Guard on respect for human rights during law enforcement operations. Major governmental donors active in in this field include the US government, which has a partnership program with the Ministry of the Interior focused on training police forces; EU member states (in particular France, Spain, Germany and Italy); other countries such as Japan; and several Arab states.

<sup>11</sup> In its 2012 European Neighborhood Policy (ENP) report, the EU urged Tunisia to ensure the effective implementation of international human rights conventions ratified by Tunisia, and to adopt the necessary legislative reforms for the consolidation of democracy, including the reforms relating to the judiciary, the security sector, and the media.

<sup>12</sup> Office of the High Commissioner for Human Rights, “OHCHR in Tunisia,” undated, <http://www.ohchr.org/EN/Countries/MENARegion/Pages/OHCHRTunisia.aspx>.

## II. The Legal and Policy Framework for Pre-charge Detention

### Procedures for Arrest and Pre-charge Detention

The police, under the Ministry of the Interior, have primary responsibility for enforcing the law and maintaining order in urban areas. The National Guard, also under the Ministry of the Interior, performs the same function in coastal and non-urban areas.<sup>13</sup>

Under Tunisia's Code of Criminal Procedures (CCP), the judicial police is the branch responsible for gathering evidence of crimes, finding the perpetrators and delivering them to the courts.<sup>14</sup> The public prosecutor supervises the judicial police.<sup>15</sup>

The police may arrest a person on suspicion that the person has committed a crime. The judicial police must immediately notify the prosecutor when placing a person in custody.<sup>16</sup> Tunisian law allows the police to keep a person in its custody for three days. The prosecutor may, by a written decision that provides the reasons, extend custody only once for the same period.<sup>17</sup> During this initial six-day period, the prosecutor has to decide whether to open an investigation into the case. If he orders the opening of investigations, he has to transfer the file to the investigative judge who rules whether preventive detention is justified or whether to order the release of the accused for reasons of law or fact.

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<sup>13</sup> Law on the General Status of Internal Security Forces, Number 82-70 of 1982, art. 4. "Internal security forces comprise the agents of national security, national police, the National Guard for civil protection and the agents of prisons and reeducation." Law on the General Status of Internal Security Forces, art.5.

"The agents of interior security forces are in charge of maintaining public order. They have the obligation to intervene, either on their own initiative, or on request by others, in order to assist people in danger, and to prevent or repress any act that could cause harm to persons or goods or damage public order. The agents of internal security forces are in charge of overseeing the enforcement of law, and to establish breaches thereof. "

<sup>14</sup> Code of Criminal Procedure, Number 68-23 of 1968, art. 9, [http://www.e-justice.tn/fileadmin/fichiers\\_site\\_francais/codes\\_juridiques/Code\\_procedure\\_penale\\_fr.pdf](http://www.e-justice.tn/fileadmin/fichiers_site_francais/codes_juridiques/Code_procedure_penale_fr.pdf).

The functions of judicial police can also be exercised by other services, such as the customs service, endowed by law with the task of conducting preliminary investigations into custom offences.

<sup>15</sup> Code of Criminal Procedures, art. 10.

<sup>16</sup> Code of Criminal Procedures, art. 13 bis.

<sup>17</sup> Ibid. The obligation to justify the decision was introduced by Law n.2008-21 of March 4, 2008 on the obligation to justify the decision to prolong the duration of garde à vue and preventive detention.

The policy of the Ministry of the Interior in the regions we visited appears to be to separate the investigative and custodial functions of the police. A separate branch of the ministry, the Administration of Public Roads in each region, runs detention centers and if a detainee is required for questioning he or she is transported from the place of detention to a police station. Some police stations and detention centers are completely separate, while others are located in the same compound.

While the separation between the investigative and custodial functions of the police is a good practice, the two services operate under the umbrella of the Ministry of the Interior. There is thus a strong temptation for the custodial services to cover up mistreatment by their colleagues or not to pursue complaints diligently and efficiently. Furthermore, Human Rights Watch was unable to assess whether the policy of separation is implemented throughout the country and whether it is applied by the National Guard, also under the Ministry of the Interior, which carries out arrests and runs its own pre-charge detention centers.

Tunisian law requires police officers to follow some procedural steps to provide due process guarantees for the suspect.<sup>18</sup> They must inform a member of their family of the measures taken against the suspect and the place of custody. They must also inform the suspect of their right to request a medical examination during the period of custody. In addition, judicial police officers are required to keep a special register of data including the name of the detainee, the date and time of arrest and entry into custody, the date of release, and whether the family was informed of the detention.

## Length of Pre-charge Detention

International standards require the judicial review of detention to be “prompt.”<sup>19</sup> The UN Human Rights Committee has held that the term promptly “must not exceed a few days” and must be determined on a case by case basis.<sup>20</sup> However, the Committee has most

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<sup>18</sup> Code of Criminal Procedures, art. 13.

<sup>19</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Tunisia on March 183, 1969, art. 9(3).

Article 9(3) of the International Covenant on Civil and Political Rights provides that “anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power.”

<sup>20</sup> UN Human Rights Committee, General Comment 8, Article 9, Right to liberty and security of persons (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.7, p. 130.

recently suggested that pre-charge custody without judicial review should not exceed 48 hours.<sup>21</sup>

Under Tunisia's Code of Criminal Procedures (CCP), police officers can keep a suspect in custody for a period of three days that the public prosecutor can renew once for the same period by providing a reasoned decision.

However, in at least two detention centers, Human Rights Watch found that several detainees had remained in custody for more than six days, some for as long as 10 days. The detention centers officials explained that this practice is based on article 57 of the CCP, which gives the investigative judge the right to order the judicial police to conduct a complementary investigation (*rogatory commission*). The article states: "If for the requirements of the *rogatory commission* the judicial police officer has to keep at his disposal the suspect who was not previously heard by the investigative judge, he can decide to remand him in custody after informing the investigative judge, for a period not exceeding three days." The investigative judge can renew the custody only one more time for the same period, bringing the maximum period of pre-charge detention to 12 days.<sup>22</sup> In its official answer to Human Rights Watch's letter of inquiry, the Ministry of the Interior affirmed that persons can be held for a maximum of three days renewable once with a written order from the general prosecutor. This answer does not clarify whether the extension of the pre-charge detention beyond the six days, by invoking the procedure of the rogatory commission, should be considered as illegal. Whether it is a matter of practice or whether it is allowed by the law, this procedure increases the hardship for detainees who are held in cells and conditions that are unsatisfactory for such a prolonged period in custody.

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See also UN Human Rights Committee, *McLawrence v. Jamaica*, Communication No. 702/1996, CCPR/C/60/D/702/1996, April 26, 1996, para. 5.6.

<sup>21</sup> See UN Human Rights Committee, Draft General Comment No. 35 on Article 9: Liberty and security of person, U.N. Doc. CCPR/C/107/R.3, (2013).

While the exact meaning of "promptly" may vary depending on objective circumstances, delays must not exceed a few days from the time of arrest. In the view of the Committee, forty-eight hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than forty-eight hours should be justified by exceptional circumstances. Longer detention in the custody of law enforcement officials without judicial control unnecessarily increases the risk of ill-treatment. Laws in most state parties fix precise time limits, sometimes shorter than forty-eight hours, and these should also not be exceeded. An especially strict standard of promptness, such as 24 hours, should apply in the case of juveniles. States parties should include in their reports information concerning the time limits provided in their laws and how often they are exceeded in practice.

<sup>22</sup> Code of Criminal Procedures, art. 57.



## No Access to a Lawyer

The presence of a lawyer during police interrogation can have a deterrent effect on officials who might otherwise try to obtain information or confessions by force or other improper means from people in their custody. If the detained person has a right to consult with a lawyer in private from the outset of custody, the detainee is also able to report any ill-treatment experienced and, on the detainee's request, the lawyer can lodge a complaint.

The presence of a lawyer during police questioning may also work as a protection for police officers in case they face unfounded allegations of ill-treatment. The right to a lawyer from the first moment of deprivation of liberty is therefore an important means of preventing ill-treatment, as well as a safeguard for the due process of law. According to the special rapporteur on torture, “[l]egal provisions should ensure that detainees are given access to legal counsel within 24 hours of detention.”<sup>23</sup>

However, under Tunisian law, the period of the pre-charge detention is not covered by the right of access to a lawyer. A person arrested and detained by the police is entitled to a lawyer only at the time of the first appearance before an investigative judge, which can be up to six days after arrest.<sup>24</sup> By that time the suspect is likely to have signed, without a lawyer present, a police statement that may have been coerced and could be used against him or her during trial.

## The New Constitution

The fourth draft constitution, released on June 1, 2013, sets the constitutional framework for the protection of people deprived of their liberty. It provides various guarantees for detainees, including the presumption of innocence, a prohibition on torture, and the right to a lawyer, to be informed of rights upon arrest, and to be treated humanely and in a way that preserves dignity.<sup>25</sup>

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<sup>23</sup> UN Commission on Human Rights, Report of the Special Rapporteur on the question of torture Theo van Boven, submitted pursuant to Commission resolution 2002/38 Addendum , E/CN.4/2003/68/Add.1, February 27, 2003, <http://unispal.un.org/UNISPAL.NSF/o/7B874EAB39CFFE5D85256E6F004B90D3>, para 26(g).

<sup>24</sup> Code of Criminal Procedures, art. 69. During the first appearance before the investigative judge, the accused can have the assistance of a lawyer. The questioning [by the judge] must offer to the accused the opportunity to confess or declare his innocence. The confession of the accused does not excuse the investigative judge from the obligation to search for other evidence of guilt. See also Code of Criminal Procedures, art. 70. The person charged is authorized to communicate with his council at any time after the first hearing.

<sup>25</sup> Tunisian Fourth Draft Constitution, 2013, art. 28

However, the draft constitution does not provide for a time limit before a detainee is brought before a judge, nor does it state that the right to a lawyer begins at the moment of detention.

With respect to the role of the judiciary as a guarantor of the human rights of detainees, article 115 provides for the Constitutional Court to exercise the highest jurisdiction of the state in constitutional matters. The court rules upon the constitutionality of laws and is responsible for guaranteeing fundamental individual rights and civil liberties. A citizen may challenge the constitutionality of a law during a trial and ask the court conducting the trial to halt the proceedings until the Constitutional Court decides on the constitutionality of the impugned law.

