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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Additional information submitted by Tunisia under article 29 (4) of the Convention*

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* The present document is being issued without formal editing.

I. Introduction

1. Tunisia signed the International Convention for the Protection of All Persons from Enforced Disappearance (hereafter referred to as "the Convention") on 6 February 2007, less than two months after its adoption by the General Assembly of the United Nations in New York on 20 December 2006.

2. The Convention was approved under Decree No. 2 of 2011, dated 19 February 2011, then ratified in the same year under Order No. 550 of 2011, dated 14 May 2011.

3. Acting under article 29 (1) of the Convention, Tunisia submitted its report on the measures taken to give effect to its obligations under the Convention on 25 September 2014. This was supplemented on 1 December 2015 in the form of written replies to the list of issues related to the report raised by the Committee on Enforced Disappearances.

4. The report was discussed by the Committee on Enforced Disappearances at its 158th and 159th meetings, held on 7 and 8 March 2016, in the presence of a delegation from Tunisia. The discussion resulted in concluding observations on the report, which were adopted by the Committee at its 170th session, held on 15 March 2016.

5. In accordance with paragraph 39 of the concluding observations, on 24 March 2017, Tunisia submitted written information on its implementation of the recommendations contained in paragraphs 15, 23 and 30.

6. In accordance with paragraph 40 of the concluding observations and with article 29 (4) of the Convention, Tunisia hereby submits the present report, which covers the period between 2014 and 2025, and contains specific and updated information on the implementation of the recommendations contained in the concluding observations.

7. The report was drafted by the permanent national reporting mechanism, which is the National Commission for the Coordination, Preparation and Submission of Reports and Follow-up to Recommendations on Human Rights.[1] The Commission adopted a participatory approach and took due account of the relevant guidelines issued by the Committee.

8. The drafting of the present report is part of the comprehensive reform process that Tunisia has been undergoing since 25 July 2021 when a calendar of political milestones was established. This included Presidential Order No. 117 of 2021 on exceptional measures, dated 22 September 2021, which invoked article 80 of the 2014 Constitution to suspend all the functions of the Assembly of the Representatives of the People and to lift the judicial immunity of its members. The Order also regulates the operation of government, the functions of which are to be determined by policies set by the President of the Republic.

9. In a second phase, a national online constitutional consultation was held, in the wake of which a new constitution was put to a referendum on 25 June 2022. The new Constitution was then sealed and promulgated under Presidential Order No. 691 of 2022, dated 17 August 2022, and entered into force on 25 July 2022.

10. Under the new Constitution, legislative elections were held in two rounds on 17 December 2022 and 29 January 2023, leading to the installation of the lower house of parliament (the Assembly of the Representatives of the People). Elections were then held for members of local councils on 24 December 2023 (first round) and on 4 February 2024 (second round). Elections were also organized for members of regional councils and of district councils, which led to the creation of the upper house of parliament (the National Assembly of Regions and Districts). The country also went through a multiparty presidential election on 6 October 2024.

11. Tunisia is eager to ensure that the present report should provide an opportunity for constructive and transparent dialogue that will contribute to the strengthening of the country's human rights system.

[1] Established under Government Order No. 1593 of 2015, dated 30 October 2015, as amended by Government Order No. 663 of 2016.

II. Specific and updated information on the implementation of the recommendations contained in the concluding observations

Recommendation contained in paragraph 9 of the concluding observations

(Individual and inter-State communications)

12. The recommendation concerns expediting the procedures for making the declarations set out in articles 31 and 32 of the Convention, which relate to the competence of the Committee on Enforced Disappearances to receive and consider individual and inter-State communications.

13. Mention should be made in this connection of the significant steps taken by Tunisia to bolster its compliance with international and regional human rights standards in various fields. The State has ratified a significant number of optional protocols under which individuals and groups are able to submit complaints. In February 2011, moreover, Tunisia extended an open invitation to the special procedures of the Human Rights Council for the submission of reports concerning potential human rights violations, which also includes protection against enforced disappearance.

14. Tunisia wishes to underscore its commitment to further strengthening legislative and procedural frameworks for the protection of human rights in their various dimensions.

Recommendation contained in paragraph 11 of the concluding observations

(National human rights institution)

15. The establishment of the Human Rights Commission was envisaged under Organic Act No. 51 of 2018 dated 29 October 2018.[2] The Commission is to operate on a participatory basis with a number of different stakeholders. Under the Act, the Commission is compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) in that it has broad powers, consisting chiefly in a mandate to oversee the respect, protection, promotion and development of human rights, to monitor all violations in that regard, conduct the necessary investigations and inquiries, and take appropriate legal measures.

16. The process for the creation of the Human Rights Commission began in 2019 but was not brought to a conclusion under the previous parliament. The High Committee for Human Rights and Fundamental Freedoms which was established in June 2008 and accredited with category B status, continues to perform its functions.

Recommendations contained in paragraphs 13, 15, 17, 19, 32 and 34 of the concluding observations

(Recommendations concerning legislative matters)

17. The recommendations contained in the paragraphs in question concern the adoption of a set of legislative measures relating to the crime of enforced disappearance, specifically with regard to the following points:

[2] https://legislation-securite.tn/latest-laws/loi-organique-n-2018-51-du-29-octobre-2018-relatif-a-linstance-des-droits-de-lhomme/.

