



Rights of the Child
in Tunisia

OMCT
OPERATING THE **SOS-TORTURE** NETWORK



Rights of the Child in Tunisia



The aim of OMCT country reports
is to prevent torture

In its reports on children's rights, OMCT aims to analyse national laws in terms of the international commitments that a government has made. For example, in some countries families are not informed when their child is detained and this removes a precious safeguard against abuse. The absence of such safeguards facilitates situations where the torture of children can and does occur.

In other words, the reports aim to point out where, often unknowingly, legislation facilitates grave abuses against children.

The legal analysis is supported, where possible, by urgent appeals on the torture of children documented by OMCT. These urgent appeals (OMCT intervenes almost daily on such cases) are the foundation of all our work.

The reports are not legal semantics for their own sake, but represent, in addition to the urgent actions, another side of our strategy to end torture. The reports include meaningful and feasible recommendations for legal reform aimed at reducing the incidence of child torture.

The reports are presented to the United Nations Committee on the Rights of the Child which uses them to analyse how well a country is fulfilling its international commitments with regard to children. Its recommendations on the issue of torture, drawing from OMCT's reports, send a strong message from the international community on the need for action to end the torture of children.

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Report on the implementation
of the Convention
on the Rights of the Child
by Tunisia

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I. Introduction

According to a report drafted by UNICEF on Tunisia, “the wind of modernization has blown through it in all directions, from institutions to schools, from health to the status of women”¹. Tunisia appears to be a state in transition and is no more to be counted among the poorest nations of the world. Children largely benefit from the country’s economic and social progress, their living conditions have improved and access to health and education is ensured for most Tunisian children.

The country’s advancement is most noticeable in the legal field. The second periodical report submitted by the Republic of Tunisia to the Committee on the Rights of the Child compiles the legislative measures taken from 1994 to 1998 by the government in favour of children’s rights.

In spite of a complete legislative body protecting and promoting human rights, the Tunisian state is very repressive. Motivation for oppression and harassment can be political opposition, human rights activism, penal or civil infraction. The fight against Islamic fundamentalism is put forward to allow authorities to infringe the rules protecting individual freedoms and fundamental rights in total impunity.

The promotion of human rights principles nevertheless constitutes the core of the government’s rhetoric, in its concern to project an image of a state respectful of freedoms and a pluralist democracy. It is no secret that the Tunisian government has full control over the promotion of human rights, widely proclaimed in stereotyped formal language but systematically disregarded. Examples of violations of basic rights are not unusual in Tunisia: unfair trials and partial criminal investigations of human rights activists, torture and other cruel, inhuman or degrading treatment inflicted on prisoners in pre-trial detention, harassment and detention of human rights defenders in inhuman conditions, police surveillance as a form of intimidation, restriction of freedom of expression and of association, impediment of freedom of travel of human rights activists who are either deprived of their passports or refused permission to leave the country, deprivation of telephone and fax services to human rights associations... Human rights defenders are particularly targeted by the authorities, and their relatives, including children, become victims as well. In addition, children also suffer directly from government repression and unlawful treatment committed by state officials.

1 - UNICEF Country profiles; see <http://www.unicef.org/programme/countryprog/mena/tunisia/index.html>

II. Preliminary Observations

Looking at the legal aspect, the Republic of Tunisia is party to a large number of international conventions promoting human rights.

On 31 January 1992, Tunisia ratified the Convention on the Rights of the Child (CRC) which entered into force three months later. The government of Tunisia nevertheless made declarations and reservations to the CRC.²

Tunisia has also ratified most of the other international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR) which contains a disposition on the rights of child “*to such measures of protection as are required by his status as a minor, on the part of his family, society and the State*”³. Tunisia is party to the International Covenant on Economic, Social, and Cultural Rights (ICESCR) which also grants special rights to children⁴, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)⁵, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁶, and the Convention on the Elimination of All Forms of Racial Discrimination (CERD)⁷.

Moreover, Tunisia is a member of the Organisation of African Unity (OAU) since its creation in 1963, and of the *League of Arab States* since 1958. It also participates in the *Organisation of the Islamic Conference* since it was created in 1969.

According to article 32 of the 1959

2 - **Declarations:** 1. on the need that legislative or statutory decisions implementing the CRC be compatible with the Tunisian Constitution. 2. on the implementation of the provisions of the CRC which shall be limited by the means at the disposal of the government. 3. on the Tunisian legislation concerning voluntary termination of pregnancy, whose application should not be impeded by article 6 of the CRC.. **Reservations:** 1. on article 2 “*which may not impede implementation of the provisions of its national legislation concerning personal status, particularly in relation to marriage and inheritance rights.*” 2. on article 40, paragraph 2 (b) (v), interpreted as tolerating “*exceptions under national legislation, as is the case for some offences on which final judgement is rendered by cantonal or criminal courts without prejudice to the right of appeal in their regard to the Court of Cassation entrusted with ensuring the implementation of the law.*” 3. on article 7 which “*cannot be interpreted as prohibiting implementation of the provisions of national legislation relating to nationality and, in particular, to cases in which it is forfeited.*”

3 - Article 24 § 1 of the ICCPR, ratified in 1976 by Tunisia.

4 - See articles 10, 12 and 13 of the ICESCR, also ratified in 1976 by Tunisia.

5 - Ratified in November 1988.

6 - Ratified in 1985 with reservations to articles 9, 16 and 29: these dispositions “*must not conflict with the provisions of the Personal Status Code*” mainly “*concerning the granting of family names to children and the acquisition of property through inheritance*”.

7 - Ratified in 1969.

Constitution, “*treaties do not have the force of law until after their ratification. Treaties duly ratified have an authority superior to laws.*” The Republic of Tunisia is committed to ensuring the enjoyment of every citizen’s fundamental rights, should they be enshrined in the Constitution, the legislation or ratified international conventions. Articles 5 to 8 of the Constitution, which are devoted to the protection of human rights, specify the equality of all the citizens before the law, ensure the inviolability of the human being and freedom of conscience and commit to guaranteeing the liberties of opinion and expression. Moreover, the protection of the family and the right to work, health, and education are enshrined in the Tunisian Constitution.

OMCT takes note of additional measures in favour of children’s rights including the ratification by Tunisia in 1995 of the International Labour Organisation Convention 138 concerning the Minimum Age for Admission to Employment, and prohibiting economic exploitation of children⁸, and the Convention 182 on the Worst Forms of Child Labour ratified on 28 February 2000.

The amendment of the Personal Statute

Code in July 1993 introducing joint parental authority (art 6, 23 and 67) and adapting the divorce procedure to the best interest of the child (art 32) also improved the legal protection of children in Tunisia.

OMCT is pleased to count many other measures specifically aimed at promoting and protecting the rights of the child, the most relevant being the promulgation in 1995 of a Code for the Protection of the Child (CPE). This new legal text creates a “delegate for the protection of childhood”⁹ who enforces mechanisms and measures of prevention and protection aimed at children whose health or physical or moral integrity is endangered. The CPE also clarifies the organisation and functioning of juvenile justice in Tunisia, and gives preference to the implementation of the mechanism of mediation,¹⁰ which can be operated at any stage of the procedure. The aim of mediation is the conclusion of a conciliation between the child guilty of an offence, her/his legal

8 - Law no 95-62 of July 10 1995, on the ratification of the International Labour Convention no 138 concerning Minimum Age for Admission to Employment.

9 - Article 28 of the CPE creates a “*Délégué à la protection de l'enfance*” in each local district (“Gouvernorat”), who is entrusted a mission of preventive intervention for the protection of children in danger.

10 - Article 14 CPE: “Le présent code vise à favoriser la procédure de médiation, la correctionnalisation et la non-incrimination, ainsi qu'à faire participer les services et institutions concernés par l'enfance dans la prise de décisions et le choix de mesures compatibles avec l'intérêt supérieur de l'enfant.”

guardian and the victim, to be implemented and enforced before the penal treatment of children in conflict with the law¹¹. It guarantees children's basic rights to health before and after birth, to education, and

the freedom of expression. It also protects them against all forms of exploitation, violence, prejudice or physical, psychological or sexual assault or abandonment or neglect.

III. Definition of the Child

The Convention on the Rights of the Child establishes that “*a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier*”¹².

A general definition of the child in the Tunisian law could be drawn from article 3 of the new Code for the Protection of the Child (CPE) which establishes a general upper bench-mark by providing that “*a child*

is, for the effect of the present code, every human being under eighteen years old and who has not attained her/his majority by special provisions.”¹³

Nevertheless, OMCT notes that within the scope of the specific legislation, it is possible to alter the age of majority. Indeed, both article 7 of the Code of Obligations and Contracts and article 153 of the Tunisian Personal Statute Code (CSP) establish that, under 20 years old, a person is restrained to minority and therefore deprived of control over her/his property. The minor nevertheless attains her/his majority for the administration of civil and commercial affairs, by marriage if s/he is above 17 years old.¹⁴ This provision has to be read in conjunction with article 5 CSP which provides that “*a man under 20 years of age and a woman under 17 years of age cannot contract a marriage.*”¹⁵ Therefore, although a girl can be

11 - See Chapter III, articles 113 and following of the CPE on the Mediation.

12 - See also OAU article 2: “For the purposes of this Charter, a child means every human being below the age of 18 years.”

13 - Article 3 CPE : “Est enfant, aux effets du présent code, toute personne humaine âgée de moins de dix-huit ans et qui n'a pas encore atteint l'âge de la majorité par dispositions spéciales”.