## Legislation on Torture

Torture is outlawed by article 101bis of the Penal Code. The article, which was added to the Code by Law No. 89 of August 2, 1999, stipulates: “Any public official or equivalent found guilty of subjecting any person to torture while in the line of duty or while conducting official business shall be sentenced to eight years in prison. Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind.”

This definition of torture is not fully in conformity with article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as interpreted by the UN Committee Against Torture, because it does not provide for victims to pursue the criminal liability of commanders for acts of torture committed by their subordinates.<sup>26</sup>

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“Any accused is presumed innocent until the establishment of his guilt through a fair trial offering him all the necessary guarantees of defense during all the investigation and trial stages. He has the right to hire a lawyer. The law fixes the length of arrest and detention.” It also provides that: “A person cannot be arrested except in cases of flagrante delicto or upon the order of a prosecutor. The person should be immediately informed of his rights and of the charges against him and has the right to access a lawyer. The duration of police custody detention is limited by law.”

<sup>26</sup> UN Committee Against Torture, General Comment No.2, Implementation of article 2 by States Parties, U.N. Doc. CAT/C/GC/2/CRP. 1/Rev.4 (2007).

“The non-derogability of the prohibition of torture is underscored by the long-standing principle embodied in article 2,

Article 152 of the CCP stipulates that the validity of a confession, as with any other piece of evidence, must be left to the discretion of the presiding judge. However, the CCP does not explicitly render any confession under duress null and void and does not oblige the courts to verify that confessions were not extracted under duress. Article 69 of the CCP only states that the confession of a suspect does not exempt the investigating judge from searching for other elements of proof.

## Monitoring, Complaint, and Reparation Mechanisms

Under international law, the right of all detainees to submit a complaint, request, or appeal concerning their treatment to the detaining authorities, to higher authorities, to the judiciary, and to local, national, or international watchdog agencies, constitutes a basic safeguard against torture.<sup>27</sup>

Several laws regulate conditions in prisons, but none of them apply to pre-charge detention.<sup>28</sup> In its letter to the Ministry of the Interior, Human Rights Watch had requested information about the regulatory standards regarding conditions of detention or treatment of persons deprived of their liberty in the country's police stations and detention centers. The Ministry's reply mentioned that the security agents in charge of detention receive training in human rights, but without providing the actual regulatory standards governing pre-charge detention.<sup>29</sup>

The Ministry of the Interior has an "Inspection Générale de la Police," which undertakes oversight activities, including receiving and investigating "ethical and moral" complaints,

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paragraph 3, that an order of a superior or public authority can never be invoked as a justification of torture. Thus, subordinates may not seek refuge in superior authority and should be held to account individually. At the same time, those exercising superior authority -including public officials -cannot avoid accountability or escape criminal responsibility for torture or ill-treatment committed by subordinates where they knew or should have known that such impermissible conduct was, or was likely, to occur, and they took no reasonable and necessary preventive measures. The Committee considers it essential that the responsibility of any superior officials whether for direct instigation or encouragement of torture or ill-treatment or for consent or acquiescence therein- be fully investigated through competent, independent and impartial prosecutorial and judicial authorities. Persons who resist what they view as unlawful orders or who cooperate in the investigation of torture or ill-treatment, including by superior officials, should be protected against retaliation of any kind."

<sup>27</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles), adopted December 9, 1988, G.A. Res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988), principle 33, para. 1.

<sup>28</sup> For example; Law relating to the Organization in the Prisons, No. 2001-52 of 2001; Law relating to the treatment of pregnant or breastfeeding women in detention , No. 2008-58 of 2008; and Law relating to the prisons and rehabilitation agents, No.2001-51 of 2001.

<sup>29</sup> See Annex 2: The Tunisian Ministry of the Interior's Response to to Human Rights Watch..

i.e. allegations of corruption or racketeering by officers. A detainee is also entitled to complain directly through the normal judicial processes.<sup>30</sup> The CCP tasks the judicial police, the prosecutor, and the investigative judge to receive all sorts of complaints and to open investigations into violations of the CCP.

## The National Preventive Mechanism

Crucial for combating ill-treatment is a functioning system of independent and unannounced visits to monitor all places where persons are held when deprived of their liberty.

Tunisia ratified the UN Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment in September 1988, and ratified the Optional Protocol to the Convention against Torture (OPCAT) on June 29, 2011. The Optional Protocol requires signatories to establish National Preventive Mechanisms (NPM), independent bodies in charge of monitoring places of detention.<sup>31</sup>

On October 9, 2013, the National Constituent Assembly (NCA), acting as a legislative body, adopted a law that creates such a mechanism for Tunisia, the National Body for the Prevention of Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment. The body will consist of 16 independent full-time experts who will be elected by the plenary session of the legislative assembly following a procedure of pre-selection from a list of 45 candidates. It will have powers to visit all places of deprivation of liberty. It will also be able to ask the authorities to initiate criminal or administrative investigations in cases of alleged torture, and to make recommendations on mechanisms and measures to eradicate torture and other cruel, inhuman, or degrading treatment.

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<sup>30</sup> Code of Criminal Procedures, art. 101 provide a five-year prison term for any public agent who “uses or causes to be used, without legitimate purpose, violence against persons, while on duty.”

<sup>31</sup> Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), adopted December 18, 2002, G.A. res. A/RES/57/199, [reprinted in 42 I.L.M. 26 (2003)], entered into force June 22, 2006, art. 17.

Article 17: Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level.

The creation of the National Body for the Prevention of Torture followed a public and inclusive process of drafting, involving civil society and international experts active in the prevention of torture.

Many aspects of the new law conform to the guidelines on National Preventive Mechanisms issued by the UN Subcommittee against Torture.<sup>32</sup> For example,

- The law includes a broad definition of places where people are or may be deprived of liberty in line with the provisions of the OPCAT
- It provides powers of access for the NPM in line with those envisaged in the OPCAT
- The law grants access for the new body to information about the places of detention in Tunisia, their number and location, and the number of people detained in all the places of deprivation of liberty.
- Members will be able to interview detainees as well as anyone else who may have relevant information without the presence of a witness.
- There is an express prohibition of any sanctions/reprisals against any person or organisation who may have given information to the NPM
- Due regard is given in the law to the requirement for gender diversity of members of the NPM, and for diversity of experience in the fields of child justice, human rights, medicine and administration of justice.

However, the law has still some flaws regarding the powers of access for the mechanism which are inconsistent with those envisaged in the OPCAT. The law provides that the authorities cannot refuse requests for access by the body unless they provide a justification for the refusal to the president of the body and on the condition that it is temporary and is warranted by interests of national defense and security, by an imminent threat, or a critical health situation. This article constitutes an encroachment on the powers of the mechanism, as it gives state authorities a large leeway to deny the body access to places of detention on the basis of broad notions of national defense and security.

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<sup>32</sup> UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Twelfth session, Geneva, November 15-19, 2010.

### III. Conditions of Detention

Human Rights Watch visited four detention facilities in four different governorates of Tunisia. The purpose of this chapter is to assess the material conditions in these detention centers, including the availability of food, sanitation and hygiene, access to healthcare, time out of the cells, and the conditions of minors and women.

#### Bouchoucha Detention Center

Bouchoucha detention center is the primary detention facility for the greater Tunis region, receiving almost everyone police detain in this area. Opened in the 1980s, it is located in a large police compound three kilometers north of downtown Tunis.

The detention center is the biggest of those Human Rights Watch visited, with eight large group cells currently in use and a maximum capacity of 500 inmates.<sup>33</sup> Unlike the other centers that Human Rights Watch visited, Bouchoucha contains an outdoor courtyard that inmates use. The courtyard measures about 25 meters by 16 meters and is open to the sky.

The population of Bouchoucha fluctuates daily but can swell following unrest. During Human Rights Watch's first visit, researchers counted a total of 21 adult males in a particular cell. On a return visit two days later, the same cell contained 45 men, many of whom police had detained at mass demonstrations following the assassination of opposition figure Chokri Belaid.

The group cells at Bouchoucha are rectangular and roughly equal in size, approximately nine meters long and six meters wide, with high ceilings, three gray concrete walls and floors, and the fourth wall facing the corridor made up of iron bars. Access is through a single door on the corridor. Each cell contains three small rectangular windows near the ceiling, providing minimal light and no view beyond the cell. Each cell contains a cubicle against the back wall, with a half wall surrounding it on two sides. The cubicle contains

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<sup>33</sup> Human Rights Watch interview with Anis Ghedir, Bouchoucha detention center director, February 9, 2013. Human Rights Watch researchers visited the detention center on three separate occasions. During the second visit, on February 9, 2013, the director of the center told Human Rights Watch that the prison held 270 detainees at that time, among whom were 12 women and 15 individuals under the age of 18.

two spaces, one of which contains a squat toilet and a faucet approximately 30 centimeters above the concrete floor providing inmates their sole source of water for drinking and washing.

Other than a cell designated for special cases—including VIPs, sick prisoners, and prisoners needing protection—which contained five sets of bunk beds and a single bed with mattresses, none of the group cells that Human Rights Watch visited included any furniture. Detainees were primarily seated or lying down on thin straw mats (*hasira*) and most had covered themselves with blankets due to the cold room temperature. When we visited, radiators were working in the corridors facing the cells, but there were no sources of heat inside the cells themselves.

Detention authorities told Human Rights Watch researchers that Bouchoucha no longer has small cells where individual detainees can be isolated. The director said that if there are problems with particular detainees, the guards can shift the cell configuration in order to isolate or reassign individual inmates.<sup>34</sup> Detainees told Human Rights Watch that they had not been assigned to individual isolated cells and that they had no knowledge of punishment cells.

Though the detention center contains a room with four shower stalls, both inmates and detention center staff confirmed that detainees are not permitted to use them.<sup>35</sup>

Each cell contained a closed-circuit camera so that staff could monitor cells from a central station.

Officials and detainees confirmed to Human Rights Watch that no reading materials, radio, or TV are allowed in the detention center. Guards allow prisoners to smoke in their cells, and guards light inmates' cigarettes because they do not permit them to have lighters or matches.

The director of national security for the Tunis district explained to the Human Rights Watch team that officials provide detainees with mattresses, although sometimes they don't have

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<sup>34</sup> Human Rights Watch interview with Rached Mahjoub, director Tunis police district, Tunisia, February 9, 2013.

