United Nations CAT/C/TUN/3

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
18 August 2010
English
Original: Arabic

Committee against Torture

Consideration of reports submitted by States parties under article 19 of the Convention

Third periodic report of States parties due in 1997

Tunisia* **

[16 November 2009]

* The second periodic report submitted by the Government of Tunisia is contained in document CAT/C/20/Add.7; for its consideration by the Committee, see documents CAT/C/SR.358, 359 and 363.

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

Contents

I. Introduction

1. Tunis presents this third periodic report to the Committee against Torture in conformity with article 19 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. A preliminary report (CAT/C/Add.3) was submitted at the time and was followed by the second periodic report (CAT/C/20/Add.7) on 10 November 1997. The report was discussed by the Committee on 18 November 1998 (CAT/C/SR.358, 359 and 363).

2. This report has been prepared in accordance with chapter 19 of the Rules of Procedure of the Committee against Torture. In compliance with the general rules of the Committee, this report has been divided into three parts: introduction, measures and new legal texts on the implementation of articles 1 to 16 of the Convention, and additional information and responses to observations made by the Committee following its consideration of the second periodic report. The introduction will shed light on the most important measures taken to strengthen the protection, development and raising awareness of human rights over the period from 1999 to 2009.

3. For further information on this topic, reference is made to the preliminary report submitted by the Republic of Tunisia to the General Secretariat of the United Nations on 16 May 1996 as a core document submitted by a State party to International Human Rights Instruments[1] and the two previous reports submitted by Tunisia to the Committee.

4. The preparation of the report took considerable time out of the desire to reflect a comprehensive and global national view of the reforms, both in format and substance, introduced. It also aimed to reflect the practical measures undertaken to develop the legal, judicial and penal systems in order to provide general individual freedoms and human rights in their entirety and integrity. The report was prepared with a participatory approach involving a committee comprising representatives of the various ministries, non-governmental organizations and the Higher Commission for Human Rights and Fundamental Freedoms.

5. In line with the reform path Tunisia has adopted since 1987, in particular following the unreserved ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in 1988, the decision to revise the Code of Criminal Procedure in 1999 to bring the definition of the act of torture into conformity with the Convention, and the observations and recommendations by the Committee against Torture in 1998, several measures and initiatives have been undertaken to strengthen and enrich human rights mechanisms over the period that this report covers.

6. Tunisia's approach to dealing with the wider perspective of human rights issues has been based on three main principles: the first aims to lay the ground work for a solid legislative basis to develop and protect human rights, the second aspires to introduce mechanisms that can ensure the protection of these rights while the third is intended to disseminate the culture of human rights to ensure they are implemented and protected.

7. Against this background, Tunisia has witnessed during the years covered by this report gradual but fundamental changes as a result of the reforms to legislation and the administration of justice, all of which are intended to provide guarantees for the protection of human rights and to eliminate all forms of discrimination and injustice. Accordingly, penal legislation has been amended to ensure their conformity with United Nations'

[1] HRI/CORE/1/Add.46

standards, that the judiciary is to become the protector of human rights and that mechanisms are strengthened.

8. The first manifestation of the reform process came in 1999 when the definition of an act of torture in domestic law was brought into line with the text used in the Convention and the rights of persons deprived of their freedom were bolstered. Similar reforms continued over the past years, in particular following the fundamental constitutional amendment introduced by the 1 June 2002 Constitutional Law which came to strengthen the rule of law and institutions, and to explicitly provide for fundamental freedoms, human rights and the principles of solidarity and tolerance.

9. This constitutional amendment takes into account the universality, integrity and interdependence of human rights and fundamental freedoms. It also gives paramount importance to expanding the scope of protection to private life, the sanctity of correspondence and data protection, limiting the right to arrest and hold persons in detention to judicial authorities and ensuring the right of every person deprived of his freedom to a humane treatment and the respect for his dignity. Article 12 of the Tunisian Constitution affirms that "police custody shall be subject to a judicial review and a court order shall be required for pre-trial detention. No one may be placed arbitrarily in police custody or detention". Article 13 has been amended to provide explicitly that "Those deprived of freedom shall be treated humanely and their dignity shall be respected, in compliance with the conditions laid down by law".

10. As far as human rights protection mechanisms are concerned, human rights were brought under the umbrella of the Ministry of Justice in 2002 and a General Coordinator for human rights issues was appointed with the aim of adopting a legal and judicial approach. The measure is also intended to strengthen the human rights system when it comes to the dissemination of human rights culture in theory and in practice.

11. Laws enacted over the period covered by this report provide for the creation of the post of a sentence enforcement judge and strengthening his powers, the introduction of mediation into the Code of Criminal Procedure, paying compensation to persons deprived of their freedom but not charged and acquitted suspects, the introduction of community work in lieu of custodial punishment, paying criminal damages, strengthening the rights of the accused, improving the conditions of detainees and the reintegration of individuals. All these measures constitute an important addition to the criminal justice system and provide new guarantees to persons deprived of their freedom.

