



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

Distr.  
RESTRICTED\*

CAT/C/39/D/269/2005  
22 November 2007

ENGLISH  
Original: FRENCH

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COMMITTEE AGAINST TORTURE  
Thirty-ninth session  
5-23 November 2007

**DECISION**

**Communication No. 269/2005**

<i>Submitted by:</i>	Mr. Ali Ben Salem (represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Tunisia
<i>Date of complaint:</i>	2 May 2005 (initial submission)
<i>Date of present decision:</i>	7 November 2007
<i>Subject matter:</i>	Torture and/or ill-treatment at a police station
<i>Substantive issues:</i>	Torture and cruel, inhuman or degrading treatment or punishment; obligation of the State party to ensure that the competent authorities conduct a prompt and impartial investigation; right to lodge a complaint; right to redress
<i>Procedural issues:</i>	Exhaustion of domestic remedies, abuse of the right to submit complaints
<i>Articles of the Convention:</i>	2, paragraph 1, read in conjunction with 1; 16, paragraph 1; 11, 12, 13 and 14, read separately or in conjunction with 16, paragraph 1

[ANNEX]

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\* Made public by decision of the Committee against Torture.

**ANNEX**

**DECISION OF THE COMMITTEE AGAINST TORTURE UNDER  
ARTICLE 22 OF THE CONVENTION AGAINST TORTURE AND  
OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT  
OR PUNISHMENT**

**Thirty-ninth session**

**concerning**

**Communication No. 269/2005**

*Submitted by:* Mr. Ali Ben Salem (represented by counsel)

*Alleged victim:* The complainant

*State party:* Tunisia

*Date of complaint:* 2 May 2005 (initial submission)

*The Committee against Torture*, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Meeting on 7 November 2007,*

*Having concluded* its consideration of complaint No. 269/2005, submitted in the name of Mr. Ali Ben Salem under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Having taken into account* all information made available to it by the complainant and the State party,

*Adopts* the following:

**Decision under article 22, paragraph 7, of the Convention against Torture**

1. The complainant is Mr. Ali Ben Salem, a 73-year-old Tunisian national. He alleges he was the victim of violations by Tunisia of article 2, paragraph 1, read in conjunction with article 1; article 16, paragraph 1; and articles 11, 12, 13 and 14, read separately or in conjunction with article 16, paragraph 1, of the Convention. He is represented by counsel.

**Factual background as presented by the complainant**

2.1 The complainant has a long history of human rights activism in Tunisia, where, over the past 24 years, he has helped set up and run human rights monitoring organizations. In 1998, he co-founded the National Council for Fundamental Freedoms in Tunisia (CNLT), which the Tunisian Government refused to register as a legal non-governmental organization (NGO) and

kept under constant surveillance. In 2003, he co-founded the Tunisian Association against Torture (ATLT). He and his colleagues have been subjected to harassment, threats and violence by the Tunisian Government.

2.2 In March 2000, CNLT published a report setting out in detail all the systematic human rights violations committed by the Tunisian Government, including acts of torture. On 3 April 2000, Mr. Ben Brik, a journalist and friend of the complainant, began a hunger strike in protest against the withdrawal by the Tunisian authorities of his passport, constant police harassment and a boycott of his work by the Tunisian media. On 26 April 2000 the complainant went to visit Mr. Ben Brik and noticed a large number of people around the house. Among them he recognized several plain-clothes policemen, some of whom had been involved in the surveillance and numerous closures of CNLT offices. These policemen prevented foreign journalists from approaching Mr. Ben Brik's house. The complainant tried to flee, but was struck on the back of the neck, and partially lost consciousness. Other people were also beaten and arrested by the police.

2.3 Along with the others, the complainant was brought to El Manar 1 police station, where he was hit many times on the back of the head and neck and was kicked by several officers. He was subsequently dragged 15 metres along the courtyard face down and up a flight of stairs leading to the police station. His clothes were torn and he was left with abrasions on his lower body. He continued to be beaten, in particular by one policeman who he later learned was Mr. Abdel Baqui Ben Ali. Another officer sprayed tear gas in his face, which burned his eyes and choked him. A policeman banged his head against a wall, leaving him unconscious for an undetermined period. When he came to, he found himself in a puddle of water on the floor of the main hall of the police station. He asked to be taken to the toilet, as he felt prostate pain, a condition which he had suffered from for several years. When the policemen refused, he was obliged to drag himself along the floor to the toilets.