<sup>35</sup> Ibid. Mahjoub admitted to Human Rights Watch that inmates do not get showers, but he claimed they were unnecessary since most detainees stay only a few days and very few remain for the full six days permitted by law.

enough when the detention facility is full. He said that cleaning staff remove the mattresses in order to air them out and mop the rooms, and they bring them back in the evening. He also said that blankets are laundered every 48 hours in Bouchoucha's large laundry facility. However, when Human Rights Watch first visited Bouchoucha, on February 8, 2013, researchers interviewed many detainees who had been held for several days and said they had never slept on a mattress. The blankets looked dirty and smelled bad.

## Sfax Detention Center

The Sfax detention center is situated inside a large police complex next to the criminal court near the center of Sfax, the second largest city in Tunisia, located 270 kilometers southeast of Tunis. The detention center is accessible via a locked metal gate leading to the street running alongside the facility or through an entrance to an adjacent building that is part of the police complex. Detention center officials allowed Human Rights Watch to interview detainees in a private office inside the building adjacent to the detention center.

The detention center was built in the 1980s and can hold up to 80 detainees in four group cells.<sup>36</sup> When Human Rights Watch visited on February 13, 2013, researchers counted a total of 53 detainees, only one of whom was female. According to detention center guards, the two larger group cells can accommodate up to 24 detainees each.<sup>37</sup> The guards showed Human Rights Watch researchers an additional cell under construction behind the wall at the far end of the detention center opposite the entrance. On the second visit to the center, on September 26, researchers found that the construction of the cell was finished. It was empty at the time of the visit.

At the entrance to the detention center is a reception area with an intake desk, where Human Rights Watch researchers observed guards confiscating personal items from incoming detainees and returning items to those who were leaving.

Opposite the intake desk is a wide corridor leading to four group cells, two on each side. All of the cells have gray concrete walls and floors, high ceilings, and interlocking metal bars along the side facing the corridors.

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<sup>36</sup> Human Rights Watch interview with Colonel AbdelKader Ben Moussa, deputy director of Sfax Police District and Anis Baasaoui, director of Sfax detention center, February 13, 2013.

<sup>37</sup> Human Rights Watch interview with prison guards, Sfax detention facility, February 13, 2013.



Upon entrance to the corridor, the cell to the immediate left is a rectangular cell designated for women, which was occupied by only one woman at the time Human Rights Watch visited. All the cells contain two squat toilets with two water faucets, one on each side, which are separated from the rest of the cell by half walls. The far cell on the left, an L-shaped cell designated for adult males, is the largest in the detention center, nine meters wide and six meters long. On the right side of the corridor are another two cells designated for adult males, the first of which is another large rectangular cell containing two toilets. The far cell on the right is smaller than the others with dimensions of six meters in width and four meters in length. Unlike the others, it contains only one toilet and faucet.

All of the cells in the detention center are dim and have little direct sunlight. Though they contain slot windows just below the ceilings, the metal grating that covers them greatly diminishes the amount of natural light reaching the cells. Most of the lighting in the facility emanates from skylights located in the ceiling above the corridor outside the cells.

The facility does not contain an outdoor courtyard designated for detainee use; all inmates remain confined in the cells except when coming from or going to court. Guards allow prisoners to smoke in their cells, though lighters and matchers are not permitted. There are no showers in the facility.

## **Kairouan Detention Center**

The Kairouan detention center is located inside a large police complex in the southeastern section of the city, which is 184 kilometers southwest of Tunis.

The detention center consists of seven group cells arranged in a half-circle, like half of a pie cut into seven slices. The narrow ends of the cells face a semi-circular corridor on the other side of which is the guard booth.

Inmates occupied only six of the cells when Human Rights Watch visited, men in the first five and women in the sixth. The seventh cell was being used for storage. The cells are approximately five-and-a-half meters long and three meters wide at the center. According to one of the detention center guards, the maximum capacity of the detention center is 50, and the maximum allowed in any individual cell is seven. He said that there are usually

two guards on duty, with four daily shifts. A detention center official told Human Rights Watch researchers that the facility held 22 detainees at the time of our visit.<sup>38</sup>

Each group cell contains a squat toilet separated by a low partition wall with a faucet approximately 45 centimeters above the toilet hole that provides water for drinking and also to wash the toilet after use. The water supply is normally closed and is controlled by the guards. Thus, a detainee wishing to drink or wash must ask the guard to turn on the water supply. A guard told Human Rights Watch researchers that this regulation is necessary to prevent detainees from flooding the cells.<sup>39</sup>

The facility does not contain an outdoor courtyard designated for detainee use; all remain in the cells except when coming from or going to interrogation. Guards allow prisoners to smoke in cells, though lighters and matchers are not permitted.

## Nabeul Detention Center

The Nabeul detention center is located in the city of Nabeul, approximately 45 kilometers southeast of Tunis. The facility held between 40 and 44 detainees at the time of Human Rights Watch's two visits, on February 14 and 18, 2013. The director told Human Rights Watch that the facility had accommodated over 75 detainees over the previous weekend, forcing the administration to put some detainees in the hallways and in a police office to sleep.<sup>40</sup>

The detention center contains four group cells: two large cells designated for adult male detainees, one for women, and one for under-18 males. Human Rights Watch researchers visited the two larger cells for male detainees, each four meters by five meters in size, and two-and-a-half meters high. All of the cells get natural light from slot windows next to the ceilings. They also get light from the light fixtures in the corridors; there are no lights inside the cells.

One of the cells that researchers visited on February 18, 2013, held 18 male detainees, one of whom was under 18, while the cell designated for minors held adults.

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<sup>38</sup> Human Rights Watch interview with Lassad Driss, head of Kairouan Police District, February 12, 2013.

<sup>39</sup> Human Rights Watch interview with prison guard at Kairouan detention center, February 12, 2013.

<sup>40</sup> Human Rights Watch interview with Abdel-Nbi, director of Nabeul detention center, February 14, 2013.

Unlike other detention centers that Human Rights Watch visited, the floors at Nabeul are not exposed concrete but are tiled. Also, the half-walls surrounding the squat toilets are higher than at other facilities.

Detainees told Human Rights Watch that only guards can turn the water faucets on and off and that during their stay they had never seen any soap in the cells.

The facility does not contain an outdoor courtyard designated for detainee use; all remain in the cells except when coming from or going to interrogation. There are no showers in the detention center.

## **Insufficient Food**

The most common complaint Human Rights Watch heard about detention centers conditions—from nearly every prisoner at every facility we visited—involved the quantity and the quality of the food. The prisoners described the food as “insufficient,” “food in name only,” and including so little meat that it is “fit for turtles.” Many prisoners reported constant hunger. Every day, meals consisted of lettuce-and-sauce sandwiches with, in the best cases, thin slices of luncheon meat; or a watery soup containing pasta or rice but no protein. Except for the lettuce in the sandwich, the detainees received no fruit or vegetables. Inmates are not allowed to receive food from outside. Detention authorities blamed the poor food service on tight budgets.

In response to questions Human Rights Watch submitted to the Ministry of the Interior, the ministry wrote in a letter that sufficient food is available for detainees; that the budget allocates 800 millimes (US\$0.55) for each detainee per meal; and that detention centers officials serve food three times a day. The letter also mentions that the Interior Ministry had not received complaints from the detainees about the quantity or quality of the food.<sup>41</sup>

When authorities hold someone in detention they have an obligation to ensure basic needs that detainees cannot readily obtain for themselves. Article 20 of the Standard Minimum Rules on the Treatment of Prisoners states that “every prisoner shall be

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<sup>41</sup> See Annex 2.

provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.”<sup>42</sup> The food provided to inmates at police detention centers in Tunisia would not appear to meet these standards.

## Poor Sanitary Conditions

Hygiene and sanitary conditions were poor in all the detention facilities Human Rights Watch visited. Detainees described their struggle to keep themselves clean, when faced with overcrowding and irregular access to running water and soap. In some facilities, the detainees did not have direct access to running water and depended on law enforcement officers to turn on the faucets.

One detainee in the Nabeul detention facility said that sometimes, “You ask them [guards] to turn on the water, but they don’t listen.”<sup>43</sup> In all the detention facilities Human Rights Watch visited, researchers observed cells with no soap. Detention centers authorities justified the absence of soap by the fact the detainees could use it for “immoral things”<sup>44</sup> or to “hurt themselves by swallowing pieces of the soap.”<sup>45</sup> Unlike men’s cells, women’s cells were provided with soap. In every facility we visited, detainees said they have no access to showers.

The staff at each facility confirmed this with the possible exception of Kairouan, where one guard showed us a shower that, he said, prisoners can use in the summer months. One detainee in Bouchoucha told us, “If I asked to shower, they’d think I was crazy.”<sup>46</sup> One detainee who complained about the lack of access to showers told Human Rights Watch, “My dream is to go to prison where I can get a shower.”<sup>47</sup>

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<sup>42</sup> The Standard Minimum Rules on the Treatment of Prisoners, adopted August 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, art. 20.

<sup>43</sup> Human Rights Watch interview with Mekram, Nabeul detention center, February 14, 2013.

<sup>44</sup> Human Rights Watch interview with Hassouna er-Rebhi, director of Kairouan detention center, February 11, 2013.

<sup>45</sup> Human Rights Watch interview with Rafiq Souga, director of Sfax detention center, September 26, 2013.

<sup>46</sup> Human Rights Watch interview with Nosair, Bouchoucha detention center, February 9, 2013.

<sup>47</sup> Human Rights Watch interview with Salem, Sfax detention center, September 26, 2013.

The detention centers, many of which are located in buildings constructed more than thirty years ago, have problems with waste management. When Human Rights Watch first visited Bouchoucha, the day after a heavy nighttime rain, researchers observed that several of the toilets had backed up, emitting a strong smell of human waste.

In all the detention centers except Bouchoucha, detainees slept on thin mats known as *hasira* in Tunisian Arabic. In Bouchoucha, inmates slept on foam-rubber mattresses. Inmates used heavy blankets that appeared dirty and smelled bad.

In the detention center in Sfax, several detainees told Human Rights Watch that after they found rats in their cells at night, they took turns standing guard against them. One detainee said that he was bitten by a rat.<sup>48</sup> The doctor accompanying Human Rights Watch confirmed that he had marks that could have been rat bites.

In response to questions submitted to the Ministry of the Interior by Human Rights Watch, the ministry stated in April 2013 that several renovation projects are in progress at various detention centers, for which a total of 24,000 dinars (US\$14,541) has been allocated. The letter does not break down how this money is being spent, but states that particular attention will be paid to Sfax and Kairouan detention centers. It adds that since 2009, the Ministry of the Interior has had an agreement with the Sfax municipality for municipal employees to clean the center once a week.<sup>49</sup>

## Prolonged Confinement in Cells

Bouchoucha is the only detention center Human Rights Watch researchers visited that allows inmates regular time outside of their cells. The complex contains a courtyard measuring about 25 meters by 16 meters where on most days, according to the interviews with authorities and inmates, detainees spent 90 minutes to 2 hours. At the other facilities, according to inmates and guards, inmates were confined to their cells for the whole period of their detention in the facility except if they had to undergo interrogation at the police station or appear at a hearing in court.

