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HUMAN RIGHTS COMMITTEE

Replies of the Tunisian Government to the list of issues (CCPR/C/TUN/Q/5) to be taken up in connection with the consideration of the fifth periodic report of TUNISIA (CCPR/C/TUN/5)*

[25 February 2008]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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Constitutional and legal framework within which the Covenant is implemented (art. 2)

1. Please indicate how article 32 of the Constitution of the Tunisian Republic, according to which treaties rank higher than laws, was applied during the period covered by the present report. Have the provisions of the Covenant been invoked directly before the courts or the administrative authorities? If so, under what procedures and with what results? Please also indicate whether the State party envisages accession to the first Optional Protocol to the Covenant.

Reply

The legal rule applying to all categories of treaties is laid down in article 32 of the Constitution, which states, inter alia, that "treaties ratified by the President of the Republic and approved by the Chamber of Deputies have higher authority than laws". The Constitution thus determines the position of treaties in the legal hierarchy of legal standard-setting instruments.

Once an international treaty has entered into force by means of an approving act and a ratifying decree, it becomes part of the national legal system and a binding higher source of law.

Everyone, including the courts and other constitutional powers of the State, must abide by the rule established in article 32 of the Constitution.

Since the courts must ensure compliance with the law, they are obliged to take account of treaties and apply them as soon as they form an integral part of current legislation.

Tunisian courts, including administrative courts, ensure that the rights embodied in international conventions are respected.

The incorporation of international instruments into the internal legal order has given rise to numerous debates in Tunisian courts. Contrary to the traditional position - namely that the provisions of international conventions that have been ratified and approved create obligations only for the States parties and may not therefore be invoked directly before domestic courts - ordinary and administrative courts have decided, in several cases that international instruments, including human rights instruments, may be directly invoked by litigants.

(a) Direct application of international human rights instruments by the ordinary courts

The ordinary courts have gradually abandoned their traditional position and in a variety of cases have espoused the view that international instruments, including human rights instruments, may be directly invoked by litigants.

In a judgement delivered on 27 June 2000 in case No. 34,179, the Tunis court of first instance, ruling on an action for authority to enforce an Egyptian act of "repudiation", rejected the application on the grounds that "repudiation constitutes a traditional and religious means of

dissolving a marriage, which rests on the wish of the husband alone, without any consideration of the interests of the family. It therefore contradicts Tunisian public policy as derived from article 6 of the Constitution, articles 1, 2, 7 and 16, paragraphs 1 and 2, of the 1948 Universal Declaration of Human Rights and articles 1, 2 and 16 (c) of the 1979 Convention on the Elimination of All Forms of Discrimination against Women".

In a judgement delivered on 18 May 2000 in case No. 7,602, the Tunis court of first instance, ruling on an action to obtain the cancellation of a contract of sale agreed by a non-Muslim widow in respect of the share of real estate she had previously inherited from her deceased Tunisian Muslim husband, dismissed the applicants' action and rejected the plea that the heiress, who was not a Muslim on the date on which the estate passed to the heirs, could not be included in the list of heirs entitled to succeed to the dead man's estate.

In its considerations the court asserts in substance that "the exclusion of the widow from the list of heirs on the basis of her religious faith contradicts article 88 of the Personal Status Code, which confines impediments to inheritance to intentional homicide ..." and that "non-discrimination on the grounds of religion is one of the principles underpinning the Tunisian legal order and constitutes an element of the religious freedom guaranteed by article 5 of the Constitution and proclaimed in articles 2, 16 and 18 of the 1948 Universal Declaration of Human Rights, article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights and article 2, paragraph 1, of the International Covenant on Civil and Political Rights, which have been ratified by Tunisia ...".

In decision No. 7,286 of 2 March 2001, on an appeal on points of law brought by a Tunisian father against an appeal court decision upholding a lower court judgement granting authority to execute a judgement of the Brussels Regional Court in a divorce case where childcare had been awarded to the Belgian mother, the Court of Cassation rejected the appeal and the pleas to the effect that the foreign court's decision on childcare ran counter to Tunisian public policy on the grounds that the husband in the mixed couple, and the father of the child, was Tunisian and a Muslim, and that it would prevent him from exercising guardianship of his child and deprive the child of an upbringing in the father's culture and religion, and that the lower courts had consequently violated the law by granting authority to execute the judgement.

In stating its reasons for rejecting this appeal, the Court of Cassation argues in substance that "the Tunisian legislature - in accordance with the provisions of the Convention on the Rights of the Child of 20 November 1989, which has been ratified by Tunisia - has considered the child's best interests in matters regarding the award of care ...", so that "Tunisian public policy is in no way disturbed by the foreign court's decision to give care of the child to the foreign mother since, in this case, the relationship in question is governed by private international law and the sole criterion that must prevail here is that of the best interests of the child."

In a judgement delivered on 2 December 2003 in case No. 53/16,189, the court of first instance of La Manouba, ruling on an action brought by the Public Prosecutor's Office to establish a child's filiation after paternity had been proved by a DNA fingerprint test, expressly based its judgement establishing filiation on the grounds that "filiation is a child's right and should not be impaired by the form of relationship chosen by the child's parents. For this reason, filiation as defined in article 68 of the Personal Status Code must be interpreted broadly in accordance with article 2, paragraph 2, of the Convention on the Rights of the Child, which was

ratified by the Act of 29 November 1991 and which protects the child against all forms of discrimination or penalty based on the status of the child's parents; depriving a child of their right to filiation on the grounds that their parents are not joined in wedlock effectively penalizes the child and violates one of their fundamental rights, quite apart from the discrimination between children that would result from the artificial introduction of a difference between legitimate and natural filiation".

In a decision delivered on 6 January 2004 in case No. 120, the Tunis Appeal Court, ruling on an appeal brought by the Tunisian heirs of a Tunisian woman married in Switzerland to a Belgian citizen against the judgement of the court of first instance granting the Belgian's application to have his wife's death certificate cancelled on the grounds that his name was not included among the heirs, rejected the appeal, upheld the first court's judgement and dismissed the appellants' arguments that the marriage contracted in Switzerland was null and void owing to the impediment constituted by the prohibition on Muslim women marrying non-Muslim men and, that consequently the husband could not be included among the list of legitimate heirs to the deceased's estate.

In the reasons it gives for its decision to reject the appeal the Court argues in substance that "the assertion that the difference in religion constitutes an impediment to marriage and therefore to inheritance is a violation of article 6 of the Constitution, which guarantees the principle of the equality of all before the law and introduces a difference in treatment between men, who are apparently free to marry non-Muslims, and women, who are apparently not, as well as a difference in treatment in matters of inheritance, contrary to the freedom of conscience and religion also guaranteed by the Constitution and by the international instruments ratified by Tunisia".

(b) Direct application of international human rights instruments by the administrative courts

The Administrative Tribunal has played a crucial role in this respect since the adoption of, inter alia, Act No. 39 of 3 June 1996 establishing the right of appeal in cases concerning challenges on grounds of illegality or unconstitutionality, Act No. 79 of 24 July 2001 establishing a cassation chamber at the Administrative Tribunal and Act No. 11 of 24 February 2002 establishing the right to challenge the constitutionality of legislative decrees, thereby lifting the immunity of legislative decrees under the previous system.

All these reforms have made it possible for the Administrative Tribunal to effectively ensure respect for the rights of the public and strengthen basic principles related to human rights, not least by referring expressly to the principles set forth in international instruments on the subject. The following summaries of decisions are provided by way of example.

Administrative Tribunal's protection of the right to freedom of opinion and expression

In a decision at first instance delivered on 1 June 1994 in case No. 2,193, the Administrative Tribunal, relying on both article 19 of the Universal Declaration of Human Rights and article 8 of the Tunisian Constitution, found that the administrative authorities could not lawfully include in the personnel file of its officials a reference to their political,

philosophical or religious beliefs, or criticize them on account of their personal beliefs unless, in the exercise of their duties, they had behaved in a manner that conflicted with the proper performance of those duties.

In a decision at first instance delivered on 14 April 2001, in case No. 18,600, the Administrative Tribunal reiterated its position on the same grounds.

Administrative Tribunal's protection of the right to freedom of association

In a decision at first instance delivered on 21 May 1996 in case No. 3,643, the Administrative Tribunal, relying expressly on article 22 of the International Covenant on Civil and Political Rights, annulled on grounds of illegality the decision of the Minister of the Interior classifying the Tunisian League for the Defence of Human Rights as a general purpose association. In its considerations, the Tribunal held that "since under article 32 of the Constitution, international treaties that have been ratified have higher authority than laws, the Minister's decision adopted in pursuance of Act No. 25 of 2 April 1992, supplementing Act No. 154 of 7 November 1959 on associations, was illegal".

In a decision at first instance delivered on 13 May 2003 in case No. 13,918, the Administrative Tribunal reiterated its position, on the same grounds.

Administrative Tribunal's protection of the right to freedom of marriage

In a decision at first instance delivered on 18 December 1999 in case No. 16,919, the Administrative Tribunal, relying on article 23 of the International Covenant on Civil and Political Rights, which recognizes the right of men and women of marriageable age to marry and to found a family without restriction, annulled on grounds of illegality, the administrative authorities' decision to dismiss an official of the internal security forces because he had failed to obtain prior authorization for his marriage to a foreign woman, as required by article 8 of the Staff Regulations of the internal security forces, since the administrative authorities had been unable to show that preventive grounds for requiring such prior authorization, including a potential threat to State security, existed in the case in question.