- The absolute prohibition of enforced disappearance.
- Incorporating enforced disappearance as an autonomous offence and acting to ensure that it is treated as a crime against humanity.
- Ensuring that domestic law specifically provides for the criminal responsibility of direct superiors.
- Setting a term of limitations for criminal proceedings brought forward in respect of enforced disappearances not covered by Organic Act No. 53 of 2013, dated 24 December 2013, which concerns the establishment and regulation of transitional justice.
- Defining victims of enforced disappearance and upholding their right to reparation and to prompt, fair and adequate compensation, outside the scope of Organic Act No. 53 of 2013, dated 24 December 2013, which concerns the establishment and regulation of transitional justice.
- Making actions relating to the wrongful removal of children referred to in article 25 (1) of the Convention specific offences.

18. In this context it should be noted that, with the ratification on the part of the State, the Convention came to constitute part of the Tunisian legislative system and, in accordance with article 74 of the Constitution, it is considered to rank higher than domestic law. In this way, the crime of enforced disappearance stands as an autonomous offence in Tunisian legislation, in line with the Convention, and it is treated as such by the courts, which have invoked articles 1, 3 and 6 of the Convention in cases related to enforced disappearance.

19. It should also be noted, furthermore, that the crime of enforced disappearance is not currently included in the Criminal Code and that the State is taking this matter in hand in the revision of the Code, particularly as the 2022 Constitution includes provisions whereunder the offence can be addressed in national legislation. This is achieved by making pretrial custody and detention conditional on two basic principles. The first of these concerns the legality of pretrial custody and detention, which is permissible only in two strictly defined instances, namely flagrante delicto or a judicial warrant. The second principle relates to the rights of persons in pretrial custody or detention who, under the Constitution, must be immediately informed of their rights and of the charges against them and guaranteed access to a lawyer.

20. The absence of a national law establishing deterrent penalties for perpetrators does not mean that there is no legal framework for this offence in the Tunisian legal system. In fact, the legal system includes comprehensive provisions to combat the crime of enforced disappearance within an integrated framework that deters perpetrators and delivers justice for victims.

21. In this connection, article 250 of the Criminal Code states: “Anyone who unlawfully apprehends, arrests, imprisons or detains another person is liable to a term of imprisonment of 10 years and a fine of D 20,000.” Article 251 of the Code reads: “A term of imprisonment of 20 years and a fine of D 20,000 are applicable: (a) If the apprehension, arrest, imprisonment or detention is accompanied by the use of violence or threats; (b) If it was carried using weapons or by a group of persons; (c) 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; (d) If any of these acts is accompanied by threats to kill or harm the hostage, or to hold the hostage for the purpose of compelling a third party – be it 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. A term of imprisonment for life is applicable if the person is apprehended, arrested, imprisoned or detained for more than a 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 minor 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 harm 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.” These provisions constitute a fundamental safeguard against violations that could lead to enforced disappearance.

22. Legislators in Tunisia have criminalized the actions of concealing the instruments used to commit an offence or (in the event of death) of the body (arts. 158 and 170 of the Criminal Code). These provisions effectively block any attempts to conceal victims of enforced disappearance or to cover up the crime.

23. As concerns the criminal responsibility of the direct superiors of persons who commit the crime of enforced disappearance, as stated in article 6 (1) (b) of the Convention, it should be noted that domestic criminal legislation envisages deterrent penalties for any public official who orders, instigates, consents to or remains silent about an act of torture. The new article 101 bis of the Criminal Code states: “Torture shall mean any act producing physical or mental pain or extreme suffering inflicted intentionally upon persons in an effort to obtain from them or from a third party information or a confession concerning an act that they or a third party have committed or are suspected of having committed. Causing fear or distress to a person or third party to obtain the above is also to be considered torture. The infliction of pain, suffering, fear or distress for any reason, when motivated by racial discrimination, is also to fall within the definition of torture. Public officials and others of like status are to be considered to have committed torture if – in the course of or in connection with the performance of their duties – they order, incite, consent to or remain silent about an act of torture. Pain resulting from or inherent in legal penalties is not to be considered as torture.”

24. As concerns the recommendation to adopt a statute of limitations for the crime of enforced disappearance or to treat it as an offence that is not subject to any term of limitation, it should be noted that the highest-ranking legal provision of the Tunisian legislative system has decreed that the crime of torture that harms the physical integrity of another human being is not to be subject to prescription. In fact, article 25 of the 2022 Constitution reads: “The State is to protect human dignity and physical inviolability and to prohibit any kind of mental or physical torture. The crime of torture is not to be subject to a statute of limitations”. Also, the last paragraph of article 5 of the Code of Criminal Procedure stipulates: “Public proceedings in cases involving crimes of torture are not to be subject to a statute of limitations”.

25. For the most part, this legislation constitutes an integrated legal fabric that covers all stages of the crime of enforced disappearance – from arbitrary detention to torture to disappearance – and it reflects the comprehensive stance that Tunisian legislators have taken when dealing with this crime, which ranges from prevention (through the criminalization of preparatory acts) to deterrence (through severe penalties for crimes already perpetrated).

Recommendation contained in paragraph 21 of the concluding observations

(Military jurisdiction)

26. The military courts currently have jurisdiction over ordinary crimes when these are committed by military personnel, pursuant to article 5 (6) of the Code of Military Procedure and Penalties.

27. Thus, the following crimes, when committed by military personnel, fall under the jurisdiction of the military courts: concealing abducted persons or hindering the search for them (art. 240 of the Criminal Code); intentionally concealing persons who have fled the custody of a legal authority (art. 240 bis of the Code); and detaining persons without legal authorization (art. 250 of the Code).