2.4 A little later, he was told to go to an office a few metres further on. He was once again obliged to drag himself along the floor. Three police officers tried to force him to sit on a chair. He was then hit on the back of the neck and briefly lost consciousness. When he came to, he realized that he was being thrown in the back of a car, then fainted from pain. He was dumped at a construction site. He was discovered there in the late afternoon by three workers who found him a taxi to take him to hospital. At the hospital, medical tests confirmed that he had severe injuries to the spine, head injuries and bruises. Despite the doctors' concern, for fear of the police he decided as early as the next day to leave hospital and return to his home in Bizerte. Ever since he has suffered from serious back problems and has had difficulty standing up, walking and even carrying small objects. Doctors have advised back surgery. He also suffers from shoulder injuries. Because he cannot afford surgery, he has to take painkillers.

2.5 On 20 June 2000 the complainant lodged a complaint with the office of the Public Prosecutor describing the ill-treatment to which he had been subjected by policemen at El Manar 1 police station, requesting the Public Prosecutor to open a criminal investigation into the incident and implicating the Ministers of the Interior and of National Security. The Public Prosecutor's office would not accept the complaint, on the grounds that it was not

the two Ministers themselves who had mistreated the complainant. On 22 August 2000 the complainant mailed his complaint back to the Public Prosecutor's office. On 4 September 2000 he delivered it to the office in person. He received no reply. No investigation has been opened since.

2.6 The applicant has been subjected to nearly constant police surveillance since 26 April 2000. Plain-clothes policemen are nearly always posted in front of his home. His telephone line is often cut, and he suspects that the police have tapped it. He was again assaulted by police officers on 8 June 2004 when he tried to register the organization that he had co-founded, ATLT.

### **The complaint**

3.1 The complainant alleges a violation of article 2, read in conjunction with article 1, of the Convention, on the grounds that the State party not only failed in its obligation to take effective measures to prevent acts of torture, but also used its own police forces to subject him to such acts. The State party intentionally inflicted on the complainant treatment tantamount to torture with the aim of punishing him for his human rights activities and intimidating him into halting such activities. He notes that the seriousness of the ill-treatment is comparable to that of other cases where the Committee has found that the ill-treatment constituted torture under article 1.<sup>1</sup> Furthermore, the gravity of the ill-treatment must be assessed taking into account the victim's age, his state of health and the resulting permanent physical and mental effects of the ill-treatment. He points out that at the time of the incidents he was 67 years old and suffered from prostate problems.

3.2 The complainant considers that the State party violated article 11, on the grounds that the authorities not only failed to exercise their supervisory powers to prevent torture, but actually resorted to torture themselves. The State party thus clearly failed to exercise a systematic review of rules, instructions, methods and practices with a view to preventing any cases of torture.

3.3 The complainant alleges that he has been a victim of a violation of articles 12 and 13 taken together, on the grounds that the State party did not carry out an investigation into the acts of torture committed against him, despite abundant evidence that public officials had perpetrated such acts. He filed complaints, and several international organizations made official statements mentioning his case and describing the ill-treatment inflicted by the Tunisian police. He further notes that according to the Committee's case law, a mere allegation of torture by the victim is sufficient to require an investigation by the authorities.<sup>2</sup>

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<sup>1</sup> See communication No. 207/2002, *Dimitrijevic v. Serbia and Montenegro*, decision adopted on 24 November 2004, paras. 2.1, 2.2 and 5.3.

<sup>2</sup> See communication No. 59/1996, *Blanco Abad v. Spain*, decision adopted on 14 May 1998, para. 8.6.

3.4 With respect to the alleged violation of article 13, the complainant points out that the State party has not discharged its duty to protect him against all ill-treatment or intimidation as a consequence of his complaint. On the contrary, he considers that the State party has exposed him to intimidation by its own police force. He also points out that since the events in question he has been under nearly constant surveillance by the Tunisian police.

