UNITED
NATIONS

CAT

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

Distr.
GENERAL

CAT/C/20/Add.7
22 December 1997

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1993

Addendum

TUNISIA*

[10 November 1997]

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* For the initial report submitted by the Government of Tunisia, see CAT/C/7/Add.3; for its consideration by the Committee, see CAT/C/SR.46 and 47 and Official Records of the General Assembly, Forty-fifth session, Supplement No. 44 (A/45/44), paras. 406-434.

GE.97-19785 (E)

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Introduction

1. This periodic report has been prepared in conformity with article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. In accordance with the general guidelines of the Committee against Torture, this report is divided into two parts. The first provides information on new measures and developments of relevance to the implementation of the Convention, dealing consecutively with articles 2 to 16. The second part contains additional information and replies to the comments made by the Committee when it considered the initial report on 25 April 1990.

3. This introduction will focus on the main measures taken during the period covered by this report, i.e. 1990-1993, to strengthen the promotion and protection of human rights. For further information in this respect, please refer to the core document submitted by Tunisia to the United Nations Secretariat on 16 May 1994, which constitutes the first part of the reports of Tunisia as a State party to the international human rights instruments (HRI/CORE/1/Add.46).

4. Concerning the reforms implemented between 1991 and 1993 in pursuance of the measures taken by the authorities to guarantee respect for human dignity and strengthen human rights, mention should first be made of the introduction of new institutions designed to consolidate the rule of law and thus foster the promotion and protection of human rights and fundamental freedoms. They include the following:

> The establishment, by Decree No. 91-54 of 7 January 1991, of the Higher Committee on Human Rights and Fundamental Freedoms, a national consultative body responsible, inter alia, for assisting the President of the Republic in his action on behalf of human rights;
>
> The appointment, as from 19 June 1991, of a principal adviser to the President of the Republic on human rights;
>
> The establishment, in 1992, of human rights units within the Ministries of Justice, of the Interior and of Foreign Affairs.

5. Tunisia's commitment to constantly promoting human rights is further reflected by the adoption of new legislative and administrative measures.

6. A major reform of the Code of Criminal Procedure was introduced in November 1993, in particular to shorten the length of pre-trial detention in respect of both ordinary and serious offences. Subsequent to a first reduction in the period of pre-trial detention in 1987, following the advent of the new era, the 1993 reform confirmed the legislator's concern with strengthening protection of the freedom of the individual.

7. In another sphere, and as a means of developing the awareness and sense of responsibility of public servants regarding the need to respect both domestic and international human rights norms in the discharge of their duties, human rights teaching has been introduced within the administration.

8. To this end, on 15 June 1991 the Ministry of the Interior issued a circular on the inclusion of human rights as a subject in the training and retraining programmes for members of the internal security forces.

9. In the same connection, the Ministry of the Interior published a code of conduct for law-enforcement officials to develop awareness of their duties and responsibilities, and thus prevent abuses.

10. A circular was also published on 26 June 1992 by the Ministry of Justice concerning the organization of the programme of human rights teaching within the framework of the training and apprenticeship provided for judges by the Higher Institute of the Magistrature.

11. Moreover, it should be emphasized that at the recommendation of the President of the Republic, dated 10 February 1991, human rights departments have been set up in Tunisian universities to contribute to better knowledge of human rights and to the dissemination of the human rights culture.

12. The obligation for public officials to respect laws and regulations in the discharge of their duties has received the personal attention of the President of the Republic. Following allegations of abuses reported to him during 1991, the Head of State decided, on 20 June 1991, to establish for the first time an independent commission of investigation charged with examining the allegations. The results of this inquiry led to the adoption of disciplinary measures and the conviction of the officials responsible for abuses.

13. The concern to preserve human dignity in all circumstances also accounts for the Head of State's decision on 10 December 1992 to authorize, by special mandate, the Chairman of the Higher Committee on Human Rights and Fundamental Freedoms to visit prisons, places of detention and youth custody or observation centres with a view to verifying compliance with the laws and regulations in force. The Chairman of the Committee carried out a number of visits to prisons and the practice has since been institutionalized, as the Chairman of the Committee may now visit prisons without prior authorization.

14. All the measures adopted in Tunisia to forestall, prevent or punish any human rights violations confirm Tunisia's commitment to the promotion and protection of human rights and its attachment to ensuring the proper functioning of judicial institutions and to guaranteeing human rights.

I. INFORMATION ON NEW MEASURES AND DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF ARTICLES 2 TO 16 OF THE CONVENTION

Article 2

15. Tunisian positive law is concerned with protecting the individual's physical and moral integrity, particularly against certain breaches of duty by public officials, and severely punishes such practices. In this connection, the legislator has afforded protection for the individual against acts of torture under both criminal law and criminal procedure law.

16. Where the Criminal Code is concerned, article 101 penalizes “the use of violence against persons” and provides that any public official or similar person who, in the exercise or in connection with the exercise of his duties, uses violence or causes it to be used against any person without just cause, is liable to five years' imprisonment and a fine.

17. Article 101 thus demonstrates that the legislator has opted for a broad definition of torture and not confined himself to penalizing physical torture, as psychological torture is also penalized. Article 102 provides that any official or similar person who enters the home of a private individual against that person's will, without observing the required formalities or without manifest need, is liable to a one-year prison sentence and a fine.

18. Moreover, the penalty is particularly severe if the act of torture is perpetrated in connection with judicial proceedings. This is reflected by article 103 of the Code, which provides that any public official who unlawfully infringes another person's liberty or who employs violence against or ill-treats an accused person, a witness or an expert in order to obtain a confession or statement from them is liable to a five-year prison sentence and a fine. If only the threat of violence or ill-treatment is employed, the maximum prison sentence is reduced to six months.

19. Similarly, abuses of authority against private property by public officials are classified as acts of torture. In this connection, the Criminal Code states that any public official or similar person who, by means of acts of violence or ill-treatment, has acquired immovable or movable property against the owner's will or who has unjustly seized such property or obliged the owner to cede it to someone else is liable to a two-year prison sentence. The court shall order the restitution of the embezzled property or of its value if the property no longer exists, subject to the rights of bona fide third parties.

20. In addition, public officials or similar persons who, by means of acts of violence or ill-treatment, have employed persons on fatigue duty for work other than that of public utility ordered by the Government, or classified as urgent in the interest of the population, are liable to a two-year prison sentence and a fine (arts. 104 and 105).

21. With regard to the protection provided under criminal procedure law, article 10 of the Code of Criminal Procedure specifies which judicial police officers or magistrates are authorized to order a judicial investigation into a crime. The same article provides that judicial police functions are exercised under the authority of the Advocates-General, within the jurisdiction of each court of appeal, by:

Public Prosecutors and their deputies;

Cantonal judges;

Police superintendents, police officers and officers-in-charge of police stations;

National guard officers, non-commissioned officers and officers-in-charge of national guard stations;

Sheikhs;

Administration officials empowered by ad hoc laws to investigate and record certain offences;

Examining magistrates, in the circumstances provided for by this Code.

22. After the change of 7 November 1987, the legislator undertook to strengthen protection of the individual's freedom from arbitrary arrest and detention by incorporating safeguards into the Code of Criminal Procedure.

23. In this connection, Act No. 87-70 was promulgated on 26 November 1987 to amend a number of articles of the Code of Criminal Procedure and for the first time fix the duration of police custody. Article 13 bis stipulates that law-enforcement officials may not keep a suspect in custody for more than four days. They must report the detention to the judicial authorities, represented by the Public Prosecutor. The said authorities may, by a written decision, initially extend custody by a period of the same length and, in case of absolute necessity, renew the extension for a two-day period only.

24. It should be mentioned that prior to the adoption of the Act of 26 November 1987, police custody was not regulated; consequently suspects could remain in custody without the judicial authority being informed. The Act also introduced a major reform and an additional safeguard by stipulating that either during or after police custody the person concerned or one of his parents, children, brothers, sisters or spouse may request a medical examination; any such request is entered in the record, which must always indicate the date and time that custody and any interrogation began and ended.

25. Article 84 of the Code of Criminal Procedure specifically stipulates that pre-trial detention is an exceptional measure. It may not exceed 12 months for ordinary offences and 18 months for serious offences.

26. Article 85, as amended, states that accused persons may be held in pre-trial detention in the case of serious or in flagrante delicto offences and whenever there are substantial grounds for believing that detention is necessary as a security measure to prevent further offences, as a guarantee that the sentence will be served or as a means of protecting information.

27. Pre-trial detention in the above cases may not exceed six months. If the examination proceedings so warrant, the examining magistrate may, on advice from the Public Prosecutor and on the basis of a reasoned order, extend the detention period once in the case of an ordinary offence and twice in the case of a serious offence, for a maximum period of six months each time. An appeal may be lodged against the extension order before the Indictment Division.

28. Article 85 also stipulates that release with or without bail is automatic five days after the interrogation in the case of accused persons who

have a permanent residence in Tunisian territory and have never received a sentence of more than three months' imprisonment, if the maximum penalty set by law is one year's imprisonment.

29. On 22 November 1993 another amendment, following that of 1987, was made to this article to reduce pre-trial detention further. The maximum duration of detention is henceforth 10 months for ordinary offences and 14 months for serious offences.