14 - Article 153 CSP : “Est considéré comme interdit pour minorité, celui ou celle qui n'a pas atteint la majorité de vingt ans révolus. Le mineur devient majeur par le mariage s'il dépasse l'âge de 17 ans et ce, quant à son statut personnel et à la gestion de ses affaires civiles et commerciales.”

15 - Article 5 CSP : “[...] l'homme avant vingt ans révolus et la femme avant dix-sept ans révolus ne peuvent contracter mariage.”

emancipated to adulthood through an early marriage, a boy cannot contract a marriage previous to his civil and commercial majority. OMCT expresses its deep concern about this provision which introduces discrimination contrary to article 2 of the CRC and article 6 of the Tunisian Constitution.

Some legal capacity can also be allowed in the case of a child under the age of 18, such

as is provided by article 156 of the CSP. Under Tunisian law, a child under 13 years old is considered to be acting without proper judgement, and all her/his acts are void. On the other hand, a child over 13 years of age is considered to have discernment. Her/his acts are regarded as valid if they are advantageous to her/him, and void if they are not.¹⁶

IV. Respect of General Principles

OMCT believes that discrimination is one of the causes of torture and other forms of violence and ill treatment and regrets that Tunisian law does not provide for an explicit non-discrimination clause. OMCT is concerned about the total silence of the CPE on the subject, and regrets that the only legal protection of children against discrimination is the general principle of equality set forth in article 6 of the Tunisian Constitution.¹⁷ OMCT would therefore recommend that the Tunisian authorities introduce a provision within the CPE in order to comply with article 2 of the Convention.

1. Gender discrimination (art 2)

OMCT wishes to express its concern about the *de jure* and the *de facto* discrimination against girls compared to boys. Although some efforts were made by the government, legal discrimination against women continues to exist in certain areas, such as property and inheritance law, which is governed by Shari'a (Islamic law). For example, article 192 of the CSP provides that according

16 - Article 156 CSP : "L'enfant qui n'a pas atteint l'âge de treize ans accomplis est considéré comme dépourvu de discernement et tous ses actes sont nuls. L'enfant qui a dépassé l'âge de treize ans est considéré comme pourvu de discernement. Ses actes seront valables, s'ils ne lui procurent que des avantages, et nuls s'ils ne lui portent que des préjudices. Leur validité sera, hors de ces deux cas, subordonnée à l'accord du tuteur."

17 - Article 6 of the Constitution: "All citizens have the same rights and the same duties. They are equal before the law."

to the rules of forced heirship, the boy receives a share that is twice that of the girl's.¹⁸ Discrimination in the provisions dealing with family law is illustrated by article 8 of the CSP which provides that the authorisation for the marriage of a minor must be given by the closest male relative.¹⁹ Moreover, as pointed out earlier, the CSP provides in articles 5 and 153 for different minimum marriage age applicable to girls and boys. These provisions imply that a girl may enjoy civil and commercial rights earlier than a boy. Moreover, an earlier permissible age of marriage for girls could encourage them to marry young, not complete their schooling and thus be unable to enter a profession.

OMCT would recommend that the Tunisian Government establish 18 as the minimum age for marriage for both girls and boys and amend all discriminatory provisions which are mainly to the disadvantage of the girl in the areas traditionally governed by the Shari'a.

18 - Article 192 CSP : "Le legs obligatoire ne bénéficie qu'à la première souche des petits-enfants issus d'un enfant de l'un ou de l'autre sexe, et le partage entre eux a lieu à raison de deux parts pour le garçon et d'une part pour la fille."

19 - Article 8 CSP : "Consent au mariage du mineur le plus proche parent agnat. Il doit être saint d'esprit, de sexe masculin, majeur."

20 - See the report of Amnesty International, *Tunisia, A widening circle of repression*, AI Juin 1997 (AI Index: MDE 30/25/97). See also a paper issued by Vérité-Action, *Journée Mondiale des femmes, Aperçu sur les violations des droits des femmes en Tunisie*, 8 mars 2001, p. 4.

Decree 108 enforced by the Ministry of Education in 1985, which forbids girls from wearing the headscarf at school contributes to the gap between girls and boys with respect to schooling. The measure was introduced by a government convinced that wearing the hijab (Islamic headscarf), or even an ordinary headscarf implied that a woman belonged to or supported Islamist political groups.²⁰ This ruling nevertheless caused the exclusion from school of more than a hundred girls who were thus deprived of their right to education. Since it only applies to women, decree 108 constitutes discrimination against girls compared to boys in the application of their right to education. Moreover, discrimination on the basis of faith and opinion can be observed through such a prohibition. OMCT regrets the discrimination instituted by this government measure and would urge the Ministry of Education to amend this ruling.

2. Discrimination against children of political prisoners and refugees

OMCT wishes to express its deep concern about the various forms of discrimination

suffered by the relatives, mostly children, of human rights defenders and government opponents.

First and foremost, children of opposition political activists suffer arbitrary discrimination in their right to access to public health care. Indeed, OMCT is concerned about the fact that, in Tunisia, the political commitment of a person often results in the deprivation of the rights of her/his children to basic medical treatment. Indeed, the detention for political or other reasons in Tunisia implies deprivation of the right to government medical care for the prisoner and her/his whole family. This is a major problem for poor families who normally benefit from state support (the “carnet de santé”), cannot afford to consult a doctor in case of illness and are suddenly deprived of the right to public health care in hospitals.²¹ This situation constitutes a violation of article 24 of the CRC which promotes the “*child’s right to health and health services*”, and to article 2 of the CRC.

The detention of a child’s parents also has negative effects on her/his right to education as provided by article 28 of the CRC, and the principle of non-discrimination of all children in their right to education. Indeed,

the association *Vérité-Action* has reported several cases where children of prisoners of conscience were refused government grants and were thus unable to pursue their studies on the basis of the political opposition of their father.

OMCT also regrets that children of political refugees suffer discriminatory treatment by the state administration which refuses to deliver or confiscates their passports. As a result, these children often suffer forced separation from one or both parents in exile because, not being in possession of valid travel documents, they are unable to cross national boundaries. Families are divided and some children are left alone in Tunisia while both parents are refugees abroad, although article 9 of the CRC provides *that a child shall not be separated from his or her parents against their will*, and article 11 of the CPE recalls this provision.

This, for example, was the case of the **Ali Khelifi** family whose six children were alone in Tunisia for four years, between 1993 and 1997, while their parents were in exile in France. The children were under 15 years old and still dependent on their parents when the latter had to leave the country.

21 - See Vérité-Action, *Aperçu sur la situation des enfants des prisonniers politiques en Tunisie*, 15 novembre 2000.

Another example is the case of Mrs **Rachida Ben Salem**. In order to escape from the long suffering she had gone through, she attempted to cross the border with her children and meet her husband, a political opponent in exile in Holland. She was arrested even before reaching the border in 1997, sentenced to two years and three months detention and freed in 1999. This situation deprived her children of parental support and resulted in a violation of their right not to *be discriminated against on the basis of the expressed opinions, or beliefs of their parents*.²² They thus suffered discrimination in the denial of the opportunity to travel and join their parents, which is contrary to articles 2 and 9 of the CRC.

Another form of discrimination which should be addressed is that suffered by Tunisian refugee children who are living abroad with their parents and are deprived of their right to enter their own country. Because of the political opposition of their parents, the whole family is considered a threat to the country's public order and is prohibited from entering the country in violation of article 10 of the CRC.²³

OMCT urges the government of Tunisia to *“take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members”* as provided by article 2 § 2 CRC.

3. Respect for the views of the child (art 12)

OMCT believes that the lack of respect of the freedom of expression and opinion leading to the detention of political prisoners is likely to be a pre-condition for torture and/or other cruel, inhuman or degrading treatment.

Article 12 of the CRC urges the States Parties to guarantee to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. OMCT welcomes the provision of the Tunisian CPE protecting the right of expression of the child's opinions, enabling the child to be heard in judicial proceedings and to express

22 - For further details on these cases, see CRLDH, *Tunisie, Familles otages et victimes*.

23 - Article 10 CRC : “[...]States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country.”

her/his views in the context of social and educational measures.²⁴ This provision specific to children enhances the proclaimed freedom of expression provided by the Constitution and the legislation and applicable to adults and children.

In spite of these protective laws, OMCT regrets the wide-ranging restrictions on freedom of opinion, speech and the press in Tunisia. The Government relies on direct and indirect methods to restrict press freedom and encourages a high degree of self-censorship. The Government also uses the **Press Code**, which contains broad provisions prohibiting subversion and defamation, to prosecute individuals who express dissenting opinions. The protection of Public Order is systematically enforced to forbid demonstrations and other activities by human rights defenders, and according to various sources of information, young people in Tunisia, including children, are the main targets of the “information police”. Essentially, they are guilty of expressing their views and criticising the current political situation, and are convicted for the offence of being young and spontaneous in the expression of their rebel and dissenting opinions. They suffer a status offence, a “*délit de jeunesse*”²⁵, which is completely

discriminatory vis-à-vis adults since teenagers in Tunisia are criminalized on the basis of their age. The government punishes the fact that they are young, dynamic and impulsive in the expression of their dissenting opinions, which represent a threat to the regime. As a consequence, the majority of prisoners of opinion in Tunisia are young people, many of them between 15 and 20 years of age.