28. Following the 2011 revision to the Code of Military Procedure and Penalties,[3] the military judiciary now operates under the same procedures as those used by the ordinary courts, in the following respects:

- Establishing a two-tier system for legal proceedings.
- Establishing the possibility of civil proceedings and of individual liability.
- Expanding the scope for appealing against rulings handed down by military investigating judges.
- Reviewing time limits for appeals against rulings and sentences handed down by the military courts to bring them into line with those applied by the ordinary courts under the Code of Criminal Procedure.
- Issuing a special statute to regulate the career path of military judges.
- Establishing the Military Judicial Council and, in particular, decreeing that military judges are independent from the executive branch and from military commanders.
- Establishing a mechanism whereby, in the case of ordinary crimes committed by off-duty personnel in which a civilian is also implicated, the latter is to be referred to the ordinary courts.
- Establishing that military courts of all levels are to be presided over by judges from the court system.

Recommendations contained in paragraphs 23 and 24 of the concluding observations

(Transitional justice)

29. The criminal chambers specialized in transitional justice[4] have issued 69 indictments involving 1,120 serious human rights violations (such as murder, torture and enforced disappearance). In all, charges have been levelled against 1,426 accused persons and 1,220 victims have been identified. In addition, 131 cases were closed without indictments as the Truth and Dignity Commission did not complete its investigations.

30. There are currently 208 published cases before the criminal chambers specialized in transitional justice. The cases are still pending at various stages of trial proceedings, and no court rulings have yet been handed down.

31. In accordance with article 12 of Organic Act No. 53 of 2013, dated 24 December 2013, which concerns the establishment and regulation of transitional justice, 13,586 applications have been processed concerning requests for urgent intervention by the Ministry for Families, Women, Children and Older Persons, the Ministry of Social Affairs and the Ministry of Health. During the period of operation of the Immediate Care and Urgent Intervention Unit, the Truth and Dignity Commission issued 537 decrees in favour of victims for a total value of around D 3.3 million.

32. In the same context, the Commission issued General Framework Decision No. 11 of 2018, dated 29 May 2018, which concerns criteria for reparation and restitution. Subsequently, in February 2019, the Commission drew up 10 lists of separate decisions regarding compensation for victims of violations.

33. In addition to this, five arbitration awards were endorsed and rendered enforceable by the president of the court of appeal in Tunis. The awards were intended to settle the status of

[3] Under Decree No. 69 of 2011 amending and supplementing the Code of Military Procedure and Penalties.

[4] Established under Order No. 2887 of 2014 dated 8 August 2014, as amended by Government Order No. 1382 of 2016 dated 19 December 2016.

victims of human rights violations via the arbitration and reconciliation mechanism, according to the Commission's report of 13 July 2018.

34. It should be noted that the Truth and Dignity Commission concluded its operations in December 2018. Under article 67 of Organic Act No. 53 of 2013, the Commission's comprehensive final report was published in the Official Gazette of the Republic of Tunisia, pursuant to Decree No. 14 of 2018 issued by the board of the Commission on 31 December 2018 (Official Gazette No. 59 of 24 June 2020). The Decree itself was posted on the website of the Official Printing Office of the Republic of Tunisia.

35. In general, it is security agencies, each within its own jurisdiction, that are responsible for investigating crimes involving enforced disappearance or missing persons. They take the necessary measures and legal action then refer cases to the competent courts. The Technical and Scientific Police Department, acting on instructions from the Office of the Public Prosecution, investigating judges or law enforcement officials, conducts identification tests in order to help families to find their loved ones.

36. The authorities also take action to verify any cross-border movements made by missing persons and conduct further investigations in order to obtain as much information as possible. They also coordinate with the relevant State agencies for them to inform the families of the missing persons and to provide them with all possible assistance, such as psychological support for parents and social support for persons in situations of vulnerability.

Recommendation contained in paragraph 26 of the concluding observations

(Protection of persons participating in an investigation)

37. In addition to a number of provisions already contained in the Criminal Code, which were set forth in the previous report, the legal system has been strengthened over recent years with the integration of other pieces of legislation, which guarantee protection for persons who participate in investigations, including witnesses, victims and informants:

Organic Act No. 26 of 2015 to combat terrorism and prevent money-laundering, dated 7 August 2015, as amended and supplemented by Organic Act No. 9 of 2019, dated 23 January 2019

38. Article 46 of the Act states: "Investigating judges may, in exceptional cases in which a witness requires protection, not confront the witness with the suspect or with other witnesses, if the witness in question so requests or if the evidence to be provided by that witness is not the sole or the most important evidence for establishing guilt."

39. In the same context, article 71 envisages special protective measures for the benefit of victims and witnesses of terrorist crimes and for anyone who reports such crimes. For its part, article 73 states that the courts can decide to hear the statements of victims and witnesses of terrorist crimes using audiovisual means and without divulging their identities. When proceedings are held in camera due to the existence of a real and present danger, information that might harm the private lives or reputations of victims cannot be made public.

40. Under article 74, victims and witnesses may disclose their identity and place of residence in a confidential register kept by the State Prosecution Office, while according to article 75, in cases of imminent danger and when necessary, the identity of victims and witnesses of crimes and of anyone who reports crimes may be included in a report to be kept in a file separate from the original case file.

41. Article 76 envisages the possibility of lodging an appeal with the indictment division against a decision not to reveal a party's identity. The division's ruling in that regard is not subject to recourse. Article 78 sets for the penalties for anyone who reveals the identity of persons under protection and places them at risk.

Organic Act No. 61 of 2016 to prohibit and combat trafficking in persons, dated 3 August 2016

42. The Act contains more comprehensive provisions regarding the protection of informants, witnesses and victims. According to the final paragraph of article 14, no civil or criminal action may be taken against a person who, acting in good faith, fulfilled the duty to give notification of an offence.