Not only do ordinary and administrative courts directly apply international human rights instruments, the Constitutional Council also plays a precursor role in that reference to the Court is mandatory in order to ensure the conformity of all draft legislation with the Constitution and of the domestic legal order with the international treaties that have been ratified.

(c) Obligatory reference to the Constitutional Council

The Constitutional Council is expressly instructed, under the Constitutional Acts of 27 October 1997 and 1 June 2002, to ascertain the conformity and compatibility of all draft laws with the Constitution, and in particular with its provisions concerning human rights. This supervision extends to organizational and ordinary draft legislation, as well as any amendments made to them, when they are adopted by the Chamber of Deputies and before they are

promulgated by the President of the Republic. It is also a precaution intended to ensure the conformity and compatibility of the text under examination with the provisions of the Constitution, as well as the domestic legal system's compliance with the international treaties that have been ratified. The Council then issues a reasoned opinion, binding on all parties, which is published in the Official Journal.

Admittedly this supervision relates solely to the provisions of the Constitution, but the hierarchy of texts is in itself constitutional, since under the above-mentioned article 32, ratified international treaties have "higher authority than laws". This is a peremptory norm, which means that the constitutionality of draft laws must be checked in the same way.

In opinion No. 02-2006 concerning a bill supplementing the Personal Status Code and adding article 66 bis, which establishes grandparents' right of access to their grandchildren, the Constitutional Council pointed out in its considerations inter alia that "the United Nations Convention on the Rights of the Child of 20 November 1989, which has been ratified by the Tunisian Republic, gives precedence to the child's best interests and the child's right to preserve their family ties and lays down rights and obligations not only of parents, but also, where applicable, of members of the extended family" and that "the fact of granting grandparents the right of access after the death of one of the parents, taking account of the best interests of the child, is likely to strengthen family ties and thus represents one aspect of family protection as provided by the Constitution and the principles accepted by the Tunisian Republic, and embodied in the United Nations Convention on the Rights of the Child". Hence the Constitutional Council concluded that the bill was in conformity with the Constitution.

In its opinion No. 32-2007 on a draft law approving the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, the Constitutional Council pointed out in its considerations inter alia that "the above-mentioned article 32 lays down that treaties ratified by the President of the Republic and approved by the Chamber of Deputies have higher authority than laws", that "the fact that the State has bound itself by international obligations does not constitute an abandonment of its sovereignty, but is rather an expression of that sovereignty" and that, for this reason, "having regard to the jurisdiction conferred upon the African Court of Human and Peoples' Rights and also on the basis of both the preamble to the Constitution proclaiming the will of the people to remain faithful to the human values that constitute the common heritage of peoples mindful of human dignity [...], and article 5 of the Constitution, by which the Tunisian Republic guarantees fundamental freedoms and human rights in their universal, global, complementary and interdependent meaning, the Protocol in question will, in the light of the foregoing, contribute to the achievement of these objectives without affecting the sovereignty of the State". Hence the Constitutional Council concluded that the bill approving the Protocol to the African Charter on Human and Peoples' Rights was in conformity with the Constitution.

In its opinion No. 56-2005 concerning a bill governing diving, the Constitutional Council took the view that the bill was not in line with the Constitution owing to the fact that article 17 of the bill provided for fines and prison sentences for a number of the offences it defined, which the Constitutional Council deemed to be contrary to the provisions of article 73 of the

United Nations Convention on the Law of the Sea of 1982, which had been ratified by Tunisia. This article stipulates that "coastal State penalties for violations of fisheries laws [...] may not include imprisonment [...] or any other form of corporal punishment". The Constitutional Council pointed out in its considerations inter alia that "under the terms of article 32 of the Constitution, treaties which have been ratified and approved have higher authority than laws" and that "it follows that article 17, as it stands, does not therefore comply with article 32 of the Constitution". Hence the Constitutional Council concluded that some provisions of the bill, in particular article 17, were not in conformity with the Constitution.

Lastly, in response to the Committee's question as to whether Tunisia intends to accede to the Optional Protocol to the International Covenant on Civil and Political Rights, Tunisia is already discussing the subject, and a commission comprising representatives of the ministries concerned is now studying the question.

2. Is the High Committee on Human Rights and Fundamental Freedoms in conformity with the Paris Principles (General Assembly resolution 48/134, annex)?

Reply

Tunisia decided in 1991 to establish an independent human rights institution.

The High Committee on Human Rights and Fundamental Freedoms was initially established by a decree granting it a number of powers.

Subsequently, the Committee's role and jurisdiction were revised.

The aim in this third phase is to turn the Committee into an independent institution in keeping with the Paris Principles, and a bill to that effect is in the process of adoption.

The Committee's activities have included visits to prisons, remand prisons, shelters or observation centres for minors and social bodies responsible for looking after persons with special needs, in order to ensure that national legislation on human rights and fundamental freedoms is implemented.

These visits are thorough and genuinely independent.

For example, the Committee has visited prisons and after each visit submitted a report to the President of the Republic.

Not only does the Committee present annual reports to the President of the Republic, it widely circulates other reports that have helped to spread the culture of human rights and fundamental freedoms.

Moreover the Committee may receive citizens' complaints and applications on issues of human rights and fundamental freedoms and may submit reports on those.

3. Please describe the problems encountered with regard to the enforcement of judgements (State party's report, para. 77). Please also supply information on the work of the Commission established to monitor the enforcement of judgements and describe the contested cases and the solutions found.

Reply

The history of administrative courts shows that they were initially part of the administration itself and could exercise merely advisory functions, or *justice retenue* (retained justice). This was the position in France, for example, where the system of *justice déléguée* (delegated justice) was not introduced until 1889, with the *Cadot* decision.

It is important to note that Tunisia did not pass through the system of retained justice and its administrative courts were set up as courts able to dispense delegated justice. Their decisions are therefore universally applicable, even to the administrative authorities.

The following table shows the number of Administrative Tribunal decisions which found against the administrative authorities between 2001 and 2007.

Year	Cases	%
2001	359	35.47
2002	332	31.59
2003	242	33.42
2004	169	26.04
2005	152	19.41
2006	223	26.83
2007	127	58.52

The difficulties sometimes encountered in the enforcement of Administrative Tribunal decisions prompted the authorities to introduce measures and mechanisms that might help to strengthen coordination among the various parties directly concerned. It must, however, be made clear that an appeal for compensation is a remedy that remains open to complainants.

In 2000 the Prime Minister set up two commissions to monitor the enforcement of judgements. The first is chaired by the Secretary-General of the Government and is responsible for monitoring the enforcement of judgements in annulment proceedings. The second is chaired by the Secretary of State for the Civil Service and Administrative Reform and is responsible for monitoring the enforcement of judgements concerning compensation (*plein contentieux*). It works in conjunction with the Ombudsman and the Administrative Tribunal itself.

In addition, a specialized chamber has been set up within the Administrative Tribunal to examine difficulties in enforcing judgements.

To date 236, or 66 per cent, of the 354 problem files examined have been resolved.

Furthermore a Prime Ministerial circular of November 2004 specified ways of coordinating the various State services with a view to monitoring the enforcement of decisions against the administrative authorities.

4. Please indicate the measures taken to ensure the independence of the judiciary.

Reply

Tunisia has been at pains to enshrine this independence in law and in practice, since it realizes that the independence of the judiciary is a prerequisite of the principle of legality and the fundamental guarantee of a fair trial, and is convinced that justice is one of the main pillars of the republican regime.

The independence of the judiciary rests on three main elements, i.e.:

- Article 65 of the Constitution, which stipulates that the judiciary shall be independent in the exercise of its functions:
    - The neutrality of the judiciary, which is affirmed in law and observed in the practice of Tunisian courts, and is thus a solid tradition; and
    - The recognized prerogatives of the High Council of the Judiciary in all matters connected with the status and conditions of judges.

The substantial material, ethical, social and scientific progress achieved in recent years from which the Tunisian judiciary has benefited are evidence of Tunisia's determination to further consolidate and promote the independence of the judiciary.

Judicial independence is guaranteed not only by the Constitution, but also by the law governing the selection of members of the High Council of the Judiciary. It is likewise safeguarded by the Council's power not merely to give opinions but to take enforceable decisions concerning recruitment, appointment, promotion, transfer and discipline.

The Tunisian Constitution defines the Council's role in article 67, which states, "The High Council of the Judiciary, whose composition and powers are determined by law, ensures the application of the guarantees accorded to magistrates in the matter of nomination, advancement, transfer, and discipline."

The membership and functioning of the Council are determined by the Act of 14 July 1967, which has been amended several times. The most recent amendment was introduced by the Organization Act of 2005.

The Council consists of 18 judges. It is chaired by the President of the Republic. In addition to the Minister of Justice, who is its Vice-Chair, it includes eight permanent members chosen from among senior judges, two female judges who are appointed for a renewable two-year term and eight judges elected by colleagues representing the three levels of courts.

