



**International Convention for  
the Protection of All Persons  
from Enforced Disappearance**

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**Committee on Enforced Disappearances**

**Consideration of reports submitted by States  
parties under article 29, paragraph 1, of the  
Convention**

**Reports of States parties due in 2013**

**Tunisia\* \*\***

[Date received: 25 September 2014]

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\* The present document is being issued without formal editing.

\*\* Annexes can be consulted in the files of the secretariat.

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Organizational Act No. 53 of 24 December 2013, concerning the establishment  
and organization of a transitional justice system

## **I. Introduction**

1. Tunisia acceded to the International Convention for the Protection of All Persons from Enforced Disappearance by Decree No. 2 of 19 February 2011 and ratified the Convention by Order No. 550 of 14 May 2011.
2. During the transition since the revolution of 14 January 2011, Tunisia has been endeavouring to introduce institutional and legislative reforms that will effectively strengthen the rule of law and institutions founded on democratic principles and respect for human rights.
3. In this connection, Tunisia is committed to cooperating with the human rights mechanisms of the United Nations and to fulfilling its obligations arising from its ratification of most of the international human rights treaties, including the International Convention on the Protection of All Persons from Enforced Disappearance. The Convention is the first that Tunisia ratified after the revolution, as the State recognized that enforced disappearance is a practice that most clearly does harm to human rights and personal dignity which are guaranteed under the relevant international covenants and conventions.
4. Tunisia hereby submits this initial report to the Committee on Enforced Disappearances on the measures taken to fulfil its obligations under article 29, paragraph 1, of the Convention.
5. The present report was prepared by a national committee comprising representatives of the Ministry of Justice, Human Rights and Transitional Justice, the Ministry of the Interior, the Ministry of Foreign Affairs, the Ministry of Defence and the Ministry of Health. It was drafted taking into account the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention (as contained in document CED/C/2). Consultations were held with civil society organizations that are actively engaged in the defence of human rights: at a round table organized by the Ministry of Justice, Human Rights and Transitional Justice, the content of the report was discussed with representatives of those organizations.

## **II. General legal framework**

### **A. The current legislative system**

6. Tunisia has not yet included provisions in its criminal legislation that expressly prohibit enforced disappearance as a separate offence. However, despite the difficulties that it is facing in the wake of the revolution, and despite the challenges before it in all spheres, Tunisia is endeavouring to move forward with its efforts to suppress all acts and practices that violate human rights and undermine human dignity in law and in practice.
7. The new Constitution of the Republic of Tunisia, which was approved by the Constituent National Assembly on 26 January 2014, will serve as a starting point for the introduction of political, legislative and institutional reforms at this level. Human rights are enshrined in the new Constitution, and the State is responsible for protecting them from all violations.
8. The preamble to the Constitution affirms the commitment of the Tunisian people to human values and universal human rights principles and provides that the State must guarantee the supremacy of the law and respect for human rights and freedoms. Under the Constitution, the State has a duty to safeguard the individual and collective rights and

freedoms of citizens and to provide them with the conditions necessary for a decent life (art. 21). The right to life is a sacred right that is inviolable other than in extremely exceptional circumstances specified by law (art. 22). The State is required to protect the dignity and physical integrity of the person and to prevent acts of mental and physical torture from being committed (art. 23). The Constitution enshrines the principle that accused persons are presumed innocent until proven guilty in a fair trial in which they are afforded all guarantees necessary for their defence throughout all stages of prosecutions and trial proceedings (art. 27). It states, furthermore, that a person may be arrested or detained only if caught in the act of committing an offence or if a court warrant has been issued for that person. Persons placed under arrest must be informed immediately of their rights, the charges against them and their right to legal counsel (art. 29). The right of prisoners to humane treatment is, furthermore, recognized (art. 30).

9. These and other provisions found in the new Constitution, under the titles that deal with human rights and freedoms and the obligations of Tunisia under the international human rights treaties that the State has ratified, form an essential point of reference for the executive, legislative and judicial authorities in their efforts to protect rights and freedoms from any violation by ensuring that victims receive justice and that perpetrators are held accountable and do not enjoy impunity.

10. Organizational Act No. 53 of 24 December 2013, concerning the establishment and organization of a system of transitional justice, is one of the most important laws to be enacted since the revolution. It guarantees the right of Tunisians to establish the truth concerning past human rights violations and to hold those responsible to account and ensure that they do not enjoy impunity. It also creates an obligation to provide reparation for victims.

11. Article 1 of the Organizational Act defines transitional justice as an integrated system in which mechanisms and methods are used to ensure that past human rights violations are understood and addressed. The system is designed to establish the truth, hold those responsible for wrongdoing to account and provide reparation and rehabilitation to victims. The goal here is to achieve national reconciliation, and document the collective memory, ensure that such violations do not recur and effect a shift from an authoritarian State to a democratic system that helps to strengthen the human rights system.

12. Article 4 of the Act provides that the truth will be established through the identification of all violations, their causes, the conditions in which they occurred, their origins, the attendant circumstances and their consequences. In cases of where victims have died, gone missing or been subject to enforced disappearance, the truth is to be established when the fate and whereabouts of victims and the identity of the perpetrators and instigators of the acts concerned have been established.

13. The Truth and Dignity Commission established pursuant to the Act is responsible for strengthening transitional justice. It is tasked with investigating cases of enforced disappearance in which the fate of the victims is not known and which occurred between 1 July 1955 and the date on which the Act was issued. It takes action based on reports and complaints that are submitted to it. It is also responsible for establishing the fate of the victims.

14. Under article 8 of the Organizational Act, specialized chambers established by decree, in courts of first instance sitting in courts of appeal have competence to hear cases involving serious human rights violations committed in the past. These include cases of enforced disappearance. These chambers will be presided over by selected judges who did not participate in political trials. The judges will receive special training on the workings of transitional justice.

## **B. Treaties ratified by Tunisia**

15. In addition to the International Convention for the Protection of All Persons from Enforced Disappearance, Tunisia has ratified many of the relevant instruments and conventions that prohibit all forms of practices detrimental to human dignity. The most important of these instruments are the following:

- International Covenant on Civil and Political Rights (Act No. 30 of 29 November 1968);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Act No. 79 of 11 July 1988);
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Decree No. 5 of 19 February 2011, Order No. 552 of 17 May 2011, and Organizational Act No. 43 of 21 October 2013);
- Rome Statute of the International Criminal Court and Agreement on the Privileges and Immunities of the International Criminal Court (Decree No. 4 of 19 February 2011 and Order No. 549 of 14 May 2011).

## **C. Status of treaties in national law**

16. Under article 65 of the Tunisian Constitution, new laws providing for the ratification of treaties are deemed organizational laws. Accordingly, bills on the ratification of treaties must be approved by an absolute majority of members of the Assembly of the Representatives of the People, in accordance with article 64 of the Constitution.

17. Article 67 of the Constitution provides that treaties enter into force only upon ratification. Pursuant to article 77 of the Constitution, the President ratifies treaties and authorizes their publication after they have been approved by the Assembly of the Representatives of the People.

18. Under article 20 of the Constitution, treaties approved by the legislature and ratified by the President of the Republic are an integral part of the country's system of law and have a higher status than laws but a lower status than the Constitution.

## **D. Authorities responsible for the application of the Convention**

19. The issues dealt with by the Convention fall within the purview of the judicial and administrative authorities, independent national bodies responsible for oversight and monitoring, and the Truth and Dignity Commission that was established in the framework of the transitional justice process.

### **1. The judicial authority**

20. The judicial authority oversees the enforcement of national laws on human rights and freedoms and the application of international conventions and treaties ratified by Tunisia in this area. Article 49 of the Constitution stipulates that the judiciary must protect rights and freedoms from all violations. Article 102 stipulates that the judiciary is independent and must ensure the proper administration of justice, the supremacy of the Constitution, the rule of law and the protection of rights and freedoms. Judges are independent and discharge their duties subject only to the authority of the law.

## 2. The administrative authorities

21. The task of protecting human rights and ensuring that Tunisia respects its international obligations under the international human rights treaties that it has ratified is not the concern of any one administrative authority or State institution. A number of different authorities deal with the issues covered in these treaties and follow up on the steps taken to fulfil obligations arising from their ratification. These authorities are listed below.

### (a) *Ministry of Justice, Human Rights and Transitional Justice*

22. At the core of the first transitional Government that emerged from the National Constituent Assembly elections of 23 October 2011 was the Ministry of Human Rights and Transitional Justice (Order No. 22 of 19 January 2012 on the establishment and regulation of the functions of the Ministry of Human Rights and Transitional Justice).

23. The Ministry was tasked with proposing and following up on the implementation of human rights policies. In the field of transitional justice, the Ministry is developing a range of options for addressing past human rights violations based on a process of accountability and reconciliation that is in accordance with the transitional justice norms that have been adopted nationally. The goal is to support the transition towards democracy and to help achieve national reconciliation.

24. In the field of human rights, the Ministry performs the following functions:

- Contributing to the development of the human rights system and mechanisms for the protection of human rights;
- Formulating a strategic policy in the area of human rights and international humanitarian law;
- Proposing and drafting legal provisions relating to human rights; expressing its views on relevant legal provisions; providing advice on issues within its sphere of competence; and preparing national reports dealing, in particular, with national obligations;
- Studying bilateral and multilateral international and regional treaties that deal with human rights and international humanitarian law; submitting proposals on their ratification; and verifying to what extent national legislation meets the requirements of these instruments;
- Liaising with relevant ministries and all national institutions and organizations involved in human rights matters;
- Receiving complaints and communications concerning human rights violations and reviewing them with the relevant parties with a view to finding appropriate solutions.

25. All the tasks enumerated in the preceding paragraph were entrusted to the Ministry of Justice, Human Rights and Transitional Justice after the Ministry of Justice and the Ministry of Human Rights and Transitional Justice were merged to form a single ministry and after the formation of the Government, which is made up of national stakeholders (Order No. 413 of 3 February 2014 on the appointment of members of the Government).

26. Ever since the task of ensuring oversight of custodial and correctional institutions was transferred from the Ministry of the Interior to the Ministry of Justice and Human Rights by Act No. 51 of 3 May 2001, concerning staff of prisons and correctional institutions, the Prisons and Corrections Department has been responsible for ensuring compliance with international standards for the treatment of prisoners and with the obligations of Tunisia in this area. The Department oversees the following:

- Implementation of custodial and correctional policy;
- Enforcement of custodial sentences and of judicial measures pertaining to juvenile offenders;
- Maintenance of security in prisons and in correctional institutions for juvenile delinquents;
- Coordination with various national mechanisms to rehabilitate and reintegrate prisoners and juvenile offenders;
- Assistance to sentence enforcement judges with the enforcement of custodial and community service sentences.

(b) *Ministry of the Interior*

27. According to article 19 of the Tunisian Constitution, the Internal Security Forces is a national institution that is responsible for maintaining security and public order, protecting individuals, institutions and property and enforcing the law. This it must do while upholding civil liberties and maintaining strict impartiality.

28. The departments and institutions attached to the Ministry of the Interior apply the law with due respect for human rights and public freedoms.

29. The international human rights treaties that Tunisia has ratified are binding on State institutions, including the security forces.

30. The Ministry of the Interior, like other State institutions, is committed to strengthening and safeguarding human rights. It has launched an initiative to reform the security sector and develop a training system that will build the capacities of law enforcement officials in this area and improve the performance of the security forces so that account is taken of the need to respect human rights in the broad sense of the term.

31. The Ministry maintains an open attitude to international organizations working in the field of human rights and strives to harness efforts in order to improve the performance of the security sector so that a balance may be struck between the application of the law on the one hand and respect for human rights on the other hand. It cooperates with the International Committee of the Red Cross (ICRC), the United Nations Development Programme (UNDP) and the Office of the United Nations High Commissioner for Human Rights (OHCHR).

32. In the same context, the Ministry is working to improve its infrastructure and strengthen its institutions by providing them with the material, logistical and human resources that they need to perform well and provide a quality service to citizens.

(c) *Human rights units in ministries*

33. The Ministry of the Interior, the Ministry of Foreign Affairs and the Ministry of Social Affairs have set up their own human rights units, which review complaints about human rights violations and refer them to the authorities for further investigation. In addition, these units prepare studies, formulate strategies and liaise with governmental and non-governmental organizations that deal with human rights. Each unit works in its area of concern to follow up on the fulfilment of the obligations that Tunisia has assumed under international treaties to which it is a party.



### 3. Independent national oversight and monitoring mechanisms

#### (a) *Higher Committee on Fundamental Human Rights and Freedoms*

34. The Higher Committee on Fundamental Human Rights and Freedoms was established as a national human rights institution by Order No. 54 of 7 January 1991. The Higher Committee was completely overhauled pursuant to Act No. 37 of 16 June 2008. In particular, it was given legal personality and financial autonomy, its membership was expanded and its mandate was broadened to include the tasks set out below:

- Submitting proposals to promote human rights and fundamental freedoms at the national and international levels, including proposals on aligning legislation and practices with the requirements of international and regional instruments on human rights and fundamental freedoms;
- Receiving and reviewing communications and complaints about matters relating to human rights and fundamental freedoms; listening to the authors, if necessary; referring these cases to the authorities; and informing the authors of communications and complaints of the remedies available to them;
- Making unannounced visits to prisons, correctional institutions, detention centres, juvenile homes and supervision facilities, and social institutions that care for persons with special needs in order to ensure that the national legislation on human rights and fundamental freedoms is being applied properly;
- Following up on the observations and recommendations made by United Nations bodies, committees, regional bodies and institutions that consider the reports of Tunisia and submitting proposals on how to benefit from them.

35. However, the Higher Committee was not previously able to discharge its functions properly because of its association with the Office of the President of the Republic and because of the procedure used to appoint its members. Its mandate was such that it was not in conformity, whether from a structural or a functional perspective, with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).

36. In order to remedy all the flaws that marred its work, provisions were written into the Constitution of 26 January 2014 to give the Higher Committee constitutional status. All members are now elected by the Assembly of the Representatives of the People and the composition, elections, organizational work and accountability of the Committee are all regulated by law.

37. Under the terms of the Constitution, the Higher Committee is responsible for promoting and monitoring respect for human rights and freedoms, in addition to proposing ways of developing the human rights system and investigating and resolving violations or referring them to the relevant authorities. In addition, the Higher Committee must be consulted on draft legislation relating to its sphere of competence.