43. Under article 15, a person is to be considered to be obstructing the course of justice if they use force or threats, or offer or promise donations, gifts or benefits of any kind in order to induce a person to give false testimony or conceal the truth, or in order to prevent victims of human trafficking from coming forward or to induce them not to file or to retract a complaint.

44. The same article also extends protection to anyone who has suffered an attack on their person or property, or on the person or property of their family members, as retaliation for having testified or provided evidence in a criminal case related to human trafficking. Under the article, a person commits an offence if, having by virtue of his or her position access to information related to criminal proceedings in human trafficking cases, he or she deliberately discloses that information to persons suspected of involvement in those crimes.

Organic Act No. 58 of 2017, dated 11 August 2017, to combat violence against women

45. Article 14 of the Act stipulates that all persons, including those bound by professional secrecy, have a duty to notify the authorities if they witness or become aware of an act – or the consequences of an act – of violence within the meaning of the Act. No legal proceedings may be brought against a person who, acting in good faith, fulfilled the duty to give notification under the Act. Furthermore, no one may disclose the identity of a person who fulfils the duty of giving such notification, save with that person's consent or if required during the course of legal proceedings.

Organic Act No. 51 of 2018, dated 29 October 2018, regulating the Human Rights Commission

46. Article 20 stipulates that no legal action may be taken against any person who provides information to the Human Rights Commission regarding violations of human rights and freedoms or the perpetrators of such violations. According to article 20 (2), the Commission is to take the measures necessary, in coordination with the relevant authorities, to ensure the safety of informants and complainants and protect their professional careers.

47. Pursuant to article 21, when taking statements from victims and witnesses of human rights violations, including children, the Commission may conduct its hearings in camera in order to protect those witnesses and victims, especially the children, while also taking steps to ensure their physical integrity and safeguarding their professional careers.

Order No. 240 of 2023, dated 16 March 2023, approving a code of conduct for the Internal Security Forces of the Ministry of the Interior

48. Section III of chapter VI of the code of conduct concerns "dealing with persons with special needs, witnesses and victims". Article 40 of the code states that security personnel are required to treat witnesses "in a manner that respects their status and to provide them with the necessary protection, in accordance with the law". According to article 41, the duty of security personnel is to "attend to the welfare of victims, treat them well, respect their privacy, take due account of their mental state, facilitate their prompt access to the organs of justice and inform them of all the procedures available to them".

Recommendation contained in paragraph 28 of the concluding observations

(Non-refoulement)

49. As concerns law and legislation, mention should first be made of the provisions of article 32 of the Constitution of 25 July 2022, which prohibits the extradition of political refugees in the following terms: “The right to political asylum is guaranteed under the law, and it is prohibited to extradite persons who have been granted political asylum.”

50. For persons other than political refugees, the extradition of foreign offenders is regulated in chapter VIII of the Code of Criminal Procedure (arts. 308 to 335).

51. Article 308 stipulates that the conditions, procedures and effects of extradition are to be regulated by chapter VIII of the Code, unless international treaties stipulate otherwise. This exception clearly demonstrates the principle of the supremacy of international law, and Tunisia has, in fact, ratified a number of international treaties that address the issue of extradition, such as the Convention against Torture and the International Convention for the Protection of All Persons from Enforced Disappearance. In line with article 74 of the Constitution, these instruments have precedence over the Code of Criminal Procedure.

52. For its part, article 313 (3) of the Code of Criminal Procedure expressly stipulates that extradition is inadmissible “if there is reason to fear that the person concerned will be subjected to torture”.

53. In this regard, it should be noted that the authority competent to consider extradition requests is the indictment division of the court of appeal in Tunis, which is a collegiate body composed of a presiding judge and two associate judges. It follows fair trial procedures and issues its rulings only after having first examined all the legal and factual aspects of the situation of the person whose extradition is being sought. On this basis, if the indictment chamber finds genuine reasons to reject an extradition request, it will rule to do so. Such a refusal is binding on the executive branch, in accordance with article 323 of the Code of Criminal Procedure.

54. In the same context, article 324 of the Code stipulates: “If the opinion of the indictment chamber is to grant an extradition request, the Government may nonetheless accept or reject that opinion. If it decides to accept it, the Minister of Justice is to submit a decree to that effect for signature by the President of the Republic.”

55. At a practical level, it should be noted that the Ministry of the Interior is committed to treating migrants, including irregular migrants and refugees, in full respect of human rights principles and in line with applicable international standards. It intervenes promptly and effectively when such persons suffer any violation of their human rights, and it investigates all the complaints it receives with a view to holding perpetrators administratively and criminally accountable. Its actions in this regard are governed by the principles of impartiality, transparency and objectivity, and are conducted in full respect of the principle of the rule of law.

56. Ministerial bodies strive to guarantee the rights of migrants, refugees, and asylum-seekers by providing them with the care and sustenance they require, within the limits of available resources. The situation of such persons is addressed and assistance provided in coordination with diplomatic and consular representatives of their countries of origin and with relevant international organizations.

57. It is important to note that no groups or individuals are forcibly expelled or deported. Instead, diplomatic efforts are made to encourage irregular migrants present on national territory to return voluntarily to their countries of origin. This is a reflection of the State’s principled and unwavering rejection of any status as a country of transit or as a place of residence for irregular migrants. It also effectively blocks the way for trafficking in persons and other actions incompatible with humanitarian values.