3.5 With respect to the alleged violation of article 14, the complainant considers that the State party has ignored his right to file a complaint, and has thus deprived him of his right to obtain compensation and the means for his rehabilitation. Even if civil suits may theoretically afford adequate reparation for victims of torture, they are either unavailable or inadequate. Under article 7 of the Tunisian Code of Criminal Procedure, when a complainant chooses to bring both civil and criminal actions, judgement cannot be handed down in the civil suit until a definitive decision has been reached on the criminal charges. Since criminal proceedings were never begun in this case, the State party has denied the complainant the opportunity to claim civil damages. If the complainant brings a civil suit without any criminal proceedings being initiated, he must renounce any future criminal charges. Thus, even if he won his case, the limited compensation that resulted would be neither fair nor appropriate.<sup>3</sup>

3.6 With respect to the alleged violation of article 16, the complainant argues that while the ill-treatment he suffered may not qualify as torture, it does constitute cruel, inhuman or degrading treatment.

3.7 On the exhaustion of domestic remedies, the complainant points out that he has unsuccessfully tried all the remedies available under Tunisian law. He has tried three times to file a complaint with the Public Prosecutor's office (see paragraph 2.5 above). He has received no response to his complaints, although they were submitted in 2000. He notes the Committee's finding that allegations of torture are of such gravity that, if there is reasonable ground to believe that such an act has been committed, the State party has the obligation to proceed automatically to a prompt and impartial investigation.<sup>4</sup> In such cases, the victim need only bring the matter to the attention of the authorities for the State to be under such an obligation.<sup>5</sup> In the present case, not only did the complainant report the matter, but international organizations have also publicly decried the brutality to which he was subjected.

3.8 In the complainant's opinion, five years of inaction by the Public Prosecutor after a criminal complaint is submitted is an unreasonable and unjustifiable amount of time. He points out that the Committee has regarded a period of several months between the time the competent

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<sup>3</sup> See communication No. 161/2000, *Hajrizi Dzemaïl et al. v. Serbia and Montenegro*, decision adopted on 21 November 2002, para. 9.6.

<sup>4</sup> See communication No. 187/2001, *Thabti v. Tunisia*, decision adopted on 14 November 2003, para. 10.4.

<sup>5</sup> See communication No. 6/1990, *Parot v. Spain*, decision adopted on 26 April 1994, para. 10.4.

authority is informed of alleged torture and the time a proper investigation begins as excessive.<sup>6</sup> There is no effective remedy available to torture victims in Tunisia, because other appeal procedures are in practice flawed. A complainant can bring a private suit if the Public Prosecutor does not wish to initiate proceedings, but by so doing he forfeits the opportunity subsequently to seek criminal damages. The Committee has considered failure to bring proceedings to be an “insurmountable obstacle”, since it made it very unlikely that the victim would receive compensation.<sup>7</sup> He notes that prosecutors do not investigate allegations of torture and abuse, and that judges regularly dismiss such complaints without investigating them. Thus, while appeal procedures exist in theory, in practice they are unsatisfactory.<sup>8</sup>

3.9 The complainant requests the Committee to recommend to the State party that it take steps to investigate fully the circumstances of the torture he underwent, communicate the information to him and, based on the findings of the investigation, take action, if warranted, to bring the perpetrators to justice. He also requests that the State party take whatever steps are necessary to grant him full and suitable compensation for the injury he has suffered.

#### **State party’s observations on admissibility**

4.1 The State party forwarded its observations on the admissibility of the complaint on 21 October 2005. It objects that the communication is inadmissible because the complainant has neither used nor exhausted the domestic remedies available, which, contrary to his assertions, are effective. The State party points out that the complainant did not follow up on his complaint. On 4 September 2000, the very day that the complaint was filed with the lower court in Tunis, the Deputy Public Prosecutor invited the complainant, in writing, to produce a medical certificate attesting to the alleged bodily harm cited in his complaint; the complainant did not submit such a certificate. Even so, the Public Prosecutor asked the chief of the security service for the Tunis district to proceed with the necessary investigation of the related facts and report back to him. On 17 April 2001, the chief of the security service for the Tunis district stressed that the facts as related by the complainant had not been established but investigations were still under way. On the same dates and in the same places, on the other hand, the police had stopped and arrested people at an unauthorized gathering on the public highway. On the basis of that information, the Public Prosecutor assigned a deputy to question the persons cited in the complaint - the three policemen and the complainant. Questioned on 12 July 2001, 13 November 2001 and 11 July 2002 respectively, the three defendants all denied the facts as related by the complainant. One said he could not have been at the scene of the alleged incident because he was assigned to a different district. The other two had been at the scene of the unauthorized gathering but had been taken to hospital after being assaulted by a demonstrator.

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<sup>6</sup> See communication No. 59/1996, *Blanco Abad v. Spain*, decision adopted on 14 May 1998, para. 8.5.