38. The Ministry of Justice and Human Rights and Transitional Justice has started to draft a bill to regulate the composition of the Higher Committee and the processes for electing its members, organizing its work and holding it to account in accordance with the Constitution and with the Paris Principles.

#### (b) *National Commission for the Prevention of Torture*

39. The National Commission for the Prevention of Torture was established by Organizational Act No. 43 of 13 October 2013 in accordance with the obligations of

Tunisia pursuant to its ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

40. The Act assigns various functions to the Commission. Notably, it is empowered to:
- Conduct regular and random, unannounced visits to places of detention where there are or may be persons deprived of their liberty;
  - Ensure that places of detention are free from torture and other cruel, inhuman or degrading forms of treatment or punishment and monitor detention and sentence enforcement conditions to ensure compliance with international human rights standards and national laws;
  - Receive communications and reports of possible cases of torture or cruel, inhuman or degrading treatment or punishment in places of detention and investigate and refer cases to the competent judicial or administrative authorities, as and when appropriate.

(c) *Truth and Dignity Commission*

41. As indicated in paragraph 13 above, the Truth and Dignity Commission was established pursuant to the Organizational Act on the establishment and organization of a system of transitional justice. The Commission is an independent body with legal personality and financial autonomy. Its mandate covers the period from 1 July 1955 to the date of issuance of the Act by which it was established. The Commission will operate for a period of four years from the date on which its members are appointed, with the possibility of a single extension for a further year.

42. The Commission is entrusted by law with various functions and powers designed to enable it to establish the truth about past human rights violations and to ensure that those involved are held to account and do not enjoy impunity and that victims receive reparation and rehabilitation. The goal here is to achieve reconciliation.

## **E. Cases of enforced disappearance before the courts**

43. Since the time when Tunisia ratified the International Convention on the Protection of All Persons from Enforced Disappearance, no cases of enforced disappearance in the sense intended by the Convention have been recorded.

44. Moreover, as of the date of submission of this report, no decision had been handed down by the Tunisian courts in three pending cases where the victims are suspected of having been subjected to enforced disappearance under the former regime. The victims in these cases are:

- Kamal Al-Matmati, disappeared since 26 November 1991;
- Fathi Al-Wuhayshi, disappeared since 26 November 1996;
- Walid Hasani, disappeared since 30 September 2009.

45. The Truth and Dignity Commission established by the Organizational Act on the establishment and organization of a system of transitional justice will consider cases of enforced disappearance in which the fate of victims has not been established. This it will do based on the reports and complaints submitted to it. It will then determine what happened to these persons. The Commission has been given broad legal powers to investigate serious human rights violations such as those that will be discussed later on in this report.

### III. Information on the implementation of the Convention

#### Article 1

46. At present, there are no provisions in Tunisian law that define enforced disappearance as a separate offence in the sense intended by the International Convention on the Protection of All Persons from Enforced Disappearance.

47. There are no provisions in Tunisian law that allow for any exceptional circumstances whatsoever (war, state of emergency) to be invoked as a justification for infringing human rights and freedoms in general. Order No. 50 of 26 January 1978, concerning the regulation of a state of emergency, sets out the grounds for declaring a state of emergency in all or part of Tunisia, namely, when there is an imminent danger resulting from a serious breakdown in public order or when incidents occur that are sufficiently serious to be described as a public disaster. None of the extraordinary measures to which the law enforcement authorities can resort can be used to justify any serious infringement of the personal freedom of individuals such as an act of enforced disappearance. Moreover, Act No. 75 of 10 December 2003, concerning support for international efforts to combat terrorism and prevent money-laundering, contains no provisions that would justify the subjection of a person suspected of committing terrorist offences to unlawful deprivation of liberty or enforced disappearance or any other grave violation of human rights intended to counter terrorism.

48. Under the new Constitution of the Republic of Tunisia, protection is afforded to a number of rights that could be infringed in the context of enforced disappearance. These include the right to life (art. 22); the right to respect the dignity and physical integrity of the person and the right not to be subjected to physical and mental torture (art. 23); the right to a fair trial (art. 27); and the right not to be placed under arrest without a warrant (art. 29).

49. Under Organizational Act No. 53 of 24 December 2013, concerning the establishment and organization of a system of transitional justice, enforced disappearance is defined as a serious human rights violation. The Act specifies that the truth about such acts must be established, perpetrators must be held accountable, victims must be compensated and rehabilitated and safeguards must be established in order to prevent any recurrence.

50. Article 3 of the Organizational Act defines a violation as: “any gross or systematic infringement of a human right by State agencies or groups or individuals acting on their behalf or under their protection, if they do not have the capacity or the delegated authority to do so”. This includes any grave or systematic infringement of human rights by organized groups.

51. Tunisia is committed to aligning its criminal legislation with its international obligations under the Convention, as required under its own new Constitution, and to making a success of the transitional justice process. In an effort to fill a legal void and to make enforced disappearance a specific offence under its criminal laws, the Government established a committee at the Ministry of Justice, Human Rights and Transitional Justice, composed of representatives from relevant ministries, to draft a bill on enforced disappearance.

#### Article 2

52. There is no definition of enforced disappearance as intended by article 2 of the Convention in Tunisian law. As noted earlier, this is because there are no provisions that define it as a separate offence. However, the Criminal Code contains provisions that define

certain acts and practices similar to those that constitute enforced disappearance as offences. These include, for example, abduction, unlawful infringement of a person's liberty by a public official and unlawful arrest or detention.

## **1. Abduction**

53. Three forms of abduction are listed in the Criminal Code, as explained below.

### *(a) Abduction accompanied by the use of violence, deception or threats*

54. Article 237 of the Criminal Code provides: "Anyone who kidnaps or contrives to kidnap, carry away, abduct or transport a person from a place, using deception, violence or threats, shall be liable to a penalty of 10 years' imprisonment. The penalty shall increase to 20 years' imprisonment if the victim is a public official, a member of the diplomatic or consular corps or a family member of such a person, or if he or she is a child under 18 years of age. The penalty is applicable, regardless of the victim's status, if the purpose of the kidnapping or abduction is to secure payment of a ransom, compliance with an order or the fulfilment of a condition. A penalty of life imprisonment shall be imposed on anyone who kidnaps or abducts a person using a weapon, the guise of a uniform or a false identity or presenting an order purportedly issued by a public authority or if these actions result in the physical disability or illness of the victim. The death penalty shall be imposed if the victim dies during or as a result of the commission of such offences."

### *(b) Abduction without the use of violence, deception or threats*

55. Article 238 of the Criminal Code provides that anyone who, without using deception, violence or threats, carries off or abducts a person from a location where he or she has been placed by a guardian, carer or minder will be liable to a penalty of 2 years' imprisonment, increasing to 3 years if the victim is between 13 and 18 years of age, and to 5 years, if the victim is under 13 years of age. Attempted kidnapping is also a punishable offence.

### *(c) Concealment of or misleading the search for an abducted person*

56. Article 240 of the Criminal Code provides that the penalties established under articles 237 and 238 apply to anyone who conceals an abducted person or misleads those searching for an abducted person.

## **2. Unlawful infringement of personal freedom by a public official**

57. Under Tunisian law, it is an offence for a public official to infringe the personal freedom of another person without legal justification. Article 103 of the Criminal Code provides: "Any public official or person of equivalent status who unlawfully infringes a person's freedom or who inflicts or causes another person to inflict violence or ill-treatment on an accused person, a witness or an expert in order to obtain a confession or a statement from that person shall be liable to a penalty of 5 years' imprisonment and a fine of 5,000 dinars. The penalty shall be reduced to 6 months' imprisonment if only the threat of ill-treatment is used."

58. The Tunisian Criminal Code uses the term "public official" in a broad sense. Article 82 of the Criminal Code defines a public official as "any person who is granted official powers or who is employed by an agency of the State, a local authority, a public institution or any other entity responsible for the management of a State facility". A person of equivalent status means a person entrusted with official duties, an elected public official or a person appointed by the judiciary to perform judicial functions.

### 3. Unlawful arrest or detention

59. Article 250 of the Criminal Code provides: “Any person who unlawfully apprehends, arrests, imprisons or detains another person shall be liable to a penalty of 10 years’ imprisonment and a fine of 20,000 dinars.”

60. Under article 251, the penalty is doubled if the offence is accompanied by the use of violence or threats, if it was carried out by a person using weapons or by a group of persons or if the victim is a public servant or a member of the diplomatic or consular corps or a family member of such a person and the perpetrator had prior knowledge of the identity of the victim. The same penalty applies if any of these acts is accompanied by threats to kill or harm the person or to keep the hostage for the purpose of compelling a third party, whether a State, an intergovernmental organization, a natural or legal person or a group of persons, to undertake or refrain from a particular act as an express or implicit condition for the release of the hostage. The penalty will be life imprisonment if the person is held, arrested, imprisoned, detained for more than 1 month; if the victim suffers a physical disability or illness as a result of the act; if the offence is intended to prepare or facilitate the commission of a major or serious offence or to enable the perpetrators or their accomplices to flee or escape punishment; or if the purpose is to secure compliance with an order or a condition, or to damage the physical welfare of the victim or victims. The death penalty is applicable if the victim dies during the commission of such offences or as a result thereof.

### Article 3

61. Serious offences must be investigated according to Tunisian law (Code of Criminal Procedure, art. 47), in view of their grave nature. The Code of Criminal Procedure lists the actions to be taken by investigating judges in a case.

62. As the primary task of investigating judges is to establish the facts of a case, the law gives them full legal and actual powers to do so. Article 50 of the Code of Criminal Procedure stipulates that the task of investigating judges is to investigate criminal cases, make diligent efforts to establish the truth and review all the evidence which the court could rely on in support of its judgement. An investigating judge may not participate in the adjudication of cases that he or she has investigated.

63. According to article 53 of the Code of Criminal Procedure, the investigating judge, assisted by the court clerk, interviews witnesses, questions defendants, conducts investigations at crime scenes, searches homes, seizes items that could be used to establish the facts of a case, orders tests and carries out whatever actions are necessary to uncover evidence that supports or disproves the prosecution case.

64. Once the investigation is complete and the case is ready to be heard, the file will be transmitted to a public prosecutor for his or her views on the merits. The public prosecutor has a week to submit a request for the case to be referred to a court, or shelved, returned for further investigation or dismissed for lack of evidence (art. 104). The case file is then returned to the investigating judge, who will issue a decision concluding the investigation and listing all the steps taken in the investigation. The decision will include information regarding: victim statements and witness testimonies, if any; the defendant’s confession or denial of the charges; test results, if any; seized items; and inspections and analyses performed. The investigating judge will conclude by giving a definitive opinion as to whether the case should be shelved, dismissed or referred to an indictment chamber, if the judge is convinced that the constituent elements of a crime can be discerned in view of the factual evidence available, or whether it should be referred to a lower court because he or she considers the acts involved to constitute a lesser offence.

#### Article 4

65. As indicated in paragraph 51 of the report, a bill defining enforced disappearance as a separate offence is currently being drafted.

66. Organizational Act No. 53 of 24 December 2013 on the establishment and organization of a system of transitional justice is a first step taken by the Tunisian legislature to define enforced disappearance as an offence, since it is a serious human rights violation for which perpetrators must be held accountable and brought to justice. Article 8 of the Act provides for the establishment of specialized chambers in courts of first instance sitting in courts of appeal and presided over by selected judges who did not participate in political trials. These judges will receive special training in transitional justice. These chambers will hear cases of serious human rights violations in the sense intended by the international treaties that Tunisia has ratified and in the sense intended by the Organizational Act. The violations include murder, rape and any other form of sexual violence, torture, enforced disappearance and executions in cases where fair trial guarantees have not been provided.

#### Article 5

67. Tunisia has acceded to the Rome Statute of the International Criminal Court and the Agreement on the Privileges and Immunities of the International Criminal Court (approved by Decree No. 4 of 19 February 2011 and ratified by Order No. 549 of 14 May 2011).

#### Article 6

68. Under Tunisian law, an attempt to commit an offence is punishable by the penalty established for the offence itself, even if the attempt is obstructed or if it does not achieve the intended purpose for reasons beyond the control of the perpetrator. However, there is no penalty for attempting to commit an offence for which the penalty is less than 5 years' imprisonment, unless otherwise provided for by law (Criminal Code, art. 59).

69. With regard to sentencing of perpetrators and accomplices, Tunisian law does not define the term "perpetrator". However, it does define the term "accomplice" under article 32 of the Criminal Code, which stipulates: "Any person who commits any of the following acts shall be considered an accomplice and punished accordingly:

"1. Assisting another person in the commission of an offence or inducing a person, using gifts, promises, threats, the abuse of a position of authority or power, manipulation or criminal deception, to commit an offence;

"2. Knowingly procuring weapons, equipment or other means to assist in the commission of an offence;

"3. Knowingly aiding and abetting the perpetrator in making preparations for or facilitating the commission of the offence or related acts. This applies even if the intended offence is not committed, without prejudice to the penalties established by this Code for conspiracy or incitement of persons to endanger the internal or external security of the State;

"4. Deliberately aiding and abetting offenders by concealing stolen goods or by using other means to enable them to benefit from a crime or to escape punishment;

“5. Habitually providing a home, hiding place or meeting place for persons whom the offender knows to be engaged in seditious activities or acts that breach State security or public order or that damage people or property.”

70. Under Tunisian law, an accomplice is deemed a criminal as much as the author of an offence. Article 33 of the Criminal Code provides that accomplices to an offence incur the same penalty as that prescribed for the perpetrators of an offence, with the exception of those to whom the provisions of article 53 of the Code apply.

71. An order from a superior may not be invoked to justify criminal conduct. Article 41 of the Code of Criminal Procedure expressly states: “Compliance with orders from a superior shall not be taken as grounds to exonerate the perpetrator of an offence from punishment.” This means that no persons may contravene the law and justify the commission of an offence under the pretext that they are obliged to follow orders from a direct superior on moral or hierarchical grounds.