58. In addition to the foregoing, one established practice that serves to uphold the principle of non-refoulement as enshrined in Article 16 (1) of the Convention is to include a

particular clause into the bilateral extradition agreements that Tunisia concludes with other countries. This is to refuse extradition if to accept it would entail a violation of international human rights principles. Such a clause was effectively introduced into an extradition agreement concluded recently with the People's Democratic Republic of Algeria and ratified under Order No. 85 of 2024, dated 23 January 2024. The agreement, in fact, stipulates that "extradition is to be refused ... if it might constitute a violation of international human rights principles, particularly those set forth in the International Covenant on Civil and Political Rights, ratified in New York on 16 December 1966".[5]

Recommendation contained in paragraph 30 of the concluding observations

(Fundamental legal safeguards)

(i) Safeguards for persons suspected of committing ordinary crimes

1. Safeguards for persons in custody

(a) Legal safeguards

59. Article 35 of the Constitution states: "No one may be arrested or detained unless apprehended in flagrante delicto or under a judicial warrant. Persons who have been detained are to be immediately informed of their rights and of the charges against them, and they may appoint a lawyer. The duration of custody and detention is to be defined by law."

60. In the same way, Act No. 5 of 2016, dated 6 February 2016, which amends and supplements the Code of Criminal Procedure,[6] includes a number of safeguards regarding the conduct of inquiries by preliminary investigators. The relevant provisions, set forth in article 13 (3), are as follows:

Safeguards relating to the issuance and duration of arrest warrants

61. Prior written authorization from a public prosecutor or investigating judge, rather than subsequent notification, is a necessity. The maximum period of detention in the case of a major or minor offence is 48 hours and in the case of a misdemeanour discovered in flagrante 24 hours. Within the expiry of that period, the person in detention and the case file must be brought before a public prosecutor who must immediately conduct the questioning.

Safeguards relating to the extension of the detention period

62. The criteria in this case are the same as those applicable to the issuance of a warrant. The extension must be granted by a public prosecutor in a written warrant that includes the factual and legal grounds underpinning the decision. One extension is admissible, for 24 hours in the case of a minor offence and for 48 hours in the case of a major offence. Detention in the case of a misdemeanour cannot be extended beyond the time necessary to take a statement from the suspect and must not exceed 24 hours.

63. The person in detention has the right to see the arrest warrant and to be informed of the reasons for and length of the detention, the possibility of an extension of the detention and the length of such extension, in accordance with the law.

Safeguards regarding the obligations of the police towards persons in detention

64. In addition to the obligation to inform detainees of their rights in a language they can understand – with the possibility of recourse to an interpreter if necessary – additional safeguards have also been envisaged. These consist in the obligation to inform detainees of their right to choose a lawyer to accompany them and of their right to immediately notify a

[5] Article 4 (1) (e).

[6] https://legislation-securite.tn/latest-laws/loi-n-2016-5-du-16-fevrier-2016-modifiant-et-completant-certaines-dispositions-du-code-de-procedure-penale/.

family member of their situation. The list of persons whom it is authorized to contact under the arrest warrant has been extended to include antecedents, descendants, siblings or other relatives, other persons designated by the detainee or, in the case of foreigners, the diplomatic or consular authorities. Furthermore, if a detainee requests to be examined by a doctor, a medical requisition to that effect must be drawn up immediately.

65. Law enforcement officials are required to keep a special detention register with numbered pages and signed by a member of the Office of the Public Prosecution. The register must include the identity of persons in detention, the nature of the crime, the date and time when the relative or person designated by the detainee was notified, any request for a medical examination and, in the case of a major offence, the request to choose a lawyer or to have one appointed. The Public Prosecutor or an assistant prosecutor is required to carry out regular checks on the register and on the conditions of detention and the situation of detainees.

66. Reports drawn up by law enforcement officials must stipulate the nature of the crime and state that the suspects were informed of the measures taken against them, the reason and duration of such measures, the possible extension of the measures and the duration of the extension. The record must also state that the suspects were read their legal rights and informed that they, a relative or person of their choice have the right to choose a lawyer, and that the suspects were told that they could request a medical examination. Any action that violates the procedures set forth in the relevant provisions is null and void.

Safeguards relating to the right to request a medical examination

67. At their request, detainees have the right to an immediate medical examination, and they can repeat the request if their detention period is extended. Under the Code of Criminal Procedure, such a request can also be made by a family member (antecedents, descendants, siblings, or spouses) or by the person whom the detainee has chosen to inform of his or her detention. A medical requisition for a doctor to perform the examination must be drawn up immediately.

Safeguards relating to the right to choose or request the appointment of a lawyer

68. The Code of Criminal Procedure grants detained persons the right to seek the assistance of a lawyer to accompany them while they are being questioned or confronted with other parties by the preliminary investigator. The Code also envisages the right for detainees to meet with their lawyer in private and to review the investigation procedures while they are in detention.

69. These safeguards are regulated by a body of measures. One of these is that, once a lawyer has been selected and the necessary information provided to summon that lawyer, law enforcement officials cannot question the detained person save in the lawyer's presence. Moreover, they must set a time for the interrogation that allows the lawyer sufficient time to exercise his or her rights, notably that of reviewing the investigation procedures one hour beforehand, in accordance with the law.

