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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Fifth periodic report

TUNISIA*

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Tunisia acceded to the International Covenant on Civil and Political Rights in 1968 pursuant to Act No. 68-30 of 29 November 1968 approving its accession to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

The Human Rights Committee considered Tunisia's fourth periodic report (CCPR/C/84/Add.1) on the implementation of the Covenant at its 1360th to 1362nd meetings, held on 18 and 19 October 1994, and adopted concluding comments (CCPR/C/79/Add.43) at its 1383rd meeting (fifty-second session) on 2 November 1994. The Human Rights Committee formulated suggestions, which were well received and taken into account by Tunisia.

The present document constitutes the fifth and sixth periodic reports due to be submitted by Tunisia during the second half of 2006 in accordance with the commitment contained in its note verbale No. 377 of 18 October 2005.

Reference is made to the core document constituting the first part of reports of States parties as well as to Tunisia's previous report on the implementation of the Covenant.

Tunisia welcomes continuation of its dialogue with the Human Rights Committee and discussion of the issues raised in the Committee's previous concluding comments.

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List of abbreviations

ATFD	Tunisian Women’s Association for Democracy
ICRC	International Committee of the Red Cross
UNCITRAL	United Nations Commission on International Trade Law
UNFPA	United Nations Population Fund
LTHD	Tunisian Human Rights League
ILO	International Labour Organization
ONFP	National Office of Family and Population Affairs
UNFT	National Union of Tunisian Women

Introduction

1. The present report describes the main legislative measures and practices adopted by Tunisia during the period 1993-2005 with a view to strengthening the implementation of the International Covenant on Civil and Political Rights. The report takes into account the issues raised by the Human Rights Committee in its concluding comments in October 1994 in connection with the consideration of Tunisia's fourth report. The Tunisian Government, which has always cooperated with United Nations human rights structures and which has sought to respond to the communications sent to it by the Special Rapporteurs of the Commission on Human Rights and its working groups, welcomes this opportunity to set out its global and integrated approach to civil and political rights.

2. Drawing on Tunisia's reformist cultural heritage in order to enhance the rights of the individual as well as the definition of those rights and to promote fundamental freedoms, and with reference to international human rights instruments, President Zine El Abibidine Ben Ali has consistently promoted a vision of human rights that takes into account the dialectical link between the protection and promotion of those rights and the consolidation of a pluralist democracy in a political context marked by the strengthening of the rule of law. This national approach, the outgrowth of the historic Declaration of 7 November 1987, is characterized by the positive and realistic content it aims to give to human rights and to the values of social and political democracy. It is based not on abstract rules but on objective standards and concrete results.

3. This approach to human rights in general and to civil and political rights in particular differs from ideologies that tend to attach more importance to certain rights than to others, or to establish a hierarchy among them. This approach reconciles achievements under the first generation of human rights (civil and political rights) with those under the second generation (economic, social and cultural rights) and, indeed, even the third generation (the right to a healthy environment, peace, security, etc.), and stems from a conviction that there can be no effective democracy without human development, and no development without democracy, since one is the corollary of the other. This concept of the global nature, indivisibility and complementarity of all human rights is enshrined in the Constitution of the Republic of Tunisia as amended by Constitutional Act No. 2002-51 of 1 June 2002 embodying a substantive reform of the basic law of the State subsequent to a referendum which showed significant support by citizens. Civil and political rights are intimately linked to economic, social and cultural rights, and vice versa. Civil and political rights have no meaning in a society devoid of the essential attributes of development, and economic prosperity has no real significance in a society without political and social rights.

4. Without overlooking the functional differences between various categories of human rights, this dialectic involves, in the context of the period covered in the report (1993-2005), the development and implementation of social democracy through national programmes in the fields of education, training, health, housing, employment, the family and political democracy through the consolidation of the right to participation and the strengthening of civil society and the rule of law. This approach gives impetus to and creates a dynamic for the promotion of civil and political rights. It enlists democratic achievements in the national interest, and in the service of modernity and the promotion of the effective enjoyment of human rights.

5. The driving force behind the steady, progressive approach adopted by Tunisia with regard to the protection and promotion of human rights is the political conviction that the aim of the fundamental reforms is to relay the foundations of an advanced political system, offering the different actors in the political structure and an empowered civil society greater opportunities for participation. The central element in this initiative is democratic participation by the individual, placing individuals and politicians in a dialectic of delegation and participation, rights and duties, freedom and responsibility.

6. The development of the democratic process has necessitated the progressive anchoring of political pluralism in people's outlooks and behaviour, as well as in institutions and the components of civil society. This process helps to provide Tunisian citizens with the specific cultural means required for the exercise of their civil and political rights and to strengthen the foundations of a society characterized by freedom, solidarity and tolerance and of a State firmly governed by the rule of law and embodying credibility and an openness to dialogue. This dynamic is founded in a sovereign, political choice aimed at enabling Tunisians to enjoy day by day the benefits of a decentralized, responsible and transparent democracy and to lay together the foundations of good governance based on the principles of responsibility, autonomy and the primacy of law.

7. The dynamic of participatory democracy recognizes the right of ideological and intellectual diversity to express itself and flourish in a State governed by the rule of law. In the Tunisian context the rule of law, which is fundamental to the establishment of modernity, crystallizes in equality before the law and constitutional recognition of the State's obligation to respect and ensure respect for the law.

8. Organization Act No. 92-25 of 2 April 1992, supplementing Act No. 59-154 of 7 November 1959 on associations, has helped buttress activities by associations and raise awareness of the role and responsibility of associations in reinforcing the values of citizenship and consolidating the process of development.

9. Tunisia has always supported activities by associations and, in particular, sought to create optimum conditions for the activities of Tunisian, foreign, regional and international non-governmental organizations (NGOs) based in its territory. All organizations legally established in Tunisia carry out their activities without any hindrance. The democratic ideal underlying these attempts to realize the aspirations of an authentic State with the means to provide concrete, modern responses to its citizens postulates and presupposes to a greater or lesser extent that direct, participatory democracy is open to anyone who wishes to become involved. This direct participation by civil society makes it possible to establish a form of governance ensuring the functioning of a balanced, democratic society in which militancy cannot transgress the rules of the democratic game as defined by the legislation in force.

10. The progress made in this regard during the period 1993-2005 testifies to the significant developments in the conditions attending the pluralist democratic process in the framework of the rule of law. This process found concrete expression in the presidential, legislative and municipal elections and the election of the members of the Chamber of Councillors; in the representation of political opposition parties in regional development councils and the participation of all national organizations in meetings of regional development councils; in the

impetus given to associations, which are now perceived as a training ground for democracy and as full partners in the formulation and implementation of development programmes; and in the opening up of the media.

11. While rejecting pre-established political models, Tunisia is pursuing its efforts to allow citizens the full exercise of the civil and political rights provided for under the Covenant. To that end, a series of legal instruments has been formulated and a number of mechanisms, instruments and practical measures have been introduced since 1993 with a view, in particular, to strengthening the rule of law and political institutions, reinforcing political and intellectual pluralism, and protecting and promoting human rights.

I. CONSOLIDATION OF THE RULE OF LAW AND POLITICAL INSTITUTIONS

12. Various constitutional reforms (in particular those of 1997, 1998 and 2002) have helped to accelerate the democratic process. The aim has been to consolidate the rule of law, enhance the exercise of democracy, reinforce pluralism in various spheres of political life, strengthen human rights and expand collective and individual freedoms. Constitutional Act No. 2002-51 of 1 June 2002 amending certain provisions of the Constitution strengthened the foundations of a State governed by the rule of law and of its institutions, and enriched the legal arsenal through the addition of the values of solidarity, mutual assistance and tolerance, the establishment of a system of judicial review that ensures respect for fundamental freedoms, and the introduction of data protection guarantees. With these constitutional amendments, which affected almost half the articles of the Constitution, new provisions were introduced, including:

(a) The affirmation, in the Constitution, that the Tunisian Republic is based on the principles of the rule of law and pluralism;

(b) The specifying, in the Constitution, of the procedure for the election of the President of the Republic through the holding of a second round and the establishment of an age limit at the time of the submission of candidacies;

(c) The creation of a Chamber of Councillors to strengthen the legislature through a bicameral system designed to enhance pluralist participation and representation;

(d) The consideration of the authority of the Constitutional Council, now the constitutional arbiter with regard to elections.

13. This substantive reform of the Constitution has made it possible both to reinforce the fundamental principles on which the republican system is based (fundamental rights of the individual, the principle of the pluralism of political parties, principles related to personal status …) and to qualitatively develop the rules of the democratic process.

14. The reform of the legislature and executive was accompanied by a thorough reform of the judiciary, making it more independent and more accessible to the citizen, and strengthening the equality of all citizens before the law and the effectiveness of legal safeguards.

A. Strengthening of intellectual and political pluralism

15. With the "Change" of 7 November 1987, intellectual and political pluralism became a reality consistently supported and encouraged by the State. Diversity of belief, opinion and expression is the objective consequence of any pluralist democracy. Furthermore, since the Declaration of 7 November 1987, the Head of State has considered that the Tunisian people "have reached a level of responsibility and maturity such that every individual and group in society can make a constructive contribution to the management of the country's affairs, in accordance with the republican ideal, which confers upon institutions their full integrity and guarantees the conditions for responsible democracy".

16. Tunisia is pursuing its efforts to create mechanisms propitious to the establishment of a pluralist democratic system. To this end, a series of laws has been promulgated since 1993, including:

Organization Act No. 95-68 of 24 July 1995, amending and supplementing the Organization Act on communes aimed at strengthening regional participation and democracy at the local level;

Constitutional Act No. 95-90 of 6 November 1995 on the Constitutional Council has made it possible to include the organization of the Constitutional Council in the Constitution and to broaden its powers so as to make this body the supreme authority with regard to pluralist elections;

Act No. 97-48 of 21 July 1997 on the public funding of political parties. This Act provides for a multiparty system, consolidates the role of parties in political life, and strengthens measures already included in the Electoral Code on the funding of the electoral campaigns of candidates to the presidency of the Republic, the Chamber of Deputies and municipal councils;

Constitutional Act No. 99-52 of 30 June 1999, setting out exceptions to the provisions of the third paragraph of article 40 of the Constitution. This special Act strengthened pluralism by guaranteeing the representation of political parties in the presidential election of 1999, by allowing opposition leaders (president or general secretary) to run in presidential elections where the candidate cannot meet the candidacy requirements established in article 40 of the Constitution. However, candidates must, on the day when they submit their candidacies, have held their posts for at least five consecutive years, and the party must have at least one member in the Chamber of Deputies.

17. The establishment of a legal framework for intellectual and political pluralism forms the backcloth to Tunisia's public life. Act No. 59-154 of 7 November 1959 on the organization of associations was amended by the Acts of 2 August 1988 and 2 April 1992, introducing more liberal and progressive provisions. A system of simple declaration replaced the system of prior authorization, previously applied by the Administration in a discriminatory manner. Likewise, associations have been duly classified on the basis of their objectives and activities so as to promote women's, scientific and development organizations. In addition, Act No. 88-32 of 3 May 1988 on the organization of political parties was promulgated; the Act enshrines the

freedom to establish political parties on the condition that all political activities must be guided by respect for certain fundamental values. Article 2 provides that “a political party must act within the framework of the Constitution and the law”:

(a) In carrying out its activities, a party must respect and defend in particular:

The Arab-Muslim identity;

Human rights as defined in the Constitution and the international conventions ratified by Tunisia;

Tunisia’s achievements and in particular the republican form of government and its foundations, the sovereignty of the people as laid down in the Constitution and the principles regulating personal status;

(b) Moreover, a party must:

Renounce all forms of violence, fanaticism, racism and all other forms of discrimination;

Refrain from any activity likely to jeopardize national security, public order and the rights and freedoms of others;

Article 3 adds that “a political party may not rely fundamentally, in its principles, activities and programmes, on a religion, a language, a race, a sex or a region”.

18. The existence of nine recognized political parties reflects the political will to strengthen the pluralist democratic process and the effectiveness of the legal mechanisms established. The recognition of the Greens for Progress Party in May 2006 provides confirmation that the process of pluralist democracy is now irreversible. This process enables all legally established political forces engaged in the political process to develop a more dialectic concept of diversity. The discussion of ideas in the context of consensual democracy is the only means of appealing to the intelligence of the citizen and of benefiting from the diversity of approaches and multiplicity of ideas.

19. Associations play a significant role in promoting intellectual and cultural life. Political parties endeavour to “provide guidance to citizens with a view to ensuring their participation in political life” (Constitution, art. 8) and to ensure their representation in various elective structures. Thus, participatory democracy becomes more dynamic and encourages within civil society a debate based on tolerance and respect for others; in this context, diversity of opinion and ideological debate are not only guaranteed by the rule of law, but regarded by all as a source of national wealth for global and multidimensional development.

20. The multiparty system has led to the establishment of municipal councils and a whole range of representative constitutional structures and institutions (Chamber of Deputies, Chamber of Councillors, Economic and Social Council, regional councils), as reflected in the multiplicity of candidacy in the presidential and legislative elections of 1999 and 2004.

21. Other measures aimed at strengthening the foundations of a consensual democracy were also introduced over the reporting period. In this regard, Tunisia has striven to achieve national reconciliation in the broadest sense and to foster a climate of confidence and order between citizens and government authorities. The object of these measures is to enable all citizens freely to contribute to the work of developing and constructing a democratic society founded upon human rights, tolerance and mutual respect.

22. Organization Act No. 2002-97 of 25 November 2002 on the standing review of electoral rolls enhanced the right to participation and the transparency of elections and stimulated the pluralist democratic process. Special attention was accorded to enhancing the credibility of the list of voters and the transparency of the electoral process with a view to enabling all voters to exercise their right to vote under appropriate conditions and to enabling the opposition to make its contribution to the enrichment of political life and to the promotion of the pluralist democratic process. In this regard and in order to increase financial support for political parties and to provide them with more resources for their activities, it was decided, pursuant to Act No. 2006-7 of 15 February 2006, amending Act No. 97-48 of 21 July 1997 on the public funding of political parties, to increase State subsidies for political parties, which now amount to 135,000 dinars annually.

23. It should be noted that other reforms have also resulted in initiatives to consolidate democracy at the local level. Increased decentralization and devolution and the transfer of new prerogatives to governors and municipalities have helped to promote activities at the municipal level and to broaden the powers of regional councils. Pursuant to these reforms the municipal elections of 28 May 2000 and 8 May 2005 contributed to the consolidation of democracy at the local level.

B. Respect for freedom of opinion and expression

24. Article 8 of the Tunisian Constitution provides that: “Freedom of opinion, expression, the press, publication, assembly and association are guaranteed and shall be exercised in accordance with the law.” The freedom to think, write and publish and the freedom of the press are fundamental elements of civil and political rights. Democracy, which is supposed to mean that power is shared by all, cannot flourish without full respect for these freedoms. The consolidation of this right and the strengthening of these freedoms are important to all citizens, all the actors in society. Steps must be taken to ensure that the information sector reflects the specific characteristics of Tunisian society, as well as its concerns and aspirations.

25. Since 1993, the information and communication sector has been the subject of significant institutional and legislative efforts aimed at improving the performance and content of the audio-visual media and the press, and at strengthening intellectual and political pluralism. Promotion of the information sector is inherent in the promotion of civil and political rights. Numerous reforms have been undertaken to help the sector to fulfil its role under optimum conditions. On three occasions, amendments have been made to the Press Code with the aim of ensuring that journalists are free to discharge their role and that they enjoy an appropriate environment in which to carry out their work. Exercise of the freedom to report, to pursue the profession of journalist and to assume the role of public educator carries with it duties and responsibilities, and must be subject to certain formalities and conditions - prescribed in the

Press Code - as a necessary safeguard in a democratic society to protect the reputation and the rights of others and to prevent the disclosure of confidential information and the violation of human dignity.

26. In order to help recognized political parties publish their newsletters on a regular basis and make their views known more widely, an annual subsidy for the funding of their newsletters was granted them by Act No. 99-27 of 29 March 1999, supplementing Act No. 97-48 of 21 July 1997 on the public funding of political parties.

27. The repeal of the statutory deposit requirement, pursuant to Organization Act No. 2006-1 of 9 January 2006, amending the Press Code, represented a significant step forward in the consolidation of freedom of expression, information and publication in Tunisia. Following the repeal of the statutory deposit, the next priority is to ensure that newspapers become forums for dialogue, exchange and discussion on issues relating to the future of the country and the protection of our achievements leading on to further achievements, and above all for the Tunisian elite to demonstrate its rejection of obscurantist trends and all forms of extremism.

28. The opening up of the audio-visual media to the private sector has had a significant effect on the enhancement, plurality and diversity of information. Thus, two new radio stations and a television channel were launched in 2003 and 2005 respectively in the interest of pluralism. The launch of *Radio Culturelle*'s programmes in May 2006 was also intended to facilitate the reflection of all facets of Tunisian culture in the press and broadcast media, allow the expression of creative talent, create forums for dialogue between intellectuals and artists, and thus contribute to the dissemination of scientific and technological culture as well as a culture of human rights, women's rights and the rights of the child, and tolerance and openness.

29. Opposition parties have their own publications, as do trade unions and other elements of civil society. Journalists and editors have their own professional associations. Conceived of as an ongoing choice and a continuing process, the consolidation of freedom of expression and information is intended to strengthen the role of the media in promoting the pluralist democratic process, encourage democracy through free and responsible debate, consolidate participation by political parties in the pluralist democratic process, and continue to promote civic awareness through media programmes.

30. Confident in its human potential and aware of the importance of new information and communication technology, Tunisia has committed itself wholeheartedly to constructing a knowledge-based society at the national level and has contributed at the regional and international levels to reducing the digital divide between rich and poor countries and between people in the North and South. Thus in 1999 Tunisia took the initiative of calling for the convening of the World Summit on the Information Society, sponsored by and organized under the aegis of the United Nations. Thus, on 16, 17 and 18 November 2005, the work of the second phase of the World Summit was conducted in Tunis. This resulted in two important documents: the Tunis Commitment and the Tunis Agenda for the Information Society. The importance of the two documents is all the more crucial in view of the direct impact that control of the information highway has on the realization of civil and political rights: public information, freedom of expression, privacy and protection of personal information, and individual freedom.

Information and communication technology can be equally powerful as a vehicle for the right to human development or as a tool for segregation, domination, hegemony and impairment of the sovereignty of the least well-equipped States.

C. Consolidation of civil and political rights

31. Measures and laws for the strengthening of human rights protection and promotion machinery have succeeded each other at an increasingly rapid rate since 1993. Tunisia has ratified the majority of the international human rights instruments. While under article 32 of the Constitution international instruments take precedence over domestic laws and take immediate effect upon their official publication, Tunisia has brought its domestic legislation into line with international norms for the protection of human rights.

32. In particular, Tunisia has ratified the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. Tunisia has also ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, without entering any reservation, and has made the declarations provided for under articles 21 and 22 of that Convention.

33. As part of the consolidation of human rights, a number of important laws have been promulgated, including:

Act No. 95-9 of 23 January 1995, on the abolition of re-education labour and civilian service, reinforcing the humanist policy which has already led to the abolition of forced labour;

Act No. 95-92 of 9 November 1995, on the Children's Code, aimed at instilling in citizens, from a very young age, the values of freedom, justice, tolerance, solidarity, openness and participation in civic affairs;

Organization Act No. 98-77 of 2 November 1998, amending Act No. 75-40 of 14 May 1975 on passports and travel documents, enshrining freedom of movement by giving the judiciary the right to examine any dispute between the Administration and the citizen concerning the latter's right to leave and return to Tunisia;

Act No. 99-89 of 2 August 1999, amending and supplementing certain provisions of the Criminal Code, on the institution of community service as a substitute for prison sentences in order to make the penal system more humane;

Act No. 99-90 of 2 August 1999, amending and supplementing certain provisions of the Code of Criminal Procedure and introducing additional guarantees for persons temporarily deprived of their liberty, for example by reducing the duration of police custody, providing information to the families of arrested persons, explaining the reasons and legal grounds for the arrest, ensuring the right to a medical examination, and maintaining arrest registries under the oversight of the State prosecutor;

Act No. 2000-43 of 17 April 2000, amending and supplementing certain articles of the Code of Criminal Procedure and instituting the right of appeal in criminal cases, so as to guarantee a fair trial;

Act No. 2000-77 of 31 July 2000, amending and supplementing certain provisions of the Code of Criminal Procedure and instituting the post of enforcement judge, so as to provide for judicial review of conditions of detention and of the serving of custodial sentences;

Act No. 2001-52 of 14 May 2001, on the organization of prisons. This is the first law of its kind in the history of the prison system to govern the respective rights and duties of prisoners and the prison administration. It grants exclusive authority to the Disciplinary Council, which includes representatives of prisoners, to apply disciplinary penalties against an offending party;

Act No. 2002-93 of 29 October 2002, supplementing the Code of Criminal Procedure with regard to the establishment of a mediation procedure in criminal cases, making available alternatives to criminal legal proceedings with a view to consolidating the spirit of cooperation among citizens and facilitating the amicable settlement of disputes.

34. The consolidation of human rights is not limited to the promulgation of legal instruments. It requires awareness-raising to change outlooks and behaviour, so as to foster a context conducive to the flourishing of human rights. This aspect is reflected both in the initiation of human rights education activities and in efforts to spread a culture of human rights, both at primary, secondary and higher educational establishments and at specialized establishments that train public officials (the Higher Institute of the Judiciary, the National School of Administration, the National Security Officers School and the Higher School for Prison Administration Officers). Similarly, activities aimed at raising awareness of human rights among the public have become an essential component of the education system. Moreover, all citizens benefit from programmes aimed at promoting a culture of human rights through the media (written, audio-visual and multimedia), symposiums, cultural and artistic events and other activities carried out by civil society.

35. The numerous achievements in the protection and promotion of human rights over the reporting period bear witness to a firm and irreversible commitment to this endeavour, with a keen awareness that there is still much to be done. Among the latest initiatives taken by the State in the field of cooperation with international organizations active in the field of human rights, mention is made in particular of the agreement concluded in April 2005 between the Tunisian authorities and the International Committee of the Red Cross (ICRC) authorizing ICRC to conduct visits in all prisons and places of custody to note conditions of detention, to interview the prisoners of its choosing in the absence of a representative of the prison authorities and to submit its observations and suggestions to the competent authorities. Cooperation with ICRC also takes the form of training programmes for judges, prosecutors and officers of the prison administration and for trainers from the Ministry of Education and Training. The establishment of a national commission on international humanitarian law forms part of these cooperation initiatives.

36. In May 2006, Tunisia was accorded broad international recognition when it was elected to the new Human Rights Council by 172 votes. The election bears witness to the international community's respect for Tunisia, a country known for its achievements in the emancipation of women, who have become full citizens and equal partners with men, and for its enshrining of human rights in a political context marked by the pre-eminence of the rule of law.

II. ARTICLE 2

37. In accordance with article 2 of the Covenant, the States parties undertake to ensure to all individuals within their territories and subject to their jurisdiction the rights recognized in the Covenant, without distinction of any kind, as well as remedies against any violation of those rights.

A. Abolition of all forms of discrimination

38. Tunisia abolished slavery in 1846 and reaffirmed its commitment to the protection and promotion of human rights as universal, comprehensive, complementary and interdependent by acceding to the International Covenant on Civil and Political Rights in 1968.

1. Legal instruments

(a) The Constitution

39. Tunisia's commitment under this article is reflected politically and legally in the Constitution. Indeed, the fundamental human rights that are recognized and guaranteed by the Constitution are so recognized and guaranteed for everyone, without any distinction and without any reference to race, colour, sex, language, religion, political or other opinions, national or social origin, wealth or birth. Thus, article 5 of the Constitution, as amended by Constitutional Act No. 2002-51 of 1 June 2002, provides that: "The Republic of Tunisia guarantees fundamental freedoms and human rights in their universality, comprehensiveness, complementarity and interdependence." Article 6 adds that "All citizens have the same rights and duties. All are equal before the law."