The Council gives its opinion on the junior magistrates' files before they are submitted to the Head of State for appointment. It also decides on the appointment, promotion and transfer of judges on the basis of predetermined criteria.

The Council draws up and revises an aptitude list and promotion table, on which a judge's promotion to a higher grade depends. It investigates complaints regarding their contents and may extend the time a judge must wait for promotion.

In addition the High Council of the Judiciary is the disciplinary board of the judiciary. It decides whether to lift the immunity of judges accused of a crime or offence, and acts as the disciplinary board for judges who have committed disciplinary offences.

As to whether the principle of the independence of the judiciary under article 65 of the Constitution applies in practice given that the Council is chaired by the President of the Republic, it must be explained that this arrangement is nothing new and is more symbolic in nature. Moreover, in practice, the fact that the President chairs the Council in no way impinges on judicial independence, since any decisions regarding judges' careers are prepared and taken by their peers before the Council meets.

Comparative law shows that this model is applied in many countries' legal systems.

Judges are recruited on the basis of a competitive examination. The examination is set and organized by the Minister of Justice and Human Rights.

As required by law, judges exercise their judicial functions independently on the basis of their professional appraisal of the facts and in keeping with the spirit of the law, and free of outside influence.

Judges are independent of society in general and of the parties to the dispute under examination.

Although judicial corruption is virtually non-existent in Tunisia, the High Council of the Judiciary looks into all cases that might involve corruption very thoroughly. In two cases it was required to rule on, two judges were dismissed by a decision of the Council.

Measures to combat terrorism; respect for the rights guaranteed in the Covenant

5. Please provide detailed information on the legislation in force relating to the campaign against terrorism and give the definition of terrorism and/or terrorist acts, with particular reference to their compatibility with respect for the human rights guaranteed by the Covenant.

Reply

Tunisia's domestic legislation is in conformity with the international instruments to which it has acceded.

Long before the attacks of 11 September 2001, terrorist acts adversely affecting the security of individuals, groups or property were treated as serious offences attracting severe penalties under Tunisian criminal legislation.

On 22 November 1993, eight years before the adoption of Security Council resolution 1373 (2001), Tunisia amended its legislation to create the offence of incitement to hatred and violence. Since the adoption of the resolution, it has joined the international community in the fight against terrorism.

Tunisia has also enacted a comprehensive law dealing with terrorism and money-laundering (Act No. 2003-75 of 10 December 2003 concerning support for international efforts to combat terrorism and prevent money-laundering).

The main aim of the Act, set out in article 1, is to contribute, inter alia, "to supporting the international effort to combat all forms of terrorism, tackling the sources of financing of terrorism and suppressing money-laundering".

It was through this law that Tunisia incorporated in domestic legislation the provisions of international conventions that have a bearing on the fight against terrorism and the relevant resolutions of the United Nations Security Council and General Assembly. Article 1 of the Act stipulates that counter-terrorist action must be conducted "within the framework of the international, regional and bilateral conventions ratified by the Republic of Tunisia and in compliance with constitutional guarantees".

(a) The fight against terrorism

Act No. 2003-75 concerns the prevention and criminal prosecution of terrorist acts (arts. 12 to 25) and the prevention and criminal prosecution in Tunisian territory of all forms of financing, preparation or perpetration of terrorist acts targeting other States and their citizens (arts. 13, 14 and 15).

Furthermore, the Act defines the crime of terrorism and assimilated offences (incitement to hatred, racism, religious extremism, etc.). It imposes the obligation to report suspicious or unusual transactions and to freeze the funds involved.

According to the criteria set forth in chapter IV of the Act, a terrorist crime is any individual or collective act, the purpose of which is to terrorize a person, a group of persons or a population with a view to influencing a State's policy, compelling it to act in a particular way or preventing it from so acting; disturbing public order or international peace and security; attacking persons or property; damaging the premises of diplomatic or consular missions or international organizations; inflicting serious damage on the environment, thereby seriously endangering the life and health of the population; or harming vital resources, infrastructure, means of transport and communication, information systems or public facilities.

(b) The fight against money laundering

The Tunisian legislature, aware of the involvement of organized crime in terrorist activities (particularly illicit drug and weapons trafficking and theft), decided to classify money-laundering transactions as an offence.

Under Tunisian law, the financing of terrorism now constitutes an offence in its own right attracting penalties of from 5 to 12 years' imprisonment.

The Act guarantees the institution of criminal or extradition proceedings against anyone who participates in the financing, organization, preparation or perpetration of terrorist acts or who provides any support for such acts. It further permits the identification, detection, freezing and seizure of assets.

With a view to precluding the risk of abusive implementation of the Act, the Tunisian legislature stipulated in article 67 that the confiscation of laundered assets and the proceeds flowing directly or indirectly from the offence of laundering and their transfer to the State must be ordered by a court.

Accepting also the importance of a preventive approach in seeking to counter illicit financing channels, the legislature set up a Financial Investigation Committee which is tasked, inter alia, with looking into suspicious operations and transactions and may seek assistance in that regard from its foreign counterparts.

The Financial Investigation Committee exemplifies the cooperation that takes place between the different bodies involved in investigating money-laundering transactions. It is composed of representatives of the country's various judicial and financial bodies and security services, thereby facilitating more effective coordination of their efforts to keep track of suspicious operations and transactions and hence to eliminate illicit financial channels and counteract the financing of terrorism and money-laundering.

(c) Judicial counter-terrorism mechanisms

Act No. 2003-75 provides for a number of criminal measures that can contribute to effective counter-terrorist action:

- Centralized prosecution: the Act assigns responsibility for investigating terrorist offences, initiating proceedings and trying the offenders to judicial police officers and judicial authorities in the capital. This choice was largely motivated by the fact that these authorities have become highly conversant with the complex structures of terrorist groups through the number and types of cases they have had to deal with.

- The establishment of a judicial body that specializes in the fight against terrorism.

- Closer cooperation among the different authorities responsible for counter-terrorist action (judicial police, prosecuting, investigation and trial authorities, persons subject to compulsory reporting requirements and financial investigation unit).

(d) The fight against terrorism and respect for human rights

The drafters of Act No. 2003-75 drew on relevant international norms and took pains to ensure that the provisions of the new Act were in conformity with those of Security Council resolution 1373 (2001) and met the following two basic requirements:

- Establishment of a comprehensive law-enforcement regime with the capacity to act with the requisite dispatch to ensure the surveillance and prosecution of terrorists and to guarantee the security of individuals, especially those targeted by terrorists. Given the

threat to such persons from terrorist organizations, the Tunisian legislature accorded them special protection and included a provision permitting the identity of judicial police officers or members of judicial bodies dealing with cases of terrorism to be kept secret.

- Judicial supervision of the preliminary inquiry and investigations conducted by judicial police officers executing requests for judicial assistance.

The Tunisian legislature thus enhanced the protection of individual freedoms, in conformity with the protection afforded by the Constitution (for instance in article 12, which stipulates that "police custody shall be subject to judicial review and a court order shall be required for pretrial detention. No one may be placed arbitrarily in police custody or detention.") and in line with the recommendations concerning the protection of human rights and fundamental freedoms contained in international instruments.

Furthermore, Tunisian legislation makes no provision for administrative measures that restrict individual freedoms, but it authorizes judicial police officers to order a suspect to be taken into police custody in connection with a preliminary inquiry or a request for judicial assistance, and it authorizes the investigating judge to order a suspect to be placed in pretrial detention in the context of a preliminary investigation.

The periods for which persons may be held in policy custody and pretrial detention for ordinary offences are the same as those for terrorist offences.

Tunisia has not established a special court to hear cases involving terrorist offences, which still fall within the jurisdiction of the ordinary courts.

Perpetrators of terrorist offences enjoy the right to be presumed innocent and are guaranteed a fair trial.

The terrorist threat is not confined to the realm of theory. Tunisia's geopolitical situation is particularly sensitive, and that increases the seriousness of the terrorist risks to which it is exposed. Thanks to a comprehensive and well-balanced strategy from which no conceivable counter-terrorist plan of action has been omitted, Tunisia has succeeded in preventing a terrorist crisis. Alongside its legislative strategy, the fight against poverty, commitment to a message of tolerance and reform of the education system constitute the four pillars on which Tunisia has based its fight against the terrorist threat.

The terrorist risk is nevertheless particularly difficult to eradicate. Tunisia has been made painfully aware of that fact on a number of occasions. In April 2001, a tanker truck was blown up in the suicide bombing of a thousand-year-old synagogue on the picturesque island of Djerba, a lethal attack that claimed the lives of several tourists. In December 2006 and January 2007, a heavily armed group infiltrated the country to try to blow up public buildings. Its members were involved in violent armed clashes with the law-enforcement agencies, which succeeded in neutralizing them, but two members of the Armed Forces lost their lives in defending our country's security against the terrorists.

These incidents are just two examples of the seriousness of the terrorist threat faced by Tunisia.

Tunisia remains firmly committed to the fight against terrorism in the context of the legislation and preventive actions just described. Its aim is to strike a balance between effective action against terrorism and respect for the rights of persons prosecuted in that connection. As has been noted in a number of countries, maintaining balance between the two concerns, which are sometimes necessarily at variance, is not always an easy task.