As a factual illustration, in February 2000 the “*Comité pour le respect des Libertés et droits de l’homme en Tunisie*” (CRLDHT) reported the **arrest of 22 young persons**, among whom 12 were under 18, who took part in a demonstration in Sfax.²⁶ These high-school students were accused of participating in unauthorised demonstrations and armed marches, breach of private and public property, violence against policemen on duty, and chanting slogans expressing their hostility against the administration of president Ben

24 - Article 10 CPE : “Le présent code garantit à l’enfant le droit d’exprimer librement ses opinions qui doivent être prises en considération conformément à son âge et à son degré de maturité, à cette fin sera donnée à l’enfant une occasion spéciale pour exprimer ses opinions et être écouté dans toutes les procédures judiciaires et les mesures sociales et scolaires concernant sa situation.”

25 - The expression of “*délit de jeunesse*” was mentioned and described by Sihem Ben Sedrim during a conference made in Geneva in November 2001.

26 - See a paper made by the CRLDHT on <http://www.maghreb-ddh.sgdg.org/crldht/2000/machine-judiciaire.html>

Ali. The Government reportedly detained hundreds of secondary-school students and other youths in connection with two demonstrations held in February and April 2000. Many of them were sentenced to penalties of up to five years in prison. Moreover, it has been revealed that while in police custody, these young people suffered torture and ill treatment.

As justification of the repressive attitude of the Tunisian police, President Ben Ali stated in a speech in July 2000 that although the Government must protect the right of citizens to hold dissenting opinions, those citizens who criticize the country in the international media were “traitors” who would be prosecuted to the full extent of the law.

OMCT also regrets other recently reported violations of the freedom of expression of the child. For example, the International

Committee of Solidarity for Political Prisoners in Tunisia (ICSPPT), informed OMCT that **Wafa Ben Amor**, aged 15, decided to publish a statement expressing her solidarity with Palestinian children. She distributed the paper at her school, which caused her to be suspended from school for a month. This type of occurrence seems to be frequent.

OMCT expresses its deep concern about such events which appear to be regular occurrences. OMCT urges the government of Tunisia to put an immediate end to this practice which breaches both national and international laws and ensure that the victims obtain redress and adequate reparation.

OMCT also recommends that the broad provisions prohibiting subversion and defamation contained in the Press Code be defined clearly.

V. Protection Against Torture, and Other Cruel, Inhuman or Degrading Treatment

Considering the reported current practice of torture in Tunisia, OMCT believes that the Government's report concerning the issues of torture and other forms of ill treatment is inadequate. The report provides very little information on *de facto* ill treatment or torture of children and *de jure* protection. Therefore, OMCT believes that the Committee should be provided with more information.

1. Tunisia's Legal Framework

Although no protection from torture is provided at the constitutional level, Tunisia's legislation is particularly severe in cases of ill treatment perpetrated in connection with judicial proceedings²⁷. This is reflected in article 101 of the Criminal Code²⁸ which punishes any public official who has committed or ordered an act of violence, without any legitimate cause, against individuals by five years of imprisonment and a fine of 500 francs. Moreover, article 103 of the Criminal Code²⁹ provides that any

public official who unlawfully infringes another person's liberty or who employs violence against or ill-treats an accused person, a witness or an expert in order to obtain a confession or statement is liable to a five-year prison sentence and a fine. If only the threat of violence or ill treatment is employed, the maximum prison sentence is reduced to six months. A penalty of two years' imprisonment and a fine is incurred by a public official or similar person who, resorting to one of the practices mentioned in article 103, has employed persons on fatigue

27 - See Second periodic report of state parties due in 1993: Tunisia, CAT/C/20/Add.7, 22 December 1997, paragraph 18.

28 - Article 101 CP : "Tout fonctionnaire public ou assimilé qui, dans l'exercice ou à l'occasion de l'exercice de ses fonctions a, sans motif légitime, usé ou fait user de violence envers les personnes, est puni d'un emprisonnement de 5 ans et d'une amende de 500 francs."

29 - Article 103 CP : "Est puni de l'emprisonnement pendant 5 ans et d'une amende de 500 francs, le fonctionnaire public qui porte une atteinte illégitime à la liberté individuelle d'autrui ou qui exerce ou fait exercer des violences ou des mauvais traitements contre un accusé, un témoin, un expert, pour en obtenir des aveux ou des déclarations. S'il y a eu seulement menaces de violences ou de mauvais traitements, le maximum de la peine d'emprisonnement est réduit à 6 mois."

duty for work other than that of public utility ordered by the Government (art. 105 CP)³⁰.

OMCT is deeply concerned about the absence of a definition of torture under Tunisian law, which is contrary to article 4 of the CAT³¹. Indeed, OMCT agrees with the observations of the Committee Against Torture relating to the fact that “the Tunisian Criminal Code, *inter alia*, uses the term “violence” instead of torture and article 101 of the Criminal Code penalizes the use of violence only when it is used without legitimate cause.”³² Moreover, OMCT regrets that it is not clear within the criminal

legislation that statements obtained from a person through the use of violence or torture may not be used as evidence against her/him. Accordingly, OMCT urges the Tunisian government to amend its criminal legislation in order for it to comply with the wording of article 1 of the CAT.³³

2. Child victims of torture in Tunisia

During its consideration of Tunisia’s second periodic report, the Committee against Torture expressed its “concern over the wide gap that exists between law and practice with regard to the protection of human rights in Tunisia”. The Committee was particularly disturbed by the reported widespread practice of torture and other cruel and degrading treatment perpetrated by security forces and the police, which, in certain cases, resulted in death in custody. Furthermore, it was concerned over the pressure and intimidation used by officials to prevent the victims from lodging complaints.”³⁴

According to different sources, detention for political reasons is still widespread in Tunisia and security forces routinely use

30 - Article 105 CP: “Les fonctionnaires publics ou assimilés qui, en recourant à l'un des moyens visés dans l'article 103, ont employé des hommes de corvée à des travaux autres que ceux d'utilité publique ordonnés par le gouvernement ou reconnus urgents dans l'intérêt des populations, sont punis d'un emprisonnement de 2 ans et d'une amende de 500 francs.”

31 - Article 4 CAT: “Each State Party shall ensure that all acts of torture are offences under its criminal law.”

32 - Concluding observations of the Committee against Torture: Tunisia. 19/11/98. A/54/44, para. 95.

33 - Art 1 CAT: “For the purposes of this Convention, 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 a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

34 - Concluding observations of the Committee against Torture: Tunisia. 19/11/98. A/54/44, para. 96.

various methods of torture to coerce confessions from detainees³⁵. Arbitrary detentions without charge or trial, forced disappearances, torture, and extra-judicial killings are current practices in Tunisia, as reported by the large number of testimonies from detainees or human rights defenders, and children are not excluded from such abhorrent practices.

OMCT wishes to express its concern about the reported widespread ill-treatment inflicted by police officials on juvenile delinquents. According to various sources, young (including under 18) drug-users and/or delinquents are the main targets of the Tunisian authorities, and are repeatedly victims of torture and other inhuman, degrading treatment. As a factual example, **Hassène Azouzi**, who was under 18 when arrested on 17 March 2001, was charged with the offence of using drugs. Detained in an adult prison together with other young delinquents, he suffered sexual abuse and other forms of ill-treatment, and died in detention under suspect conditions.³⁶

Another case of torture of children was also reported by the “*Conseil National des Libertés en Tunisie*” (CNLT)³⁷. **Mohamed Salah Dridi**, 16 years old,

was arrested on 13 December 1999. This child was accused of participating in the theft of a dog (which was found shortly after). He was the victim of torture and sexual ill-treatment by two police officers, and still suffers a deep-rooted psychological trauma.³⁸

The same report informs OMCT about the testimonies of 150 young people, including children, who used drugs and were arrested in 1998. They describe the horrifying sessions of torture they had to go through, and relate in detail the methods of persecution used by their oppressor which included electric shock; submersion of the head in water; beatings with hands, sticks, and police batons; cigarette burns; and food and sleep deprivation. The Tunisian security forces also reportedly employed the “rotisserie” method: Stripping prisoners naked, manacled their wrists behind their ankles and beating the prisoners while they were

35 - See among others, the report submitted by the Observatory for the Protection of Human Rights Defenders (OMCT and FIDH), Human Rights Watch and Amnesty International, *The Administration of Justice in Tunisia, Torture, Trumped-up charges and a tainted trial*, Vol. 12, No 1 (E), March 2000.

36 - See the article issued by CNLT on <http://www.maghreb-ddh.org/actualites/actu.php?id=20> (further developments on that case pages 17-18 of this report).

37 - Conseil National pour les Libertés en Tunisie (CNLT), *Rapport sur l'Etat des Libertés en Tunisie*, March 2000. (see website : <http://www.mygale.org/tuniscom/rapportentl.htm>).

38 - Ibid. p. 18.

suspended from a rod. Another method of torture known as the *falaqa* consists of suspending a prisoner by the feet and severely beating the soles of the feet; suspension of a prisoner by his feet from the metal door of his cell for hours until the prisoner loses consciousness; and confinement of the prisoner to the “cachot,” a tiny, unlit cell. LTDH and the CNLT both reported cases in which prisoners committed self-mutilation in prison to protest conditions and then, as punishment, the prison authorities sutured the prisoners’ self-inflicted wounds without anesthesia and put them into isolation or into “cachot.” Such methods of torture are inflicted on both children and adults.

