



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

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COMMITTEE AGAINST TORTURE

Thirty-first session
10 - 21 November 2003

DECISION

Communication No. 188/2001

<u>Submitted by:</u>	Mr. Imed ABDELLI (represented by the non-governmental organization Vérité-Action)
<u>On behalf of:</u>	Complainant
<u>State party:</u>	Tunisia
<u>Date of submission:</u>	29 June 2000
<u>Date of decision :</u>	14 November 2002

[ANNEX]

* Made public by decision of the Committee against Torture.

ANNEX

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

Thirty-first session

Concerning

Communication No. 188/2001

<u>Submitted by:</u>	Mr. Imed ABDELLI (represented by the non-governmental organization Vérité-Action)
<u>On behalf of:</u>	Complainant
<u>State party:</u>	Tunisia
<u>Date of submission:</u>	29 June 2000

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

Meeting on 14 November 2003,

Having concluded its consideration of complaint No. 188/2001, submitted to the Committee against Torture by Mr. Imed Abdelli under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following:

Decision under article 22, paragraph 7, of the Convention

1. The complainant is Mr. Imed Abdelli, a Tunisian citizen, born on 3 March 1966 in Tunis and resident in Switzerland since 7 July 1998, where he has refugee status. He claims to be the victim of violations by Tunisia of the provisions of article 1, article 2, paragraph 1, article 4, article 5, article 11, article 12, article 13, article 14, article 15 and article 16 of the Convention. He is represented by the non-governmental organization Vérité-Action.

1.2 Tunisia ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and made the Declaration under article 22 of the Convention on 23 September 1988.

Facts as submitted by the complainant

2.1 The complainant states that he was an active member of the Islamist organization ENNAHDA (formerly MTI). One day in July 1987, at 1.30 a.m., the complainant was arrested at his home, on the grounds that he belonged to an unauthorized association. He says that, while he was being arrested, the police manhandled his mother and beat two of his brothers with their truncheons. The complainant was held for 2 days at the district police station in a dirty cellar with no water; for 10 days in the holding cells in El Gorjani, from where he was taken daily to the Jebel Jelloud district police headquarters for questioning; and for one month at the Bouchoucha detention centre.

2.2 The complainant provides a detailed description of the different types of torture to which he was subjected.

2.3 The complainant describes what is customarily known as the “roast chicken” position, in which the victim is stripped naked, his hands tied and his legs folded between his arms, with an iron bar placed behind his knees, from which he is then suspended between two tables and beaten, in particular on the soles of his feet, his knees and his head. The complainant says that he was subjected to this torture for two sessions lasting more than one hour each. He adds that, during one of these sessions, his torturers also masturbated him to humiliate him and leave him exhausted.

2.4 The complainant also claims that he was subjected to “chair” torture, in which the victim is forced to kneel and to hold a chair as high as possible above his head, and is then whipped whenever he starts to lower the chair.

2.5 Following this, for one month, in the detention centre of the intelligence service in Bouchoucha, the complainant was subjected to interrogation under torture, namely, the “roast chicken” position, until he passed out. He adds that, every day, when being escorted from his cell to the offices, he was struck across the face and hit with truncheons. In addition, according to the complainant, his family was unable to obtain any information about him and his mother was detained, for an entire day, in the premises of the Ministry of the Interior for having requested a meeting with her son. The complainant asserts that he witnessed torture being inflicted on other detainees, such as Zoussef Bouthelja and Moncef Zarrouk, the latter having died in his cell on 13 August 1987 as a result of the ill-treatment to which he had been subjected.

2.6 From the end of August to 25 October 1987, the complainant was detained in Tunis prison in an overcrowded cell with no facilities.

2.7 On 25 October 1987, the complainant was placed in Mornag prison, after being sentenced to two years' immediate imprisonment. When the indictment against him was quashed he was released on 24 December 1987.

2.8 Two months later, the complainant was questioned by the police for possession of a video cassette showing the bloodshed of 1987 committed by the State security services of Sousse governorate. The complainant was held for 15 days at the headquarters of the Ministry of the Interior and was subjected to interrogation accompanied by slaps, beatings and intimidation. He was released on 30 March 1988.

2.9 According to the complainant, following the April 1989 elections, he stopped coming back to his family home because of a wave of arrests being conducted at the time, targeted in particular against opposition party members and sympathizers. The complainant claims that in 1990 his family was subjected to harassment (night-time raids, summonses for questioning and confiscation of passports). In May 1991, the complainant's brothers Lofti and Nabil were detained and tortured in order to get information about the complainant.

2.10 On 20 November 1991, at 7 a.m., the complainant was detained by the State security services. He maintains that, for the next 25 days he was subjected to various forms of torture. The complainant mentions the practice of "balanco", in which the victim is held upside down and immersed in dirty water with an admixture of bleach and other chemicals until he chokes. The victim adds that his torturers tied a piece of string to his penis which they then repeatedly tugged in all directions, until it started emitting a mixture of blood and sperm.

2.11 The complainant was also placed on a table where he was masturbated and then beaten on his erect penis. The complainant claims that he was given injections in his testicles, which caused first strong arousal and then intolerable pain. He adds that he was subjected to sessions of beatings administered by experts, in which he was struck on both ears at the same time until he passed out, and claims that his hearing has been permanently damaged as a result. He also claims that his torturers were assisted by a doctor, to ensure that torture was applied in the most effective doses.

2.12 According to the complainant, on the twenty-fifth day, the Director of State Security, Ezzedine Djmail, stubbed out cigarettes on his body, notably in the region of his genitalia.

2.13 On 13 January 1992, the complainant was taken to Tunis central prison.

2.14 After appearing briefly before the judge, on 12 March 1992, the complainant was sentenced to two years' immediate imprisonment and three years' administrative supervision for helping to support an unauthorized association, and this verdict was upheld on appeal on 7 July 1992. The complainant submits a statement by a representative of the non-governmental organization Human Rights Watch, who attended one session of the trial and states that his case was disturbing.

2.15 The complainant states that his request for a medical check was refused and that he was even threatened by a member of the prison service with further torture if he dared complain of his treatment to the judge.

2.16 After six months in Tunis central prison, the complainant was repeatedly transferred between different penal institutions in the country, including El Kef prison, from 19 July to 15

October 1992; Kasserine, from 15 to 18 October 1992; and then Gafsa, and others, which transfers, he maintains, were designed to prevent him from having any contact with his family. The complainant says that he was treated like an “untouchable”, in other words, he was barred from speaking with or being helped by other detainees; his mail and family visits were obstructed. The complainant says that his mother was always abused when she visited the prison - her headscarf was ripped off and she was summoned for questioning after the visits.