<sup>7</sup> See communication No. 207/2002, *Dimitrijevic v. Serbia and Montenegro*, decision adopted on 24 November 2004, para. 5.4.

<sup>8</sup> See European Court of Human Rights, *Aksoy v. Turkey*, Preliminary objections, 18 December 1996, Reports of Judgments and Decisions 1996-IV, para. 53.

Faced with the complainant's failure to respond, the Tunis prosecutor's office decided on 29 May 2003 to bring the alleged victim face-to-face with the three police officers. It assigned the office of the chief of the security service for the Tunis district to summon the complainant and ask him for contact details of the witnesses he cited in his complaint. That request was not followed up because the complainant was not at the address given in the initial complaint. The Deputy Public Prosecutor therefore decided on 12 June 2003 to file the case without further action, for lack of evidence.

4.2 The State party points out that the allegations made by the complainant relate to acts that qualify as crimes under Tunisian law, action on which is time-barred only after 10 years. The complainant can, therefore, still lodge an appeal. The State party stresses that the complainant has offered no serious reason for his failure to take action despite the legal and practical opportunities open to him to bring his case before the national courts. He can contest the Public Prosecutor's decision to file the case without further action, having the inquiry brought before an examining magistrate, or he can summon the defendants directly before the Criminal Division of the High Court under article 36 of the Code of Criminal Procedure. He can combine a civil application for compensation with the criminal proceedings, or await a conviction, then bring a separate civil suit for damages before the civil courts alone. The complainant can also file an administrative appeal, since public officials who commit serious misconduct render the State liable along with themselves. An appeal of this kind is still possible, since the limitation period for compensation appeals is 15 years. The State party asserts that domestic remedies are effective but the complainant has not made intelligent use of them. It cites numerous examples to show that appeals to the Tunisian justice system in similar cases have been not only possible, but effective.

4.3 Because of the complainant's political motivations and the slanderous content of the communication, the State party considers that he has abused the right to submit communications under article 22, paragraph 2, of the Convention. It points out that the complainant is a founder member of two groups that are not legally recognized in Tunisia, CNLT and ATLT, which continue to operate outside the law and are constantly adopting disparaging positions aimed at discrediting the country's institutions. It notes that the complainant has levelled serious defamatory accusations against the Tunisian judicial authorities that are in actual fact not supported by any evidence.

### **Complainant's comments on the State party's observations**

5.1 On 21 November 2005 the complainant reaffirmed that he had made use of the domestic remedies provided under Tunisian law, despite the fact that they were ineffective. He had done more than should be expected to have the incidents investigated and judged at the national level, since he had taken all the steps that should have led to a serious inquiry. The obligation to undertake an investigation lay with the State even in the absence of any formal procedural action on the part of the victim. In any case, he had gone in person to the offices of the competent authorities to submit his complaint after trying to complain twice before. No notification, summons or instruction had been sent to him, and no information on the status of his case had been communicated to him. He therefore considered that he had not been remiss as far as following up on his complaint was concerned. The State party bore sole responsibility for

conducting the inquiry. Even if the complainant had not shown due diligence, the State party would be under the same obligation. The Committee had stated that a lack of action on the part of the victim could not excuse failings by the State party in the investigation of accusations of torture.<sup>9</sup>

5.2 The complainant considers that his complaint was unproductive since he had never been informed of any follow-up to it. He notes that none of the records, letters and other communications concerning the investigation which the State party mentions have been produced by the State party in its response to his communication; and in any event, they cannot be considered to amount to a full, impartial investigation as required by article 12 of the Convention. As for the fact that he did not receive the summons issued in June 2003 because he was not at home, he argues that absence from his home on one occasion is not a valid reason to exclude him entirely from the proceedings. As for medical certificates, even if the Public Prosecutor in September 2000 did issue a request - which was never received - asking him to present such documents, no further attempt to obtain them was made thereafter. He notes that the chief of the security service for the Tunis district reached the provisional conclusion in his message of 17 April 2001, seven months after the inquiry supposedly started, that the facts as related had not been established, and did so without hearing any witnesses, the complainant or the defendants, or seeing any medical certificates. Of the three defendants, the first was questioned more than a year after the incident and the last, more than two years after it although the criminal investigation service could easily get in touch with them all. The complainant further notes that the State party reports, without giving further details, that the three defendants denied the facts, and that there is no indication that their statements were subsequently checked. He considers that the authorities have not conducted a prompt, serious, exhaustive and impartial investigation.