12. Tunisia's cooperation with the various United Nations' human rights bodies, as was illustrated by the positive responses to the recent recommendations issued by the Committee against Torture, has been translated into the adoption of a number of practical measures and legislation aimed at strengthening human rights.

13. From 1999 to 2009, several all-encompassing legislative additions have been introduced to Tunisian law with direct and indirect bearing on countering torture, inhuman, cruel or degrading punishment. They include:

- The adoption of the international definition of an act of torture as provided for by Law No. 89 of 2 August 1999 amending the Criminal Code.
- The abolition of forced labour in prisons to protect human dignity and to ensure harmony between the penal system and the principles of human rights as provided for by the 2 August 1999 law amending the Criminal Code.
- Strengthening the rights of persons in custody by reducing the period of detention, informing members of family, the possibility of access to medical services and the proper keeping of custodial records in conformity with Law No. 90 of 2 August 1999 amending the Code of Criminal Procedure.

- The introduction of a dual justice system in the criminal area as provided for by Law No. 43 of 17 April 2000 which amends the Code of Criminal Procedure.
- The establishment of the post of a sentence enforcement judge by Law No. 77 of 31 July 2000 and the strengthening of his powers by Law No. 92 of 29 October 2002.
- The transfer of penitentiary and correctional institutions from the supervision of the Ministry of the Interior to the Ministry of Justice and Human Rights by Law No. 51 of 3 May 2001.
- The enactment of Law No. 52 of 14 May 2001 to regulate the work of prison establishments.
- The recognition of the right to compensation for cases of miscarriages of justice as provided for by Law No. 94 of 94 of 29 October 2002 to protect the rights of any person who has been sentenced to a term of provisional imprisonment or a prison sentence and is subsequently proven innocent.
- The recognition of the right of a suspect to be informed by the judicial police of the right to have a lawyer present when questioned as provided for by Law No. 32 of 22 March 2007.
- The enactment of Law No. 21 of 4 March 2008 providing for the explanation of the legal grounds for the extension of police custody or pre-trial detention.
- The enactment of Law No. 58 of 4 August 2008 on imprisoned mothers, pregnant women and breast-feeding mothers.
- The enactment of Law No. 75 of 11 December 2008 regarding the protection of the accused, improving detention conditions and facilitating reintegration.
- The enactment of Law No. 68 of 12 August 2009 on the codification of criminal damages and the development of alternatives to imprisonment.

14. The host of measures taken by Tunisia to prevent violations of human rights, to deter any individual from perpetrating such violations and to ensure that there is no impunity, are the outcome of a political will aimed at upholding freedoms and liberties under the umbrella of the judiciary and the rule of law.

15. In the light of this comprehensive approach, a number of other important measures have been introduced. They are:

- The elevation of the legislation governing the work of the Higher Commission for Human Rights and Fundamental Freedoms to the level of law giving it a legal identity, financial independence and strengthening its mandate and authority to intervene in cases requiring support for and protection of human rights. The Higher Commission is also charged with the preparation of draft reports to be submitted by Tunisia to United Nations bodies, the follow-up of observations and recommendations by the United Nations organs, and the preparation and publication of a national annual report on the state of human rights. The Higher Commission enjoys a wide-ranging membership bringing together various expertise, specialisations and schools of thought. Law No. 37 of 16 June 2008 makes the High Commission an independent body in accordance with the Paris Principles.
- The introduction of a dual justice system in the juvenile criminal area as provided for by Law No. 53 of 22 May 2000 which amends the child protection code.
- The enactment of Law No. 52 of 3 June 2002 regarding legal assistance, which was further amended by Law No. 27 of 27 May 2007 to expand the scope of eligibility to

cover cases brought before the Court of Cassation. These measures further strengthen the rights of persons with limited income to bring civil suits before the courts.

- Identifying alternative approaches to penal retribution through Law No. 93 of 29 October 2002 which amends the Code of Criminal Procedure and provides that reconciliation should be attempted in the criminal sphere.
- Providing care for reformed offenders as stipulated in Law No. 93 of 3 October 2007 which supplements certain provisions of the Code of Criminal Procedure.