2.17 On leaving Gafsa prison on 11 January 1994, the complainant was taken to the governorate security headquarters to fill in a report sheet and to answer questions about the activities of other prisoners and his future plans. He was ordered to report at Gorjani district police headquarters as soon as he arrived in Tunis.

2.18 The complainant was also required to report for administrative supervision twice a day, at 10 a.m. and 4 p.m. at the local police station, and to report daily to the district police headquarters. According to the complainant, these supervision arrangements had the practical effect of house arrest, accompanied by a prohibition on employment. In addition, several weeks after his release, the complainant was required to report for questioning by various security bodies, including the national guard station on route X in Bardo, the national guard investigation centre in Bardo, the intelligence service, the State security service and the national guard barracks in Aouina. These bodies all subjected him to questioning and demanded that he collaborate with them in monitoring members of the opposition, on pain of continued harassment against him and his family, through such measures as night-time raids and summonses for questioning.

2.19 The complainant claims that, after he threatened to defy the administrative supervision arrangements, he was able to resume his university studies, but these were still severely disrupted by the repeated summonses to Sijoumi police headquarters for questioning, because of his refusal to collaborate.

2.20 In spring 1995, the complainant was rearrested on the grounds that he had attempted to flee the country. He was held for 10 days and subjected to ill-treatment, comprising beatings, slaps and threats of sexual abuse, in an endeavour to force him to collaborate. Under this coercion, the complainant signed a minuted record on 12 April 1995, certifying that he was an active member of the unauthorized organization ENNAHDA.

2.21 The complainant was then sentenced, on 18 May 1995, by the court of first instance in Tunis to three years' immediate imprisonment and five years' administrative supervision; this verdict was upheld on appeal on 31 May 1996.

2.22 The complainant says that he requested the judge at the court of first instance in Tunis to protect him from the torture to which he was subjected daily in prison, and also informed him that he had been on hunger strike for a week. According to the complainant, the police then escorted him from the courtroom in the presence of the judge, who did not react.

2.23 While held in Tunis central prison from 13 April 1995 to 31 August 1996, the complainant was subjected to torture which, on this occasion, comprised the practice of “falka”, in which the torturers tie the victim's legs to a bar and raise his feet in the air so that they can

whip the soles of his feet. The complainant explains that the deputy director of the prison personally participated in these torture sessions, tying him, for example, to the door of his cell before hitting him on the head with a truncheon until he passed out. At the end of August and beginning of September 1995, the complainant was placed in solitary confinement and deprived of washing facilities. He then went on a hunger strike, demanding medical attention and an end to the discriminatory treatment against him.

2.24 After being transferred to Grombalia prison, the complainant continued his hunger strike from 28 November to 13 December 1997 and, once again, was beaten on the orders of the director.

2.25 The complainant states that, during his years of detention, he was only ever able to have one meeting with his lawyers, and that was in the presence of a prison officer.

2.26 After his release on 12 April 1998, the complainant was subjected to harassment, in the form of summonses for questioning, interrogation and daily supervision, until he fled the country for Switzerland on 22 June 1998, where he was granted refugee status in December 1998.

2.27 The complainant states that, since he fled the country, members of his family have been subjected to interrogation and other forms of humiliation, including a refusal to issue a passport to his mother.

2.28 The complainant provides a list of people who carried out acts of torture against him, namely, Ezzeddine Jnaieh, Director of State Security in 1991; Mohamed Ennaceur, Director of General Intelligence in 1995; Moncef Ben Gbila, senior officer in the State Security Service in 1987; Mojahid Farhi, lieutenant colonel; Belhassen Kilani, full lieutenant; Salim Boughnia, full lieutenant; Faouzi El Attrouss, major; Hédi Ezzitouni, full lieutenant; Abderrahman Guesmi, Interior Ministry official; Faycal Redissi, Interior Ministry official; Tahar Dlaiguia, Bouchoucha detention centre official; Mohamed Ben Amor, State Security; Hassen Khemiri, warrant officer; Mohamed Kassem, deputy director of Messadine prison in 1997; Habib Haoula, prison wing supervisor at Messadine prison; and Mohamed Zrelli, prison wing supervisor at Grombalia prison. The complainant adds that the then Minister for Internal Affairs, Abdallah Kallel, should be held responsible for the treatment to which he was subjected since, at a press conference held on 22 May 1991, the minister named him as the person responsible for a campaign of terror.

2.29 The complainant describes the after-effects of his torture and the conditions in which he was held, which include hearing problems (he submits a certificate from a Swiss ear, nose and throat specialist), rheumatism, skin disorders, an ulcer and mental problems.

2.30 As to whether all domestic remedies have been exhausted, the complainant argues that, although such remedies are provided in Tunisian law, they are unavailable in practice because of the bias of judges and the impunity granted to those responsible for violations. He adds that the regulations governing the activities of bodies which play a role in upholding human rights, such as the Higher Committee for Human Rights and Fundamental Freedoms and the Constitutional Council, prevent them from supporting complaints of torture. To back up his argument, he cites the reports of such non-governmental organizations as Amnesty International.

Substance of the complaint

3.1 The complainant maintains that the Tunisian Government has breached the following articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

Article 1. The practices described above, such as “falka”, the “roast chicken” position, “balanco”, the “chair”, etc., to which the complainant was subjected, constitute acts of torture.

Article 2, paragraph 1. It is alleged that the State party not only failed to take effective measures to prevent torture, but even mobilized its administrative machinery and, in particular, its police force as an instrument of torture against the complainant.

Article 4. It is alleged that the State party has not ensured that all the acts of torture to which the complainant has been subjected are offences under its criminal law.

Article 5. It is alleged that the State party has instituted no legal proceedings against those responsible for torturing the complainant.

Article 11. It is alleged that the authorities have not used their supervisory powers to prevent torture; instead, specific instructions have been given that torture is to be applied.

Article 12. It is alleged that the State party has not carried out an investigation of the acts of torture committed against the complainant.

Article 13. It is alleged that the State party has not effectively upheld the complainant’s right to lodge a complaint with the competent authorities.

Article 14. It is alleged that the State party has ignored the complainant’s right to make a complaint and has thereby deprived him of his right to redress and rehabilitation.

Article 15. It is alleged that the complainant was sentenced in 1992 and 1995 to prison sentences on the basis of confessions obtained as a result of torture.