Non-discrimination and equal rights of men and women (arts. 3 and 26)

6. Please provide information on the scale of violence against women, including domestic violence, and the measures taken to remedy it. Please provide statistics covering the last five years concerning the number of complaints recorded concerning violence against women, the investigations and prosecutions following those complaints, the types of penalties handed down and the compensation awarded to the victims or their families. Does the State party envisage criminalizing marital rape? Please comment on the compatibility of the provisions of article 218 of the Criminal Code, concerning withdrawal of a case by a victim who is the (grand)parent or spouse, with the provisions of the Covenant.

Reply

The Personal Status Code promulgated in 1956 protects women against all forms of violence, guarantees them full capacity to seek legal remedies and includes various arrangements for compensation. The 1993 reforms pursuant to which certain articles of the Personal Status Code and the Criminal Code were amended led to tangible progress in efforts to counteract violence.

Former article 23 of the Personal Status Code required a wife to obey her husband and to "perform her conjugal duties in accordance with usage and custom". Pursuant to Act No. 93-74 of 12 July 1993, (new) article 23 of the Code stipulates that "each spouse shall be considerate of, maintain good relations with and avoid causing injury to the other". To that end, it institutes a new kind of relationship within married couples based on complementarity and independence. The wife is no longer treated as her husband's chattel but acquires legal personality in her own right, with the same rights and duties as her spouse.

Article 31 of the Personal Status Code entitles a woman who has been the victim (or whose children have been the victims) of assault and battery involving even light injuries inflicted by the father or husband to file for divorce on the ground of the harm suffered, and to obtain maintenance, accommodation, custody and compensation in cash for the material and non-material damage caused by her husband.

In addition, domestic violence is punishable under criminal law with a term of imprisonment of up to two years. The Act of 12 July 1993 amending article 218 of the Criminal Code treats the marital relationship as an aggravating circumstance that warrants a harsher penalty. According to (new) article 218, "any individual who wilfully commits assault or battery

or any other act of violence or assault ... shall be punished by imprisonment for one year and a fine of 1,000 dinars. If the perpetrator of the assault is a descendant or spouse of the victim, the penalty shall be two years' imprisonment and a fine of 2,000 dinars".

Records of the Public Prosecutor's Office showing trends in cases of domestic violence

Action	Judicial year				
	02-03	03-04	04-05	06-05	07-06
Referral	6 799	6 277	6 671	7 252	7 820
Record of proceedings	3 905	3 792	4 486	5 192	5 750
Discontinuance or withdrawal	1 558	1 857	1 652	2 021	2 204
Referral to the cantonal court	353	243	284	504	318
Referral to the criminal court	1 589	1 972	2 091	1 710	2 217
Opening of an investigation	7	9	54	131	45
Discontinuance on other grounds	398	500	405	826	966

Marital rape, like all other forms of rape, is a crime under Tunisian law. It falls under articles 227 and 227 bis of the Criminal Code. It should be stressed in this regard that neither of these articles treats the status of spouse, under any circumstances, as a status that confers immunity from prosecution or as a mitigating circumstance for the assailant. The law is thus applicable to everyone and rape is deemed to have occurred in the absence of consent on the part of the woman.

In practice, there do not seem to have been any complaints of marital rape. Several women's rights associations have mounted campaigns to make women aware of their rights and have established listening and counselling centres for women victims of any kind of assault. The courts will not fail to prosecute, and where appropriate punish, any cases of marital rape that are referred to them.

With regard to adultery, unlike other countries belonging to diverse cultural traditions, Tunisia places adultery by women and by men on an absolutely equal footing. Article 236 of the Criminal Code is particularly explicit in this regard, since it punishes "adultery by the husband or the wife" without making any distinction.

By the 1993 reform, the legislature abrogated article 207 of the Criminal Code, which granted extenuating circumstances to a husband who killed his wife on discovering her in the act of adultery. This crime now attracts the penalty applicable to homicide, namely life imprisonment. There is no longer any distinction between men and women under Tunisian law in terms of the crime of adultery.

With regard to the types of penalties imposed, they can be pecuniary or custodial depending on the seriousness of the facts of the case. The right to compensation is recognized. Damages should be commensurate with the harm suffered. Compensation is awarded for bodily injury and material and non-material damages.

7. Please comment on the compatibility of article 58 of the Personal Status Code, concerning the right to custody of children, with articles 3 and 26 of the Covenant.

Reply

The purpose of article 58 of the Personal Status Code is to establish the conditions to be fulfilled by the person responsible for a child's custody, while articles 3 and 26 of the International Covenant on Civil and Political Rights establish the principle of equality and non-discrimination, particularly on grounds of sex, race or religion.

A careful reading of article 58 of the Personal Status Code leads to the conclusion that it does not treat the sexes unequally and that it makes no provision for discrimination. This conclusion is based on the fact that article 58 accords no special privileges to either sex when it comes to determining who should be awarded care of the child. Attribution of custody is based on a fundamental criterion that is effectively neutral in respect of those seeking custody of the child, namely the criterion of the child's best interest, which is reaffirmed as a general principle in the Child Protection Code adopted on 9 November 1995 (I). Moreover, the courts have consistently sought to consolidate the egalitarian spirit underlying article 58 by emphasizing the principle that the sole criterion that should guide a court's decision when awarding care is the best interest of the child. This judicial practice has the merit of ruling out all considerations of a discriminatory nature when custody is awarded (II).

I. CONFORMITY OF ARTICLE 58 WITH THE PRINCIPLE OF EQUALITY

Inequality means according a person privileges solely on the grounds of sex, race or religion. It must be recognized in this connection that the Tunisian legislature has never sought to use article 58 as a means of giving one sex precedence over the other. The sole purpose of article 58 is to establish objective conditions for ensuring that custody is awarded to the parent who is best equipped to raise the child in conditions conducive to their full physical, spiritual and intellectual development.

All the conditions laid down in article 58 are thus intended to achieve the same objective, which is to safeguard the best interest of the child. None of the conditions is designed to favour any person claiming care of the child. Pursuit of the child's best interest determines the choice of these conditions and constitutes their sole function. It follows that neither men nor women are necessarily given preference when it comes to granting care of the child. It is clear from a close examination of the conditions laid down in article 58 that none of them is in any way vitiated by inequality or discrimination:

- The condition of having reached the age of majority: as no distinction is made in terms of age between men and women, the two sexes become eligible to apply for custody at the same age.

- The condition of being in full possession of one's mental faculties: there is no provision for discrimination in this regard.

- The condition of honesty: this is equally applicable to men and women.

- The condition of being able to provide for the child's needs: this is required of the two sexes without discrimination.

- The condition of being free of any infectious disease: this is a neutral condition that cannot entail any form of discrimination.

- The condition that a man with custody should have a woman available to look after the child: clearly, this condition is applicable solely to men and in no way subjects women to unequal treatment. There can be no question here of discrimination against women. Moreover, this condition flows as a matter of course from the nature of custody, which should provide a child deprived of a mother's love and protection with an alternative source of female affection.

- The condition that a man with custody or the husband of a mother with custody should be related to the child to a degree that precludes marriage. The sole purpose of this condition is to protect the child and it cannot be attributed to any discriminatory motivation. The legislature demands kinship with the child to a degree that precludes marriage as an additional protection for female children against abuse by a man with custody or the husband of a mother with custody.

- The "condition" that a woman with custody should not be married: it should be stressed that this condition is neither general nor automatic.

Firstly, this is not a general condition because it is not applicable in cases where the person with custody is the mother and legal guardian of the child, i.e. where the father is deceased, absent or incapable. Moreover, the condition that a woman with custody should not be married is not applicable in cases where the child is breastfeeding.

Secondly, the condition that a woman with custody should not be married is not automatic, since it is applicable only if the court does not decide otherwise. In other words, the criterion that determines the court's final decision is the best interest of the child. It may therefore be concluded here again that the decision to award care will in practice now be taken in the light of the child's best interest rather than of the unmarried status of the woman. Article 58 contains a clear directive which requires the court to reach its decision on the basis of the "interest of the child". Whether or not the woman is married thus becomes a marginal factor since the child's best interest takes precedence. It follows that a woman's marriage is no longer an impediment to custody. A married woman is perfectly entitled to be awarded custody if the child's best interest so requires. Being unmarried is no longer a real condition for awarding a woman custody. Only the child's best interest should be taken into account. This position is furthermore upheld in Tunisian case law, which, in a courageous and progressive interpretation of the law, has found that the sole criterion for awarding custody is the best interest of the child.

II. PRINCIPLE OF EQUALITY UPHELD IN CASE LAW

It is the criterion of protection of the child's best interest that guarantees full equality between parents in terms of the award of care. Men and women are thus on a perfectly equal footing when it comes to obtaining custody of the child, since it is the child's best interest that enables the court to decide between them. The courts can take credit for having first introduced and adopted the criterion of the child's best interest in Tunisian law, well before the legislature became involved. There was no mention of the notion of the child's interest in the Personal Status Code when it was promulgated in 1956. It was the Tunis Appeal Court which, in a burst of creative energy, introduced the notion into Tunisian law by stating clearly and precisely, in a judgement handed down on 29 May 1958,[1] that the award of custody should be based on "the interest of the child".