5.3 The complainant considers that the other domestic remedies mentioned by the State party are equally ineffective, and that he therefore does not need to pursue them to satisfy article 22, paragraph 5 (b), of the Convention. With regard to seeking remedy through criminal proceedings, he mentions that he has run up against several obstacles as already described, including the absence of a decision by the Public Prosecutor not to bring a prosecution. Furthermore, if an investigation begun by institution of a civil suit results in a dismissal of proceedings, the complainant may be held civilly and criminally liable, and this deters action. Regarding a possible civil remedy, he points out that under article 7 of the Code of Criminal Procedure, civil suits are dependent and contingent upon the criminal proceedings; yet in practice, criminal proceedings are not an available option. As regards an administrative appeal, he says that a favourable outcome is no more likely in the administrative tribunal than it would be in the criminal courts, and the outcome of his attempt to bring criminal charges is a good indicator of how administrative litigation would probably end. Furthermore, he considers that by their very nature, neither civil nor administrative proceedings can guarantee full and appropriate reparation in a case of torture: only a criminal remedy for such a violation of the fundamental rights of the person is appropriate.

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<sup>9</sup> See communication No. 59/1996, *Blanco Abad v. Spain*, decision adopted on 14 May 1998, para. 8.7.



5.4 As regards the argument that his communication constitutes an abuse of the right to submit communications to the Committee, the complainant states that he has merely exercised his right to an effective remedy, that he has no political motivations and has made no defamatory statements against the State party. He notes that the Committee has found that a complainant's political commitment does not impede consideration of his complaint.<sup>10</sup>

#### **Additional observations by the parties**

6.1 On 26 April 2006 the State party reiterated that the complainant had, since the alleged assault, been blatantly negligent, not least insofar as it had taken over four months for him to file his complaint, he had not enclosed a medical certificate, and he had not given sufficient details concerning the policemen he accused and the witnesses he cited. Besides those major omissions, the complainant had been remiss in following up on the investigation, since at no time after submitting his complaint had he taken the trouble to enquire about the outcome or follow it up. His attitude indicated bad faith and a deliberate intention to make the appeal procedure appear ineffective. The Public Prosecutor, on the other hand, had shown exceptional diligence, considering that complaints not supported by strong evidence are generally filed with no further action. In this case, the Public Prosecutor had examined the complaint the very day it had been submitted; he had noted the absence of a medical certificate and had opted to give the complaint a chance by asking the complainant to supply one. Despite the paucity of evidence, he had on his own initiative undertaken an investigation into the facts as related by the complainant. Despite this diligence, the absence of the complainant from his home, observed on numerous occasions, had seriously hampered the collection of reliable information.

6.2 Regarding the absence of information on the status of the case, the State party explains that the Code of Criminal Procedure calls for no special procedures to notify or inform the complainant when a complaint is filed, and that it is customary and logical for the complainant himself to follow the case. As for the argument that the complainant may be held criminally and civilly liable in the event that proceedings are dismissed in an application for civil indemnities, the State party explains that such a risk exists only if slanderous accusations have been made. On the matter of evidence, it emphasizes that its comments are based entirely on official documents in the case file.

7. On 10 May 2006 the complainant again asserted that he had been diligent and had persevered in his attempts to file a complaint, and the ineffectiveness of the legal steps he had taken was in no way attributable to his conduct. He added that he did not actually have any alternative legal course affording reasonable prospects of satisfaction.

#### **Decision of the Committee on admissibility**

8.1 The Committee considered the question of the admissibility of the complaint at its thirty-seventh session and, in a decision dated 8 November 2006, pronounced it admissible.

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<sup>10</sup> See for example communication No. 187/2001, *Thabti v. Tunisia*, decision adopted on 14 November 2003, para. 7.3.

8.2 The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

8.3 The State party had requested the Committee to declare the complaint inadmissible on the grounds that the complainant had abused the right to submit such a communication and had not exhausted all available domestic remedies. The complainant for his part contested the arguments put forward by the State party, asserting not only that his submission to the Committee was not abusive, but also that his approaches to the Tunisian authorities stood no chance of success.