Article 16: The repressive measures and practices described above, such as solitary confinement, violation of the right to medical care and medicine and the right to send and receive mail, restriction of family visits, house arrest and harassment of his family, applied by the State party against the complainant constitute cruel, inhuman and degrading treatment or punishment.

3.2 The complainant also alleges that his right to practise his religion while in detention, his freedom of movement and his right to work were infringed by the administrative supervision measures applied against him, as was his right to continue his studies. He seeks redress for the harm inflicted on him and on his family, including cessation of the daily harassment of his family by the local police, and requests that they be granted passports.

State party's observations on admissibility

4.1 On 4 December 2001, the State party challenged the admissibility of the complaint on the grounds that the complainant had neither employed nor exhausted available domestic remedies. It maintains, first, that the complainant may still have recourse to the available domestic remedies, since, under Tunisian law, the limitation period for acts alleged to be, and characterized as, serious offences is 10 years.

4.2 The State party explains that, under the criminal justice system, the complainant may submit a complaint, from within Tunisia or abroad, to a representative of the Public Prosecutor's Office with jurisdiction in the area in question. He may also authorize a Tunisian lawyer of his own choice to submit such a complaint or request a foreign lawyer to do so with the assistance of a Tunisian colleague.

4.3 Under the same rules of criminal procedure, the Public Prosecutor will receive the said complaint and institute a judicial inquiry. In accordance with article 53 of the Code of Criminal Procedure, the examining magistrate to whom the case is referred will hear the author of the complaint. In the light of this hearing, he may decide to hear witnesses, question suspects, undertake on-site investigations and seize physical evidence. He may also order expert studies and carry out any actions which he deems necessary for the uncovering of evidence, both in favour of and against the complainant, with a view to discovering the truth and verifying facts on which the trial court will be able to base its decision.

4.4 The State party explains that the complainant may, in addition, lodge with the examining magistrate during the pre-trial proceedings an application for criminal indemnification for any harm suffered, over and above the criminal charges brought against those responsible for the offences against him.

4.5 If the examining magistrate deems that the public right of action is not exercisable, that the acts do not constitute a violation or that there is no prima facie case against the accused, he shall rule that there are no grounds for prosecution. If, on the other hand, the magistrate deems that the acts constitute an offence punishable by imprisonment, he shall send the accused before a competent court - which in the present instance, where a serious offence has been committed, would be the indictment chamber. All rulings by the examining magistrate are immediately communicated to all the parties to the proceedings, including the complainant who brought the criminal indemnification proceedings. Having been thus notified within a period of 48 hours, the complainant may, within four days, lodge an appeal against any ruling prejudicial to his interests. This appeal, submitted in writing or orally, is received by the clerk of the court. If there is prima facie evidence of the commission of an offence, the indictment chamber sends the accused before the competent court (criminal court or criminal division of a court of first instance), having given rulings on all the counts established during the proceedings. If it chooses, it may also order further information to be provided by one of its assessors or by the examining magistrate; it may also institute new proceedings, or conduct or order an inquiry into matters which have not yet been the subject of an examination. The decisions of the indictment chamber are subject to immediate enforcement.

4.6 A complainant seeking criminal indemnification may appeal on a point of law against a decision of the indictment chamber once it has been notified. This remedy is admissible when the indictment chamber rules that there are no grounds for prosecution; when it has ruled that the application for criminal indemnification is inadmissible, or that the prosecution is time-barred; when it has deemed the court to which the case has been referred to lack jurisdiction; or when it has omitted to make a ruling on one of the counts.

4.7 The State party stresses that, in conformity with article 7 of the Code of Criminal Procedure, the complainant may bring criminal indemnification proceedings before the court to which the case has been referred (criminal court or criminal division of the court of first instance) and, as appropriate, may lodge an appeal, either with the Court of Appeal if the offence in question is an ordinary offence, or with the criminal division of the Court of Appeal if it is a serious offence. The complainant may also appeal to the Court of Cassation.

4.8 Second, the State party maintains that the domestic remedies are effective. According to the State party, the Tunisian courts have systematically and consistently acted to remedy deficiencies in the law, and stiff sentences have been handed down on those responsible for abuses and violations of the law. The State party says that, between 1 January 1988 and 31 March 1995, judgements were handed down in 302 cases involving members of the police or the national guard under a variety of counts, 227 of which fell into the category of abuse of authority. The penalties imposed varied from fines to terms of imprisonment of up to several years.¹

4.9 Third, the State party maintains that, given the complainant's "political and partisan" motives and his "offensive and defamatory" remarks, his complaint may be considered an abuse of the right to submit complaints.

4.10 The State party explains that the ideology and the political platform of the "movement" of which the complainant was an active member are based exclusively on religious principles, promoting an extremist view of religion which negates democratic rights and the rights of women. This is an illegal "movement", fomenting religious and racial hatred and employing violence. According to the State party, this "movement" perpetrated terrorist attacks which caused material damage and loss of life over the period 1990-1991. For that reason, and also because it is in breach of the Constitution and the law on political parties, this "movement" has not been recognized by the authorities.

4.11 The State party indicates that the complainant is making unsubstantiated allegations to the effect that "the Tunisian authorities have not criminalized these acts of torture ...". According to the State party, this allegation is given the lie by Act No. 99-89 of 2 August 1999, whereby the legislature amended and transposed a number of provisions of the Criminal Code and incorporated the definition of torture as set out in the Convention against Torture.

Complainant's comments on the State party's observations

¹ The examples cited by the State party are available for information in the file.

5.1 In a letter of 7 May 2002, the complainant challenged the State party's argument that he was supposedly unwilling to turn to the Tunisian justice system and make use of domestic remedies.

5.2 The complainant believes that the recourse procedures are excessively protracted. He notes, in this context, that the appeal procedure against his conviction in 1995 comprised 18 sessions, lasting from June 1995 to the end of May 1996. According to the complainant, these delays were entirely due to the authorities, who repeatedly postponed consideration of his appeal because they were embarrassed to have to convict a person - who, to make matters worse, was a political opponent - for illegally attempting to leave the country. He says that this conviction would in itself be harmful to the image of the regime and that this made it harder to hand down a stiff sentence. He believes that this delay in a simple appeal procedure demonstrates that the lodging of a complaint of torture - even assuming that such a complaint would be accepted - would be an even more protracted process. The complainant also describes how, when his name appeared in various reports by non-governmental organizations, including after his conviction in 1995, the authorities reacted by worsening the conditions in which he was held, subjecting him to mental and corporal punishment and transferring him to prisons far from his family home, and harassing his family, who were placed under stricter supervision. In support of his arguments, he cites the case of Mr. Abderraouf Khémair Ben Sadok Laribi, who died in police custody as a result of ill-treatment. According to the complainant, even though the dead man's family lodged a complaint of intentional homicide against the Minister of the Interior on 9 August 1991, and even though the case received extensive media coverage, as a result of which his family received material compensation and an interview was granted with an adviser of the President, the case was closed without any effective investigation, while the minister in office at the time was given full protection by the Government.