30. In this respect, the new provisions of the article stipulate that if the examination proceedings so warrant, the examining magistrate may, on advice from the Public Prosecutor and by a reasoned order, decide to extend the detention, once in the case of an ordinary offence for a duration of no more than three months, and twice in the case of a serious offence, for a maximum of four months each time.

31. After the warrant of arrest has been enforced, the examining magistrate questions the accused within three days at most from his admission to the remand prison. After this period, the accused is taken before the Public Prosecutor who requests the examining magistrate immediately to question him.

32. Should he refuse or be unable to do so, the questioning is carried out by the president of the court or by a judge appointed by him, failing which the Public Prosecutor orders the accused's immediate release (article 79 of the Code of Criminal Procedure). The accused enjoys the same safeguards whether the court issues a warrant for his arrest or a warrant of detention against him (article 142 of the Code of Criminal Procedure).

33. When the accused first appears before the examining magistrate, the latter informs him of the charges against him and of the relevant legislation and takes his statement, after having warned him of his right to reply only in the presence of counsel of his own choosing. This warning is noted in the record (article 69 of the Code of Criminal Procedure).

34. The examining magistrate may, in order to ensure that the examination proceedings go ahead smoothly, decide to hold the accused in pre-trial detention provided his decision observes certain rules and is taken on an exceptional basis.

35. It should further be emphasized that, since the new era began on 7 November 1987, the authorities have shown particular concern about conditions of detention. This aspect was dealt with in detail in the initial report. However, it is worth recalling that among the safeguards set forth to protect the rights of detainees, the prison regulations introduced under Decree No. 88-1876 of 14 November 1988 require a decision by the judicial authorities for persons to be admitted to prison. In addition, no police measures may be taken against detainees. However, judicial police officers in possession of a rogatory commission issued by the judicial authorities may be authorized to question a detainee implicated in another case.

36. As part of the efforts made to ensure that individuals are protected against any acts of torture, the Ministry of the Interior issued two circulars, Nos. 6 and 53, of 3 January and 12 February 1992 respectively,

concerning relations between members of the security forces and citizens (see annex). The purpose of these circulars will be discussed in more detail later in this report.

37. In addition, on 28 May 1992 the Minister of the Interior issued circular No. 32 concerning the establishment of a human rights unit within the Directorate-General for Political Affairs. This unit is responsible, inter alia, for informing families about the situation of detainees and for conducting investigations into complaints lodged by citizens.

38. During the first months of 1991, when numerous acts of violence were carried out by the illegal "Ennahdha" movement and a fundamentalist plot to overthrow the regime by violence was discovered, allegations of abuses by law-enforcement officials against detainees were reported to the President of the Republic. On 20 June 1991, the Head of State decided to set up an independent commission of investigation to look into the allegations of ill-treatment. The Chairman of the Higher Committee on Human Rights and Fundamental Freedoms was appointed Chairman of the Commission and charged with selecting its members.

39. In its report, the Commission of Investigation described a number of cases of ill-treatment, while emphasizing that they were isolated instances that did not reflect State policy. It recommended that measures should be taken against those responsible in order to prevent any repetition of such abuses. In the light of this inquiry, disciplinary and judicial measures were taken against a number of law-enforcement officials for abuse of powers. Eighty-eight cases were referred to the courts; various sentences, including prison sentences, were handed down against the offenders and 21 law-enforcement officials were dismissed.

40. The Ministry of the Interior has, however, indicated that numerous allegations of failure to observe the time limits for police custody are unsubstantiated. It has been established that activists of the illegal "Ennahdha" extremist movement implicated in criminal offences had gone into hiding, unknown to their families, for fear of arrest, leading their families to believe that they had been arrested well before the actual date of their arrest; as a result, when they contacted national and international human rights organizations, the families reported the date of their disappearance, presuming that to be when they were arrested.

41. In addition, in order to enhance the measures already taken to forestall or prevent acts of torture or ill-treatment, the Chairman of the Higher Committee on Human Rights and Fundamental Freedoms was authorized, by a decree dated 10 December 1992, to visit prisons, places of detention and youth custody or observation centres, as a special mandate of the President of the Republic.

42. Subsequent to this decision, the Chairman of the Committee visited the Manouba women's prison (on 6 January 1993) to ascertain that the laws and provisions governing detention were being complied with. He subsequently sent the Head of State a report informing him of his findings.

Article 3

43. Article 7 of the Tunisian Constitution prohibits the extradition of political refugees. However, with this major exception, the Code of Criminal Procedure lays down the extradition procedure in chapter 8 of book 4, concerning the specific procedures (arts. 308 to 335).

44. Article 308 of the Code stipulates that, except where provision is made to the contrary by treaty, the conditions, procedure and effects of extradition shall be regulated by chapter 8. The reservation made in this article concerns the primacy of treaty law over national law. Accordingly, bilateral agreements on mutual judicial assistance entered into by Tunisia and various other countries, together with international conventions that deal with extradition, such as the Convention against Torture, take precedence for purposes of application over the provisions of the Code of Criminal Procedure.

45. In actual fact, article 308 merely restates the principle of the primacy of ratified conventions over internal laws, as set forth in article 32 of the Tunisian Constitution, pursuant to which duly ratified treaties have a higher authority than laws.

46. Consequently, article 3 of the Convention applies in full and supplements the provisions of the Code of Criminal Procedure, which does not permit extradition "if the crime or offence is of a political nature or if the circumstances indicate that the extradition has been requested for political motives" (article 313 of the Code of Criminal Procedure). The provisions of the Convention thus supplement Tunisian law in respect of extradition.

47. Tunisian law guarantees the rights of the person liable to extradition. Neither the political authorities nor the administrative authorities assess the "substantial grounds for believing that he would be in danger of being subjected to torture" and the existence in the State concerned of "a consistent pattern of gross, flagrant or mass violations of human rights". Only the Indictment Division of the Tunis Court of Appeal is competent to consider applications for extradition (article 321 of the Code of Criminal Procedure). If this body issues an unfavourable opinion, its ruling is definitive and extradition may not be granted (article 323 of the Code of Criminal Procedure).

Article 4

48. The Tunisian Penal Code contains a series of articles dealing with the abuse of authority by public officials or similar persons:

(a) Article 101, which explicitly categorizes the use of violence as an offence, stipulates a penalty of five years' imprisonment and a fine for any public official or similar person who, in the exercise of his duties, uses violence or causes it to be used against any person without just cause. The Court of Cassation has defined the scope of article 101. Criminal judgement No. 4960 of 16 January 1967 upholds the principle whereby the article "provides for sanctions against a public servant who assaults others in the course of his duties". This clause comes under the heading "abuse of authority", which means that it is only applicable to public servants vested

by the law and the Government with the authority to maintain law and order, to enforce the law or regulations or to execute government or judicial decisions.

(b) The same penalty is incurred by a public official who unlawfully interferes with the personal liberty of others, or who perpetrates or causes to be perpetrated violence or ill-treatment against an accused person, witness or expert in order to obtain a confession or statement from them (art. 103, para. 1).

(c) The threat of violence or ill-treatment by a public official is punishable by six months' imprisonment (art. 103, para. 2).

(d) A penalty of two years' imprisonment and a fine is incurred by a public official or similar person who, resorting to one of the practices mentioned in article 103, has employed persons on fatigue duty for work other than that of public utility ordered by the Government (art. 105).

49. Public officials found guilty of attacks on personal freedom, violence or torture, may be debarred from exercising certain rights such as employment in the civil service, a career in certain professions, the right to vote, the right to carry weapons or all official honorary distinctions (art. 115).

50. In this respect, it should be noted that Tunisian criminal law defines the category of public official very broadly. Article 82 defines public officials as persons “vested with authority, including temporary authority, whether remunerated or not, whose execution is related to some public interest and which therefore renders a service to the State, public administrations, municipalities or public institutions”.

51. The person's status as a public official thus has a bearing on the determination of the penalty for acts of violence or assault. This status is an aggravating circumstance whose consequences are set by the legislature itself and which the judge takes into account in sentencing.

52. Severe penalties are thus applied in cases of violence, assault, torture or cruel treatment committed during an inquiry and in general when individuals are deprived of their freedom through abuse or abnormal treatment.

53. The Penal Code provides for the punishment of violent acts of any kind, whether direct or indirect, physical or mental.

54. However, public officials are liable to the most severe penalties, as established by the Penal Code, if the consequences of their actions are particularly serious. Any public official who perpetrates acts of torture is therefore always liable to the heaviest penalty:

(a) As regards violence in cases of kidnapping or abduction, new article 237 of the Penal Code, as amended in 1989, provides that if a physical disability or illness results from this crime, the perpetrator is liable to imprisonment for life. The same is true in cases of arbitrary arrest, detention or restraint which result in physical disability or illness

(art. 251). The penalty is 10 to 20 years' imprisonment when the illness or physical disability is the result of the hijacking of a means of land, air or sea transport (art. 306 bis).