40. Furthermore, article 5 of the Constitution, amended on 1 June 2002, guarantees the inviolability of the individual, freedom of conscience and freedom of religious worship. Article 8 of the Constitution provides that: "Freedom of opinion, expression, the press, publication, assembly and association are guaranteed and shall be exercised in accordance with the law." Article 9 (new) stipulates that: "The inviolability of the home, the confidentiality of correspondence and the protection of personal data shall be guaranteed, other than in exceptional cases prescribed by law."

41. Article 12 (new) of the Constitution of 1 June 2002 regarding the presumption of the innocence of any accused person provides that: "Police custody shall be subject to judicial review and pretrial detention shall be exercised only following judicial instruction. It is forbidden to arbitrarily place any individual in police custody or detention. An accused person shall be presumed innocent until proven guilty at a trial providing all guarantees necessary for the person's defence."

42. Furthermore, (new) article 13 of the Constitution relating to the personalization of sentences and the non-retroactive nature of criminal law establishes that: “Penalties relate to individuals and may be imposed only under a law enacted prior to the punishable act, except where subsequent legislation provides for less serious penalties.” Moreover, it stipulates that: “Those deprived of freedom shall be treated humanely and their dignity shall be respected, in compliance with the conditions laid down by law.”

43. The right to own property is governed by article 14 of the Constitution. Article 17 of the Constitution deals with the prohibition against the extradition of political refugees. The safeguarding of the integrity of the national territory is governed by (new) article 15 of the Constitution. New articles 72 and 74 of the Constitution have extended the authority of the Constitutional Council. Article 75 (new) of the Constitution emphasizes the binding nature of decisions handed down by the Council in electoral matters.

(b) Legislation

44. Legislative, legal and administrative guarantees have been provided to uphold the principle of non-discrimination. In a similar vein, article 2 of Act No. 88-32 of 3 May 1988 on the organization of political parties provides that “political parties shall act within the bounds of the Constitution and the law”, that they “shall, in their activities, respect and defend in particular human rights as determined by the Constitution and the international conventions ratified by Tunisia” and that they “furthermore shall renounce all forms of violence, as well as fanaticism, racism and all other forms of discrimination”.

45. Organization Act No. 93-85 of 2 August 1993 amending the Press Code penalizes various discriminatory acts. Thus, (new) article 44 stipulates that “anyone who directly fosters either hatred among races, religions or population groups, or the spread of opinions based on racial segregation or on religious extremism, ... or incites the infringement by the population of the laws of the country shall be punished by a term of imprisonment of two months to three years and a fine of 1,000 to 2,000 dinars”. Similarly, under article 52 bis of the Criminal Code, introduced by Act No. 93-112 of 22 November 1993 supplementing the Code, acts of incitement to hatred or racial or religious fanaticism, irrespective of the means used, are to be considered terrorist acts.

46. Thus, for example, on 18 October 1994 the Tunis Appeals Court upheld a ruling by a court of first instance sentencing a citizen to two years’ imprisonment and a fine of 1,100 dinars for having distributed pamphlets inciting the population to clash with Jews. The convicted person brought the case before the United Nations Working Group on Arbitrary Detention, which in its ruling pointed out that inciting racial hatred was an offence, not an opinion. Consequently, the detention was found not to be arbitrary. Convinced that tolerance and non-discrimination are a state of mind and a behaviour, the Tunisian State spares no effort in combating discrimination.

2. In practice

47. Tunisia firmly subscribes to the objectives and principles of the United Nations as set out in international instruments, in particular those concerning non-discrimination for reasons of

race, colour, descent or national or ethnic origin. This commitment was confirmed by Tunisia's ratification on 12 January 1967 of the International Convention on the Elimination of All Forms of Racial Discrimination.

48. Tunisia has always been a country with a racial mix; that is its greatest asset. This empirical and historic fact presupposes quite simply that the problem of racial discrimination does not exist in Tunisia. Racial mixing is not a permanent condition, but a process that has made it possible to acknowledge a sense of multiple belonging and to submerge cultural differences and community-based separatism. Faced with the resurgence of the dream of a homogenous society (the Islamic fundamentalist far-right that has emerged more or less throughout the Arab countries) and a rigid heterogeneity (community-based reaction in many Western countries) - bitter denials of democratic values - in Tunisia we still advocate openness and tolerance, and in our lives we respect the right to be different. Tunisia is thus truly one of the rare countries that can boast that it has no racial discrimination problem, owing to the homogeneity of its population. The values of tolerance and respect for others are deeply rooted in the Arab-Muslim civilization to which Tunisia belongs and to which it makes enlightened contributions as a country in the forefront of human civilization.

B. Incorporation of the principles of the Covenant in the national legal system

49. In article 2, paragraph 2, of the Covenant, States undertake to take steps, in accordance with their constitutional processes and with the provisions of the Covenant, to give effect to the rights recognized in the Covenant.

50. Indeed, it is the law that makes it possible to implement these rights and that provides the procedures required to ensure they are respected. The same holds true for the rights recognized by the Covenant that have not already been guaranteed by the Constitution. In this respect, Tunisia has progressively introduced procedures to give full effect to human rights, whether enshrined in the Constitution or the Covenant, or the various human rights instruments that it has ratified.

1. Constitutional reforms

51. Numerous constitutional reforms were introduced during the period covered by this report, including:

Constitutional Act No. 95-90 of 6 November 1995 on the Constitutional Council, including provisions governing the organization of the Constitutional Council in the Constitution, and broadening the Council's prerogatives and powers with the intent of confirming the primacy of the Constitution and the rule of law;

Constitutional Act No. 97-65 of 27 October 1997, amending and supplementing certain articles of the Constitution. These amendments relate to the broadening of the scope of referendums, as a way to enshrine the people's sovereignty, and to the delimitation of the respective competencies of the legislature and the regulatory authorities. They also cover

the introduction of provisions on political parties, with a view to consolidating the democratic process, on the lowering of the minimum age for candidates to the Chamber of Deputies and on the right to run for election to the Chamber of Deputies;

Constitutional Act No. 2002-51 of 1 June 2002, amending certain provisions of the Constitution, which introduced constitutional rules relating to the rights and freedoms of individuals, aimed at strengthening, promoting and enhancing such rights.

2. Legislative reforms

52. In addition, laws guaranteeing the protection of and respect for human rights were also promulgated, in particular:

Act No. 93-73 of 12 July 1993, amending certain articles of the Code of Criminal Procedure, aimed at updating national legislation on minors and the establishment of a system for the supervision of minors;

Act No. 93-74 of 12 July 1993, amending certain articles of the Personal Status Code, aimed at strengthening the principle of equality between spouses and enshrining the best interests of the child and strengthening the mother's role in family affairs;

Organization Act No. 93-80 of 26 July 1993 on the establishment of NGOs in Tunisia, defining the concessions, privileges and exemptions granted to NGOs operating in the country;

Act No. 93-114 of 22 November 1993, amending and supplementing certain articles of the Code of Criminal Procedure by reducing the duration of pretrial detention and establishing the office of a single judge;

Act No. 95-9 of 23 January 1995 on the abolition of re-education labour and civilian service with a view to reaffirming individual freedom to work;

Organization Act No. 95-68 of 24 July 1995, amending and supplementing the Organization Act on communes with the aim of encouraging citizen involvement and strengthening democracy at the local level.

53. Other laws guaranteeing the protection of and respect for human rights were also promulgated, including:

Act No. 93-65 of 5 July 1993 establishing an alimony and maintenance payments guarantee fund, strengthening the rights of women and children;

Act No. 95-92 of 9 November 1995 on the publication of the Children's Code, aimed at ensuring conditions for the right of children to self-fulfilment and at instilling in citizens, from a very young age, the values of freedom, justice, tolerance, solidarity, openness and participation in civic affairs;

Decree No. 96-1134 of 17 June 1996 establishing a special status for child protection officers and specifying the areas in which they may intervene and the ways in which they may interact with the competent social services and bodies;

Act No. 95-62 of 10 July 1995 ratifying International Labour Organization (ILO) Convention No. 138 concerning Minimum Age for Admission to Employment, of 26 June 1973, which prohibits the economic exploitation of children;

Act No. 97-48 of 21 July 1997 on the public funding of political parties, aimed at enshrining political pluralism and consolidating the role of political parties in the country's political life;

Organization Act No. 98-77 of 2 November 1998, amending Act No. 75-40 of 14 May 1975 on passports and travel documents, enshrining freedom of movement by giving the judiciary the right to examine any dispute between the Administration and the citizen concerning the latter's right to leave and return to Tunisia;

Act No. 99-89 of 2 August 1999, amending and supplementing certain provisions of the Criminal Code, on the institution of community service orders as a substitute for prison sentences. The same law also abolished forced labour in prisons and added provisions relating to the definition of the crime of torture;

Act No. 99-90 of 2 August 1999, amending and supplementing certain provisions of the Code of Criminal Procedure and introducing additional guarantees for persons temporarily deprived of their liberty, for example by reducing the duration of police custody, providing information to the families of arrested persons, explaining the reasons and legal grounds for the arrest, ensuring the right to a medical examination, and maintaining arrest registries under the oversight of the State prosecutor;

Act No. 2000-43 of 17 April 2000, amending and supplementing certain articles of the Code of Criminal Procedure and instituting the right of appeal in criminal cases. This Act enhances the rights of persons on trial and streamlines bodies dealing with criminal justice;

Act No. 2000-53 of 22 May 2000, amending and supplementing certain articles of the Children's Code, aimed at strengthening the protection of children and ensuring for them the right to survival, protection and development;

Act No. 2000-77 of 31 July 2000, amending and supplementing certain provisions of the Code of Criminal Procedure and instituting the post of enforcement judge so as to provide for judicial review of conditions of detention and of the serving of custodial sentences, to strengthen guarantees for convicted persons and to enshrine a humanistic approach in State policy;

Act No. 2001-52 of 14 May 2001 on the organization of prisons. This is the first law of its kind in the history of the prison system to govern the respective rights and duties of prisoners and the prison administration. It grants exclusive authority to the

Disciplinary Council, which includes representatives of prisoners, to apply disciplinary penalties against an offending party. The provisions of this new law are in line with the relevant international covenants;

Act No. 2002-52 of 3 June 2002 on the granting of legal aid broadened the scope of such assistance so as to consolidate the right of citizens with limited means to bring proceedings;

Act No. 2002-92 of 29 October 2002 amending and supplementing the Code of Criminal Procedure so as to strengthen the rights of enforcement judges by giving them the opportunity to allow release on parole for certain categories of convicted persons, and to follow up on the serving of community service orders;

Act No. 2002-93 of 29 October 1992, supplementing the Code of Criminal Procedure with regard to the establishment of a mediation procedure in criminal cases, providing for a conciliation procedure in criminal cases, consisting in granting the State prosecutor the authority, in the case of certain violations or offences and with the agreement of the parties, to conduct conciliation proceedings guaranteeing the rights of the injured party and terminating criminal proceedings;

Act No. 2002-94 of 29 October 2002 on the compensation of persons who have been held in pretrial detention or who have been sentenced and whose innocence has been proven, is intended to establish the principle of the responsibility of the State for injury caused by the administration of justice;

Organization Act No. 2004-63 of 27 July 2004 on the protection of personal data seeks to strengthen the protection and promotion of human rights and strike a balance between the growing use of modern means of communication and the protection of personal privacy.

54. In addition, the Tunisian legal system is developing parallel machinery to guarantee the freedoms recognized by the Covenant against any form of violation. Criminal justice is based on the rule of the territoriality of laws. Tunisian criminal law applies throughout Tunisian territory. The lawmakers consider that if there is a violation of law and order, it is for society itself to take up the matter through a prosecution brought by the Public Prosecutor’s Office. Article 1 of the Code of Criminal Procedure thus provides that “any offence shall give rise to public proceedings having as their purpose the imposition of a penalty and, if an injury has been caused, to a civil suit with a view to obtaining compensation therefor”.

C. Guarantees of useful and fair remedies

55. In order to guarantee to all citizens effective remedies against any violations, the Tunisian judicial system is based on a set of principles that include equality of all citizens before the public justice system, without discrimination of any nature whatsoever. Moreover, free access to the courts has been strengthened by the abolition of the enrolment fee and the counsel’s hearing fee, both in judicial courts and in the Administrative Court.

1. Judicial remedies

(a) Ordinary law courts

56. The legislature has continued to expand the availability of judicial remedies. Regarding opportunities for victims of acts of torture to seek compensation, article 1 of the Code of Criminal Procedure establishes the principle that any offence entails the initiation of a public prosecution with the aim of applying penalties, and of a civil action for compensation for the injury caused. A party who has been the victim of an act of torture may institute a public prosecution on his or her own initiative. However, he or she may also bring a civil action, either in conjunction with the public prosecution, or separately in a civil court. The civil action may be brought by all persons who have directly suffered personal injury as a result of the offence (Code of Criminal Procedure, art. 7).

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

58. If a person has an interest in taking legal action, his or her application will be recognized as well-founded. A refusal to do justice on any ground whatsoever, even that of the silence or obscurity of the law, is considered an offence of denial of justice (Criminal Code, art. 108).

59. In order to strengthen the right of the individual to bring proceedings, and to provide for the exercise of this right, the enrolment fee in judicial courts and the counsel's hearing fee have been abolished, thus supporting the principle that justice should be free. Similarly, the registration fees for arbitration were abolished under Act No. 94-56 of 16 May 1994, which excluded arbitration decisions from the need for formal registration.

60. In a similar vein, the office of referring judge has been established in all courts of first instance. A magistrate from the Public Prosecutor's Office is responsible for providing citizens with the necessary information, particularly information concerning procedure.

61. Also of note is the promulgation of Act No. 2002-52 of 3 June 2002 on the granting of legal aid. A specialized commission rules on requests for such assistance. It is chaired by the State prosecutor attached to each court of first instance, assisted by a representative of the bar association and a financial administration official. This commission gives priority, as and when appropriate, to torture victims, and may grant them assistance to cover all the costs of the proceedings, including lawyer's fees.

62. In order to guarantee the right of persons on trial to expeditious consideration of their cases, and as part of the restructuring of the court of first instance and the simplification of its procedures, Act No. 93-114 of 22 November 1993, amending and supplementing certain articles of the Code of Criminal Procedure, established the office of a single judge, responsible for considering certain cases that do not generally require deliberations or exchanges of opinions among judges. These cases, which are considered to be offences of a formal nature and to be easily decided, include the issuance of cheques with insufficient funds, building without a permit and offences relating to business practices involving prices and competition.

63. Several other measures were also taken to improve the administration of justice. These include:

Act No. 2000-43 of 17 April 2000, amending and supplementing certain articles of the Code of Criminal Procedure and instituting the right of appeal in criminal cases for persons over 18 who are on trial, aimed at further strengthening the rights of the defence, in conformity with the International Covenant on Civil and Political Rights;

Act No. 2000-77 of 31 July 2000, amending and supplementing certain provisions of the Code of Criminal Procedure and instituting the post of enforcement judge to review the conditions in which sentences are served within places of custody, to visit prisons, to release certain prisoners on parole, to meet prisoners and to check on the registry of disciplinary cases;

Act No. 2002-94 of 29 October 2002 on the compensation of persons who have been held in pretrial detention or who have been sentenced and whose innocence has been proven, which institutes the principle of payment by the State of appropriate compensation to any person who has been held in police custody and whose guilt has not been established, and of compensation for any person who has been sent to prison and subsequently, following review of the trial, exonerated by the justice system;

Act No. 2001-51 of 3 May 2001 on supervisory staff and officers of prisons and rehabilitation establishments, supplementing the provisions on the transfer of responsibilities from prisons and their administrations to the Ministry of Justice and Human Rights, thus fostering the strengthening of individual liberties and extending judicial review to cover the execution of sentences;

Act No. 2001-52 of 14 May 2001, on the organization of prisons, replacing Decree No. 88-1876 of 4 November 1988 on special regulations for prisons. This Act consolidated guarantees protecting the rights of prisoners, in line with international standards, by explicitly regulating their rights and duties (medical examination, hygiene, access to reading material and maintenance of family ties). Prisoners are to be informed of such rights and duties so as to preserve their dignity and physical integrity, and to avoid any abuse. The Act also prepares prisoners for life after prison, allowing them to take up employment for which they are entitled to be paid. Furthermore, it provides prisoners with the opportunity to follow a rehabilitation programme comprising two training sessions, leading to qualifications. Thus, once released, prisoners can have a job that makes it possible for them to meet their needs and to avoid returning to a life of crime. Under this new Act, female prisoners who are pregnant or who are breastfeeding receive medical, social and psychological assistance. In all cases, the enforcement judge is required to inform the family court judge of cases of female prisoners who have children with them;

Organization Act No. 2005-81 of 4 August 2005, amending and supplementing Act No. 67-29 of 14 July 1967 on the organization of the judiciary, the High Council of the Judiciary and the statute of the judiciary. The Act modified the composition of the Council, increasing the number of members elected by the various levels of judges from 6 to 8, and

reducing the number of appointed judges from 34 to 18. The Act, in its (new) article 60, also strengthened disciplinary guarantees by allowing for appeals against disciplinary decisions to an appeals board under the High Council of the Judiciary. As for the disciplinary penalties applicable by the Disciplinary Council, (new) article 52 eliminated the penalty of demotion from the penalties available, and reduced from three years to nine months the period of suspension from office.

64. Labour law has been amended to make it possible more quickly and efficiently to resolve disputes that may arise between workers and enterprises when a contract is concluded, having regard for the importance of resolving such disputes and for their impact on social peace and on development efforts. Procedures for appeals to industrial tribunals have been simplified to facilitate the exercise of the right to bring cases. Industrial tribunals have been reorganized, and new tribunals have been set up at the seat of each court of first instance.

65. Furthermore, labour law was amended by Act No. 94-28 of 21 February 1994, which established a system of compensation for harm resulting from industrial accidents and occupational illnesses. In addition, Act No. 94-59 of 23 May 1994, amending and supplementing certain articles of the Code of Civil and Commercial Procedure, strengthened the conciliation role of the cantonal judge. Under the Act, the competence of the cantonal judge, whose first instance rulings were limited to cases involving payment for personal or movable property of up to 3,000 dinars only, was extended to cover cases of up to 7,000 dinars. This amendment reflects the will of the legislature to bring the justice system closer to those it serves, as there are cantonal courts in all districts (sub-prefectures).

66. Under this new legislation the judge must attempt to bring about conciliation between the two parties before a decision is handed down. In this way, the cantonal judge has a social and humanitarian role to play, enabling him or her to make an effective contribution to bringing about social harmony and establishing a spirit of tolerance and understanding between citizens through judicial conciliation.

(b) The Administrative Court

67. Act No. 72-40 of 1 June 1972 on the Administrative Court provides in its article 3 that this court is competent to rule on appeals for the annulment of acts by the administrative authorities. Article 5 of the Act states that such appeals are intended to ensure - in accordance with the law, the regulations in force and the general principles of law and the rule of law - respect for legality by the executive authorities. In addition, the State may incur civil liability even when it acts as a public authority, if its representatives, agents or officials have caused material or moral injury to others. The injured party may call upon the State to compensate for the injury (Decree of 27 November 1888 and Obligations and Contracts Code, art. 84). This is without prejudice to the direct liability of such officials vis-à-vis the injured parties.

68. Act No. 59-154 of 7 November 1959 on associations, initially amended and supplemented by Organization Act No. 88-90 of 2 August 1988, was further amended and supplemented by Organization Act No. 92-25 of 2 April 1992, establishing the principle that individuals joining any kind of public association may not be discriminated against, with the aim of extending the

、exercise of participatory democracy and involving the greatest number of citizens in the activities of associations and ensuring the neutrality of associations of a general nature vis-à-vis political action. By virtue of this amendment, persons meeting the conditions for membership of a public association but prevented from joining it can take legal action before the court of first instance.

69. Pursuant to this reform, the Ministry of the Interior issued an order on 14 May 1992 classifying the Tunisian Human Rights League (LTDH) as an association of a general nature. Having refused to comply with that order, the League was dissolved as a matter of course, in June 1992, upon expiry of the time limits set by the Act as amended. Following an appeal, however, the Administrative Court on 26 March 1993 decided on a stay of execution of the Minister of the Interior's order. This decision enabled the League to provisionally resume its activities and to hold its Congress in 1994. On 21 May 1996 the Administrative Court found in favour of the League.

70. With the aim of establishing the principle of conciliation as a method of conflict resolution, an international arbitration code was promulgated on 26 April 1993 and entered into force on 27 October of that year. This legislation, which is based to a large extent on the Model Law on International Commercial Conciliation of the United Nations Commission on International Trade Law (UNCITRAL), is considered by those who use it to be particularly liberal.

2. Administrative remedies

71. The High Committee on Human Rights and Fundamental Freedoms is an independent body made up of representatives of ministerial departments (one third) and independent persons (two thirds). It can hear the complaints and grievances of individuals or NGOs and can carry out investigations into alleged human rights violations and make proposals to improve legislation and practice. It publishes an annual report on its activities and a national report on the human rights situation in the country.

72. The role of the Ombudsman is to receive individual applications from citizens and NGOs concerning the administrative problems encountered by the public when dealing with public services or civil servants; the Ombudsman is also authorized to make proposals to the President of the Republic.

73. The role of the Citizen Supervisor is to: (a) promote dialogue between the Administration and citizens, as required by the legislature, and to establish a new basis for this relationship; (b) contribute directly or indirectly to finding appropriate solutions for overcoming administrative problems.

74. The Relations with Citizens Bureaux are responsible at the central and regional levels for:

Helping citizens to overcome any difficulties they encounter in their dealings with the Administration and helping them to obtain administrative services pursuant to the legislation and regulations in force;

Welcoming citizens, taking receipt of their applications and, in conjunction with the departments concerned, investigating these applications with the aim of finding suitable solutions;

Informing citizens, directly by mail or telephone, of the administrative procedures and formalities concerning the provision of the various services.

75. The role of the Human Rights Coordinator, who is based at the Ministry of Justice and Human Rights, is to manage the different issues in conjunction with the human rights units of the ministries concerned, in particular the Ministry of Justice and Human Rights, the Ministry of the Interior and Local Development, and the Ministry of Foreign Affairs. This important office strengthens the effectiveness of human rights protection.

76. Application to the same administrative authority to reconsider its decision can also be very effective. This is an administrative measure whereby an application is made to the higher administrative authority, such as the head of administration (minister, governor, etc.), before a complaint is lodged or proceedings taken against an administrative body before the competent judicial authority.

77. There have been a number of problems regarding enforcement of judgements. The Chairman of the High Committee on Human Rights and Fundamental Freedoms has laid this matter before the President of the Republic. The Head of State immediately ordered a commission to be set up, chaired by the Secretary-General of the Government, to ensure the monitoring of the enforcement of judgements and find proper solutions for each case. This commission is in the process of resolving the enforcement problems referred to it, either by referral to the administrative department concerned, or by awarding fair compensation if enforcement is impossible for reasons of force majeure.

III. ARTICLE 3

78. Article 3 of the Covenant guarantees “the equal right of men and women to the enjoyment of all civil and political rights”. In Tunisia, the principle of equality between men and women is enshrined in the Constitution, article 6 of which states that: “All citizens have the same rights and duties. All are equal before the law.”

79. By Act No. 85-68 of 12 July 1985, Tunisia ratified the Convention on the Elimination of All Forms of Discrimination against Women. In June 2002, Tunisia submitted its combined third and fourth periodic report to the Committee on the Elimination of Discrimination against Women, which welcomed the efforts made by Tunisia to promote women’s rights on an ongoing basis in the context of a drive to modernize the country while respecting its traditions.