5.3 The complainant also believes that the recourse procedures would not lead to any satisfactory remedies. He enumerates the efforts he made, to no avail, in 1992 to seek a medical examination and, in 1995, to secure protection from the judicial authorities against the ill-treatment to which he was being subjected. For that reason, it seemed unlikely to the complainant that he would obtain satisfaction from the judicial authorities. The complainant explains that his case with the magistrate was not an isolated instance and, in that context, submits an extract from a report by the Tunisian Committee for Human Rights and Freedoms. He maintains that the judicial system is not independent and gave him no protection when he was convicted in 1992 and 1995. He says that he has been a victim of the "culture of torture" in Tunisia and that it was psychologically very difficult for him to submit his complaint to the Committee against Torture for fear of reprisals against his family. He adds, lastly, that his hunger strikes against his ill-treatment failed to bring any results, apart from some material concessions. Similarly, the letters he wrote to the administration of the prisons following these hunger strikes also proved unavailing. In addition, the transfer of the prison service to the Ministry of Justice has done nothing to change the complicity of the service in such practices. The complainant cites extracts from reports by the International Federation for Human Rights and the Tunisian Committee for Human Rights and Freedoms in support of his observation that complaints of torture do not succeed and that the authorities exert pressure to prevent the lodging of such complaints. He also maintains that the administrative supervision under which he was placed, which involved constant supervision by eight different authorities, accompanied by acts of intimidation, meant that lodging a complaint would have placed him in danger.

5.4 The complainant also challenges the State party's arguments that a Tunisian lawyer can be instructed from abroad to lodge a complaint.

5.5 The complainant describes serious encroachments by the authorities on the free and independent exercise of the legal profession. According to the complainant, lawyers who dare to defend complaints of torture are subject to harassment and other abuses, including prison sentences. As an example, he cites the cases of the lawyers Néjib Hosny, Béchir Essid and Anouar Kosri, and quotes extracts from reports and statements by Amnesty International, the World Organization against Torture, the International Federation for Human Rights and the International Commission of Jurists. He adds, also on the basis of these reports by non-governmental organizations, that none of the complaints lodged by victims of torture over recent years, particularly following the promulgation in 1988 of article 13 bis of the Code of Criminal Procedure, providing for the possibility of medical visits, have been followed up. He also explains that, in certain cases, medical checks have been allowed after a long delay, once all traces of torture have disappeared, and that the checks are sometimes carried out by compliant doctors who will fail to find anything wrong with the detainees' physical condition, even if there are traces of torture. The complainant believes that, in these circumstances, it would not make much difference to appoint a lawyer.

5.6 The complainant also cites as an obstacle the fact that not only is legal aid not an established practice in Tunisia, but that the procedures involved are not accompanied by the necessary safeguards.

5.7 The complainant also stresses that the lodging of a complaint from abroad with the Tunisian authorities is likely to be covered by article 305, paragraph 3, of the Tunisian Code of Criminal Procedure, which provides that "any Tunisian who commits any of the offences mentioned in section 52 bis of the Criminal Code abroad may be prosecuted and brought to trial, even if the aforementioned offences are not punishable under the legislation of the State in which they were committed". The complainant believes that a complaint submitted by him from abroad could be construed as an insult against the regime, given that the State party has declared him to be a terrorist.

5.8 The complainant also explains that his situation as a political refugee in Switzerland precludes him from successfully concluding any proceedings that he might initiate, given the restrictions placed on contacts between refugees and the authorities in their own countries. He explains that severance of all relations with the country of origin is one of the conditions on which the status of refugee is granted, and that it plays an important role when consideration is being given to withdrawing asylum. According to the complainant, such asylum would effectively end if the refugee should once again, of his own volition, seek the protection of his country of origin, for example by maintaining close contacts with the authorities or paying regular visits to the country.

5.9 The complainant also challenges the affirmation by the State party of the existence of available remedies. He argues that the State party has confined itself to repeating the procedure described in the Code of Criminal Procedure, which is far from being applied in reality, particularly where political prisoners are concerned. In support of his argument, the complainant

cites reports by Amnesty International, Human Rights Watch, the World Organization against Torture, the National Consultative Commission on Human Rights in France and the National Council for Fundamental Freedoms in Tunisia. The complainant also refers to the Committee against Torture's concluding observations on Tunisia, dated 19 November 1998. He stresses that the Committee against Torture recommended, among other things, that the State party should, first, ensure the right of victims of torture to lodge a complaint without the fear of being subject to any kind of reprisal, harassment, harsh treatment or prosecution, even if the outcome of the investigation does not prove their allegations, and to seek and obtain redress if those allegations are proven correct; second, ensure that medical examinations are automatically provided following allegations of abuse and that autopsies are performed following any deaths in custody; and third, ensure that the findings of all investigations concerning cases of torture are made public and that such information includes details of any offences committed, the names of the offenders, the dates, places and circumstances of the incidents and the punishment received by those found guilty. The Committee also noted that many of the regulations existing in Tunisia for the protection of arrested persons were not adhered to in practice. It also expressed its concern over the wide gap that existed between law and practice with regard to the protection of human rights, and was particularly disturbed by the reported widespread practice of torture and other cruel and degrading treatment perpetrated by security forces and the police, which, in certain cases, resulted in death in custody.

5.10 The complainant also notes the lack of independence of the judicial system and the bodies set up to monitor application of the law. Lastly, he emphasizes that the State party's reply, in the current case, shows that no domestic investigation has been held into the rather detailed information contained in the complaint under consideration.

5.11 The complainant also challenges the State party's argument that the domestic remedies are effective.

5.12 With regard to the 302 cases involving police or national guard officers against whom, according to the State party, sentences have been handed down, the complainant points out that there is no tangible proof that these cases, which have not been published or made public in any way, actually took place; that the 277 cases cited by the State party as examples of abuse of authority are not relevant to the case in question; and that the State party refers only to cases which do not tarnish the image of Tunisia and therefore include no case of inhuman or degrading treatment. He explains that the cases adduced by the State party took place during the period 1988-1995 and were covered by the concluding observations of the Committee against Torture mentioned above.