(b) In cases of intentional violence, the Penal Code distinguishes, by order of gravity:

- Assault or acts of violence which have no serious or lasting effects on the health of the victim; the perpetrators of such violent acts are liable to 15 days' imprisonment and a fine (art. 319);

- Violent acts which have serious consequences for the health of the victim (article 218 et seq. of the Penal Code). In the case of wounds, blows or any other act of violence, the penalty is one-years' imprisonment and a fine. In the event of premeditation, the penalty shall be three-years' imprisonment. If the acts of violence result in mutilation, loss of the use of a limb, disfigurement, infirmity or permanent disability not exceeding 20 per cent, the penalty shall be five-years' imprisonment. If the disability exceeds 20 per cent, the penalty shall be six years' imprisonment (art. 219). In addition, the mere fact of participating in a brawl resulting in serious consequences for the victim is punishable by six months' imprisonment (art. 220);

(c) With regard to threats of violence, anyone who, by any means whatsoever, threatens another with an attack which would carry a criminal penalty, is liable to six months' to five years' imprisonment and a fine. The penalty is doubled if the threats are accompanied by orders or by conditions, even if made verbally (article 222, as amended in 1977). A person who threatens another with a weapon, even without intending to use it, is liable to one year's imprisonment and a fine (art. 223).

55. The protection afforded to all individuals under Tunisian criminal law is not a mere formality or statement of principle but is applied in practice. See the information on this subject in the section on article 2.

Article 5

56. The general rules on jurisdiction apply in the particular case of acts of torture or violence. Article 129 of the Code of Criminal Procedure provides that, as a general rule “courts competent to try an offence are those in the place where the offence was committed, in the defendant's place of domicile, in the defendant's last place of residence or in the place where the defendant was found”. The broad jurisdiction of Tunisian courts applies not only in cases of conflict of jurisdiction between two Tunisian courts but also in cases of conflict between a Tunisian court and a foreign court.

57. In cases where a Tunisian national is the victim of acts of torture committed abroad by non-Tunisians and also in cases where an alien is arrested in Tunisia for an offence committed abroad and no extradition proceedings are instituted, the Tunisian courts may establish their jurisdiction under the

provisions of article 5 of the Convention, which would thus complement the general rules of jurisdiction set out in the Code of Criminal Procedure.

Article 6

58. It should be recalled that, as regards the provisions of article 6, the general rules of procedure apply in the absence of any request for extradition. Under this procedure, if a person is suspected of having committed acts of torture that may be defined as an offence, the Public Prosecutor of the district where the alien was arrested "shall proceed forthwith to establish the prisoner's identity, inform him of the grounds for his arrest and draft a full report" (article 319 of the Code of Criminal Procedure). After this, "the alien shall appear before the Indictment Division of the Court of Appeal of Tunis within a maximum of 15 days from the notification of the grounds for arrest. An examination shall then be held and a report drafted. The Public Prosecutor's Office and the prisoner shall be heard. The prisoner may obtain the aid of a lawyer. He may be released on bail at any time during the proceedings, subject to the provisions of this Code" (article 321 of the Code of Criminal Procedure).

59. Other than in special extradition proceedings, an alien suspect is summoned to an examination and, if he does not appear, an arrest warrant is issued by the examining magistrate. The warrant indicates the nature of the charge and the legislation applicable and instructs any law-enforcement official to effect the arrest. After questioning within three days, the examining magistrate may, on a submission by the Public Prosecutor, issue a warrant of commitment if the offence is punishable by imprisonment or carries a more severe penalty. On his first appearance, the person in custody has the right not to reply except in the presence of counsel of his own choosing. After this first appearance he is allowed to communicate at any time with his counsel.

60. It follows from these general rules that an alien taken into custody may communicate with the appropriate representative of his State, even in the absence of an express provision to this effect. In practice, such communication is the rule.

61. Article 6, paragraphs 3 and 4, of the Convention complements the rules of procedure of Tunisian law, insofar as an alien taken into custody is authorized not only to communicate at any time with his counsel (i.e. his lawyer, in accordance with article 70 of the Code of Criminal Procedure) - who in most cases is appointed to defend the accused by the diplomatic or consular authorities of his country - but also to "communicate immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides", as provided in article 6, paragraph 3, of the Convention.

62. In addition, the conventions on judicial cooperation that Tunisia has signed with several other countries generally include rules governing the communications referred to in article 6 of the Convention.

Article 7

63. Article 7 provides that the State Party in the territory under whose jurisdiction a person who has committed acts of torture is found shall, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution. The procedures and sentences shall be the same as for ordinary offences of a serious nature and shall in no way be less stringent than those which apply in cases where the offence has been committed in the territory of the State or when the offender or victim is a national of that State.

64. It has already been pointed out in the comments on article 5 that the provisions of the Convention in this matter extend Tunisian jurisdiction only to cases where the victim is Tunisian and to cases where the offender is found in Tunisian territory but not extradited.

65. Under Tunisian criminal law, the use of violence by a public official or similar person is treated as a serious offence, especially when it results in wounds, disfigurement or permanent disability. The same applies to assaults and other acts of violence perpetrated by one citizen against another when they lead to permanent disability equal to or exceeding 20 per cent.

66. The Department of Public Prosecutions represented by the Public Prosecutor establishes whether an offence has been committed and receives accusations by public officials or private individuals, as well as complaints by injured parties (article 26 of the Code of Criminal Procedure). The Public Prosecutor initiates the proceedings and brings the accused to court if the acts in question are ordinary offences or infractions, and must order the opening of an inquiry if the acts constitute serious offences (article 47 of the Code).

67. The examining magistrate then questions the accused. He acquaints him with the charges against him and the legislation applicable to such offences, and hears statements by the accused after informing him of his right not to reply except in the presence of counsel of his own choosing. A note of this warning is entered in the record. If no choice is made, when the accused person is indicted and requests legal counsel to be appointed, counsel shall be appointed for him by the president of the court (article 69 of the Code). The indicted prisoner is allowed to communicate at any time with his counsel (art. 70).

68. The accused's file is made available to the defence counsel 24 hours prior to the questioning. The defence counsel may make a statement once authorized to do so by the examining magistrate. Lastly, the report is immediately drawn up and read out to the indicted person, marked and initialled and signed by the judge, the clerk of the court, the person appearing and, where appropriate, by the lawyer and interpreter (art. 72). The items produced in evidence are shown to the indicted person for him to state whether he recognizes them and to make any comments thereon.

69. In the case of acts defined as ordinary offences, the Public Prosecutor may merely take statements from the accused, who in the course of the questioning or the period of custody enjoys the necessary safeguards. The

person in custody or one of his parents, children, brothers, sisters or his spouse may request a medical examination. A note of this request is made in the record, which must always indicate the date and time when the period of custody began and ended. Similarly, the date and time when any questioning begins and ends must be indicated. The record must be initialled by the person held in custody; in the event of refusal, this fact is noted, together with the reasons.

70. In police stations where persons are held in custody, judicial police officers must keep a special numbered register of the identities of persons held, indicating the date and time when custody begins and ends (article 13 bis of the Code of Criminal Procedure). There are, of course, administrative and judicial checks as to the accuracy of the information in the registers. The inspectorates-general of police services and of the national guard may check the records at any time. Judicial supervision is carried out through the advocates-general of the courts of appeal, under whose authority all agents of the judicial police carry out their duties, in accordance with the provisions of article 10 of the Code of Criminal Procedure. Disciplinary sanctions or judicial proceedings may be ordered as a result of this double check.

71. Persons who have committed acts of torture remain liable to prosecution as long as the public right of action is not prescribed. Prescription occurs when 10 years have passed from the date when the offence was committed, if the act of torture constitutes a serious offence, and when 3 years have passed if it constitutes an ordinary offence. Prescription is suspended by any hindrance in law or in fact to the exercise of the public right of action (article 5 of the Penal Code). Public action may resume whenever new charges arise. According to article 121 of the Code of Criminal Procedure, new charges may consist of statements by witnesses, or evidence and records which, although it was not possible to submit them to the examining magistrate or the court of indictment, nevertheless lend support to charges which otherwise would have been deemed poorly founded, or shed new light on the facts, thereby helping to establish the truth. It is the sole responsibility of the Public Prosecutor or the Advocate-General to decide whether there are grounds for requesting the reopening of the case on new charges.

72. Tunisian law is stringent in punishing acts of violence or torture, but nevertheless safeguards the rights of the accused, both in proceedings instituted by the Public Prosecutor's Office and in the investigation or judgement. Acts of torture, however they are categorized, are considered offences under the ordinary law of an especially serious nature. Even if they constitute lesser offences and the opening of a judicial investigation is optional, it is customary among the Tunisian judicial authorities to order a judicial investigation in all cases where the suspect is a public official, in order to provide every guarantee of due process and fair administration of justice.

73. In addition, the procedures and sentences are the same whatever the place of the offence or the nationality of the offender. Moreover, Tunisian law guarantees the fair treatment of the accused even after the case is closed, insofar as publication of extracts of judgements and the disclosure of

the identity of the accused are prohibited unless the competent authority decides otherwise. Indeed, under article 5 of the Penal Code, publication of the contents of a judgement constitutes an additional sanction.

Article 8

74. The Constitution of Tunisia provides for refusal of requests for the extradition of political refugees. This is the only exception incorporated into the Code of Criminal Procedure, which in all other cases permits extradition and treats acts of torture, violence and inhuman treatment as extraditable offences.