A. Equality between men and women in legislation and in practice

80. Article 7 of the Constitution provides that all citizens may exercise fully their rights without any form of discrimination. Equality between men and women is, moreover, a fundamental principle of the guidelines for the project for Tunisian society. Thus, the Personal Status Code promulgated on 13 August 1956 was a legislative and political vehicle for the

emancipation of women and paved the way for initiatives on women's emancipation and advancement, confirming Tunisia's attachment to all its commitments in the area of protecting and consolidating women's rights.

81. This principle is also confirmed in the National Covenant signed on 8 November 1988 by the representatives of political parties and social and professional organizations, which states that "the principle of equality, that is to say of equality among citizens, men and women, without discrimination on the grounds of religion, colour, opinion or political affiliation, is no less important than the principle of liberty". Similarly, Act No. 88-32 of 3 May 1988 on the organization of political parties and Constitutional Act No. 97-65 of 27 October 1997, amending and supplementing certain articles of the Constitution, provide that political parties must, in their work, respect and defend the principles governing personal status, and renounce racism or any other form of discrimination.

82. The amendments introduced to certain articles of the Personal Status Code, pursuant to Act No. 93-74 of 12 July 1993, strengthened the position of women as persons in their own right, enjoying all rights. The reasoning underlying this amendment is that the cause of women is part of the cause of development in general, that these rights are indissociable from human rights, and that the development of these rights is not an end in itself but part of the overall framework of efforts to protect the family and guarantee the psychological and social balance of individuals and society.

83. Article 23 of the Personal Status Code, as amended by Act No. 93-74 of 12 July 1993, provides that "spouses shall be considerate of, maintain good relations with and avoid causing injury to the other. Both spouses shall fulfil their conjugal duties in conformity with usage and custom. They shall cooperate in managing the family's affairs, the proper education of their children and the conduct of their affairs, including education, travel and financial transactions. The husband, as head of the family, should provide for the needs of his wife and children to the extent of his means and in accordance with the needs of the household. The wife shall contribute to the family's expenses if she has property". This development in relations between men and women has certainly had consequences in terms of relationships within the family and male and female roles in a relationship.

84. The legislature's commitment to ending discrimination against women is also clear from the new articles 2 and 28 of the Personal Status Code. The new article 2, which stipulates the conditions under which presents exchanged between fiancés can be returned, has introduced equal rights for both parties, whereas under the former article 2 the fiancé alone had the right to the return of gifts. The new article 28 applies the same rule of equality with regard to the return of gifts between spouses in the event of dissolution of an unconsummated marriage.

85. Similarly, the elimination of a woman's obligation to "obey" her husband confirms Tunisia's commitment to greater family balance, to raising the status of women in families and to eliminating anything that might encourage lack of respect for women or affect their dignity. The Personal Status Code has enabled the relationship of dominant man/submissive woman to be transcended and the legislative and cultural foundations to be laid for equality between men and

women. Changes in behaviour and in legislation have benefited women and have opened up the horizons of the gender equality so desired by women, but also by an increasing number of men. These changes have helped to liberate men and women, who are obliged to live together in an interdependent and complementary manner.

86. Article 153 (new) of the Personal Status Code stipulates “a minor over the age of 17 shall become adult by marriage in regard to personal status and the management of his or her civil and business affairs”. This matter is mainly of interest to girls, who when they marry become adults, and are able to exercise the rights inherent in their personal status and civil and business activities. They are able to contribute effectively, alongside their husbands, to the education of their children and the conduct of the family’s affairs. Even in the event of marital conflict, a wife who has not attained the age of legal majority (20 years) can, owing to her emancipation through marriage, initiate court proceedings and enter into all types of civil and business transactions.

87. With the aim of strengthening family courts, Act No. 93-74 of 12 July 1993, amending certain articles of the Personal Status Code, established the function of family judge, specialized and competent in family affairs, and with at least 10 years’ experience (new art. 32). The idea is to contain family disputes, with the aim of helping to prevent families breaking up and protecting the interests of children. Family judges are involved in conciliation between spouses. If divorce is inevitable, the judge takes emergency measures concerning matters of housing, alimony, custody of children and visiting arrangements, taking into consideration the interests of minors and the requirements concerning their protection and the safeguards for their future.

88. Before the amendment of article 67 of the Personal Status Code, only a father could be a child’s legal guardian, while custody of children was granted to the mother. Article 67 (new) of the Personal Status Code gives guardianship rights to the mother. The mother may be appointed guardian by court decision, if the current guardian is unable to fulfil his duties towards the child he is responsible for, or in the event of abuse in the exercise of guardianship, negligence in fulfilment of the guardian’s duties, the guardian’s absence from the family home or his leaving with no known address. The legislature thus took the innovative measure of introducing deprivation of paternal authority, to the benefit of the mother having custody of the children.

89. Act No. 93-65 of 5 July 1993 established the Alimony and Maintenance Payments Guarantee Fund for divorced women and their children, who can submit a request to the Fund for amounts due, if they have obtained a final judgement that has not been enforced owing to the debtor’s refusal to pay. The Decree of 9 August 1993 laid down the procedures for the operation of this Fund, which is considered to be a major asset for divorced women and their children, in that it prevents them from being in want. It is important to point out that this Decree was amended by the Decree of 16 March 1998, in order to bring its provisions into line with those of article 46 of the Personal Status Code. Thus, maintenance continues to be paid to children continuing their studies up to the age of 25 and, with no age limit, to girls with no means of support, or without support from a husband, and to disabled children.

90. Extensive use has been made of the Alimony and Maintenance Payments Guarantee Fund, which came into being on 13 September 1993. A great many people have benefited from its services, as shown by the figures below.

Table 1

Number of families who have benefited from the services of the Alimony and Maintenance Payments Guarantee Fund since 1995

Date	Beneficiary families	Amounts (in thousands of dinars)
1995	1 854	1 332
1996	851	1 375
1997	780	1 764
1998	894	2 450
1999	825	3 114
2000	900	3 749
2001	815	3 658
2002	961	4 664
2003	906	5 209
2004	232	1 685
Total	9 018	29 000

91. As part of efforts to strengthen the role and place of women in society, and with the ethical and political aim of protecting women from all forms of discrimination, the legislature has sought to promote to a greater extent equality of men and women before the law, and remove from legislation all vestiges of discrimination against women. Act No. 2000-17 of 7 February 2000, repealing certain provisions of the Obligations and Contracts Code, abolished article 831 of this Code, which stipulated that "a married woman can only undertake to work as a child-minder, or in another capacity, with the authorization of her husband. The husband has the right to terminate any employment agreement entered into without his consent".

92. The same Act also repealed the second paragraph of article 1481, which stated that "a married woman cannot put up more than one third of her assets as surety without her husband's authorization. The husband's authorization does not constitute a guarantee unless otherwise stated". This Act also repealed the second paragraph of article 1524, which provided that "a woman cannot stand bail without her husband's agreement. The husband cannot retroactively act as guarantor, unless otherwise stipulated". This new legislation is aimed at improving equality between men and women, in the area of rights and duties, with no order of precedence.

93. Act No. 2005-80 of 9 August 2005, amending a number of provisions of the Obligations and Contracts Code, amended articles 1138 and 1158 of the Code, which contained discriminatory provisions, since the only case of power of attorney they envisaged involved the husband representing his wife, which implicitly amounted to denying a woman the right to represent her husband. In this context, (new) article 1158 acknowledges the possibility of a woman representing her husband by providing that "divorce shall end the power of attorney granted by one spouse to the other".

94. In order to improve gender equality, Act No. 93-62 of 23 June 1993 amended article 12 of the Tunisian Nationality Code, by granting Tunisian women the right to transmit their nationality

to children born outside Tunisia to an alien father, on the basis of a simple, joint written declaration by both parents, provided the children are under 19 years old, at which age the legislature gives them the freedom to express their views regarding the nationality they choose.

95. Article 12 of the Tunisian Nationality Code was amended pursuant to Act No. 2002-4 of 21 January 2002 to read “in the event of the death, disappearance or legal incapacity of the father, the mother’s declaration shall suffice”.

96. In line with the principle of equality in this regard, the Constitution, as amended by Constitutional Act No. 97-65 of 27 October 1997 amending and supplementing certain articles of the Constitution, places paternal and maternal affiliation on an equal footing, recognizing the right of all Tunisians born of a Tunisian father or of a Tunisian mother, without discrimination, to stand as a parliamentary candidate.

97. With regard to inheritance law, the legislature has made progress towards recognizing the equality of the sexes. The inheritance rights of Tunisian women have improved significantly owing to the establishment of a number of legislative mechanisms, such as:

(a) The “return mechanism”, which allows a daughter to inherit the entire estate if she is the sole heir;

(b) The establishment of the compulsory legacy regime, which grants the small children of a predeceased son or daughter the right to a claim on the inheritance;

(c) The introduction of the common property regime, which was established pursuant to Act No. 98-91 of 2 November 1998 amending Act No. 60-30 of 14 December 1960 on the organization of social security schemes, in accordance with the new relations of shared responsibility and partnership governing the couple, as stipulated in (new) article 23 of the Personal Status Code.

98. While article 24 of the Personal Status Code establishes the separation of property owned by spouses, whereby women dispose of property which they acquire during the marriage under the same conditions as their husbands, Act No. 98-91 of 2 November 1998 grants spouses the possibility of opting for the common property regime. The aim of this regime is to put one or more properties destined for family use into common ownership. The Act stipulates that only property acquired after marriage can become common property, with the exclusion of property acquired through inheritance, legacy or donation.

99. Article 207 of the Criminal Code was repealed pursuant to Act No. 93-72 of 12 July 1993 amending and supplementing certain articles of the Criminal Code. The Act eliminated the attenuating circumstances previously recognized where a husband murdered his wife or her accomplice caught in flagrante delicto of adultery. The maximum penalty was 5 years, whereas the crime of manslaughter is subject to punishment of up to 20 years’ imprisonment. By abolishing the attenuating circumstances in the case of men whose wives are unfaithful, the legislature has provided for equality between spouses for crimes of passion.

100. New Act No. 2004-73 of 2 August 2004, amending and supplementing the Criminal Code with regard to punishment of offences against public morals and sexual harassment, was

promulgated in order to remedy the lack of provisions to punish harassment. This Act supplemented the Criminal Code with regard to offences against public morals and sexual harassment, demonstrating the commitment to fostering collective civic behaviour and safeguarding the dignity of individuals, particularly women.

101. The former simplistic image of women is based on a division of roles between the sexes that is presented as "natural" and thus unchangeable: salaries and politics for men, home and babies for women. If there is to be a real transformation in the relationship between the sexes, leading to greater equality and trust, men must radically reappraise themselves and this formerly prevailing image. To this end, the aim of improving the image of women in the media and publications, and the overhaul of school curricula, is to instil into children and young people the principle of gender equality and to present an objective, real image of women in school textbooks. This image, reflecting women's status within the family, highlights the principles of harmony, mutual respect and shared responsibility, which must prevail in family relationships and in society.

102. With the aim of eliminating illiteracy, in particular among women, especially rural women, a national adult education programme was implemented in 2000. This programme, which was targeted mainly at young people and women, particularly from rural areas, met with a response on a massive scale by women, who represented 87.6 per cent of the programme's students in 2006. Thanks to the efforts made at national level, the illiteracy rate for women dropped from 42.3 per cent in 1994 to 31 per cent in 2004.

103. Tunisia has made an international commitment to equality between men and women in the field of employment, with the ratification of ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, of 25 June 1958; ILO Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, of 29 June 1951; and the United Nations Convention on the Elimination of All Forms of Discrimination against Women, of 18 December 1979.

104. Tunisia has attached importance to making the role of women more dynamic and encouraging them to actively participate in development efforts, as one of the essential components of its model of society. To this end, the increased presence of women in all areas and all sectors of activity embodies the principle of gender equality. According to the 2004 census, women represent 26.6 per cent of the working population in Tunisia, compared to 5.5 per cent in 1966. Moreover, the number of women entrepreneurs has increased dramatically; thus, the number of women company directors in the formal sector increased from 1,000 in 1991 to 10,000 in 2003.

105. Tunisian legislation grants working women childbirth and maternity rights and time off for breastfeeding, and obliges employers who employ 50 women to set aside a special room for breastfeeding (Labour Code, art. 64 and Decree 68-328 of 22 October 1968 establishing general hygiene regulations applicable to enterprises subject to the Labour Code, art. 19).

106. Tunisian legislation has provided other facilities for working women, including early retirement, part-time work in the private sector, part-time work in the civil service and in public enterprises, and leave of absence.

107. The Labour Code, revised in 1994 and 1996, the Framework Collective Agreement concluded in 1973, and the sectoral collective agreements (of which there are currently 51) prohibit all forms of discrimination.

108. In addition to these legal instruments, pursuant to Act No. 93-66 of 5 July 1993 a new article (5 bis) was added to the Labour Code, amending the Labour Code with regard to non-discrimination between the sexes. This article explicitly establishes the principle of non-discrimination between men and women in the implementation of the provisions of the Labour Code. The presence of women in decision-making posts in administration has also increased, reaching 22.7 per cent in 2003 compared to 12 per cent in 1994.

109. In order to involve women in the process of sustainable development the Ministry for Women, Family, Youth and the Elderly has included in its work strategy efforts to increase the empowerment of women, with the aim of meeting the Millennium Development Goals. To this end, the following structures were set up:

The National Observatory for Women (as part of the Centre for Research, Study, Documentation and Information on Women);

The National Council for Women's and Family Affairs, consolidated by the establishment of three technical committees responsible for drawing up annual reports on the implementation of legislation and equal opportunities, the image of women in the media, and national and international target dates concerning women and families;

The National Women and Development Commission.

B. Impetus given to the participation of women

110. The legal instruments available have enabled the content of women's rights to be improved. From minimum, protection-based rights, which were subsequently complemented by need-based rights, women's rights have now reached a new level of meaning: rights to citizenship and the political responsibility of women citizens. Thus, the way women participate individually and politically in civic affairs has had tangible results; the participation of women in political life leads them to generate, in real everyday situations, new rights to fully fledged citizenship, and to assume their responsibilities in this area, in line with the principles enshrined in the international conventions ratified by Tunisia in the area of women's rights.

1. In public affairs

111. With regard to the executive, following the ministerial reshuffle of 10 November 2004, women represent 14.89 per cent of the total number of members of Government, compared to the previous figure of 13.6 per cent. The Government currently has two women ministers and five women secretaries of state. Representation of women in the Chamber of Deputies doubled between 1999 and 2004, increasing from 11.5 per cent to 22.75 per cent, compared to 7.4 per cent in 1994. The Vice-President of the Chamber of Deputies is a woman, and one of the standing committees is also chaired by a woman. Women make up 17 per cent of the members of the Chamber of Councillors (Senate), who were elected in 2005 for the first term of office in this new body, and one of its vice-presidents is a woman. Representation of women in municipal

councils, following the municipal elections of 2005, stood at 21.6 per cent, compared to 16 per cent in 1995. Women's participation in consultative committees has also distinctly improved. Women now account for 25 per cent of the members of the Constitutional Council, 20 per cent of the members of the Economic and Social Council (compared to 11 per cent in 2002), 20 per cent of the members of the High Council for Communication and 13.3 per cent of the members of the High Council of the Judiciary. Women have also been appointed to high-level posts such as that of Ombudsman, first president of the Court of Auditors, ambassador, governor, etc. Some 20 women work as official representatives in ministerial cabinets.

112. In judicial bodies, women account for 27 per cent of judges and 31 per cent of lawyers. Many of them are presidents of cantonal courts, or legal advisers to courts of appeal and cassation. Three women judges are members of the High Council of the Judiciary.

113. The same holds true for regional bodies, where women account for 32 per cent of members of the regional councils of the 24 governorates, in line with the decision taken in 1999 aimed at consolidating the participation of women in public life.

2. In civil society

114. Tunisian women participate actively in community activities, which were given considerable impetus with the consolidation of the democratic process and strengthening of civil society. They account for more than a third of the members of Tunisia's 8,913 associations and occupy 21 per cent of management posts of associations and national and professional organizations.

115. Armed with the benefits brought by legal instruments, women continue to achieve greater emancipation. The way they see themselves has changed, thus also changing the way others look at them. Their demands have also changed. What has been gained in terms of the protection and promotion of women's rights is not only the enforcement of those rights; they constitute a symbolic revolution and the discovery of new values, which have repercussions for relationships within the family (particularly with regard to children's education and future), the social sphere and civic rights. A path is being forged towards new social relationships, freedom and civic responsibility. It is no longer women's rights that are the foundation of social progress, but the rights of women citizens, whose right to participate in the management of community affairs develops their skills of judgement, in full satisfaction of their right to education, training, culture, health and work.

IV. ARTICLE 4

116. Article 4 of the Covenant provides that in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States parties may take measures derogating from their obligations under the Covenant.

117. To this end, article 46 of the Tunisian Constitution provides for a state of emergency which involves a special, exceptional procedure and specifies how the President of the Republic can adopt measures of derogation so as to cope with an emergency threatening the country.

Article 46 provides that: "In case of imminent danger threatening the institutions of the Republic and the security and independence of the country and impeding the proper functioning of the government authorities the President of the Republic may take exceptional measures required by the circumstances after consultation with the Prime Minister and the President of the Chamber of Deputies and the President of the Chamber of Councillors (…). These measures cease to be valid after the ending of the circumstances which gave rise to them (…)."

118. In the period covered by the present report, Tunisia has never decreed a state of emergency. Despite the real danger represented by the Ennahdha Islamist movement, which is connected to the international pan-Islamic movement, Tunisia refused to proclaim a state of emergency and undertook to resolve the situation in compliance with the law and to follow the usual procedures concerning the legal measures of arrest and police custody.

119. Since 7 November 1987 Tunisia has had no political or economic crises that have led to situations of difficulty or exceptional public dangers. A climate of harmony and social peace prevails, as a result of economic development, the social reforms undertaken and the consensual participatory democracy introduced since the adoption on 8 November 1988 of the National Covenant by the representatives of political parties and social and professional organizations. This National Covenant was conceived of as a "common contract able to bring Tunisians together in consensus, in order to establish democracy and consolidate the rule of law". From the point of view of the signatories of this founding text of consensual democracy "the legitimate right to difference means neither insurrection nor rift". The overarching objective is to "strengthen the foundations of the rule of law as an instrument for fulfilling the ambitions" of all Tunisians and to "harness all sources of energy and human and natural resources" in order to establish the foundations of a just, egalitarian, free and developed society.

V. ARTICLE 5

120. The safeguard clause included in article 5 of the Covenant is designed to prevent any deliberately mistaken or restrictive interpretation of other articles of the Covenant which could be cited to justify the violation of rights recognized by the Covenant or broader limitations than it provides on the exercise of those rights.

121. Being an integral part of Tunisian legal standards, the Covenant, and international conventions duly ratified by Tunisia, take precedence over domestic legislation, pursuant to article 32 of the Constitution.

122. Similarly, there may be no restrictions upon or derogations from any of the fundamental human rights recognized in Tunisia, even in the event of the Covenant not recognizing certain rights or recognizing them to a lesser extent. Fundamental human rights are recognized by the Constitution, as amended by Constitutional Act No. 2002-51 of 1 June 2002, article 5 of which provides that: "The Republic of Tunisia guarantees fundamental freedoms and human rights in their universality, comprehensiveness, complementarity and interdependence."

123. In the Tunisian legal system it would be inconceivable to rely on a provision of the Covenant in order to infringe human rights since the Constitution, as a higher legal instrument,

provides in its article 8, following the constitutional amendment introduced by Act No. 97-65 of 27 October 1997, that: “Political parties provide guidance to citizens with a view to ensuring their participation in political life. Political parties must be organized on democratic principles. Political parties must respect the sovereignty of the people, the values of the Republic and human rights. Political parties undertake to renounce all forms of violence, fanaticism, racism and all forms of discrimination. A political party may not rely fundamentally, in its principles, objectives, activities and programmes, on a language, a race, a sex or a region. All parties are forbidden to have ties of dependence with foreign parties or interests.”

124. The constitutional obligation to respect human rights is also established in legislation (Press Code, Act No. 88-32 of 3 May 1988 on the organization of political parties, Outline Act No. 2002-80 of 23 July 2002 on education and school teaching policy). The expression “human rights” is used to mean all the commitments entered into by Tunisia through the ratification of international human rights instruments, including the Covenant, which is protected in Tunisia under the Constitution with regard to any political action on the part of the State or any other actor in society. Any legislation or international convention that runs counter to human rights is considered to be unconstitutional. The Constitutional Council monitors in advance the constitutionality of laws and the ratification of international treaties and conventions (Constitution, art. 72 et seq.).

VI. ARTICLE 6

125. Article 6 of the Covenant guarantees every human being the right to life. Tunisian positive law has made protection of the security of the individual, and more particularly physical integrity, a basic principle of public freedoms.

126. Article 5 of the Constitution establishes the inviolability of the individual and protection against any attempt on his or her life. Similarly, Tunisian law protects the right to life through the imposition of the penalties provided for in the Criminal Code on all who violate life.

127. Tunisia has continued to extend the scope of application of article 6 of the Covenant concerning the right to life, with the aim of protecting human life in all circumstances and all situations where a person’s physical integrity is threatened. This protection is a priority in cases where the age or physical condition of the person concerned does not allow that person to defend him or herself against possible attacks. To this end the legislature has set out a number of special provisions for children, the elderly and the disabled.

A. Protecting the life of the child

128. The Children’s Code was promulgated pursuant to Act No. 95-92 of 9 November 1995 on the publication of the Children’s Code, with the aim of guaranteeing children the conditions for the full development of their potential and providing them with all-round protection. The humanist aim of the Code is, as stated in its article 1, “to place the rights of the child to safeguarding and protection in the context of the broad national policy choices which have made human rights into noble ideals that guide the will of Tunisians and allow them to develop and enhance their personal experiences, in accordance with human values”.

129. Protecting a child's right to life is based on measures guaranteeing a child's survival and self-fulfilment, responsibility for which falls primarily to the parents. Thus, in the event of incapacity or negligence on the part of the latter, the legislature has provided for several mechanisms for the child's protection, in particular the establishment of a team of child protection officers to intercede with families or any other person in charge of the child so as to prevent any form of harm or abuse threatening the child's security and development (Children's Code, art. 28 et seq.).

130. Article 30 of the Children's Code states that "the child protection officer is responsible for acting in all cases where it is proved that the health of the child or his or her physical integrity is threatened or endangered owing to the environment in which he or she lives or to acts which the child carries out or as a result of ill-treatment to which he or she is subjected". Article 46 of the same code provides that "in the event of imminent danger, the child protection officer may decide to remove the child from the place of danger, with the help of the police if necessary, to a place of safety, under his or her own responsibility, while respecting the inviolability of the home".

131. The protection of the right to life is a legal obligation provided for by article 31 of the Children's Code, which obliges all adults to notify the child protection officer in cases where a child is living in a particularly difficult situation that threatens his or her physical health.

132. The ratification by Tunisia, pursuant to Decree No. 2003-1814 of 25 August 2003 publishing the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, of the two Optional Protocols is another measure designed to ensure the protection of the child and his or her right to self-fulfilment.

B. Penalization of the abandonment of children or legally incapacitated persons

133. The promulgation of the Children's Code was accompanied by the revision of a number of provisions of the Criminal Code concerning attacks against the person, by Act No. 95-93 of 9 November 1995, amending and supplementing certain articles of the Criminal Code, with the aim of improving the protection of children against sexual or economic exploitation by an individual or organized gang.