The legislature's amendment of the Personal Status Code by the Act of 3 June 1966, which introduced the criterion of the child's interest, thus endorsed the innovative jurisprudence giving the child's best interest precedence when custody is awarded. This innovative momentum has continued unabated and the case law has been confirmed on a number of occasions. Two examples may be cited here: first, the proclamation of the best interest of the child as the sole criterion for awarding custody; and, second, the declaration that, in custody cases, courts are prohibited from basing their decisions on discriminatory considerations of any nature whatsoever.

For its part, the Court of Cassation held in a judgement of 26 February 1991[2] that "the best interest of the child is the guiding principle and sole criterion" to be taken into consideration when awarding custody. In another judgement of 8 March 1994,[3] the Court of Cassation held that the best interest of the child is "the sole consideration on which the court's decision should be based". The Court reiterated its position in equally forceful terms in a judgement of 1 April 1997.[4]

Using these clear and precise terms, the Court of Cassation has declared that the award of care shall be based on a single criterion, that of the child's best interest. By ceasing to cite article 58 of the Personal Status Code, the Court of Cassation has made clear its determination to consolidate all conditions governing the award of custody in a single condition, namely protecting the best interest of the child. It is a courageous position that demonstrates the

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[1] Tunis Court of Appeal, judgement No. 16,980 of 29 May 1958, *Revue de la jurisprudence et de la législation*, 1959, No. 6, p. 54.

[2] Civil Cassation, judgement No. 26,406 of 26 February 1991, *Bulletin des arrêts de la cour de cassation*, 1991, p. 142.

[3] Civil Cassation, judgement No. 38,775 of 8 March 1994, *Bulletin des arrêts de la cour de cassation*, 1994, p. 282.

[4] Civil Cassation, judgement No. 54,808 of 1 April 1997, *Bulletin des arrêts de la cour de cassation*, 1997, p. 281.

judiciary's role as innovator and its contribution to the development of positive law. This position makes it impossible for discriminatory factors to influence a court's judgement when awarding custody.

The Court of Cassation has also reaffirmed the absolute equality of parents when it comes to awarding custody of children from mixed marriages. The problem arose when one school of thought argued that a mother of foreign nationality who was not resident in Tunisia could not be granted care of her children. In a remarkable judgement of 2 March 2001,[5] the Court of Cassation stated in forceful terms that "the best interest of the child must be the sole criterion for awarding custody and all other considerations are barred". The "other considerations" barred by the Court of Cassation are those based on the mother's foreign nationality, her residence abroad and her religion. This position graphically illustrates the fact that no discrimination based on sex, race or religion is acceptable under Tunisian law. Moreover, this is the explicit purport of articles 3 and 26 of the Covenant.

Right to life (art. 6)

8. Please indicate the numbers of persons sentenced to death, the crimes for which they were sentenced and the number of death sentences pronounced in absentia. Since there have been no executions since 1991 (State party's report, para. 142), does Tunisia envisage ratification of the second Optional Protocol to the Covenant?

Reply

Tunisian legislation permits the death penalty for certain crimes. However, the legislature's policy is restrictive in this regard. In contrast to the situation in several countries belonging to the same cultural sphere as Tunisia, homicide is not always punishable by death. The death penalty is applicable only where there are aggravating circumstances such as premeditation or if the homicide is preceded by rape.

Eighty-seven people are currently under sentence of death (84 men and 3 women).

The following table shows the total number of persons sentenced to death since 1991, with a breakdown by type of offence.

Type of offence	Number of persons sentenced
Intentional premeditated homicide	46
Intentional homicide preceded by rape	11
Intentional homicide preceded by indecent assault	5
Intentional homicide followed by robbery with aggravated assault	25
Total	87

[5] Civil Cassation, judgement No. 7,286 of 2 March 2001, *Revue de la jurisprudence et de la législation*, 2001, No. 1, p. 183.

The number of persons sentenced to death in absentia is 14.

Article 6 of the Covenant does not impose an obligation to abolish the death penalty but adopts a very restrictive approach, which is in line with that adopted by Tunisia.

With regard to Tunisia's intention to accede to the second Optional Protocol to the Covenant, it should be noted that the matter is already under discussion.

Tunisia has not carried out any execution since 1991. The Head of State has expressed strong reservations regarding execution on many occasions. As recently as December 2007, the President stated clearly in an interview with a French newspaper: "I shall never sign an execution warrant for a person sentenced to death." This means that Tunisia is a de facto abolitionist State.

Prohibition of torture and cruel, inhuman or degrading treatment, right to liberty and security, treatment of prisoners (arts. 7, 9 and 10)

9. Although new national legislation prohibits arbitrary arrest and detention (State party's report, paras. 167-179), it appears that such practices are in use and that they particularly affect human rights defenders. Please comment. Please also state whether the law and practice of the State party permit any person who is arrested or detained to take proceedings before a court so that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful, in accordance with article 9 of the Covenant. Is the right to legal counsel also guaranteed, and in what way?

Reply

It should be noted, in addition to the information provided in the report, that domestic legislation prohibits arbitrary arrest and detention. Allegations of the arbitrary arrest and detention of human rights defenders are entirely unfounded. Human rights defenders, like all other citizens, enjoy all the rights guaranteed by law, in conformity with the principle that all citizens are equal before the law, set forth in article 6 of the Constitution.

Moreover, anyone who is unlawfully arrested or detained has the right to file a complaint with the Public Prosecutor's Office with a view to prosecuting the person or persons responsible for the arbitrary arrest or detention. Article 103 of the Criminal Code strictly prohibits any infringement of a person's individual liberty and punishes with five years' imprisonment any public official who infringes other people's individual liberty.

The Tunisian authorities take care to ensure compliance with legal provisions whenever there is an allegation of arbitrary detention. The State is committed to preserving the security and liberty of all its citizens and does not stand idly by when a case of arbitrary detention is reported. The Public Prosecutor's Office quite frequently pays unannounced visits to holding centres, checking arrest registers and conditions of detention.

It should be noted that all arrested persons, as stated in the report, enjoy all legal guarantees, including the assistance of a lawyer in the event of a request for judicial assistance.

With regard to the allegations regarding human rights defenders, only one person claiming to be a human rights defender was held by an international body to have been the victim of arbitrary detention, contrary to Tunisia's view.

10. Notwithstanding the promulgation of the Act of 14 May 2001 on the organization of prisons (State party's report, paras. 188-189), the conditions of detention appear to give cause for concern. Please provide more detailed information on the results of, and follow-up to, the investigations conducted by the commission of inquiry on living conditions in prisons (State party's report, paras. 195 ff).

Reply

In 2001, prison administration was transferred from the Ministry of the Interior to the Ministry of Justice and Human Rights.

With a view to improving prison conditions, new regulations were introduced under the Act of 14 May 2001 on the organization of prisons, and prisoners are now separated by sex, age and type of offence. The Act also prepares prisoners for life after prison, allowing them (a) to take up paid employment, in accordance with the provisions of the Covenant, and (b) to take a training programme that will help with rehabilitation and resumption of work.

Tunisia's concern at the situation in its prisons was confirmed by the establishment in 2002 of a commission of inquiry into prison conditions in Tunisia. Commission members met with several prisoners in their cells in complete freedom. The detainees confirmed that their prison conditions have improved in recent years. The commission's report included an analysis of the problem of overpopulation in some prisons, the consequent shortage of beds and the impact that has had on the physical and psychological health of the inmates.

The commission also looked at the special programmes that have been developed for teaching illiterate inmates and for vocational training as well as sporting and cultural activities organized for inmates' benefit.

Recommendations were then made to further improve prison conditions.

Based on the commission's recommendations following visits to the various prisons, measures have been adopted to further improve prisoners' living conditions and facilitate their social reintegration.

These measures include:

- A review of the situation of defendants awaiting trial; pretrial detention should be an exceptional measure

- Introduction of forms of release with or without bail for offences without serious consequences for people or property

- Continued implementation of the Act on community service as an alternative to imprisonment for certain offences, while helping those concerned and the establishments that take convicted persons to see the benefits of the Act and the value of such measures

- Completion of the multidisciplinary health unit programme by installing units in the two prisons yet to be equipped

- Speedier installation of X-ray equipment in prisons that do not yet have it and are a long way from hospitals

- Improvements to health care and reinforcement of medical and psychiatric provision to ensure better monitoring of detainees' physical and psychological health

- A review of conditions for granting rehabilitative remission, so as to provide as many prisoners as possible with a permanent source of income after their release from prison

- Strengthening of the retraining programme for officials in the prison and rehabilitation services

- Due emphasis on vocational training programmes and sporting and cultural activities for detainees, and special education programmes for illiterate prisoners

- Sentence enforcement judges in prisons to be allowed to devote all their time to their proper tasks in order to strengthen their role in monitoring prison conditions and the enforcement of sentences, and helping detainees to obtain parole. In fact, sentence enforcement judges obtained parole for 545 prisoners in 2003.

Moreover, the scope of action of sentence enforcement judges has been extended to cover a number of questions, such as:

- Authorizing prisoners to visit their relatives in hospital or at home, in accordance with the law

- The right to inspect the record of disciplinary cases

- Authorizing prisoners to take their baccalaureate or master's examination

- Authorizing prisoners to attend relatives' funerals, in accordance with the law.