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<sup>48</sup> Human Rights Watch interview with Kamel, Sfax detention center, February 14, 2013.

<sup>49</sup> See Annex 2.

## General Medical Care

Except Bouchoucha, none of the detention centers that Human Rights Watch visited had a medical facility or a doctor on staff. Jail authorities at all the facilities informed Human Rights Watch that they transported detainees to nearby hospitals in the event of health problems.<sup>50</sup>

The detention authorities admitted to Human Rights Watch that they are not equipped to provide medical care because, they say, they house detainees only a few days. They also said they ensure that detainees are brought to a hospital whenever warranted.

The doctor at Bouchoucha who is seconded from the Ministry of Health to the Ministry of the Interior and reports back to both ministries, told us that he works administrative hours from 8:30 a.m. to 5:30 p.m., with the help of two nurses.<sup>51</sup> However, in the evening and at night, after the medical staff has left, guards handle medical complaints and emergencies. The doctor noted that the Bouchoucha detention center has no ambulance of its own, so when one is needed the staff must phone the operation room in the Ministry of the Interior, which causes delays. The nearby Charles Nicole Hospital has an agreement with Bouchoucha to expedite admissions in emergency cases. The medical office at Bouchoucha has an examination table, a desk and a sink, along with drawers for files.

Another room serves as a pharmacy, with locked cupboards for the medicine. The available medicine that the doctor showed to the doctor in our research team was primarily for the treatment of chronic diseases like diabetes and medications such as anti-coagulants. There were also small quantities of other medicine such as analgesics and antibiotics.

Unlike Bouchoucha, the three other detention facilities Human Rights Watch researchers visited did not have a permanent doctor or nurse. In those facilities, Human Rights Watch researchers asked detainees whether they had seen a doctor inside the detention facility, and whether detention authorities informed them of their right to see a doctor. Detainees said that they had not been informed of their right to see a doctor. They also said they had not seen a doctor in the detention facility.

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<sup>50</sup> The Human Rights Committee has repeatedly determined that the ICCPR requires governments to provide “adequate medical care during detention.” See *Pinto v. Trinidad and Tobago* (Communication No. 232/1987), Report of the Human Rights Committee, vol. 2, UN Doc A/45/40, p. 69.

<sup>51</sup> Human Rights Watch interview with Doctor Abdelhafidh Hachana, Bouchoucha detention center, February 9, 2013.

Human Rights Watch researchers interviewed one detainee in Nabeul detention center who had undergone pelvic surgery three weeks before his detention, and who was still relying on crutches. He claimed he needed daily physiotherapy that he did not receive in detention, despite several requests to see a doctor.<sup>52</sup>

International standards require that “persons in police custody should have a formally recognized right of access to a doctor.” In other words, a doctor should always be called without delay if a detainee requests a medical examination; police officers should not seek to filter such requests.<sup>53</sup>

## Minors Not Always Separated

Human Rights Watch researchers interviewed eight minors in the four facilities. They found that authorities did not scrupulously respect the obligation under international human rights law to separate adults from minors. In Bouchoucha, one cell is reserved for minors, and the three times that Human Rights Watch visited the center, we found minors grouped together in the specially designated cell. One guard did admit to Human Rights Watch that when staff cleans the rooms, minors are sometimes moved to the adult cells for short periods of time.<sup>54</sup>

In the Nabeul detention center, during the researchers’ second visit there on February 18, Human Rights Watch observed that minors were mixed with adults. Researchers counted three minors in a cell containing adults. Human Rights Watch interviewed a 17-year-old detained in the Nabeul Jail who said he had been housed with adults since entering the detention center eight days earlier.<sup>55</sup>

In the Sfax detention center, Human Rights Watch interviewed a 17-year-old boy who had been detained in the same cell as adults since he was brought to the detention center, six days before.<sup>56</sup>

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<sup>52</sup> Human Rights Watch interview with Mohamed, Nabeul detention center, February 18, 2013.

<sup>53</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) Standards, adopted 2002, CPT/Inf/E (2002) 1, p.11-12.

<sup>54</sup> Human Rights Watch interview with Anis Ghedir, February 9, 2013.

<sup>55</sup> Human Rights Watch interview with Makram, Nabeul detention center, February 14, 2013.

<sup>56</sup> Human Rights Watch interview with Samir, Sfax detention center, September 26, 2013.

## Women's Experience of Detention

Human Rights Watch researchers interviewed nine women in the detention center of Bouchoucha in the course of four visits. The team interviewed one woman in the facility in Sfax.

At the Bouchacha facility women were grouped together in one cell. During the first visit, on February 8, 2013, the toilet in the cell had backed up and emitted a terrible stench, but the women's cell was the only one that had soap. On a second visit, the women were switched to a different cell. While the women suffered from the same poor conditions as men with regards to food, hygiene, and lack of leisure, in addition, women have no access to outdoor exercise and spend their entire time in custody in the cell. One detainee, who had arrived at Bouchoucha four days earlier, said that she had never been allowed to go out.<sup>57</sup> The majority of women detainees reported that female guards conducted body searches upon their arrival, in accordance with international norms. However, in one case in Bouchoucha, one woman said that she had been searched upon arrival, which was during late hours in the night, by a male guard.<sup>58</sup>

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<sup>57</sup> Human Rights Watch interview with Salwa, Bouchoucha detention center, September 24, 2013.

<sup>58</sup> Human Rights Watch interview with Souheir, Bouchoucha detention center, September 24, 2013.



## **IV. Insufficient Safeguards against Mistreatment of Detainees**

Tunisian law requires police officers to follow some procedural steps that provide due process guarantees for the suspect.<sup>59</sup> The police officer must inform the suspect in the language they understand of the measures taken against them and the reasons for their arrest, and must read to them the guarantees that they enjoy under the law.

They must inform a member of their family of the measures taken against the suspect and of the place of custody. They must also inform the suspect of their right to request a medical examination during the period of custody. In addition, judicial police officers have to keep a special register of data including: name of detainee, date and time of their arrest and entry into custody, date of their release, and whether their family was informed of their detention.

On the basis of Human Rights Watch's visits to detention centers and interviews with inmates, this chapter identifies shortcomings in the system of safeguards that are supposed to protect detainees against mistreatment.

### **Access to a Medical Examination**

Early medical examination of detainees is an important means of deterring and detecting mistreatment—and is, moreover, important for assuring detainees' health. The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988) recommends in Principle 24 that “a proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment.”

Human Rights Watch examined medical registers and medical practice in the four detention centers visited. Our team included a physician, whose role was to focus on healthcare conditions in the detention centers, check medical records, and assess detainees' access to healthcare.

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<sup>59</sup> Code of Criminal Procedures, art.13 bis CCP, added by Law No. 87-70 of 1987 and modified by Law No. 99-90 of 1999.

Human Rights Watch found that detention centers generally have a practice of refusing to admit a person with visible injuries if he has no medical certificate. This good practice is however hampered by the absence of routine, thorough medical examination upon admission to the centers. In addition, the detention facilities that Human Rights Watch visited did not adequately record injuries and other medical problems.

## Medical Examination upon Admission

In the Tunisian detention centers Human Rights Watch visited, the common practice appears to be to refer detainees bearing visible signs of violence to a hospital before admitting them. Authorities at all detention centers visited told Human Rights Watch researchers that they refuse to accept detainees with visible injuries, including injuries that look like they could be the result of beatings.<sup>60</sup> Human Rights Watch saw several detainees with superficial injuries who confirmed they had been taken to the hospital after their arrest and interrogation and before their admission to the detention center. The registers we examined indicated whether the person had been sent to the hospital before admission to the detention center.

Although detention authorities generally seem to conform to the requirement of sending suspects for medical examination, Human Rights Watch came across several cases showing that this practice was not always followed consistently by medical staff and detention guards. For example, Human Rights Watch interviewed a female detainee in Bouchouchawho had extensive bruises on her buttocks and thighs.<sup>61</sup> She said she was arrested at 4 p.m. on Friday, September 20, 2013 at her home.

Three police cars came full of police agents. They took me in the car to the Charles de Gaulle police station. They didn't beat me up in the car, only insulted me. At the police station they took me to an office. One of the policemen in police uniform went out and came back with an electric cable and told me that I must say I work as a prostitute with another guy from my neighborhood. He started beating me on my thighs, my buttocks,

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<sup>60</sup> Human Rights Watch interview with Colonel Abdel Kader Ben Moussa, deputy director Sfax Police District and Anis Baasaoui, director of Sfax detention center; Human Rights Watch interview with Rached Mahjoub, director of Tunis police district, February 9, 2013

<sup>61</sup> Human Rights Watch interview with Souha, Bouchoucha detention center, September 24, 2013.

and my legs. They kept me in that office from 5 p.m. to 1 a.m., then they brought me here.

She said she asked to see the doctor at Bouchoucha the following day and told him police officers had beaten her. However, she said the doctor did not examine her bruises or order further medical exams, and only gave her a painkiller. Human Rights Watch checked the doctor's medical register, which confirmed he had offered her painkillers. The registers did not include allegations of beatings or requests for further medical examinations. The doctor on the Human Rights Watch research team determined that the woman's extensive bruises posed a serious risk of thrombosis and that she should have been sent to the hospital.

## Recording of Injuries

Recording injuries suffered by persons detained by the police is an important safeguard against torture and other ill-treatment. International standards require that "the fact that a detained or imprisoned person underwent a medical examination, the name of the physician, and the results of such an examination shall be duly recorded. Access to such records shall be ensured."<sup>62</sup>

Human Rights Watch researchers examined the general registers of the detention facilities visited. The recording of medical problems was not uniform across the centers. In Bouchoucha the registers contain one column concerning "general remarks," in which medical remarks are recorded. In others, registers had a column exclusively dedicated to medical issues. However, except in Sfax detention center, neither the general registers nor the medical registers in the other detention centers noted the nature of the detainee's symptoms or diagnoses. They included only information about the date the detainee was seen by a doctor or sent to a hospital, and the nature of the treatment. These records fail to describe adequately the source of any injuries and the type, location and characteristics of all injuries, details that could serve not only to determine the consistency of complaints of torture but also preclude false allegations against the police.