134. Article 212 (new) of the Criminal Code provides that a person who endangers or causes to be endangered, or abandons or causes to be abandoned, a child or legally incapacitated person unable to protect him or herself, shall be punished by three years' imprisonment and a fine of 200 dinars. Article 213 (new) of the Code provides that "abandonment shall be punishable by life imprisonment if the child or legally incapacitated person dies as a result of this abandonment".

135. Guaranteed health services and social services for disabled people is considered a "national responsibility" under article 3 of Outline Act No. 2005-83 of 15 August 2005 on the advancement and protection of disabled persons.

136. Act No. 2001-93 of 7 August 2001 on reproductive medicine introduced the concept of reproductive health and prohibits genetic engineering, cloning and the trafficking of foetuses and human embryos. This Act governs the start of life in the process of assisted reproductive technology in accordance with bioethics rules, in order to guarantee conformity with human rights.

C. The preservation of human life by the repeal of article 207 of the Criminal Code

137. Article 207 of the Criminal Code provided that a husband who murdered his wife, caught in flagrante delicto of adultery, incurred a penalty of five years' imprisonment, thus reducing the crime of voluntary manslaughter to a simple misdemeanour. Act No. 93-72 of 12 July 1993, amending certain articles of the Criminal Code, repealed this article 207, thus abolishing this provision that ran counter to the right to life and the principle of preservation of human life.

D. Protection of elderly persons

138. Act No. 94-114 of 31 October 1994 on the protection of elderly persons provides in its article 2 that protecting the life of elderly persons entails:

Safeguarding their health;

Encouraging studies and research on the individual and collective aspects of ageing and the possible ways of ensuring the protection and welfare of elderly persons.

139. The legislature has provided for the death penalty only for perpetrators of serious crimes, as described in the previous report. The application of this penalty by courts is very limited. Many people sentenced to death have been granted a presidential pardon and have had their sentences commuted to life imprisonment.

140. Article 9 of the Criminal Code provides that "any condemned woman who is found to be pregnant shall not be executed until after delivery". Under the terms of these provisions a pregnant woman may be sentenced to death by a court but may not be executed until after she has given birth. Article 2, paragraph 2, of the Criminal Code states that when the penalty incurred by a child is the death penalty or life imprisonment, it shall be replaced by 10 years' imprisonment.

141. In October 1995, Tunisia hosted an international scientific colloquium on the death penalty in international law and international legislation. On that occasion, the General Secretary of the International Federation of Citizens and Parliamentarians for the Abolition of the Death Penalty warmly thanked the Tunisian Government for its help in organizing the colloquium, in which many researchers, international experts, parliamentarians and representatives of NGOs had taken part.

142. The report by the United Nations Secretary-General on the work of the sixty-second session of the Commission on Human Rights (E/CN.4/2006/83), considered Tunisia as a "de facto abolitionist" since the last enforcement of the death penalty dated back to 9 October 1991. The report defines as "de facto abolitionist" those countries that have had no executions for at least 10 years.

143. Terrorism is a global scourge affecting human lives. In this regard, Tunisia has promulgated Act No. 2003-75 of 10 December 2003 on support for international efforts to combat terrorism and money-laundering.

144. Tunisia has never experienced genocide at any point in history.

VII. ARTICLE 7

145. Article 7 of the Covenant seeks to protect the individual from being subjected to any kind of violence, whether by a private individual or by a public official. The penalties prescribed for such offences are extremely severe, particularly when the victim is a minor or legally incapacitated or when the violence precedes, accompanies or follows a violation of individual freedom.

146. Civil society has been associated with the movement for the protection of the physical safety of the person. In this context, women’s associations are actively fighting against gender-based violence. The Tunisian Women’s Association for Democracy (ATFD) set up a counselling centre for female victims of domestic violence. In addition, the National Union of Tunisian Women (UNFT) established a counselling and legal advice unit. It set up two temporary accommodation facilities for female victims of domestic violence and their children (the first of which is in Tunis, the second in Sousse) providing multisectoral assistance: medical, social, financial, etc.).

147. Tunisia has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without reservations. It has published the declaration on recognition of the competence of the Committee against Torture under articles 21 and 22 of the Convention. Finally, all the procedures required for the entry into force of the Convention have been completed and legislation updated to bring it into line with the Convention.

148. To this end, the Criminal Code was amended by Act No. 99-89 of 2 August 1999, amending and supplementing certain of its provisions, in particular through the introduction of a new article (101 bis) which states that “any public official or person of comparable status who subjects a person to torture in the performance of or in connection with his or her duties shall be liable to eight years’ imprisonment”. Torture is defined in the same article in accordance with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

A. Protection of vulnerable categories

149. Since the ratification by Tunisia, on 23 September 1988, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Act No. 88-79 of 11 July 1988, ratifying the 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), various measures have been taken to humanize sentences, in particular, the abolition of forced labour on 27 May 1989 (Act No. 89-27 of 27 February 1989 on the abolition of forced labour). These measures have been strengthened by provisions for the protection of the most vulnerable, in order to guarantee their rights. This applies to mentally ill persons, children in conflict with the law and elderly persons.

1. Protection of mentally ill persons

150. Act No. 92-83 of 3 August 1992, on mental health and conditions of hospitalization for mental disorders, requires hospitalization to be consistent with individual freedoms and the safeguarding of human dignity.

151. Persons with mental disorders may not be admitted to hospital without their consent, unless it proves impossible to obtain informed consent or if the state of mental health of the individual concerned calls for urgent care or poses a threat to their safety or to that of third parties. Restrictions on freedom are strictly limited to the measures required by the state of health and treatment of the individuals concerned. The latter must, in any case, be informed of their admission or, as soon as their condition allows, of their legal status and of all their rights. They may communicate with public medical health inspectors and with the judicial authorities, send and receive personal letters, and contact family members and the mental health regional commission responsible for reviewing the situation of hospitalized persons in conformity with individual freedoms and human dignity.

2. Protection of children in conflict with the law

152. With regard to children in conflict with the law, Decree No. 95-2423 of 11 December 1995 on the regulations governing rehabilitation centres for juvenile offenders, established three schemes:

An intensive management scheme based on assistance for and supervision of serious juvenile offenders or repeat offenders;

A semi-open scheme in which the minor is granted permission to leave the centre and to participate in outreach activities, for minors whose behaviour has improved;

An open scheme that promotes the rehabilitation and protection of minors.

153. The various schemes, which constitute substitutes for deprivation of liberty and release measures, are supervised and reviewed by the enforcement judge for minors, a judicial body independent of the authorities.

3. Protection of elderly persons

154. Act No. 94-114 of 31 October 1994, on the protection of elderly persons, established private institutions for the assistance and protection of elderly persons, to be used only in case of necessity and in the absence of alternatives. Elderly persons may not be admitted to or kept in these institutions without their consent. Admission is at their own request or that of their legal representatives or of the authorities.

B. Medical and scientific experimentation and free consent

155. Article 7 of Act No. 2001-93 of 7 August 2001 on reproductive medicine states that “it is prohibited to create human embryos or to use them for commercial or industrial purposes or for the purpose of eugenics”.

156. In the context of the prohibition on subjecting a person, without his or her consent, to medical or scientific experimentation, the Code of Medical Ethics, promulgated by Decree No. 93-1155 of 17 May 1993 embodying the Code of Medical Ethics, reaffirms the commitment of the State to ensuring free consent of the individual to medical and scientific experimentation by reiterating the principles already enshrined in Decree No. 90-1401 of 3 September 1990, establishing the modalities for medical and scientific testing of drugs intended for human medical use. These instruments set out the requirement for free and informed consent of the patient or his or her legal guardian, and for there to be therapeutic value for the patient (life-saving, cure, pain relief) undergoing medical experimentation. With regard to non-therapeutic experimentation (Decree No. 90-1401, arts. 105 to 111), the primacy of the life and health of the individual subjected to the experiment is respected. This is reflected in the requirement for the patient's consent and the need for information to be provided on the nature, purpose and effects of the experiment on his or her life and health, taking into account the responsibility of the doctor, who must suspend the experiment if the individual or his or her legal guardian so requests or if a risk is present.

157. In addition, Tunisia has trained public officials responsible for the implementation of human rights legislation. On taking up their duties, these officials must pledge to abide by the law, to ensure the freedom and dignity of the individual and not to subject the latter to torture or cruel treatment. Severe penalties are imposed by law on officials who abuse their authority in the performance of their duties or who violate the individual freedom of others.

158. To give practical expression to the special attention devoted by Tunisia to juvenile offenders, Act No. 93-73 of 12 July 1993, amending certain articles of the Criminal Code, was promulgated. It provides, inter alia, for:

A reduction in the observation period to one month, renewable once only;

Periodic review, at least every six months, of sentences on young persons;

Follow-up by specialized judges of cases involving young persons in rehabilitation centres.

159. It should be noted that the above-mentioned Act was annulled by Act No. 95-92 of 9 November 1995 on the publication of the Children's Code, which laid the foundations for judicial supervision of the enforcement of sentences. The Children's Code reflected this development in its article 109 by entrusting the juvenile court judge with supervision of the enforcement of measures and decisions taken with regard to children.

VIII. ARTICLE 8

160. Article 8, paragraph 1, of the Covenant stipulates that: "No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited." Paragraphs 1 and 2 of the same article further state that: "No one shall be held in servitude" and that "no one shall be required to perform forced or compulsory labour".

161. The Constitution of the Republic of Tunisia has no specific provisions regarding slavery and similar practices, merely emphasizing in its preamble the attachment of the framers of the Constitution "to the human values that constitute the common heritage of the peoples attached to human dignity, justice and liberty and who are striving for peace, progress and free cooperation among nations", because Tunisia was among the first States to prohibit slavery. Tunisia prohibited slavery in the nineteenth century, pursuant to the Decree of 28 May 1890 imposing criminal penalties on any person who enslaved another person.

162. In 1966 Tunisia acceded to the Slavery Convention of 25 September 1926, as amended by the Protocol of 7 December 1953, and to the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 7 September 1956 (Act No. 66-32 of May 1966). In 1962 Tunisia also ratified ILO Convention No. 29 concerning Forced or Compulsory Labour, of 28 June 1930 (Act No. 62-51 of 23 November 1962), and Convention No. 105 concerning the Abolition of Forced Labour, of 25 June 1957, in 1958. Accession to and ratification of these conventions marked the end of slavery in Tunisia.

163. In accordance with the relevant provisions of article 8 of the Covenant, and in the light of article 15 of the Constitution, which provides that the defence of Tunisia and its territorial integrity is a sacred duty for every citizen, article 1 of Act No. 2004-1 on national service of 14 January 2004 stipulates that "national service is aimed at preparing citizens to defend their country, participate in its overall development and contribute to promoting peace throughout the world". Article 2 further states that "every citizen aged 20 years must volunteer for national service" and that he or she "retains the obligation to discharge national service up to the age of 35 years". Article 23 determines cases of exemption from military service. "Exemption from military service applies to any citizen who: firstly, has been deemed medically unfit for service; secondly, has been definitively recognized as the family provider, because he is effectively responsible for the upkeep of one or several persons who would lack sufficient resources as a result of the individual's conscription … ." Those individuals called up for military service, the duration of which is set at one year, are assigned to military or national service.

164. Pursuant to the new criminal policy guidelines, the State embarked on a major initiative to humanize custodial sentences with a view to preserving the dignity of convicted persons. In this context, Act No. 95-9 of 23 January 1995 was promulgated, providing for the abolition of re-education labour and civilian service, which were additional sentences restricting freedom of work, complementary to a custodial sentence. This decision reflects the desire to promote human rights, public and private freedoms, and freedom of work.

165. Decree No. 95-2423 of 11 December 1995, embodying the internal regulations of rehabilitation centres for juvenile offenders, established alternative regimes to imprisonment, consisted in placing juvenile offenders in open or semi-open rehabilitation centres compatible with the social environment.

IX. ARTICLE 9

166. Article 9 of the Covenant prohibits any violation of the security of person, arbitrary arrest or detention. It guarantees the right to liberty and security of all individuals. In Tunisia, protection of the liberty and security of person without discrimination is a political choice and a

genuine reality. The State guarantees the security of persons in its territory, without any discrimination, against any violation and punishes the perpetrator of any form of aggression. Arrest and detention of individuals for a criminal offence is governed mainly by the Criminal Code. To this end, and in conformity with the principle of the territoriality of criminal law, the guarantees relating to police custody, pretrial detention and imprisonment, provided for under Tunisian legislation, apply to everyone without any distinction.

A. Protection against arbitrary arrest

167. Many legislative measures were taken during the period 1993-2005 in relation to protection against arbitrary arrest, including:

Act No. 93-114 of 22 November 1993, amending and supplementing certain articles of the Criminal Code, which seeks to enhance the rights of prisoners;

Act No. 99-90 of 2 August 1999, amending and supplementing certain provisions of the Criminal Code, which seeks to promote safeguards for persons in custody. It should be noted in this respect that the maximum duration of police custody and pretrial detention is set by law. With regard to custody, the maximum duration has been set, since 1999, at three days and may be extended only once, for a period of equal duration. Its maximum duration is thus six days;

The duration of pretrial detention varies according to whether a crime or an offence has been committed. In the case of a crime, its maximum duration is six months and may be extended twice, for four months each time. Its maximum duration is thus 14 months. In the case of an offence, its maximum duration has been set, since 1993, at six months with the possibility of a single extension for a period of three months, thus providing for a maximum of nine months. Under the terms of the Act, the criminal investigation police officer is required to inform the person in custody of the procedure initiated against him or her, the reason for and duration of the procedure, and also to read the safeguards provided to him or her by law, namely the possibility of undergoing a medical examination during the period of custody. Furthermore, the police officer is required to inform one of the ascendants, descendants, brothers, sisters, or spouse of the suspect, as he or she chooses, of the measure taken against him or her. The prisoner or one of the above-mentioned persons may request that he or she undergo a medical examination during custody or upon termination of this period.

168. The report drawn up by the criminal investigation police officer must contain the following:

The information provided to the prisoner concerning the measure taken against him or her and the reason for the measure;

The safeguards provided by law, read to the prisoner;

Notification or failure to notify the family of the prisoner;

Whether the medical examination was requested by the prisoner or a family member;

Indication of the date and time of the beginning and end of custody and questioning;

The signatures of the criminal investigation police officer and the prisoner;

The notation, where appropriate, that the prisoner declined to sign the report and an indication of the reason why.

169. Criminal investigation police officers in custody centres must keep a special register numbered and signed by the State prosecutor or his or her alternate, which must contain the following information:

The identity of the prisoner;

The date and time of the beginning of custody;

Notification to the family of the measure taken against the prisoner;

Whether the medical examination was requested by the prisoner or one of his or her ascendants, descendants, brothers, sisters, or spouse.

170. With a view to improving safeguards during police custody, the Tunisian Constitution was amended by Constitutional Act No. 2002-51 of 1 June 2002; article 12 of the Act stipulates that "police custody is subject to judicial review and pretrial detention may be employed only following judicial instruction. It is forbidden to arbitrarily place any individual in police custody or detention".

B. Protection against arbitrary detention

171. The legislative measures taken during the period covered by this report with regard to protection against arbitrary detention include the institution of community service orders as a substitute for prison sentences and the adoption of provisions relating to the international definition of the crime of torture, pursuant to Act No. 99-89 of 2 August 1999, amending and supplementing certain provisions of the Criminal Code. The term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing the person for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her, when severe pain or suffering is inflicted for any reason based on discrimination of any kind (Criminal Code, art. 101 bis). This definition of torture in the Criminal Code is consistent with the definition provided by the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

172. Pursuant to Act No. 99-89 of 2 August 1999, amending and supplementing certain provisions of the Criminal Code, forced labour was abolished in prisons, thus protecting the dignity of the individual and bringing the sentencing regime into line with human rights principles.

173. The function of enforcement judge was established by Act No. 2000-77 of 31 July 2000, amending and supplementing certain articles of the Criminal Code, and the authority of the enforcement judge was strengthened by Act No. 2002-92 of 29 October 2002.

174. A system of appeals courts (two-tier proceedings) was established pursuant to Act No. 2000-43 of 17 April 2000, providing for the right of appeal in criminal proceedings. This Act, in conformity with the international charters and covenants ratified by the Republic of Tunisia, is based on the following three principles:

Introducing a system of appeals courts in the criminal justice system;

Maintaining a two-tier proceedings system;

Maintaining a bench of five judges in criminal chambers.

175. Two-tier criminal proceedings were established in the juvenile justice system. In accordance with the provisions of the Act amending certain articles of the Criminal Code and establishing two-tier criminal proceedings, article 83 of the Children's Code was amended and article 103 of the Code supplemented. This amendment is based on the following principles:

Retaining the office of the juvenile court judge, in accordance with the provisions of the Children's Code;

Retaining the primary role assigned by the Code to the juvenile court judge;

Harmonization of this Act with the spirit and the letter of the United Nations Convention on the Rights of the Child, which recommends greater flexibility of the criminal justice system with regard to juvenile offenders.

176. The measures introduced by the Children's Code, enacted by Act No. 95-92 of 9 November 1995 with regard to the publication of the Children's Code, include:

The establishment of the irrebuttable presumption of innocence according to which a minor under 13 years of age cannot have broken criminal law (art. 68);

Prohibition of pretrial detention for children under 15 years old accused of having committed a minor offence or an offence. Pretrial detention may be envisaged if it appears absolutely necessary, or if it is impossible to make any other arrangements (Children's Code, art. 94).

177. Pursuant to Act No. 2001-51 of 3 May 2001 on prison and rehabilitation officials, prisons and their administration were transferred from the Ministry of the Interior to the Ministry of Justice and Human Rights.

178. The promulgation of Act No. 2001-52 of 14 May 2001 on the prison system is designed to bring about the more rational organization of conditions of detention in prisons and to guarantee the rights of prisoners with a view to facilitating their reintegration into society. The provisions

of this new Act, which repeals Decree No. 88-1876 of 4 November 1988, are consistent with the relevant international covenants. This new Act strengthens the safeguards for the protection of the rights of prisoners by regulating in detail their rights and duties (medical examination, hygiene, reading, preserving family ties …), of which they are to be informed, in order to safeguard their dignity and physical safety and prevent any abuse. The Act also provides for the preparation of prisoners for life after release from prison, allowing them to take up employment for which they are entitled to be paid, in accordance with the provisions of the Covenant, and to follow a rehabilitation programme comprising of two training sessions, leading to qualifications, providing them with the opportunity to learn an occupation that will enable them, once released, to support themselves and avoid reverting to crime. Under this new Act, pregnant and breastfeeding female prisoners will receive medical, social and even psychological assistance. In each case, the enforcement judge is required to inform the family court judge of the cases of women accompanied by their children for whose follow-up he or she is responsible.

179. The principle of State responsibility for injury caused by the system of justice was established pursuant to the promulgation of Act No. 2002-94 of October 2002 on the compensation of persons who have been in temporary detention and whose innocence has been proven.

C. Safeguards against impunity

180. Equality before the law means that every person must be protected by the law and if a person has suffered injury, he or she may bring proceedings and is entitled to equal treatment before the courts. An analysis of digests of case law over the last 12 years shows consistent application of articles 101 to 106 of the Tunisian Criminal Code, penalizing abusive practices by public officials against private individuals.

181. The desire for a transparent, independent judicial system led, inter alia, to the reform establishing the office of enforcement judge to monitor the enforcement of sentences, and the implementation of two-tier criminal proceedings. The latter provision makes it possible to rule on criminal cases at trial level and subsequently on appeal, while retaining the two-tier proceedings system (investigating judge and indictment division), thus contributing to strengthening criminal justice proceedings.

182. In addition, Tunisian law provides for both disciplinary and judicial penalties against public officials who, in the performance of their duties, violate the physical integrity of the person. In this regard reference is made to Act No. 99-89 of 2 August 1999, amending and supplementing certain provisions of the Criminal Code, which in its article 101 bis imposes severe penalties, including imprisonment of up to eight years, on any official or person of comparable status who subjects a person to torture in the performance of or in connection with his or her duties.

183. Thus, during the period from 1 January 1988 to 31 March 1995, the Tunisian judicial system ruled on 302 cases of police and national guard officers facing various charges, including 277 cases of abuse of authority. The sentences handed down ranged from a fine to several years' imprisonment.

184. More recent data show that during the period from 2000 to June 2005, 104 police officers were brought to court and received sentences of up to 10 years' imprisonment without possibility of parole. Disciplinary measures were also taken against several law enforcement officials. The Ministry of the Interior brought a number of such officials before the Honour Council and more than 20 of them were dismissed for having committed acts of violence or for abuse of authority.

185. Measures taken to strengthen the protection of human rights and counter the "culture of impunity" include, in particular, the adoption of a code of conduct for law enforcement officials, human rights training for officials, supervision of conditions of detention and the way in which detainees are treated at police stations, legal counselling and any other appropriate form of assistance for detainees.

X. ARTICLE 10

186. Under article 10 of the Covenant, persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person. The conditions of their detention must, in particular, be appropriate to their age.

187. Article 5 of the Constitution of the Republic of Tunisia guarantees the inviolability of the human person. In addition, the law guarantees protection of the physical safety of individuals through a series of deterrent measures stipulated in the Criminal Code, and punishes severely anyone who violates the physical safety of individuals, including public officials (arts. 101, 103, 105, 219, 222, 223, 224, 237, 306, 319).

188. The legislature attaches particular importance to conditions of detention in prisons. The promulgation of Act No. 2001-52 of 14 May 2001 on the organization of prisons is designed to achieve more rational organization of conditions of detention in prisons and to guarantee the rights of prisoners, with a view to facilitating their reintegration into society. The provisions of this new Act, which supersedes Decree No. 88-1876 of 4 November 1988, are consistent with the relevant international covenants.

189. This new instrument consolidates guarantees protecting the rights of prisoners by explicitly regulating their rights and duties (medical examination, hygiene, access to reading material and maintenance of family ties ...). Prisoners are to be informed of such rights and duties so as to preserve their dignity and physical integrity, and to avoid any abuse. The Act also prepares prisoners for life after prison, allowing them to take up employment for which they are entitled to be paid, in accordance with the provisions of the Covenant, and to follow a rehabilitation programme comprising two training sessions, leading to qualifications, providing them with the opportunity of learning an occupation that will enable them, once released, to support themselves and avoid returning to a life of crime. Under this new Act, female prisoners who are pregnant or who are breastfeeding receive medical, social and even psychological assistance. In all cases, the enforcement judge is required to inform the family court judge of cases of female prisoners who have children with them and for whose follow-up he or she is responsible.

190. In the context of the improvement of conditions of detention, Act No. 2001-51 of 3 May 2001, on prison and rehabilitation officials, shifted the responsibility for prison administration from the Ministry of the Interior and Local Development to the Ministry of Justice and Human Rights.

191. Furthermore, Act No. 2001-73 of 11 July 2001, amending articles 356 and 359 of the Code of Criminal Procedure, was adopted. With respect to parole, this Act shifted the prerogative of the Ministry of the Interior and Local Development regarding the granting of parole to the Ministry of Justice and Human Rights.

192. Moreover, the Children's Code ensures that serious juvenile offenders whose detention is necessary receive special and appropriate treatment, as article 94 of the Code clearly states that: "A child aged less than 15 years accused of an offence or a crime may not be held on remand." The same article further states that: "In all other cases which fall outside the provisions of this Code, a minor may be sent to a place of detention only if such detention appears absolutely necessary, or if it is impossible to make any other arrangement. In such a case, the minor shall be placed in a specialized institution, or, in the absence of such an institution, in a separate block reserved for minors, separating him or her at night, without exception, from the other detainees. Non-observance of this measure shall place the perpetrator in the position of failing to comply with the law. During pretrial detention, the minor shall be granted permission to leave the centre, at the discretion of the court, on Saturdays and Sundays and during public holidays."