16. In addition to these substantive pieces of legislation passed by the Tunisian legislature to meet the highest international standards and comparative approaches to advanced penal systems, the State continues to pay special attention to the improvement of conditions and treatment of inmates in prisons, detention centres and preventive custody facilities through the following measures:

- Continued and unannounced visits by the Higher Commission for Human Rights and Fundamental Freedoms to prisons, detention centres and preventive custody facilities to oversee the conditions and treatment of inmates and detainees. Working teams involving the head of the Higher Commission and other juridical prominent figures have been established to conduct such visits and to report to the President of the State. A special investigation committee has also been created to look into reported cases of ill-treatment of inmates. Further details of the activities of the Higher Commission are referred to in another part of this report.
- Continued efforts by the Ministry of Justice and Human Rights and the Ministry of the Interior and Local Development to disseminate human rights culture among judges and law enforcement officers.
- The conclusion on 26 April 2005 of an agreement between the General Coordinator of the Higher Commission and the regional representative of the International Committee of the Red Cross (ICRC) of an agreement allowing the delegates of the Committee visits to prison establishments and juvenile penitentiaries that come under the supervision of the Ministry of Justice and Human Rights and the Ministry of the Interior and Local Development. Since the entry into force of the agreement, the Committee has conducted several visits to various prisons all over the country, met in private with prisoners selected by its representatives and has been given all the support needed to conduct such missions.
- Continued work of amnesty, parole and reinstatement committees to ensure the implementation of release and reintegration decisions.

II. Information concerning measures and new legal text regarding the implementation of articles 1 to 16 of the Convention

Article 1

17. As part of the cooperation efforts with the Committee against Torture, the Tunisian legislature reviewed the Criminal Code and added article 101bis by Law No. 89 of 2 August 1999 which stipulates the following: “Any public official or equivalent found guilty of subjecting any person to torture while in the line of duty or while conducting official business shall be sentenced to eight years in prison. Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person

for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind".

18. This legal definition of torture is based on the text used in article 1 of the Convention against Torture. In line with the same article of the Convention, article 101bis also provides for punishment meted out to any public official or any other person acting in an official capacity. Article 101bis makes reference to public officials or their equivalent.

19. According to article 82 of the Criminal Code "a public official is any person who is covered by the provisions of this law, granted official powers or employed by an agency of the state, local authority, state establishment or any other entity responsible for the management of a state facility. An equivalent of a public official is any person charged with performing a public duty, to act on behalf of a public entity or tasked by the judiciary to perform a judicial duty".

20. This development in legislation reflects the attention given in the penal system to the protection of persons deprived of their freedom in accordance with the provisions of international instruments. It also reflects the human approach adopted by the State to prohibit torture and other cruel, inhuman or degrading treatment or punishment.

21. Other judicial measures intended to deter public officials from resorting to torture while performing their duty and the position of Tunisian jurisprudence towards torture will be dealt with in comments on article 4.

Article 2

22. The State has made every effort to introduce legislative, administrative and judicial measures to prohibit the use of torture on all territories under its jurisdiction. No exceptional circumstances whatsoever, political or administrative, may be invoked as a justification of torture. Tunisian law does not recognize an order from a superior officer or a public authority as a justification for the use of torture when it comes to the violation of human rights. The rule of law applies to all individuals without distinction.

23. As part of the State's policy to protect the physical and mental safety of individuals against any violations that may be committed by law enforcement officers in the line of duty, measures have been strengthened to prohibit the use of torture and ill-treatment with special emphasis on the application of article 2, paragraphs (2) and (3).

Strengthening measures aimed at the prohibition of acts of torture and mistreatment

24. The most important measures taken in this area for the period covered in this report include:

Legislative measures

25. The State has focused its attention on providing greater physical and mental protection of individuals against all forms of ill-treatment and torture through bolstering legal provisions on four levels: constitutional law, criminal law, the Code of Criminal Procedure and prisons law.

Constitutional law

26. Constitutional Law No. 51 of 1 June 2002, which amended several provisions of the Tunisian Constitution, has elevated judicial guarantees to cases of police custody and

pretrial detention to constitutional levels through a specific mention to persons deprived of their freedom.

Elevation of judicial guarantees for police custody and pretrial detention to constitutional level

27. Article 12 (new) of the Constitution stipulates that "police custody shall be subject to a judicial review and a court order shall be required for pre-trial detention. No one may be placed arbitrarily in police custody or detention". Article 13 states that "Those deprived of their freedom shall be treated humanely and their dignity shall be respected, in compliance with the conditions laid down by law".

28. The Tunisian legislature did not introduce measures governing police custody and pre-trial detention until 1987. On 26 November of that year the Code of Criminal Procedure, for the first time, limited the period of police custody to four days with the possibility of a similar period of extension and a further two days in exceptional circumstances. On 2 August 1999 this period was reduced to three days with one extension for a similar duration.

29. In the case of pre-trial detention, the 26 November 1987 law prescribed a period of six months for minor offences with one extension for a similar period (a maximum of 12 months) and two six-month extensions for serious offences (a maximum of 18 months). Law No. 114 of 22 November 1993 reduced custody periods to nine months (six months with a three-month extension) for minor offences and 14 months (six months with two four-month extensions) for serious offences.

30. The inclusion by the legislature of references to police custody and pre-trial detention in the text of the Constitution goes to show the importance the State attaches to the protection of individual freedoms and to the role of the judiciary of enforcing that protection. As the Constitution stands supreme above all other laws, the constitutional reference is intended to emphasize that supremacy.