75. The conditions, procedure and effects of extradition are governed by the Code of Criminal Procedure unless special treaty provisions apply (art. 308). The exception relates both to bilateral agreements on mutual judicial assistance and to international conventions.

76. By virtue of the principle of the primacy of treaties over domestic legislation, the provisions of article 8 of the Convention have a higher legal value than domestic laws and take precedence over any contrary provisions in the Code of Criminal Procedure.

Article 9

77. Tunisia does not make extradition conditional upon the existence of a treaty and it generally provides all requesting countries with any useful information on persons who have committed offences either in Tunisia or abroad. Articles 331 et seq. of the Code of Criminal Procedure give examples of the type of judicial cooperation that may be provided by the Tunisian authorities even to States with which it is not bound by a treaty. Article 331 provides as follows:

> "As far as non-political criminal proceedings in a foreign country are concerned, letters rogatory issued by foreign authorities shall be transmitted through diplomatic channels to the Ministry of Justice. Such letters rogatory shall be executed, if appropriate, in accordance with Tunisian law. In cases of emergency they may be transmitted directly between the judicial authorities of the two States."

78. In addition, under article 333 of the same Code:

> "In criminal cases under investigation abroad, whenever the foreign Government requires evidence or documents that are in the hands of the Tunisian authorities, it shall submit a request through diplomatic channels. The request shall be complied with unless there are any special reasons for not doing so, and the requesting Government shall undertake to return the evidence and documents as soon as possible."

79. Thanks to Tunisia's commitment to international cooperation, it is practically impossible for persons who have committed acts of torture to escape prosecution, whether they are in Tunisia or have fled abroad.

Article 10

80. Among the new measures taken in implementation of the provisions of article 10, the following may be mentioned:

(a) The publication by the Ministry of the Interior, on 15 June 1991, of circular No. 504 concerning the inclusion of human rights as a subject in training programmes for agents of the internal security forces. On that occasion, the Minister stressed that it was particularly important to include this subject in training and retraining programmes for the officers and agents involved, in accordance with the democratic choices made by Tunisia since the beginning of the new era. The circular notes that these programmes are intended to provide an opportunity to recall the obligations incumbent on agents of the security forces, who, as public officials, must behave in a civilized fashion towards citizens, and also to draw their attention to the penalties incurred by the abuse of authority and by infringements of the rights, individual freedoms and possessions of others. Those in positions of responsibility are therefore invited to monitor the implementation of these programmes and ensure the improvement of the behaviour of all agents of the security forces, wherever they are located, in accordance with the basic principles set forth in the Universal Declaration of Human Rights.

(b) The publication of special guidelines containing the texts of the various United Nations and national instruments, to be distributed to those responsible for enforcing the law. The intention is that these should become a working tool and a reference document that guides their conduct in the performance of their duties. The document includes the following texts:

- The Declaration of 7 November 1987;
- The Constitution of the Republic of Tunisia;
- The Universal Declaration of Human Rights;
- The International Covenant on Civil and Political Rights;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Extracts from the Code of Criminal Procedure;
- The decree relating to the organization of prison establishments;
- A note setting forth the rules of conduct to be followed by officials responsible for enforcing the law;
- The Standard Minimum Rules for the Treatment of Prisoners;
- The Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

- The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief;

- The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;

- The Basic Principles on the Role of Lawyers.

These guidelines were published in the context of the basic options for the new Tunisia, in implementation of the directives of the President of the Republic with regard to the strengthening of public freedoms and respect for the dignity of the individual. In presenting the guidelines, the Minister of the Interior emphasized that the task of officials responsible for ensuring respect for the law is to protect society and ensure peace, security and stability. This requires them to be fully aware of their duties and responsibilities, so that the freedom, integrity and dignity of the individual may be safeguarded.

(c) Widespread distribution of the circulars dealing with the rules for the treatment of detainees and the punishment of any abuse. Circular No. 895 on that subject, issued by the Ministry of the Interior on 16 December 1991, required the text of the oath sworn by agents of the internal security forces when entering the service to be displayed. It explicitly refers to the obligation of such agents to abide by the regulations and observe the law. This oath must be sworn before the President of the Court of First Instance with jurisdiction in the area concerned and is entered in the records (see annex).

(d) The dissemination of the Standard Minimum Rules for the Treatment of Prisoners. Circular No. 904, of 24 December 1991, was issued by the Minister of the Interior, ordering the Rules to be displayed in police stations and national guard barracks. The Minister called on these agents to abide by the Rules and to observe them to the letter (see annex).

81. In order to heighten law-enforcement agents' awareness of the need to respect human rights and to give them a sense of moral and legal responsibility, the Minister of the Interior published circular No. 72, of 24 February 1992, requiring all agents and officers of the internal security forces who are given a command function to sign a commitment to respect human rights and public freedoms.

82. Two further circulars were issued in 1992 in the context of the Minister of the Interior's appeal for an improvement in relations with the citizenry. The first (No. 6, of 3 January 1992) emphasizes the need for agents of the security forces to adhere to the law and to apply it rigorously, without abuse or excess that might encourage attacks on the administration or lead to prosecution of the agent before the competent authorities. In the second circular (No. 53, of 12 February 1992), which reports a certain deterioration in the relations between security agents and the citizenry, the Minister of the Interior urged all the officials involved to make efforts to improve their relationship with citizens, to help them and to show understanding and patience (see annex).

83. At the level of the Ministry of Justice, the Higher Institute of the Magistrature offers a modern professional qualification and further training to magistrates. The Institute has taken part in several human rights seminars and an important component of its training programme deals with human rights. Two decrees issued by the Ministry of Justice on 26 June 1992 establish the inclusion of human rights as a subject in the teaching and training programmes of the Higher Institute of the Magistrature.

84. Among the most important components of the training programme are courses on human rights. They aim to expand the knowledge of future magistrates through the study of the international conventions and of the recommendations and guidelines issued by the United Nations and regional organizations in the area of human rights; and to familiarize junior magistrates with international human rights protection mechanisms and comparative law.

85. These courses, and the related practical work, such as simulated trials and other learning techniques, also aim to cultivate a sense of humanity and an awareness of international standards, with the objective of safeguarding defendants' rights and making justice prevail in conscience and conduct.

Article 11

86. In addition to the administrative oversight performed by the Inspectorate-General of the Ministry of the Interior, the subordination of members of the judicial police to judicial authority, represented by the Public Prosecutor, reflects the Tunisian legislature's desire to keep a systematic watch on the procedures and practices for the arrest and interrogation of suspects. This is designed to prevent acts of torture being committed by officers responsible for law enforcement.

87. Article 10 of the Code of Criminal Procedure lists the officials of the judicial police, namely, magistrates authorized to investigate any breaches of the rules and law-enforcement officers.

88. Article 13 bis of the Code, as amended by the Act of 12 November 1987, stipulates that law-enforcement officers may not hold a suspect for more than four days. They must report the detention to the judicial authorities, represented by the Public Prosecutor. The judicial authorities may issue a decision in writing to extend the detention period, initially for four more days and, in cases of absolute necessity, for a further period of two days only.

89. Police custody is systematically supervised by the Public Prosecutor, who orders an extension only in exceptional circumstances. In all cases and within the four-day limit, however, the Public Prosecutor verifies the physical condition of the suspect.

90. The same Act provides that, during or at the end of the custody period, the person held in custody, or his or her parents, children, brothers, sisters or spouse may request a medical examination. This is noted in the record, which must in all cases state the date and time of the beginning and end of the custody and of any interrogation.

91. In this connection, as noted earlier, the Ministry of the Interior issued circular No. 904 of 24 December 1991, disseminating the Standard Minimum Rules for the Treatment of Prisoners, and circular No. 895 of 16 December 1991 concerning, among other things, the taking of an oath by members of the internal security forces on assuming their duties. The oath emphasizes the need to respect the law and thus prevent any use of torture or other inhuman or degrading treatment.

92. Protecting the suspect against any act of physical or mental torture means that the examining magistrate must, when the suspect first appears before him, inform him of the charges against him and of the relevant legislation and take his statement after advising him of his right to reply only in the presence of counsel of his choice. The fact that he has been so advised is placed on record (article 69 of the Code of Criminal Procedure).

93. An accused with a permanent residence in Tunisia and with no previous convictions involving imprisonment for more than three months is entitled to be released, with or without bail, five days after the interrogation, provided that the maximum legal penalty for the offence in question is less than one year's imprisonment.

94. The accused may be placed in pre-trial detention in cases of serious or in flagrante delicto offences and whenever there are substantial grounds for believing that detention is necessary as a security measure to prevent further offences, as a guarantee that the sentence will be served or as a means of ensuring the authenticity of information. In such cases, pre-trial detention may not exceed six months.

95. If the investigation so warrants, the examining magistrate may, on advice from the Public Prosecutor and on the basis of a reasoned order, extend the detention period once for not more than three months for ordinary offences and twice, for not more than four months each time, in the case of serious offences.

96. An order extending the pre-trial detention period may be appealed before the Indictment Division (new article 85 of the Code of Criminal Procedure). The length of extensions of pre-trial detention was shortened by the Act of 22 November 1993. Previously, detention could be extended for six months in the case of ordinary offences and twice for six months each in the case of serious offences.