(b) Key practical measures for the effective implementation of legal safeguards

Operational notes issued by the Ministry of the Interior

70. On 10 December 2022, the Ministry of the Interior issued operational notes containing reference guides intended to be used to support the system of custody and detention:

- A guide regarding the implementation of Act No. 5 of 2016 which, in particular, clarifies the conditions and procedures regulating placement in detention, referral for medical examination, the presence of a lawyer and the record of the questioning. The purpose of the guide is to obviate procedural irregularities that could invalidate the proceedings.
- A guide to good detention practices for law enforcement officials, which contains a set of general recommendations on how to safeguard detainees' fundamental rights. The recommendations focus on compliance with the law, procedural correctness, the

protection of detainees' physical integrity and professional familiarity with the processes and procedures regulating detention, without irregularities or violations.

- A poster detailing safeguards has been circulated to make detainees more aware of their legal rights and guarantees. It also serves to remind the Ministry's own law enforcement officials of the fundamental legal rules governing detention and their obligation to comply with them.

71. Under an operational note dated 5 December 2023, specifications for the layout of the aforementioned poster were circulated to all relevant structures. The purpose of this was to have a standard approved format for the poster and to authorize its display in prominent locations in police stations, National Guard posts and all security units where detention takes place. The note also emphasized the need to respect the safeguards set forth on the poster and to conduct the supervision necessary to that end. This helps to ensure that detainees are duly informed of all their rights under the Code of Criminal Procedure.

72. The Ministry issued a further operational note on 8 December 2023. This one concerned a standardized "teaching kit" on "best detention practices" to be distributed to training centres for security personnel and the National Guard. The kit, which was developed in line with relevant scientific and educational standards in the field of basic and continuing training, aims to standardize and improve the quality of training curricula. Its purpose is to build the skills of persons working in the detention system and improve their ability to interact with detainees.

Code of conduct for the Internal Security Forces of the Ministry of the Interior

73. The code, which was issued pursuant to Order No. 240 of 2023, dated 16 March 2023,[7] sets forth the principles, values and best practices that security personnel must uphold when dealing with civilians in any situation. The code stipulates that security personnel must fully respect human rights and human dignity, as set forth in the Constitution and in relevant international treaties. It further states that they must protect all persons from torture and other cruel, inhuman or degrading treatment (art. 5). According to the code, moreover, detention is to be an exceptional measure to which law enforcement officials resort only when necessary for the purposes of the investigation and only with judicial authorization, in accordance with the law (art. 4).

74. The code includes a chapter entitled "Conduct during detention" which stipulates that security personnel acting in the capacity of law enforcement officials, if they detain a suspect, must comply with the conditions and procedures set out in law as well as with the relevant regulations and reference guides. They must immediately inform detainees of the procedures being taken against them and of the reasons for such procedures and ensure that they are able to benefit from all the safeguards envisaged in law (art. 29). The code further emphasizes that security personnel must perform their functions without resorting to any form of torture or ill-treatment. Moreover, they must ensure the physical and mental well-being of detainees, preserve their dignity and provide them with the necessary protection and healthcare (art. 30).

2. Safeguards for persons in prison

(a) Legal safeguards

75. The legal safeguards enjoyed by prison inmates are set forth in Prisons Act No. 52 of 2001, dated 14 May 2001. That Act was amended and supplemented by Act No. 58 of 2008, dated 4 August 2008, which concerns imprisoned women who are mothers, pregnant or breastfeeding.[8]

76. A review of the structural organization of the Public Authority for Prisons and Reform took place in 2020 with a view to creating a subunit for inmates' rights as part of the General Department for Inmates' Affairs (the Department for Criminal Matters and Human Rights).

[7] https://legislation-securite.tn/latest-laws/decret-n-2023-240-du-16-mars-2023-portant-approbation-du-code-de-conduite-des-forces-de-securite-interieure-relevant-du-ministere-de-linterieur/.

[8] https://legislation-securite.tn/latest-laws/loi-n-2001-52-du-14-mai-2001-relative-a-lorganisation-des-prisons/.

The new subunit, which includes an office for coordination and follow-up on inmates' rights and an office for cooperation with oversight bodies, is responsible for ensuring that inmates enjoy all their legally guaranteed rights, as follows:

Right of inmates to be informed, in a language they understand, of the reasons for their detention, the nature of the charges against them and their rights

77. This is guaranteed by guiding inmates during the initial reception process and informing them of all their rights. However, in cases where communication is difficult due to the fact that the inmates are foreigners, a member of staff is called upon to inform them verbally. It should be noted, moreover, that the Public Authority for Prisons and Reform undertakes to inform the Ministry of Justice when foreign nationals are admitted to prison, and the Ministry in turn informs the embassies and consulates of their countries of origin.

Right of all inmates to be registered

78. Each prison or correctional facility is to keep a sealed and numbered record of detention, which is to be signed by the president of the court of first instance that has jurisdiction over that facility. An individual criminal record is to be created for each inmate upon admittance which is to contain the inmate's court records and case file as well as the prison ID card showing a photograph, full name, sobriquet (if any) and other identifying details (mother's name, date of birth, address, occupation, educational level, civil status, number of children and criminal status (repeat or first-time offender)). The record should also include the identities of family members who can be contacted in case of an emergency. The judicial status of the inmate is likewise to be set down, both in the record of detention and in the individual criminal record.

Right to inform relatives of inmates' detention

79. The families of detainees are immediately notified by telegram when their loved one is admitted to prison. The prison administration is legally obliged to make such notification.

Right to a confidential medical examination

80. Prison inmates are referred for medical examination as a matter of course, and their state of health is recorded in their medical file, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

Right to access detainees' medical files upon request and make them available to the courts

81. All medical documents are confidential and may be accessed only by medical and paramedical staff who are directly involved in the patient's care, as set forth in the Code of Medical Ethics and the Criminal Code. Requests from judicial authorities for copies of inmates' medical files are to be fulfilled only under written court requisitions or authorizations. Doctors accompanying delegations from oversight bodies that visit prisons and correctional institutions – whether under the law or under special agreements – are also authorized to access inmates' medical files. This is to take place in the presence of the prison doctor and with the explicit written consent of the inmates concerned.