Inclusion of the principle of humane treatment for persons deprived of their freedom in the Constitution

31. Under the same constitutional amendment, a new paragraph has been added to Article 13 stating that "Those deprived of their freedom shall be treated humanely and their dignity shall be respected in conformity with the conditions laid down by law". This addition constitutes an important achievement for the human rights system in Tunisia giving it the added constitutional value with a significant legislative impact on the penal and criminal justice systems. The new guarantees fall in line with article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which are enshrined in Tunisia's penal policies.

Penal law

32. In addition to the legislative arsenal that existed before 1999 which included offences committed by public officials while performing their duty, the Tunisian legislature embarked on a policy to further develop the penal system by the end of that very same year.

Legislation in the penal law before 1999

33. Legislation in the penal law prior to 1999 contained important provisions that criminalizes the different forms of aggression against persons as was provided for under article 101 of the Criminal Code. It prohibits the use of violence against persons and states that any public official or his equivalent who commits in person, without justification, an act of violence in the line of duty shall be punished with five years in prison and a fine.

This goes to show that the legislator has adopted a wider scope of the notion of torture that goes beyond physical harm to include mental torture. The legislator, however, links the commission of the offence to justification.

34. Justification, in this context, refers to legal justification only. A public official's reaction to ward off an attack or in self-defence without the intention of inflicting torture or harm on others is perceived as justification. Article 102 of the Criminal Code prescribes one year in prison and a fine for any public official or his equivalent who, without legal justification or explicit need to, enters the home of another person without the owner's consent.

35. Article 103 of the Criminal Code prescribes five years in prison and a fine for any public official who violates the personal freedom of another person without legal justification, resorts to violence or the ill-treatment in person or through the instigation of another official to resort to violence or ill-treatment of an accused or a witness or an expert to obtain a statement. If no violence or ill-treatment is involved, punishment is reduced to six months.

36. Acts of torture include the violation of individual property by public officials. The Criminal Code stipulates that any public official, or his equivalent, found guilty of using violence or ill-treatment to acquire property or moveable assets against the will of its rightful owner, or of forcing the owner to sell to a third party, shall be sentenced to two years in prison. The judge will also order the restitution of the property or the equivalent value to the owner and will order compensation to all other parties who acted in good faith. Article 105 of the Criminal Code also prescribes two years of imprisonment and a fine for any public official found guilty of using violence or ill-treatment of persons forcing them to perform duties not ordered by the State.

37. This report will review such articles in the light of Tunisian jurisprudence when dealing with article 4 of the Convention.

Legislative provisions under criminal law after 1999 and their application

38. Legislative provisions under the criminal law after 1999 has been strengthened through the creation of several juridical institutions as part of a new approach aimed at introducing a humane dimension to the penal system and the introduction of alternative punishment to replace traditional penal measures. The application of the new alternatives has had a positive impact on individual freedoms and their protection. This has led the public authorities to adopt further changes along the same lines by 2009.

Definition and criminalization of torture

39. To demonstrate the serious approach by Tunisia to cooperating with the United Nations and to strengthening measures to combat torture and other cruel, inhuman or degrading treatment or punishment, the Tunisian legislator amended the Criminal Code by adding article 101bis by Law No. 89 of 2 August 1999 which defines torture in precisely the same terms as those used in article 1 of the Convention.

Abolition of compulsory work in prisons

40. To protect human dignity and to ensure the conformity of the penal system with the principles of human rights, Law No. 2 of 2 August 1999 removed the last paragraph of article 13 of the Criminal Code which made it compulsory for inmates to work while serving their sentence. This deletion falls in line with the new approach adopted by the Tunisian legislator to develop the penal system through greater transparency and in conformity with the 23 January 1995 law which abolished work and civil service while serving a sentence.

41. The new law of 14 May 2001, governing the regulation of prisons, recognizes the right of inmates to work against remuneration within the available means. Article 19 of the law enumerates the rights of inmates in paragraphs (7) and (8) as follows:

- "Work by inmates against remuneration within the available means in accordance with the working hours set forth by law. A joint decision by the ministers in charge of prison management and social affairs shall determine the conditions and method of work.
- Inmates shall enjoy all the guarantees and rights provided for under legislation governing work accidents and occupational safety".

42. To regulate the right of inmates to work, a joint decision was adopted by the Minister of Justice and Human Rights and the Minister of Social Affairs and Solidarity on 8 April 2008 to regulate employment conditions. It sets forth the payment of remuneration based on qualifications, the express desire by the inmate to work and the approval of the employment committee in the establishment where the inmate is held.

43. Further guarantees are provided to inmates against the dangers of work hazards under the 12 August 2009 law, according to which inmates performing community work in lieu of serving their sentence are covered by the same occupational safety and work accidents protection as provided for in Law No. 28 of 21 February 1994.