72. With regard to the responsibility of superiors for acts carried out by their subordinates, article 6 of Act No. 112 of 12 December 1983, concerning general regulations on the conduct of State officials, local authorities and public administrative institutions, provides: “All public officials, whatever their rank in the administrative hierarchy, are responsible for discharging the tasks entrusted to them. All officials entrusted with the management of a department answer to their superiors for the powers granted to them and for the orders that they give. They may not be relieved of any responsibility incumbent upon them in connection with the responsibilities of their subordinates.”

73. Article 8 of the Act provides that disciplinary action will be taken against a public official who commits an error in the course of his or her duties. This is without prejudice to the penalties provided for by the Criminal Code. If an official is sued for committing an administrative error, the administrative authority is required to pay damages awarded by the court against that official.

74. Article 46 of Act No. 70 of 6 August 1982, concerning the statutes of the Internal Security Forces, provides: “Without prejudice to the provisions of organizational acts, all Internal Security Forces personnel, whatever their rank in the hierarchy, shall be responsible for the tasks entrusted to them and for the execution of lawful orders from their superiors. All Internal Security Forces officers responsible for the management of a department within their corps or an Internal Security Forces unit shall answer to their superiors for the powers granted to them in that regard and for the orders that they give. The fact that their subordinates bear responsibility as individuals or a group for their actions shall not exclude them from bearing their own responsibilities.”

## **Article 7**

75. The penalties prescribed in the current criminal laws are for offences similar to enforced disappearance that are mentioned in the comments made regarding article 3 of the Convention. Specific penalties for the crime of enforced disappearance and a description of aggravating and mitigating circumstances will be included in the legal text that is currently being drafted.

## **Article 8**

76. Article 9 of Organizational Act No. 53 of 24 December 2013 on the establishment and organization of a system of transitional justice states that cases of grave human rights violations, including enforced disappearances, shall not be subject to a statute of limitations.

77. The same principle applies to the crime of torture under article 23 of the Constitution and article 24 (2) of Organizational Act No. 43 of 21 October on the National Commission for the Prevention of Torture.

## Article 9

78. The principle of territoriality is enshrined in Tunisian criminal law. Article 129 of the Code of Criminal Procedure provides: “The court in the area where the offence was committed or the domicile of the defendant is situated, has been known to reside or was arrested shall exercise jurisdiction over the case. The first court to consider the case shall issue the decision.”

79. If the offence is committed on board a vessel or an aircraft registered in Tunisia or leased, minus the crew, to an operator based or permanently residing in Tunisian territory, the case will come under the jurisdiction of the court at the port of docking or landing. This same court will have jurisdiction over the case, even if one of the above-mentioned conditions is not met, if the vessel docks or aircraft lands in Tunisian territory with the accused person on board.

80. Under article 14 of the Code of Civil Aviation, Tunisian courts have jurisdiction to try offences committed on board aircraft registered in Tunisia in the following cases:

- (a) If the aircraft lands on Tunisian soil immediately after the offence is committed;
- (b) If the operator of the aircraft, which has been leased from a third party minus the crew, is a resident in Tunisia;
- (c) If the intent was to divert the aircraft and the perpetrator or an accomplice is in Tunisia.

The courts in the place where the aircraft lands will have jurisdiction if the case is brought to court just after the landing. Alternatively, if the perpetrator is arrested subsequently in Tunisia, the courts in the place where the arrest occurred will have jurisdiction.

81. Article 15 of the Maritime Criminal and Disciplinary Code provides that offences committed on board ships must be referred to the ordinary courts.

82. The jurisdiction of Tunisian courts encompasses offences committed by Tunisian citizens abroad under article 305 of the Code of Criminal Procedure. The article provides: “A Tunisian citizen may be prosecuted and brought to trial before the Tunisian courts for an offence committed outside Tunisia that is punishable under Tunisian law, unless the offence is not punishable in the country where it was committed or the defendant can show that a final judgement has been handed down abroad regarding the offence and, if a penalty was imposed, that the defendant has served his or her sentence or it is time-barred or the defendant was pardoned.” These provisions also apply to any person who acquires Tunisian nationality after committing an offence.

83. Article 307 bis provides that: “Any person who commits or aids another in the commission of an offence abroad may be prosecuted and brought to trial before the Tunisian courts if the injured party is a Tunisian national.

“Such a case may be prosecuted only at the request of the Office of the Public Prosecutor pursuant to a complaint from the injured party or his or her heirs.

“A case may not be prosecuted if the defendant can show that a final decision concerning the offence has been handed down abroad and if the person incurred a



penalty, that he or she has served his or her sentence or it is time-barred or the person has been pardoned.”

## **Article 10**

84. When certain legal conditions are met, an individual in Tunisia may be lawfully detained or held in custody for committing an offence punishable under existing Tunisian criminal legislation. The detention or custody arrangement must be made in compliance with established legal procedures, and individuals may not be detained arbitrarily or on spurious grounds. No person may be detained beyond the time limit established by law for prosecutions, trials and extradition procedures, if applicable. The State is responsible for ensuring that an immediate initial investigation is conducted into the facts of a case.

85. Any foreign national who is placed in detention or under arrest will immediately be provided with assistance in contacting the nearest consular service of the State of which he or she is a national or of the country of residence, if he or she is stateless. As soon as the person is arrested or detained, the Tunisian authorities will inform the person’s national authorities of the arrest and of the preliminary investigation and indicate whether the person is to be tried by the courts.

86. In accordance with article 10 of the Convention, foreign nationals are afforded all the guarantees contained in the Code of Criminal Procedure. Under article 309 of the Code, the public prosecutor must question a detained foreign national immediately, establish the person’s identity, inform the person that a warrant for his or her arrest has been issued and produce a report on the case. The foreign national will then be brought before the indictment chamber at the court of appeal in Tunis. Under article 321 of the Code, he must be charged “within 15 days from the date on which he is informed of the arrest warrant. He shall then be questioned and his statement taken. The public prosecution and the defendant shall be heard, and the latter may use a counsel and an interpreter. The defendant may be released on bail at any stage of the investigation in accordance with the provisions of the law”.

87. At the procedural level, a foreign national who is a suspect may be summoned for questioning. If the person fails to attend, the investigating judge may issue an order to appear, detailing the alleged offences, citing the applicable legislation and authorizing law enforcement officials to arrest the suspect. Having questioned the defendant, the investigating judge may issue a detention order after consulting the State prosecutor, if the act concerned is punishable by imprisonment or a harsher sentence. During the initial interview, the defendant may choose not to answer any questions without a lawyer of his or her choosing and an interpreter being present. A defendant placed in pretrial detention after an initial interview has the right to a visit from his or her lawyer at any time.

88. These general procedural rules show that, in accordance with the principle of reciprocity, detained foreign nationals who are arrested can communicate with a representative of their country, even if there is no explicit provision to that effect.

## **Article 11**

89. The Constitution contains a set of provisions relating to fair trial guarantees. Article 27 provides that a defendant is to be presumed innocent until proven guilty in a fair trial in which he or she is granted all fair trial guarantees at all stages of the proceedings.

90. Article 102 provides that the judiciary is independent, administers justice, and ensures the supremacy of the Constitution, the rule of law and the protection of rights and freedoms.

91. Article 108 provides: “Everyone has the right to a fair trial within a reasonable period. Litigants are equal before the law. The right to legal recourse and the right to a defence are guaranteed. The law facilitates access to justice and provides for legal assistance to be granted to persons without financial means. The law provides for two levels of adjudication. Hearings shall be held in open court, unless a closed hearing is required under the law. Judgements shall only be handed down in open court.”

92. Article 110 states that: “The different categories of courts are established by law. No special courts may be established, nor may any special procedures be instituted that could contravene fair trial principles.”

93. Tunisian law affords fair trial guarantees to Tunisians and foreign nationals suspected of having committed an act of enforced disappearance or another offence. These guarantees are provided at all stages of legal and judicial proceedings.

#### **1. Fair trial guarantees under Tunisian law: the pretrial stage**

94. The principal guarantees established by Tunisian law for the benefit of those suspected of having committed a crime of enforced disappearance or any other offence are set out in the following paragraphs.

##### *(a) Police custody and pretrial detention as exceptional measures*

95. Under article 13 bis of the Code of Criminal Procedure, law enforcement officials may hold a suspect for up to 3 days in cases that require further investigation, and must notify the public prosecutor about the matter. The period of custody may be extended once, for the same duration, pursuant to a reasoned decision setting out the factual and legal grounds for the extension.

96. Article 85 of the Code of Criminal Procedure states that pretrial detention is an exceptional measure. It provides explicitly: “A defendant may be placed in pretrial detention if he or she is caught committing an offence or serious offence, or when strong evidence emerges requiring the use of detention as a security measure in order to prevent further offences from being committed or to ensure that a penalty is enforced or that an investigation is conducted properly.”

##### *(b) The right to be notified immediately of an arrest warrant or pretrial detention order*

97. The right to be notified immediately of an arrest warrant or pretrial detention order has been established to serve two purposes: to ensure that the grounds for resorting to either procedure are known so that a person can challenge the decision and its lawfulness; and to ensure that information is provided regarding the rights guaranteed by law to persons in pretrial detention or under arrest.

##### *(c) The right to legal counsel*

98. According to Act No. 32 of 22 March 2007, supplementing certain provisions of the Code of Criminal Procedure, a lawyer may be present during investigation procedures conducted by law enforcement officials on behalf of an investigating judge. Pursuant to a bill on the amendment of the Code of Criminal Procedure that is currently before the National Constituent Assembly, a lawyer will be able to be present during the initial stages of an investigation without requiring any authorization. This measure will strengthen the right to a defence of persons in pretrial detention.

(d) *The right to communicate with the outside world*

99. The right to communicate with the outside world while in detention encompasses a number of other rights. These include the right to communication with a family member, the right of foreign nationals to have contact with representatives of their Governments, as provided for explicitly in article 13 bis of the Code of Criminal Procedure and article 36 of Act No. 52 of 2001, concerning the prisons system, the right to be examined by a doctor, and the right to receive visits while in custody or pretrial detention.

(e) *The right to challenge the lawfulness of a pretrial detention decision*

100. A challenge to a decision by an investigating judge to place a defendant in pretrial detention may be lodged with a higher authority, namely, an indictment chamber, in accordance with article 87 of the Code of Criminal Procedure. One of the guarantees established under Tunisian law concerning pretrial detention is that decisions to extend a period of detention must be justified, which underscores the fact that pretrial detention is an exceptional measure.

(f) *The right to adequate time for the preparation of a defence case*

101. A person who has been charged with an offence, whether or not he or she has been taken into custody, has the right to be granted adequate time to prepare his or her defence. Adequate time means time to allow the defendant and his or her lawyer to see the documents in the case file, scrutinize the evidence and submit evidence from witnesses, pleadings, documents and information.

(g) *The rights of the defendant during questioning*

102. One of the most important rights afforded to defendants under Tunisian law is the right to be questioned in the presence of a lawyer, as required under Act No. 32 of 22 March 2007, which supplements certain provisions of the Code of Criminal Procedure and prohibits the extraction of confessions by force. Article 199 of the Code of Criminal Procedure provides that any confession obtained by means of coercion will be deemed null and void and that any person who commits such an act will be liable to prosecution.

(h) *The right to silence*

103. Article 74 of the Code of Criminal Procedure establishes the right to silence. It provides: "If a defendant refuses to answer questions or pretends to be unable to do so, the investigating judge shall caution him or her that the investigation does not depend upon his or her reply. The caution shall be noted in the statement."

(i) *The right to the services of an interpreter*

104. Article 66 of the Code of Criminal Procedure provides that the defendant has the right to the services of an interpreter if he or she does not understand or speak of the court.

(j) *The right of persons deprived of liberty to humane treatment*

105. Persons deprived of liberty, whether they are being held in custody, pretrial detention or prison where they are serving a sentence, enjoy the right to humane treatment. This right is guaranteed under article 30 of the Constitution, which provides that all prisoners have the right to humane treatment that preserves their dignity.

## 2. Guarantees provided by Tunisian law during the trial process

106. Tunisian law recognizes the right of parties to have their case heard by a competent, independent and impartial court that has been established in accordance with the law. Article 110 of the Constitution provides that different types of courts shall be established by law and that special courts or proceedings that would undermine fair trial principles may not be established. Article 102 of the Constitution stipulates that the judiciary is independent and administers justice, ensures the supremacy of the Constitution and the rule of law and protects rights and freedoms. Judges are independent and discharge their duties subject only to the authority of the law.

107. Article 23 of Act No. 29 of 14 July 1967, concerning the judicial system, the Supreme Judicial Council and the Judiciary Organizational Act, provides: “Judges shall administer justice completely impartially, no matter who the parties are or the interests at stake. They shall not pronounce judgements based on their personal knowledge of cases and shall not express their views, orally or in writing, even in an advisory capacity, in cases other than those under their direct jurisdiction.” Under the Constitution, judges are to be held accountable for any breach of their impartiality and integrity.

108. Chapter VI of the Code of Criminal Procedure regulates the procedures for recusing judges in order to guarantee impartiality.

109. In addition to the above-mentioned rights, the following guarantees are provided under Tunisian law.

### (a) *Presumption of innocence*

110. Article 27 of the Constitution provides that a defendant is to be presumed innocent until proven guilty in a fair trial in which he or she is granted all fair trial guarantees at all stages of the proceedings.

### (b) *Principle of legality*

111. Article 28 of the Constitution provides that penalties are to be imposed on individuals and only pursuant to an existing legal provision, unless a more lenient provision that would benefit the defendant is introduced. It provides: “Penalties are imposed on individuals and only pursuant to an existing legal provision.” Similarly, part I of the Criminal Code provides: “Penalties shall be imposed only pursuant to an existing legal provision. If a law is enacted after the commission of the offence [under review] and before a judgement is handed down, the new law shall apply, if it is more lenient.”

### (c) *The right not to be tried twice for the same offence*

112. Article 132 bis of the Code of Criminal Procedure provides: “No person who has been acquitted by a court shall be tried again for the same offence, even if in a different legal context.”

### (d) *The right to a defence*

113. Respect for this right is the core element of a fair trial and has constitutional rank in Tunisian law. Article 108 of the Constitution provides that the right of legal recourse and the right to a defence are guaranteed and that the law must provide for legal assistance to be offered to persons without means. Article 105 states that the legal profession is a free and independent profession and its members contribute to the delivery of justice and the defence of rights and freedoms. Article 141 of the Code of Criminal Procedure affirms the right not to be tried twice for the same offence. It provides: “The assistance of a lawyer shall be provided when a case involving a serious offence is heard before a court of first

instance sitting at a court of appeal and when an appeal is heard before a criminal appeals chamber at a court of appeal. If the defendant does not appoint a lawyer, the presiding judge shall appoint one.”