193. Article 12 of the same Code expresses a general principle that summarizes the provisions of article 10 of the Covenant. It states that "this Code guarantees the accused child the right to treatment which protects his or her honour and security". Furthermore, article 15 of the Children's Code states that "a child placed in an educational institution for protection or rehabilitation or placed in detention is entitled to health, physical and moral protection. He or she is also entitled to social and educational support, taking into account his or her age, gender, abilities and personality".

194. The unannounced visit on 27 July 1996 of the Head of State to the civilian prison in Tunis clearly illustrates the humanist approach of Tunisian policies and is a concrete expression of the wish to rehabilitate all offenders and facilitate their reintegration into society. During this visit, the Head of State closely examined the functioning of the Tunis prison and the conditions of treatment of prisoners, aimed at promoting their rehabilitation and reintegration into society, preserving their dignity and preventing them from reoffending. This visit was made to the administrative offices of the prison, premises containing accommodation for prisoners, the medical service, the social and psychological support service, and the catering, occupational training, and production services. The President of the Republic, who took the opportunity to meet a number of prisoners in the various services, concluded his visit with a recommendation for the strengthening of the social, health and psychological protection and occupational training of prisoners, as well as the development of different kinds of assistance for former prisoners, in-depth study of the causes of criminal behaviour, and the formulation of the most appropriate methods to prevent and counter crime, while at the same time seeking to ensure humane treatment of prisoners in accordance with human rights principles and rules. On the same day, the Chairman of the High Committee on Human Rights and Fundamental Freedoms was entrusted by the President of the Republic with the task of carrying out unannounced visits to prisons, without prior authorization.

195. Similarly, at the end of 2002, the Head of State entrusted the Chairman of the High Committee on Human Rights and Fundamental Freedoms with the establishment of a commission of inquiry, under his chairmanship, to conduct enquiries on living conditions in

prisons and submit his report to the Head of State. A commission was set up. It consisted, together with the Chairman of the High Committee, of a former head of the National Bar Association and a former head of the National Association of Pharmacists.

196. Following visits to 12 prisons, the commission drew up a report describing the various aspects of imprisonment and the situation of prisoners. Its members met prisoners either in their living quarters or on a one-to-one basis. The Chairman of the High Committee on Human Rights and Fundamental Freedoms submitted a report to the President of the Republic on 17 February 2003. This document contains the remarks of the Commission and its assessment of the various aspects of imprisonment. The report includes an analysis of the state of overcrowding in some prisons, resulting in an insufficient number of beds and adverse effects on the health and well-being of prisoners.

197. In order to remedy the situation and address its causes, a series of measures were prescribed, including, in particular:

> Reviewing the situation of detainees awaiting trial, taking into account the fact that pretrial detention should be considered as an exceptional measure;
>
> Implementing release on bail, in cases in which the crimes committed by detainees do not constitute a threat to the security of persons and property;
>
> Continuing the firm application of the Act on community service orders as a substitute for imprisonment, in the case of certain crimes.

198. In the same regard, on 26 April 2005, the Tunisian authorities and the International Committee of the Red Cross signed an agreement on the humanitarian activities of ICRC for prisoners. This agreement was implemented following a decision by the Tunisian authorities to authorize ICRC to visit prisons in Tunisia, including temporary detention units and places of custody. It should be noted that visits to prisoners are for strictly humanitarian purposes. They should permit an objective assessment by ICRC representatives of the conditions of detention and treatment of prisoners in Tunisia.

XI. ARTICLE 11

199. Article 11 of the Covenant provides that: “No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.”

200. Tunisian legislation does not provide for imprisonment for persons unable to fulfil contractual obligations. The Code of Civil and Commercial Procedure provides only for distraint of the property of the debtor.

201. With a view to preserving human dignity, imprisonment on the ground of inability to fulfil contractual obligations was abolished under Tunisian civil law. The Civil and Commercial Code, promulgated on 5 October 1959, retains only the specific performance of obligations or equivalent in respect of financial debt, involving only pursuance of the assets of the debtor.

202. This method of recovery of civil debt is used in two situations. The first situation concerns the recovery of maintenance or alimony pursuant to a judgement which could not be executed against the debtor for serious breach or wrongful family abandonment. Act No. 93-74 of 12 July 1993, amending certain articles of the Personal Status Code, amended article 53 (bis) of the Personal Status Code in an innovative way by further strengthening the spirit of tolerance and the family unit. Recalcitrant debtors are ordered to fulfil their maintenance obligations within one month, subject to criminal proceedings. Payment of the amounts due, however, immediately terminates any prosecution by the recipients of the maintenance or alimony payments and the passing or enforcement of a sentence.

203. In addition, Act No. 93-65 of 5 July 1993, on the establishment of an alimony and maintenance payments guarantee fund, and Decree No. 93-1655 of 9 August 1993 on the intervention procedure of the fund, provided for the establishment of the fund. This new mechanism is designed to the supplant the father or former spouse in default by paying, in his place, maintenance and/or alimony to the divorced wife, without prejudice to the right to bring proceedings against the debtor to recover the payments, with additional fines and statutory interest.

204. It should be noted that the Decree of 9 August 1993 on the intervention procedure of the Alimony and Maintenance Payments Guarantee Fund was amended by Decree No. 98-671 of 16 March 1998 in order to bring its provisions into line with those of article 46 of the Personal Status Code, so that maintenance payments would continue to be made to children continuing their studies until the age of 25 years, and to girls - without any age limit - without means of support or who are not in the care of a husband, and also to children with disabilities unable to earn a living. The second amendment by the 1998 Decree provides that, if the recalcitrant debtor reoffends, the Guarantee Fund systematically continues paying beneficiaries the amounts due without their being required to provide, every three months, a certificate regarding proceedings for family abandonment, as provided for in article 6, paragraph 2, of the Decree of 9 August 1993.

205. A second situation concerns the issuing of cheques with insufficient funds, which is an offence under criminal business law. Act No. 96-28 of 3 April 1996, amending and supplementing certain provisions of the Commercial Code, established a depenalization mechanism by allowing for a period of amicable settlement between the drawer and the drawee of three months from the date of non-payment of the amounts due. Measures were introduced to make banks partly responsible for rectifying accounts and forestalling criminal proceedings, thus avoiding penalizing borrowers to the maximum extent possible.

XII. ARTICLE 12

206. The right to freedom of movement and residence enshrined in article 12 of the Covenant is guaranteed by the Constitution without any discrimination. Article 10 of the Constitution provides that: “Every citizen has the right to move freely within the country, to leave it and to establish domicile within the limits established by law.” Article 11 stipulates that: “No citizen may be expelled from the country or prevented from returning to it.”

207. Freedom of movement within the country is not subject to any formalities. The only restrictions that apply stem from the requirements of criminal action (detention, administrative supervision).

208. Freedom to leave and return to the country is governed by Act No. 75-40 of 14 May 1975 on passports and travel documents. Article 34 of the Act provides that, in order to leave Tunisian territory, travellers are required to pass through the border posts established for that purpose. Under article 1, any Tunisian national wishing to travel abroad must be in possession of a national travel document. Travel documents are of two kinds: passports and travel authorizations (art. 3). Every Tunisian national has the right to be issued with a passport, and to have it renewed or extended, subject to the restrictions laid down by the Act (criminal prosecution, a minor or legally disqualified person unable to produce an authorization from his legal representative in the absence of a judicial decision, reasons of public order and security).

209. It should be recalled that the Act on passports and travel documents was amended in 1988 by Basic Act No. 98-77 of 2 November 1998. It is worth noting that this Act provides the judiciary with sole jurisdiction over the withdrawal of valid ordinary passports, in accordance with the terms and provisions of the Act.

210. In order to guarantee this freedom further, on the occasion of the meeting of the Council of Ministers on 12 May 2000, the President of the Republic reiterated that the possession of a passport is an inalienable right of each citizen, in the same way as for any piece of identification. He also emphasized that this right is guaranteed by law in the same way as freedom of movement, which may be restricted by the judicial system in cases provided for by law. Article 12 of the Covenant (para. 3) provides that the right to freedom of movement and residence “shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals”.

XIII. ARTICLE 13

211. Under the provisions of article 13 of the Covenant, an alien who is lawfully in the territory of a State may be expelled only by virtue of a decision taken in accordance with the law.

212. The status of aliens is governed by Act No. 68-2 of 8 March 1968. There are 46,402 aliens lawfully resident in Tunisia, including 22 refugees.

213. Tunisia has ratified the Protocol relating to the Status of Refugees, which entered into force on 4 October 1967, and the Organization of African Unity (OAU) Convention governing the Specific Aspects of Refugee Problems in Africa. Article 17 of the Constitution prohibits the extradition of political refugees. Refugees authorized to reside in Tunisia may receive a residence permit and a type “C” travel document (Act No. 74-40 of 14 May 1975 on passports and travel documents). As for possibility of employment, it is to be noted that refugees enjoy special treatment. They are granted a permit immediately by the Ministry of Employment.

214. There are no restrictions on the freedom of movement of aliens in Tunisia, barring measures adopted under Act No. 74-40 relating to expulsion. It should be noted that, from 2002 to 2005, some 1,282 illegally resident aliens were subject to expulsion pursuant to decisions taken in accordance with the law. Since an order of the Minister of the Interior expelling an alien

is an administrative act, an appeal may be lodged against it on the grounds of abuse of authority before the Administrative Court, which, in turn, may decide to suspend the execution of the order until it has been able to consider the substance of the appeal. It should be noted that the Minister of the Interior alone has the power to sign the expulsion order. He cannot delegate that power without infringing the law.

215. In order to protect people, Tunisian citizens and aliens alike, from any possible trafficking, the Act on passports and travel documents was amended by Organization Act No. 2004-6 of 3 February 2004 which imposes severe penalties for those who have provided information for, planned, facilitated, assisted, acted as intermediary in or organized the smuggling of a person in and out of Tunisian territory by land, sea or air, even if no payment was received. These penalties range from a 3-year prison sentence and a fine of 8,000 dinars to a 20-year prison sentence and a fine of 100,000 dinars if the act results in death.

216. It should be noted that, in accordance with the Act on passports and travel documents, amended by Organization Act No. 2004-6 of 3 February 2004, all aliens involved or convicted in cases relating to the trafficking of persons must be expelled from Tunisian territory as soon as they have served their sentence and are prohibited from entering Tunisian territory for 10 years when the sentence is for an offence, and for life when the sentence is for a crime.

XIV. ARTICLE 14

217. Article 14 of the Covenant provides for a series of safeguards relating to the administration of justice. It lists a number of rules which must be observed in order to preserve the civil rights of all citizens and to guarantee individual freedoms. Measures and initiatives to reform the national judicial system are in keeping with the letter and spirit of the provisions of this article.

A. Presumption of innocence

218. The principle of the presumption of innocence is enshrined in article 12 of the Constitution and in article 1 of the Criminal Code.

219. On 31 July 1996, the High Council of the Judiciary adopted a series of measures for the settlement of certain disputes out of court, such as family disputes which could be settled amicably or disputes that are unlikely to disrupt social order or will cause only negligible harm. Conciliation and mediation involve judicial pardon and avoid criminal proceedings to the maximum extent possible, relying instead on civil damages. The purpose of these measures is to limit unnecessary proceedings when there is doubt as to guilt. As far as offences incurring a short prison sentence are concerned, the Council recommends giving preference to suspended sentences rather than enforceable sentences.

B. Guarantees for a person accused of a criminal offence

220. Informing the accused of the nature of and grounds for charges is provided for in Act No. 94-80 of 4 July 1994 on professional sworn interpreters. It relates to the provision of free assistance by professional sworn interpreters in all proceedings whose purpose is to inform and defend aliens brought before prosecutors or ordinary courts as well as by specialists for the deaf and blind.

221. The right of defence of the accused person was further strengthened by the Decree of 10 October 2004 extending the payment of fees to trainee lawyers appointed by the court in criminal cases.

222. The same benefits are provided for in Decree No. 94-2196 of 24 October 1994 amending Decree No. 79-751 of 21 August 1979, which established industrial tribunals in courts of first instance in order to reinforce the right of workers to bring legal proceedings. Furthermore, the time limits for referring cases to industrial tribunals and handing down judgements have been abolished given the vital, human implications of social conflicts. It is with this in mind that the legislature continues to shorten the judicial phase of the settlement of disputes. The High Council of the Judiciary is according priority to the settlement of cases where the accused is under arrest and in the case of offences punishable by short custodial sentences.

223. The legislature is making increasing use of conciliation so as to ensure the swiftness and efficiency of the judicial machinery. Conciliation has become the rule in family disputes (alimony, divorce, etc.), disputes submitted to the cantonal courts which involve sums under 7,000 dinars (Act No. 94-59 of 23 May 1994 amending and supplementing certain articles of the Civil and Commercial Code) and commercial disputes (Act of 17 April 1995 establishing a commercial judge, who is obliged to intervene in amicable and judicial settlement procedures). In order to ensure the swiftness and efficiency of justice, a single judge was established to deal with offences involving the issuing of uncovered cheques and unauthorized building offences.

C. Principle of the right of appeal

224. Act No. 96-38 of 3 June 1996 on the division of powers between the courts and the Administrative Court and the establishment of a council on conflicts of jurisdiction, and Act No. 96-39 of 3 June 1996 amending Act No. 72-40 of 1 June 1972 on the Administrative Court, consolidate the right of defence by establishing the right of appeal to the Administrative Court. These two acts also make administrative justice more accessible to citizens by holding regular court sessions in the regions, and through the gradual introduction of regional chambers of the Administrative Court, but above all through the establishment of an arbitration and appeal council for referring administrative cases to the ordinary courts.

225. With a view to further strengthening the right of defence, the rule of the right of appeal in criminal cases was first enshrined in Tunisian law pursuant to Act No. 2000-43 of 17 April 2000 introducing the rule of the right of appeal in criminal cases. This Act is in consonance with the international covenants and agreements ratified by the Republic of Tunisia, and is based on the following principles:

Introducing a system of appeals courts in the criminal justice system;

Maintaining a two-tier proceedings system;

Maintaining a bench of five judges in criminal chambers.

D. Prohibition of double jeopardy

226. Act No. 93-114 of 22 November 1993 amending and supplementing certain articles of the Code of Criminal Procedure added article 132 (bis), which fully upholds this principle. Pursuant to this article, no one who has been acquitted may be prosecuted again for the same acts, even if they are classified as different offences.

E. Protection of minors during criminal proceedings

227. Act No. 93-73 of 12 July 1993, amending certain articles of the Code of Criminal Procedure, introduces various alternative measures, reflected in 1995 in the Children's Code concerning criminal proceedings against a juvenile offender aged between 13 and 18 who has diminished criminal responsibility.

228. In this regard specialist social workers are appointed to work with juvenile judges. The social workers are responsible for helping to seek solutions in cases involving juvenile offenders in order to assist their reintegration. A pilot centre for monitoring minors, responsible for monitoring the behaviour of juvenile offenders before their referral to the competent courts, was set up in 1993. Juvenile offenders are no longer brought before ordinary criminal courts but before special juvenile courts. The juvenile judge must consult two advisers who are specialists in juvenile matters after ordering an investigation into the medical, psychological and social situation of the minor in question. The judge may then decide to order measures for the protection, assistance, monitoring, education or placement of the minor in a public or private occupational training or medical-educational establishment. The detention of a juvenile offender is an exceptional measure. It must be proportionate to the gravity and level of awareness of the act committed. Minors may only be detained in juvenile detention centres.

229. With a view to strengthening the protection of children, Act No. 93-73 of 12 July 1993, amending certain articles of the Code of Criminal Procedure, introduced the following:

> A single juvenile judge dealing with minor offences that incur preventive measures only and do not entail any deprivation of liberty;
>
> Parole for minors as an alternative to custodial sentences with a view to ensuring their rehabilitation and reintegration into society.

XV. ARTICLE 15

230. Article 15 establishes the rule of the non-retroactivity of criminal law except for laws that impose more lenient penalties. Article 13 of the Constitution, as amended by Constitutional Act No. 2002-51 of 1 June 2002, embodies the rule of the non-retroactivity of criminal law, by stating that "penalties relate to individuals and may be imposed only under a law enacted prior to the punishable act, except where subsequent legislation provides for less severe penalties". This principle is binding not only on the judge but also on the legislature. It is reflected in the Criminal Code, article 1 of which states: "No one shall be punished except by virtue of a provision in a pre-existing law." The same article provides this rule should be brought into line

with article 15 of the Covenant and article 13 of the Constitution, by stating: "If, subsequent to the commission of the act, but prior to the final judgement, provision is made by law for the imposition of a more lenient penalty, this law only shall apply."

XVI. ARTICLE 16

231. Under the provisions of this article: "Everyone shall have the right to recognition everywhere as a person before the law." Under Tunisian law, such legal personality is accorded to every individual at birth. This status exists of itself and regardless of the individual's ability to express his or her will. A child already conceived when a question of succession arises stands to inherit (Personal Status Code, art. 147), but may do so only if not stillborn. Thus, the individual is a subject of law and has legal personality from birth. He or she may always exercise his or her rights by proxy.

232. Article 5 of the Children's Code provides that every child is entitled to an identity from birth. This identity consists of the first name, family name, date of birth and nationality.

233. Act No. 2003-51 of 7 July 2003, amending and supplementing Act No. 98-75 of 28 October 1998 on the attribution of a father's name to children who have been abandoned or whose paternity is unknown, recognizes the right of such children to take their father's name and establishes for the first time the right of every child to have an identity from birth.

234. Act No. 93-62 of 23 June 1993 amending article 12 of the Nationality Code provides that: "A child born abroad of a Tunisian mother and a foreign father shall become Tunisian provided that an application for this status is made through the submission of a declaration during the year before the child reaches the age of majority. However, the applicant may become Tunisian before reaching the age of 19 through a joint declaration by his or her mother and father." Act No. 2002-4 of 21 January 2002, amending article 12 of the Nationality Code, also states that, "in the event of the death, disappearance or legal incapacity of the father, the unilateral declaration of the mother shall suffice". The person concerned acquires Tunisian nationality on the date on which the declaration is registered, subject to the provisions of the Code.

XVII. ARTICLE 17

235. Tunisian law prohibits the interference and violations referred to in article 17 of the Covenant and protects individuals against such acts. In this connection article 64 of the Press Code, as amended by Organization Act No. 93-85 of 2 August 1993, amending the Press Code, prohibits reporting on cases of defamation of character where the allegations concern private life or refer to events that took place more than 10 years previously or acts which constitute an offence subject to amnesty or the statute of limitations. The article also prohibits reporting on cases dealing with acknowledgement of filiation, divorce and abortion. The publication of judgements in such cases is subject to judicial authorization. Again with a view to preserving the individual's right to privacy, article 64 of the Press Code prohibits the use of sound-recording apparatus, or of photographic or film cameras during hearings, without the authorization of the competent judicial authorities. The law does not accept evidence of an act giving rise to the allegation where it concerns private life (Press Code, new art. 57, para. 3).

236. As already made clear in the commentary on article 14 of the Covenant, under article 117 of the Code of Civil Procedure, the court may decide to hear a case in camera in order to safeguard the inviolability of family secrecy and parties to the proceedings may themselves request that a case be heard in camera. Pursuant to the Code of Criminal Procedure the court may also decide to hear cases in camera to protect public morals (art. 143). The Code prohibits reporting on proceedings before the juvenile judge: a judgement handed down by the latter may be published, on condition that no indication of the minor's name is given, even in the form of initials. The Criminal Code provides severe penalties for the disclosure of confidential information, in particular by persons who, by virtue of their profession, come into possession, in one way or another, of such information concerning the private lives of individuals (art. 254). There are a number of laws binding members of professions to professional secrecy. For example, the banking profession is governed by the Act of 7 December 1967; the legal profession is governed by Act No. 89-87 of 7 September 1989; and the medical profession by the Code of Ethics of 20 October 1973. Judges are also subject, by virtue of their status, to the obligation of professional secrecy.

237. Article 9 of the Constitution, as amended by the major reform of 1 June 2002, in addition to the inviolability of the home, guarantees the secrecy of correspondence and the protection of personal data. The Criminal Code prescribes penalties for the unauthorized disclosure of the contents of another person's correspondence (letters, telegrams or other documents) (art. 253). The sole exception is in the case of considerations relating to security and public order. Under article 99 of the Code of Criminal Procedure, the investigating judge may order the seizure of any object, correspondence or other dispatch, provided that he or she considers it useful in ascertaining the truth. The judge is also empowered to order a search for and seizure of correspondence addressed to or received from an accused person, but may examine it only if a delay would entail some risk.

238. The Constitution guarantees the inviolability of the home, except in special cases provided for by law (art. 9). This guarantee is ensured by a number of legislative provisions. The Criminal Code prescribes penalties for those entering or remaining on premises used for habitation against the will of the owner (art. 256). Any attempt to do so is also punishable. The practice of the courts is to apply this article even to owners entering premises used for habitation against the will of the tenant. The penalty is even more severe if the offence is committed during the night, in a group, by breaking and entering, or the perpetrators are armed (art. 257).

XVIII. ARTICLE 18

239. Article 18 of the Covenant refers to freedom of thought, conscience and religion. This freedom is guaranteed by the Constitution, article 5 of which provides that: "The Tunisian Republic guarantees the inviolability of the individual, freedom of conscience and freedom of religious worship, provided that it does not disturb public order."

240. Freedom of thought, conscience and judgement in Tunisia are founded on *ijtihad* and a culture of difference. It should be noted that freedom of conscience and thought, as understood in the context of human rights, have been defended by Tunisian reformist thinkers since the nineteenth century.

241. Islam is the State religion in Tunisia. However, the State is not religious since it is organized in accordance with the Constitution, which recognizes that the people alone are sovereign in such matters. Pursuant to the Constitution, the State has the duty to protect freedom of conscience and other religions. Freedom of thought, conscience and religion is first and foremost the right of every individual to live by, carry within and subscribe to his or her own philosophy, political opinion and belief, with due respect for others and in keeping with the rule of law.

242. Islam is the religion of the vast majority of Tunisians. This does not entail any constraint for non-Muslims: the Constitution guarantees the freedom to practise other religions. Non-Muslim Tunisian citizens therefore live in harmony with the rest of the population. This is the case for the Jewish and the Christian communities, who enjoy all their rights.

243. Act No. 58-78 of 11 July 1958 on the Jewish faith guarantees Tunisian Jews freedom of conscience, the freedom to practise their religion and to use their language.

244. Christians - for the most part Western women living in Tunisia who have acquired Tunisian nationality upon marriage to Tunisians - are free to practise their religion in churches scattered around the country, which are managed freely and independently. Practising Christians of all faiths in Tunisia have 14 churches at their disposal - more than ample for them to be able to practise their religion. The church is represented by a prelate appointed by the Holy See.

245. The State watches out for any phenomenon and any activity that might be discriminatory in nature. To that end a set of provisions has been defined under Tunisian law declaring incitement to racial hatred and any act of intolerance or racial violence punishable violations.

246. Thus, (new) article 44 of Organization Act No. 93-85 of 2 August 1993, amending the Press Code, provides that “anyone who directly fosters either hatred among races, religions or population groups, or the spread of opinions based on racial segregation or on religious extremism … shall be punished by a term of imprisonment of two months to three years and a fine of 1,000 to 2,000 dinars”.

247. Article 53 of the Press Code adds that “defamation committed (...) against a group of persons not specified in the present article but who belong by origin to a particular race or religion shall be punishable by a term of imprisonment of between one month and one year and a fine, if the purpose of such defamation is to stir up hatred among citizens or inhabitants”.