Community work in lieu of serving a prison sentence

44. In accordance with Law No. 89 of 2 August 1999, a new form of punishment has been introduced to Article 5 of the Criminal Code under the title "community work". This amendment required further additions to the Code such as the introduction of articles 15bis, 15ter, 17, 18 and 18bis. The legislator, through Law No. 90 of 2 August 1999, also introduced new provisions to the Code of Criminal Procedure regarding the implementation of this new punishment under articles 343, 344, 345, new 346bis and 348.

45. These new additions to the Criminal Code determine the scope of application. They single out minor offences, such as certain violent conduct, road accidents, robbery and other minor crimes which fall under this category, do not constitute a danger to society and do not reflect an inherent criminal tendency by the perpetrator. Other specific conditions (the presence of the accused at the hearing to express remorse, an undertaking not to reoffend and the acceptance of the arrangement before the pronouncement of the verdict) must be met to benefit from the new scheme. Special emphasis is laid by the legislator on informing the accused of his right to refuse to sign up to the arrangement and to record his acceptance to avoid the measure becoming a form of forced labour.

46. The substitution of a custodial sentence by community work requires certain arrangements to determine the type of institutions that can accommodate the offenders. As such, only public institutions and local communities are selected to benefit from this type of work. Community work is viewed as a recompense for society for damage caused by offending individuals in return for not having to serve a custodial sentence.

47. Mechanisms put in place to ensure the effectiveness of the arrangement include undergoing a medical examination to ensure the physical and mental aptitude of the individual. This is complemented by the occupational safety guarantees provided by the 2 August 1999 law.

48. The observance of community work requires procedural arrangements regarding implementation, the provision of guarantees for the continuation of work, absence from work or the termination of the arrangement. Procedural measures put into place to regulate community work use a table that takes into account the behaviour of the individual and the frequency of unauthorised absence from work. The law places particular emphasis on the

voluntary nature of the arrangement allowing for assurances covering the suspension of implementation for health, family or professional reasons. The table below lists cases where community work has been prescribed from 2 August 1999 to end of the 2008/2009 judicial year.

Court	*2001/02*	*2002/03*	*2003/04*	*2004/05*	*2005/06*	*2006/07*	*2007/08*	*2008/09*
Appeal	1	7	28	11	20	4	3	0
First instance	8	84	272	143	246	259	181	274
District	6	79	86	104	290	164	144	235
Total	**15**	**170**	**386**	**258**	**556**	**427**	**328**	**509**

49. A review of the use of this approach over the years shows that the results remain modest due to the procedural difficulties encountered. The presence of the accused during the hearing and the expression of remorse to benefit from a community work verdict is not always attainable. Pleading guilty to the charges is a prerequisite if the court were to prescribe community work in lieu of a custodial sentence.

50. Other difficulties include the use of the expression “before pronouncing judgement” in article 15.3.2 of the Criminal Code which often prevents the court from prescribing community work for an offender before returning a guilty verdict and sentencing him for a maximum of six months in order to be able to inform him of his right to accept community work instead of a custodial sentence.

51. To avoid these difficulties and to simplify the measures leading to the substitution of a custodial sentence with community work, the 1999 law was amended by Law No. 68 of 12 August 2009 regulating punitive damages and the development of alternatives to prison sentence. The amendment raises the maximum custodial sentence exchangeable for community work from six months to one year. It also expands the scope of offences covered by the arrangement and removes the condition of expression of remorse. The new provisions provide for informing the guilty person of the right to refuse community work and to record his position. As such, a single presence during several hearings will suffice for the accused to benefit from a switch to community work. The court may decide to pronounce a community work sentence for an absent party if it saw fit to do so.

52. In return for the removal of the condition of expression of remorse, other criteria have been introduced to satisfy the court that a custodial sentence may be commuted to community work. They include mitigating circumstances or the conviction that handing down a community work sentence as punishment can contribute to reintegration into society.

53. In conformity with the measures introduced to protect inmates from work hazards, the 12 August 2009 law provides for the application of Law No. 28 of 21 February 1994 on compensation for workplace injuries to convicts performing community work. This measure aims to overcome the reservations expressed by several public institutions to employing convicts sentenced to community work. Another measure to help persons sentenced to community work to reintegrate into society is the provision not to include community service in the criminal record of convicts.

Introduction of punitive damages

54. To further strengthen human rights mechanisms and to further develop the penal system, a reduction of the time spent in prison especially for first-time offenders has been introduced giving courts wider discretionary powers in determining alternative punishment depending on the gravity of the offence. Law No. 68 of 12 August 2009 on punitive

damages and alternatives to prison sentence empowers a court ruling on a petty offence or a simple offence which carries a short-term prison sentence to replace that sentence with the payment, within a specified time frame, of damages which are agreed upon by the victim and the offender, subject to the proviso that the original sentence will be reinstated if the damages are not paid on time.