(e) *Attendance at court hearings*

114. Pursuant to the Tunisian Code of Criminal Procedure, defendants must attend court hearings (courts of first instance and of appeal), with two exceptions. Article 141 provides: “Defendants accused of committing a serious or major offence that is punishable by imprisonment shall attend the hearing in person. If the offence is not punishable by imprisonment, or if a civil suit is involved, defendants may appoint a lawyer to represent them and the court may always summon them if it sees fit to do so. If a defendant or his or her representative does not appear before a court when summoned, the court may nevertheless proceed with the hearing and may hand down a judgement in absentia, if the defendant has not been informed of the summons in person. The judgement is considered to have been handed down in the presence of the defendant, if he or she has been informed of the summons in person [but decides not to attend].” A judgement rendered in absentia remains open to appeal in accordance with article 175 et seq. of the Code of Criminal Procedure.

(f) *Principle of open justice*

115. Article 108 of the Constitution establishes the principle that trials should be conducted in open court, unless the law requires that they be conducted in camera. Judgements may only be handed down in open court. Article 143 of the Code of Criminal Procedure also affirms this right. It provides: “The presiding judge shall conduct the proceedings and maintain order in the court. Hearings shall be conducted in public and in the presence of a public prosecutor and the opposing parties in the case, unless the court, acting of its own motion or at the request of the public prosecutor, decides that the hearing must be held in camera in the interest of maintaining public order or morals, and mentions this in the record.”

(g) *The right to summon and cross-examine witnesses (adversarial principle)*

116. All persons charged with a criminal offence have the right to summon their own witnesses and to confront prosecution witnesses. This right embodies the principle of equality of arms between the prosecution and the defence. Article 154, paragraph 2, of the Code of Criminal Procedure provides that challenges refuting the content of statements taken down by the police and police reports must be presented in writing or in a witness statement. Article 158 states that, unless the law provides otherwise, witnesses are to be summoned through administrative procedures or by an officer at law.

(h) *Appeals*

117. By law, all persons have the right to appeal court judgements that find against him by filing an appeal or an objection, or submitting comments or a petition for a review, in accordance with the procedures established in the Code of Criminal Procedure.

## **Article 12**

118. Tunisia ensures that its judicial authorities conduct prompt and impartial investigations when they receive reports about acts that could constitute offences being perpetrated in any location under their jurisdiction. The principal authority here is the public prosecution service, as represented by the public prosecutor, investigating judges and indictment chamber judges. Under the Organizational Act on the establishment and

organization of a system of transitional justice, the Truth and Dignity Commission is vested with police powers and may utilize any procedure or mechanism that would enable it to uncover facts about the serious human rights violations.

**1. Investigations by the judicial authorities**

*(a) Inquiries by public prosecutors*

119. According to article 20 of the Code of Criminal Procedure, the public prosecution service is responsible for initiating and pursuing prosecutions, enforcing the law and ensuring that sentences are carried out.

120. According to article 26 of the Code of Criminal Procedure, the public prosecution service is responsible for looking into offences and for receiving reports from public officials and individuals about offences. It also receives complaints from victims about rights violations. The service may conduct an investigation only in cases of flagrante delicto offences and serious offences. However, it may conduct preliminary inquiries to gather information and evidence about an offence. In addition, it may question suspects, take down statements and draw up records of interviews. Under article 31, the public prosecution service may request that an interim investigation into a complaint be conducted by an investigating judge when there are insufficient grounds to justify an investigation or pending the filing of charges against given persons.

*(b) Investigations by an investigating judge*

121. Investigating judges make every effort to establish the facts and examine every element upon which the court might rely in order to substantiate its decision. Article 69 of the Code of Criminal Procedure provides explicitly that an investigating judge may dispense with certain formalities, if there is a need to question a person or to take action because a witness is at risk of dying or evidence might be lost or the case is one of a flagrante delicto offence.

122. Once an investigation has been concluded, the investigating judge will refer the case file to the public prosecutor who must make a written submission, as soon as possible and within a week, requesting that the case either be referred to the competent court, put on file, investigated further or dropped as inadmissible.

123. As soon as the public prosecutor's submissions have been filed, the investigating judge will issue a decision on the charges against the accused and on all the submissions that the prosecutor has filed.

124. All decisions of the investigating judge may be appealed before the indictment chamber by the defendant, his or her legal representative and the public prosecution service.

*(c) Investigations by indictment chambers*

125. The indictment chamber is a second-level court of inquiry. Under article 116 of the Code of Criminal Procedure, its powers include, that of calling on its own justices or the investigating judge to conduct additional inquiries. It may also issue new warrants, conduct its own investigation or have an investigation conducted into matters that have not been examined. This it will do taking into account the views of a representative of the public prosecution service.

126. It may be inferred from article 116 that an indictment chamber dealing with a case involving the commission of an offence in any location under its jurisdiction, may, if necessary, conduct additional inquiries and even issue new warrants, if there is reason to believe that certain individuals were not investigated.

127. Under article 36 of the Code of Criminal Procedure, injured parties may bring a civil action under their own responsibility, if a case is closed by a public prosecutor. They may either request that the case be referred for investigation or that it be brought to trial.

## **2. Investigations by the Truth and Dignity Commission in the context of transitional justice**

128. Organizational Act No. 53 of 24 December 2013 on the establishment and organization of a system of transitional justice assigned broad investigative powers to the Truth and Dignity Commission to establish the truth about serious human rights violations, including enforced disappearances, committed under the former regime. The Commission is responsible for the following tasks:

- Holding private or public hearings for victims of violations and for any purpose relating to its activities;
- Investigating cases of enforced disappearance in which the fate of victims is unknown, based on the reports and complaints that it receives, and establishing what happened to the victims;
- Collecting data on violations, monitoring them and recording and documenting cases with a view to building a database and establishing a consolidated register of victims;
- Identifying the responsibilities of State agencies and other parties for violations covered by the Organizational Act; establishing the causes; and proposing solutions to prevent their recurrence.

129. In order to accomplish these tasks, the Commission has been entrusted with various legal powers. The Commission:

- Has access to public and private archives, regardless of any impediments contained in current legislation;
- Receives complaints and submissions concerning violations. This it must continue to do for one year from the date on which it begins its activities. The Commission may extend this deadline for a period of up to six months;
- Investigates all violations covered by the Organizational Act using all the means and methods that it deems necessary in order to ensure the right to a defence;
- Summons any person whom it deems useful to investigate or whose testimony it deems useful to hear – nobody may claim immunity;
- Takes all appropriate steps to protect witnesses, victims, experts and all persons who must be questioned, whatever their status, about violations covered by the Organizational Act. This it does, in cooperation with the relevant departments and agencies, by ensuring that the necessary security precautions are taken, by protecting those concerned from criminal acts and attacks, and by maintaining confidentiality;
- Deploys public officials to carry out its functions in connection with inquiries, investigations and protection measures;
- Requests the judicial and administrative authorities, public bodies and natural or legal persons to provide it with documents and information in their possession;
- Familiarizes itself with cases before the judicial courts and with the rulings or judgements handed down in these cases;
- Requests information from foreign Governments and non-governmental organizations in accordance with the international treaties and conventions

concluded for that purpose and gathers information from victims, witnesses, government officials and others in other countries, in coordination with the competent authority;

- Conducts inspections in public and private establishments, conducts searches and seizes documents, movable items and tools used in connection with the violations under investigation, and issues reports on the action that it has taken. In that regard, it has the same powers as law enforcement officials and provides the necessary procedural and judicial guarantees;
- Has recourse to procedures and methods that will allow it to uncover the facts.

130. The Commission transmits case files on cases of serious human rights violations to the public prosecution service, and is notified of subsequent actions taken by the judicial authorities. This does not contradict the principle that a person may be tried only once for the same offence.

131. Witnesses are protected from ill-treatment under article 103 of the Criminal Code, as amended by Decree No. 106 of 22 October 2011, which prescribes a penalty of 5 years' imprisonment and a fine of 5,000 dinars to be imposed on any public official or equivalent who ill-treats or orders another to ill-treat a witness or expert in order to obtain a statement from that person. If only the threat of ill-treatment is used, the penalty will be reduced to 6 months.

132. In order to avoid any pressure on witnesses, article 65 of the Code of Criminal Procedure states that witnesses are to be heard individually and not in the presence of defendants. Under article 155 (2) of the Code of Criminal Procedure, as amended by Decree No. 106 of 22 October 2011, witness statements obtained by means of torture or coercion are deemed null and void.

133. In addition, article 40 of the Organizational Act on the establishment and organization of a system of transitional justice authorizes the Truth and Dignity Commission to take all appropriate measures to protect victims, witnesses, experts, and all those whose statements are to be heard, whatever their status, in connection with serious human rights violations. This it must do, in cooperation with the relevant departments and agencies, by ensuring that the necessary security precautions are taken, by protecting those concerned from criminal acts and attacks and maintaining confidentiality.

134. Given that no cases of enforced disappearance have been recorded since the ratification by Tunisia of the Convention and that cases of enforced disappearance that occurred prior to the enactment of the Organizational Act on the establishment and organization of a system of transitional justice will be investigated by the Truth and Dignity Commission based on the communications and complaints that it receives and refers to the competent courts, the Commission has no detailed statistical data, at present, on the number of complaints made about enforced disappearance, apart from the three cases cited in paragraph 44 of this report.

135. At present, there is no special training for specialized security teams or for judges responsible for investigating cases of enforced disappearance. However, judges in specialized chambers will receive training, in the context of broader training on transitional justice, on dealing with grave human rights violations, including enforced disappearance.

### **Article 13**

136. The conditions, procedures and legal consequences of extradition are detailed in articles 308–330 of the Code of Criminal Procedure. However, these articles apply without prejudice to the provisions of either an international or a bilateral agreement on judicial



cooperation in this area, in accordance with the principle, enshrined in the Tunisian Constitution, that international treaties supersede national legislation.

137. Article 311 of the Code of Criminal Procedure provides that extradition must be granted if the offence for which it is requested is punishable under Tunisian law as an offence or serious offence. This implies that enforced disappearance must be included as an offence in the Tunisian Criminal Code to enable the Government to grant an extradition request in a case involving such an offence.

138. Article 26 of the Tunisian Constitution prohibits the extradition of persons who have been granted political asylum. The same prohibition is contained in article 313 of the Code of Criminal Procedure, which provides that extradition may not be granted if the offence for which it is requested is a political offence or if it is apparent, from the circumstances, that the extradition request has been made for political ends.

139. If the authority competent to consider extradition requests (the indictment chamber of the appeals court in Tunis) has reason to believe that an extradition request has been made for the purpose of prosecuting or punishing a person on grounds of his or her sex, race, religion, nationality, ethnic origin or political opinions, it may deny the request, providing a reasoned opinion. Such a refusal is not subject to appeal and is binding on the executive branch, in accordance with article 323 of the Code of Criminal Procedure.

140. If the indictment chamber decides to grant an extradition request, its decision is not binding on the executive branch, which may exercise its discretion as to whether or not to grant extradition, in accordance with article 324 of the Code of Criminal Procedure.

#### **Article 14**

141. Under the mutual assistance and judicial cooperation agreements that it has concluded, Tunisia extends all possible assistance in connection with legal and judicial measures in respect of any extraditable offence, including enforced disappearance. Such assistance includes the provision of evidence in its possession that may be needed in order to make progress in a case.

142. Section 4, chapter VIII, of the Code of Criminal Procedure on the extradition of foreign nationals is dedicated to judicial cooperation procedures. It covers a number of forms of such cooperation, mainly the transmittal and processing of letters rogatory, the transmittal and serving of judicial documents, access to criminal evidence, and the summoning of witnesses to arrange confrontation meetings with the accused. The conventions on mutual assistance and judicial cooperation that Tunisia has concluded with many States provide details on the scope of the judicial cooperation arrangement and related procedures.

#### **Article 15**

143. Since it ratified the Convention, Tunisia has not received any requests for judicial cooperation to assist victims of enforced disappearance, seek disappeared persons, identify their whereabouts or exhume, identify and return the remains of deceased victims. It has not submitted any requests of this kind to any other State either.

#### **Article 16**

144. With regard to Tunisian citizens, article 25 of the Constitution provides that no citizens may be stripped of their nationality, exiled, extradited or prevented from returning

to their own country, while article 312 of the Code of Criminal Procedure states that the extradition of Tunisian citizens is prohibited. Although extradition is prohibited, Tunisian citizens will be tried for any major or serious offence that they commit abroad, if a request is received from a foreign authority through the diplomatic channel.

145. Tunisian law prohibits the expulsion, return or extradition of a foreign national to another State, if there are substantial grounds to believe that the person would be in danger of being subjected to a grave violation, such as enforced disappearance, particularly if the other State has a record of grave, flagrant or mass human rights violations.

146. Under article 18 of Act No. 7 of 8 March 1968, concerning the situation of foreign nationals in Tunisia, foreigners may be expelled from the country only when their presence constitutes a threat to public security. Expulsion decisions are taken by the Minister of the Interior. Foreign nationals who are subject to an expulsion order can appeal to an administrative court to have the decision overturned. If they fear that they are in danger of being subjected to a violation in the State to which they are to be returned, they can invoke this argument before the court. In this case, the Court must establish that there is a consistent pattern of gross, flagrant or mass human rights violations in the State concerned.

147. Tunisian law provides that no foreign national may be extradited, if there are substantial grounds for believing that the person would be subjected to enforced disappearance. As noted in our comments on article 13, the indictment chamber is responsible for considering extradition requests and for verifying whether or not such threats exist.

## **Articles 17 and 18**

148. Tunisian law states that no person may be deprived of his or her liberty arbitrarily or held in any place not under the jurisdiction of the State. Article 29 of the Tunisian Constitution provides: “No person may be arrested or detained unless apprehended during the commission of a crime or pursuant to a court decision. Persons who have been arrested shall be immediately informed of their rights and of the charge against them. They have the right to appoint a lawyer. The period of time for which a person may be held in custody or detention shall be established by law.”

