



## DETENTION IN TUNISIA: SANCTIONS THAT GO BEYOND DEPRIVATION OF LIBERTY

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During Zine el-Abidine Ben Ali's 24 years of authoritarian rule (1987-2011), the situation in Tunisian prisons was characterised by "repression, excessive use of force, arbitrary arrests, torture and imprisonment".<sup>1</sup> Civil society and external observers did not have access to detention centres. State institutions would not admit to any shortcomings, and persecuted their opponents. Beyond these repressive criminal practices, most of which ultimately remained behind closed doors, Tunisia was on political lockdown.

Since 2011 revolution changed this situation and the institutions' rhetoric and stance. The prison administration, which used to fall under the Ministry of the Interior's authority, is now governed by the Ministry of Justice. Prisons have, at least partially, been opened up to monitoring activities and civil society analyses. Put in place in 2011, numerous monitoring initiatives from Tunisian civil society<sup>2</sup> are raising awareness of the disquieting situation in prisons, helping to prevent certain bad practices. The public administration also largely confirms these observations and shortcomings, leading to a common diagnosis of the situation in prisons.



## Detention centres in Tunisia

There are several different types of detention centre in Tunisia, including detention centres for individuals placed in custody and prisons.<sup>3</sup> There are 27 functioning prisons in Tunisia, 18 of which are intended for prisoners serving sentences, with the remaining nine reserved for those in preventive detention. In practice, however, detainees awaiting judgment and condemned prisoners are mixed within the same prisons and the same cells, in breach of international rules. Furthermore, according to observers, human rights violations of all kinds are common in detention centres for people in custody. These centres remain difficult to access, and information on custody conditions is limited.<sup>4</sup> The Bouchoucha detention centre, housing people placed in custody in Tunis, is often described as the worst detention centre in Tunisia.



1 OHCHR 2011.

2 For example, by the Tunisian League for Human Rights and the Organisation Against Torture in Tunisia.

3 Alongside these common law prisons, there are also other detention centres, such as administrative holding centres or closed psychiatric facilities, which we do not address here.

4 Situation as of 15 April 2014 according to the Directorate General for Prisons and Rehabilitation (DGPR).

5 OHCHR 2014.

6 PARJ 2014.

7 PARJ 2014.

8 OHCHR 2014.

9 PARJ 2014.



## Prison overcrowding and penal chain deficits

In 2014, 23,697 people were imprisoned in Tunisia, representing 226 people imprisoned per 100,000 inhabitants. This is nearly twice the European average. Around 58% of detainees are in preventive detention, meaning that they were not condemned, and are still presumed innocent.<sup>5</sup> There is widespread recourse to preventive detention, and it is not regarded as an exceptional measure as stipulated by law. According to the European Union, this situation "is a result of the impaired functioning of the criminal justice system, and seems to indicate that the rules governing preventive detention are inadequate".<sup>6</sup> The space available per detainee in prisons has been declining over the past few years, dropping from 2 m<sup>2</sup> per detainee in 2012, to 1.41 m<sup>2</sup> in 2014. The occupancy rate is in excess of 150%.<sup>7</sup> In some cells, beds have to be shared, putting individuals in preventive detention side-by-side with condemned prisoners, repeat offenders involved in violent or organised crime, and individuals suspected of theft or cannabis consumption, both young and old.

Nearly all prison buildings were built before 1950, and were not designed for this purpose. Most of them are former industrial buildings or colonial farms. The cells are large rooms filled with dozens of detainees, or even more than a hundred in some prisons. Privacy is non-existent there. Prisoners spend around 23 hours a day in these cells for the entire duration of their detention. Exercise areas often measure no more than a few metres squared, and prisoners spend only a few minutes a day there. The prison guards, whose number is insufficient to manage this amount of prisoners, can only provide a minimum level of surveillance: they make sure that the detainees survive and remain in detention without rioting.

## A punishment far in excess of deprivation of liberty

Under such conditions, the punishment imposed on prisoners goes beyond deprivation of liberty. Detainees' minimum rights cannot be adequately guaranteed.

Free access to training or social reintegration activities generally exists only in theory, or is limited to local and isolated initiatives. Family visits are restricted to once per week, and they take place from behind a window or bars. Fathers and mothers with families are entitled to one visit in a separate room every three months. Private conjugal visits are not permitted.

## A desocialising and criminogenic living space

In practice, prison society is co-managed by the prison guards and the detainees. Life in the cells is primarily organised by the detainees. In each cell, a responsible individual called a "caporal" is appointed by the prison administration and is given the task of "managing" the cell. This "caporal" is often chosen from among the prisoners who have been there the longest; often from among those detainees sentenced for the most serious crimes. Bestowed with the ability to act like a gang leader under the aegis of the prison administration, they are the ones who manage everyday social and economic life in the cells: they assign beds, decide the position of detainees in the cell, distribute the food brought by families, perform minor organisational tasks, and sell staple commodities used by the detainees.

Small support groups form according to personal affinities, geographical origin, or the opinion of the detainees. Detainees accused of terrorism or regarded as Islamists are particularly stigmatised and forced to organise themselves independently. They form separate groups, especially in the prisons in Tunis.

***"In prisons, cases of torture are rare but bad treatment persists. Most of the old members of staff are still there, and are working under the same conditions. It is the mentalities that need to be changed."***

A coordinator at a Tunisian civil society organisation.





## The by-products of a system where almost anything can be bought

In this society living on the margins of the rule of law, where almost everything can be bought and sold, violence and corruption serve to exacerbate inequalities. According to observers, cleaner, less overcrowded cells, and access to means of communication can be bought from the administration. In order to improve their unbearable detention conditions, detainees and their families sometimes give in to the pressure exerted by certain guards.