55. Punitive damages may be imposed as an alternative to a prison term for minor and major offences in which direct personal injury is inflicted on the victim and which carry a prison sentence of up to 6 months. Such sentences are too short for offenders to benefit from the appropriate reform and rehabilitation programmes, which makes it less likely that they will achieve their objectives of reforming the offender and may lead to reoffending.

56. When ruling in a case, a court may also safeguard the rights of the victim by requiring the offender to pay punitive damages of a minimum of 20 Tunisian dinars and a maximum of 5,000 dinars, even if there is more than one victim.

57. In order to balance the interests of the victim, the accused and society, the above-mentioned provisions do not apply to offences for which a prison term of 6 months or more is prescribed or which pose an inherent danger to society and for which the payment of compensation cannot make amends. Likewise, punitive damages may not be offered as an alternative to prison terms of less than six months, for certain serious offences. Such offences include bribery and offences whose gravity depends on the status of the victim such as offences against minors. Some offences which are subject to specific legal procedures are also excluded such as causing death or injury as a result of a traffic accident and writing a cheque with insufficient funds in the relevant account to cover it.

58. The accused, or his representative, or an ascendant, descendant, relative or spouse has three months to submit dated documentary evidence to the public prosecutor at the court which ordered the payment of punitive damages to show that the sentence has been executed or that the punitive damages have been paid within three months from the date of pronouncement of judgement.

59. If the offender does not pay the punitive damages or make other restitution within three months of the date on which the deadline for appealing the verdict of the court of first instance expires, or within three months of the final verdict being handed down, the public prosecutor will initiate procedures to enforce the original prison sentence.

60. In order to ensure the reintegration of an accused into society, the draft provides for the non-inclusion of punitive damages sentences in the criminal record when requested by a third party.

Criminal procedures law

61. The most salient additions and amendments to the criminal procedures law in the area of added physical and mental protection for persons deprived of their freedom include:

Regulation of detention procedures

62. Article 84 of the Code of Criminal Procedure states explicitly that pre-trial detention is an exceptional measure and does not exceed nine months in cases of minor offences and 14 months in serious crime cases.

63. To emphasize the exceptional nature of preventive custody, the legislator amended article 85 of the Code of Criminal Procedure by Law No. 74 of 11 December 2008 which widens the scope of mandatory release, requires justification for a detention decision, makes it mandatory to release the suspect when the designated pre-trial detention period has elapsed and provides for new measures to improve the conditions of detainees.

Expansion of the scope of mandatory release

64. The above-mentioned law provides for the mandatory release of an accused sentenced to no more than six months instead of three months under the previous law. The new text also applies the rule of conditional release for persons serving a sentence of no more than two years as opposed to a sentence of one year under the old provision. The new article states: "an accused person shall be released on or without bail five days after being questioned, provided that he had a fixed abode in Tunisia and had not previously been sentenced to more than six months' imprisonment and has not been sentenced for an offence to more than two years, except when sentenced for crimes that fall under articles 68, 70 and 217 of the Criminal Code".

Justification of detention

65. It should be noted that in the same year, the legislator enacted Law No. 21 of 4 March 2008 for the same purpose and made it mandatory to justify any decision to detain a suspect and to include all legal and material evidence relied upon to issue the detention order. In this context, article 85 of the Code of Criminal Procedure stipulates that "an accused person may be remanded in custody for committing serious offences or flagrant major offences, or when serious allegations had been made or evidence had been provided which necessitate detention as a security measure to prevent further offences from being committed, to ensure that a penalty was enforced or to facilitate investigations".

66. The period of preventive custody in the cases referred to above may not exceed six months taking into account the legal and material grounds that justify the detention decision. If investigation necessitates further detention, an investigating judge may seek the opinion of a public prosecutor to prolong the period of custody having provided the justification for the request. Extension of custody may not exceed one period of three months for a minor offence and two periods of four months for major offences. Both cases of requests for extension of detention are subject to appeal.

Obligation to release the accused at the expiry of the period of pre-trial detention

67. To reinforce the guarantees afforded to detainees under pre-trial detention, the legislator makes it mandatory to release a suspect upon the expiry of the prescribed period. The penultimate paragraph of article 85 of the Code of Criminal Procedure states:

"A decision of the indictment division to send a case back to an investigating judge to complete certain procedures necessary for the preparation of a case shall not result in the accused being held beyond the maximum permitted term. Once this term has expired, the investigating judge or the indictment division shall grant the detained a temporary release without prejudice to future summons".

New legal measures to improve the conditions of detainees

68. The new measures aim to reduce the duration of preventive custody and to expedite the process of dealing with cases. One method is the separation of cases. Article 104bis states that "except in certain cases requiring that joinder measures are applied in conformity with article 131 of the Code of Criminal Procedure and article 55 of the Criminal Code, the investigating judge, when preparing to submit a case of an accused charged with minor and serious offences, may separate the charges and refer them to the public prosecutor to make his written submissions without prejudice to cases of serious crime attributed to others.