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<sup>62</sup> Body of Principles, Principle 26.

In one case, Human Rights Watch found that visible serious injuries were apparently not duly recorded in the registers. Bouchoucha has a new register, created in April 2013, for terrorist cases.<sup>63</sup> In the register, Human Rights Watch found the name of Ezzeddine Abdellaoui, arrested on August 6, 2013 in connection with arms trafficking and the assassination of the Tunisian opposition politician Chokri Belaid. Human Rights Watch had previously interviewed the family and lawyer of Abdellaoui who said that during his arrest, Abdellaoui was severely injured in the arm during an exchange of fire with the security forces and underwent a surgical operation in the Security Forces Hospital in La Marsa, Tunis.<sup>64</sup> The lawyer had shown Human Rights Watch the medical certificate from the hospital about the operation. However, the entry for him in the register makes no mention of his injuries.

In another example of inadequate recording of injuries, the doctor on Human Rights Watch's research team examined a detainee who bore injuries on his penis. He was arrested together with the woman mentioned above on suspicion of operating a prostitution network. He said police officers took him to the Charles de Gaulle police station. One policeman beat him on his penis with a baton, he said. The examination of the delegation's doctor confirmed that he had an enflamed penis exuding pus and blood. The detention center doctor did not note any of these details in his register and did not order further medical examination of the detainee.<sup>65</sup>

Human Rights Watch interviewed a detainee of Russian nationality in the Nabeul detention center. He bore signs of a severe beating, with a bleeding black eye, and bruises on the arms, the legs, and the back, close to his kidney. He had stitches on his lips and his wrists were injured in a manner consistent with the misuse of handcuffs.

The man told Human Rights Watch that officers had arrested him the day before at his hotel for the attempted murder of his girlfriend. He alleged that police had beaten him while he was handcuffed. Human Rights Watch checked the medical register of the detention center, which confirmed that he had been sent to the Sion Ville Hospital in Nabeul with a prescription from the hospital attached to the register. However, neither the

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<sup>63</sup> Human Rights Watch visit to Bouchoucha, September 24, 2013.

<sup>64</sup> Human Rights Watch interview with Chokri Azzouz, Ezzdine Abdellaoui's lawyer, Tunis, September 20, 2013.

<sup>65</sup> Human Rights Watch forensic examination and interview of Bilel, Bouchoucha detention center, September 24, 2013.

register nor the prescription contained any indication of the type and extent of the injuries, or the types of medical examination and procedures he underwent.

## Lack of Information on Rights

It is essential for the prevention of mistreatment that persons deprived of liberty be notified of their rights. Article 13 bis of the Code of Criminal Procedures (CCP) requires officers of judicial police to inform detainees in a language they understand of the actions taken against them, the cause and length of detention, and to explain the guarantees afforded by the law, including the possibility of undertaking a medical exam during pre-charge detention.

Human Rights Watch interviewed judicial police officers in Kairouan who showed us a standard form issued by the Ministry of the Interior for a “detention order,” to be signed by both the investigator and the suspect.<sup>66</sup> The form directs the police officer to inform suspects of their rights and to ask them whether they want to undergo a medical examination. In addition, it lists the notification to the family and the actual undertaking of medical examinations.

In practice, however, Human Rights Watch found that many of the detainees interviewed reported that they had not received any information on their rights.

A detainee who was arrested in Nabeul said:

The judicial police came to my garage at 9 a.m. They beat me with big sticks in the garage... then they put me in handcuffs and put me in the middle of the back seat. I asked, “Why you are arresting me?” They didn’t answer, and they drove me from Maamoura [a neighborhood 10 kilometers outside of Nabeul] to the Nabeul police station. I kept asking the police, “Why am I being arrested?” They slapped me. They left me in the police station till about 4 p.m. without telling me anything. My father and my brother came to ask about me,

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<sup>66</sup> Human Rights Watch interview with Khaled Aissa and Saber Trabelsi, judicial police officers, Kairouan police compound September 25, 2013,

they didn't let them in. Finally they took me to interrogation, and told me I had burglarized the home of someone who works in the municipality.<sup>67</sup>

## General Respect for the Pre-Charge Deadline

From interviews with inmates and a review of the registers kept at detention centers, Human Rights Watch found that, in the detention centers visited, authorities generally complied with the time limit set by law for bringing persons placed in their custody before an investigative judge. Under the Code of Criminal Procedures (CCP), a person may be held for up to three days, renewable once for three more days, under order from the prosecutor's office. If the public prosecutor decides to pursue a case, the investigative judge holds a preliminary hearing with the suspect and reviews the accusations and the basis for continuing to hold him or her.

## Recording in Registers

During the visit, Human Rights Watch reviewed the custody records in all police stations visited and was informed about the system for keeping of registers and books.

The format of the registers was not uniform and varied from one detention center to another. In all the detention centers, registers included the name and surname of the detainee, the time and hour of their admission to the detention center, motives of arrest, the reference number of the minutes, confiscated objects, signature of the detainee with the thumb, the name of the agent who brought the detainee, the date and hour of their departure from the center, the name of the police agent who took him out, and a column on state of health. In some detention centers, the registers contained a column on the notification to the family.

Human Rights Watch found that in examining 20 cases, authorities in each case appeared to have entered the required information about the inmates, including full name, date of admission, reasons for detention and whether the person underwent a medical examination at admission to the detention center.<sup>68</sup>

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<sup>67</sup> Human Rights Watch interview with Mehdi, Nabeul detention facility, February 14, 2013.

<sup>68</sup> Body of Principles, Principle 12. "1. There shall be duly recorded: (a) The reasons for the arrest; (b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority; (c) The identity of the law enforcement officials concerned; (d) Precise information concerning the place of custody. (2) Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law."

## V. Allegations of Mistreatment

### Mistreatment during Arrest and Interrogation

In 40 out of 70 interviews with detainees at the four detention centers, the prisoners reported physical violence during arrest, transfer to the police station, and the early stages of detention. The violence included slaps, punches, kicks, strikes with a baton, insults, threats, humiliation, shoving, and roughing up the person in custody.

International standards permit law enforcement officials to use force only when strictly necessary and to the extent required for the performance of their duty.<sup>69</sup> In Tunisia, pre-charge detainees have no right to legal representation. They can be interrogated and detained for as long as six days without any external monitoring of their interrogations or conditions of detention. Nor are there other types of safeguards, such as video and audio recording, which could provide a complete and authentic record of the interview process, facilitating the investigation of any allegations of ill treatment. This makes pre-charge detainees especially vulnerable to abuse.

Some of the detainees Human Rights Watch interviewed said their mistreatment began while police were conducting the arrest. One man said that during riots which followed the assassination of opposition politician Chokri Belaid, he was walking along the *corniche*, or seafront, in Sfax when a police van drove up, and around five officers emerged, chasing people and beating them with batons. He said the officers beat him on his back and dumped him in a police van along with 18 or 20 others that they rounded up the same way. Human Rights Watch separately interviewed four other young men arrested in the same incident who described the same subsequent mistreatment.<sup>70</sup> They drove to the district police station, where officers lined the men up against a wall and told them to kneel with their arms up. Police officers slapped the face and poked the ribs of anyone who let his arms fall.<sup>71</sup>

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See also Body of Principles, Principle 26. "The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law."

<sup>69</sup> UN Code of Conduct for Law Enforcement Officials, adopted December 17, 1979, G.A. Res. 34/169, art. 3

<sup>70</sup> Human Rights Watch interview with Jabber , Mouhab, Kahled, Sfax detention center, February 13, 2013.

<sup>71</sup> Human Rights Watch interview with Moez, Sfax detention center, February 13, 2013.

Another detainee in the Sfax Jail, who reported beatings from anti-riot police during his arrest, had dark bruises on his back upper thigh and less visible bruises on his lower back. He said the judicial police took him to the hospital for X-rays after his interrogation.<sup>72</sup> Human Rights Watch checked the register and found that it recorded that the suspect underwent X-ray exams.

Yet most of the detainees reporting abuse to Human Rights Watch said the mistreatment occurred while they were already in custody, and not offering resistance to the police. A detainee in Nabeul, arrested with another friend on suspicion of stealing car registration papers in order to extort money from the owner of the car, described to Human Rights Watch his treatment during arrest and interrogation:

The judicial police came, riding in a KIA [vehicle] and on some motorbikes. I won't tell you about the insults they used. They put us in the 4x4 Kia. We were not handcuffed, but leaning on each other, facing the spare tire. In the car I said to them, "I didn't do anything, why are you taking me?" There were five in the car, wearing plain clothes. One of them replied, "You'll go to the police and we'll see about everything." In the car, there was no beating, just insults. When we arrived at the police station, a police guy started to insult us, and handcuffed us. Another said, "We will be frank with you, speak frankly and everything will be alright." I told them what happened. There were two police officers...one said, "Let's talk *rujla* [man to man]." When they beat me, I asked, "Is this man to man? .... I kept denying I stole, that's when the police got mad and slapped me. I was afraid, I fell on the ground. I started to cry, I don't normally cry. They kept slapping me. I fell on the ground again."<sup>73</sup>

In Nabeul, Human Rights Watch interviewed two friends, Mohamed and Mehrez, who had been riding on Mehrez's motorcycle when they saw a commotion at the Menzel Temime roundabout. "People were running," said Mohamed. "There was a truck stopped and people were unloading cigarette cartons from the truck." The two men said they continued on their way to the city center, and then went home, only to find the police looking for them three days later.

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<sup>72</sup> Human Rights Watch interview with Naim, Sfax detention facility, February 13, 2013.

<sup>73</sup> Human Rights Watch interview with Naim, Nabeul detention center, February 14, 2013.



Mehrez, who had scratches on his face that he said came from a police assault, told Human Rights Watch that the police came to his home, arrested him, and took him to the Menzel Temime judicial police station. He said that during his interrogation, the police tried to make him confess that he had been involved in holding up the truck. Five officers beat him, punching him in the stomach until he fell on the ground, then punched and kicked him more.<sup>74</sup>

In a separate interview, Mohamed, who had undergone pelvic surgery three weeks before his arrest and was still on crutches, said that he had been out when the police came to his home looking for him. When Mohamed reported to the judicial police at Menzel Temime,

They brought me into an office where I saw my friend Mehrez sitting on a chair. He had bruises on his face. The policeman told me, “Mehrez said you used a sword to hold up the truck transporting cigarettes.” Mehrez was crying.