In addition to these measures, and to reduce prison overcrowding, new prisons have been built, including one in Sfax to replace the old prison there and another in Mornaguia to replace the old prison in Tunis. New wings have also been built in the prisons of Borj Erroumi, Borj El Amri, Sers and Saouaf.

The total number of beds has increased from 18,873 (2003) to 24,900 (2007), there are now 790 showers, 2,160 drinking water taps and 1,520 toilets.

The following improvements have also been made in the provision of care and support:

- Improved medical care: automatic check-ups on admission; installation of equipped medical units; presence of a full-time physician-in-charge and part-time medical specialists; free medical consultations, medicines and care; transfer of sick prisoners in need of external medical care to civilian hospitals; medical and psychological care for pregnant women and breastfeeding mothers and their children

- Reinforcement of the medical and paramedical framework:

Function		2003	2004	2005	2006	2007
Specialist		3	3	6	5	5
General practitioner		26	30	28	30	30
Special agreements	General practitioner	17	17	12	15	15
	Dentist	12	12	12	9	9
	Specialist	36	34	37	36	36
Pharmacist		-	1	1	1	1
Senior technician		5	5	15	15	15
Assistant		2	2	2	2	2
Nurse		195	202	222	227	240

- Installation of medical units in Mornaguia, Gabès and Nadhour prisons

- Purchase of modern medical equipment: dental unit (all prisons), ophthalmological unit (Mornaguia, Borj-Elamri, Mornag), radiological unit (Bizerte, Mornaguia, Sfax), physiotherapy unit (Borj-Roumi, Mornaguia, Sousse, Sfax), ultrasound (Mornaguia), ECG scanner (all prisons), glucometer (all prisons)

- Care and treatment of drug addicts: 2003 (112), 2004 (43), 2005 (113), 2006 (159), 2007 (148)

- Improved psychological assistance for inmates: interview on admission, individual treatment, case studies, group therapy, peripatetic psychological counselling services.

In order to improve psychological services to detainees, 11 psychologists were recruited between 2003 and 2007.

- Improvement of social services and post-release support: establishment of a social service in all prisons; admission interview; help with maintaining family ties; action to provide material support to needy families; social surveys and studies; action to rehabilitate inmates eligible for release. Post-release support is aimed at those eligible for release and provided in close consultation with the family, regional and local authorities and relevant organizations and associations.

In order to improve social services to prisoners, 10 sociologists were recruited between 2003 and 2007.

- Strengthening of family ties: visits without physical barriers for 92,036 prisoners, as follows: 2003 (13,902), 2004 (19,081), 2005 (15,108), 2006 (22,128), 2007 (21,817)

Since 1992 the prisoner rehabilitation programme set up to facilitate social reintegration has been offered twice a year, on 25 July and 7 November. It has three main components: occupational rehabilitation, social and psychological rehabilitation and cultural rehabilitation. It is certified by final vocational training examinations, with certificates from the competent authorities and a presidential pardon.

Prisoner rehabilitation programme: number of sessions and certificates awarded

Year	Sessions	Rehabilitated prisoners			Certificates			
		Men	Women	Total	Professions	Crafts/trades	Agriculture	Total
2003	24	129	1	130	29	73	26	128
	25	93	2	95	58	12	25	95
2004	26	403	18	421	215	59	147	421
	27	236	3	239	162	18	59	239
2006	28	506	11	517	338	52	127	517
	29	328	4	332	202	24	80	306
2007	30	329	6	335	206	40	74	320
	31	348	5	353	200	37	86	323
Overall total		2 372	50	2 422	1 410	315	624	2 349

Adult education programme: all prisoners who cannot read or write have access to the national adult education programme launched in 2000. The programme is run jointly with the Ministry of Social Affairs, Solidarity and Tunisians Abroad.

Year	Basic programme	Supplementary programme	Total
2003	272	306	578
2004	325	329	654
2005	302	318	620
2006	330	374	704
2007	406	324	730
Overall total	1 635	1 651	3 286

Secondary and higher education programme: prisoners attending secondary schools or universities can continue their studies and take their examinations with the authorization of the Prisons and Rehabilitation Department.

Year	Baccalaureate		Higher education
	Candidates	Passed	
2003/04	5 + 1 French baccalaureate	1 1	3 MBA: 1 Level 2: 2
2004/05	6 + 1 French baccalaureate	2 1	3 Masters in law: 1 Level 1: 2
2005/06	9 + 1 French baccalaureate	1 1	12 Level 3: 1 Masters: 2 Level 2: 1 Level 1: 8
2006/07	12 + 1 French baccalaureate	2 1	14 Level 3: 1 Masters: 3 Level 2: 4 Level 1: 6

Supervision and monitoring methods:

- Unannounced visits to prisons by the High Committee on Human Rights and Fundamental Freedoms: one in 2004, two in 2005, one in 2006, two in 2007
- Monitoring visits by the Minister of Justice and Human Rights
- Supervision and monitoring visits by the Director of Prisons and Rehabilitation
- Full or selective inspections organized by the Department of Prisons and Rehabilitation.

11. Please indicate the number of complaints recorded concerning torture or ill-treatment by public officials and supply information on the investigations, prosecutions, convictions and compensation resulting from those complaints. Please provide more information on the mechanisms permitting consideration of complaints of torture or ill-treatment made against public officials at all stages of deprivation of liberty. In particular, to what extent are those mechanisms independent? Do non-governmental organizations have access to places of detention and on what terms?

Reply

To prevent abuse, Tunisian law has established a whole arsenal of penalties for perpetrators of torture or ill-treatment against prisoners. To back up the law, it has also set up effective human rights protection mechanisms.

Numerous judicial and non-judicial mechanisms are in place, which permit consideration of complaints of torture or ill-treatment made against public officials at all stages of deprivation of liberty.

These mechanisms have made it possible for alleged victims of abuse and violations by police officers, the National Guard or prison officials, to file complaints against them, take legal action in the courts and obtain compensation for the harm they have suffered.

Unfortunately the Tunisian State does not have statistics showing the number of complaints made against the law-enforcement officers, since until recently the statistics and data-collection system covered only cases that have gone to court and not all the complaints brought. However, a review of court records shows that there have been a number of cases in which police officers, members of the National Guard or prison officials were brought before the courts for offences of various kinds relating to the performance of their duties.

I. Judicial mechanisms

The ordinary courts try cases against perpetrators or accomplices (public officials) for acts of violence, ill-treatment or abuse of authority and hand down severe penalties where guilt is established.

The following decisions illustrate the effectiveness of these judicial mechanisms (criminal and civil) to the extent that they convict the perpetrators and compensate the victims.

Decision No. 6,651 of 1 July 1992 by the Mednine Court of Appeal: a National Guard officer was sentenced to a four-month suspended prison sentence for acts of violence by a public official in the performance of his duties under article 101 of the Criminal Code.

Decision No. 1,120 of 25 January 2002 by the Tunis Court of Appeal: three prison officers were sentenced to four years' imprisonment for acts of violence against a prisoner, causing permanent disability of more than 20 per cent, under articles 218 and 219 of the Criminal Code; the State was ordered to pay the victim 307,000 dinars in compensation.

Decision No. 788 of 2 April 2002 by the Tunis Court of Appeal: a police officer was sentenced to 15 years in prison for deliberate assault and involuntary homicide under article 208 of the Criminal Code.

Decision No. 1,546 of 3 April 2002 by the Tunis Court of Appeal: a National Guard officer was sentenced to 16 months in prison for acts of violence resulting in permanent disability of more than 20 per cent, under articles 218 and 219 of the Criminal Code; the State was ordered to pay the victim 18,000 dinars in compensation.

Decision No. 2,645 of 12 March 2005 by the Tunis Court of Appeal: three police officers were sentenced to prison terms ranging from 12 to 18 months for acts of violence by public officials in the performance of their duties, under article 101 of the Criminal Code.

Decision No. 10,372 of 2 February 2007 by the Tunis Court of Appeal: a police station chief was sentenced to a fine of 500 dinars for acts of violence by a public official in the performance of his duties under article 101 of the Criminal Code.

Since criminal prosecution does not affect the administration's right to take disciplinary action against its officials in accordance with the principle of the duality of criminal and disciplinary offences, the perpetrators of such offences are also generally liable to disciplinary proceedings for dismissal.

The following table shows the number of police officers, members of the National Guard and prison officials prosecuted in the Tunisian courts between 2000 and 2007.

Year	Officials tried
2000	5
2001	7
2002	10
2003	12
2004	20
2005	30
2006	15
2007	11
Cases pending	95
Total	205

Breakdown by offence

Offence	Cases
Abuse of authority and abuse of power with violence	80
Use of physical or verbal violence by State officials in the performance of their duties	107
Use of violence against an accused to obtain a confession	8
Arbitrary detention and abduction	2
Miscellaneous misconduct	8
Total	205

Whenever the court determines that ill-treatment has occurred, it awards compensation at the victim's request. In Decision No. 1,120 cited above, compensation was set at 307,000 dinars (around US$ 205).