5.13 Lastly, the complainant believes that the State party's comments regarding his membership of the ENNAHDA movement and the aspersions cast upon it demonstrate the continued discrimination against the opposition, which is still considered illegal. According to the complainant, with its references in this context to terrorism, the State party is demonstrating its bias and, by extension, the impossibility of obtaining any remedy in Tunisia. He also stresses that the prohibition of torture and inhuman or degrading treatment is a provision which admits of no exception, including for terrorists.

5.14 Finally, in the light of his previous explanations, the complainant rejects the observation by the State party to the effect that the present complaint constitutes an abuse of the right to submit complaints, an argument which, the complainant believes, shows that the State party has decided to resort to a political manoeuvre which has no legal relevance.

Additional observations from the State party on admissibility

6.1 On 8 November 2002 the State party again challenged the admissibility of the complaint. It maintains, first, that the complainant's claims about recourse to the Tunisian justice system and the use of domestic remedies are baseless and unsupported by any evidence. It adds that appeal procedures do not take an unreasonable time, and that proceedings in respect of the allegations made in the complaint are not time-barred, since the time-limit for bringing proceedings in such cases is 10 years. Second, the State party considers that the complainant's claims that a complaint lodged from abroad with the Tunisian authorities is might be covered by article 305, paragraph 3, of the Code of Criminal Procedure, which permits the prosecution of those guilty of terrorist acts, are baseless. Third, the State party affirms that, contrary to the complainant's allegations, it is open to him to instruct a lawyer of his choice to lodge a complaint from abroad. The State party adds that the complainant's refugee status does not deprive him of his right to lay complaints before the Tunisian courts. Fourth, it maintains that domestic remedies before the Tunisian judicial authorities are not only possible in the current case but effective, as shown by the fact that victims of violations in Tunisia have obtained satisfaction. Lastly, the State party indicates that its reply of 4 December 2001 was not intended to be defamatory to the complainant, who is, nonetheless, abusing the right to submit complaints.

Committee's decision on admissibility

7.1 At its twenty-ninth session, the Committee considered the admissibility of the complaint, and in a decision of 20 November 2002 declared it admissible.

7.2 With regard to the issue of the exhaustion of domestic remedies, the Committee noted that the State party challenged the admissibility of the complaint on the grounds that available and effective domestic remedies had not been exhausted. In the present case, the Committee noted that the State party had provided a detailed description both of the remedies available, under law, to any complainant and of cases where such remedies had been applied against those responsible for abuses and for violations of the law. The Committee considered, nevertheless, that the State party had not sufficiently demonstrated the relevance of its arguments to the specific circumstances of the case of this complainant, who claims to have suffered violations of his rights. It made clear that it did not doubt the information provided by the State party about members of the security forces being prosecuted and convicted for a variety of abuses. But the Committee pointed out that it could not lose sight of the fact that the case at issue dates from 1987 and that, given a statute of limitations of 10 years, the question arose in the present case of whether, failing interruption or suspension of the statute of limitations - a matter on which the State party had provided no information - action before the Tunisian courts would be disallowed. The Committee noted, moreover, that the complainant's allegations related to facts that had already been reported publicly to the authorities. The Committee pointed out that to date it remained unaware of any investigations voluntarily undertaken by the State party. The Committee therefore considered it very unlikely in the present case that the complainant would

obtain satisfaction by exhausting domestic remedies, and decided to proceed in accordance with article 22, paragraph 5 (b), of the Convention.

7.3 The Committee noted, in addition, the argument by the State party to the effect that the complainant's claim was tantamount to abuse of the right to lodge a complaint. The Committee considered that any report of torture was a serious matter and that only through consideration of the merits could it be determined whether or not the allegations were defamatory. Furthermore, the Committee believed that the complainant's political and partisan commitment adduced by the State party did not impede consideration of this complaint, in accordance with the provisions of article 22, paragraph 2, of the Convention.

State party's observations on the merits

8.1 In its observations of 3 April 2003 and 25 September 2003, the State party challenges the complainant's allegations and reiterates its position regarding admissibility.

8.2 In relation to the allegations concerning the State party's "complicity" and inertia vis-à-vis "practices of torture", the State party indicates that it has set up preventive² and dissuasive³ machinery to combat torture so as to prevent any act which might violate the dignity and physical integrity of any individual.

8.3 Concerning the allegations relating to the "practice of torture" and the "impunity of the perpetrators of torture", the State party considers that the complainant has not presented any evidence to support his claims. It emphasizes that, contrary to the complainant's allegations, Tunisia has taken all necessary legal and practical steps, in judicial and administrative bodies, to prevent the practice of torture and prosecute any offenders, in accordance with articles 4, 5 and 13 of the Convention. Equally, according to the State party, the complainant has offered no grounds for his inertia and failure to act to take advantage of the effective legal opportunities available to him to bring his case before the judicial and administrative authorities (see paragraph 6.1). Concerning the Committee's decision on admissibility, the State party emphasizes that the complainant cites not only "incidents" dating back to 1987, but also "incidents" dating from 1995, 1996 and 1997, that is, a time when the Convention against Torture was fully incorporated into Tunisian domestic law and when he reports "ill-treatment" that he claims to have suffered while being held in "Tunis central prison" and "Grombalia prison". Hence the statute of limitations has not expired, and the complainant should urgently act to interrupt the limitation period, either by contacting the judicial authorities directly, or by

² This includes instruction in human rights values in training schools for the security forces, the Higher Institute of the Judiciary and the National School for training and retraining of staff and supervisors in prisons and correctional institutions; a human-rights-related code of conduct aimed at senior law enforcement officials; and the transfer of responsibility for prisons and correctional institutions from the Ministry of the Interior to the Ministry of Justice and Human Rights.

³ A legislative reference system has been set up: contrary to the complainant's allegation that the Tunisian authorities have not criminalized acts of torture, the State party indicates that it has ratified the Convention against Torture without reservations, and that the Convention forms an integral part of Tunisian domestic law and may be invoked before the courts. The provisions of criminal law relating to torture are severe and precise (Criminal Code, art. 101 bis).

performing an act which has the effect of interrupting the limitation. The State party also mentions the scope for the complainant to lodge an appeal for compensation for any serious injury caused by a public official in the performance of his duties,⁴ noting that the limitation period stands at 15 years.⁵ The State party points out that the Tunisian courts have always acted systematically to remedy deficiencies in the law on acts of torture (see paragraph 4.10).