97. It should be noted that any departure from the rules guaranteeing the freedom of the individual renders the official concerned liable to prosecution and possible imprisonment (article 103 of the Penal Code). The injured party may be compensated for the injury suffered. Under article 85 of the Code of Obligations and Contracts, an official causing injury to another person must compensate the injured party. Article 86 of the same Code stipulates that any member of the judiciary abusing his position is liable for any injury caused to another person and must compensate such person, whatever the magnitude of the compensation stipulated in the Penal Code.

98. As regards prisoners, article 3 of the prison regulations laid down by the decree of 4 November 1988 stipulates that “no person may be admitted to

prison except pursuant to a judgement or on the basis of a warrant of arrest or commitment or an order for body execution". Commitment is thus possible only on the basis of a judicial decision, which provides citizens with a considerable degree of protection against unlawful, incommunicado or arbitrary imprisonment.

99. To achieve this, prisons have been divided into three categories according to the gravity of the offence and of the sentence:

The first category includes the main prisons for persons sentenced to five years' imprisonment or more;

The second category includes regional prisons for persons in pre-trial detention and those convicted of ordinary or minor offences;

The third category includes semi-open prisons for persons engaged in rehabilitative work or convicted of ordinary or minor offences.

100. To ensure humane treatment of detainees and guarantee them effective protection against physical, mental or sexual abuse, they are classified by sex, age, nature of the crime and penal status, depending on whether the detainee has been convicted, is under arrest, or is a first-time or repeat offender. For example, female detainees are placed in prisons reserved for women. If necessary, they are placed in special wings. They are guarded by female warders under the direction of the prison governor. Female prisoners may keep children less than three years old with them. However, this age-limit can be raised at the mother's request and with the agreement of the prison governor (article 9 of the decree).

101. The prison administration must provide prisoners with single beds. Prisoners are kept together by day and by night. However, whenever necessary in the interest of the investigation and the detainee's safety, he or she may be isolated in a room equipped with the basic amenities and necessary sanitary facilities. In such cases, two prisoners may not be kept in the same room (article 10 of the decree).

102. The prison regulations set out the rights of detainees, which members of law-enforcement agencies are obligated to respect:

Right to medical care and medication;

Right to hygiene;

Right to receive visits and gifts from relatives;

Right to meet the lawyer responsible for their defence with no prison officers present;

Right to correspondence;

Right to work in exchange for a wage;

Right to at least one hour's outdoor exercise daily.

103. The decree laying down prison regulations defines disciplinary procedures within prisons. Disciplinary action is taken on the basis of a decision by the disciplinary board comprising a prisoners' representative and a social worker. Disciplinary action may under no circumstances involve torture or corporal punishment. It may involve forfeiture of the right to receive gifts for a period not exceeding 15 days, forfeiture of visiting rights or of the right to receive writing materials and publications for the same period and confinement to a cell for not more than 10 days.

104. It is worth noting that, under the decree of 13 March 1957, the legislature set up regional prison watch committees to consider all matters relating to the health, nutrition, work schedule and protection of prisoners.

105. In addition, the President of the Republic established a tradition of continuous political monitoring of the treatment of prisoners which has improved judicial and administrative supervision. Although it has already been mentioned earlier, it is worth recalling here that, on 17 April 1992, the Head of State wrote to the Chairman of the Commission of Investigation set up to look into allegations of human rights violations, inviting him to prepare a report on the implementation and follow-up of recommendations made after the inquiry (see annex).

106. A major reform of the juvenile justice system was introduced with the Act of 12 July 1993 amending a number of provisions of the Code of Criminal Procedure. Article 224 (amended by Act No. 82-56 of 4 June 1982) provides that “children between 13 and 18 years of age who are charged with an offence shall not be tried by the ordinary criminal courts. They shall be tried by a juvenile magistrate or the juvenile criminal court” (provision amended by Act No. 93-73 of 12 July 1993). The juvenile magistrate also has jurisdiction over minors between 7 and 13 years old. The minority of the offender is determined on the basis of the date of the offence with which he is charged.

107. Similarly, article 225 states: “The juvenile magistrate and the juvenile criminal court shall, depending on the circumstances, order such measures of protection, assistance, surveillance and education as deemed necessary. In special cases, when the circumstances and personality of the offender are considered to require it, they may impose penal sanctions on minors of more than 13 years of age. In such cases, the sentence shall be served in a specialized establishment or, if there is none, in the wing reserved for minors” (amended by Act No. 93-73 of 12 July 1993).

108. Juvenile offenders are entitled to special judicial treatment, by virtue of their status. New article 234 stipulates that “the juvenile magistrate shall carry out all necessary measures and investigations to ascertain the truth and the character of the minor in question and to determine appropriate rehabilitation measures. He shall conduct a background investigation to gather information on the material and moral status of the family, the character and history of the minor, his school attendance and the conditions in which he has lived or been brought up. He shall, if necessary, order a medical and psychological examination of the minor or order the minor to be placed in an observation centre. Experts shall study the psychological, medical and sociological aspects of the minor's personality and report thereon to the juvenile magistrate within one month of the minor being placed in the

centre. This time limit may be extended only in cases of necessity and for a further month only. However, in the interest of the minor, he may order none of these measures or prescribe only one of them. In such cases, he shall issue a reasoned decision".

109. New article 237 (amended by Act No. 93-73 of 12 July 1993) grants juvenile defendants rights exceeding the scope of ordinary law by stipulating:

> "The juvenile magistrate or juvenile examining magistrate shall notify the known parents or guardians of legal proceedings in advance and, if the minor or his legal representative does not choose counsel, shall appoint one or have one appointed by the presiding judge. They may order the social services or other qualified persons to conduct the background inquiries. The juvenile magistrate or juvenile examining magistrate may temporarily place the minor:
>
> (a) With his parents, guardian or other trustworthy person;
>
> (b) In an observation centre;
>
> (c) In a remand home;
>
> (d) In an approved public or private institution;
>
> (e) With a child-care service or hospital;
>
> (f) In an educational, vocational training or treatment institution or establishment approved by the competent authorities.
>
> Temporary custody may, under certain circumstances, take the form of non-custodial supervision".

110. A custodial sentence is a very exceptional measure which can be imposed on a juvenile offender only if his personality so requires and no other measure is considered effective. New article 238 (amended by Act No. 93-73 of 12 July 1993) of the Code of Criminal Procedure stipulates clearly that minors less than 13 years old who are charged with an offence or crime "may not be placed in a prison by the juvenile magistrate or by the Indictment Division unless such a measure appears essential or it is impossible to make any other arrangement. In such cases, the minor shall be placed in a specialized institution or, where there is none, in the section reserved for minors and shall, as far as possible, be separated from other prisoners at night".

111. Juvenile offenders also receive special judicial treatment. Article 239 of the Code of Criminal Procedure, as amended by the Act of 12 July 1993, stipulates that the juvenile magistrate shall issue a ruling after having heard the child, the parents or guardian, the victim, witnesses, the Public Prosecutor and the defence and after consulting two expert juvenile counsellors, who must provide a written opinion. The juvenile magistrate is not bound by the counsellors' opinion. He may also issue a ruling even if one or both counsellors are unable to attend the hearing. He may, if the interest

of the minor so requires, excuse him from attending the hearing, in which case he is represented by a lawyer or by his father, mother, guardian or the person who has custody of him.

112. New article 240 of the same Code also states:

> "Only the witnesses in the case, the minor's immediate family, legal representative or guardian, lawyers, representatives of associations or institutions concerned with children and non-custodial supervisors shall be permitted to attend the proceedings."

The magistrate may at any time order the minor to withdraw for all or part of the subsequent proceedings.

113. Publication of the record of the proceedings or information regarding the identity and personality of juvenile offenders is prohibited. Breaches of the regulations are punishable by a fine of 10 to 1,000 dinars. Subsequent offences are punishable by imprisonment for two months to two years. The judgement is pronounced at public proceedings. It may be published, provided that the minor's name is not given, even in the form of an initial. Offenders are liable to a fine of 10 to 100 dinars and repeat offenders to imprisonment for one month to one year.

114. As regards measures taken on behalf of children, the Tunisian legislature, in adopting the Act of 12 July 1993, introduced the system for the review of penalties as a prelude to the appointment of judges for the enforcement of sentences. New article 254 provides that the juvenile magistrate may, ex officio or at the request of the Public Prosecutor, the minor, his parents, guardian or the person who has custody of him, or on the basis of the report of the non-custodial supervisor, rule on any problems of enforcement, incidents or requests for return to custody and, in general, modify the measures of protection, assistance, supervision, education or rehabilitation ordered with respect to the minor by him or by the juvenile criminal court.

115. The juvenile magistrate must, in conjunction with the services concerned, monitor the execution of the sentence imposed on the minor by visiting him to ascertain his condition and the effectiveness of the measure decided on. He may, if necessary, call for medical or psychological examinations or background investigations. He must review the case of the minor at least once every six months with a view to amending his decision, ex officio or at the request of the Public Prosecutor, the minor, his parents, his legal representative, his guardian or his lawyer.