The *International Committee of Solidarity for Political Prisoners in Tunisia* (ICSPPT) also communicated to OMCT several cases of torture and other cruel or degrading treatment inflicted on children in Tunisia. Teenagers between 15 and 18 years old are frequently arrested for participation in demonstrations against the government, juvenile delinquency or “participation in an illegal organisation”. They are detained in adult prisons and, in order to destroy their will, they are sometimes detained with paedophiles. They are subjected to rape or attempts of rape by the authorities, and/or

adult cellmates, and often suffer torture and other ill-treatment.

According to the information received by ICSPPT, such ill-treatment was inflicted, among others, upon **Mourad Riahi** arrested when he was 16 and sentenced for four years; **Maher Slimane**, 16 years old at the time of the arrest, sentenced for 20 years and still in detention; **Younes Hammadi** aged 15, convicted to 5 years of jail; and **Mohamed Sakka**, 16 years old at the time of his arrest and sentenced until 1998.

Another example described by CNLT³⁹ is that of **Ali El Metoui**, found guilty of participating in high-school demonstrations and condemned to 16 months in prison where he suffered torture while he was 16 years old. Being the son of a political detainee, he continued to be subjected to different forms of harassment and ill-treatment after his release. Until November 1999, he had to report to the police every two hours at first, then the charge was reduced; he has endured regular police visits into his home at any time of day and night and has been tortured on these occasions; he tried to take up his high-school studies again but was systematically disturbed by policemen who

forced him out of the room each time he tried to sit for his final exam. They took him to the police station to beat, threaten and insult him. He was at last disqualified from registering to do the exam again by the Ministry of Education, and will thus never be able to conclude his high-school studies.

Torture continues to be a problem in Tunisia due to a climate of impunity fostered by a judiciary system that ignores evidence of torture and routinely convicts defendants on the basis of coerced confessions. Human rights advocates maintain that charges of torture and ill-treatment are difficult to substantiate because government authorities often deny medical examinations until evidence of abuse has disappeared. In spite of the Government's denial of its lack of investigation of alleged cases of torture, CNLT stated in its March 2000 report on torture that the police often refuse to register complaints and judges dismiss complaints lodged by alleged victims of torture with little or no investigation.⁴⁰

OMCT recalls that the Committee against Torture⁴¹ concluded that, "by constantly denying these allegations, the authorities are in fact granting those responsible for torture immunity from punishment, thus encour-

aging the continuation of these abhorrent practices".

OMCT is deeply concerned about the widespread practice of torture which extends to children, and urges the Tunisian Government to recognise and address this huge problem with effective measures. It should take steps to ensure that all allegations of torture and ill-treatment are promptly, thoroughly and impartially investigated and the full findings of investigations made public. Those responsible should be identified, brought before a competent and impartial tribunal and the sanctions provided by the law should be applied.

3. Children of political prisoners and refugee victims of torture

Although article 13 of the Tunisian Constitution provides that the sentence is personal and cannot be pronounced except by virtue of a law existing prior to the punishable act, various sources reported that the families of detainees and exiled persons are frequently subjected to arrest, violence and

40 - *Ibid.*

41 - Concluding observations of the Committee against Torture: Tunisia. 19/11/98. A/54/44, paras.88-105.

sexual abuse or sexual threats in order to put pressure on or to punish their imprisoned or exiled relatives.⁴² This widespread practice is clearly contrary to the CRC which provides in article 2(2) that “*States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.*”

Threats or harassment of the wives and children of political prisoners are common methods used by the authorities to put pressure on and intimidate any person who might have discordant views vis-à-vis the regime. The children of Human Rights defenders live in the fear of the “*moudahamat*”, which are brutal police break-ins at night, and witness vicious investigations and ill-treatment of their mothers.⁴³ They are terrorised, questioned and threatened (including sexually). By extracting information

from family members on one of their relatives, or as a simple reprisal against a person expressing opposition against the regime, the whole family suffers ill-treatment at the hands of the police: harassment combined with physical, psychological and sexual violence or threats of violence, house arrest, deprivation of identity papers which implies the impossibility of visiting the prisoner, withdrawal of passport, incitement to divorce, etc.

In many cases, the violence suffered by wives and children could be considered as torture because of the severe pain or suffering intentionally inflicted on them by or at the instigation of or with the consent or acquiescence of a public official. This was, for example, the case of **Zohra Sa’d Allah** and her three children, whose father left the country in 1995 after four years of detention, and **Mounia Daikh**, also mother of three children whose husband left Tunisia several years ago. These two families left without husband and father in Tunisia have been continuously harassed, the mothers have been repeatedly arrested and ill-treated during interrogation, their homes have been raided by police, including at night, and they have been prevented from leaving the country.⁴⁴

42 - See C.R.L.D.H. Tunisie, (Comité pour le respect des libertés et des droits de l'homme en Tunisie), Familles otages et victimes, <http://www.maghreb.ddh.sgdg.org/crldht/familles.html#fn3>. See also the remark of the Committee against Torture in Concluding observations of the Committee against Torture: Tunisia, 19/11/98. A/54/44, para. 99.

43 - See Vérité-Action, *Aperçu sur la situation des enfants des prisonniers politiques en Tunisie*, 15 novembre 2000.

44 - Amnesty International, *Tunisia, a widening circle of repression*, AI-index: MDE 30/025/1997, June 1997.

OMCT deeply regrets the harmful physical and psychological effects that repression inflicted on adults has on children. OMCT is gravely concerned about ill-treatment which sometimes amounts to torture and inhuman or degrading treatment inflicted on the rel-

atives of political prisoners or exiled human rights defenders. The violence suffered by children should be seriously addressed by the Tunisian government, and all the measures should be taken to put an immediate and effective end to such practices.

V. Violence against Children

1. Protection from all forms of violence

According to a study made by a Tunisian professor of medicine, Moncef Marzouki⁴⁵, the problem of violence against children in Tunisia was often negated by doctors and paediatricians who used to affirm that they had never had to treat child victims of parents' ill-treatment. Yet inquiries and facts prove that acts of violence are still a common practice in traditional Tunisian education. Indeed, only 20% of interrogated families insist that they never beat their children. It is considered normal in the traditional culture to inflict corporal punishment on children and wives when they disobey. In fact, 64% of parents consider that beating their child is good for her/his education. The motivation is variable: teach-

ing them good manners (60%), improving school results (30%), and instilling obedience and fear in children (26%), which are signs of a good education in traditional culture.

Young boys under 12 are more exposed than girls to corporal punishment because it is traditionally accepted by the society. The child's whole body is exposed to beating, except the head which is generally exempted from slapping. Fathers are traditionally entrusted with the inflicting of punishment, but mothers and teachers also have the implicit responsibility of beating the children.

According to an informal inquiry, it is at school that children mostly suffer corporal punishment. Indeed, schools in Tunisia, as

45 - Moncef Marzouki, "L'enfant battu et les attitudes culturelles: l'exemple de la Tunisie", in *Child Abuse & Neglect*, USA, vol. 11, 1987, pp.137-141.

products of their era, reproduce the same kind of educative methods based on obedience, alienation and violence. Current practice in Tunisia allows teachers at school to use corporal punishment as a method of education. This kind of violence on children does not appear to be addressed as an issue in Tunisia, but is honoured and generalised as part of the local culture. The traditional tolerance of violence inflicted on children not only violates article 19, which requires children to be protected from “all forms of physical or mental violence” while in the care of parents or others, but also clearly violates article 28(2) of the CRC which declares that “school discipline shall be administered in a manner consistent with the child’s human dignity”.

Moreover, OMCT deems that under article 37 of the Convention, Tunisia is bound by an obligation of due diligence, which requires States parties to adopt preventive, protective and reparative measures against abuses

perpetrated by private actors. As the government did not completely fulfil this obligation with regard to corporal punishment imposed by parents or teachers, Tunisia must be held responsible at least for cruel, inhuman or degrading treatment in the wording of article 37 of the CRC.

OMCT welcomes the provisions enacted by the government aimed at the protection of children against “usual ill-treatment”. Most notably article 24 of the CPE which defines “usual ill-treatment” as “*abidance of the child to torture, repeated violations against her/his physical integrity, or her/his detention, or the habit of depriving her/him of food, or to commit any brutal act which is susceptible to affect the emotional or psychological well being of the child*”⁴⁶. OMCT regrets that it remains unclear whether occasional corporal punishment inflicted on children, in particular as a method of education, falls within the scope of this article.

Considering criminal law, OMCT welcomes article 224 of the CP which defines “usual ill-treatment” of a child as a crime punishable with 5 years of prison and a fine of 500 francs.⁴⁷ But in spite of this strict existing legislation, cases of ill-treatment of children at home still occur. Corporal

46 - Article 24 CPE : “Le mauvais traitement habituel signifie la soumission de l'enfant à la torture, à des violations répétées de son intégrité physique, ou sa détention, ou l'habitude de le priver de nourriture, ou de commettre tout acte de brutalité qui est susceptible d'affecter l'équilibre affectif ou psychologique de l'enfant.”

47 - Article 224 CP : “Est puni de cinq ans de prison et d'une amende de 500 francs, quiconque maltraite habituellement un enfant ou tout autre incapable de l'un ou l'autre sexe, placé sous son autorité ou sa surveillance, sans préjudice, s'il y a lieu, des peines plus graves prévues pour les violences et voies de fait. Est considérée comme mauvais traitement tombant sous l'application du paragraphe précédent, la privation habituelle d'aliments ou de soins.”

chastisement inflicted on children as a method of education does not seem to fall within the scope of this article since it is never punishable. Implicitly, Tunisian tradition which gives the right to correction and imposing of discipline, acts as a derogation to the application of article 224 of the CP. Clearly, punishment which results in damage to the physical and psychological integrity of the child, whether it is regular or not, and even if tolerated by the culture, is a very serious crime. It is regrettable that, according to the current Tunisian legislation, the perpetrator of such a crime would not appear to be subject to any sanction.