8.4 As for the allegations of failure to respect guarantees relating to judicial procedure, the State party regards them as unfounded. According to the State party, the authorities did not prevent the complainant from lodging a complaint before the courts - on the contrary, he opted not to make use of domestic remedies. As for the "obligation" of judges to ignore statements made as a result of torture, the State party cites article 15 of the Convention against Torture, and considers that it is incumbent on the accused to provide the judge with at least basic evidence that his statement has been made in an unlawful manner. In this way he would confirm the truth of his allegations by presenting a medical report or a certificate proving that he had lodged a complaint with the public prosecutor's office, or even by displaying obvious traces of torture or ill-treatment to the court. However, the State party points out that the complainant did not deem it necessary to lodge a complaint either during his detention or during his trial; this formed part of a strategy adopted by the "ENNAHDA" illegal extremist movement in order to discredit Tunisian institutions by systematically alleging acts of torture and ill-treatment but not making use of available remedies.

8.5 Concerning the allegations relating to his confession, the State party considers baseless the complainant's claim that he was found guilty on the sole basis of his confession. It points out that, under the last paragraph of article 69 and article 152 of the Code of Criminal Procedure, a confession on the part of the accused cannot relieve the judge of the obligation to seek other evidence, while confessions, like all items of evidence, are a matter for the independent appreciation of the judge. On that basis, it is a constant of Tunisian case law that an accused cannot be found guilty on the sole basis of a confession.⁶ In the case in question, the basis for the court's decision, in addition to the confessions made by the complainant throughout the judicial proceedings, was testimony by his accomplices. The State party also rejects as baseless the complainant's allegation that he had signed a transcript without being aware of its content, pointing out that the law requires that the transcript be read to the accused before signature, and that this was done. Concerning the complainant's allegations that the proceedings in his case were both summary and protracted, the State party indicates that the length of the proceedings is dictated by respect for the right to a defence. In addition, with the aim of preventing counsel or even the prosecution from engaging in delaying tactics and seeking the postponement of hearings, the State party points out that rulings by judges are always accompanied by a statement of grounds, as are rulings postponing hearings relating to the criminal proceedings against the complainant.

⁴ Under the Administrative Court Act of 1 June 1972, the State may be held responsible even when it is performing a sovereign act if its representatives, agents or officials have caused material or moral injury to a third person. The injured party may demand from the State compensation for the injury suffered, under article 84 of the Code of Obligations and Contracts, without prejudice to the direct liability of its officials vis-à-vis the injured parties.

⁵ Administrative Court - judgement No. 1013 of 10 May 1003 and judgement No. 21816 of 24 January 1997.

⁶ Judgement No. 4692 of 30 July 1996, published in the *Revue de Jurisprudence et Législation (R.J.:L)*; judgement No. 8616 of 25 February 1974 R.J.L. 1975; and judgement No. 7943 of 3 September 1973 R.J.L 1974.

8.6 Concerning the allegations relating to prison conditions, and in particular the comparison of prisons to “concentration centres”, the State party considers them unfounded. Concerning the arrangements for transfers between one prison and another, which the complainant considers to constitute an abuse, the State party points out that, in keeping with the applicable regulations, transfers are decided upon in the light of the different stages of the proceedings, the number of cases and the courts which have competence for specific areas. The prisons are grouped in three categories: for persons held awaiting trial; for persons serving custodial sentences; and semi-open prisons for persons found guilty of ordinary offences, which are authorized to organize agricultural labour. According to the State party, as the status of the complainant had changed from that of remand prisoner to that of a prisoner serving a custodial sentence, and bearing in mind the requirements as to investigations in his case or in other similar cases, he was transferred from one prison to another, in accordance with the applicable regulations. Moreover, the conditions in which the complainant was held, wherever he was held, were in keeping with the prison regulations governing conditions for holding prisoners in order to ensure prisoners’ physical and moral safety. The State party points out that prisoners’ rights are scrupulously protected in Tunisia, without any discrimination, whatever the status of the prisoner, in a context of respect for human dignity, in accordance with international standards and Tunisian legislation. Medical, psychological and social supervision is provided, and family visits are allowed.

8.7 Contrary to the allegations that the medical consequences suffered by the complainant are due to torture, the State party rejects any causal link. Moreover, according to the State party, contrary to the complainant’s allegations that his request for a medical examination was refused (see paragraph 2.15), he enjoyed appropriate care and proper medical supervision, as stipulated in the prison regulations, throughout his stay in prison.

8.8 Concerning the allegations that he was denied visits, according to the State party the complainant regularly received visits from his brother Belhassen Abdelli, in accordance with the prison regulations, as demonstrated by the visitors’ records in the prisons in which he was held.

8.9 Concerning the allegations relating to article 11 of the Convention, the State party rejects them and refers to systematic monitoring⁷ of compliance with rules, instructions, methods and

⁷ In addition to legislation, protective institutional machinery has been set up by stages, including surprise visits to prisons by the Chairman of the Higher Committee for Human Rights and Fundamental Freedoms, and the creation on 31 July 2000 of a post of “judge for the enforcement of sentences” who is responsible for closely monitoring the enforcement of custodial sentences and conducting periodic visits to prisons.

practices of interrogation and provisions relating to the holding⁸ and treatment of persons who have been arrested, detained or imprisoned.⁹

8.10 Concerning the allegations relating to administrative supervision and the social situation of Mr. Abdelli's family, the State party explains that administrative supervision cannot be equated with ill-treatment under the Convention against Torture because it is in fact an additional punishment for which provision is made in article 5 of the Criminal Code. According to the State party, the application of this measure did not prevent the complainant from continuing to live a normal life, and in particular to pursue his studies following his release in 1994. It is pointed out that the fact that it was not possible for those studies to be completed could not constitute proof of alleged restrictions imposed within the framework of administrative supervision. According to the State party, the allegations of abuse are unfounded, and the summonses produced by the complainant do not constitute ill-treatment or an abuse of the administrative supervision procedure. In addition, the State party indicates that the summons dating from 1998 constitutes irrefutable evidence that the complainant's allegations are false. It also maintains that the complainant's family is not suffering from any form of harassment or restrictions, that the complainant's mother is receiving a pension following the death of her husband, and that the family is living in decent circumstances.

Observations by the complainant :

9.1 In his observations dated 20 May 2003, the complainant sought to respond to each of the points contained in the above observations by the State party.