116. If a minor of not less than 15 years of age is found to have rendered ineffectual the protection or surveillance measures already taken in his case through persistent misconduct or indiscipline or dangerous behaviour, the juvenile magistrate may issue a reasoned decision placing him in a specialized institution up to a maximum age of 20.

Article 12

117. Monitoring and investigations are the responsibility of the bodies referred to in the commentary on article 11, namely the Inspectorate-General of the Ministry of the Interior and the Department of Criminal Affairs, in conjunction with the Inspectorate-General, both of which come under the Ministry of Justice. Whenever there is a possibility or grounds for believing that an act of torture has been committed, investigations and inquiries are ordered.

118. D5 days' imprisonment and a fine (art. 319);

- Violent acts which have serious consequences for the health of the victim (article 218 et seq. of the Penal Code). In the case of wounds, blows or any other act of violence, the penalty is one-years' imprisonment and a fine. In the event of premeditation, the penalty shall be three-years' imprisonment. If the acts of violence result in mutilation, loss of the use of a limb, disfigurement, infirmity or permanent disability not exceeding 20 per cent, the penalty shall be five-years' imprisonment. If the disability exceeds 20 per cent, the penalty shall be six years' imprisonment (art. 219). In addition, the mere fact of participating in a brawl resulting in serious consequences for the victim is punishable by six months' imprisonment (art. 220);

e cases from the start of the detention.

120. In its report, the Commission found that abuses had in fact been committed by individuals who had not taken account of State policy or of the guidelines of the President of the Republic. It stated that it had been informed of judicial investigations and inquiries into those abuses and of the disciplinary measures taken against those responsible.

121. The Commission of Investigation was of the view that Tunisia must preserve its honourable position regarding human rights and deal with all incidents of violence, however serious, by legal means. Among the proposals and recommendations which it put forward in that regard were the following:

Ensure the widest possible publicity, both within and outside the country, for government policy and the substantial achievements in the field of human rights, while confirming that persons responsible for any abuses will be punished following a thorough investigation;

Disseminate the provisions of instruments and laws concerning human rights, drawing attention to the consequences of any violation of their provisions and describing in detail the cases and the penalties prescribed in international instruments and Tunisian legislation;

Disseminate further human rights principles and precepts through education, teaching, cultural and information infrastructures at all levels;

Strengthen cooperation with human rights bodies, recommend that they coordinate their efforts and affirm the need to eliminate political considerations from action to promote human rights;

Study and develop legislation to consolidate and safeguard human rights.

122. On 19 October 1991, the President of the Republic ordered the publication of the Commission's conclusions and recommendations. The publication was welcomed by many bodies both within and outside the country and aroused the interest of human rights organizations. The President of the Republic instructed all bodies concerned to monitor the implementation of the recommendations.

123. The report was not published in its entirety as the law prohibits disclosure of the names of suspects in cases where no verdict has been reached (article 5 of the Penal Code). The conclusions and recommendations were published, however.

124. As noted earlier, the President of the Republic again instructed the Chairman of the Commission of Investigation to report on the implementation of the Commission's recommendations (see annex for the President's letter dated 17 April 1992).

125. On 17 April 1992, a small ministerial panel, presided over by the President of the Republic, considered the follow-up to the Commission's report. The panel, which included the Chairman of the Higher Committee on Human Rights and Fundamental Freedoms in his capacity as Chairman of the Commission, reviewed judicial action and disciplinary measures as well as the situation of victims and the assistance to be provided to them pending the verdict of the court. The panel also considered the measures to prevent abuses and inculcate the human rights culture among law-enforcement officials.

126. On 13 July 1992, the Chairman of the Commission of Investigation submitted to the Head of State a report on the extent of the implementation of the Commission's recommendations. The President of the Republic ordered the document to be published in extenso. This was done on 21 July 1992. The national and international press commented at length on this event, stressing that it was in accordance with the policy of transparency pursued by the Tunisian authorities.

Article 13

127. The right to complain to the competent authorities is guaranteed under Tunisian law by both ordinary and special procedures.

(a) Ordinary procedures

128. The judicial authorities responsible for receiving complaints are, in general: the Public Prosecutor and officers of justice, namely deputy public prosecutors, district judges, police superintendents, officers and officers-in-charge of police stations, national guard officers, non-commissioned officers and officers-in-charge of national guard stations in their capacity as officers of the judicial police.

129. Officers of justice immediately inform the Public Prosecutor of any offence brought to their attention in the performance of their duties and transmit to him any relevant information and reports. Should a complainant be exposed to danger of any sort on account of his complaint, they take all the necessary measures to protect him.

(b) Special procedures

130. Tunisian law affords further guarantees to victims of criminally reprehensible acts. If the Public Prosecutor or officers of justice fail to take action, victims of torture may themselves bring criminal indemnification proceedings before an examining magistrate or competent court. Article 36 of the Code of Criminal Procedure provides that "a decision of the Public Prosecutor not to pursue the case shall not prevent the injured party from exercising the public right of action under his own responsibility. In instituting criminal indemnification proceedings, the injured party may apply for an information or cite the accused directly before the court".

131. Article 37 of the Code stipulates that "a civil action being conducted at the same time as a public action in accordance with article 7 of this Code may be brought before the examining magistrate at the information stage, or before the court trying the case".

132. As regards the criminal indemnification action itself, article 38 states that "the trial court or examining magistrate shall ascertain the admissibility of the criminal indemnification action and, if he so finds, shall declare it inadmissible. Inadmissibility may be cited by the Public Prosecutor, the accused, the civil party concerned or any other civil party ... . The examining magistrate shall issue a ruling after transmitting the case file to the Public Prosecutor; this ruling shall be open to appeal before the Indictment Division within four days of transmittal, in the case of the Public Prosecutor, and of notification, in the case of the other parties".

133. Article 39 of the Code of Criminal Procedure makes it easy to bring criminal indemnification proceedings by providing that "criminal indemnification proceedings may be instituted by submitting an application in writing, signed by the complainant or his representative, to the Public Prosecutor, the examining magistrate or the trial court, as the case may be ...".

134. However, under Tunisian law, anyone unjustifiably bringing civil indemnification proceedings incurs both civil and criminal liability. Article 45 of the Code of Criminal Procedure stipulates that, when a dismissal decision has been handed down following the opening of an information on the institution of criminal indemnification proceedings, the accused may apply for compensation for the injury incurred by the institution of the proceedings, without prejudice to any criminal prosecution for false accusation.

135. Article 46 of the same Code further states that, in the event of acquittal, the court may impose a fine of 50 dinars on a party instituting criminal indemnification proceedings who has directly cited the accused, without prejudice to any criminal prosecution for false accusation.

136. Protection is provided to the complainant and witnesses against any act of torture, intimidation or ill-treatment both during and after the closure of proceedings. Public officials committing such acts are liable to civil and criminal penalties.

Article 14

137. Article 1 of the Code of Criminal Procedure establishes the principle that any offence shall entail the institution of a public prosecution to determine the penalties and, if harm has been caused, the institution of a civil action for redress. The party who has been the victim of an act of torture may institute the public prosecution under his own responsibility; however, he may also bring a civil action either in conjunction with the public prosecution or separately in a civil court. The civil action may be brought by all persons who have directly suffered personal injury as a result of the offence (article 7 of the Code of Criminal Procedure).

138. It should be noted that, if the victim is destitute, he may be granted legal aid. Legal aid covers all procedural costs, including lawyers' fees.

139. Furthermore, article 49 of the statute of the internal security forces (Act No. 82-70 of 6 August 1982) stipulates that “if a member of the internal security forces is prosecuted by a third party for professional misconduct, the Administration must meet the cost of any civil sentence against him”. Victims are thus certain to obtain redress.

Article 15

140. Under Tunisian law, a confession obtained from a person against his will may not be used as evidence against him. Article 432 of the Code of Obligations and Contracts stipulates that confessions must be free and lucid; any factors that vitiate consent also vitiate the confession. Article 51 of the Code stipulates that any violence likely to induce either physical suffering or deep mental disturbance or fear of subjecting the victim's person, honour or property to appreciable harm constitute absence of consent. Accordingly, statements obtained from a person through the use of violence or torture may not be used as evidence against him.

141. It is also worth noting the provisions of new article 13 bis of the Code of Criminal Procedure, which require officers of the judicial police to allow persons in custody to undergo a medical examination if they or one of their relatives so request and to note the request in the judicial record. The object of this provision is to provide a means of ascertaining whether the person in custody has been the victim of violence or torture.

142. Should the medical examination reveal traces of violence or of torture, the judicial record will be invalid and nothing in it may be used against the victim of the violence, on the grounds of failure to comply with the procedural rules and in particular with article 155 of the Code, whereby “the judicial record is valid as proof only if it is in due and proper form and if the author, in the performance of his duties, provides information on what he has personally seen or heard regarding a matter within his competence”.

143. In addition, regulations governing evidence require a confession, like any other evidence, to be left freely to the appraisal of the judge, who decides on the basis of his innermost conviction (articles 150 and 152 of the Code). Consequently, if a judge is convinced that an accused person's confession has been obtained by violence or torture, he will avoid convicting him on the basis of that confession.