69. An investigating judge, when considering serious crime charges against more than one of the accused, may separate the charges brought against each one of them to expedite the process for those under pre-trial detention without having to suspend procedures for the others because of investigation requirements. Immediately after the submissions by the

public prosecutor, the investigating judge shall issue a separate ruling for all those facing charges in the case but shall remain in charge of investigating the charges against others until another separate ruling is made in their case". The first and second periodic reports by Tunisia touch upon other detention issues taken by the public authorities.

Alternatives to traditional penal measures

70. In addition to the mediation system introduced in 1995 and its positive outcomes, the Tunisian legislator added another method in 2002, namely penal mediation by conciliation.

Mediation

71. Article 113 of the Child Protection Code defines mediation as "a mechanism aimed at reconciling a deviant child and his legal representative, on the one hand, and the victim, his representatives or inheritors, on the other, with a view to suspending legal proceedings, trial or the execution of a ruling". Mediation is considered as an alternative to traditional penal measures which revolve around the basic principle of "any offence can lead to a public claim aimed at enforcing punitive measures and, subsequently, leading to a civil suit for damages" as provided for in article 1 of the Code of Criminal Procedure. Mediation, by contrast, "overrides" and even goes beyond this principle. It allows-if undertaken before the initiation of proceedings, to avoid a public claim or, following the beginning of proceedings, to halt a trial or the execution of a court ruling. Mediation, therefore, is similar to reconciliation in nature but different in procedure.

72. In accordance with the Child Protection Code, mediation may be resorted to at any phase of legal proceedings but only covers minor offences and not major crimes. The process begins with an application by the deviant child or his representative to the head of the Child Protection Agency who mediates a solution between the parties. The signed agreement is then forwarded to the competent judicial authorities for approval. Such measures do not apply to cases involving the breach of public order or morality. The same Code also provides for the review of reached agreements by a child court judge to ensure the best interests of the child. To encourage the use of mediation, article 117 of the Child Protection Code provides for the exemption of mediation applications from registration fees and stamp duties.

73. Mediation fulfils several objectives ranging from sparing a child appearances at police stations and other judicial institutions, allows the victim to claim damages in all or in part, allows children to be involved in finding solutions and saves courts time.

74. Figures issued by the Ministry of Women, Children and the Elderly Affairs, under the umbrella of which child protection workers operate, show that mediation cases have been on the rise which is a testimony to its effectiveness and gradual acceptance. The table below illustrates the cases of mediation agreements concluded.

Year	*Reconciliation agreements concluded*
1999	165
2000	260
2001	434
2002	449
2003	514
2004	618
2005	708
2006	481
2007	932
2008	912

Reconciliation through mediation in the penal system

75. One of the alternatives to traditional penal measures adopted by legislation is the reconciliation through mediation by Law No. 93 of 29 October 2002. The measure is intended to ensure the payment of damages to the victim by the offender and to raise the level of the sense of responsibility among offenders to facilitate their reintegration into society.

76. The Prosecutor General may offer, of his own accord or based on a request by either party or their legal representative, reconciliation in minor offences cases in accordance with article 335bis, before proceedings are set in motion by the public prosecution. Reconciliation through mediation must be implemented during the time scale agreed. Failure to do so or refusal to recognize the agreement by the plaintiff exonerates the accused from further responsibility. Public proceedings remain suspended without the statutes of limitation taking effect while reconciliation through mediation efforts is still ongoing. The table below shows the development in the use of reconciliation through mediation since the introduction of the law to the end of the first half of 2008/2009.

Case status	*2002/03*	*2003/04*	*2004/05*	*2005/06*	*2006/07*	*2007/08*	*2008/09*
Resolved through mediation	176	1 206	890	964	942	934	840
Failure of mediation	8	103	120	130	162	173	128
Total	**184**	**1 309**	**1 010**	**1 094**	**1 104**	**1 107**	**968**

77. As a result of the success of the reconciliation-through-mediation approach and the stability of outcomes achieved, a new law was enacted under the number 68 of 12 August 2009 which expanded the list of offences that fell exclusively under article 335bis of the Code of Criminal Procedure to cover articles 226bis and 296 of the Code.

78. The new law covers petty crimes and need-driven theft where no criminal tendencies are observed. Reconciliation in these cases, however, only applies to first-time offenders with the aim of avoiding serving a prison sentence and facilitating their reintegration into society.

Prisons law

79. Prisons have been regulated by Decision No. 1876 of 4 November 1988. However, by 2001 the sector came under a new legal framework regulated by Law No. 52 of 14 May

2001 governing the conditions of prisons, the rights of inmates and their future reintegration into society in line with applicable international standards.