149. Article 2 of Organizational Act No. 43 of 21 October 2013 on the National Commission for the Prevention of Torture defines deprivation of liberty as “any form of detention or arrest or imprisonment or placement of a person by order of a judicial or administrative or other authority or at its instigation or with its consent or acquiescence”. It defines places of detention as “all places that are or could come under the jurisdiction and control of the Tunisian State or that were established with its agreement and in which there could be persons deprived of their liberty by order of a public authority or at its instigation or with its consent or acquiescence”.

150. Under the Organizational Act, the following are considered to be places of detention:

- Civilian prisons;
- Correctional centres for young offenders;
- Homes or supervision centres for children;
- Detention centres;
- Psychiatric institutions;
- Centres for refugees and asylum seekers;
- Centres for migrants;

- Quarantine centres;
- Transit areas in airports and ports;
- Discipline centres and vehicles used to transfer persons who have been deprived of their liberty.

## 1. Custody and pretrial detention as exceptional measures of deprivation of liberty

151. Custody and pretrial detention arrangements are regulated under the Code of Criminal Procedure.

### (a) Custody

152. Act No. 70 of 26 November 1987 and Act No. 90 of 20 August 1999 supplemented the Code of Criminal Procedure, adding article 13 bis to the Code. The Code was amended by Act No. 27 of 4 March 2008, which introduced particular regulations on detention, where no legal provisions had existed before. Article 13 bis is highly specific and is perhaps one of the most formally detailed articles.

153. Under article 13 bis, law enforcement officials — specifically, police commanders, officers and station chiefs, National Guard officers, non-commissioned officers, centre commanders, and customs officials — are authorized, to hold suspects in custody for up to 3 days in cases requiring investigation and must inform the public prosecution service that they have done so. The public prosecution service can extend the custody period once, for the same duration, pursuant to a written reasoned decision setting out the factual and legal grounds for the extension. The requirement to provide a reasoned explanation for an extension decision forms part of a policy on crime that is designed to strengthen the rights of suspects and the guarantees available to them.

154. The same article provides that a family member of a suspect must be informed by law enforcement officials, in a language that he or she understands, of the action taken with respect to the suspect, why the action has been taken and its duration. The family member must also be informed that he or she can legally request a medical examination to be conducted during the custody period.

155. Law enforcement officials are required by law to inform a parent, child, sibling or spouse of a suspect, depending on the suspect's choice, of any action taken regarding that person. In addition, they are required to indicate in the police report:

- That the suspect has been informed of the action taken and the grounds for taking it;
- That the suspect has been apprised of the guarantees available to him or her under the law;
- Whether or not the family of the suspect has been notified;
- That a request for a medical examination has been submitted by the suspect or a family member, if that is the case;
- The date and time of the start and end of the custody period;
- The date and time of the start and end of the interview;
- The police report must be signed by a police officer and the person in custody; should the latter refuse to sign, the reason for the refusal must be mentioned in the report.

156. Under Tunisian law, law enforcement officials must keep a special register at places of detention, with numbered pages signed by the public prosecutor or his or her assistants. The register must include specific information so as to ensure that the rights of inmates are

boosted and that the court can monitor the situation to verify compliance with the relevant procedures. The specific information to be recorded consists in:

- Details about the inmates' identity;
- The date and time of the start and end of the detention period;
- Details of any notification of family members regarding measure taken vis-à-vis inmates;
- Any request made for a medical examination, if submitted by an inmate or a parent, child, sibling or spouse.

157. A bill to amend and supplement certain provisions of the Code of Criminal Procedure has been drafted to bolster the guarantees and rights of detainees, by, for example, reducing the custody period to 48 hours and requiring the presence of a lawyer during the preliminary investigation, in addition to requiring prior authorization from a public prosecutor to hold a suspect.

158. With regard to children in detention, article 77 of the Child Protection Code states that law enforcement officials may only interview a child suspect or institute proceedings in a case involving a child after the public prosecutor has been notified. Moreover, they may only interview a child under the age of 15 years in the presence of his or her parent or guardian or an adult relative.

(b) *Pretrial detention*

159. Article 84 of the Code of Criminal Procedure provides that pretrial detention is an exceptional measure. Article 85 sets out the rules to be followed when taking this measure. It stipulates that: "A defendant may be taken into pretrial detention when apprehended in the commission of an offence or serious offence or when serious allegations have been made that require detention to be used as a security measure in order to prevent the commission of further offences, to ensure that a penalty is enforced, or to facilitate an investigation."

160. Pretrial detention may not exceed six months. A reasoned decision to take a person into pretrial detention, setting out the factual and legal grounds for the decision, must be provided. A defendant may be kept in detention, if warranted in the interests of an investigation. The investigating judge, having sought the opinion of the public prosecutor and provided a reasoned decision, may extend the detention on one occasion, not exceeding 3 months if the case involves a major offence, and, if it involves a serious offence, on two occasions, each not exceeding 4 months. Such decisions are subject to appeal.

161. In order to emphasize that pretrial detention is an exceptional measure, the legislature amended article 85 of the Code of Criminal Procedure by Act No. 74 of 11 December 2008. The amended article 85 expanded mandatory release requirements to include any case in which the defendant has not previously been sentenced to more than 6 months' imprisonment, whereas the former requirement was not more than 3 months' imprisonment, as well as any case in which the statutory maximum penalty is 2 years' imprisonment, whereas the former requirement was 1 year's imprisonment. The new article 85 provides that: "A defendant of fixed abode in Tunisia who has not previously been sentenced to more than 6 months' imprisonment shall be released, with or without bail, five days after questioning, if the maximum applicable penalty does not exceed 2 years' imprisonment, except in connection with the offences set forth under articles 68, 70 and 218 of the Criminal Code."

162. With regard to children, article 93 of the Child Protection Code requires the investigating judge in a case involving a child to inform the child's known parents, legal

guardian or custodian in order to bring proceedings against the child. In addition, article 94 provides that a child may not be taken into pretrial detention if charged with a major or a lesser offence. A child may not be held in a place of detention unless it is clearly necessary or it appears that there are no other measures that can be taken. This article requires children to be placed in a competent institution. When this is not possible, they may be placed temporarily in a special children's wing of a prison, provided that they are separated at night from the other inmates.

## 2. Admission to places of deprivation of liberty

### (a) Admission to prisons

163. Act No. 52 of 14 May 2001, concerning the prisons system, sets out the rules to be followed by the Prisons Administration Department. Perhaps the most important of these is that a person may be admitted to a prison only pursuant to a committal warrant, order to appear, a court judgement or a coercive order (art. 4). Under Tunisian law, imprisonment is legitimate only on the basis of:

- A committal warrant: a committal warrant issued by the competent judicial authority to senior prison guards, pursuant to which a defendant may be received and admitted to prison. The Code of Criminal Procedure and the Child Protection Code specify the authorities that can issue committal warrants, namely, investigating judges (Code of Criminal Procedure, arts. 78–83), indictment chambers (art. 117), juvenile court judges (Child Protection Code, art. 87), public prosecutors and their assistants (Code of Criminal Procedure, arts. 26 and 206) and presiding judges (arts. 142 and 169);
- An order to appear: investigating judges and presiding judges may issue an order to appear on the basis of which a person may be imprisoned (Code of Criminal Procedure, arts. 79 and 142);
- An excerpt from a court judgement: an excerpt from a court judgement constitutes legal grounds for the imprisonment of a person sentenced to a penalty of deprivation of liberty. A representative of the public prosecution service, as the authority responsible for overseeing the enforcement of sentences (Code of Criminal Procedure, art. 336 (1)), forwards excerpts from final court decisions handing down penalties of imprisonment to police stations for implementation so that those penalties can be served by those who have incurred them, or issues search warrants for the purpose of arresting and imprisoning such persons pursuant to those sentences;
- A coercive order: a coercive order can constitute legal grounds for imprisonment, in accordance with the provisions of articles 343 and 348 of the Code of Criminal Procedure.

164. Article 11 of the Prison Systems Act requires prison directors to keep a numbered logbook, sealed by the president of the court of first instance with territorial jurisdiction, for the purpose of recording the identity of every inmate, the grounds for the inmate's admission to the prison, the judicial authority issuing the warrant, and the date and time of the inmate's admission and discharge.

165. Article 14 provides that the prison administration must inform a parent, child, sibling or spouse of the inmate, according to their choice, upon their admission to prison and whenever he or she are transferred from one prison to another. It also requires every inmate to provide upon admission to prison the name and address of the person to be contacted in an emergency.

166. Under article 31 of the Act, relatives of inmates in pretrial detention or in respect of whom a definitive sentence has not been handed down are permitted to visit them once per week on a visitors' permit issued by the relevant judicial authorities.

167. The sole exception to the right of persons in pretrial detention to communicate is contained in article 70 of the Code of Criminal Procedure, which authorizes the investigating judge to proscribe, by means of a reasoned decision that is not subject to appeal, communication with a defendant held in detention for a period of 10 days, renewable once. In no case does this proscription apply to the defendant's counsel.

168. Under article 32 of the Act, the relatives of persons in respect of whom a definitive sentence has been handed down may visit them once per week and on religious holidays, with a permit issued by the Prisons and Corrections Department. Visiting permits may be valid for a single visit, for multiple visits or for unlimited visits.

169. Under article 36 of the Act, consular or diplomatic officials responsible for consular functions are permitted to visit nationals of their countries who have been imprisoned. They may visit persons in pretrial detention or those in respect of whom a definitive sentence has not been handed down, with a permit issued by the judicial authority. A permit from the Prisons and Corrections Department is required for them to visit persons in respect of whom a definitive sentence has been handed down. The visit takes place in the office of the prison director or an office designated for the purpose, with the prison director or his representative.

170. In accordance with the provisions of article 17 of the Act, inmates in pretrial detention or convicted prisoners have the right to meet with the appointed defence counsel without a prison officer in attendance, pursuant to a permit issued by the competent judicial authority; convicted prisoners have the right to meet with a lawyer, with the permission of the Prisons and Corrections Department, in the presence of a prison official. In addition, sentenced prisoners have the right to meet with the sentencing judge in the cases provided for by the current legislation; they also have the right to meet with the prison director and to correspond with the defence counsel appointed in their case, as well as with the judicial authorities concerned, through the prison administration.

(b) *Admission to correctional centres for young offenders*

171. Ordinance No. 2423 of 11 December 1995 on the rules of procedure of correctional centres for young offenders requires directors of such centres to keep a sealed logbook from the Prisons and Corrections Department in which is recorded the identity of every child admitted, the reason for admission and the authorities concerned, in addition to the date and time of admission and discharge (art. 9). Moreover, the child's guardian must be informed of a decision to admit the child, in order to establish contact with him or her; the guardian must also be notified three days prior to the child's discharge. In the event that the child's guardian is unable to collect him or her in person, the child remains at the centre; the centre notifies the local and regional authorities to which the child will return, in order to summon his or her guardian or his or her guardian's representative. In addition, the Ordinance provides for the right of the child to receive family visits in a place designated for that purpose and to meet with the director of the institution.

(c) *Placement in the juvenile observation centre*

172. The juvenile observation centre was created pursuant to Act No. 94 of 26 October 1992. Children are placed in the centre prior to trial, on the basis of a referral by a juvenile judge. Experts in the social sciences, psychology, education and medicine study the personality of children placed in the centre, with a view to identifying the motives for their delinquency and their personality traits, as well as effective ways of rehabilitating them. An

expert report is transmitted to the juvenile judge within one month of the child's placement in the centre and before a decision is handed down in each case. If necessary, the juvenile judge can postpone this deadline for a period of one month only. Under article 9 of the centre's rules of procedure, the centre accepts children pursuant to an observation order or committal warrant from a juvenile judge. Under article 10 of the rules of procedure, the centre's admissions and welfare department is required to maintain a public, numbered and indexed register showing admissions and discharges of centre residents and containing the following data:

- Registration number;
- The child's full name and title;
- The child's national identification card number or, if not available, that of his or her guardian;
- The child's family address, if known;
- Date of admission, referring authority and date of discharge.

(d) *Hospitalization of persons with mental illness in specialized institutions*

173. Act No. 83 of 3 August 1992 concerning mental health and conditions of hospitalization for mental disorders, as revised and supplemented by Act No. 40 of 3 May 2004, regulates the hospitalization of persons with mental illness. It provides that no persons may be admitted to or accommodated in an institution for patients with mental disorders without the consent of the person concerned or, as appropriate, that of their legal guardian, unless their mental disorder makes it impossible to obtain such consent or if their condition requires urgent assistance or represents a threat to their safety or that of others.

174. Under the Act, prior to admitting a person to hospital, the hospital director is required to ask a third party (a parent, child, spouse, dependent or legal guardian of the patient) to ascertain that the application for hospitalization meets the legal conditions and contains the required documents, and to verify the identity of the prospective patient, as well as the identity of the person who made the application for hospitalization.

175. Article 23 of the Act requires every hospital to keep a logbook, numbered and indexed by the medical inspectorate in the Ministry of Public Health, in which is recorded, within 24 hours:

- The name, title, profession, age and residential address of the person submitting the application for hospitalization;
- Date and time of admission to hospital;
- Name, title, profession, age and residential address of the person in respect of whom the application for hospitalization has been submitted;
- Two medical certificates attached to the request for admission to the hospital;
- Decision to detain, as appropriate;
- Date and time at which the hospitalization procedure was initiated;
- Delayed discharges from hospital provided for under article 21 of the Act and subsequent actions;
- Date and time of deaths, in addition to supporting medical certificates.

176. Under the Act, the President of the Court of First Instance in the district in which the person concerned resides is competent to issue a compulsory hospital detention order and

may do so pursuant to a written request from any public health authority or from the public prosecutor, accompanied by a written medical opinion.

177. Moreover, the president of the court of first instance concerned is authorized to issue a compulsory hospital detention order in respect of a person with a mental disorder that constitutes a threat to his or her safety or that of others. The court president may order that the person concerned be detained at the public hospital closest to his or her place of residence with a specialized mental health section, after he or she or his or her representative has heard the patient, either in court or, alternatively, at the patient's place of residence. No admissions are made until the president of the court of first instance concerned has issued a decision to that effect.