144. In short, if the court determines that acts of torture have taken place, the entire proceedings against the accused who has been the victim of such torture are invalidated. Regardless of any further prosecution of the official or officials committing the acts of torture, a new investigation of the accused will be conducted by other officials in place of the invalidated investigation.

Article 16

145. It should be pointed out that the provisions of article 103 of the Penal Code referred to in the commentary on article 4 of the Convention are general provisions capable of encompassing the concept of torture in its broadest sense. Article 103 states: “Any public official who unlawfully interferes with the personal liberty of others, or who perpetrates or causes to be perpetrated violence or ill-treatment against an accused person, witness or expert in order to obtain a confession or statement from them shall incur a penalty of five years' imprisonment and a fine. Where the mere threat of violence or ill-treatment is concerned, the maximum sentence shall be reduced to six months' imprisonment.”

146. The Tunisian Penal Code nonetheless stipulates severe sentences for any threat of violence or ill-treatment. Under article 222 of the Code, a penalty of six months' to five years' imprisonment and a fine shall be incurred “by anyone who, by any means whatsoever, threatens another with an attack which would carry a criminal penalty. The penalty is doubled if the threats are accompanied by orders or by conditions, even if made verbally”.

147. Similarly, article 223 of the Code stipulates that “a person who threatens another with a weapon, even without intending to use it, is liable to one year's imprisonment and a fine”.

148. The concept of torture is employed in Tunisian law in its broadest sense, i.e. it may be either physical or mental, and exercised either upon the person of the victim himself or upon the person of someone close to him. Thus, for example, kidnapping or hijacking is punishable by 10 years' imprisonment. However, if the kidnapping or hijacking is carried out with the use of weapons or with a false uniform or under a false identity or on false orders from the authorities, the penalty is extended to imprisonment for life. The offences in question carry the death penalty if they cause death, either directly or indirectly (article 237 of the Penal Code).

II. ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE FOLLOWING THE CONSIDERATION OF THE INITIAL REPORT OF TUNISIA

149. During the consideration of Tunisia's initial report in 1990, the members of the Committee made their recommendations to the Tunisian Government

and on that occasion requested specific information on various issues raised in the report. Additional information, as requested by the members of the Committee, is provided below.

Information requested concerning the National Agreement, the Tunisian Human Rights League and the principle of two hearings in Tunisia

The National Agreement

150. Out of a concern to rationalize political relations between the various shades of political, social and intellectual opinion in Tunisia and with the aim of promoting national concord among all Tunisians, a National Agreement was drawn up, discussed and ratified on 7 November 1988, one year after the Change. The Agreement is a kind of code of honour, a moral and civilizational contract, comprising the common values and major principles and ideals capable of rallying Tunisians and banning anything of such a nature as to divide them. The National Agreement does not have legal value, but is rather a code of political, social and civilizational ethics.

The Tunisian Human Rights League (LTDH)

151. The Tunisian Human Rights League obtained an endorsement on 7 May 1977, the date of its creation. That important event marked the legal recognition of the first independent specialized human rights association in Africa and the Arab world. In accordance with its statutes, the League aims to “defend and preserve the fundamental freedoms provided for by the Tunisian Constitution, the laws of the country and the Universal Declaration of Human Rights”.

152. The League proposes to carry out various tasks with a view to the promotion and protection of human rights. It organizes seminars, expresses its position on the status of rights and freedoms, and intercedes with the authorities concerned to find solutions to the complaints it receives. The League has also been authorized to visit prisons, and visits made have encouraged some of its members to express their satisfaction regarding the situation prevailing in these institutions.

153. Membership of the League is limited, as stipulated in its statutes, to persons whose candidatures are accepted by the steering committee. The Associations Act No. 59-154, dating from 7 November 1959 and first amended on 2 August 1988, was further amended on 2 April 1992 to affirm the principle of non-discrimination in regard to League membership since, by virtue of this amendment, persons meeting the conditions for membership of a public association but prevented from joining it can take legal action before the court in first instance.

154. Pursuant to this reform, the Minister of the Interior issued an order on 14 May 1992 classifying the League as an association of a general character. Having refused to comply with that order, the League was dissolved as a matter of course, in June 1992, upon expiry of the time limits set by the Act as amended. Following an appeal, however, the Administrative Tribunal

on 26 March 1993 granted interim relief, deciding on a stay of execution of the Minister of the Interior's order, thus enabling the League to resume its activities pending a decision on the merits of the case.

Principle of two hearings

155. This principle underlying the administration of justice in Tunisia was adopted to strengthen the guarantees afforded to the litigant. The latter can therefore institute an action before a first court while retaining the right to bring his case at a later stage before a second court, namely the court of appeal for judgements rendered by courts of first instance, and the court of first instance for judgements rendered by the cantonal courts.

156. It should be pointed out that the principle of two hearings is applied at the level of the trial courts to all cases involving correctional offences. Where criminal cases are concerned, the double-hearing principle is applied at the level of the examination proceedings, which are conducted by the examining magistrate (first hearing) and the Indictment Division (second hearing). An application for judicial review remains possible in all cases.

Question relating to the classification of legal norms whereby conventions ratified by Tunisia have an intermediary position between the Constitution and ordinary laws

157. Article 32 of the Constitution states that treaties have the force of law only after their ratification. Statutorily ratified treaties have greater force of law than enacted law itself. A fundamental principle is thus enshrined in the Tunisian Constitution, namely the superiority of treaties over internal legislation. It follows from this principle that in the event of a contradiction between a treaty and internal legislation, it is the treaty which has the force of law.

158. The Tunisian system is also distinguished by the direct applicability of treaties at part of internal legislation, so that the provisions of the treaty itself are applied by the judges and administrations charged with their application, without having to be reproduced in an enacted law, as is the case in most countries of the world.

159. The litigant can invoke international provisions before national bodies, including the courts, in Tunisia. This option is available to him by virtue of the fact that the Constitution recognizes the superiority of international treaties over internal legislation and because such treaties are directly applicable in domestic law.

Practice concerning the application of the Convention by Tunisian courts

160. This practice is limited. Lawyers prefer to base themselves on the provisions of domestic law and the courts rarely refer automatically to international conventions. In the event of a conflict between the provisions of a convention and domestic legal norms, it is the provisions of the international instrument which prevail, since they have infra-constitutional but supra-legal value.

Publication of the Convention in the Journal Officiel

161. The publication of the Convention is a necessary formality to render the instrument enforceable against third parties. However, publication of the ratifying law suffices for it to be invoked before the courts. The Journal Officiel de la République Tunisienne obligatorily reaches the seat of all courts and public administrations. Its contents are therefore brought to the attention of the practitioners of the law. Lawyers generally subscribe to the Journal Officiel, which is a basic tool for the exercise of their profession. As regards citizens, it is true that they only occasionally refer to the Journal Officiel.

162. An additional effort to popularize and propagate the contents of the Convention against Torture, as well as other international conventions, is nevertheless necessary.

Information requested concerning capital punishment

163. It should first of all be emphasized that article 5 of the Constitution enshrines the principle of the inviolability of the human person. The right to life is thus protected in Tunisian law, with penal sanctions being taken against anyone who makes an attempt upon the life of another person.

164. These sanctions may extend to capital punishment and are provided for by the Penal Code as followings:

(a) In cases of intentional homicide, inter alia, involving:

Intentional murder with premeditation (article 201 of the Penal Code);

Murder preceded or followed by another offence (art. 204);

Parricide (art. 205), defined as murder committed by the descendant upon the person of the father, mother or any other ascendant;

Kidnapping, abduction, detention or restraint (new articles 237 and 251).

(b) In the absence of intentional homicide, the death penalty is incurred in cases of grave offences constituting a particular danger to the national community, namely:

In cases of the use or threat of use of a weapon against a judge during a hearing; in the case of a crime of rape committed with violence, use or threat of use of a weapon and in the case of a crime of rape committed even without the use of such means against a child under 10 years of age;

In cases of treason or espionage, as defined in articles 60 and 60 bis of the Penal Code;

In cases of extremely grave offences against the internal security of the State. Such cases are covered by articles 63, 72, 74 and 76 of the Penal Code;

In cases of extremely grave crimes committed by military personnel, including in wartime and as provided for by the Code of Military Justice (cases of treason, espionage, violation of fundamental duties of command, etc.).

165. Conscious of the gravity of the death penalty, the legislature has attached certain conditions thereto, as follows:

Article 80 of the Penal Code exempts from the penalties incurred by perpetrators of offences against the security of the State those guilty persons who, before any action is taken or any proceedings are initiated, first inform the administrative or judicial authorities of the conspiracies or attempts or denounce their perpetrators or accomplices, or who, after the commencement of proceedings, ensure the arrest of such persons.

New article 43 of the Penal Code provides that when the penalty incurred is the death penalty, it is replaced in the case of offenders aged between 13 and 18 by 10 years' imprisonment.

Article 38 of the same Code states that the offence is not punishable if the accused person had not yet reached 13 years of age or was insane at the time when the act in question was committed.

Article 53 of the Penal Code allows the court to mitigate the sentence when this is justified by the circumstances of the case.