8.4 On the question of abuse raised by the State party, the Committee pointed out that in order for there to be abuse of the right to raise a matter before the Committee under article 22 of the Convention, one of the following conditions must be met: the submission of a matter to the Committee must amount to malice or a display of bad faith or intent at least to mislead, or be frivolous; or the acts or omissions referred to must have nothing to do with the Convention. In the present case, however, it had been ascertained that the complainant had reported being tortured and/or ill-treated by policemen in the street or at a police station, and had accused the State party of violating provisions of the Convention.

8.5 Regarding the contention that the complaint should not be entertained owing to the failure to exhaust domestic remedies, while taking into consideration the State party's description of its legal and court system, the Committee noted that the incident in question had taken place on 26 April 2000 at El Manar 1 police station; that the only investigations had been conducted by the chief of the security service of the Tunis district and by the Public Prosecutor, who had eventually filed the complaint with no further action; that by the date the complaint was submitted to the Committee against Torture, 6 July 2005 (over five years after the incident), no substantive decision had been reached; and that that was an abnormally long delay before dealing with extremely serious acts which qualify as crimes attracting severe penalties under Tunisian law. In the light of the above, the Committee considered that the requirements of article 22, paragraph 5, of the Convention, had been met.

8.6 The Committee against Torture therefore decided that the communication was admissible in respect of articles 2, paragraph 1, read in conjunction with 1; 16, paragraph 1; 11, 12, 13 and 14, read separately or in conjunction with 16, paragraph 1.

### **State party's observations**

9.1 On 2 March 2007 the State party repeated that no provision of the Convention had been violated and expressed surprise that the Committee should have found the complaint admissible. It points out that a complaint to the Committee should not allow the complainant to evade the consequences of his own negligence and his failure to exhaust available domestic remedies.

9.2 The Committee had found that no substantive decision had been reached more than five years after the complainant had complained to the authorities, but the State party stresses that it was several serious omissions on the part of the complainant that had led the Public Prosecutor to file the case: failure to attach a medical certificate or provide sufficient details

about the policemen accused and the witnesses cited, and failure to follow up on his complaint. The absence of convincing evidence and details of the full names and addresses of witnesses, in addition to the accused's denial of the facts as related by the complainant, made it impossible to take a decision on the substance of the complaint.

9.3 The State party believes it has explained the available remedies that are still open to the complainant. Since criminal proceedings are not yet time-barred, the complainant can still bring judicial proceedings. The State party is emphatic that there is no question that domestic remedies are effective. As it has indicated in earlier submissions, both disciplinary and judicial sanctions have been imposed on officials where liability has been established. In this case, the Committee could have recommended that the complainant should initiate proceedings and exhaust domestic remedies in accordance with the Convention. The State party therefore requests that the Committee review its position in light of these considerations. The State party submits no observations on the merits.

#### **Further comments by the parties**

10. On 28 March 2007 the complainant pointed out that the State party was merely repeating the comments it has already made on admissibility and had put forward no observations on the merits.

11. On 12 April 2007, the State party again regretted the Committee's attitude in finding the complaint admissible despite all the State party's clarifications. It reported that further steps had been taken in line with rule 111 of the Committee's rules of procedure. In accordance with article 23 of the Code of Criminal Procedure, the prosecutor at the Tunis Court of Appeal had asked the Public Prosecutor at the lower court in Tunis to provide information on the facts of the complaint. A preliminary inquiry had thus been opened against such persons as might be indicated by the inquiry, to be carried out by the judge in charge of the 10th investigating office of the lower court in Tunis. The case had been registered with the investigating judge as No. 8696/10.<sup>11</sup> Pending the outcome of the judicial investigation and in light of the measures taken by the authorities, the State party invited the Committee to review its decision on admissibility.

12.1 On 20 April 2007, the complainant noted that the State party's observations were now irrelevant since a decision on admissibility had already been taken. The State party was simply repeating the arguments it had previously put forward. However, the complainant noted that concerning several of his allegations the State party had provided information that was not correct. He had submitted his first complaint to the Tunisian authorities in June 2000. Instead of

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<sup>11</sup> According to the registration certificate enclosed, which has been translated into French, "The registrar responsible for the 10th investigating office of the court of first instance in Tunis hereby certifies that the case registered as No. 8696/10, concerning the investigation of such persons as may be indicated by the investigation, in accordance with article 31 of the Code of Criminal Procedure, for the purposes of determining the circumstances of the arrest of Mr. Ali Ben Salem on 26 April 2000, at the El Manar 1 police station, Tunis, and the alleged events in relation thereto, is still under investigation."

facilitating his access to domestic remedies, the State party had continued to harass and intimidate him in 2005 and 2006, including by placing him under constant close surveillance. He had been placed under house arrest on several occasions. On 3 June 2006 he had been placed under temporary arrest and barred from leaving the country.