178. A medical certificate issued by a psychologist is transmitted to the hospital by the President of the Court of First Instance concerned, the public prosecutor and the Ministry of Public Health within 48 hours of a hospital admission. Compulsory hospital detention orders are recorded in a special logbook, similar to that referred in the context of applications for admission by a third party.

179. Under article 32 of the Act, these institutions are subject to oversight and may be visited, on unspecified dates and at least once per year, by physicians serving as public health inspectors and individuals appointed for that purpose by the President of the Court of First Instance, the public prosecutor or the governor of the district in which the institution concerned is located. Those authorities receive and investigate, as appropriate, complaints from persons who have been admitted to hospital.

180. Chapter VI and, specifically, article 37 of this Act, prescribes the criminal penalties applicable to the director of a residential hospital who admits a person on the basis of an application submitted by a third party without taking into account the provisions of article 15 on admission conditions and procedures for applications by third parties, or who cancels or withholds a complaint or application addressed by a person admitted to the hospital to the judicial or administrative authorities.

### **3. Oversight of places of deprivation of liberty**

181. Numerous authorities oversee places of deprivation of liberty in order to verify their compliance with the current legislation in practice. Such oversight, whether administrative or judicial or conducted by independent bodies and non-governmental organizations, makes it possible to monitor all breaches of and arbitrary attacks on freedom by officials responsible for law enforcement.

#### *(a) Administrative oversight*

##### **1. Oversight by the Ministry of Justice, Human Rights and Transitional Justice**

182. Pursuant to a decision of the Prime Minister on 27 November 2012, the Minister of Human Rights and Transitional Justice is responsible for undertaking field visits to prisons and custody and detention centres and interviewing prisoners and detainees in order to investigate their conditions and follow up on their concerns. Under the aforementioned Act, the Minister of Human Rights and Transitional Justice or a person appointed by the Minister is authorized to enter any prison facility or custody and detention centre unannounced and to interview any official or detainee in the place of their detention, or any other place.



## 2. Oversight by inspectorates

### *Prisons and correctional establishments inspectorate*

183. During inspections by the prisons and correctional establishments inspectorate, violations that might occur in the course of work and prevent an institution from pursuing an ideal course in accordance with established procedures, laws and ordinances are identified; in addition, the extent of the commitment of professional staff to the regulations and their respect for the rules governing the enforcement of penalties in prisons and correctional establishments becomes apparent.

184. Within the inspectorate, a subsidiary inspections and investigations body focuses on various aspects and types of penal facilities and takes action to curb working practices, procedures or policies that go beyond the legal system and standards of humane treatment in particular. It then follows up and provides oversight, having monitored and prosecuted any violations, which it collates and transmits to the central leadership which, in turn, transmits them for investigation to the investigations department.

185. The investigations department conducts inquiries and investigations into all complaints and grievances entrusted to it by prisoners or their families, or cases in respect of which it receives information. The department hears the complainant, witnesses and officials against whom complaints have been made, collects material data and compares events and actions. In the light of these investigations, it proposes either, in the event that it establishes wrongdoing by official or officials, that disciplinary sanctions commensurate with the role of each individual as a perpetrator, accomplice or accessory should be imposed, or that the case should be shelved for lack of supporting evidence. In the event that it uncovers criminal acts, the department refers the matter to court. Moreover, if it concludes that there is a regulatory or procedural flaw that affects the ways in which the institution conducts its work, the department can make regulatory or organizational proposals. It should be noted that if a complaint is brought to court at the same time as it is dealt with administratively, consideration of a disciplinary course of action is suspended until the court determines the criminal liability of the official concerned and until the administrative liabilities are established.

### *National Security and National Guard inspectorates*

186. Since their creation in 1997, both of these inspectorates have been engaged in oversight, including of the conduct and relations of police officers with one another, with their superiors and with expatriate nationals at various police units. Their oversight also includes verification that logbooks at those units are properly kept (that entries therein are made in accordance with the law and with respect for formalities) and inspection of premises (detention cells, judicial affairs offices, reception).

187. In order to make sure that security work is conducted with the requisite efficiency and skill, the inspectorates oversee the tasks delegated to those responsible for investigation and ensure that the human resources available are a good fit for the tasks to which they are assigned.

188. The National Security and National Guard inspectorates take various measures when they encounter wrongdoing (abuse of authority, bribery, violence or torture) and procedural breaches (improperly kept records, detention and telegram logbooks) at police units. According to the type of violation encountered, the inspectorates draw the attention of the unit supervisor to the situation and invite him to rectify it, or open an administrative investigation and propose that administrative sanctions should be imposed on those who committed the violations, or that the matter should be referred to court if it is established that the acts committed constitute offences.

189. In addition, the inspectorates make the necessary inquiries into the validity of the information received in connection with police officers, including human rights violations (pursuant to petitions from injured parties or various sources), and verifies that the information is duly submitted in the required administrative form.

(b) *Judicial oversight*

190. Act No. 77 of 31 July 2000 revising and supplementing certain articles of the Code of Criminal Procedure established the office of sentence enforcement judge. The powers of sentence enforcement judges were strengthened pursuant to Act No. 92 of 29 October 2002. Under the Code of Criminal Procedure, sentence enforcement judges are authorized to oversee the conditions in which custodial sentences are enforced in prison establishments under the territorial jurisdiction of the sentencing court. The most important of the oversight powers of sentence enforcement judges in this area include:

- Visiting prisons at least once every two months to inspect the conditions of inmates;
- Meeting inmates who wish to be interviewed or whom the judge wishes to hear in a private office;
- Inspecting the disciplinary logbook;
- Requesting the prison management to provide inmates with social welfare services;
- Continuing to receive written updates from the prison physician concerning any serious health conditions that have been identified;
- Submitting an annual report containing observations, recommendations and conclusions to the Minister of Justice.

191. It should also be noted that juvenile court judges are responsible for overseeing the application of the measures and penalties handed down by them and by the juvenile courts. They are required to follow up on decisions handed down in respect of children and, in cooperation with the establishments concerned, to visit children in order to examine their situation and the extent to which they find the measures ordered acceptable (Child Protection Code, art. 109).

(c) *Oversight by independent national institutions*

1. Higher Committee on Human Rights and Fundamental Freedoms

192. Under article 5 of Act No. 37 of 16 June 2008 concerning the Higher Committee on Human Rights and Fundamental Freedoms, the chairperson of the Committee is authorized to make unannounced visits to prison and correctional establishments, detention centres, children's shelters and observation centres and social institutions providing care to people with special needs, in order to determine their compliance with national legislation on human rights and fundamental freedoms.

2. National Commission for the Prevention of Torture

193. The tasks entrusted by Organizational Act No. 43 of 21 October 2013 to the National Commission for the Prevention of Torture include conducting regular periodic visits and unannounced visits at any time of its choosing to places of detention in which there are or may be persons deprived of their liberty.

194. In addition, the Commission is entrusted with verifying that places of detention are free from torture and other cruel, inhuman or degrading forms of treatment or punishment and monitoring the compatibility of detention conditions and penalty enforcement with

international human rights standards and national laws. As part of the discharge of its functions, the Commission is vested with the authority to:

- Obtain the possible administrative access necessary;
- Obtain information on places of detention, their number and location and the number of persons deprived of their liberty;
- Obtain information on the treatment of persons deprived of their liberty and the conditions of their detention;
- Enter all places of detention and associated installations and facilities;
- Conduct interviews in private with persons deprived of their liberty or any other person able to provide information, without witnesses, in person or through a sworn interpreter, as appropriate.

195. Periodic or unannounced visits to places of deprivation of liberty may be challenged by the authorities concerned only for urgent or compelling reasons related to national defence, public safety, natural disasters or serious disruption in the place to be visited that would temporarily prevent the visit from taking place. In such cases, a written reasoned decision, informing the chairperson of the Commission and specifying the duration of the temporary ban, is required. Anyone who violates such a ban is liable to disciplinary proceedings.

(d) *Oversight by non-governmental organizations*

1. International Committee of the Red Cross

196. Under the agreement signed on 26 April 2005 by the then Human Rights Coordinator and the Regional Representative of ICRC, ICRC delegates are permitted to visit all prison units and correctional and rehabilitation centres for young offenders, as well as detention centres. Since the entry into force of the agreement, ICRC has conducted numerous visits to various prison units and detention centres throughout Tunisia, during which it has met with the prisoners it wished to interview and heard them individually, and has been given every assistance by the administration in examining prisoners' living conditions.

2. Office of the United Nations High Commissioner for Human Rights

197. Pursuant to the headquarters agreement concluded by the Government of Tunisia and the High Commissioner on 13 July 2011 and ratified by Decree No. 94 of 29 September 2011, staff at OHCHR in Tunisia conduct visits to prisons and detention centres to monitor the human rights situation and respect for international standards. They then draft reports containing conclusions and recommendations for stakeholders. In this context, OHCHR in Tunisia published a report in March 2014 on "Prisons in Tunisia: international standards versus reality". The report was drafted with reference to international standards regarding prison conditions and the treatment of inmates, and compared these with the relevant national legislation, on the one hand, and the implementation and application of those principles at the practical level on the other hand. The report drew a number of conclusions and made recommendations with a view to developing the prison system.

3. National civil society organizations

198. After the revolution, for the first time in the history of Tunisian prisons, memorandums of understanding on prison visits were signed between the Ministry of Justice, Human Rights and Transitional Justice and a number of national human rights organizations. These included Freedom and Justice, the International Association in

Support of Political Prisoners, the National Council for Fundamental Freedoms, the Association for Dignity for Political Prisoners, the Bariq Association, the Association for the Rehabilitation of Prisoners and Monitoring of Prison Conditions, the Justice and Rehabilitation Association, the Insan Association and the Association for the Defence of Human Rights. The memorandums of understanding aim to regulate and control procedures for visits that representatives of national human rights organizations might make to Tunisian prisons. In addition, they aim to achieve cooperation with regard to rehabilitating prisoners and detainees, educating them about their rights and helping reintegrate them into society, and to contribute to training prison and correctional staff, particularly in the regions, in human rights. The organizations that sign these memorandums can conduct inspection visits to Tunisian prisons without prior permission in teams of up to three people, who may be accompanied by a physician provided that the prison is duly informed one day prior to the date of the visit.

199. The following table shows the number of visits made by organizations and associations to various prison units during the period from January 2013 to May 2014.

<i>Organization or associations</i>	<i>No. of visits</i>
International Association in Support of Political Prisoners	17
Freedom and Justice	58
Association for the Rehabilitation of Prisoners and Monitoring of Prison Conditions	3
Association for Dignity for Political Prisoners	6
Justice and Rehabilitation Association	22
Bariq Association	3
Tunisian League for the Defence of Human Rights	13
Higher Committee on Human Rights and Fundamental Freedoms	3
ICRC	99
OHCHR	12
<b>Total</b>	<b>236</b>

## Article 19

200. Organizational Act No. 63 of 27 July 2004 on the protection of personal data establishes that the right of everyone to the protection of personal data relating to his or her private life is a fundamental right guaranteed by the Constitution and may only be handled with transparency, integrity and respect for human dignity.

201. Article 9 of the Act requires that data should be processed with respect for the human person, private life and public freedoms. The processing of personal data of any origin and form must not compromise the rights of persons protected by the laws and measures in force and it is prohibited under any circumstances to use personal data for the purpose of abusing or defaming a person.

202. Article 10 provides that personal data may be collected only for specified, explicit and legitimate purposes. Article 11 provides that personal data must be processed with full integrity and within the scope of the purpose for which they were collected. Moreover, those responsible for processing data must ensure that the data concerned are valid, accurate and up to date.

203. Article 13 prohibits the processing of personal data relating to offences, investigations, criminal proceedings, penalties, precautionary measures or judicial records.

204. In the same context, article 88 of the Child Protection Code provides that the juvenile judge and all those whom he or she assigns shall ensure, when preparing a social profile, that the sanctity of the family and private life of the child is respected. Article 97 of the Code requires the court to take effective action to end violations to which the child may be exposed in his or her private life, such as by the seizure of books, recordings, images, films, correspondence or any other document that could affect the honour or reputation of the child or his or her family.

205. Article 2 of Organizational Act No. 53 of 24 December 2013 on the establishment and organization of a system of transitional justice also makes provision for the protection of the personal data of victims; under article 2, the right to know the truth about violations is guaranteed by law to all citizens, with due consideration for the victims' interests and dignity and without prejudice to the protection of personal data.

## Articles 20 and 22

206. Article 70 of the Code of Criminal Procedure contains an exception to the right of a person in pretrial detention to communicate with the outside world. It provides that in order to ensure the proper conduct of an investigation, the investigating judge is authorized to prohibit, by a reasoned decision that is not subject to appeal, contact with the defendant for a period of 10 days, renewable once. A decision to prohibit contact does not under any circumstances extend to the defendant's legal counsel.

207. Article 21 of the Prisons Act (Act No. 52 of 14 May 2001) sets out a number of disciplinary sanctions that may be taken against a prisoner who violates an obligation, interferes with the proper functioning of the prison or disrupts prison security. These sanctions include deprivation of family visits for a specified period of up to a maximum of 15 days. This or other disciplinary sanctions are imposed only after a prisoner has been heard, after the arguments in his or her defence have been considered and, in the event that the prisoner is a foreign national, after he or she has availed himself of an interpreter, as appropriate. Article 24 of the Act provides that the Prisons and Corrections Department shall be given written notification of all disciplinary measures taken by the disciplinary board (art. 24). A prisoner has the right to object to a disciplinary measure no later than the day after he or she is notified of such action; he or she should do so to the prison administration, which shall raise the matter immediately with the Prisons and Corrections Department. Raising an objection to a disciplinary measure does not have suspensive effect. The Prisons and Corrections Department has the right to impose or reduce a disciplinary measure.

208. Tunisian law guarantees the right of any person with a legitimate interest to obtain information about persons deprived of their liberty, as well as the right of any person to seek a legal remedy if his or her personal freedom is violated without legal justification.

209. Detention is a measure that is subject to a set of formal and substantive requirements; these are set out in the commentary on articles 17 and 18 of the Convention. Although there are no explicit provisions imposing penalties for failure to meet those conditions, in particular those relating to the issuance of reports and the keeping of logbooks at detention centres, penalties for violations can be established with reference to the provisions of the Criminal Code, the Code of Criminal Procedure and certain other legal provisions.