After interrogating Mohamed, police officers told him they would release him and call his brother to pick him up.

They took Mehrez to another room. I started hearing beating and the screams from the other room. Then they came with my brother ... [and] handcuffed us together. They wrote my statement, which I read and signed. The statement said I am accused of holding up the truck.”<sup>75</sup>

Another detainee, Ali, was arrested on February 8 by a group of approximately 30 officers from the riot and regular police while he was guarding a shop in Sfax from looters during the unrest following Chokri Belaid’s assassination, he said. At Sfax’s central police station, he said he was forced to sit with his hands cuffed behind his back from 1 to 5 a.m. The police transferred him to the Jounubiyya station of the Judicial Police for interrogation at 10 a.m. February 9. The police accused him of using drugs, and when he denied the accusation, the interrogator responded, “You are lying, I’m going to fuck your mother,” Ali said. The interrogator forced him to remove his clothes piece by piece and threatened to rape him, he said. He refused to remove his underwear, despite being ordered to, and the police placed him unclothed for 10

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<sup>74</sup> Human Rights Watch interview with Mehrez, Nabeul detention center, February 18, 2013.

<sup>75</sup> Human Rights Watch interview with Mohamed, Nabeul detention center, February 18, 2013.

minutes in a cold room. Then the interrogators gave him three papers that he signed without reading. He said he was too afraid to ask to read the statement.<sup>76</sup>

In one case, Human Rights Watch received information from a third party that contradicted the version provided by the authorities. Human Rights Watch interviewed a detainee of Russian nationality in the Nabeul detention center whose case is described in the previous chapter. As noted, when Human Rights Watch interviewed this man he showed signs of a severe beating, with a bleeding black eye, and bruises on his arms, legs, and back. He told Human Rights Watch that officers had beaten him after they arrested him the day before at his hotel for the attempted murder of his girlfriend.

When interviewed about the injuries, the director of the detention center and the judicial police gave contradictory accounts and denied that the police had injured the man. The director said that the man was drunk and that he had probably hit himself against the wall. He then called the judicial police in charge of the case, in the presence of Human Rights Watch researchers. They told him that his injuries were the result of the dispute he had with the lover of his wife, when he found them together in the hotel room. However, Human Rights Watch received a day later a phone call from a travel agent in charge of this Russian group of tourists. She said that she saw the man being arrested by the police in the reception hall and that he showed no signs of injury at the time of his arrest and that the police immediately handcuffed him and took him out of the hotel.<sup>77</sup>

## Use of Electrical Devices

Human Rights Watch researchers heard allegations from five detainees in three detention facilities that the police used devices that look like flashlights to administer electric shocks during arrest and interrogations.

Human Rights Watch researchers spoke with a police officer in the Sfax police compound who said the Interior Ministry prohibited the use of such electric devices.<sup>78</sup> He said however that some police agents might buy them on the black market, and then use them in their arrest operations. He showed us an electric device he keeps in his office.

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<sup>76</sup> Human Rights Watch interview with Ali, Sfax detention center, February 13, 2013.

<sup>77</sup> Human Rights Watch phone interview with Polina, September 27, 2013.

<sup>78</sup> Human Rights Watch interview with Lotfi Ezzeddine, Captain in anti-riot police, Sfax police compound, February 13, 2013.



Electric device, Sfax judicial police, February 13, 2013. © 2013 Human Rights Watch



Electric device, Sfax judicial police, February 13, 2013. © 2013 Human Rights Watch

Human Rights Watch sent a letter to the Ministry of the Interior on September 27 asking whether the ministry had any guidelines on the use of such electric devices and whether they have received complaints from suspects on their use during arrest and interrogation.<sup>79</sup> On November 11, the Ministry of the Interior sent to Human Rights Watch an official letter in which it denied having received any complaints regarding the use of electric devices.

The use of electric devices is only permitted in circumstances in which the use of force would be lawful, and authorities must ensure that their use is strictly regulated and that they are used only when this is strictly necessary.<sup>80</sup>

Seventeen-year-old Sami, said that the police in Kairouan arrested him and three other young men for theft, handcuffing them to one another, at a café, and took them to the Sidi Omar Bouhajla police station. There, during interrogation, the judicial police insulted and beat them. One policeman touched a flashlight-like device to their handcuffs and Sami said he felt an electric shock.<sup>81</sup>

A detainee in the Sfax detention center said that police agents arrested him on suspicion of participating in the unrest following Chokri Belaid's assassination. At the judicial police station, he said several officers interrogated him, and one of them had a flashlight-shaped device that he used to administer an electric shock to his metal handcuffs, causing him severe pain. He said for some minutes he lost sensation in his arm.<sup>82</sup>

A detainee in the Nabeul detention center said four plainclothes police officers arrested him at a café for fighting with another person. They roughed him up, handcuffed him, and took him in a police van to the judicial police station. There they made him sit on a chair still handcuffed and interrogated him. He said one of the policemen used a device on his handcuffs; he did not see it, but he felt a jolt and trembled from the shock.<sup>83</sup>

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<sup>79</sup> Letter from Human Rights Watch to the Tunisian Ministry of the Interior, September 27, 2013.

<sup>80</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) Standards, p.101.

<sup>81</sup> Human Rights Watch interview with Sami, Kairouan detention facility, February 12, 2013.

<sup>82</sup> Human Rights Watch Interview with Moattab, 16 years old, Sfax detention center, February 13, 2013.

<sup>83</sup> Human Rights Watch Interview with Adel, Kairouan detention center, February 12, 2013.

## Forced Confessions

Twenty seven detainees told Human Rights Watch that fear of the police compelled them to sign the minutes of their interrogation, even if they had not read them and did not know their content. For example, Saber, arrested in Nabeul on February 11, 2013, on what he said were suspicions of drug use, told Human Rights Watch, “I signed my statement without reading it. No one reads it...If you asked to read it, they’d make mincemeat of you. You must sign.”<sup>84</sup>

One of the detainees said that when the police presented his statement for signature, he was “too afraid to ask” to read it.<sup>85</sup> Another said that he felt he had no choice after enduring insults, slaps, and other humiliating treatment. One detainee said a policeman told him, “If you don’t sign, I’ll slap you until you faint.”<sup>86</sup>

One of the detainees, from Côte d’Ivoire, who does not read, speak, or understand Arabic, said that the police arrested him in the Tunis-Carthage International Airport while he was waiting to catch a flight, on suspicion that he had a forged laissez-passer. They took him to the 18 of January police station at Bab Bhar in Tunis. A policeman interrogated him in his office. He asked him how he got the laissez-passer and slapped him. “He slapped me hard, on the face and on the top and back of the head, a number of times,” he said. After interrogating him, the policeman gave him documents in Arabic to sign: “They told me I had to sign. I did: When someone slaps you, you’re not going to disobey.”<sup>87</sup>

A detainee arrested in Nabeul for alleged theft described to Human Rights Watch the atmosphere during interrogation:

There were two interrogators, one writing, one asking questions. They questioned me and my friend both at the same time, while we were handcuffed together. They questioned us from about 2 p.m. till 9 p.m., all this time police were coming and going. One was so polite. Others came in and were slapping me and my friend on the back of the head. At the end

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<sup>84</sup> Human Rights Watch Interview with Saber, Nabeul detention center, February 14, 2013.

<sup>85</sup> Human Rights Watch interview with Ahmed, Nabeul detention center, February 18, 2013.

<sup>86</sup> Human Rights Watch interview with Iskander, Sfax detention center, February 13.

<sup>87</sup> Human Rights Watch interview with K, from Ivory Coast, Bouchoucha detention center, February 9, 2013.

they printed out the interrogation statement. When I asked to read it, the police said “Shut up! We wrote exactly what you said.” They threatened me, saying, “We’ll send you behind the sun [meaning we will kill you].” I signed, but I don’t know what it said.<sup>88</sup>

Human Rights Watch heard allegations about forced confessions from ex-detainees interviewed after they were released. For example, Mourad Meherzi, a cameraman working for the independent web-based Astrolabe TV, told Human Rights Watch that police officers tried to force him to sign a statement and to confess a crime. Mourad was arrested on August 18, 2013, two days after he captured on camera the film director Nasreddine Shili hitting Culture Minister Mehdi Mabrouk in the face with an egg. On August 23, the public prosecutor brought charges against Meherzi that include conspiracy to assault a public servant and harming public morals, and issued a detention order against him. He spent five days in the detention center of Bouchoucha. He told Human Rights Watch:

Police forces came to my house around 9 p.m. They were five, in plainclothes. They knocked on the door and told my sister that they were friends. She called me and when I came to the door they surrounded me and forced me into a four-wheel-drive car. They immediately started insulting me, and insulting my mother and my family. They took me to the interrogation center of Gorjani. There they started interrogating me about what happened during the egg-throwing incident. The number of investigators swelled and there were approximately 11 at some point. One of them was threatening me; he said if I don’t admit that I plotted with Nasreddine to assault the minister, he will torture me and rape me. They didn’t beat me, but they roughed me up. At some point they took me to another office, one stayed with me and two others were in another closed office, I could hear them type. After a while, they brought papers and asked me to sign. I refused, I told them I can’t sign something I didn’t read. They became angry and roughed me up. But I persisted and refused to sign.<sup>89</sup>

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<sup>88</sup> Human Rights Watch interview with Bilal, Nabeul detention center, September 14, 2013.

<sup>89</sup> Human Rights Watch interview with Mourad Meherzi, Tunis, September 28, 2013.

## Mistreatment of Women

Four out of ten women we interviewed reported that police officers insulted them verbally, calling them “whores” during their arrest and interrogation. A 22-year-old woman said police officers subjected her to physical mistreatment when they arrested her with her boyfriend on February 11 on suspicion of drug consumption. Policemen put them in a van to drive them to Bab Bhar district police station, and on the ride there, the woman said they insulted her and slapped her.<sup>90</sup> Another woman said that the Morality Police arrested her in the Tunis airport on suspicion of belonging to a prostitution network and took her to the Gorjani Interrogation Center. There they slapped her on the face several times, as they tried to make her confess the names of her accomplices.<sup>91</sup>

## Mistreatment in Detention Centers

In each detention center Human Rights Watch visited, we asked detainees privately how the guards treated them. Except in Nabeul Jail, detainees reported no physical mistreatment, although some complained about insults from the guards. In the Nabeul Jail, some detainees told Human Rights Watch about mistreatment and humiliation by the guards on the night shift. At least five detainees interviewed separately told Human Rights Watch that two guards on February 15 forced them and other detainees to come out of two cells on their knees, and crawl down the corridor while the guards beat them with a stick for about 15 minutes. On an earlier visit to the detention center in Nabeul, four inmates described an incident with the night guards one week prior, on February 8, in similar terms. One detainee said:

On Friday, the night shift guards came, they heard one of the inmates curse, they became aggressive, and they forced us outside the cell. They made us kneel down in the corridor, and they started to beat us. One of the guards was using a wooden stick, he beat us with it, he beat me on my back—the piece broke from the beating. All this lasted for 15 to 20 minutes. Then they ordered us to go back to the cell.<sup>92</sup>

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<sup>90</sup> Human Rights Watch interview with Farida, Bouchoucha detention center, February 9, 2013.