OMCT would therefore recommend that the Government of Tunisia make it clear that it considers all ill-treatment of children to be unacceptable, irrespective of its frequency.⁴⁸ OMCT would recommend amending the current legislation as a matter of urgency so as to comply with the requirement of the CRC to guarantee adequate protection for the physical and psychological integrity of the child.

2. Protection against sexual abuse

Article 19 of the CRC includes sexual abuse in the scope of protection of the Convention. Sexual abuse of children may include not only violent sexual assault but also other sexual activity, consensual or not, with children regarded as immature or below a certain defined age of sexual consent. Sexual abuse also extends to sexual exploitation as addressed in article 34 of the CRC.⁴⁹

OMCT welcomes the Tunisian legislation condemning sexual abuse of children. According to article 228 CP, indecent assault of a person of either sex without her/his consent is punishable by a six year prison sentence. The sentence will be increased to twelve years if the victim is under the age of 18. A life sentence will be handed out if the act is carried out at gunpoint, under threat, confinement, or results in injury, mutilation or disfigurement or is followed by any other act which puts the victim's life in danger.⁵⁰

48 - See statement from Mr. HAMMARBERG in Summary Record of the 226th meeting : Tunisia. 13/06/95. CRC/C/SR.226.

49 - "States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse".

50 - Article 228 CP : Est puni d'un emprisonnement pendant six ans, l'attentat à la pudeur, commis sur une personne de l'un ou de l'autre sexe sans son consentement . La peine est portée à douze ans de prison si la victime est âgée de moins de dix –huit ans accomplis. L'emprisonnement sera à vie si l'attentat à la pudeur précité a été commis par usage d'arme , menace, séquestration ou s'en est suivi blessure par ou mutilation ou défiguration ou tout autre acte de nature à mettre la vie de la victime en danger.

Article 228 bis CP adds that an act of indecent assault without violence committed against a child under eighteen years of age will be punishable by five years imprisonment. Attempted indecent exposure is a punishable offence.⁵¹

OMCT welcomes the fact that indecent assault on children is criminally punishable, and that the penalty is increased when the sexual assault or abuse is inflicted by the ascendants of the victim or any person who has influence over her/him.⁵² According to articles 232 to 234 CP, sexual exploitation of children is also specifically punishable, by detention during 3 to 5 years, and a fine of 5000 *dinars*.

In spite of this strict ruling, different sources indicate that sexual abuse and exploitation of children is still widespread in Tunisia both at home and in the street. OMCT regrets that Tunisia's report is silent on this

topic. A study was made of 354 cases of child victims of physical or sexual aggression who sought the emergency service of a Tunisian hospital from 1994 to 1996⁵³. The study highlighted the fact that the majority of abused children were between zero and fifteen years old for girls, and between seven and fifteen for boys. Most of the time, the aggressor was a relative or someone known by the victim. Girl victims of an act of aggression who go to the hospital usually suffer more serious injuries than boys, which could imply that most of the acts of aggression that do not result in serious wounds are concealed by the family.

According to the law in Tunisia, girls are most protected and prohibited from having sexual intercourse before the age of 20. In spite of the laws and the culture, sexual abuse still occurs although it is a very sensitive topic and therefore often concealed. Moreover, the victims tend not to report the violation because they are under the oppression of a person familiar to them who has authority and influence on them.

OMCT would recommend that the Tunisian government carry out a study on the nature and extent of this issue, and take measures against the sexual abuse of chil-

51 - Art. 228 bis CP : L'attentat à la pudeur commis sans violence sur la personne d'un enfant âgé de moins de dix-huit ans accomplis, est puni de cinq ans d'emprisonnement. La tentative est punissable.

52 - Article 229 CP : La peine est le double de la peine encourue, si les coupables des infractions visées aux articles 227 bis, 228, 228 bis sont des ascendants de la victime, s'ils ont de quelque manière que ce soit autorité sur elle, s'ils sont ses instituteurs, ses serviteurs, ses médecins, ses chirurgiens dentistes, ou si l'attentat a été commis avec l'aide de plusieurs personnes.

53 - Chibi A., *L'enfant victime de violences*, Thèse de doctorat en médecine, Faculté de Sousse-Tunisie, 1997.

dren still occurring in Tunisia. Adequate reparation, rehabilitation and reintegration

should be provided to child victims of the violation of their sexual integrity.

VI. Children in Conflict with the Law

1. Age of criminal responsibility

With respect to article 40 of the CRC, the Tunisian Criminal Code (articles 38 and 43) and the CPE (articles 68 and following) establish “*a minimum age below which children shall be presumed not to have the capacity to infringe the penal law*”. OMCT welcomes the Tunisian legislation which states that an infraction committed by child under 13 years old is not punishable.⁵⁴ Between 13 and 15 years old, the CPE still considers the child as incapable of infringement of penal law, although the contrary can be proven.⁵⁵ Before 15 years of age, a child who commits an offence cannot be kept in detention, while the law is not clear about the punishment of a child under 15 convicted for a crime. A child under the age of 18 years still has a limited responsibility according to the nature and gravity of the infraction, the personality of the child, and the circumstances of the case,⁵⁶ but can

exceptionally be charged with a criminal sanction.⁵⁷

2. Juvenile judicial proceedings

OMCT welcomes the fact that Tunisian law grants children in conflict with the law the right to special treatment regarding both the administration of justice and penalties imposed. Between 13 and 18, a child accused of any minor offence, misdemeanour

54 - Article 38 CP: “L’infraction n’est pas punissable lorsque le prévenu n’a pas dépassé l’âge de 13 ans révolus au temps de l’action.”

55 - Article 68 CPE: “L’enfant âgé de moins de treize ans est présumé irréfragablement n’avoir pas la capacité d’enfreindre la loi pénale, cette présomption devient réfragable pour les enfants âgés de treize à quinze ans révolus.”

56 - Article 69 CPE: “Tous les crimes, sauf ceux entraînant mort d’homme, peuvent être correctionnalisés en considération de la nature de l’infraction, sa gravité, l’intérêt lésé, ou la personnalité de l’enfant et les circonstances de l’affaire.”

57 - Article 79 CPE: “Ils pourront exceptionnellement, lorsque le dossier du fait commis et celui de la personnalité de l’enfant, leur paraîtront l’exiger, prononcer à l’égard de l’enfant âgé de plus de quinze ans, une sanction pénale. En ce cas, la peine s’exécute dans un établissement adapté et spécialisé.”

or crime cannot be heard by the regular criminal jurisdictions, but is subject to judgement before the juvenile system.⁵⁸ OMCT also welcomes the adoption in May 2000 of a new law⁵⁹ which instituted a double degree of jurisdiction in the criminal field to hear about crimes committed by children.

Moreover, OMCT is pleased to observe that children accused of a crime benefit from special guarantees for their defence and the protection of their physical and psychological integrity. When convicted by the judge, children are subject to reduced penalties as compared to those applicable to adults, and cannot legally be detained for more than 10 years.⁶⁰ The conviction to detention is exceptional and the sentence has to be served

in institutions specialised and adapted to receive children.⁶¹

OMCT is nevertheless concerned about the failure in the implementation of the laws since it was reported that children of political opponents to the government have been detained and tortured.

Moreover, children accused of delinquency have also been subjected to torture. Examples of inaccurate functioning of the Tunisian juvenile system were given by the CNLT. **Hassène Azouzi** was not yet 18 when arrested at his home in the middle of the night of 17 March 2001. He was charged with taking drugs and sentenced to detention in a section of a prison for adults that is renowned for its harsh conditions. Pavilion D of the Prison “9 Avril” is reserved for young detainees who are former drug addicts and are still being provided with drugs, who have no more contact with their families, and can thus be easily sexually abused. After several months of detention in inhuman conditions, in which he was subjected to harassment and ill-treatment and showed serious signs of weakness and illness, he was finally found dead in very suspicious circumstances.

58 - Article 71 CPE : “Les enfants, âgés de treize à dix-huit ans révolus auxquels est imputée une infraction qualifiée contraventions délits ou crime ne sont pas déférés aux juridictions pénales de droit commun. Ils ne sont justiciables que du juge des enfants ou du tribunal pour enfants.”

59 - The law 2000/53 entered into force 22 May 2000 completing some dispositions of the Code for the protection of the child.

60 - Article 43 CP : “Tombent sous la loi pénale, les délinquants âgés de plus de 13 ans révolus et moins de 18 ans révolus. Toutefois, lorsque la peine encourue est la peine de mort ou l'emprisonnement à vie, elle est remplacée par un emprisonnement de dix ans. Si la peine encourue est celle de l'emprisonnement à temps, elle est réduite de moitié.”

61 - Article 79 CPE: “Ils pourront exceptionnellement, lorsque le dossier du fait commis et celui de la personnalité de l'enfant, leur paraîtront l'exiger, prononcer à l'égard de l'enfant âgé de plus de quinze ans, une sanction pénale. En ce cas, la peine s'exécute dans un établissement adapté et spécialisé.”

OMCT wishes to express its concern about the reported frequent occurrences of torture of juvenile delinquents, as well as the imposition of adult penalties although the alleged offenders are still below the criminal age limit.