210. Article 155 of the Code of Criminal Procedure provides that the report shall have probative value only if it is in accordance with the law from a formal point of view, and if the author of the report includes what he or she heard or saw himself or herself in the exercise of his or her functions. The implications of this article are that if a suspect's family is not informed of his or her detention, or if the date and time of the start and end of the

detention period or the questioning are not indicated, the report has no probative value. This tendency could lead to the penalization of omissions, meaning that any measure contrary to the law would not be considered by the court; the penalty could apply to a specific part of the record and not to others, and could be extended to all formal irregularities. However, it is logical and, at the same time, important to impose invalidation as a penalty, even with regard to the actions of law enforcement officers; article 199 of the Code of Criminal Procedure provides that all acts or decisions that are contrary to public policy provisions, the fundamental rules of procedure or the legitimate interests of the defence shall be of no effect.

211. The written statement setting out the factual and legal grounds for a decision to extend detention or hold in pretrial detention is one of the most important guarantees for every individual who has lost his liberty; moreover, it strengthens judicial monitoring of detention and reaffirms the exceptional nature of pretrial detention. In the event that a person is detained, the public prosecutor is responsible for monitoring the grounds justifying an extension, such as whether or not it has been established that an offence has taken place and the need to prevent a further offence from being committed. The public prosecutor must weigh up the reasons why the investigation requires an extension, such as for the purpose of hearing witnesses or apprehending a fugitive defendant, and assess the overall evidence used to justify pretrial detention. The fact that the investigating judge is required to set out the reasons for a decision to hold a person in pretrial detention enables the indictment chamber, in the event of an appeal, to scrutinize the validity of the reasons and justifications provided, in accordance with the principle that freedom is the rule and detention is the exception to the rule. The requirement to provide a reasoned decision safeguards the legitimate interests of persons deprived of their liberty, without compromising the purposes served by detention or pretrial detention in terms of controlling crime, gathering evidence and apprehending and bringing perpetrators to justice.

212. The failure of an investigating judge to comply with the formalities required for the issuance of judicial warrants (committal warrant and order to appear) does not invalidate them but does entail disciplinary action or a fine, as appropriate. The courts of justice have sole competence to adjudicate in every dispute concerning a warrant or its interference with individual liberty, in accordance with article 83 of the Code of Criminal Procedure.

213. With regard to the keeping of logbooks by detention centres, any breach of the rules of procedure provided for under article 13 bis of the Code of Criminal Procedure by the authorities is brought to the attention of the detention centre supervisor, who is invited either to rectify the mistake, to open an administrative inquiry and propose administrative sanctions against those responsible, or to refer the matter to court if it is established that the acts constitute offences.

214. With regard to the administrative measures taken in the event that breaches are found in the logbooks of places of deprivation of liberty and correctional centres for young offenders, the Prisons and Corrections Department ensures that an administrative inquiry is conducted by the prisons and correctional establishment inspectorate. In accordance with the findings of those inquiries and the gravity of the breach or administrative error committed, one of the administrative sanctions provided for by law under the prisons and correctional service statutes (warning, reprimand, suspension for a specified period or dismissal) is imposed.

215. Article 103 of the Criminal Code prescribes a penalty of 5 years' imprisonment and a fine of 5,000 dinars for any public official or equivalent who violates the personal freedom of another person without legal justification or who directly or indirectly inflicts violence or ill-treatment on a defendant or witness or expert in order to obtain a confession or a statement. The elements of this offence are as follows:

- The material element, which consists in the violation of the freedom of another person such as the arrest or detention of a person without legal justification by a public official;
- The intentional element, which consists in the intention of the official to violate the freedom of another person; the official can avoid conviction if they can establish that they acted in good faith.

Consequently, when the elements of this offence are present, a person who has been deprived of his or her liberty without legal justification or any person affected may prosecute the offender for violating the freedom of another person without legal justification.

216. A person who has been unlawfully deprived of his or her liberty or who is affected as a result of such deprivation may bring a case to court pursuant to article 250 of the Criminal Code, which prescribes a penalty of 10 years' imprisonment and a fine of 20,000 dinars for anyone who apprehends, arrests, imprisons or detains a person without a legal warrant.

## **Article 21**

217. Tunisian law guarantees the reliable verification of the release of persons deprived of their liberty in prisons, correctional centres for young offenders, the juvenile observation centre or mental hospitals.

### **1. Persons in prisons and correctional centres for young offenders**

218. Act No. 52 of 14 May 2001 concerning the prisons system provides that when a prisoner is released they shall receive a release order from the prison director. The prisoner shall receive his or her belongings and money deposited in the prison fund against their signature in a dedicated logbook.

219. In the event of the death of a prisoner, under article 43 the prison director is required to inform the competent judicial authorities, the Prisons and Corrections Department, the family of the deceased prisoner and the civil registrar. The public health physician shall issue a death certificate to the family of the deceased prisoner.

220. Order No. 2423 of 11 December 1995 on the rules of procedure of correctional centres for young offenders requires directors of such centres to record in a sealed logbook from the Prisons and Corrections Department the date and time of admissions and discharges.

221. The centre administration is required to notify the child's guardian three days prior to his or her discharge. In the event that the child's guardian is unable to collect him or her in person, the child remains at the centre; the centre is required to notify the local and regional authorities to which the child will return, in order to summon his or her guardian or his or her guardian's representative.

222. When the period for which a child is placed in a centre expires, the centre is required to give him a release order and send a copy thereof to the Prisons and Corrections Department.

### **2. Children placed in the juvenile observation centre**

223. Article 13 of the centre's rules of procedure provides that a child residing at the centre is subject to a closed system and may only be granted temporary leave to exit by the judge who issued the observation order or committal warrant pertaining to that child. Under

article 14, the centre director or his or her representative is required to inform the juvenile judge, the district police unit, the child's family and the Ministry of Social Affairs immediately in the event that a child absconds from the centre during his stay or fails to return after being granted leave. The same applies in the event of the death of a child at the centre; in addition, the centre is required to inform the district prosecutor.

224. A child's stay at the centre is terminated by a decision from the juvenile judge who authorized the placement. The admissions and welfare department of the centre is required to record in the numbered, indexed admission and discharge logbook the date and time of the child's final discharge from the centre.

### **3. Persons with mental illness hospitalized in specialized institutions**

225. Under Act No. 83 of 3 August 1992 concerning mental health and conditions of hospitalization for mental disorders, as revised and supplemented by Act No. 40 of 3 May 2004, every mental hospital is required to enter in a logbook numbered and indexed by the medical inspectorate in the Ministry of Public Health within 24 hours the date and time of admissions to the hospital, delayed discharges from hospital and subsequent actions taken, and deaths at the hospital, in addition to supporting medical certificates.

226. Patients admitted on a mandatory basis are discharged from hospital when the attending psychiatrist issues a medical certificate stating that the patient may be discharged. In such cases, the hospital director is required to enter the statement in the logbook and bring the matter before the president of the court with territorial jurisdiction within 48 hours. The court is required to issue a decision in that regard without delay and to inform the hospital director of its decision within a maximum of 48 hours; when that period expires, the patient must be discharged (art. 28).

## **Article 23**

227. Tunisia attaches great importance to improving the training of law enforcement officers and places particular emphasis on the promotion of a human rights culture. It believes that the principal means by which such a culture may be disseminated and behaviour changed for the better is education, since the effectiveness of laws and regulations, important as these may be, depends on the degree to which a human rights culture has been developed and assimilated. Tunisia pursues a policy of human rights education consistent with the broad thrust of the second phase (2010–2014) of the World Programme for Human Rights Education plan of action.

### **1. Training at the Ministry of Justice, Human Rights and Transitional Justice**

#### *(a) Training for human rights staff*

228. The Ministry of Justice, Human Rights and Transitional Justice seeks to provide staff and, in particular, those working in human rights, with training on the oversight, monitoring and visiting of places of deprivation of liberty. The most important training sessions that have been held include the following:

- A training session on the theme of human rights and visits to places of detention was held from 6 to 8 February 2013, in cooperation with OHCHR in Tunis. The session focused on theoretical and applied training in techniques for conducting visits to prisons and detention centres and on international standards for the treatment of prisoners (visit to the civilian prison in Murnaq and the women's prison in Manouba);



- Two training sessions were held for professional staff working at the Ministry in September and December 2013 in cooperation with the Geneva Centre for the Democratic Control of Armed Forces for the Ministry's benefit on the theme of strengthening human rights protection in Tunisia by visiting places of detention. The first session focused on theoretical and applied training on prison visiting, while the second focused on theoretical and applied training on visiting places of detention (applied visit to the civilian prison in Murnaq and the detention centre in Bouchoucha).

(b) *Training for judges*

229. Since its establishment in 1987, the Higher Institute of the Judiciary has provided training to its students and to practising judges on respect for human rights and fundamental freedoms.

230. For students of the Institute, in accordance with the decision issued by the Minister of Justice on 26 June 1993 the training forms part of the core human rights courses studied. The courses aim to familiarize students with the international conventions, recommendations and principles of conduct published by the United Nations and the regional organizations in the field of human rights and to provide knowledge of the international protection mechanisms and comparative law. In addition, these courses and the associated practical demonstrations — such as mock trials and other educational methods — aim to promote better understanding of international standards aimed at guaranteeing the rights of parties in the administration of justice.

231. With regard to practising judges, the Minister of Justice issued a second decision on 26 June 1993 calling on the Higher Judicial Institute to organize lectures in order to build on the experience of judges, develop their skills and draw their attention to developments in the sphere of international conventions, human rights protection, national legislation and the jurisprudence, in line with policies aimed at the promotion and protection of human rights. These lectures are delivered at training sessions, seminars or meetings held in the main building of the Institute or in the courts, with the participation of judges.

232. Human rights are taught at the Institute as part of a skills and training package for students or as part of continued training for practising judges on international human rights mechanisms and human rights protection mechanisms. The following topics are covered:

- International human rights mechanisms;
- International treaties adopted by the United Nations and other international instruments (declarations, recommendations, codes of conduct);
- Model regional agreements adopted in the Arab, Islamic and African context and the American and European context;
- Human rights protection mechanisms;
- The relationship of the United Nations and other specialized agencies, the International Labour Organization (ILO) and the regional organizations with national legal and judicial systems;
- The role played by non-governmental organizations in the dissemination of human rights culture and the protection of human rights;
- In addition, the Institute organizes numerous human rights seminars as part of the core training of its students and of continuing training for practising judges.

(c) *Training for prisons and correctional facilities staff*

233. The Prisons and Corrections Department has introduced human rights as a core subject for new recruits of all kinds taking basic training programmes and for aspiring officers during their practical training at the National Prisons and Corrections Training School. Moreover, numerous refresher courses have been held to upgrade working prison officers' skills, with a view to increasing their knowledge of human rights and familiarizing them with the latest developments in that sphere. The courses have focused on the following themes: rights and duties of prisoners and related regulations, treatment of prisoners and dialogue and communication skills. In addition, the Prisons and Corrections Department also organizes periodically human rights awareness days for officials working in all of the prisons and correctional facilities that its professional staff oversee.

234. In cooperation with OHCHR in Tunisia, the Prisons and Corrections Department has taken steps to build capacity. For that purpose, three training courses on human rights were scheduled for prison officers and staff working in prisons. A training course for 26 staff and officers was held at various prison and correctional facilities during the period 9–14 June 2014. It was decided that professional staff would be selected to participate in the training by giving priority to those who work directly with prisoners (chiefs of complexes and wings).

235. In addition, 20 professional staff were trained in cooperation with ICRC during 2013 at a training for trainers session, with a view to mainstreaming the training correspondents' plan at all prison and correctional facilities. Most of the practical training completed by participating professional staff included the following topics:

- Human rights in prisons and the impact of the revolution;
- Social services: the human factor;
- Monitoring hunger strikers;
- Rehabilitation of offenders for the benefit of the community;
- Towards a new design for penitentiary institutions that strikes a balance between security and humanitarian concerns.

**2. Training at the Ministry of National Defence**

236. International humanitarian law is taught at different military educational establishments at various levels, in particular at schools for sergeants and non-commissioned officers and military academies; this topic is included in the various stages of the basic and continuing training given to the Tunisian Armed Forces. The subject is offered in the form of 30 hours of theoretical lessons and tasks per year at various branches of the military academies. This training is also given "in the context of applied training at individual facilities, as part of continuing training" at training centres, including the captains' course, military command school, the Higher Military Academy and the Institute of National Defence.

237. The Ministry of National Defence disseminates the culture of international humanitarian law widely in all military circles. It has organized training courses on international humanitarian law for officers and military judges. In particular, it organized the following courses, in cooperation with ICRC:

- A training course for officers from all three forces from 11 to 13 September 2006;
- Training courses for officers and military judges in April 2007;
- Training courses for officers and military judges in October 2008.

### 3. Training at the Ministry of the Interior

238. Staff and professional staff at the Ministry of the Interior receive basic and continuing training at various schools for police officers and members of the National Guard. The topic of human rights and public freedoms is one of the main areas of study included in the training programmes as it is beneficial to trainees from various bodies, such as police inspectors, police officers, police superintendents and lieutenants. Highly skilled professionals in the field provide between 8 and 40 hours of teaching in these areas. The human rights topics taught to trainees from various career paths include:

- The role of security agencies in strengthening human rights principles;
- The responsibility of police officers to protect human rights, in particular the rights of suspects;
- Security work: ensuring human rights and the State's role and responsibility in strengthening them;
- Complaints procedures and measures available in the event of human rights violations;
- United Nations standards and practices in the event of human rights violations by police.

239. With regard to research and studies in this area, it should be noted that high-ranking professional staff graduates of various security and National Guard schools, such as the Higher Institute of Internal Security Forces, have prepared and published a number of papers and theses. Of those, we should like to note:

- Security and human rights (2005);
- The performance of the security services in view of the obligation to apply the law and respect human rights (2005);
- Torture and degrading treatment in Tunisian law (2010);
- Violation of physical integrity by law enforcement agents in Tunisian law (2011);
- Rights and duties of prisoners in Tunisian law (2011);
- Mechanisms for the promotion of human rights culture in the Internal Security Forces (2013);
- The international criminal system against human rights violations (2013).