II. Non-judicial mechanisms

In addition to the right of victims of abuse of authority to apply to the ordinary courts, there are non-judicial mechanisms such as:

- The High Committee on Human Rights and Fundamental Freedoms, which investigates complaints and grievances from persons claiming to be the victims of human rights violations, or members of their family, forwards them to the competent authorities for reply, and monitors their progress

- The human rights units set up as monitoring, study and intervention groups in the Ministries most concerned, such as Justice and Human Rights, the Interior and Local Development, and Foreign Affairs.

Moreover, it should be recalled that as part of its commitment to respect the rights of persons deprived of their liberty, and under an agreement reached in 2005, the Tunisian Government has allowed the International Committee of the Red Cross (ICRC), an international organization known for its impartiality and expertise, to visit its prisons, all pretrial detention units and all places of police custody. To that end, an agreement was signed with immediate effect between the Government of Tunisia and ICRC on 26 April 2005.

Between June 2005 and 31 December 2006 ICRC made 61 visits, taking in 18 police posts, 9 National Guard posts and Tunisia's 28 prisons. In the course of these visits, the ICRC representatives conducted thousands of interviews without witnesses. Between January 2006 and May 2007 it made 32 prison visits. This cooperation with ICRC also takes the form of training programmes for judges, prosecutors and prison officials.

12. It appears that members of the opposition and human rights defenders are subject to harassment and intimidation, and even torture and ill-treatment by public officials. Please comment and, where appropriate, indicate the measures taken to guarantee effective compliance with the provisions of the Covenant.

Reply

There are nine political parties in Tunisia, six of which are represented in the Chamber of Deputies, and they conduct their affairs in the normal way.

Regarding the opposition parties, legally constituted parties conduct their activities without restriction and publish their newspapers. The operations of those that are represented in the Chamber of Deputies are subsidized by the State.

The unrecognized groups are treated in accordance with the Political Parties Act, which provides that a political party must act within the framework of the Constitution and the law and that in the conduct of its affairs should respect and defend in particular: "the republican form of government and its foundations, the principle of the sovereignty of the people and the principles regulating personal status". The Act also provides that political parties must "eschew violence in any of its forms, as well as fanaticism, racism and all other forms of discrimination". In addition, the Act states that "a political party may not place its basic reliance, in its principles, activities or programmes, on one religion, language, race, sex or region", which is to say that Tunisia is committed to combating the use of religion for political purposes. It is open to anything that is likely to promote pluralism without extremism and deepen the democratic process.

As for human rights defenders, there is a plethora of organizations that claim to defend human rights. There are conflicts between and even within some of these associations.

In any event, the State is in no way indifferent to acts of aggression from any quarter, whenever it is established that law-enforcement officers have carried out such attacks, and it takes appropriate action. The victims, for their part, have every right to complain and obtain redress.

13. In the context of the campaign against impunity (State party's report, paras. 180-185) please provide information covering the last five years on sentences handed down, disaggregated by nature of the charge and the rank of the official concerned.

Reply

The Tunisian Government works unceasingly against all forms of impunity by putting in place all the mechanisms necessary for the protection of human rights, including supervision and inspection mechanisms, and by facilitating victims' access to justice so as to make it possible to record all forms of abuse of authority, gather evidence and bring the perpetrators before the competent judicial authorities.

Domestic proceedings, whether judicial or administrative, against law-enforcement officers who are guilty of such offences are speedy and effective.

(a) Criminal penalties

The criminal penalties handed down against law-enforcement officials between 2000 and 2007 ranged from fines to several years' imprisonment, as shown above.

(b) Administrative sanctions

Disciplinary proceedings against law-enforcement officers guilty of misconduct also give rise to administrative sanctions. Thus, 120 officers of the security forces were found guilty of disciplinary offences, and the penalties ranged from dismissal to suspension to a warning.

The following table shows the number of correctional officers who have been subject to disciplinary sanctions:

Penalty / Year	First warning	Warning	Reprimand	Suspension from duty	Total
2003	-	-	1	1	2
2004	1	-	4	4	9
2005	3	1	3	2	9
2006	-	-	-	1	1
2007	-	-	1	1	2
Total	4	1	9	9	23

Right to a fair trial (art. 14)

14. Does Tunisian law prohibit the use of statements obtained through torture or ill-treatment as evidence in any proceedings?

Reply

Tunisian law prohibits the production of statements obtained by torture or ill-treatment as evidence in any proceedings. It is a general principle of law that any act procured through violent means is null absolutely, and this is supported in Tunisian law, which gives a broad definition of

violence as “any acts likely to produce in the victim physical suffering, psychological disturbance or the fear of exposing their person, honour or property to harm”.

Furthermore, article 152 of the Code of Criminal Procedure provides that “confessions, like any evidence, are evaluated at the court’s discretion”.

In a judgement handed down on 25 February 1974, the Criminal Division of the Court of Cassation decided that any judgement that fails to discuss arguments that might show that the confession is not valid is liable to be struck down.

Freedom of opinion and expression (art. 19)

15. Notwithstanding the Tunisian legislation guaranteeing freedom to inform and to obtain information (paras. 260-289), it appears that journalists’ work is subject to censorship. Please comment on this information and, where appropriate, state what measures have been taken to bring practice into line with the provisions of the Covenant.

Reply

The Tunisian Constitution and all relevant legislation guarantee the right to inform and be informed.

There is an ever-growing trend towards media pluralism, and a willingness on the part of the State to encourage it. This is illustrated by the 9 January 2006 reform of the Press Code, which abolished the statutory registration requirement for all national press publications, whether daily papers, periodicals or magazines.

Tunisia’s rich variety of media is reflected in the continuing burgeoning of publications of all kinds, as shown below.

Opposition newspapers: nearly all the opposition parties publish newspapers - generally weeklies - without restriction, and are totally free to take a critical editorial line. The following are some such newspapers:

- El Mawquif (Democratic Progressive Party)
- Mouatinoun (Democratic Forum for Work and Liberties)
- Attariq El Jadid (Al-Tajdid Movement)
- El Mostaqbel (Movement of Socialist Democrats)
- El Wihda (Popular Unity Party)
- El Oufouq (Social Liberal Party)
- El Watan (Unionist Democratic Union).

Political newspapers' lack of material and financial means remains an obstacle to their development. The authorities have helped by granting subsidies to the organs of political parties represented in Parliament.

It was recently decided to raise the subsidy for party newspapers published daily or weekly to 240,000 dinars (previously 180,000 dinars), an increase of 33.3 per cent. For those parties that publish monthly, the grant was raised to 60,000 dinars (previously 45,000 dinars), again an increase of 33.3 per cent. These increases take effect on 1 January 2008.

With regard to the audiovisual sector, in the spirit of greater pluralism the Government has authorized a new private television station called Hannibal, and several private national and regional radio stations.

In addition, a journalists' union has been set up following free elections.

Even so, shortcomings persist. In practice there is resistance and negative attitudes that make it difficult for journalists to access information sources.

Self-censorship, which is a residue of old practices of censorship, takes various forms, chiefly a lack of initiative and a tendency in the press to await instructions from higher up.

The Government is concerned at the situation and is making every effort to address it, so as to break through this inertia and remove all obstacles to a press characterized by courage, commitment and constructive criticism.

16. Certain Tunisian news websites and electronic newspapers and the sites of political parties, NGOs and foreign media that publish information critical of the Tunisian Government and of Tunisia's human rights situation appear to be regularly blocked in Tunisia. Please comment and, where appropriate, state whether such practices are in accordance with the Communications Code promulgated by Act No. 2001-1 of 15 January 2001 and with article 19 of the Covenant (State party's report, paras. 278-289).

Reply

The electronic media is free and not subject to any restrictions under the Communications Code. The regime is a liberal one that encourages the creation of websites. But there are sites that not only do not defend human rights, but threaten them. As in other countries, paedophile and terrorist sites, or sites that encourage racial hatred cannot leave Tunisia's leaders indifferent.

17. Please comment on the new provision in the Electoral Code, arising out of Organization Act No. 2003-58 of 4 August 2003, which prohibits Tunisians from expressing an opinion for or against a Presidential election candidate to the foreign audio-visual media during the election campaign, on pain of a 25,000 dinar fine, with regard to its compatibility with article 19 of the Covenant.

Reply

Article 62-III of the Electoral Code prohibits any use during election campaigns of a private or foreign radio or television station, or one broadcasting from abroad, in order to encourage people to vote or refrain from voting for a candidate or ticket. It also prohibits the use of private or foreign radio or television stations for election advertising during the campaign period. Any violation of these prohibitions is punishable by a fine of 25,000 dinars.

The provisions of this article are not incompatible with article 19 of the Covenant, which guarantees freedom of opinion and expression. It is important to distinguish between the right to freedom of expression, which remains a basic human right, and the use of foreign audio-visual media during electoral campaigns, which is defined in a special legal framework. Unequal access to foreign audio-visual media is likely to give one or more candidates an advantage over the others. It represents a threat to the principle of equality between candidates and jeopardizes the democratic process itself.

In addition, the rule established in article 62-III is a reflection of the fact that elections are an exclusively sovereign matter.