The services offered by the administration are not generally provided: only those detainees who do not receive visits and who are not being supported by their families, eat the food provided by the prison authorities. The overwhelming majority of detainees get their food from the packages or "hampers" their families bring to the prison three times a week, which demonstrates the appalling quality of the food provided by the prison. These packages are systematically checked by the administration, and are distributed to the inmates by the "caporals". The financial autonomy and independent management powers accorded to prisons makes it possible for money to be embezzled and enables the lack of transparency. Each prison is responsible for contracting all of its own suppliers and detention service providers, in particular medical and catering services. This encourages acts of misappropriation, which appear to be widespread, given the poor state of the services actually provided to detainees.

## A forgotten question: who are the victims of this system?

According to data collected from the Tunisian Directorate General for Prisons and Rehabilitation by the Tunisian Bureau of the United Nations Office of the High Commissioner for Human Rights,<sup>8</sup> the majority of detainees are young men (55% are under the age of 30) with a low level of education (half of detainees have only been to primary school, 43% to secondary school). Three out of four detainees are being held on suspicion of committing, or after being found guilty of committing, a particular crime, such as theft (31%), consumption or trafficking of narcotics (26%) and other crimes (17%), including failure to pay bills. According to the United Nations Office on Drugs and Crime, 5,000 of the inmates in Tunisian prisons are there for having consumed cannabis.<sup>9</sup>

## The social, psychological and health consequences for society as a whole

Such an environment compromises the future reintegration of detainees into society, despite the fact that this is described as an integral function of prison sentences. Upon leaving prison, former detainees are also confronted with other obstacles to reintegration, some of which are insurmountable. The sentence imposed upon them by a society seeking to restore security to the country prevents them from being reintegrated into social, family and local life. "*Far habes*", which literally means "prison rat", is a popular expression that former prisoners often hear for many years after leaving prison. Additional complications faced by these young, under-qualified individuals in their attempts to return to work include widespread unemployment, and the requirement to have a clean criminal record in order to join the civil service or to access certain other private professions. It is not uncommon for former detainees to solely find refuge among their former fellow inmates, or within criminal or extremist networks. In this social context, repeat offending is endemic; 45% of Tunisian prisoners are repeat offenders.



## The challenges to be overcome to improve the Tunisian prison system

Although the authorities have changed their rhetoric since the revolution, and although civil society associations have been granted partial access to detention centres, the challenges to be overcome to ensure decent detention conditions are enormous. Today, even though police officers and prison guards no longer mistreat their wards at the behest of their superiors, bad practices persist, and the situation of detainees is still cause for concern. This situation, which primarily affects young men who committed petty crimes, has an adverse effect on the development of Tunisian society as a whole. A substantial decrease in the prison population, in particular in the number of prisoners in preventive detention, is an essential prerequisite for improving detention conditions. To make this change a lasting one, the decrease in the prison population must accompany an overhaul of prison policy (in particular prosecution policy) and how the penal chain functions. It is also necessary to call into question the practice of systematic prosecution and mass recourse to preventive detention for people suspected of having committed minor offences.

The management of the prison population must be improved, in particular by separating those in preventive detention from condemned prisoners, and those serving long-term sentences from those serving short-term sentences. There must be increased use of alternative sentences to imprisonment, which are currently only imposed in exceptional cases. To this end, it is necessary to work with all stakeholders in the penal chain and to involve them in political discussions. Administrative and social structures with the capacity to organise community service must be included in the process and be given support in implementing community service sentences. The internal monitoring of prisons by the Directorate General for Prisons and Rehabilitation and the Ministry of Justice, as well as external monitoring by civil society, would make it possible to curb abusive practices and corruption. Initial training for staff, and a reform of the management system for prison establishments, must also be organised.



### Sources :

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# Avocats Sans Frontières' approach towards detention before judgment

In collaboration with its partners in Tunisia, Democratic Republic of Congo, Burundi and Uganda in particular, Avocats Sans Frontières (ASF) is taking structured action in defence of persons placed in detention before judgment (custody and preventive detention), who require access to a high-quality justice system which respects the rule of law.

Several interdependent factors justify ASF's intervention in this field:

- The persons placed in detention find themselves in a severely vulnerable situation:
  - The prison population is largely composed of persons who were already in a fragile situation before entering prison.
  - Detention exacerbates their vulnerable situation by stopping them from continuing their pre-existing economic activities, and places them in poor sanitary conditions.
  - Detention results in marginalisation of individuals, who will subsequently have to reintegrate themselves into society. It also gives rise to spiralling criminality.
- Within the countries where ASF is active, detention before judgment is one of the main causes of prison overcrowding.
- It is also a frequent source of major human rights violations.

Based on these findings, ASF recommends:

- Enhancing the ability of the detainees to act effectively as fully-fledged stakeholders, in particular through awareness-raising activities and legal advice.
- High-quality legal advice and judicial assistance from lawyers and providers of legal aid for persons placed in detention before judgment.
- Commitment on the part of those involved in providing access to justice to establish a penal system that respects the rule of law.

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Founded in Belgium in 1992, Avocats Sans Frontières (ASF) is an international NGO specialising in the defence of human rights and support for justice in countries in fragile and post-conflict situations. For more than 20 years, ASF has been implementing programmes which improve access to justice for persons in vulnerable situation.

For more information about ASF's projects on detention before judgment, visit [www.asf.be/detention](http://www.asf.be/detention)

*Detention before judgment: at what cost?*

A video by ASF

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