240. The Ministry of the Interior has carried out a number of security sector reform projects. These include:

- A project launched by the Ministry of the Interior, in cooperation with ICRC, to implement a project to improve the treatment of persons in detention, in the context of efforts to combat abuse in detention. The project was launched in April 2013 and will run to the end of 2016. It focuses on six main areas, of which the most important are: completion of the good practice manual; review of legal provisions and their conformity with international human rights standards for detainees; sectoral training; specifications and training programmes for officials working in the field; and improving infrastructure. Training sessions for professional staff and for police and National Guard staff have begun, particularly for those who deal with persons in detention, in order to develop forensic investigation techniques. Some 860 police officers have taken part in these courses and it is anticipated that a further 2,000 will do so by the end of 2016. The programme includes training on the human rights in general and on the rights of detainees in particular. A poster listing the

guarantees afforded to detainees has been prepared and will be circulated to the various security facilities for general consultation (dissemination of a culture of detainees' rights). Procedural manuals setting out the rules for the treatment of detainees will be completed;

- A UNDP security sector reform programme, in cooperation with the United Nations Population Fund (UNFPA), that aims to develop and standardize procedures in newly established model police stations;
- A project to support and enhance juvenile justice in Tunisia, overseen by the Ministry of Justice, Human Rights and Transitional Justice and the United Nations Children's Fund (UNICEF), which aims to provide more guarantees for children in conflict with the law;
- Publication of a booklet on 27 January 2014 with support from OHCHR in Tunisia containing a simplified formulation of human rights standards for the Internal Security Forces in Tunisia;
- Numerous training workshops on the prevention of torture. One workshop was held on 15 and 16 April 2014 in cooperation with the Association against Torture that encompassed key guidelines for monitoring places of detention and best practices in the area of concern, and the stakes raised in the context of detention by the gap between security requirements and the principle of respect for the human dignity of detainees.

## **Article 24**

### **1. Reparation for victims**

241. Under Tunisian law, the victim of an offence has the right to bring an action for appropriate compensation against the perpetrator of that offence. The victim can either sue for damages in the criminal proceedings or file a separate civil action. Article 7 of the Code of Criminal Procedure provides that anyone who suffers a personal injury as the direct result of an offence may bring a civil action. A civil action may be brought concurrently with the public action or separately before a civil court. In the latter case, when a public action has been brought, the judgement in the civil action shall be suspended until there has been a definitive ruling in the criminal case. Article 8 provides that the same conditions and limitations apply to the statute of limitations on private actions as public actions for damages. Otherwise, civil actions are subject to the provisions of the Civil Code.

242. Moreover, under article 49 of the Internal Security Forces Statute (Act No. 70 of 6 August 1982), if an Internal Security Forces officer is prosecuted for committing a wrongful act while on duty or in the course of duty, the authorities must afford victims the right to obtain civil compensation.

243. With regard to transitional justice, since the revolution Tunisia has sought to rehabilitate victims of oppression and tyranny by adopting a policy based on the complementary elements of general amnesty and reparations. Pursuant to Decree No. 1 of 19 February 2011 on the general amnesty, which was the first legislative item promulgated after the revolution, all those who had been sentenced for political, association or trade union activities were released. However, the rehabilitation of victims involves more than the mere elimination of the offence and the sentence. In this context, the Decree provides that those to whom the amnesty applies have the right to return to work and claim compensation.

244. In addition, Organizational Act No. 53 of 24 December 2013 on the establishment and organization of a system of transitional justice sets out the rights of victims of grave human rights violations to reparations and rehabilitation.

245. Article 10 thereof defines a victim as any natural or legal person who has individually or collectively sustained harm as a result of being subject to a violation in the sense intended by the Organizational Act. Under the same article, family members who have sustained harm as a result of their relationship to the victim are considered to be victims, in the common law sense, as is anyone who has sustained harm while intervening to assist the victim or to prevent him from being subjected to a violation.

246. Under Organizational Act No. 53 of 2013, the right to reparation for victims of violations is guaranteed by the State. While the State is responsible for providing adequate forms of reparation commensurate with the gravity of the violation and the situation of every victim, the resources available to the State must be taken into account when the law is enforced. Under article 11, reparation is based on moral and material compensation, apology, restitution of rights, rehabilitation and reintegration. It can be individual or collective, and take into account the situation of older persons, women, children, persons with disabilities, persons with special needs, the sick and vulnerable groups.

247. Under article 12, the State has a duty to provide immediate care and temporary compensation to victims in need, particularly older persons, women, children, persons with disabilities, persons with special needs, the sick and vulnerable groups, without waiting for judgements or decisions on reparation to be handed down. Article 13 provides that the State has a duty to fund all litigation costs for victims in human rights cases in the sense intended by the law, in accordance with the laws pertaining to judicial assistance and legal aid before the administrative courts.

248. Under article 39, the Truth and Dignity Commission is required to ensure that a comprehensive programme of individual and collective reparations for victims of violations is in place. The programme must be based on recognition of the violations suffered by victims. It must take decisions and measures on reparations for them, while taking into account all the decisions and administrative and legal measures taken previously for victims and regulating the required criteria for the compensation of victims. It must identify ways of disbursing compensation and, in the process, take into consideration the compensation estimates. In addition, it must take steps to provide urgent briefing and temporary compensation to victims.

249. In addition, under article 41, a fund known as the Fund for the Dignity and Rehabilitation of Victims of Tyranny was established, the organization and management of which will be governed pursuant to a regulation.

250. Article 2 of the aforementioned transitional justice law provides that the right to know about violations is guaranteed by law to all citizens. In accordance with article 4, the truth is established by identifying and determining all violations as well as determining their causes, circumstances, sources, surrounding circumstances and consequences; in cases where victims died, went missing or were subjected to enforced disappearance, their fate and whereabouts is established as well as the identity of the perpetrators and those responsible for the acts that led to their fate.

251. The Truth and Dignity Commission is responsible for investigating cases of enforced disappearance that have not been accounted for in accordance with reports and complaints submitted to it, and for identifying the fate of victims. The Commission, as indicated in the commentary on article 12 of the Convention, is vested with broad investigative powers so that it can establish the truth of serious human rights violations that occurred under the former regime.

**2. Measures to recognize the legal status of disappeared persons**

252. The Personal Status Code addresses situations involving missing and absent persons.

253. Article 81 of the Code provides that any person of whom there is no news and who may be found alive shall be considered missing. Under article 82, if a person goes missing in time of war or in exceptional circumstances involving serious risk of death, the judge is required to establish a deadline not exceeding two years in order to search for the person concerned; thereafter, the person may be declared missing. If a person goes missing under other circumstances, the judge, having used all means to establish whether the person concerned is alive or dead, is vested with the authority to determine the length of time after which that person may be declared dead.

254. Article 83 provides that if a person goes missing and does not have an authorized representative, the judge shall make an inventory of that person's property and appoint a family member or other person as administrator to manage it until such time as it is established whether the person concerned is alive or dead, or he or she is declared missing.

255. With regard to absent persons, article 40 provides that if a husband who has no property leaves his wife and leaves her no alimony and nobody provides for her during his absence, the judge shall grant the husband one month to return, after which he shall grant a divorce, having obtained a statement on oath from the woman as to the facts.

256. Under article 67, the judge may entrust guardianship powers to the mother having custody of a child when the father is incapable of exercising those powers or leaves his residence and is without known address, or for any reason in order to protect the interests of the child.

257. Moreover, article 58 of the Civil Status Code (Act No. 3 of 1 August 1957) provides that in the event that a person reappears following a court decision to declare him dead, he must be allowed to provide proof of his existence and to request that the decision be annulled. He must be allowed to recover his property in its present condition and the price of property of which he has been divested, as well as property purchased with the capital and the income due on it.

**3. The right to establish associations and organizations concerned with the issue of enforced disappearance**

258. Freedom of association is enshrined in article 35 of the new Constitution. After the revolution, all restrictions on the activities of national and international non-governmental organizations dealing with human rights were lifted, enabling them to exercise their functions. Decree No. 88 of 24 September 2011 on the regulation of associations, which abolished the work requirements of the Associations Act (Act No. 154 of 7 November 1959), formed an appropriate legal framework for associative action. Article 6 thereof prohibits the public authorities from directly or indirectly obstructing or impeding the activity of associations. Article 5 reaffirms the right of associations to access information, evaluate the role of State institutions and submit proposals for the improvement of their performance, as well as their right to organize meetings, demonstrations, conference, workshops and all other civil activities, and to publish reports and information, print leaflets and conduct opinion polls.

259. Conversely, under the Decree associations are prohibited from adopting in their statutes, data, programmes or activities any incitement to violence, hatred, fanaticism or discrimination on grounds of religion, nationality or region. They are prohibited from conducting commercial activities for the purpose of distributing monies to their members for personal benefit and exploiting the association in order to avoid tax. Moreover, they are prohibited from collecting monies to support political parties or independent candidates for

national, regional or local elections or providing material support to them; this prohibition excludes the right of the association to express its political views and its standpoints on issues of public interest.

260. Against this background, the Tunisian State guarantees the right to establish organizations or associations concerned with the issue of enforced disappearance, and for such organizations and associations to contribute to the formulation of programmes, policies and legislation with a view to preventing and addressing the root causes of enforced disappearance.

## Article 25

261. Tunisia ratified the Convention on the Rights of the Child pursuant to Act No. 92 of 29 November 1991. In order to align the national legislation with the provisions of the Convention, the Tunisian legislature introduced legal protection for children in the Child Protection Code, issued pursuant to Act No. 92 of 9 November 1995; article 2 of the Code provides that children shall be protected from all forms of violence, harm, physical, mental or sexual abuse, neglect, dereliction or other ill-treatment or exploitation.

262. Under the Criminal Code, the penalties applicable to acts of torture and abduction are aggravated in cases involving the torture and abduction of children. Under article 101, aggravated penalties are prescribed for torture when it is inflicted on a child; the penalty is increased from 8 years' imprisonment and a fine of 10,000 dinars to 10 years' imprisonment and a fine of 20,000 dinars, rising to 16 years' imprisonment and a fine of 25,000 dinars if the torture of a child results in the amputation or fracture of a limb or permanent disability.

263. Moreover, article 237 of the Criminal Code increases the penalty prescribed for the abduction of a person with the use of force, threat or deception from 10 to 20 years' imprisonment if the person kidnapped or abducted is a child under 18 years of age.

264. Article 238, which deals with abduction without the use of violence, deception or threat, prescribes a penalty of 2 years' imprisonment for anyone who without deception, violence or threat abducts or removes a person from the place in which he has been placed by his parents or guardians or those entrusted with his custody, increasing to 3 years' imprisonment if the child abducted is between 13 and 18 years of age and further increasing to 5 years' imprisonment if the child abducted is under 13 years of age. The attempted commission of such offences is punishable.

265. It should be noted that under article 47 of the Constitution, it is the duty of the State to provide all kinds of protection for all children without discrimination, in accordance with the best interests of the child. Moreover, article 4 of the Child Protection Code emphasizes that all measures taken by the courts, the administrative authorities or public or private welfare institutions must take into account the best interests of the child. It is clear from all the provisions contained in the Child Protection Code that Tunisian law seeks to guarantee all forms of social and judicial protection to children, including children at risk and young offenders, in accordance with the best interests of the child.

266. In response to the requirements of subparagraph 1 (b) of this article, article 20 of the Civil Status Act (Act No. 3 of 1 August 1957) stipulates that any alteration and any falsification of civil status records and any entry made on a separate sheet but not entered in the proper registers open the way for civil suits to be taken by the persons concerned and for the imposition of the penalties prescribed by the Criminal Code. The Criminal Code prescribes penalties for forgery by a public official or equivalent or any other person. Article 172 prescribes a penalty of life imprisonment and a fine of 1,000 dinars for any public official or equivalent who in the course of his work commits a forgery likely to

cause public or private damage by making a false document or knowingly misrepresenting the truth by any means whatsoever in any material or non-material record the object of which is to establish a right or an incident with legal consequences. If a forgery is committed by a person who is not a public official or equivalent, the prescribed penalty is 15 years' imprisonment and a fine of 300 dinars, in accordance with article 175 of the Criminal Code. In accordance with article 178, the supplementary penalties established in article 5 of the Criminal Code also apply, notably, disqualification from public office for a public official or equivalent.

267. Lastly, it should be noted that the types of placement of children are regulated in Tunisia by Act No. 27 of 4 March 1958 concerning public guardianship, fostering (*kafalah*) and adoption.

268. With regard to the end of the fostering or adoption period, article 7 provides that the fostering period ends once the adopted child reaches the age of majority. The court of first instance can ask the foster parent, the parents of the fostered child or the Office of the Public Prosecutor to dissolve a fostering agreement if that is in the interest of the child. Thus fostering arrangements end automatically when the child reaches majority or are ended before that time through the courts.

269. In the case of adoption, under article 13 the decision of the district judge is final. However, article 16 provides that the court of first instance can, at the request of the public prosecutor, decide to remove a child from the custody of an adoptive parent and assign custody to another person if that is in the interests of the adopted child, if it becomes apparent that the adoptive parent has seriously breached his duties. Although this article provides for a serious breach of duties by the adoptive parent towards the adopted child, the Tunisian courts have recourse to the right to revoke the adoption if it is in the best interests of the child to do so. In its decision in respect of Civil Appeal No. 29577 of 23 March 1993, the Tunisian Court of Cassation ruled that an adoption decision was not in any respect a decision in the judicial sense, even if it was handed down in the form of a decision as set out in article 13 of Act No. 27 of 4 March 1958 and could, therefore, be revoked, should it be necessary to do so. In the same decision, the Court reaffirmed that the legislature wished to protect the interests of the adopted child, which was the main reason why an adoption contract was required by law. Consequently, the contract was revocable in the event that there was evidence that it had been breached, like any other civil contract, or if there were serious grounds for doing so because the interests of the adopted child were not being served or were in jeopardy or in the event that the child was reluctant or categorically rejected adoption, being determined to keep his original parents upon reaching the age of discretion or majority. This right forms part of freedom of the person and the right of the child, as a person, to maintain his legitimate right to his real parents. This right is championed in human rights and child rights legislation and enshrined in the Adoption Act, which focuses on the interests of the adopted child.

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