<sup>91</sup> Human Rights Watch interview with Hela, Bouchoucha detention center, February 9, 2013.

<sup>92</sup> Human Rights Watch Interview with Ahmed, Nabeul detention, February 18, 2013.

Human Rights Watch reported the allegations to the director of the detention center, who said he had not been aware of the incidents but promised to investigate and to end any abusive practices.

Human Rights Watch noted these incidents in its letter to the Ministry of the Interior. The ministry responded: “Regarding the allegation of mistreatment in the Nabeul detention facility on February 15, the ministry opened an administrative investigation in this regard and heard 15 detainees as well as the guards. The detainees denied having any knowledge of the incident. Detention authorities decided however to change all the guards.”<sup>93</sup>

However, it is not clear how the investigators interviewed the same detainees who told Human Rights Watch about the incident, since those detainees would have departed the facility by the time the ministry launched the investigation.

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<sup>93</sup> Response letter from the Tunisian Ministry of the Interior to Human Rights Watch, May 30, 2013.



## IV. Tunisia's Obligations under International Law

Detainees retain their human rights and fundamental freedoms; there should be no restrictions on their rights nor should they be subjected to any hardship or constraint, other than that which is unavoidable as a result of their detention. Article 10 of the International Covenant on Civil and Political Rights requires that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

The African Charter on Human and Peoples' Rights also protects every individual's human dignity and prohibits all forms of degradation including torture, and cruel, inhuman or degrading punishment and treatment. A growing body of jurisprudence has recognized that poor detention conditions, overcrowding, lack of adequate sanitary provision, lack of light, lack of exercise, and the use of certain forms of punishments and restraints might amount to inhumane or degrading treatment.<sup>94</sup>

Numerous international instruments provide further guidance on the protection and respect of human rights of criminal defendants and persons deprived of their liberty. The most comprehensive are the UN Standard Minimum Rules for the Treatment of Prisoners. Other relevant instruments include the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Basic Principles for the Treatment of Prisoners. The UN Rules for the Protection of Juveniles Deprived of their Liberty and the UN Standard Minimum Rules for the Administration of Juvenile Justice lay out additional specifications of the conditions under which children may be detained.

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<sup>94</sup> See International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A.Res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 7.

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

See also Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, art. 12.

“Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”

See also Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, approved by the Inter-American Commission on Human Rights March 2008, General Principle 1.

“[All persons] shall be protected from any kind of threats and acts of torture, execution, forced disappearance, cruel, inhuman, or degrading treatment or punishment, sexual violence, corporal punishment, collective punishment, forced intervention or coercive treatment, from any method intended to obliterate their personality or to diminish their physical or mental capacities.”

At the regional level, the African Commission on Human and Peoples' Rights has adopted instruments containing recommendations to improve protections of those encountering African criminal justice systems. It addressed due process rights in the 1992 Resolution on the Right to Recourse Procedure and Fair Trial and the 2003 Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa.

Several international instruments address standards for conditions of detention in prisons as well as in police custody, containing guidelines on food, hygiene, bedding and outdoor time.<sup>95</sup> In addition, several international bodies have developed an interpretation of the minimum standards. For example, the European Committee for the Prevention of Torture and inhuman or degrading treatment or punishment, stated that “All police cells should be clean and of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded); preferably cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and clean blankets. Persons in police custody should have access to a proper toilet facility under decent conditions, and be offered adequate means to wash themselves. They should have ready access to drinking water and be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day. Persons held in police custody for 24 hours or more should, as far as possible, be offered outdoor exercise every day.”<sup>96</sup>

International standards state, “All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.”<sup>97</sup> The UN special rapporteur on torture has interpreted this right to oblige states “to fulfill and protect the various human rights of detainees, above all their rights to food, water, health, privacy, equal access to justice and an effective remedy against torture and other human rights violations, [which] derives from the simple fact that detainees are powerless.”<sup>98</sup>

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<sup>95</sup> Body of Principles; Standard Minimum Rules; Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.

<sup>96</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “12<sup>th</sup> General Report on the CPT's Activities covering the period of 1 January – 31 December 2001,” CPT/Inf (2002) 15, Strasbourg, September 3, 2002.

<sup>97</sup> Body of Principles, Principle 1.

<sup>98</sup> UN Commission on Human Rights, Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/63/175, July 28, 2008.

## Acknowledgments

This report was researched and written by Amna Guellali, Tunisia researcher in the Middle East and North Africa division of Human Rights Watch. Eric Goldstein, deputy director, Adam Coogle, researcher and Ahmed Kaaniche, research assistant in the Middle East and North Africa division of Human Rights Watch, participated in the research mission.

Eric Goldstein and Robin Shulman, consultant with the Middle East and North Africa division, edited the report. Clive Baldwin, senior legal advisor, conducted legal review. Tom Porteous, deputy program director, conducted program review. Jillian Slutzker and Sandy Elkhoury, associates in the Middle East and North Africa division, provided production assistance.

Grace Choi, publications director, Kathy Mills, publications specialist, and Fitzroy Hepkins, administrative manager, prepared the report for publication.

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## Annex 1: Human Rights Watch's Letter to the Prime Minister of Tunisia

April 10, 2013

His Excellency Ali Laarayedh  
Head of Government  
Place du Gouvernement - La Kasbah  
1020 Tunis

CC  
Lotfi Ben Jeddou  
Minister of Interior  
Ministry of the Interior  
Avenue Habib Bourguiba, 1000, Tunis

Dear Premier Laarayedh:

Thank you again for the authorization you granted in July 2012, in your former capacity as Minister of Interior, to Human Rights Watch to visit detention and arrest facilities under the ministry's authority. We commend the openness and cooperation of the ministry as well as the detention authorities who gave us wide access to these centers.

As you know, a team of four Human Rights Watch researchers accompanied by a doctor visited, between February 8 and 20, 2013, the detention center of Bouchoucha in Tunis, and detention centers in Sfax, Kairouan, and Nabeul. The research team interviewed more than 70 detainees in these police-run detention centers. The research will culminate in a report including recommendations to the Tunisian authorities.

I write to you today to share with you our preliminary impressions from these visits and to invite your feedback on a number of issues in order to ensure that your views are reflected in the upcoming report. Any pertinent information you provide by May 8, 2013 will be reflected in our report.

### *Allegations of Inadequate Nutrition*

The most universal complaint we heard about detention center conditions—from nearly every prisoner at every facility we visited—involved the quality and adequacy of the food. The prisoners described the food as “insufficient,” “food in name only,” and “fit for turtles.” Many prisoners reported feeling constantly hungry. In some detention facilities, detainees reported that meals were served only twice a day. Meals consisted of sandwiches composed of bread, lettuce, and sauce, and in the best cases thin slices of salami; or a watery soup containing pasta or rice but no protein. Except the lettuce found in the sandwich, the detainees received no fruit or vegetables.

### *Allegations of Poor Sanitary Conditions*

Hygiene and sanitary conditions appeared to be bad in all the detention facilities we visited. One of the main issues reported by detainees is their struggle to keep themselves clean, due to inadequate access to running water and cleansing agents, including soap. In some facilities the detainees did not have direct access to running water and had to ask the guards each time they wanted to turn it on. In all the detention facilities visited by Human Rights Watch, the researchers observed cells where there was no soap. In Kairouan, the prison director told us that soap was put in the cells each morning and then taken away. In every facility we visited, detainees said they have no access to showers. The staff at each facility confirmed this with the possible exception of Kairouan, where one guard showed us a shower that, he said, prisoners can use in the summer months.

In addition, the old structures of the detention facilities create problems with waste management. During the first visit of Human Rights Watch to Bouchoucha center, researchers observed how, following a heavy rain the previous evening, several of the toilets had backed up, leaving waste water on the floors of the cells and giving off a strong smell of human waste. The director of Bouchoucha confirmed to Human Rights Watch that the toilets clog when it rains.

In the Sfax detention facility, many detainees interviewed by Human Rights Watch reported the presence of rats.

Bouchoucha is the only detention center we visited that allows its inmates time outdoors. It contains a 25 meter by 16 meter courtyard where on most days, according to the accounts we gathered, inmates spent 90 minutes to two hours. In the other facilities, according to both the inmates and the guards, inmates were confined to their cells around the clock except if they had an appointment in court or with the police.

### *Allegations of Physical Mistreatment in Detention Centers and During Arrest*

In most of the detention facilities visited by Human Rights Watch, detainees did not report physical mistreatment by the guards. However, in Nabeul detention center, Human Rights Watch heard stories of mistreatment and humiliation that the detainees attributed to two of the nighttime guards. At least 5 detainees whom we interviewed individually described how the two guards on Friday, February 15 obliged them and other detainees to come out of two cells on their knees, and beat them with a stick during 15 minutes when they obliged them to crawl in the corridor. On an earlier visit to the detention center in Nabeul, four inmates described in the same terms an earlier incident with the same guards and same treatment that happened one week before, on February 8.

While physical mistreatment by detention center guards appeared to be rare, most of the detainees interviewed by Human Rights Watch reported being subject to police mistreatment during arrest and interrogation. This mistreatment includes, variously, insults, humiliation, threats of rape, shoving, slaps, punches, kicks, and beatings with sticks and batons. In most of the cases documented by Human Rights Watch, the detainees said the police subjected them to such mistreatment at a time when they were offering no resistance to the police, either while being placed under arrest or while already in custody.