12.2 Given the State party's persistent refusal to comment on the merits of the complaint, the complainant requested the Committee to base its decision on the facts as he had described them. He recalled that the Human Rights Committee and the Committee against Torture had consistently maintained that due weight must be given to a complainant's allegations if the State party fails to provide any contradictory evidence or explanation. In the present case, the State party had not expressed any view on the merits. The complainant, however, had correctly proceeded to substantiate his allegations with a number of documents, including copies of his medical records, his complaint to the Tunisian judicial authorities, witness statements and several pieces of additional documentation.

12.3 The complainant asserted that the State party had not been able to demonstrate that remedies were effectively available to victims in Tunisia. It had merely described the domestic remedies available to victims in theory. The judicial system in Tunisia was not independent and the courts generally endorsed the Government's decisions. Under the circumstances the burden of proof with regard to the effectiveness of remedies rested on the State party. In the present case, the State party had not met this burden of proof because it had merely described the availability of remedies in theory without contradicting any of the evidence provided by the complainant to show that such remedies were not available in practice.

13.1 On 15 May 2007, the State party asserted that the complainant was accusing the Tunisian judiciary of hidden intentions. As far as the date of submission of the complaint was concerned, the State party argued that the receipt produced by the complainant in no way proved that he had actually sent the complaint, since the receipt made no mention of the nature or purpose of the letter sent. The State party considered that the complainant was again indulging in slanderous allegations against the Tunisian judiciary. It recalled that criminal proceedings had been instituted by the Public Prosecutor's Office. More than 100 law enforcement officers had been brought before the correctional and criminal courts since 2000 for violations committed while on duty. There was therefore no doubt about the effectiveness of domestic remedies.

13.2 In the State party's view, the complainant was resorting to manipulation in order to sabotage the judicial proceedings and disrupt the proper course of domestic remedies. Having undermined the efforts of the Public Prosecutor with the lower court in Tunis following submission of his complaint in September 2000, and those of the Deputy Prosecutor appointed to conduct the preliminary investigation into the allegations, the complainant was now adopting an attitude of non-cooperation. The complainant had been summoned to appear before the investigating magistrate on 30 April 2007 but had once again refused to make a statement on the grounds that his lawyer had not been permitted to attend, even though the examining magistrate had explained that his status as complainant did not require the assistance of a lawyer and that the latter did not need to be heard for the purposes of the inquiry. The examining magistrate therefore went ahead with other measures, including calling other people cited by the complainant. The case was continuing. Consequently, the State party considered that it was still within its rights to request the Committee to review its decision on admissibility pending the outcome of the ongoing judicial inquiry.

14. On 13 September 2007, the complainant again stated that the State party was merely reiterating earlier observations. He repeated that the State party bore sole responsibility for the lack of progress in the domestic proceedings. He recalled that the State party had even denied him legal assistance when he had been called before the examining magistrate, a point, moreover, that was not contested by the State party. Denial of access to a lawyer was a violation of Tunisian law.

15. On 25 October 2007, the State party again requested that the Committee postpone its decision on the merits until the investigation had been completed and all domestic remedies exhausted. It recalled that, contrary to the complainant's assertions, the judicial authority had shown due diligence by ordering:

- That a preliminary investigation be opened on the basis of a complaint that was not supported by any evidence;
- That the investigation be conducted personally by a member of the Prosecutor's Office without the assistance of the criminal investigation service;
- That, despite the decision by the Prosecutor's Office to file the case, a judicial investigation had been opened even though it might never lead to any result owing to the complainant's attitude of non-cooperation.

On the last point, the State party recalled that under Tunisian law a witness was not entitled to legal assistance and that the complainant would not have qualified as an "assisted witness" on account of his status as a possible victim. The examining magistrate in charge of the case had summoned the complainant to appear at a hearing scheduled for 16 October 2007, but the latter had failed to appear.