248. For the same purpose of combating all forms of religious discrimination, all persons who hinder or disrupt the practice of a religion are liable to criminal penalties. Article 165 of the Criminal Code provides that “anyone who hinders or disrupts religious worship or ceremonies shall be punished by a term of imprisonment of six months and a fine, without prejudice to the more severe penalties which would be incurred in cases of abuse, acts of violence or threats”.

249. Moreover, the State guarantees the inviolability of places of worship of all faiths. To this end, article 161 of the Criminal Code provides that “anyone who destroys, demolishes, damages, disfigures or defiles religious buildings, monuments, emblems or objects shall be liable to a one-year prison term and a fine”.

250. The defence of freedom of thought, conscience and religion is one of the essential aims of educational and cultural choices intended to promote a culture of difference, which is understood as a set of values, attitudes, behaviours and lifestyles based on the mutual acceptance of differences.

251. The culture of difference is one of the main objectives of the Tunisian education system, which aims “to prepare young people for a life that leaves no room for any form of discrimination or segregation based on sex, social origin, race or religion” and “to offer students the right to develop their personalities and help them to achieve maturity through their own efforts by instilling in them the values of tolerance and moderation”.

252. In this connection, the promotion of religious culture in schools has a civilizing and progressive dimension, in that it aims to train students to think independently and to enable them “to assimilate the values of tolerance of and respect for others as a condition for their own development”.

253. Human rights education is included in all curricula and especially in all subjects that have a specific bearing on such matters, including civic education and languages and literature.

254. The Ministry of Education and Training watches out for all manifestations of discrimination and intolerance. Misrepresented as a requirement under certain vague prescriptions of the Koran, the *hijab* was imposed on Muslim women as a mark of their inferior position in society and a symbol of their submission. With the rise of fundamentalism, the *hijab* took on a new meaning. It became the emblem and expression of efforts to rally people to join the movement. To wear the *hijab* means that one is a Muslim sister, in the same way that to have a beard means that one is a Muslim brother. The presence of the *hijab* in schools is not in keeping with the principles of the education system and the values it upholds: openness, tolerance and the rejection of all forms of discrimination, not to mention political neutrality. Ministry of Education Circular No. 108 requests pupils, in accordance with the school rules, to dress decently. Moreover, the *hijab* which is advocated by fundamentalist fanatics is totally alien to Tunisian traditional dress.

255. Lastly, the work of the Ben Ali Chair for Dialogue among Civilizations and Religions continues to show that religions and civilizations can and must contribute to laying the ethical, philosophical and political foundations of coexistence and cooperation among peoples.

XIX. ARTICLE 19

A. Freedom of opinion and expression

256. Article 19, paragraph 1, of the Covenant provides that: “Everyone shall have the right to hold opinions without interference.” This principle has been enshrined in article 8 of the Constitution of Tunisia since 1959. It states: “Freedom of opinion, expression, the press, publication, assembly and association are guaranteed and shall be exercised in accordance with the law.”

257. Since its accession to the Covenant in 1968, Tunisia has made additional efforts to strengthen the implementation of these guarantees. Over the reporting period, no one has been subjected to harassment on account of their opinions unless those opinions constitute offences under criminal law. Tunisian criminal law penalizes all incitements to fanaticism, religious and racial hatred and the perpetration of terrorist acts. Article 6 of Act No. 2003-75 of 10 December 2003 on support for international efforts to combat terrorism and money-laundering states that "acts of incitement, by whatever means, to hatred or racial or religious fanaticism are subject to the same regime as offences that are classified as terrorist acts".

258. Likewise, article 44 of the Press Code as amended by Organization Act No. 93-85 of 2 August 1993 provides that "any one who, by the means mentioned in article 42, directly fosters either hatred among races, religions or population groups or the spread of opinions based on racial segregation or on religious extremism, or incites the commission of the offences set out in article 48 of this Code, or the infringement by the population of the laws of the country, shall be punished by a term of imprisonment of two months to three years and a fine of 1,000 to 2,000 dinars".

259. Tunisian justice rigorously applies these legal provisions. In one particular case which became famous because it was such a telling example, the Tunis Appeals Court decided on 28 March 1995, in case No. 26718, to uphold the judgement of the court of first instance sentencing a Tunisian citizen to three years' imprisonment and three years' administrative supervision. The case involved a person who on 5 October 1994 had prepared and distributed pamphlets on behalf of the so-called Committee to Combat Normalization and Zionization, in which he urged people to rise up against the Jews and to oppose any form of agreement with them, by insisting on the need to fight them and to reject any peace process with them. On 28 September 1994, the United Nations Working Group on Arbitrary Detention, which examined the case, issued a decision in which it considered that the restrictions placed by Tunisian law on freedom of opinion in order to combat the dissemination of racist ideas or remarks were compatible with the rules of international law, in particular articles 19 and 20 of the Covenant. Consequently, the Working Group on Arbitrary Detention decided to consider the acts in question as an offence and not the expression of an opinion. Accordingly, the Group declared that the detention of the perpetrator of the crime was not arbitrary.

260. Various measures have been adopted over the reporting period to ensure wider implementation of freedom of opinion and expression and to promote pluralism in the media. For example, amendments were introduced to the Press Code, particularly in 2001 and 2006, so that journalists can exercise their profession in complete freedom and in an atmosphere conducive to their work.

261. In this connection, the promulgation of Organization Act No. 2001-43 of 3 May 2001, amending the Press Code, made existing procedures more flexible, in particular through:

> The abolition of the offence of defamation of public order, covered in article 51 of the Press Code, owing to its lack of clarity and openness to multiple interpretations which could give rise to abuse;

The amendment of article 8, paragraph 2, of the Code relating to the statutory deposit for publications to obviate the need for their centralized deposit with the Ministry of the Interior;

The amendment of article 73, paragraph 2, of the Code reducing from six to three months the maximum duration for which the suspension of a daily newspaper may be ordered by a court;

The removal of custodial sentences from the articles of the Press Code relating to penalties (arts. 35-39, 45, 61 and 62) thereby ensuring that the Code relates to freedom and not repression of the press;

The amendment of article 15 (bis) of the Code, which increased the number of journalists holding professional licences and university diplomas who are employed full time in the editorial office of every publication. The amendment increases the number of such journalists from one third to one half of the permanent editorial staff;

The amendment of article 19, paragraph 2, of the Code relating to the offence of "fronting" as perpetrated by the owner or silent partner of a publication, which abolished the prison sentence but maintained and increased the fine. The same applies to article 23 relating to the offence of accepting a sum of money or any other benefit for the purposes of misrepresenting an advertisement as information.

262. Similarly, the promulgation of Organization Act No. 2006-1 of 9 January 2006, amending the Press Code, was a significant step forward in the process of consolidating freedom of expression, information and publication. Article 3 (new) of the Act states that: "The following publications of the national press shall no longer be subject to any statutory deposit:

Daily newspapers and periodicals;

Magazines."

263. This legislative measure is aimed at rendering more lenient the legal procedures governing freedom of the press with a view to the greater liberalization of the media and the creation of a forum for dialogue, exchange and discussion of themes and issues affecting the future of the country and the safeguarding of its achievements. This measure affects and concerns all those who work in the press, information and communication sectors with the aim of changing the media scene, upholding freedom of expression and opinion and strengthening intellectual and political pluralism.

264. In order to give the editors of periodicals the time needed to put in place suitable financial and contractual conditions for the success of their operation, the period of validity of the declaration was extended from six months to one year, pursuant to article 14 of the Press Code. In addition, the definition of foreign publications was reviewed with the aim of opening up more to the outside world (art. 24).

265. In accordance with the principles aimed at the elimination of racial discrimination set out in the international instruments to which Tunisia has acceded, the amended legislation extended the penalty prescribed for those responsible for incitement to racial hatred to all those who spread opinions based on racial segregation. Similarly, with the aim of consolidating human rights and disseminating values of tolerance, the same penalty now also applies to proponents of religious extremism advocating religious or racial hatred (art. 44).

266. The amendment also introduced the condition that the truth of allegations made against public authorities, individuals or corporations must be established (art. 57). This measure is intended to enhance the objectiveness of journalists in accordance with their professional code of ethics with a view to protecting the basic rights of all public or private persons. It is an indication of the balance the Tunisian legislature wishes to strike between human rights and the moral and legal responsibility of all those involved in the press and information sector.

267. With the aim of strengthening the role of the High Council for Communication, Decree No. 2002-999 of 2 May 2002 supplementing Decree No. 89-238 of 30 January 1989, which established the High Council for Communication, was promulgated. It assigned the Council the following new functions:

To act as a monitoring centre for the information sector under the supervision of specialists, intellectuals and representatives of civil society and of political parties;

To collect all national and international data concerning the development of the sector;

To draft consolidated reports on developments in the area;

To publish information bulletins so as to spread a culture of freedom of expression.

268. The opposition parties and representatives of civil society have formed part of this Council since December 2005, thereby contributing to the pluralist debate on the quality of the press, radio and television and on appropriate measures for the development of the national media landscape.

269. Many initiatives have been taken in the press, information and communication sector in order to enrich and diversify the media landscape and to step up measures to strengthen the protection of freedom of opinion and expression as well as to close the digital divide in the information and communication sectors.

Press

270. The number of national publications and periodicals continues to increase: approximately 250 national publications and 950 foreign newspapers and magazines are available in Tunisia. There are currently 973 journalists, compared with 639 in 1990, 35 per cent of whom are women and 53 per cent of whom are university graduates. In addition, there are 70 foreign correspondents working in the country.

271. Some 137 new publications covering a wide spectrum were launched between 1993 and the end of 2005.

272. The opposition parties have their own publications: *Al-Tariq Al-Jadid* (organ of the Al-Tajdid Movement), *Al-Mawqif* (organ of the Progressive Democratic Party), *Al-Wahdah* (organ of the Popular Unity Party (PUP)),which contribute to the national intellectual and political environment.

273. With the aim of consolidating these arrangements and offering the newspapers of the opposition parties the best conditions for enhancing the national media landscape, subsidies were granted to them to cover part of their costs for paper and printing under the following legislation: Act No. 97-48 of 21 July 1997 on the public funding of political parties; Decree No. 98-479 of 19 February 1998 establishing the methods for distributing allowances to political parties; Decree No. 2001-1496 of 22 June 2001 establishing the amount and methods for allocating the annual subsidy to support the publications of political parties. Act No. 2006-7 of 15 February 2006 amending Act No. 97-48 of 21 July 1997 on the public funding of political parties led to an increase in this subsidy, and set the annual amount for each party at 135,000 dinars.

274. The promotion of information and improvement of the message it carries are the collective responsibility of all parties. The aim is to introduce new traditions of objectiveness and courage in analysing topics on the one hand, and to learn to accept criticism and different points of view on the other hand. Publications such as *Al-Shab* (weekly publication of the Tunisian General Labour Union), *Réalités* (independent weekly publication), *Le Temps* (independent daily newspaper), *L'Observateur* (independent weekly publication), *Akhbar-El-Jumhuriya* (independent weekly publication), *L'Économiste maghrébin* (fortnightly publication) publish courageous articles, carry information relating to NGOs such as the Tunisian Human Rights League and other socio-professional associations and opposition parties and provide a real channel for intellectual and political pluralism.

Audio-visual sector

275. The audio-visual sector has been enhanced through the launching of the private radio stations *Mosaïque FM* and *Jawhara FM*, *Radio culturelle* as well as the first private television channel, *Hannibal TV.* In addition to national radio and television programmes, five regional radio stations broadcast in the various regions of the country. There are special radio and television channels for young listeners such as *Canal 21* and *Radio Jeunes.*

276. All these audio-visual media deal with the various concerns of Tunisians and consistently show a degree of courage in broaching subjects which are supposedly taboo, such as juvenile delinquency, construction workers, AIDS, divorce, employment, etc. Parliamentary debates are broadcast live on television. Live television programmes in which representatives of the opposition and civil society have an opportunity to air their opinions are broadcast every week.

277. During the presidential and legislative elections of 1999 and 2004, radio and television slots were allocated, under judicial supervision, to all candidates regardless of their affiliation, so that every candidate had the opportunity to introduce his or her electoral manifesto to the electorate through radio and television without distinction or discrimination and the electorate could make its choice with conviction and all the information required.

B. Guarantees relating to freedom of information

278. A Communications Code was promulgated pursuant to Act No. 2001-1 of 15 January 2001. The Code relates to the organization of the communications sector and related services and networks and establishes the rights and duties of their users, and the legal guarantees granted to all parties concerned.

280. Tunisia has pursued the realization of the right of the citizen to communication, a right which was introduced by article 3 of the Communications Code, inter alia by:

> Offering citizens the possibility of choosing their service provider in the communication sector by introducing the principle of multiple service providers for all communication services, such as mobile telephone providers (GSM);
>
> Guaranteeing all citizens equal access to communication services by providing those services under the same conditions throughout the country at moderate rates within the purchasing power of all strata of society;
>
> Bringing communication services closer to the citizen by opening commercial agencies in all regions and putting various services online;
>
> Extending the Internet to all universities, scientific research institutes, senior and junior secondary schools;
>
> Continuing to offer computers at reasonable prices within the purchasing power of all citizens, particularly those on a low income.

281. It was in recognition of Tunisia's efforts in the fields of information and communication technology that the country was chosen by the United Nations General Assembly to host the second phase of the World Summit on the Information Society, from 16 to 18 November 2005.

282. The beginning of the twenty-first century has witnessed a growing need for information and access to knowledge and new means of communication. This is at the same time the result of an aspiration by all to broaden skills and the ability to act, and also a major requirement for social and economic development. This dual dimension - human and democratic - reflects the issues addressed during the second phase of the World Summit, held on 16, 17 and 18 November 2005 in Tunis. That event produced two documents, entitled the Tunis Commitment and the Tunis Agenda for the Information Society, which are all the more important because their objective is to identify mechanisms and means to bridge the digital divide and to bring the international community to find appropriate solutions.

283. The Tunis Summit was the first intergovernmental meeting to emphasize the acknowledged fact that the Internet had become a vital infrastructure for the entire world. Paragraph 68 of the Tunis Agenda for the Information Society established that "We recognize that all Governments should have an equal role and responsibility for international Internet governance and for ensuring the stability, security and continuity of the Internet."

284. The Tunis Commitment, inspired by the Universal Declaration of Human Rights, took a clear position on freedom of expression, recognizing it as "essential for the Information Society and beneficial to development". The Tunis Summit concluded with a commitment to bridge the digital divide between North and South. The United Nations undertook to connect all villages to the Internet by 2015. Currently, only 1 billion of the world's people have access to the Internet.

285. The Tunis Commitment and the Tunis Agenda for the Information Society are genuine steps forward in the promotion of civil and political rights among nations. In an ever more globalized world, where communication has become a strategic commodity and where the intangible economy is booming, communication networks play a fundamental role. In the light of the enormous potential that information and communication technology can have for the improvement of economic, social and cultural welfare in a digital knowledge-based economy, it is imperative for the entire world to have access to these technologies, under pain of seeing "cyber-ghettos" emerging. If that happened, it would not only be ethically deplorable, but also a hindrance to the development of all peoples. All of this fully substantiates the road map drawn up to bridge the digital divide, on the basis of the Tunis Summit.

286. The Internet, which may be a wonderful instrument for freedom and an inexhaustible font of modernity and universality, may also, with its immense media resources, become a tool for the propagation of fascist or fundamentalist beliefs and the dissemination of pornography. Indeed, the pornographic images and extremist and fascist ideas conveyed by the Internet pose an increasing danger to democratic and pluralistic culture and to public morality. It is thus becoming essential to place the Internet at the heart of a public and civic battle to control its content and its availability, so as to protect the freedom to receive and to disseminate information. Pluralism presupposes among other things that the public should assert its responsibility for the use of information that passes over the Internet. In a complex world, with rapid change and real dangers, access to the Internet poses a genuine cultural challenge.

287. The right to be informed does not mean that there should be no rules, and that permissiveness and offences against public morals should be permitted. To ensure that this is not the case, a Communications Code was adopted under Act No. 2001-1 of 15 January 2001, governing the communications and services sector and related networks, and establishing the rights and duties of users, along with the legal guarantees granted to all parties concerned.

288. We cannot permit Islamic fundamentalists to make use in any way of the culture of the Internet to manipulate Tunisia's youth. Tunisian law prohibits in any event all advocacy of hatred and any encouragement of terrorist acts. Indeed, by law, the encouragement of crimes or of fanatical acts based on religious or ethnic considerations is itself treated as an act of terrorism. By Act No. 93-122 of 22 November 1993, supplementing the Criminal Code (art. 52 bis), the Tunisian legislature considered the encouragement of hatred and racial and religious fanaticism as terrorist offences, and provided for severe penalties.

289. Freedom of expression, information and self-information is fully guaranteed in Tunisia both in law and in everyday life. The only restrictions on this freedom are applied in accordance with current legislation, and with full respect for Tunisia's international commitments as set out in article 19, paragraph 3, of the Covenant.

XX. ARTICLE 20

290. Article 20 of the Covenant prohibits propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. The article calls on States parties to the Covenant to adopt legislative measures to introduce such prohibitions.

291. To that end, Tunisia ratified the International Convention on the Elimination of All Forms of Racial Discrimination in 1966, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity in 1972, and the International Convention on the Suppression and Punishment of the Crime of Apartheid in 1976. Furthermore, article 20 of the Covenant is reflected in various pieces of legislation in Tunisia.

A. The Constitution

292. The Constitution enshrines the absolute equality of all citizens before the law, establishing that all have the same rights and duties (art. 6). Article 8, paragraph 4, of the Constitution, as amended by Constitutional Act No. 2002-51 of 1 June 2002, stipulates that "political parties undertake to renounce all forms of violence, fanaticism, racism and all forms of discrimination".

B. The Criminal Code

293. Under article 52 bis, added to the Criminal Code by Act No. 93-112 of 22 November 1993, acts of incitement to hatred or racial or religious fanaticism are treated in the same way as terrorist acts, irrespective of the means used.

C. The Press Code

294. Article 44 of the Press Code, amended by Organization Act No. 93-85 of 2 August 1993 amending the Press Code, penalizes anyone who directly fosters either hatred among races, religions or population groups, or the spread of opinions based on racial segregation or on religious extremism, or incites others to commit offences against the President of the Republic or against one of the religions whose practice is authorized, or the infringement by the population of the laws of the country. Article 53 of the same Code also stipulates that "defamation committed … against a group of persons … who belong by origin to a particular race or religion shall be punishable by a term of imprisonment of between one month and one year and a fine of 120 to 1,200 dinars, if the purpose of such defamation is to stir up hatred among citizens or inhabitants". In cases of defamation or insult against individuals, legal action is taken only if the defamed or insulted person files a complaint. However, such legal action may be instituted automatically if the defamation or insult is directed against a group of persons belonging inter alia to a particular race or religion with the purpose of stirring up hatred among citizens or inhabitants.

D. The Children's Code

295. Article 18 of the Children's Code prohibits the participation of children in war and armed conflict. Article 19 prohibits the exploitation of children in various forms of organized crime, including inculcating fanaticism and hatred in children and inciting them to commit acts of violence or terror.

296. In addition, by Act No. 2002-42 of 7 May 2002, Tunisia acceded to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. It also approved, by Act No. 2003-5 of 21 January 2003, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

XXI. ARTICLE 21

297. Article 21 of the Covenant recognizes the right of peaceful assembly subject to restrictions imposed in the interest of national security, public safety, public order, the protection of public health or morals, or the protection of the freedom of others.

298. In Tunisia, freedom of assembly is guaranteed by the Constitution (art. 8) and is exercised in accordance with the conditions stipulated by law. In this respect, 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. A declaration must be made prior to the event, and for each meeting there must be a committee responsible for maintaining order and preventing any breach of the law.

299. In keeping with the spirit of article 21 of the Covenant, the competent authorities may prohibit by decree any meeting likely to be detrimental to public safety or law and order. Such decrees are subject to appeal to the Administrative Court on the ground of abuse of authority. The security authorities assign an official to attend each public meeting. The official is authorized to declare the meeting dissolved at the request of the committee responsible, or if clashes or acts of violence occur. Armed processions, parades and demonstrations are prohibited.

300. In Tunisia, the exercise of the right of assembly is, in accordance with article 21 of the Covenant, subject to no restrictions "other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others".

XXII. ARTICLE 22

301. Article 22 ensures freedom of association and trade union freedoms. The right to establish associations, including political parties, and to belong to them is considered a fundamental condition for the exercise of the civil and political rights recognized for persons and groups. In Tunisian law, a very clear distinction is drawn between the activities of voluntary associations,

considered to be benevolent and disinterested, political work aimed at exercising or influencing power, and the activities of trade unions, which are occupational in nature and advance the claims of their memberships.

A. Protection of freedom of association

302. The right to form associations and political parties is exercised in accordance with the legal provisions in force. Freedom of association is guaranteed in article 8 of the Constitution.

303. Organization Act No. 88-90 of 2 August 1988, amending Act No. 59-154 of 7 November 1959 on associations, simplified the procedures for the formation of such associations. It replaced a system requiring prior authorization with one requiring a declaration, and provides that an association is to be legally considered as established three months after the date when the declaration was officially submitted to the competent authorities.

304. Organization Act No. 92-25 of 2 April 1992, supplementing Act No. 59-154 of 7 November 1959 on associations, is aimed at broadening the exercise of democracy and at involving the greatest possible number of citizens in the work of associations. It is also aimed at ensuring the political neutrality of associations of a general nature, thus protecting their work from any attempts at political exploitation.

305. The above amendment brought certain discriminatory practices to an end by guaranteeing the right of any rejected applicants to initiate court proceedings if they are convinced that there has been unjustified discrimination on the part of the association in question. Indeed, the Act provides that associations of a general nature may not refuse membership to anyone who subscribes to their principles and decisions, unless such persons have lost their civil and political rights, or have activities and practices that are at variance with the association’s objectives. The Act stipulates that “associations of a general nature cannot refuse membership to any persons who subscribe to their principles and decisions, unless those persons are not in possession of their civil and political rights or if their activities and practices are incompatible with the association’s goals”. In the event of a dispute concerning membership, an applicant may refer the matter to the court of first instance of the place where the association has its headquarters.

306. To ensure the independence of associations and protect them from partisan political infighting, the Act prohibits persons holding major posts in political parties from also holding director-level functions in organizations of a general nature. The Act on associations stipulates that “those who perform functions or have responsibilities in the central executive bodies of political parties may not be leaders of associations of a general nature”. These provisions apply to the executive boards of the associations, and also to the associated sections or bodies or the secondary groups covered by article 6 bis of the Act.

307. Decree No. 2000-688 of 5 April 2000 set up the Center for Information, Training, Studies and Documentation on Associations (IFEDA) and established its administrative and financial structures and its means of operation. The Center is a public, non-administrative establishment reporting to the Prime Minister. It was created to help associations carry out their activities and improve their performance, based on the principle that the work of associations is a fundamental pillar of civil society.

308. There were 7,282 associations in 1999; their numbers have grown significantly, reaching 8,913 in 2005. The associations include:

Women's associations:	20
Sports associations:	1 150
Scientific associations:	478
Cultural and artistic associations:	5 740
Welfare, relief and social service associations:	411
Development associations:	502
Social associations:	520
Associations of a general nature:	92

309. This understanding of and support for associations as a cornerstone on which to build a civil society with solidarity is a crowning achievement of civics as a social value. It is an illustration of the desire to build according to one's design - the hallmark of any modern society that cares about providing for its own development. The Tunisian State has never faltered in encouraging the sense of citizenship and the civic and associative culture so necessary to fuelling the dynamism of pluralist democracy.

310. The aim of citizen action and community life is not to provide off-the-shelf answers, but to build a participative citizenry, in which people feel invested and play their part. This means they must immediately see the link between this participative citizenry and ways to tackle the everyday problems that they face, as they perceive them and formulate them, whether in relation to such matters as employment, training, social protection, the future of youth, democracy in society or Tunisia's openness to the rest of the world.