OMCT urges the Tunisian government to carry out a serious investigation on similar cases and in particular that of the young Hassène, in order to discover the exact

causes of his death, to identify those responsible, bring them before a competent and impartial tribunal and apply the sanctions provided by law. OMCT also insists on the urgent need for the Tunisian government to take all necessary measures in order to efficiently apply the existing legislation relative to juvenile justice, and to respect the right of children to receive lower penalties and be detained in different establishments than those of adults.

VII. Conclusions and Recommendations

OMCT is deeply preoccupied by the significant gap between thorough legal provisions and their weak or inexistent application in practice. Recalling a recommendation made by the UN Human Rights Committee in October 1994⁶², OMCT urges the government of Tunisia to take steps to strengthen the independence of the judiciary and human rights institutions in Tunisia in order to “close the gap between law and practice and enhance the confidence of the public in those institutions”. The Republic of Tunisia should ensure by all means the adequate and efficient implementation of the laws enacted in order to

guarantee the effective promotion and protection of the fundamental rights of the child.

OMCT is deeply concerned about the *de jure* and *de facto* **discrimination** between girls and boys and would like to call upon the Tunisian Government to:

- introduce a non-discrimination provision within the CPE in order to comply with article 2 of the Convention;
- Establish 18 as the minimum age for marriage for both girls and boys;

- Amend all discriminatory provisions which are mainly at the disadvantage of girls in the areas traditionally governed by the Shari'a (property, inheritance law and family law);
- Address societal discrimination against girls which exists in areas such as private sector employment or education; and most important, abolish the decree 108 enforced by the Ministry of Education which leads to indirect discrimination against girls compared to boys in the application of their right to education, and discrimination on the basis of faith and opinion;
- Take all necessary measures to ensure that the right to basic health care and education is equally applied to all children, regardless of their parents' political commitment;
- Take steps to ensure that children of political detainees or refugees are no longer victims of discrimination by being arbitrarily deprived of their identity card and passport, and that they be allowed to "leave any country for the purpose of

family reunification and return to their own country" (as provided by article 10 CRC);

Concerning the respect of the **freedom of opinion** of Tunisian children, OMCT recommends that the government :

- Take measures to ensure the exercise of freedom of opinion and expression in accordance with articles 12, 13 and 14 of the CRC;
- Amend and clarify the broad provisions prohibiting subversion and defamation contained in the Press Code "which unduly protect Government policy and officials from criticism"⁶³, and put an end to the wide application of the restrictions imposed on the freedom of opinion, speech and the press in Tunisia, primarily concerning children;

As for the issue of **torture and other cruel, inhuman or degrading treatment or punishment**, OMCT regrets that the authorities constantly deny allegations of torture which implies that total impunity is granted to those responsible for this practice. OMCT therefore urges the Tunisian government to:

62 - See the recommendations made by the UN Human Rights Committee in October 1994 [see UN Index: M/CCPR/C/52/COM/TUN/3].

- Enact a provision in order to ensure that the Tunisian criminal legislation complies with article 1 of the CAT, first and foremost by introducing a clear definition of the word “torture” instead of only using the word “violence”;
- Take all necessary measures to ensure that complaints of cases of torture and ill-treatment of children be effectively taken into account. Guarantee an immediate and impartial investigation into the circumstances of alleged cases of torture, identify those responsible, bring them before a competent and impartial tribunal and apply the sanctions provided by the law. Ensure that the full findings of investigations are made public;
- Provide reparation, rehabilitation and reintegration of child victims of torture and other cruel, inhuman or degrading treatment;
- Take steps to ensure the immediate and automatic medical examinations of children who are allegedly victims of torture or ill-treatment, without waiting for the evidence of abuse to disappear. Equally, ensure that thorough autopsies are per-

formed following any death in custody;

- Seriously address the violence suffered by the children of political opponents to the regime, which sometimes amounts to torture and inhuman or degrading treatment; all measures should be taken to put an immediate and effective end to threats and harassments of the wives and children of prisoners of opinion;

Considering the issue of **violence** against children, and the compliance of Tunisian law with article 19 of the CRC, OMCT would recommend that the Tunisian Government:

- Amend articles 24 CPE and 224 CP so as to ensure the strict prohibition and punishment of all ill-treatment of children, including corporal punishment in the family and at school, whether it is usual or not;
- Carry out a study on the nature and extent of the issue of sexual abuse of children, and take measures aimed at efficient enforcement of the law and against the current practice of sexual abuse of children still occurring in Tunisia;

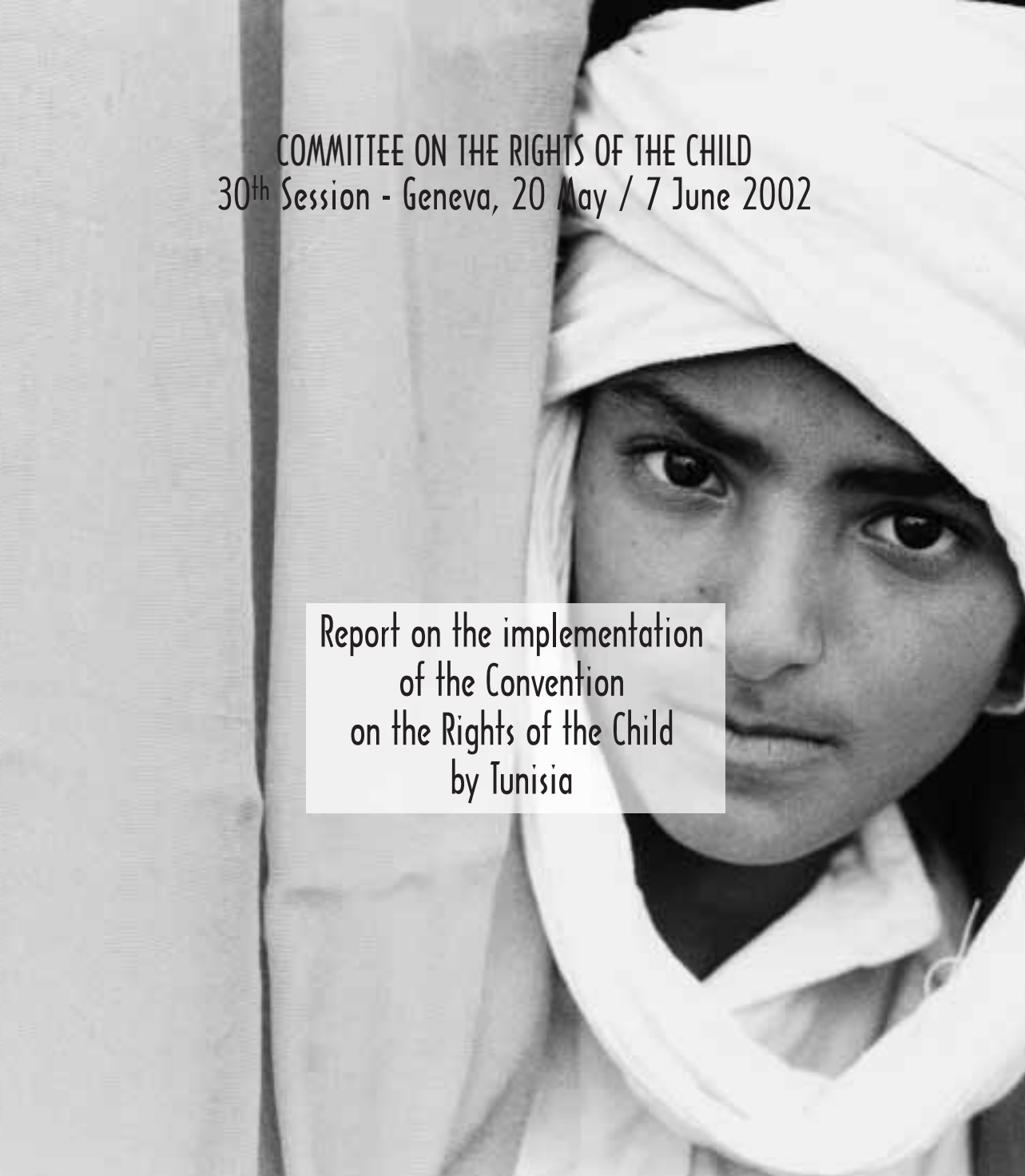
- Provide adequate investigations on alleged cases, ensure the prosecution and punishment of the perpetrators as well as reparation, rehabilitation and reintegration of child victims of violations of their sexual integrity;

As for **children in conflict with the law** in Tunisia, OMCT regrets the gap between law and practice, and recommends that the Government :

- Take steps to bind juvenile judges to the effective and impartial application of the

Code for the Protection of the Child and of international standards on juvenile justice, in particular on the relevant provisions of the CRC;

- Take all necessary measures in order to respect the right of children under the age of 18 to be heard before a specialised juvenile jurisdiction, to be issued appropriate adequate penalties and to be detained in institutions specifically for children, distinct from those for adults.



COMMITTEE ON THE RIGHTS OF THE CHILD
30th Session - Geneva, 20 May / 7 June 2002

Report on the implementation
of the Convention
on the Rights of the Child
by Tunisia

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

1. At its 788th and 789th meetings (see CRC/C/SR.788 and 789), held on 28 May 2002, the Committee on the Rights of the Child considered the second periodic report of Tunisia (CRC/C/83/Add.1), which was received on 16 March 1999, and adopted, at its th meeting, held on 7 June 2002, the following concluding observations.