Right to appeal against detention

82. Prisoners and juvenile offenders are to be informed of any changes in their judicial status, and any appeals or requests for review or reconsideration they make are to be recorded and forwarded to the courts without delay.

(b) Key practical measures for the effective implementation of legal safeguards

Administrative orders

83. The administrative body in charge of prisons – i.e., the Public Authority for Prisons and Reform – issues "administrative orders" which serve to clarify and regulate the

safeguards available to prison inmates. These include Administrative Order No. 59, dated 23 August 2019, which sets forth the information that must be communicated to inmates concerning their rights and duties and the prison rules they must respect. For its part, Administrative Order No. 29, dated 10 April 2019, requires the head of the prison administration to orally inform newly arrived inmates of their judicial status and the length of their sentence. The inmates concerned are to post their fingerprint to acknowledge that they have been so informed. Administrative Order No. 11, dated 10 February 2010, includes a body of guidelines to be followed in the event of a medical emergency.

Manual for prisoners in Tunisia

84. In order to ensure that prisoners are duly informed of their rights, they are provided with a copy of the "Manual for prisoners in Tunisia" when they are first admitted to prison. This booklet is a comprehensive compendium that explains inmates' different rights and duties inside the prison system. It also includes a number of different legal texts that might otherwise be difficult to access.

85. Around 20,000 copies of the Manual have been distributed in 11 prisons, and the judges who compiled the Manual have been training prison staff in how to use it.

Criminal information system

86. In order to uphold the right of inmates to be registered, all information relating to them (their identity and their judicial status) is entered into the criminal information system, which is administered by the prisons and by the Public Authority for Prisons and Reform. The data contained in the system can be accessed or updated only by authorized staff. Biometric data is also used vis-à-vis all prisoner transfers.

3. Role of the judiciary in protecting fundamental legal safeguards in the areas of detention and preventive custody

87. The courts play an important role in protecting the safeguards enshrined in the law, particularly as concerns detention and preventive custody, and in responding to any potential violations.

88. The courts have issued a number of rulings reaffirming that such safeguards are linked to the "legitimate interests of accused persons". They have also overturned proceedings that were conducted in violation of the law and ordered the mandatory release of accused persons in cases where the maximum period of preventive custody has been exceeded. This reflects provisions contained in article 199 of the Code of Criminal Procedure which invalidate "all actions and rulings that are contrary to provisions relating to public order, fundamental procedural rules or the legitimate interests of accused persons". These rulings include the following:

Court of Cassation Ruling No. 93338, dated 2 November 2020 (detention)

89. The documents in the case file demonstrate a failure to respect procedures concerning the period of detention, as stipulated in article 13 bis of the Code of Criminal Procedure.[9] These are mandatory procedures that concern public order and the legitimate interests of accused persons, and the Court is acting at its own initiative because the violation in question affects both those matters, pursuant to article 199 of the Code of Criminal Procedure. Therefore, all proceedings are to be dropped and become invalid, including the seizure order.

Court of Cassation Ruling No. 84956, dated 18 March 2020 (preventive custody)

90. It is indisputable that article 85 of the Code of Criminal Procedure, as set out above, includes fundamental provisions regulating serious and exceptional measures that affect the freedom of persons. For that reason, a specific judicial authority has been designated to make rulings in that regard, with its jurisdiction being limited exclusively to major offences and to minor offences discovered in flagrante. The duration of custody (including extensions) is

[9] Abbreviated as C.C.P.

limited to 9 months in the case of a minor offence and to 14 months in the case of a major offence. If the maximum period is exceeded, release is mandatory and enforceable by law.

Court of Cassation Ruling No. 98618, dated 15 July 2020 (legitimate interests of accused persons: right to defence)

91. Acting under article 199 of the Code of Criminal Procedure, the primary task of the indictment division is to oversee the investigation and investigative procedures, removing any shortcomings or irregularities and invalidating any contraventions. The oversight process includes verifying compliance with article 85 of the Code, which concerns preventive detention. In this regard, the focus of the oversight is on the conditions for issuing a detention order, the justification for such an order, the length of detention and any extension thereto. It might also involve reclassifying the actions involved and giving them their correct legal definition, if the investigating judge has failed to do so correctly. One important function of an investigating judge – as expressly stated in article 69 of the Code of Criminal Procedure – is to verify the identity of suspects when they first appear before him, to inform them of the acts they are suspected of having committed and the applicable legal provisions and – having first informed them of their right to be assisted by a lawyer of their choice - to hear what suspects have to say in reply. This is because the right to defence during investigation and trial is in the legitimate interests of accused persons. In fact, it has been elevated to the status of a constitutional principle in article 27 of the new Constitution, which states: "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 prosecution and trial proceedings."

(ii) Safeguards for persons suspected of committing terrorist crimes

92. The legislative framework for combating terrorism has been updated to ensure effective prevention and response to terrorist crimes while also respecting rights and freedoms. In this connection, Organic Act No. 26 of 2015 to combat terrorism and prevent money-laundering was enacted on 7 August 2015, subsequently amended by Organic Act No. 9 of 2019, dated 23 January 2019.[10]

93. The Act criminalizes all actions stipulated in the relevant treaties and protocols, and it seeks to ensure compliance with the binding resolutions issued by the United Nations Security Council by criminalizing any travel or movements to and from areas of armed conflict and any glorification of or incitement to terrorism.