Right of peaceful assembly (art. 21)

18. The freedom of assembly of human rights defenders appears to be impaired by the authorities of the State party in various ways, including by surrounding NGO offices and sealing off districts to prevent meetings being held. Please comment and, where appropriate, state what measures have been taken or are envisaged to guarantee compliance with the provisions of article 21 of the Covenant.

Reply

Freedom of assembly is guaranteed by the Constitution (art. 8) and is exercised in the conditions stipulated by law. Article 1 of Act No. 69-4, of 24 January 1969, regulating public meetings, processions, parades, demonstrations and assemblies, stipulates that public meetings may be held freely. They may be held without prior authorization, but there are a number of formalities to be observed. Advance notice must be given, and for each meeting there must be a committee responsible for maintaining order and preventing any breach of the law.

These conditions are in line with article 21 of the Covenant.

The State encourages the use of public venues by NGOs and opposition political parties where such meetings comply with the law. For example, the local branch of Amnesty International recently held its congress without restriction in a public venue. The same applied to

the National Council of the Democratic Progressive Party, which was held in a local hotel. The Al-Tajdid Movement, too, has held a series of conferences and meetings in public premises, without restriction.

19. Please provide more precise information on the criteria applied in declaring a meeting illegal or a threat to public safety. Please also specify whether there are any remedies where authorization for a meeting is refused and, if so, how those remedies are exercised. Please provide statistics covering the last five years on the number of meetings declared illegal, the names of the organizations, the reason for the refusals of authorization and the names of the bodies or authorities involved in those decisions.

Reply

The criteria used are those specified by law.

There are no statistics available. However, only very few meetings are declared illegal. It might have applied to a group called the International Association for the Support of Political Prisoners, whose aims and programmes fall into the category of activities carried out by extremist groups in the guise of groups claiming to defend human rights.

An order banning the holding of a public meeting is not irrevocable. Its legality is subject to challenge in the Administrative Tribunal.

Freedom of association (art. 22)

20. In practice, and contrary to national legislation governing the registration of associations and the provisions of article 22 of the Covenant, human rights defenders appear to be subjected by the State party authorities to numerous obstructions designed to prevent their recognition as associations (refusal to provide a receipt confirming the statement of constitution as an association; failure to acknowledge the deposit of statutes). Please provide specific information on the number of applications for registration from associations of human rights defenders, the time needed for registration and the number of refusals and on what grounds.

Reply

The Associations Act sets forth the legal framework governing the establishment of associations and the conduct of their activities.

Article 3 of the Act requires persons wishing to form an association to deposit a statement to that effect and a list of the founders of the association at the headquarters of the governorate or *délégation* in which the association is based. A receipt will be issued.

Currently 47 applications to establish associations are under consideration.

Associations whose application is turned down have the right to appeal to the Administrative Tribunal to challenge the grounds for denial. The National Council for Fundamental Freedoms in Tunisia, for example, has challenged the legality of the decision to deny its application in the Administrative Tribunal. The appeal is in progress.

Rights of persons belonging to minorities (art. 27)

21. It appears that Berbers are demanding the protection and promotion of their culture and language. Please state if measures have been taken or are envisaged to guarantee the maintenance and development of Berber culture in accordance with article 27 of the Covenant.

Reply

Tunisia's original ethnicity is Berber. Its population has, however, assimilated groups from elsewhere. No attempt has ever been made in Tunisia to assert rights belonging to a specific category. Unlike in other countries, there is no such thing as an ethnic minority in Tunisia. It is surprising that a question of this kind should be raised in relation to a country that is ethnically integrated.

While confirming its commitment to protect minorities all over the world in accordance with international law, Tunisia wishes to point out that it is important to look at real situations, not invent situations in response to activism that is of no relevance in this country.

Dissemination of information relating to the Covenant

22. Please provide information on training in the provisions of the Covenant given to public officials, and especially judges and police officers.

Reply

The institutions responsible for training State agents (the Higher Institute of the Judiciary, the Prison Officers College and the Police College) provide training in human rights and fundamental freedoms.

With regard to the training of judges, according to article 1 of a Ministry of Justice order dated 26 June 1993, on human rights education as part of the training and certification provided by the Higher Institute of the Judiciary, "among the most important components of the training and certification provided by the Higher Institute of the Judiciary are the courses on human rights. These courses are intended to foster knowledge of the international conventions, the human rights recommendations and guidelines issued by the United Nations and regional organizations, the international protection mechanisms and comparative law. The courses and the related practical work, such as simulated trials and other teaching techniques, are designed to cultivate a sense of the humanity of international standards, with the aim of safeguarding the rights of subjects of law and ensuring the proper administration of justice". According to article 2 of the order, "human rights is taught in two semesters, the first dealing with international human rights instruments and the second with human rights protection mechanisms, as follows:

(a) International human rights instruments, including:

(i) The international conventions adopted by the United Nations (the International Bill of Human Rights) and other international texts (declarations, guidelines, principles and codes of conduct);

(ii) The prototype regional conventions adopted by Arab, Islamic and African organizations and those adopted at the European and American levels; and

(b) Human rights protection mechanisms:

(i) Within the framework of the United Nations, specialized agencies, the International Labour Organization and regional organizations, and their relationship with the domestic legal and judicial order;

(ii) Within the NGO framework, highlighting NGOs' role in disseminating and protecting the principles of human rights".

In terms of in-service training for sitting judges, the Higher Institute of the Judiciary organizes conferences and symposiums on such topics as victims' rights; human rights; the judiciary and human rights; human rights in Tunisian law; the Constitutional Council; the criminal court and human rights; Tunisia and human rights; women and the law; women and the modern world; legal aid; child protection mechanisms in Tunisian law; the rights of the family in the Code of Private International Law; the protection of personal data under Organization Act No. 63-2004 of 27 July 2004; the best interests of the child in law and in justice.

In addition, subjects addressed in junior magistrates' final dissertations from 2001 to 2007 include the treaty bodies; the new prison legislation and human rights; the humanization of punishment in Tunisia's penal system; domestic non-judicial human rights protection mechanisms; a commentary on article 12 of the Universal Declaration of Human Rights; national and international criteria for a fair criminal trial; the Tunisian Constitution and human rights; and international conventions and Tunisian law and case law.

Meanwhile, the Police College and the Prison Officers College are working to develop an understanding of human rights among administrators and officers in the correctional and rehabilitation services, with a view to improving relations between security officials and the citizen, as well as services to prisoners.

The content of training in human rights and fundamental freedoms for administrators and officers in the national security services is as follows:

- Civilization as the foundation of human rights
- International and domestic human rights protection mechanisms
- Development of Tunisia's legislation on human rights and fundamental freedoms
- Basic principles on the use of force by security officers

- Code of conduct for law-enforcement officials
- Guarantees of the physical integrity of the individual in Tunisian law (police custody and pretrial detention)
- Protecting the rights of women, children and the elderly
- Protecting the rights of people with special needs.

In addition, the Prisons and Rehabilitation Training School organizes human rights training for the following administrators and officials:

- Trainee lieutenants (implementation training)
- Trainees from the civil administration (basic training)
- Trainees from the uniformed section (basic training)
- Administrators and officers of the Department of Prisons and Rehabilitation (specialist training).

These sessions are run by administrators from the Department of Prisons and Rehabilitation and cover the following subjects:

- Universal Declaration of Human Rights of 10 December 1948
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Rights and freedoms contained in the Constitution of the Republic of Tunisia
- Humane treatment of prisoners and respect for their dignity
- Civic education
- Rights of the child

In order to enable trainee officers and students from the Prisons and Rehabilitation Training School to acquire the legal knowledge they need to perform their duties properly, the School has scheduled lectures for the 2007/08 academic year on human rights, alternative sentencing, the sentence enforcement judge and the Child Protection Code.

23. Please indicate whether the State party has published information on the Covenant, the Committee’s previous concluding observations and the process of submission of the present report of the State party. Please give information on the involvement of representatives of civil society in the preparation of the report.

Reply

Tunisia has not only published information on the main human rights instruments including the Covenant, it has also incorporated excerpts from them in every school textbook at all levels of education - primary, secondary and university.

Such information is also disseminated via the training and retraining programmes of a number of occupational groups, notably judges, lawyers, law-enforcement officials, prison personnel, health workers including psychologists, and social workers.

The Committee's previous concluding observations were circulated to the relevant ministries and are accessible to the general public through the Internet.

Lastly, with regard to the preparation and submission of the present report and consultations with civil society, meetings were held at the offices of the Human Rights Coordinator, coinciding with the preparation of Tunisia's report for the Human Rights Council's universal periodic review. Several associations were consulted, including NGOs representing workers (General Union of Tunisian Workers), the judiciary (Tunisian Magistrates' Association), lawyers (Tunisian Bar Association), journalists (Tunisian Journalists' Union), human rights defenders, including those working with women's rights and the rights of children and persons with disabilities (e.g., Tunisian Red Crescent, Association for the Reintegration of Released Prisoners, National Union of Tunisian Women, Association of Democratic Women, Tunisian Mothers' Association, Centre for Research, Studies, Documentation and Information on Women, Tunisian Association for Children's Rights, Tunisian Union of Social Solidarity, National Union of the Blind), as well as parliamentarians from both the majority and the opposition, and university teachers.