A. INTRODUCTION

2. The Committee welcomes the submission of the State party's second periodic report, which was submitted in a timely manner and prepared in accordance with the Committee's guidelines for reporting. The Committee furthermore appreciates the detailed written response to the list of issues (CRC/C/Q/TUN/2), which was equally submitted in a timely manner. The Committee notes with appreciation that the well-informed and high-ranking delegation contributed to an informative and constructive dialogue.

B. FOLLOW-UP MEASURES UNDERTAKEN AND PROGRESS ACHIEVED BY THE STATE PARTY

3. The Committee notes the State party's commitment to the issue of child rights and particularly welcomes the adoption of the Child Protection Code, on 9 November 1995, which entered into force on 11 January 1996, including the ensuing establishment of delegates for the protection of childhood by Decret N° 96-1134, the obligatory reporting of danger to children and the development of a specialized system of juvenile justice . The Committee particularly welcomes that articles 4 and 10 of the Child Protection Code make express reference to the best interest of the child as well as respect for the views of the child, respectively, in line with the previous recommendation of the Committee (CRC/C/15/Add.39, para. 7). The Committee further notes the establishment of a child parliament.

4. The Committee welcomes efforts to improve data collection, in line with previous

recommendations (ibid, para. 12), including by enhancing the status of the National Council for Children by converting it into a Higher Council under Decree No. 2002-574 of 12 March 2002, and by drafting an annual report on the situation of the child.

5. In light of the previous recommendations (ibid, para. 9) the Committee further commends the amendment of the Labour Code, raising the minimum age for admission to employment to 16 years, which is the age for completion of compulsory education. The Committee notes the series of new laws adopted regarding children born out of wedlock, and with regard to the joint responsibility on the part of spouses, as well as policy measures to ensure maintenance following divorce, measures for the protection of children deprived of a family environment, and various other steps taken to ameliorate the implementation of the Convention and to follow-up on the previous dialogue with the Committee.

6. In light of the previous recommendations (ibid, para. 10), the Committee notes with satisfaction the withdrawal, on 1 March 2002, of Reservation no. 2 with regard to article 40, paragraph 2 (b) (v) and Declaration no. 2, by which the State party declares that

“its undertaking to implement the provisions of this Convention shall be limited by the means at its disposal.”

7. The Committee welcomes the ratification by the State party in 1995 of the ILO Convention 138 concerning Minimum Age for Admission to Employment and the ratification in 2000 of ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

C. PRINCIPAL SUBJECTS OF CONCERN AND COMMITTEE RECOMMENDATIONS

C.1 General Measures of Implementation

Committee's previous recommendations

8. The Committee regrets that some of the concerns and recommendations (CRC/C/15/Add.39) it made upon consideration of the State party's initial report (CRC/C/11/Add.2) have been insufficiently

addressed, particularly those contained in paras. 6, 7, 8, 10, 13, 14, 16 and 17. The Committee notes that those concerns and recommendations are reiterated in the present document.

9. The Committee urges the State party to make every effort to address those recommendations from the concluding observations of the initial report that have not yet been implemented and to address the list of concerns contained in the present concluding observations on the second periodic report.

Reservations

10. While welcoming the State party's withdrawal of Reservation no. 2 with regard to article 40, paragraph 2 (b) (v) and Declaration no. 2, by which the State party declares that "its undertaking to implement the provisions of this Convention shall be limited by the means at its disposal", and noting the statement by the delegation that consideration will be given to withdrawing the remaining reservations, the Committee remains concerned about the extent of reservations and declarations made to the Convention by the State party. In particular,

the Committee reiterates that the reservation relating to the application of article 2 appears to be incompatible with the object and purpose of the Convention.

11. The Committee, in line with its previous recommendation, and in light of the Vienna Declaration and Programme of Action (1993), encourages the State party to consider reviewing its reservations and declarations with a view to withdrawing them, including in particular the reservations relating to article 2 of the Convention.

Coordination

12. While welcoming the efforts made in the area of coordination, the Committee observes that the effectiveness in practice of the Higher Council for Children as a mechanism for coordination remains unclear.

13. The Committee recommends that the State party make every effort to ensure the effectiveness of the Higher Council for Children, the status of which was recently enhanced. It reiterates its previous recommendation to the State party to strengthen the efficiency and the effectiveness of coordination between the central

Government and the governorates (ibid, para. 13).

Data collection

14. While noting the significant efforts of the State party to collect reliable data on the situation of children, and particularly the preparation of an annual report on the situation of the child, the Committee regrets in particular the maintenance of a sectoral approach to data collection and monitoring.

15. The Committee recommends the State party to:

- a) Conduct impact assessments regarding the annual report on the situation of the child, incorporating all areas of the Convention
- b) Develop an integrative approach to data collection and monitoring;
- c) seek technical assistance from, inter alia, UNICEF, UNFPA and UNDP in this regard.

Independent monitoring structures

16. The Committee welcomes the creation of the “Information, Training, Documentation and Study Observatory” in February 2002, and the appointment of delegates who play an important role in the protection of children and in receiving complaints. However, the Committee notes the need to establish a monitoring mechanism of an independent nature, in line with its previous recommendation for the State party (ibid, para. 8).

17. The Committee encourages the State party to:

- a) establish an independent national human rights institution in accordance with the Paris Principles relating to the status of national institutions (A/RES/48/134), to monitor and evaluate progress in the implementation of the Convention at the national and, if appropriate, at the local levels, including implementation by the private sector and NGOs as providers of services to children. This institution should be empowered to receive and investigate individual complaints of violations of child rights in a child-sensitive manner, and effectively address them; and

- b) seek technical assistance from, inter alia, the Office of the High Commissioner for Human Rights, and UNICEF.

Training/Dissemination of the Convention

18. While noting with appreciation the efforts undertaken by the State party to widely publicize the principles and provisions of the Convention, including the broadcasting of information through the media and the integration of parts of the Convention in school curricula, the Committee is of the opinion that the measures to create widespread awareness and understanding of all principles and provisions of the Convention need to be further strengthened and implemented in an on-going, comprehensive and systematic basis.

19. The Committee reiterates its recommendation (ibid, para. 11) to pursue its efforts aiming at creating awareness of all aspects of the Convention, and having its basic principles grasped by the general public, and to continue training relevant professional groups working for and with children, in particular parliamentarians, judges, lawyers, law enforcement officials, civil servants, municipal workers, personnel

working in institutions and places of detention for children, teachers, health personnel, including psychologists, social workers, religious leaders, as well as children and their parents.

Technical assistance from, among others, OHCHR and UNICEF could be requested in this regard.

D.2 Definition of the Child

20. While noting the positive measures taken to bring the different age requirements into full compliance with the Convention, and measures taken to follow-up on the Committee's previous consideration by raising the minimum age of admission to employment to 16 years so as to harmonize it with the age of compulsory education, the Committee is concerned at the disparity in the minimum age of marriage for boys and girls, and particularly the age of marriage for girls which is set at 17 years, although noting with appreciation that it was raised from 15 years.

21. The Committee recommends the State party to address the disparities in the min-

imum age of marriage for boys and girls by raising the minimum age of marriage for girls.

D.3 General Principles

The right to non-discrimination

22. The Committee welcomes the information on measures taken to address discrimination against children born out of wedlock, in line with the Committee's previous recommendations, although remaining concerned at the implementation of legislation in practice. It furthermore observes that the principle of non-discrimination (article 2 of the Convention) does not figure prominently in the new Child Protection Code. The Committee is deeply concerned that the principle of non-discrimination is not fully implemented in practice with respect to several groups, including on the basis of political and human rights activities, expressed opinions or beliefs of children or the child's parents, as well as with regard to children with disabilities and children living in less advantaged regions and rural areas, especially with regard to their access to health and adequate educational facilities.

23. In accordance with article 2 of the Convention, the Committee recommends the State party

- a) to make concerted efforts at all levels to address discrimination, notably discrimination based on the political and human rights activities, expressed opinions, or beliefs of children or the child's parents, legal guardians or family members, disability and national, ethnic, or social origin, through a review and re-orientation of policies, including increased budgetary allocations for programmes targeting the most vulnerable groups;
- b) enhance efforts to close gaps in the enjoyment of rights between different regions as well as with regard to gaps between urban and rural communities.
- c) to ensure effective law enforcement, undertake studies and launch comprehensive public information campaigns to prevent and combat all forms of discrimination, in line with the previous recommendation (ibid, para. 7).

24. The Committee requests that specific information be included, in the next periodic

report, on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and taking account of General Comment no. 1 on article 29(1) of the Convention (aims of education).

Respect for the views of the child

25. Taking note of the efforts by the State party to give effect to the principle of respect for the views of the child, in particular its inclusion in the Child Protection Code, the Committee is nevertheless concerned that respect for the views of the child remains limited owing to traditional societal attitudes towards children in schools, civil courts, administrative decisions and especially in the family, as well as concerns regarding the implementation of arts. 13 and 15, providing for the right to freedom of expression as well as the right to freedom of association and to freedom of peaceful assembly, respectively.

26. The Committee recommends that the State party

- a) promote and facilitate, within the family, the school, the courts and administrative bodies, respect for the views of children and their participation in all matters affecting them, in accordance with article 12 of the Convention;
- b) develop skills-training programmes in community settings for teachers, social workers, local officials and confessional leaders to enable them to assist children to express their informed views and opinions and to have them taken into consideration; and
- c) seek assistance from UNICEF among others.

D.4 Civil Rights and Freedoms

Right to freedom of expression and peaceful assembly

27. The Committee is concerned that the rights to freedom of expression, including to receive information as well as freedom of association and peaceful assembly are not fully guaranteed in practice.