311. The 8,913 associations provide a school of participatory democracy that allows citizens to find prospects for the future; they are also a way forward that embodies a new deal in relations between the State and civil society. This change is occurring hand in hand with a transfer of competencies toward the local and neighbourhood levels, with an ever more coherent level of subsidiarity.

B. Organization of political parties

312. Act No. 88-32 of 3 May 1988 on the organization of political parties obliges political parties to respect and defend human rights as set out in the Constitution and the international conventions ratified by Tunisia.

313. There are currently nine political parties in Tunisia:

The Constitutional Democratic Assembly (RCD), established in 1920;

The Al-Tajdid Movement (former Tunisian Communist Party, banned until 18 July 1981);

The Movement of Social Democrats (MDS), active since 19 November 1983;

The Popular Unity Party (PUP), active since 19 November 1983;

The Social Liberal Party (PSL), active since 12 November 1988;

The Progressive Democratic Party, active since 12 September 1983;

The Unionist Democratic Union (UDU), active since 30 November 1988;

The Democratic Forum for Work and Liberties (FDTL), active since 25 October 2002;

The Greens for Progress Party, created on 3 March 2006.

314. In accordance with the law now in force, the task of these political parties consists in promoting a climate of pluralism based on mutual respect and modern values. Democracy is not merely a way of organizing institutions; it is a spirit, a system of morals and a practice: the political parties that engage in the democratic process make these possible and develop them, consolidating further the spirit of participation crucial to the emergence of a sense of responsibility. Without that, there can be no democracy.

C. Protection of trade union freedom

315. Tunisia in 1957 ratified ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise Convention, of 9 July 1948. This freedom is governed by articles 242 to 271 of the Labour Code. Trade union rights are recognized for all occupational categories. The general statute for State employees recognizes the right of such workers to form trade unions (Act No. 83-112 of 12 December 1983, establishing the general statute for State employees, employees of local public bodies and public administrative establishments, art. 4). Other workers, whether in the private or public sectors, are accorded the right to organize under the Labour Code and the Framework Collective Agreement approved in 1973. Under article 242 of the Labour Code, trade unions or professional associations may be set up freely. No authorization is required, the only formality to be completed for the formation of a trade union being the deposit of its statutes with the headquarters of the governorate or district which is territorially competent. However, the Code prohibits trade unions from being set up as sections of foreign trade union organizations (art. 253).

316. Similarly, (new) article 5 of the Framework Collective Agreement, which addresses trade union rights and freedom of opinion, grants trade union officials an amount of time in which to carry out their duties and to take part in training courses held by the union (30 hours per year in companies employing between 50 and 99 workers, 60 hours per year in those with between 100 and 200 workers, and 110 hours per year in companies with more than 200 workers).

317. Aliens may join trade unions, but may not be appointed to administrative or executive posts in a trade union without the approval of the Minister of Labour. As unions are occupational organizations, they must exclusively defend the economic and social interests of their memberships.

318. As for the right to strike, the Tunisian Constitution recognizes it by virtue of its guarantee of trade union rights (art. 8). The Labour Code regulates the procedure for resorting to strikes; it favours the settlement by non-conflictual means of collective labour disputes.

319. In accordance with article 22, paragraph 2, of the Covenant, the law places some restrictions on freedom of association and trade union freedom in respect of certain persons or social and occupational categories. Because of the nature of their functions, members of the armed forces and the internal security forces are prohibited from forming political parties or political associations and from being members thereof. However, members of the armed forces or the internal security forces may be authorized to join social, sporting, cultural or welfare associations. Members of the armed forces and the internal security forces are prohibited from forming or joining trade unions, and thus do not have the right to strike.

320. With the changes brought about by globalization, both the State and all components of civil society must become involved in the promotion of trade union freedoms in order to safeguard the social achievements of the State. A genuine dialogue is required to reconstruct a social and civic pact. Such a dialogue is more likely to take place in civil society, where there are associations, trade unions, craftsmen and professionals and there is a greater chance of finding concrete, adaptable and humane solutions within the framework of citizen action and community life. Thus, the Tunisian State, when it encourages civil society, has in mind nothing less than reinventing democracy. If a sense of citizenship basically stems from an ability to take action together, then there must be involvement by citizens in order to reinvent democracy.

XXIII. ARTICLE 23

321. Article 23 of the Covenant deals with the protection of the family as a natural and fundamental group unit of society.

322. The Personal Status Code laid the foundation for a modern, solid and prosperous family. However, the efforts of the legislature did not stop there, and the progressive development of family law has been a continuous undertaking. For example, a law on reproductive medicine was promulgated in 2001 in order to perfect the legislation relating to sexual health.

323. Tunisia has adopted a voluntary birth control programme designed to promote families that are balanced in every respect. The National Family Planning Office, set up in 1971 and renamed the National Office of Family and Population Affairs (ONFP) in 1984, is actively involved in the implementation of Tunisia's demographic policy and in the preparation of action programmes for the development of the family. Basic family health services have also been set up throughout Tunisia to provide essential mother and child health care and, in particular, to undertake preventive measures for the benefit of the family. It is as a result of this policy that the United Nations Population Fund (UNFPA) has selected ONFP as a centre of excellence for reproductive health.

324. A supplementary health system was instituted by Act No. 2004-71 of 2 August 2004, which established a health insurance scheme guaranteeing the principles of solidarity and equality of rights. Article 7 of the Act provides for the establishment of the National Health Insurance Fund, responsible for managing statutory health insurance schemes. Owing to a consistent social coverage policy, low-income families receive free medical care. In 2003 the coverage rate was 86 per cent.

325. With a view to protecting and promoting the acquired rights of Tunisian families, in 1993 a post was established for a deputy minister in charge of women’s and family affairs, reporting to the Prime Minister. The post was subsequently transformed into a Ministry of Family, Children, Seniors’ and Women’s Affairs.

326. In order to ensure the health of the family, the legislature adopted Act No. 64-46 of 3 November 1964, instituting a prenuptial medical certificate. The certificate is not an impediment to the right to marry. It is intended to draw the attention of the prospective spouses to the harmful effects that dangerous diseases, in particular tuberculosis and syphilis, could have for their partners or future children. Article 1 of the Act stipulates that the physician should state on the medical certificate only that the individual concerned has been examined with a view to marriage. The Act allows the physician to refuse to issue the prenuptial certificate if he or she considers the marriage to be undesirable, or to postpone issuing it until the patient’s health is restored and his or her status no longer presents a danger for the couple’s children.

327. The right to marry is recognized for both men and women without any discrimination whatsoever, as is shown by the various provisions of the Personal Status Code. Registrars are obligated to marry aliens, who are governed by their own personal status regulations; article 38 of Act No. 57-3 of 1 August 1957, governing civil status, provides that the registrar must officiate “the marriage act of aliens in accordance with Tunisian law, upon production of a certificate from their consul stating that they may marry”.

328. There is no restriction of the right to marry, except in the case of two categories of public officials - members of the armed forces and diplomats - for whom marriage may take place only after permission has been obtained from the authorities. By virtue of the nature of their functions, such people may not enter into marriage with persons who might jeopardize State security. In the consideration of article 3 of the Covenant, it was pointed out that the Tunisian legislature has set a minimum age for marriage (over 20 years of age for men, and 17 for women). Similarly, the Personal Status Code, by requiring the consent of the spouses, makes marriage a matter for the spouses alone.

329. Prompted by a concern to adapt the law to an evolving society, the Tunisian legislature has promulgated a series of new legal instruments. The main ones include:

Act No. 93-74 of 12 July 1993 amending certain articles of the Personal Status Code relating to the status of women as fiancées (art. 2), wives (arts. 12, 23 and 28), mothers (art. 6), divorcees (arts. 32, 32 bis and 53 bis) and legal guardians (art. 67);

Act No. 93-65 of 5 July 1993 establishing the Alimony and Maintenance Payments Guarantee Fund;

Act No. 95-95 of 9 November 1995 amending and supplementing certain articles of the Obligations and Contracts Code, adding article 93 bis concerning the responsibility of fathers and mothers for acts committed by their children when minors. Under this law, mothers are jointly responsible with fathers for compensating third parties prejudiced by the actions of their children;

Act No. 2002-4 of 21 January 2002 amending article 12 of the Tunisian Nationality Code, granting Tunisian nationality to children born in other countries to Tunisian mothers and foreign fathers, provided such status is claimed by a statement made within one year prior to the age of majority. Furthermore, in the event of the death, disappearance or legal incapacity of the father, a unilateral declaration by the mother suffices;

Act No. 2003-51 of 7 July 2003, amending and supplementing Act No. 98-75 of 28 October 1998 on the attribution of a father's name to children who have been abandoned or whose paternity is unknown, makes it possible for children born out of wedlock to have the patronymic name of their mothers, or of their fathers in cases where paternity can be proved by admission, testimony or genetic analysis.

XXIV. ARTICLE 24

330. Article 24 of the Covenant guarantees that the child shall have, without any discrimination whatsoever, the protection required by his or her status as a minor. This protection is provided by the family, society and the State. Tunisian positive law contains a range of provisions designed to provide the child with maximum protection without any discrimination on the basis of race, sex, religion or social status. In its efforts to strengthen the rights of the child, Tunisia has promulgated a series of legal instruments and instituted various measures aimed, on the one hand, at giving effect in practice to the commitments deriving from its ratification of international instruments, and, on the other hand, at reaffirming its desire to safeguard such rights.

331. Tunisian law regulates child labour to protect children from exploitation. Over and above the provisions in the Labour Code governing child labour, Act No. 2005-32 of 4 April 2005 ratifying Act No. 65-25 of 1 July 1965 on the situation of domestic workers has strengthened the rights of children in this sector. Article 2 (new) of this Act prohibits "the employment as domestic workers of children under the age of 16".

332. Furthermore, Tunisia has ratified several international conventions dealing with child labour, including the two conventions addressing workers' fundamental rights: ILO Convention No. 138 concerning Minimum Age for Admission to Employment, of 26 June 1973, and ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, of 17 June 1999.

333. Tunisia took part in the World Summit for Children, held in September 1990, which adopted a World Declaration on the Survival, Protection and Development of Children, as well as a strategy for the implementation of the Declaration. Tunisia also took part in the twenty-seventh special session of the United Nations General Assembly, on children, held in

New York from 8 to 10 May 2002. The outcome document of that session includes a Declaration and a Plan of Action that bear witness to the international community's commitment to build a world where children are guaranteed the right to self-fulfilment.

334. The right to education, recognized by the Constitution, has in the past decade evolved considerably, both in law and in the effective enjoyment of this right. The enrolment rate for children 6 years of age has now reached 99.1 per cent, and is the same for girls and boys.

335. The provision of education for free is reaffirmed by article 4 of Outline Act No. 2002-80 of 23 July 2002 on education and school teaching policy, which provides that "the State shall guarantee the right to free education at public schools" at all levels of schooling.

336. As for the compulsory nature of education, article 1 of the Act stipulates that "no pupil under 16 years of age may be definitively excluded from all public schools without a decision by the Minister of Education; such children may be excluded only for serious offences, after an appearance before the Education Board". Article 21 of the Act adds that those guardians who fail to register their children at one of the basic education establishments, or who withdraw their children before the age of 16 when the children in question are able to continue their studies in a normal manner and in accordance with the regulations in force, are liable to penalties.

337. Concrete measures are taken to ensure the effective enjoyment of this right by all children, with respect for equity and equal opportunity. The State provides assistance for children from low-income families; this takes various forms, such as making boarding schools and cafeterias available, the issuance without charge of textbooks and school supplies and the provision of study grants.

338. Given the important role played by day care in raising and educating children, it was decided to mandate social welfare funds to cover part of the fees for day-care centres, as stipulated in Act No. 94-88 of 26 July 1994 on contributions to day-care fee coverage. In particular, this measure concerns children whose mothers are members of social welfare funds and who receive an overall salary that is under a certain threshold.

339. On another subject, regarding the right to learn and the right to receive occupational training, Tunisia has promulgated a series of laws as a concrete response to article 28 of the Convention on the Rights of the Child and ILO Convention No. 143 concerning Migration in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (Supplementary Provisions), of 24 June 1975. Acts Nos. 93-10, 93-11 and 93-12 of 17 February 1993 were aimed at strengthening the role of learning and occupational training in human resources development and at increasing the opportunities for children to undertake occupational training.

340. In addition, special attention has been paid to disabled children, by allowing them to continue their schooling in normal conditions or at special education institutions, in accordance with a joint agreement between the Ministries of Social Affairs, Solidarity and Tunisians Abroad; Education and Training; Public Health; and Family, Children, Seniors' and Women's Affairs. The agreement, concluded on 11 May 1994, establishes the conditions for the creation of special education teaching and training centres, along with the modalities for organizing and managing such centres.

341. In addition, Outline Act No. 2005-83 of 15 August 2005 on the promotion and protection of disabled persons was promulgated with a view to ensuring respect for the principles of equality of opportunity and non-discrimination. Article 24 of this Act establishes that "the State shall ensure that appropriate conditions exist to permit disabled children and those unable to receive an education and training in the ordinary system to receive adequate teaching, special education and vocational rehabilitation appropriate to their specific needs". A programme has been drawn up for the mainstreaming of disabled persons in ordinary schools; it is known as the "national strategy for the integration of disabled children at school". This national programme was launched in the 2003/04 school year with the involvement of the Ministries of Education and Training; Public Health; and Social Affairs, Solidarity and Tunisians Abroad. The programme, which initially covered 126 schools, has now been extended to nearly twice as many.

342. Preschooling is provided either by ordinary kindergartens or, if they are unable to do so, by specialized centres. Preparatory classes receive disabled children who are considered able to undertake schooling in the ordinary school programme. The State has made a considerable effort to equip receiving schools with the human and material resources required to ensure an accessible school environment and appropriate programme content.

343. Children who cannot be mainstreamed in ordinary schools owing to the degree of their disabilities are cared for by institutions specialized in the education, rehabilitation and vocational training of disabled people. The conditions for the creation of such establishments are set out in specifications drawn up pursuant to Act No. 2001-3 of 3 January 2001. Such centres provide comprehensive care, including medical, psychological, social, educational, academic, occupational and leisure activities for the disabled. Their activities are aimed at ensuring the intellectual, affective and physical fulfilment and development of the disabled, to the fullest extent possible. They allow the disabled to acquire a maximum of independence in everyday life, with a view to permitting their integration in society. The activities of the specialized centres that belong to associations are funded mainly through State subsidies and contributions from the social security funds.

344. The attention paid to children's health is a constant element of State policy, which has consistently attached the utmost importance to this subject, not only in relation to treatment, but also in respect of prevention and health promotion.

345. The provision of services for young Tunisians living in other countries is a specific component of the education system. It is one of the vocations and purposes of schools, in particular, to bolster the national identity of pupils and the sense of belonging to a civilization that is at once national, North African, Arab, Islamic, African and Mediterranean, while at the same time strengthening openness to universal civilization.

346. Legislation has also been drafted to protect women and the family and to guarantee the growth and development of the child. Act No. 93-74 of 12 July 1993, amending certain articles of the Personal Status Code, aims, in addition to consolidating the rights of women, to promote the family and, in particular, safeguard the rights of children, particularly their right to life, health, education and integration.

347. Under Act No. 2002-4 of 21 January 2002, amending article 12 of the Tunisian Nationality Code, it is possible to grant Tunisian nationality to a child born abroad to a Tunisian mother and a foreign father. The child must simply make a declaration in the year before he or she reaches the age of majority (20). However, the applicant may acquire Tunisian nationality before the age of 19 pursuant to a declaration made jointly by his mother and father or a unilateral declaration by his mother in the event of the father's death or disappearance.

348. Article 23 of the Personal Status Code, as amended by Act No. 93-74 of 12 July 1993, amending certain articles of the Personal Status Code, provides that both spouses must support each other in the management of family affairs and the education of their children. Article 46 (new) of the Code also extends the child's right to maintenance until the age of majority or completion of studies, up to a maximum age of 25. Girls, moreover, will continue to be provided for until they have their own resources or a husband to provide for them.

349. In the interest of protecting the family unit, (new) article 32 of the Personal Status Code provides that three conciliation sessions must be held if the couple has children under the age of majority. Under the Code, in the event of separation, if the mother has custody of the children she is granted guardianship as regards their travel, studies and financial affairs. Such areas of guardianship may extend to the children's other affairs if their guardian is incapable of managing them, provided it is in the child's best interests, in accordance with article 67 of the Personal Status Code, amended by Act No. 93-74 of 12 July 1993.

350. Under Act No. 93-65 of 5 July 1993, an alimony and maintenance payments guarantee fund was established to resolve the problem of persistent debtors who do not fulfil their obligations towards their dependants. This measure is also aimed at strengthening the rights of women and protecting the interests of children. In this regard, under Act No. 93-74 of 12 July 1993, amending certain articles of the Personal Status Code, debtors who persistently do not pay alimony are replaced by the State.

351. With regard to the administration of justice for juvenile offenders in a way that protects their rights and takes into consideration their situation and the gravity of the offence committed, Act No. 93-73 of 12 July 1993, amending certain articles of the Code of Criminal Procedure, provides that children aged between 13 and 18 charged with criminal offences are not brought before the regular courts but are tried by the juvenile court judge or juvenile court. The investigation is carried out by a juvenile examining judge. In this context, a technical committee was established to monitor children released from detention and ensure they are provided with rehabilitation and reintegration services. The committee brings together 10 ministries and meets quarterly with a view to reviewing educational programmes, participating in the elaboration of children's training programmes and evaluating efforts undertaken to facilitate the integration of children released from detention and guarantee the future protection of young offenders leaving rehabilitation centres.

352. In addition, Act No. 95-93 of 9 November 1995, amending and supplementing certain articles of the Criminal Code, contributed to strengthening the Criminal Code in terms of protecting children from sexual or economic exploitation by individuals or criminal organizations. Similarly, Act No. 95-94 of 9 November 1995, amending and supplementing Act No. 92-52 of 18 May 1992 on narcotics, clearly promotes social and medical treatment of juvenile drug addicts on judicial review of their case.

353. In the context of strengthening the rights of the child and with a view to harmonizing Tunisian legislation with the principles of the international instruments on protection of children's rights, a special committee was established on National Children's Day (11 January 1994) in order to elaborate a draft Children's Code. The Code was promulgated by Act No. 95-92 of 9 November 1995 on publication of the Children's Code. Pursuant to article 1, the Code aims to "incorporate the rights of the child to safeguarding and protection into the public policies which have made human rights the noble ideals that guide the will of Tunisians and allow them to develop and enhance their personal experiences, in accordance with human values".

354. This Code is based on a new moral code under which society as a whole has an obligation towards the child, because of his or her physical and moral vulnerability. Thus, a comprehensive legal framework, promoting the prevention of ill-treatment of children and generally improving their situation, has been put in place. New protection mechanisms were introduced, including:

> The child protection officer, who intervenes in all cases in which the health of the child or his or her physical or moral integrity is at risk. Similarly, it is the responsibility of all persons, including those bound by professional confidentiality, to notify the child protection officer of situations in which the child is at risk;
>
> The establishment of regional commissions regrouping several ministries responsible for the legal regularization of cases of children born out of wedlock and monitoring the family development and social integration of those children. From this perspective, Act No. 2003-51 of 7 July 2003, amending and supplementing Act No. 98-75 of 28 October 1998, on the attribution of a father's name to children who have been abandoned or are of unknown parentage, was promulgated, as was Act No. 2001-31 of 29 March 2001, establishing a certification that the original name and the attributed name were the same.

XXV. ARTICLE 25

355. Article 25 of the Covenant sets forth the right of every citizen, without discrimination, to participate in the public life of his or her country. Such participation implies, inter alia, the right of every citizen to vote and to be eligible for election and to have access, on general terms of equality, to public service.

356. The Constitution of the Tunisian Republic provides that: "Sovereignty belongs to the Tunisian people, who exercise it in accordance with the Constitution" (art. 3) and that: "The people exercise legislative power through the intermediary of a representative assembly called the Chamber of Deputies and the Chamber of Councillors" (art. 18).

A. Participatory democracy

1. Multiparty democracy

357. The concepts of participation and pluralism are founded in the historic Declaration of 7 November 1987, which states that the "people deserve an advanced political system with appropriate institutions, one that is genuinely based on a multiparty system and the plurality of

mass organizations", and Act No. 88-32 of 3 May 1988 on the organization of political parties. The establishment of pluralism is therefore one of the conditions of democracy. Political parties are invested with a fundamental mission with regard to the development of a sense of citizenship and the crystallization of the options and alternatives available so as to ensure the vitality of the political system.

358. Article 5, paragraph 2, of the Constitution, as amended by Constitutional Act No. 2002-51 of 1 June 2002, amending certain provisions of the Constitution, states that the Republic is founded upon the principles of the rule of law and pluralism, and establishes the right of every individual to participate in civic affairs. The concept of pluralism, in this context, refers to the many ways of thinking and diverse political movements directly involved in a political system that has been freed from a one-party system. Pluralism requires a multiparty system and a plurality of mass organizations, associations and the various components of civil society. All of these groups offer forums that allow citizens to participate in society and contribute to the building of democracy within the framework of the rule of law.

359. Participatory democracy, when all actors involved in political life and organizations follow the rules of the game, engenders quality and competence, and fosters modernity. Civil society as a whole is involved in this venture, which requires daring and dedication, but also moderation, responsibility, lucidity and respect for others. To that end, several legal and political measures have been taken to enshrine pluralism and participation in society in terms of the electoral system and access to decision-making positions.

2. Local democracy

360. With regard to the promotion of local democracy, an organization act on the composition of the regional councils was promulgated on 28 January 2002. The Act provides that up to 20 per cent of the representatives in the regional councils may come from opposition parties, on the condition that the parties have representatives in the municipal councils of the regions concerned.

361. The focus on local democracy emphasizes commune-level activities, which has resulted in the initiation of a review of the Organization Act on communes to consolidate decentralization, by giving prominence to human resources at the municipal level and increasing their responsibilities.

3. Civil society participation

362. Associations are considered an essential partner in the creation of a free and responsible society in which activities by associations constitute an appropriate setting for citizen participation in society. In the context of the consolidation of participatory democracy, associations allow a climate of solidarity and community to be promoted.

363. Political policy in support of civil society has led to the establishment of an appropriate institutional and regulatory framework and the promotion of participatory democracy. This has resulted in an increase in the number of associations from 7,282 in 1999 to 8,913 in 2005. These associations are active in many areas and are essential partners of the government authorities in economic, social and cultural development. They foster citizenship and are a vital factor in the

shaping of political and social modernity. Because of this, participatory democracy is no longer just a concept. By opening up to citizens' ideas and creativity and involving them in the choices to be made, the association movement, acting in accordance with the law, represents the political capacity to mobilize citizens to assist in identifying the way forward, as well as an initiative shaping the restructuring of the relationship between the State and civil society. The political ideal underpinning this goal - a new model of citizenship - presupposes to a greater or lesser extent that direct democracy is open to all citizens who wish to become involved. This direct participation by civil society makes it possible to establish a form of governance maintaining a balanced system in which militancy cannot stifle the rights of individuals or transgress the rules of the game as defined by the rule of law.

364. The role conferred upon the Chairman of the High Committee on Human Rights and Fundamental Freedoms by the Head of State in November 2005, in this context of the consolidation of civil society activities, consists in strengthening ties with the leaders of political parties and other components of civil society and learning about their concerns, expectations and aspirations.

365. With the changes brought about by globalization and their consequences, there is a need for real dialogue to reconstruct a social and civic pact in order to protect the social achievements of the State, and this dialogue is more likely to take place in civil society, where there are associations, trade unions, craftsmen and professionals, and there is a greater chance of finding concrete and humane solutions within the framework of the dialectic between citizen action and community life. In that regard the participation of civil society in public life makes a decisive contribution to reconstituting the political sphere by ensuring that civil and political rights are increasingly implemented and consolidated through a different relationship between civil society and the State.