94. The Act, furthermore, envisages compliance with the Forty Recommendations of the Financial Action Task Force on Money Laundering,[11] including a review of the section on "special investigation methods" and their application to money laundering offences and associated predicate offences.

1. Key practical measures for the effective implementation of legal safeguards

95. Persons detained for terrorist crimes enjoy the same safeguards as other suspects, as stipulated in Organic Act No. 26 of 2015 to combat terrorism and prevent money-laundering, dated 7 August 2015, amended and supplemented by Organic Act No. 9 of 2019, dated 23 January 2019. Specifically, the Act reads: "The Criminal Code and the Code of Criminal Procedure are applicable to the offences envisaged in the provisions of the present Act, insofar as they do not conflict with those provisions. Children are to remain subject to the Child Protection Code."

96. Section VI ("Provisions relating to terrorist crimes") of the "Guide to the enforcement of Act No. 5 of 2016" states that persons suspected in terrorism cases enjoy the same safeguards as persons detained for other crimes, in particular the right to physical integrity, the right to defence and the right to a fair trial.

[10] https://legislation-securite.tn/latest-laws/loi-organique-n-2015-26-du-7-aout-2015-relative-a-la-lutte-contre-le-terrorisme-et-a-la-repression-du-blanchiment-dargent/.

[11] GAFI.

97. It should be noted, moreover, that the Organic Act to combat terrorism stipulates that investigations into terrorism offences must take account of their particular complexity, and this too constitutes an important safeguard for accused persons. Investigations are conducted by a special judicial body, the judicial counter-terrorism unit, which – to take account of the specific needs of children – has been reinforced with judges specializing in cases involving minors.

98. The length of detention in terrorism cases reflects the complexity of such crimes compared to crimes under ordinary law and the length of preliminary investigations (from examining the crime and gathering evidence to identifying the perpetrators). It also takes account of the need for prosecutors in different parts of the country to coordinate with one another and with the State Prosecution Office and the judicial counter-terrorism unit. For this reason, the Organic Act envisages specific detention periods, which may not exceed 5 days (art. 39). For its part, the (new) article 130 of the Act reads: "Detention periods may be extended only once and for the same period (5 days), by means of a written warrant that includes the factual and legal grounds underpinning the decision."

99. Although the Organic Act contains no explicit provision regarding the appointment of a lawyer in cases of terrorism, article 4 of the Act nonetheless refers to the Code of Criminal Procedure, article 13 (3) of which states: "When investigating cases of terrorism, prosecutors may prohibit lawyers from visiting or meeting suspects, from attending the questioning of suspects or their confrontation with other parties or from consulting the case file. Such a prohibition is not to last more than 48 hours from the date of detention."

100. The new article 57 (6) of Act No. 5 of 2016 stipulates: "When investigating cases of terrorism, and unless prosecutors have already made a decision in that regard, investigating judges may prohibit lawyers from visiting or meeting suspects, from attending the questioning of suspects or their confrontation with other parties or from consulting the case file. Such a prohibition is not to last more than 48 hours from the date of detention." This is considered to be an exceptional provision. It is not applied as a matter of course but is imposed at the discretion of the public prosecutor or the investigating judge when required by the exigencies of the investigation and in specific instances, i.e., terrorism. The prohibition also has a limited duration in time, after which lawyers may accompany their clients throughout all stages of the preliminary investigation. Thus, this exception has a narrow scope of application that is justifiable and surrounded by a body of legal safeguards.

101. Suspects in terrorism cases are registered when detained and upon admission to prison, as detailed in paragraphs 64, 77 and 85 of the present report. Mention may also be made in this regard of article 172 of the Criminal Code, which states: "Public officials or persons of similar status or notaries public who, in the course of their duties, commit an act of forgery that leads to an instance of public or private harm are liable to a term of life imprisonment and to a fine of D 1,000 in the following cases: … The creation of a forged document or the deliberate alteration of the truth, using any means and in any document, physical or virtual, whether an electronic/online document, microfilm or microfiche, for the purpose of upholding a right or proving a truth that has legal consequences." Article 178 of the Code reads: "All the cases set forth in the present section attract the additional penalties envisaged in article 5."

2. Role of the judiciary in upholding the principles of procedural legality and a fair trial, including the presumption of innocence

102. A number of rulings have been handed down in this regard by the Court of Cassation, including the following:

Court of Cassation Ruling No. 72835, dated 17 May 2018

103. The provisions of the Code of Criminal Procedure are mandatory rules that govern public order, and the purpose of the enactment of the Code was, on the one hand, to achieve the public good and, on the other, to protect public and individual freedoms. This serves to consolidate the principle of procedural legality, i.e., the exercise of authority and the application of safeguards as envisaged in the law and within the limits set by legislators, in order to guarantee a fair trial.

Court of Cassation Ruling No. 42717, dated 23 November 2017

104. The offence of joining a terrorist organization subsists in the presence of any concrete activity that expresses the perpetrator's intention to join the ranks of that organization. … The function of the court is to establish the truth in all its aspects, and it must investigate that truth in the course of the trial proceedings, without burdening accused persons with the requirement to demonstrate their innocence, because innocence is presumed and does not need to be demonstrated to the court. The investigation, then, should focus exclusively on verifying whether there is sufficient evidence to refute that legal presumption. If an investigation fails to produce conclusive evidence to support the charges, accused persons are not required to provide any evidence of innocence, because the presumption is that they are innocent.