28. The Committee recommends that the State party take all necessary measures to ensure the full implementation of the rights to freedom of expression and to freedom of association and peaceful assembly in practice, in accordance with articles 13 and 15 of the Convention.

Right to freedom of thought, conscience and religion

29. The Committee is concerned about information brought to its attention, which indicates that the exercise of the right to freedom of religion may not always be fully guaranteed, particularly with regard to regulations prohibiting the wearing of a headscarf by girls in schools.

30. The Committee recommends that the State party take all necessary measures to ensure the full implementation of the right to freedom of thought, conscience and religion.

Right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment

31. While noting the delegation's statement as to the complete absence of torture or other cruel, inhuman or degrading treatment or punishment in the State party, the Committee remains extremely concerned at allegations of violations of the right of the child not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment appearing in a number of reports brought to the attention of the Committee, particularly in relation to children of human rights defenders and political opponents.

32. In light of article 37 (a) of the Convention, the Committee strongly recommends that the State party

- a) enforce, or, when appropriate review existing legislation, and investigate in an effective way reported cases of torture and ill-treatment of children;
- b) ensure that alleged perpetrators be transferred from active duty or suspended while they are under investigation, dismissed and punished if convicted, and

that court proceedings and sentences should be publicized;

- c) train law enforcement personnel on child rights issues;
- d) in the light of article 39, take all appropriate measures to ensure the physical and psychological recovery and social integration of child victims of torture and/or ill-treatment.

D.5 Family Environment and Alternative Care

Violence/abuse/neglect/maltreatment

33. While noting the provision in the Code of Child Protection regarding ill-treatment (art. 24) and the relevant provision in the Penal Code (art. 224), as well as the Ministerial Circular of December 1997, banning all forms of corporal punishment and practices hurting the dignity of children, the Committee is concerned that, as noted by the delegation, corporal punishment is only a crime if it is prejudicial to the health of the child. It notes with concern that violence as a means of discipline in the home and at school continues to be acceptable as

a form of discipline in the State party. The Committee regrets that no follow-up to the Committee's previous recommendation has been initiated to protect children from ill-treatment (ibid, para. 17). The Committee is furthermore concerned that there is insufficient information and awareness of domestic violence and its harmful impact on children.

34. The Committee urges the State party to:

- a) take all legislative measures to prohibit in the most effective way possible all forms of physical and mental violence, including corporal punishment and sexual abuse, against children in the family, in the schools and in institutions; and furthermore recommends that the State party:
- b) conduct a study to assess the nature and extent of ill-treatment and abuse of children, and design policies and programmes to address it;
- c) carry out public education campaigns about the negative consequences of ill-treatment of children, and promote positive, non-violent forms of discipline as an alternative to corporal punishment;

- d) establish effective procedures and mechanisms to receive, monitor, and investigate complaints, including intervening where necessary;
- e) investigate and prosecute instances of ill-treatment, ensuring that the abused child is not victimized in legal proceedings and his/her privacy is protected;
- f) provide care, recovery and reintegration for victims;
- g) train teachers, law enforcement officials, care workers, judges and health professionals in the identification, reporting and management of ill-treatment cases;
- h) take into consideration the recommendations of the Committee adopted on its days of general discussion on children and violence (CRC/C/100, para. 688, and CRC/C/111, paras. 701-745);
- i) seek assistance from, among others, UNICEF and WHO.

D.6 Basic Health and Welfare

Children with disabilities

35. While welcoming the extensive legislation regarding children with disabilities, and their rights to appropriate education, rehabilitation and training, the Committee regrets that only a small number of children with minor disabilities attend regular schools. The Committee notes the statement by the delegation, that a strategy for integration and vocational training for children with disabilities, as well as a study on causes of disabilities are in the process of being completed.

36. The Committee urges the State party to:

- a) review existing policies and practice in relation to children with disabilities, taking due regard of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and of the Committee's recommendations adopted on its General Discussion Day on "Children with Disabilities" (CRC/C/69);

- b) undertake greater efforts to promote community-based rehabilitation programmes and inclusive education;
- c) undertake greater efforts in the area of prevention, by reviewing, inter alia, health programmes and policies relating to pregnancy, birth and child health, and
- d) seek assistance from, inter alia, UNICEF, and WHO, and relevant NGOs.

Right to health and healthcare

37. The Committee notes the sustained commitment by the State party to implement its primary health policies and the ensuing achievements in the area of health care, notably the decrease by 40% of infant and under five child mortality rates over the past decade, and achievements in the area of vaccinations, among others. While noting the delegation's statement that a plan has been formulated to address the issue of persisting regional and urban/rural disparities in the availability and quality of maternal and child health care services, the Committee nevertheless remains concerned at the persistence of this problem as well as challenges regarding the provision of health

services dealing with adolescent specific needs.

38. The Committee urges the State party to:

- a) reinforce its efforts to allocate appropriate resources, and develop and adopt, policies and programmes to improve and protect the health situation of children, particularly in the rural regions showing the highest mortality indicators;
- b) ensure equal access to and quality healthcare to all children, independent of socio-economic factors;
- c) reinforce health services capacities to address adolescent specific needs;
- d) seek technical assistance from, amongst others, WHO and UNICEF.

D.7 Education, Leisure and Cultural Activities

Education

39. While welcoming the State party's commitment to making basic education a priority

and achieving virtually universal access to education, the Committee remains concerned at the repetition and drop out rates, which, while decreasing, continue to pose a significant challenge to the educational system. The Committee is furthermore concerned at regional disparities in education as well as the disparity of the illiteracy rate between urban and rural areas as well as gender disparities. The Committee is furthermore concerned at the low enrolment in early childhood education and the decrease of public early childhood education centers which may result in discrimination on the basis of income level.

40. The Committee recommends the State party:

- a) to take all appropriate measures, including the allocation of adequate financial, human and technical resources, to further improve education, as stipulated in articles 28 and 29, both with regard to quality as well as relevance –taking into account General Comment no.1 on article 29(1) of the Convention (aims of education)–, and to ensure that all children enjoy the right to education;

- b) to seek to implement additional measures to promote early childhood education, and to encourage children to stay in school and to adopt effective measures to reduce illiteracy rates;
- c) to continue cooperation with the UNESCO and UNICEF in improving the sector of education.

D.8 Special Measures of Protection

Economic exploitation

41. While welcoming various measures taken (see paras. 5 and 7) to address the phenomenon of child labour, the Committee is concerned about the lack of specific data and activities concerning child labour in the State party.

42. The Committee recommends the State party:

- a) to take all necessary measures to effectively prevent and combat child labour, and

- b) to report in the next periodic report on the nature and magnitude of child labour as well as the measures taken for the implementation of ILO Conventions 138 and 182.

Sexual exploitation

43. While welcoming the State party's strict criminal legislation regarding sexual abuse and exploitation of children, the Committee is concerned at reports indicating its existence in the State party, both at home and in the street. The Committee is further concerned at the insufficient data on and awareness of the phenomenon of sexual abuse and exploitation of children in Tunisia.
44. In light of article 34 and other related articles of the Convention, the Committee recommends that the State party undertake studies with a view to assess the scope of sexual exploitation of children, including prostitution and pornography; and implement appropriate policies and programmes for prevention and for the rehabilitation, recovery and reintegration of child victims according to the Declaration and Agenda for Action and the Global Commitment adopted

at the 1996 and 2001 World Congresses against Commercial Sexual Exploitation of Children.

Administration of justice

45. The Committee welcomes the adoption of the Child Protection Code as well as other legal provisions in the area of juvenile justice. However, the Committee is concerned at the failure of the State party to guarantee full implementation of all provisions (e.g. the fact that juvenile courts have not yet been established), in light of reports of detention and ill-treatment of children, as well as detention of juveniles with adults, which has allegedly resulted in sexual abuse or other ill-treatment.
46. The Committee recommends the State party to
- a) ensure the full implementation of the juvenile justice system as envisaged in legislation, in accordance with all relevant provisions of the Convention, in particular articles 37, 40 and 39, as well as other relevant international standards in this area, such as the Beijing Rules, the Riyadh Guidelines, the United Nations

Rules for the Protection of Juveniles Deprived of their Liberty, and the Vienna Guidelines for Action on Children in the Criminal Justice System;

- b) ensure that the deprivation of liberty is only used as a measure of last resort; children have access to legal aid and independent and effective complaints mechanisms; and that persons under 18 are not detained with adults;
- c) treat children or juveniles in conflict with the law and children or juveniles at risk in a different and distinct manner so that they are not placed in the same institutions with the same regime or restrictions; and
- d) seek assistance from, inter alia, the Office of the High Commissioner for Human Rights, the Centre for International Crime Prevention, the International Network on Juvenile Justice, and UNICEF through the Coordination Panel on Juvenile Justice.

D.9 Optional Protocols to the Convention on the Rights of the Child

47. The Committee encourages the State party to ratify the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict.

D.10 Dissemination of the Convention

48. Finally, the Committee recommends that in accordance with article 44, paragraph 6, of the Convention, the second periodic report presented by the State party be made widely available to the public at large and that consideration be given to the publication of the report along with the written answers to the list of issues raised by the Committee, the relevant summary records of the discussion, and the concluding observations adopted thereon by the Committee following its consideration of the report. Such a document should be widely distributed in order to generate debate and

awareness of the Convention and its implementation and monitoring within the Government, the Parliament and the

general public, including concerned non-governmental organizations.

The World Organisation
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wishes to extend its grati-
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