### *Allegations of Violations of Due Process Rights*

Tunisia's Code of Criminal Procedures (CCP) requires the police to follow procedural steps to protect the rights of the suspect. The police must inform a member of the suspect's family of the measures taken against him and the place of custody. He has also to inform the suspect of their right to request a medical examination during the period of custody. However, the overwhelming majority of the detainees we asked said that the police did not

inform them of their rights during arrest and interrogation, such as their right to inform their family members and their right to have a medical examination. In addition, most of them reported that they signed statements prepared for them by the police without reading them, either because the police prevented them from reading them or because they said that they dared not ask to read it. Some reported that the police used physical violence on them during interrogation or when coercing them to sign their statements. If and when this is true, it violates the guarantees of due process of law.

From its interviews with inmates and its review of the registers kept at detention centers, Human Rights Watch found that in the detention centers we visited, authorities generally complied with the time limit set by law for bringing persons placed in their custody before an investigative judge. Under the CCP, a person detained may be held for no longer than three days, renewable once for three more days. If the public prosecutor decides to pursue the case, the investigative judge holds a preliminary hearing with the suspect and reviews the accusations and the basis for continuing to hold him or her.

However, in the detention facility of Nabeul, visited two times, the Human Rights Watch team found that several detainees had been there for more than six days, some for as long as 10 days. The detention authorities explained that the investigative judge, after holding a preliminary hearing for the suspect, has six days to decide whether to confirm the charges or to drop them. The investigative judge can order the judicial police to conduct a complementary investigation (*commission rogatoire*). In their view, this means the suspect can stay legally as long as 12 days in pre-arraignment detention: six days before the transfer of the case to the investigative judge; and six more days if the investigative judge orders a complementary investigation. However, such a situation seems to put detainees in hardship as they are kept for as long as 12 days in cells which are not equipped to hold people for longer than a few days.

In order to reflect official information and views in our final report, we would be grateful to receive answers to the following questions.

With regards to nutrition:

- What is the budget allocated to food per detainee per day?
- Do you consider the diet currently provided to detainees to be adequate?

- Are there any plans to modify that diet and if so, how?

With regard to sanitary conditions:

- Does the Ministry of Justice have a plan to upgrade the waste evacuation plumbing serving the cells at Bouchoucha? If so, when will this work be completed?
- Is there a system-wide policy on the detainees' having access to running water on a regular basis?
- Does the detention administration within the Ministry of the Interior have system-wide policies on furnishing soap to the inmates and granting them access to showers? If so, what are these policies?
- Does the Ministry of the Interior conduct regular inspections to check the sanitary conditions in the detention facilities under its control? If so, how frequently are they conducted?

With regard to allegations of physical mistreatment:

- Is the ministry aware of the above described allegations of mistreatment said to have occurred on February 9 and 15 in the Nabeul detention facility? If so, has it taken any measures in response?
- What are the measures and mechanisms employed by the Ministry of the Interior to ensure that guards treat detainees humanely? By what means can inmates file a complaint about mistreatment?

With regard to the rights of suspects taken into custody and questioned:

- Please provide the applicable laws, guidelines, regulations, and orders governing the use of force by law enforcement agents when placing a person in custody and during the taking of his statement.
- Please provide us with the safeguards to ensure that the statements given by persons in police custody are voluntary and that the suspect is given a full opportunity to review the written version of his statement to ensure its accuracy before signing it, and is free not to sign it if he so chooses.



- Is the Ministry of the Interior aware that some detainees at the Nabeul police detention center appear to have been held longer than six days? Can the authorities explain why such a practice exists and whether it conforms to Tunisian law?

As noted above, we hope to get your answers to these questions arising from our visits to police detention centers, as well as any other pertinent information you wish to provide. All pertinent information you provide by May 8, 2013 will be reflected in our report.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to be 'S. Whitson', with a long horizontal flourish extending to the right.

Sarah Leah Whitson  
Executive Director  
Middle East and Northern Africa Division  
Human Rights Watch

## **Annex 2:**

# **Response Letter from the Tunisian Ministry of the Interior to Human Rights Watch**

Tunisian Republic  
Ministry of the Interior  
General Directorate for Foreign Relations and International Cooperation  
Directorate of Multilateral Relations

May 30, 2013

### **Information brief with the Ministry of the Interior's comments on the Human Rights Watch report**

Pursuant to the visit conducted by a Human Rights Watch delegation—which included deputy director of the MENA division Eric Goldstein, Tunisia bureau director Amna Guellali, researchers Ahmed Kaaniche and Adam Coogle, and Dr. Liliia Bouguerra—to holding facilities in Bouchoucha, Nabeul, Sfax, Kairouan, al-Zahrani, Hayy al-Zuhur, and the Judicial Police Directorate from February 8 to 20, 2013, the delegation prepared a report. The report leads the Ministry of the Interior to make the following observations:

#### **1. Regarding insufficient food**

Rations allocated to those in custody are sufficient and likely to improve, as a sum of 800 millimes has been allocated for each meal, at a rate of three meals per day. The type of meal is periodically changed. It should be noted that there have been no complaints from those in custody.

#### **2. Regarding health conditions**

The delegation's visit coincided with work on some holding cells to improve ventilation, light, and space and to repaint. A sum of 24,000 dinars has been allocated for this purpose. In addition, cells will be treated to eliminate insects and rats, particularly in the centers in Sfax and Kairouan, while a special logbook will be adopted to ensure regular maintenance. Since August 2009 coordination has been underway with the municipality of Greater Sfax to oversee weekly maintenance and cleaning in holding cells in the Sfax

National Security region. The necessary cleaning supplies are provided in sufficient amounts, as are covers and mattresses, and there is periodic health oversight.

### **3. Regarding ill treatment**

We treat all persons in custody in accordance with the legal regulatory framework and pursuant to international human rights conventions. Regarding the report's claim of the ill treatment of detainees by guards on February 15, 2013 in the Nabil detention center, an administrative inquiry was opened; 15 detainees and all staff working on that day gave statements. The detainees denied they were assaulted, and all guards on the holding cells were transferred and replaced to avoid suspicions.

### **4. Regarding violation of the right to a fair trial**

Persons can be held in custody three days, which can be extended to a maximum of six days with a written order from the general prosecutor (section 57 and 13(bis) of the Code of Criminal Procedures).

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Edy Kaufman  
Marina Pinto Kaufman  
Robert Malley  
Ahmed Mansoor  
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Abdelaziz Nouaydi  
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# Annex 3: Human Rights Watch's Second Letter to the Tunisian Ministry of the Interior

[www.hrw.org](http://www.hrw.org)

September 27, 2013

His Excellency Lotfi Ben Jeddou  
Minister of Interior  
Ministry of Interior  
Avenue Habib Bourguiba, 1000 Tunis  
Fax: 00.216.71.340.888

Dear Mr. Minister,

First, I would like to thank you for having sent us, via an oral note transmitted by the Ministry of Foreign Affairs, the official answers of your Ministry to our letter dated April 10, 2013. In that letter, we presented to you the preliminary findings of our visits to the detention centers of Bouchoucha, Nabeul, Kairouan, and Sfax, and we requested responses from the Ministry on some points raised in the letter.

We send you this letter to add one more question about some allegations, collected during our visits to these centers, on policemen using devices resembling “electro-chocks”. Five people detained the centers mentioned above said that during arrest and interrogations, policemen applied these electro-chocks to their handcuffs, causing them tremors in the body and a temporary loss of sensation. They also said that the devices, black in color, looked similar to electric torches. The allegations were about events that took place between February 6 and 14, 2013.

For example, a 17-year old inmate, interviewed in the detention center of Kairouan, told us that he and three other young men were arrested by policemen in a café on suspicion of theft, then they were handcuffed together and transported to the police station of Sidi Omar Bouhajla. During interrogation, a policeman applied the device to his handcuffs, which caused him a discharge in the arm.

Another detainee in the center of Sfax also told our delegation that he had been arrested for participating in the riots that followed the assassination of Chokri Belaid. He said that the policeman who interrogated him applied the device to his handcuffs, causing him a loss of sensation in his arm for several minutes.

We would like to know if the Ministry has developed any guidelines to its officers prohibiting or regulating the use of such a type of devices. We would also like to know whether you have already received similar complaints from prisoners and whether you have opened any investigations on this use of this device.

Thank you for your consideration.

Sincerely

A handwritten signature in black ink, appearing to be 'Sarah Leah Whitson', with a long horizontal flourish extending to the right.

Sarah Leah Whitson  
Executive Director  
Middle East and North Africa Division  
Human Rights Watch

## **Annex 4: Response Letter from the Tunisian Ministry of Foreign Affairs to Human Rights Watch**

Republic of Tunisia  
Ministry of Foreign Affairs  
GDOIC/DHR

Tunis, November 11<sup>th</sup>, 2013

**From:** The Director of Human Rights  
**To:** The director of Human Rights Watch office in Tunis

**Subject:** Response of the Ministry of Interior to the letter of “Human Rights Watch” dated September 27<sup>th</sup>, 2013.

I have the honor to transmit to you the response of the Ministry of Interior to the letter cited in the subject and containing “allegations of mistreatment of detainees in custody committed by officers working in detention centers, and in which your organization wishes to know if any complaints have been filed” in this regard:

“Following investigations that have been opened for this purpose, it was found that no abuse has been committed by the officers working in the detention centers, nor has any complaint been submitted to any security unit or court.

The Ministry of Interior would like to reiterate its commitment to treating detainees in accordance with law and international standards of human rights. This is achieved by supervising officers working in detention centers to avoid all forms of abuse and to engage in applying all procedures required in relation to custody”.

Sincerely,

Lassaad Ben Lamine

# CRACKS IN THE SYSTEM

## Conditions of Pre-Charge Detainees in Tunisia

For decades, Tunisian detainees have been largely invisible to the outside world. *Cracks in the System* documents the conditions for detainees in pre-charge detention—the period of time a person spends in police custody from the moment of arrest to the moment he or she appears before an investigative judge. The report also documents persistent mistreatment during police arrest and interrogation and examines the legal framework governing pre-charge detention.

Based on visits to four detention centers in different Tunisian cities and interviews with inmates and detention officers, the report found that detainees suffer from poor nutrition, insufficient health care, and poor hygienic conditions. Their lack of access to a lawyer from the moment of arrest increases the risk that officials will mistreat them and force confessions during interrogation.

The report calls on the Tunisian government to: revise the code of criminal procedures to reduce the maximum time allowed for police custody before judicial review; introduce legislation to ensure that all people deprived of their liberty are immediately entitled to the assistance of a lawyer; and conduct a nationwide assessment of the material conditions of detention centers to ensure that all meet minimum standards.



*(left) Nabeul detention center, corridor, February 18, 2013.*

*(front cover) A man behind bars at Sfax detention center; Tunisia September 26, 2013.*

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