9.2 Concerning the preventive arrangements for combating torture, the complainant considers that the State party has confined itself to listing an arsenal of laws and measures of an administrative and political nature which, he says, are not put into effect in any way. To support this assertion he cites reports prepared by the non-governmental organization "National Council for Fundamental Freedoms in Tunisia" (CNLT).¹⁰

⁸ Act No. 99-90 of 2 August 1999 amended and supplemented a number of provisions of the Code of Criminal Procedure, and in particular reduced the length of police custody to three days, renewable once only for a further three days. Under the Act, criminal investigation officers may not hold a suspect for more than three days; they must notify the public prosecutor, who may, by written decision, extend the length of police custody once only for a further three days. The criminal investigation officer must inform the suspect of the measure being taken against him and its duration, and his rights under the law, notably the possibility of undergoing a medical examination during his period in custody. The officer must also inform one of the suspect's parents or children, brothers or sisters or spouse, as selected by him, of the measure being taken against him. These safeguards were further strengthened under the constitutional reform of 26 May 2002, which granted constitutional status to supervision of police custody by the judiciary, stipulating that this custodial measure could be imposed only by order of a court.

⁹ The Act of 24 April 2001 on conditions for the imprisonment and treatment of detainees strengthened safeguards for the protection of prisoners and provided for prisoners to be prepared for a working life by offering them opportunities for paid employment.

¹⁰ « Le procès-Tournant : A propos des procès militaires de Bouchoucha et de Bab Saadoun en 1992 », October 1992 ; "Pour la réhabilitation de l'indépendance de la justice", April 2000- December 2001.

9.3 In relation to the establishment of a legislative reference system to combat torture, the complainant considers that article 101 bis of the Code of Criminal Procedure was adopted belatedly in 1999, in particular in response to the concern expressed by the Committee against Torture at the fact that the wording of article 101 of the Criminal Code could be used to justify serious abuses involving violence during questioning. He also claims that this new article is not applied, and attaches a list of the victims of repression in Tunisia between 1991 and 1998 prepared by the non-governmental organization "Vérité-Action". He also points out that the cases cited by the State party to demonstrate its willingness to act to combat torture relate only to accusations of abuse of authority and violence and assault, as well as offences under the ordinary law, and not to cases of torture leading to death or cases involving physical and moral harm suffered by the victims of torture.

9.4 Concerning the practice of torture and impunity, the complainant maintains that torturers do enjoy impunity, and that in particular no serious investigation has been carried out into those suspected of committing crimes of torture. He considers that, in his own case, the State party's observations display a selective approach to the facts by shifting from 1987 to 1996, whereas the most serious violations occurred in 1991. The complainant also states that, whereas a State governed by the rule of law should automatically follow up any report of a criminal act which may be regarded as a serious offence, the Tunisian authorities are content to accuse the alleged victims of terrorism and manipulation. The complainant considers that his allegations are at the very least plausible in terms of the detail of the torture he suffered (names, places and treatment inflicted), but the State party contents itself with a blanket denial. The complainant did not mention torturers because of their membership of the security forces, but because of specific and repeated attacks on his physical and moral integrity and his private and family life. The initiation of an investigation designed to check whether a person belonging to the security forces has committed acts of torture or other acts does not constitute a violation of the presumption of innocence but a legal step which is vital in order to investigate a case and, if appropriate, place it before the judicial authorities for decision. In relation to appeals before the courts, the complainant considers that the State party has confined itself to repeating the description of legal options open to victims set out in its previous submissions without responding to the last two sentences of paragraph 7.2 of the decision on admissibility. He reiterates that the theoretical legal options described by the State party are inoperative, while listing in support of this conclusion cases in which the rights of the victims were ignored.

9.5 Concerning the complainant's inertia and lack of action, he considers that the State party is inconsistent in holding that acts of torture are regarded as serious offences in Tunisian law and accordingly prosecuted automatically, while awaiting a complaint by the victim before taking action. He also re-emphasizes his serious efforts to demand a medical examination and an investigation into the torture he had suffered.

9.6 Concerning the allegations relating to the trial, the complainant considers that the State party remains silent concerning the conditions in which his trial took place, and has failed to embark on any investigation to check the allegations of torture that he made before the judge.

9.7 Concerning the allegations relating to his confession, the complainant maintains that his confession was extracted under torture, and, citing the reports of CNLT, states that such methods are used in political trials and sometimes in trials involving offences under ordinary law.

Concerning the length of the trials, the complainant states that the 1992 trial was summary in nature because it formed part of a spate of trials aimed at putting as many members of the ENNAHDA movement as possible behind bars, while the 1995 trial was protracted since the lawyers insisted on the principle of double jeopardy. The complainant also notes that the State party is silent about his arrest a few months after the Presidential pardon of 1987.

9.8 Concerning the conditions in which he was held, the complainant considers that the State party is taking refuge behind legal texts in order to dismiss the detailed information he provides. He points out that the question of transferring him for the purposes of the investigation never arose, and calls on the State party to prove the contrary.

9.9 In relation to visits, the complainant explains that each time he was transferred, his family had difficulty discovering his new place of detention. He considers that denial of visits constituted a form of revenge against him each time he sought to exercise a right and took action to that end, for example in the form of hunger strikes. He points out that the prison entry and exit logs can confirm his claims. In addition, the complainant's family found it difficult to exercise the right to visit him because of the conditions imposed on the visitors - the complainant's mother was ill-treated to make her remove her scarf, and was made to wait many hours for a visit lasting a few minutes.

9.10 Concerning the allegations relating to the provision of care, the complainant draws the Committee's attention to the medical certificate contained in his file. Concerning the treatment cited by the State party, the complainant demands the production of his medical file by the State party.

9.11 In relation to administrative supervision, the complainant considers that any punishment, including those provided for in the Tunisian Criminal Code, may be characterized as inhuman and degrading if the goal pursued does not include the reconciliation of the offender with his social environment. He points out in particular that his resumption of his studies prompted a tightening of the administrative supervision, including imposition of an obligation to report to the police twice a day, insistent surveillance by the university police and a ban on contacts with the other students. Concerning his summonses, the complainant states that the three years which elapsed between his two summonses in 1995 and 1998 corresponded to the period he spent in prison after being arrested again in 1995. According to the complainant, administrative supervision serves only to bolster the police's stranglehold over the freedom of movement of former prisoners.

9.12 Concerning the situation of his family, the complainant records the suffering caused by the police surveillance and various forms of intimidation. He mentions that two of his brothers (Nabil and Lofti) were imprisoned in advance of his arrest, and that his mother was detained for a whole day. In addition, according to the complainant, the authorities' deliberate decision to move him far from his family affected the pattern of the visits.