166. The number of death sentences has been considerably reduced by the provisions of the Code of Criminal Procedure, as amended by the Act of 27 February 1989, which states that “judgements shall be rendered by a majority of the votes. However, death sentences and sentences of life imprisonment shall be approved by at least four votes”. Thus, a special majority of the votes (of the five judges of the Criminal Division) is required when a judgement imposing the death penalty is handed down. The President of the Republic can always exercise his right to grant a pardon and to commute the death sentence to a penalty of life imprisonment (article 371 of the Code of Criminal Procedure).

167. Furthermore, it should be noted in this regard that since the Change, and in the framework of consistent respect for the human being, death sentences have been carried out only under very rare circumstances and for villainous crimes that are particularly shocking to the public. The last execution in Tunisia was in 1992.

Questions relating to sentences imposing corporal punishment

168. Since the promulgation of the Penal Code in 1913, Tunisia has abolished the practice of corporal punishment, which was replaced by forced labour, custodial sentences and pecuniary sanctions. By the Act of 27 February 1989, the penalty of forced labour was also abolished from the Tunisian legal system and replaced by penalties of imprisonment.

Question relating to the application of article 5, paragraph 2, of the Convention against Torture in Tunisian law

169. The provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment take precedence over domestic legislation, pursuant to Tunisia's accession to the Convention. Article 32 of the Constitution provides that “duly ratified treaties have a higher authority than laws”. Thus, the provisions of article 5, paragraph 2, of the Convention are directly applicable in Tunisian law and, in the event of any conflict with the latter, the provisions of the Convention prevail.

Information requested concerning the definition of torture in Tunisian law

170. The definition of torture as contained in article 101 of the Penal Code is one of the broadest definitions. The article uses the term “violence” against persons. The concept of violence encompasses any physical or mental aggression, whether direct or indirect and whether or not leaving traces. The definition given in Tunisian law thus conforms to that of the Convention.

171. The accused's physical and moral integrity is protected by the legislature, which has afforded the possibility for the person held in police custody or one of his parents, children, brothers, sisters or spouse to request a medical examination. Such a request must be noted in the record (article 13 bis of the Penal Code).

Question concerning the teaching of human rights to law-enforcement officials and in universities

172. The fact that every individual is informed of his rights helps to ensure effective and general respect for the rights of others in full knowledge thereof and to encourage every person to fulfil his duties.

173. Being aware of his rights, moreover, the individual is encouraged to refrain from committing any violation of the law or of the rights of others. The training programmes in specialized institutions, such as the Higher Institute of the Magistrature, the schools for internal security agents and the military academies, and in higher educational establishments, particularly those teaching law and medicine, therefore provide courses relating to human rights, including instruction on the question of torture and ill-treatment. Human rights departments were established in Tunisian universities following the recommendation made on 10 December 1991 by the President of the Republic.

174. With regard to the human rights training programmes for law-enforcement officials, reference should be made to the information, provided on this subject in the first part of the report.

Question concerning the existence of forensic medicine services in hospitals

175. Forensic physicians, who are generally sworn legal experts, enjoy all the guarantees of impartiality and independence in the exercise of their functions and thus help torture victims in defending their right to take legal action against the perpetrators of torture and claim compensation by

certifying the existence of traces of violence or torture, if any, and evaluating any permanent or temporary disability resulting therefrom.

176. These physicians work in various hospitals throughout the country in their specialized fields of medicine. To enhance the training of doctors in general and particularly that of physicians called upon to perform expert forensic examinations, a course in forensic medicine is provided for students of medicine in Tunisian universities. For more details of the guarantees afforded to suspects in police custody, reference should be made to the respective commentaries in the first part of this report.

Question relating to incommunicado detention

177. Tunisian legislation categorically prohibits incommunicado detention. Any detention other than police custody, effected in accordance with the relevant provisions of the Code of Criminal Procedure, is authorized by the Public Prosecutor and therefore must be recorded with all the details required by the legal procedure. Article 3 of Decree No. 88-1876 of 4 November 1988, concerning the prison regulations, states that “no person may be admitted to prison except pursuant to a judgement or on the basis of a warrant of arrest or detention or an order for body execution”.

178. Article 237 of the Penal Code states that “a penalty of 10 years' imprisonment shall be incurred by anyone who, by fraud, violence or threat, abducts an individual or causes him to be abducted, or who causes the individual to be led away, withdrawn or moved from the place where he was ... . The penalty shall be increased to life imprisonment if the abduction or withdrawal was effected using a weapon or with a false uniform or under a false identity or on false orders from the public authorities, or results in physical disability or illness”.

179. Article 238 of the same Code states that “anyone who, without fraud, violence or threat, withdraws or moves an individual from the place where he has been put by those to whose authority or direction he has been submitted or entrusted shall be liable to two years' imprisonment. This penalty shall be increased to three years' imprisonment if the person abducted is under 15 years of age. An attempt to perform such an act is punishable”.

180. Article 250 of the Penal Code provides for punishment of incommunicado detention. It states that anyone “who without lawful order arrests, detains or restrains a person shall be liable to 10 years' imprisonment”. This penalty will be increased to life imprisonment if “the arrest, detention or restraint lasted more than a month or resulted in physical disability or illness” or if the operation aims to violate the physical integrity of the victim.

Information requested concerning police or national guard personnel who have been the subject of inquiries, prosecutions or convictions

181. During the period marked by the discovery of the fundamentalist conspiracy aimed at overthrowing the regime by violence and the proliferation of acts of violence by the illegal extremist movement known as “Ennahdha”, allegations of abuses by members of the forces of law and order against some

detainees were brought to the attention of the President of the Republic, who immediately took the initiative of convening leading national figures working in the field of human rights, including the Chairman of the Higher Committee on Human Rights and Fundamental Freedoms, the President of the Tunisian Human Rights League and the President of the Arab Institute of Human Rights.

182. On 20 June 1991 the President of the Republic decided to set up an independent commission of investigation to look into the allegations of ill-treatment. The Commission's conclusions and recommendations were published on 19 October 1991. The report notes that some abuses were, in fact, committed. Measures were decided upon to deal with those cases of abuse in accordance with the law in force.

183. In recent years, more than 100 law-enforcement officials have been brought before the correctional and criminal courts for offences involving abuse of authority. Judgements were rendered imposing penalties ranging from fines to imprisonment.

184. Furthermore, disciplinary measures were also taken against several law-enforcement officials who had exceeded their powers and were guilty of abuse of authority or professional misconduct. The Ministry of the Interior brought a number of officials before the honour council and more than 20 of them were dismissed for having committed acts of violence or for abuse of authority.

Information requested concerning the physical rehabilitation of torture victims and means for them to obtain redress and legal aid

185. While some isolated individual excesses have been reported and penalized, these do not, however, constitute a practice which necessitates the institution of a programme of physical rehabilitation for torture victims, as is the case in some other countries.

186. With regard to means of redress, article 1 of the Code of Criminal Procedure establishes the principle that any offence shall entail the institution of a public prosecution to determine the penalties and, if harm has been caused, the institution of a civil action for redress. The party who has been the victim of an act of torture may institute the public prosecution under his own responsibility; however he may also bring a civil action either in conjunction with the public prosecution or separately in a civil court. The civil action may be brought by all persons who have directly suffered personal injury as a result of the offence (article 7 of the Code of Criminal Procedure).

187. Furthermore, article 49 of the statute of the internal security forces (Act No. 82-70 of 6 August 1982) stipulates that “if a member of the internal security forces is prosecuted by a third party for professional misconduct, the Administration must meet the cost of any civil sentence against him”. Victims are thus certain to obtain redress.

188. Concerning legal aid, it should be pointed out that there is a special commission which decides on requests for such assistance. It is chaired by the public prosecutor attached to each court of first instance, who is

assisted by a representative of the bar association and an official of the financial administration. This commission gives priority, as and when appropriate, to torture victims and may grant them assistance to cover all the costs of the proceedings, including the lawyer's fees.

Question relating to the application of article 15 of the Convention in Tunisian law

189. Since they rank above the provisions of internal law, the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - in this case article 15 - may be applied with the provisions of domestic law.

190. With regard to the information sought by members of the Committee concerning conditions of arrest and detention, medical examinations requested by persons placed in police custody, conditions of detention for women with young children, isolation as a disciplinary measure and abuse of authority by public officials, reference should be made to the various commentaries in the first part of this report.

List of annexes*

1. Decree of 14 January 1992 and circular No. 504 of 15 June 1991 relating to the inclusion of human rights as a subject in the training programmes for agents of the internal security forces.

2. Circular No. 895 of 16 December 1991 on displaying the text of the oath to be sworn by agents of the internal security forces when taking office.

3. Circulars No. 904 of 24 December 1991 and No. 46 of 19 February 1992 concerning the dissemination of the Standard Minimum Rules for the Treatment of Prisoners.

4. Circulars No. 6 of 3 January 1992 and No. 53 of 12 February 1992 concerning the relations of agents of the internal security forces with the general public.

5. Circular No. 72 of 24 February 1992 concerning the signature of the commitment to ensure respect for human rights and public freedoms.

6. Text of the letter dated 17 April 1992 addressed by the President of the Republic to the Chairman of the Commission of Investigation established on 20 June 1991.

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* The annexes may be consulted in the files of the Office of the United Nations High Commissioner for Human Rights.