B. The electoral system

1. Presidential elections

366. Constitutional Act No. 99-52 of 30 June 1999, setting out exceptions to the provisions of the third paragraph of article 40 of the Constitution, established, for the first time, that more than one candidate could stand in the presidential elections, which were held that year. Under this Act, the candidate no longer has to be put forward by 30 elected representatives, as was previously stipulated in article 40 of the Constitution. The Act provides that, on an exceptional basis, the leader of a political party, either the president or the general secretary, can stand as a candidate, on the condition that they have held their post for five consecutive years on the day they submit their candidacy and that the party has at least one representative in the Chamber of Deputies.

367. Constitutional Act No. 2003-34 of 13 May 2003, setting out exceptions to the provisions of the third paragraph of article 40 of the Constitution, specified that candidates did not have to be party leaders, as was the case in 1999; rather, each of the five political parties represented in the Chamber of Deputies could put forward a member of its executive body in the presidential elections.

368. Furthermore, it is worth noting that electing the President of the Republic using a two-round system, instituted as a result of the constitutional reform of 1 June 2002, is a political achievement that reaffirms efforts to further entrench the sovereignty of the people.

369. In the presidential elections of 2004, President Ben Ali competed against three other candidates: the General Secretary of the Popular Unity Party, the leader of the Social Liberal Party, and a member of the political bureau of the Al-Tajdid Movement.

370. Pursuant to Constitutional Act No. 99-52 of 30 June 1999, setting out exceptions to the provisions of the third paragraph of article 40 of the Constitution, a similar competition took place in the presidential elections of 1999, when there were two candidates, the first time that more than one candidate had stood for election. The candidates were the General Secretary of the Unionist Democratic Union and the General Secretary of the Popular Unity Party.

371. The participation rate in the presidential elections of 2004 was 91.52 per cent. The participation rate recorded in the presidential elections that took place in October 1999 was 91.4 per cent.

2. Legislative elections

372. Organization Act No. 93-118 of 27 December 1993, amending and supplementing the Electoral Code, amended the voting system. That amendment, the subject of broad consultation with the representatives of the political parties and other civil society structures and bodies, established the majority voting system and introduced proportional representation in order to guarantee the representation of the opposition in the Chamber of Deputies. The amendments to the Electoral Code also seek to further strengthen democratic choice, to consolidate pluralism and to establish the concept of justice and national harmony. Thus:

> The minimum age required to stand as a candidate in the legislative elections was lowered from 25 to 23 years, pursuant to Organization Act No. 98-93 of 6 November 1998, amending and supplementing certain provisions of the Electoral Code, which increased the number of people eligible to participate in politics;
>
> Subsidies are granted by the State to each presidential candidate and to each list of candidates in the legislative elections, as a contribution to funding the election campaign;
>
> The State budget covers the costs involved in establishing electoral rolls, advertising, reviewing the electoral rolls as well as printing and distributing ballot papers and voting cards;
>
> Sponsoring candidates in the legislative elections is no longer permitted.

373. The new voting system that has been adopted provides for seats to be allocated on two levels: on a constituency level and on a national level. The opposition parties were able, owing to this system, to take 19 seats in the Chamber of Deputies for the first time in 1994.

374. All the amendments listed above offer increased guarantees with regard to the credibility of elections and allow the opposition to contribute to the enrichment of political life and the promotion of the pluralist democratic process. In addition to these amendments, the conditions

for granting subsidies to presidential candidates to cover the costs of their election campaigns have been relaxed. In that regard, the promulgation of Organization Act No. 2006-7 of 15 February 2006, amending Act No. 97-48 of 21 July 1997 on the public funding of political parties, increased the subsidy granted to all political parties to cover their operating costs.

375. The amendment to article 48 of the Electoral Code, pursuant to Organization Act No. 2000-32 of 21 March 2000, amending certain provisions of the Electoral Code, aims to guarantee totally transparent elections. The amendment requires voters to pick up all ballot papers before entering the booth. In the same vein and with the aim of guaranteeing transparent elections, Organization Act No. 2002-97 of 25 November 2002 on the introduction of a system of standing review of electoral rolls cancelled the annual review system and established a standing review system in order to facilitate the addition of new entries to the roll. After the standing review of electoral rolls came into force in early 2003, nearly 1,500,000 citizens who had not signed up before had their names added to electoral rolls for the general elections of 2004-2005. The percentage of the population of voting age that had registered reached a peak of 82.56 per cent in 2004. This percentage was higher than in 1999 (65.1 per cent) and in 1989 (62 per cent). In 2004, the number of voters increased by more than a million compared to 1999. The percentage of voters in 2004, among those who had reached the legal age by 2004, was 75.49 per cent, while in 1999 and 1994 it was around only 59 per cent.

376. Furthermore, any dispute regarding registration or removal from the list is considered by the Review Board chaired by a judge appointed by the Ministry of Justice. Appointing a judge to chair this Board was one of the measures introduced by the 2003 amendment of the Electoral Code. Another was that voting cards must be distributed five months before the elections. Voting cards are sent directly to the voters, who acknowledge receipt of the card by signing next to their surname and first name. A Committee has been set up to consider the claims of voters who are legally registered on the electoral roll but who have not received their voting cards. This amendment also provides for a relaxation of the conditions relating to scrutineers as well as a reduction in the number of polling stations in communes with more than 7,000 voters to allow opposition parties to place observers at those stations.

377. Furthermore, the 2003 amendment prohibited polling station staff from wearing anything likely to indicate their political affiliation. This measure clearly shows the efforts made to promote conditions for exercising democracy. To that end, the amendment requires the voter to sign the electoral roll in person proving the completion of the act of voting.

378. The reform of the Electoral Code by Organization Act No. 2002-58 of 4 August 2003, amending and supplementing the Electoral Code, aims to make the election process more transparent and to consolidate achievements in the development of the pluralist democratic process. This reform amended 46 articles and added a similar number. By the provisions of this Act, voters are required, after having voted, to sign the electoral roll, staff at polling stations are bound to neutrality, the accreditation of observers by political parties is facilitated, voting by proxy is prohibited, and disputes regarding registration on the electoral roll are referred to the judicial authority.

379. Thus the amendments to the Electoral Code place the greatest responsibility with regard to the elections into the hands of the competing parties, including observing at polling stations, counting votes and reporting any abuses. All under the auspices of a neutral administration,

which offers the necessary services in the polling stations and counting centres. The Movement of Social Democrats, for example, put in place 436 observers during the 2004 elections but did not report any abuses.380. Seven parties participated in the legislative elections of 2004, with 168 electoral rolls, as well as seven independent lists. Each party has its own platform, objectives, priorities and policies. They differ from each other on many points. But all agree on the principles of the republican political regime, the rejection of the ideas defended by obscurantist forces and the need to safeguard the achievements of modernity. The number of candidates for the seats in the Chamber of Deputies approached 1,000, for 189 seats, or more than 5 candidates per seat. These figures were far higher than those recorded at the 1999 and 1994 elections. The participation rate recorded in the 2004 legislative elections was 91.45 per cent. The percentage for the legislative elections that took place in October 1999 was 91.4 per cent.

Table 2

Democratic electoral practice in Tunisia since 1989

Parties	1989	1994	1999	2004
	Votes/(seats)			
Movement of Social Democrats (MDS)	76 141	30 660 (10)	98 220 (13)	194 829 (14)
Popular Unity Party (PUP)	11 082	8 391 (2)	52 054 (7)	132 179 (11)
Unionist Democratic Union (UDU)	7 934	9 152 (3)	52 612 (7)	92 780 (7)
Al-Tajdid Movement	7 789	11 299 (4)	32 220 (5)	43 268 (3)
Social Liberal Party (PSL)	5 270	1 892	15 024 (2)	26 099 (2)
Progressive Democratic Party (PDP)	4 071	1 749	5 835	10 217
Independent candidates	289 445	1 061	3 738	1 093
Total	402 732	64 204	259 703	521 201
Percentage	(19.8)	(2.3)	(8.4)	(12.41)
(Seats)		(19)	(34)	(37)
Constitutional Democratic Assembly	1 634 603	2 768 667	2 831 030	3 678 645
Percentage	(80.48)	(97.73)	(91.59)	(87.59)
Number of seats	(141)	(144)	(148)	(152)
Population	7 909 545	8 815 400	9 450 640	9 910 872
Population of voting age	4 077 253	4 804 500	5 203 000	5 583 200
Percentage of population	(51.5)	(54.5)	(55.1)	(56)
Registered voters	2 711 953	2 978 694	3 388 142	4 609 237
Percentage of voting age	(66.5)	(62)	(65.1)	(82.56)
Actual voters	2 082 759	2 832 871	3 166 194	4 215 151
Percentage of registered voters	(76.46)	(95.47)	(91.51)	(91.45)
Percentage of legal voting age	(51.1)	(59)	(63.34)	(75.49)

381. These numerical data make it possible to confirm the increasing number of votes cast for opposition parties. These parties obtained more than 520,000 votes in the 2004 legislative elections. In 1999, they obtained only 260,000 votes. In 1994, they received fewer than 60,000 votes. Progress is also being made with regard to increasing the presence of the opposition parties in terms of the number of seats. In 2004 opposition parties obtained 37 out of a total of 189 seats in the Chamber of Deputies, compared to 34 in 1999. The opposition parties were better represented following the municipal elections, with 268 seats. This progress can only strengthen the future of the opposition parties, not only in parliament, but also in the regions, and consolidate the right to participate in political life.

3. Chamber of Councillors

382. The fundamental amendment to the Constitution by Constitutional Act No. 2002-51 of 1 June 2002 created a second legislative chamber, the Chamber of Councillors, in keeping with the practice of the oldest democracies, which adopted the bicameral system. As well as consolidating general representation through the direct election of representatives of the people, this amendment aims to guarantee broader representation of the regions and of the various components of society, with a view to enhancing the legislative function and political life in general. The creation of the Chamber of Councillors has strengthened and expanded the participation of citizens and their representatives in determining social, economic and cultural objectives and the attainment of these objectives. The creation of the Chamber of Councillors as a complementary legislative forum to the Chamber of Deputies allows all socio-professional categories and the representatives of all regions to express themselves, to express the expectations of the regions and society, and to foster pluralist and participatory democracy. Thus, this new Chamber contributes to strengthening democratic oversight.

383. In the same context, Organization Act No. 2004-48 of 14 June 2004, on the work of the Chamber of Deputies and the Chamber of Councillors and the relationship between the two chambers, was promulgated with a view to organizing the functioning of the Chamber of Deputies and the Chamber of Councillors while establishing the relationship between them. The number of members of the Chamber of Councillors should not be greater than two thirds of the members of the Chamber of Deputies. The Chamber of Councillors comprises one or two representatives from each governorate.

384. The seats are distributed evenly among the sectors concerned. The Chamber of Councillors, authorized to exercise legislative functions, voices the concerns of all regions, the various professional sectors and different social categories.

4. Municipal elections

385. The amendment of the Electoral Code in 1998 strengthened the presence of the opposition in the municipal councils and allowed it to obtain 243 seats in the 2005 elections. Decree No. 2000-907 of 8 May 2000, on the extraordinary review of electoral rolls, offered an extended deadline to voters who did not register on time to guarantee that they can exercise their right to vote.

386. There were more than 5,000 candidates for the municipal elections of 25 May 2005, compared to 4,200 in 2000. The opposition won seats for the first time in the municipal councils following the municipal elections of May 2000, resulting in greater representation of opposition parties and independent lists in municipal councils. The number of town councillors from these parties or independent lists elected to municipal councils increased considerably, from 6 seats in 1994 to 243 seats in 2005. This local democracy approach is an integral part of the democratic fabric, and aims to open up to all citizens the possibility of participating in the nation's endeavours. For this reason, the 4,366 town councillors assume responsibility, during their term of office, for making the community a convivial, modern, mutually supportive place where local democracy is exercised on a daily, ongoing basis.

387. The participation in 2005 of four opposition parties and a list of independent candidates in this exercise of local democracy, alongside the party in office, shows that politics seen as the management of community affairs is of interest to Tunisians.

388. The level of citizen participation in these elections, the transparency and neutrality shown by the Administration during the elections, and the election of a great number of women as councillors, would not have been possible without the establishment of institutional and cultural mechanisms and the dissemination of a civic culture that is conducive to the increased involvement of citizens and civil society in community affairs.

389. In order to guarantee free and fair elections, a National Election Observatory was set up in 1999, with the task of monitoring the conduct of presidential and legislative elections, from the moment of submission of candidacies to the announcement of the results. This body is available to all citizens; it takes note of all observations addressed to it and any complaints lodged by citizens or political parties concerning the conduct of the electoral campaign and requests the Government to remedy any problems or shortcomings identified. The Observatory aims to fulfil its mission to the best of its ability, to ensure the transparency and proper conduct of the electoral process.

390. At the end of the elections the Observatory prepares a report for submission to the President of the Republic, containing comments made by the observers and proposals for making the necessary corrections to improve the electoral system. After the 2004 elections the National Election Observatory's report was published in the press and made available to the general public. A national observatory was also set up for the 2005 municipal elections, and its report was also made public.

C. Access to decision-making posts

1. The public service

391. All citizens are entitled to apply for jobs in the public service. This principle is established in article 6 of the Tunisian Constitution, which provides "All citizens have the same rights and duties. All are equal before the law." In addition, article 11 of the statute governing public service staff states that "subject to any special provisions dictated by the nature of a person's duties, that may be taken in this regard, no distinction is made between men and women for the application of the present law".

2. Political participation

392. Participatory democracy finds concrete expression in the existence of several political parties, contributing to the enrichment of national political life.

(a) The Constitutional Democratic Assembly is the majority party, open to all intellectual persuasions of a modernist bent. In terms of members it is the country's main political power. The party of liberation and construction of the nation State, the Constitutional Democratic Assembly is currently the only political party able to put forward candidates in all the country's districts during the different national elections;

(b) Opposition parties play an active role in the pluralist process. Legally recognized political parties play an increasingly important role in fostering participatory democracy. Opposition parties are guaranteed minimum representation of at least 20 per cent of the seats of deputies and town and regional councillors. Opposition parties play an increasing role in political life, not only through their speeches and political programmes but also through their deputies and town councillors.

XXVI. ARTICLE 26

393. Article 26 sets forth general provisions concerning the equality of all persons before the law and their entitlement without discrimination to the equal protection of the law.

394. Article 6 of the Tunisian Constitution embodies this principle, in stating that: "All citizens have the same rights and duties. All are equal before the law." Thus, any person whose rights are protected by law and who believes those rights to have been impaired, may go to court and has the right to equal treatment by a court of law.

395. The Tunisian legal system provides for convergent mechanisms to guarantee the rights recognized by article 26 of the Covenant. Criminal law is based on the rule of the territoriality of laws. Tunisian criminal law applies throughout Tunisian territory.

396. Because of its attachment to the principle of equality, Tunisia has ratified a number of treaties and conventions prohibiting various forms of discrimination. It should be recalled, once again, that such conventions take precedence over ordinary laws and are binding on the judge. The following are some of the conventions that Tunisia has ratified:

(a) ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, of 25 June 1958 (ratified in 1959);

(b) International Convention on the Elimination of All Forms of Racial Discrimination (ratified in 1966);

(c) ILO Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, of 29 June 1951 (ratified in 1968);

(d) Protocol relating to the Status of Refugees (ratified in 1968);

(e) Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (ratified in 1968);

(f) Convention on the Nationality of Married Women (ratified in 1967);

(g) Convention on the Political Rights of Women (ratified in 1967);

(h) Convention against Discrimination in Education (ratified in 1969);

(i) Convention relating to the Status of Stateless Persons (ratified in 1969);

(j) International Convention on the Suppression and Punishment of the Crime of Apartheid (ratified in 1976);

(k) Convention on the Elimination of All Forms of Discrimination against Women (ratified in 1985);

(l) Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (ratified in 1988);

(m) Convention on the Rights of the Child (ratified in 1991).

XXVII. ARTICLE 27

397. Article 27 of the Covenant guarantees that, where ethnic, religious or linguistic minorities exist, they are entitled to enjoy their own culture, to profess and practise their own religion, or to use their own language.

398. The demographic composition of the Tunisian population is, ethnically speaking, very homogeneous. It consists essentially of Muslim Arabs of the Malikite rite. Religious sects are virtually non-existent. There is no self-contained community with its own particularly geographical location which asserts its specific character. The Berbers, representing the indigenous population, do not form a minority asserting its specific character since they are citizens who are fully and completely integrated into the social fabric.

399. The non-Muslim population consists mainly of Tunisians of the Jewish community, which enjoys all the rights set forth in article 27 of the Covenant. As has already been pointed out, in the comments on article 18 of the Covenant, this community has freedom to practise its religion. It might be added that Act No. 58-78 of 11 July 1958 concerning the Jewish faith contains all the provisions needed to ensure that Tunisian Jews have their own culture, profess and practise their own religion and use their own language. To that end, article 2 of the Act recognizes to the Jewish faith associations, as institutions serving the public interest, the right to ensure:

(a) The organization and upkeep of synagogues;

(b) The supervision of the ritual slaughter and the provision of unleavened bread and kosher food products, with the assistance of the rabbis;

(c) Assistance of a cultural nature to members of their community; and

(d) The organization of religious teaching.

400. In Tunisia, the support given to the cultural and spiritual fulfilment of the Jewish community takes the form of the subsidies given by the local authorities to Jewish cultural associations.

401. Similarly, the Christian community, which consists mainly of Western women living in Tunisia who have acquired Tunisian nationality following marriage to a Tunisian man, practise freely their religion in a number of Christian churches, scattered around the country. The Church is represented by a prelate appointed by the Holy See. Article 1 of Decree No. 64-245 of 23 July 1964, publishing the agreement concluded between the Government of Tunisia and the Holy See states that “the Government of Tunisia protects the free practice of the Catholic religion in Tunisia in accordance with the provisions of article 5 of the Tunisian Constitution of 1 June 1959”.

402. Tunisia, a country with a great civilization and a history that goes back millenniums, has a profound and homogenous identity. The preservation and consolidation of that identity form a strategic priority of its cultural policy. This choice does not contradict the equally important requirement of openness to other cultures, respect for differences, dialogue and exchanges with other peoples, and the prohibition of all forms of cultural intolerance and chauvinism.

403. The holding in Tunisia in 1995, under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO) of the International Conference on the Teaching of Tolerance in the Mediterranean Area, and the declaration adopted by the Conference, known as the Carthage Declaration, recognize Tunisia’s unswerving commitment to respect these principles.

404. The Tunisian media (television stations, radio and the press) play an important role in disseminating to the public the values of non-discrimination, tolerance, openness and respect for differences.

405. The Ben Ali Chair for the dialogue of civilizations and religions, established in November 2001, has held a number of symposiums, seminars and round tables, including the following:

“The dialogue of civilizations in the Mediterranean”, held on 3 January 2002 (speaker: Sebastiano Maffetone);

“Builders of civilization in the Mediterranean”, held on 23 January 2002;

“Islam and the law”, held on 5 April 2002;

“Tolerance in Tunisia: from Carthage to Kairouan”, held on 30 July 2002;

“The Ben Ali Chair for the dialogue of civilizations and religions: reference principles and objectives”, held on 20 November 2002;

“Tunisia, meeting place and crossroads of civilizations”, held on 7 October 2002;

“The meeting of the three major Abrahamic religions in Jerusalem (Al Quds). What past? What future?”, held on 9 October 2002 (Father Michel Lelong);

“Tolerance in order to bring about closer relations and solidarity between peoples”, held on 9 and 10 December 2002 (international symposium);

“Carthage and its civilization”, held on 22 January 2003;

“Tunisia - 3000 years of art and history”, held on 7 February 2003;

“Dialogue of cultures”, held on 28 April 2003;

“Islam and Christianity in the time of Harun al-Rashid and Charlemagne”, held on 9 May 2003;

“Tunisia, cultural diversity and values”, held on 15 September 2003;

“For a culture of peace”, held on 21 September 2003 (round table);

“The dialogue of civilizations: the thoughts of President Ben Ali” on 8 and 9 October 2003;

“For an interreligious dialogue”, held on 17 and 18 October 2003;

“Tunisia, host country and crossroads of civilizations”, held on 23 October 2003;

“Islam and Christianity: building a future together” held on 17, 18 and 19 February 2004 (international symposium);

“Promoting peace and tolerance between peoples”, held on 17 March 2005;

“Learning about the Other. How? Why?”, held on 25 April 2005;

“For dialogue between Abrahamic religions”, held on 9 March 2005;

“Tolerance or acceptance of the Other”, held on 5 May 2005;

“Interreligious dialogue today”, held on 15 May 2005;

“Solidarity in the world: the approach of Tunisia”, held on 25 June 2005 (Euro-Mediterranean Symposium).

XXVIII. CONCLUSION

406. This report reflects a crucial period in the life of the country; it looks at some aspects of the past, and sets out some pointers for the future. Prepared in collaboration with representatives of civil society, the report describes as objectively as possible the initiatives and measures introduced in the area of the protection and promotion of civil and political rights and aims to

inform others of the progress made by Tunisia, as a result of which the country has now embarked upon a sure path - one that is studded with difficulties, but leads to a promising future. There is still a long way to go, but the path is clearly mapped out.

407. Tunisia's work in protecting and promoting civil and political rights is characterized by creative interplay between participatory democracy, the application of human rights and the consolidation of the foundations of the rule of law. The objective is to establish a pluralist democracy in which the contrasting elements are not affiliation-based fanaticisms but rather opinions and programmes. The aim is to build a participatory democracy between responsible citizens and mature parties, whose role is to find new ideas for Tunisia, come up with alternative solutions and educate voters, in order to safeguard the interests of the country.

408. Tunisia's ambitions in the area of promoting and protecting human rights are based on historical, social, political and cultural constants which give rise to a genuine, dynamic choice that looks to the future. This is why Tunisia has done its utmost to ensure respect for humanism, pluralism and the right to be different. This entails punishing all acts of discrimination, whatever the pretext or context, all acts of incitement to hate or violence, and all forms of defamation and abuse. Thus, one can conceive of a society for human beings, created by human beings, and strive together to achieve this aim.

409. The culture of human rights leads to a new decisive landmark on the path towards consolidation of legal achievements. The aim is not to detract from the urgency of the fight for human rights but to enable the concept to take root more firmly in people's thoughts and actions, as the very principle of any modern civilization: human beings cannot be considered as a means but always as an end. All human beings have inalienable rights. However, none of these rights is ever definitively acquired: efforts of lucidity, responsibility and solidarity are required in order to receive them, win them and exercise them. Implementation in practice, on an ongoing basis, makes it imperative to have a culture of human rights, which can only develop in a climate of respect between all people: respect for one another's dignity; identity; and right to be different in an open, tolerant society where everyone has the right to live a safe and peaceful life, while taking on the duties that living together entails.

410. Of course, all initiatives and measures aimed at the protection and promotion of civil and political rights have borne fruit thanks to constantly renewed political commitment and the involvement of civil society. These efforts must be continued, however, since the process of human development is never complete.

411. Achieving a balance between rhetoric and political practice goes hand in hand with promotion of an increasingly effective participatory democracy. This sophisticated form of democracy requires, in addition to political will, a considerable amount of time in order to take root in people's thinking and traditions, blossom and grow. It is surely only conceivable in the context of the rule of law, in direct relation to the protection of human rights, as there can be no rule of law without a prevailing climate of human rights, just as there can be no human rights without a framework of rule of law. The Tunisian approach is progressive, and at the same time determined, irreversible and full of promise.