9.13 Concerning the application of article 11 of the Convention, the complainant considers that the State party once again contents itself with a theoretical description of its legal arsenal and a reference to the activities of the Higher Committee on Human Rights and Fundamental Freedoms, a non-independent institution. Citing documents issued by non-governmental

organizations,¹¹ the complainant notes violations relating to the supervision of detention and police custody, such as manipulation of the dates when arrests were recorded, and incommunicado detention. He notes that the State party has not responded to his precise allegations relating to his detention for over a month in 1987, for 56 days in 1991 and for 18 days in 1995.

9.14 In relation to the ENNAHDA movement, the complainant maintains that the organization is well known for its democratic ideals and its opposition to dictatorship and impunity, contrary to the State party's explanations. In addition, he challenges the accusations of terrorism levelled by the State party, which in fact form part of a complete fabrication.

9.15 Lastly, according to the complainant, the State party is endeavouring to place the entire burden of proof on the victim, accusing him of inertia and failure to act, seeking protection behind a panoply of legal measures which theoretically enable victims to lodge complaints and evading its duty to ensure that those responsible for crimes, including that of torture, are automatically prosecuted. According to the complainant, the State party is thus knowingly ignoring the fact that international law and practice in relation to torture place greater emphasis on the role of States and their duties in order to enable proceedings to be completed. The complainant notes that the State party places the burden of proof on the victim alone, even though the supporting evidence, such as legal files, registers of police custody and visits, and so on, is in the sole hands of the State party and unavailable to the complainant. Referring to European case law,¹² the complainant points out that the European Court and Commission call on States parties, in the case of allegations of torture or ill-treatment, to conduct an effective investigation into the allegations of ill-treatment and not to content themselves with citing the theoretical arsenal of options available to the victim to lodge a complaint.

Consideration of the merits

10.1 The Committee examined the complaint, taking due account of all the information provided to it by the parties, in accordance with article 22, paragraph 4, of the Convention.

10.2 The Committee took note of the State party's observations of 3 April 2003 challenging the admissibility of the complaint. It notes that the points raised by the State party are not such as to prompt reconsideration of the Committee's decision on admissibility, notably owing to the lack of new or additional information from the State party on the matter of investigations voluntarily carried out by the State party (see paragraph 7.2). The Committee therefore does not consider that it should review its decision on admissibility.

10.3 The Committee therefore proceeds to examine the merits of the complaint, and notes that the complainant alleges violations by the State party of article 1, article 2, paragraph 1, article 4, article 5, article 11, article 12, article 13, article 14, article 15 and article 16 of the Convention.

¹¹ Alternative report by FIDH to Tunisia's second periodic report to the Committee against Torture; communiqué issued on 20 February 2003 by the International Association for Support for Political Prisoners in Tunisia.

¹² Guide to Jurisprudence on Torture and Ill-Treatment - Article 3 of the European Convention for the Protection of Human Rights, Debra Long (APT); Ribitsch v. Austria; Assenov v. Bulgaria.

10.4 Article 12 of the Convention, the Committee notes that article 12 of the Convention places an obligation on the authorities to proceed automatically to a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture or ill-treatment has been committed, no special importance being attached to the grounds for the suspicion.¹³

10.5 The Committee notes that the complainant maintains that he complained of acts of torture committed against him to the judge at his trials in 1992 and 1995. The complainant states that in 1992 he requested a medical examination, which was refused, and that in 1995 he sought the protection of the judge of the Tunis court of first instance against the torture inflicted on him daily at the prison. The Committee notes that the State party challenges the complainant's claim that he was denied a medical examination, without commenting on the treatment of which the complainant complained to the judge or providing the results of the medical checks allegedly carried out on Mr. Abdelli while he was being held. The Committee also takes note of the State party's failure to comment on the precise allegations set out above relating to 1995. Lastly, the Committee notes the existence of detailed and substantiated information provided by the complainant concerning his hunger strikes in Tunis central prison in 1995 and in Grombalia prison from 28 November to 13 December 1997, mounted in order to protest against the treatment he had suffered and to secure medical care. The complainant refers to letters sent to the prisons administration following his hunger strikes, which produced no result. The Committee notes that the State party has not commented on this information. The Committee considers that these elements, taken together, should have been enough to trigger an investigation, which was not held, in breach of the obligation to proceed to a prompt and impartial investigation under article 12 of the Convention.

10.6 The Committee also observes that article 13 of the Convention does not require either the formal lodging of a complaint of torture under the procedure laid down in national law or an express statement of intent to institute and sustain a criminal action arising from the offence, and that it is enough for the victim simply to bring the facts to the attention of an authority of the State for the latter to be obliged to consider it as a tacit but unequivocal expression of the victim's wish that the facts should be promptly and impartially investigated, as prescribed by this provision of the Convention.¹⁴

10.7 The Committee notes, as already indicated, that the complainant explains that he did complain to judges in 1992 and 1995 of the treatment inflicted on him, resorted to hunger strikes and wrote to the prison authorities to complain about the conditions imposed on him. The Committee regrets that the State party has not responded or provided the necessary clarification on these points. Moreover, and notwithstanding the jurisprudence under article 13 of the Convention, the Committee notes the State party's position maintaining that the complainant should have made formal use of domestic remedies in order to lodge his complaint, for example by presenting to the court a certificate proving that a complaint had been lodged with the office of the public prosecutor, or displaying obvious traces of torture or ill-treatment, or submitting a medical report. On this latter point, to which the Committee wishes to draw its attention, it is

¹³ Communication No. 59/1996 (Encarnación Blanco Abad v. Spain).

¹⁴ Communications No. 6/1990 (Henri Unai Parot v. Spain) and No. 59/1996 (Encarnación Blanco Abad v. Spain).

clear that the complainant maintains that his request for a medical examination in 1992 was refused, and that the State party challenges this allegation on the grounds that the complainant enjoyed appropriate care and proper medical supervision, as stipulated in the prison regulations, throughout his stay in prison. The Committee observes that this response by the State party is categorical and general and does not necessarily answer the complainant's precise affirmation that he asked the judge in 1992 to order a medical examination. Finally, the Committee refers to its consideration of the report submitted by Tunisia in 1997, at which time it recommended that the State party should arrange for medical examinations to be organized systematically when allegations of abuse were made.

10.8 In the light of its practice relating to article 13 and the observations set out above, the Committee considers that the breaches enumerated are incompatible with the obligation stipulated in article 13 to proceed to a prompt investigation

10.9 Finally, the Committee considers that there are insufficient elements to make a finding on the alleged violation of other provisions of the Convention raised by the complainant at the time of adoption of this decision.

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

12. Pursuant to rule 112, paragraph 5 of its rules of procedure, the Committee urges the State party to conduct an investigation into the complainant's allegations of torture and ill-treatment, and to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above.

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