### **Consideration of the merits**

16.1 The Committee has considered the communication in the light of all information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

16.2 The Committee takes note of the State party's comments of 2 March, 12 April and 15 May 2007 challenging the admissibility of the complaint. While taking note of the State party's request of 25 October 2007 for a postponement, it finds that the points raised by the State party are not such as to require the Committee to review its decision on admissibility, owing in particular to the lack of any convincing new or additional information from the State party concerning the failure to reach any decision on the complaint after more than seven years of *lis alibi pendens*, which in the Committee's opinion justifies the view that the exhaustion of domestic remedies was unreasonably prolonged (see paragraph 8.5 above). The Committee therefore sees no reason to reverse its decision on admissibility.

16.3 The Committee therefore proceeds to a consideration on the merits and notes that the complainant alleges violations by the State party of article 2, paragraph 1, read in conjunction with article 1; article 16, paragraph 1; and articles 11, 12, 13 and 14, read separately or in conjunction with article 16, paragraph 1, of the Convention.

16.4 The complainant has alleged a violation of article 2, paragraph 1, of the Convention, on the grounds that the State party failed in its duty to prevent and punish acts of torture. These provisions are applicable insofar as the acts to which the complainant was subjected are considered acts of torture within the meaning of article 1 of the Convention. In this respect, the Committee takes note of the complaint submitted and the supporting medical certificates, describing the physical injuries inflicted on the complainant, which can be characterized as severe pain and suffering inflicted deliberately by officials with a view to punishing him for acts he had allegedly committed and to intimidating him. The Committee also notes that the State party does not dispute the facts as presented by the complainant. In the circumstances, the Committee concludes that the complainant's allegations must be duly taken into account and that the facts, as presented by the complainant, constitute torture within the meaning of article 1 of the Convention.

16.5 In light of the above finding of a violation of article 1 of the Convention, the Committee need not consider whether there was a violation of article 16, paragraph 1, as the treatment suffered by the complainant in breach of article 1 is more serious and is covered by the violation of article 16 of the Convention.

16.6 Regarding articles 2 and 11, the Committee considers that the documents communicated to it furnish no proof that the State party has failed to discharge its obligations under these provisions of the Convention.

16.7 As to the allegations concerning the violation of articles 12 and 13 of the Convention, the Committee notes that according to the complainant the Public Prosecutor failed to inform him whether an inquiry was under way or had been carried out in the three years following submission of his complaint in 2000. The Committee further notes that the State party accepts that the Deputy Public Prosecutor filed the case without further action in 2003, for lack of evidence. The State party has, however, informed the Committee that the competent authorities have reopened the case (see paragraph 11 above). The State party has also indicated that the investigation is continuing, more than seven years after the alleged incidents, yet has given no details concerning the inquiry or any indication of when a decision might be expected. The Committee considers that such a delay before an investigation is initiated into allegations of torture is unreasonably long and does not meet the requirements of article 12 of the Convention,<sup>12</sup> which requires the State party to proceed to a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture has been committed. Nor has the State party fulfilled its obligation under article 13 of the Convention to ensure that the complainant has the right to complain to, and to have his case promptly and impartially investigated by, its competent authorities.

16.8 With regard to the alleged violation of article 14 of the Convention, the Committee notes the complainant's allegations that the State party has deprived him of any form of redress by failing to act on his complaint and by not immediately launching a public investigation. The Committee recalls that article 14 of the Convention recognizes not only the right to fair and

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<sup>12</sup> [See communication No. 8/1991, *Halimi-Nedzibi v. Austria*, Views of 18 November 1993, para. 13.5.]

adequate compensation, but also requires States parties to ensure that the victim of an act of torture obtains redress. The Committee considers that redress should cover all the harm suffered by the victim, including restitution, compensation, rehabilitation of the victim and measures to guarantee that there is no recurrence of the violations, while always bearing in mind the circumstances of each case. Given the length of time that has elapsed since the complainant attempted to initiate proceedings at the domestic level, and given the absence of any indication from the State party concerning the completion of the current investigation, the Committee concludes that the State party is also in breach of its obligations under article 14 of the Convention.

17. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose a violation of articles 1, 12, 13 and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

18. Pursuant to rule 112, paragraph 5, of its rules of procedure, the Committee urges the State party to conclude the investigation into the incidents in question, with a view to bringing those responsible for the complainant's treatment to justice, and to inform it, within 90 days of this decision being transmitted, of any measures taken in conformity with the Committee's Views, including the grant of compensation to the complainant.

[Adopted in English, French, Russian and Spanish, the French text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

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