80. The implementation of the provisions of the above law does not fall within the remit of the Prisons Administration only. Other impartial and independent persons such as the head of the Higher Committee for Human rights and Fundamental Freedoms, sentence enforcement judges, the head of the human rights unit at the Ministry of Justice and Human Rights, and judges from the judicial inspectorate at the Ministry. The Law encompasses the following main features:

Legality of imprisonment and proof of innocence

81. Article 4 of the law states that "no person shall be put in prison without an imprisonment order, court sentence order or compulsion order". The distinction between detention places, prisons for serving sentences and open prisons reflects the importance attached to the proof of innocence as provided for by Article 12 of the Constitution. Persons in pre-trial detention are not held in the same establishment where inmates are serving a sentence. When this separation is not possible, different wings are allocated for each category.

Inmates' rights and duties

82. This law stipulates explicitly that "a balance shall be struck between the rights of inmates, the security of the prison establishment and the safety of other inmates". Inmates' rights include, in particular:

(a) Informing inmates of the law governing prisons and of their rights and duties;

(b) Safeguarding the physical and mental safety of inmates against all forms of ill-treatment;

(c) Recognizing the rights of inmates to health care, moral respect and daily needs (hygiene, medical supervision, reading and education);

(d) Providing children under the age of 13 years unhindered access to one of their parents;

(e) Providing care for pregnant inmates and medical and social care to women inmates accompanied by children.

The law also provides for the duties of inmates and prescribes disciplinary measures and sanctions for contravening prison rules.

Preparing inmates for life after prison

83. Several measures have been put in place in this regard. They include:

(a) Helping inmates maintain family and social ties through visits and allowing inmates, after careful verification, visits outside the prison establishment.

(b) Enabling inmates to reintegrate into society through education opportunities, the acquisition of professional skills or the provision of a working opportunity when possible taking into account labour laws and regulations.

(c) The provision of incentives for good behaviour such as recommendation for early release, vocational training and help with the purchase of work tools.

84. Striking a balance between the rights of inmates and security in prisons also means the need to ensure that prison officers are aware of the letter of the law. The various provisions prohibit officers from the use of disproportionate force without sacrificing the

safety of inmates or the security of the prison. Some of the options and approaches will be dealt with in another part of this report.

Improving the work environment and conditions inside prisons

85. Improvements cover:

Social care

86. Social care is one of the most important components of the individual correctional system in Tunisia which aims to provide services to inmates while serving their sentence to enable them to remain in touch with their families and helping them overcome difficulties or, after release, by helping them to reintegrate into the social and economic life of the country.

87. Social assistance during imprisonment covers intervention on behalf of the inmate or his family with government authorities to obtain help maintain the link between the inmate and the family in the wake of imprisonment and its consequences, help with visits when the inmate is moved to another institution, and assistance to the most affected families. The table below lists assistance provided to the families of inmates between 1999 and 2008.

Year	*Assistance provided*
1999	7 025
2000	8 600
2001	7 513
2002	5 753
2003	7 158
2004	6 671
2005	10 266
2006	9 355
2007	12 173
2008	16 589

Post-release care and reintegration

88. Released inmates who show the desire to reintegrate into society can obtain support to help them avoid reoffending. Post-release assistance includes help with finding employment, setting up own small businesses, obtaining loans from the Tunisian Bank for Solidarity to finance small projects or sitting employment tests with the various employment agencies. Other services involve support during national and religious events. Some of the real-life examples of social assistance and reintegration help are:

- In 2005, attempts were made to reunite a released disabled inmate with his well-off brother. Efforts by the social services unit in prison failed to convince the brother to care for the released inmate. The prison authorities, as a result, contacted the local authorities in Qairawan province to find the released inmate a place in an old people's home.
- In 2007, social services at Jandouba prison spent two years trying to reunite an inmate with his mother after 25 years of separation. Contact was lost as a result of divorce. Transport was provided by the prison administration to help the disabled mother to visit her son.

- In 2007, the prisons authorities intervened in the case of a released inmate to help him acquire property through Cell 2121 for social housing and to help him obtain a permit to run a business in the Tunis central market.
- In 2009, the prisons authorities intervened to help an inmate serving a long sentence to obtain unemployment benefit and a housing allowance for his family.
- In 2009, the prisons services helped a released inmate to obtain credit to the tune of 11,000 and 4,000 dinars from the Tunisian Bank for Solidarity, the Prisoners' Reintegration Association and the Governor of Tunis to buy a truck and other business assets as a door-to-door salesman.
- In 2009, the prisons authorities assisted a released woman inmate to gain employment, to obtain better accommodation and to have access to free health care.

89. Since the establishment of the Tunisian Bank for Solidarity in 1999 and up to June 2008, more than 630,000 dinars have been awarded to 164 released inmates to set up small businesses.

Contact with the outside world

90. As part of the prisons services policy of privileges and services, inmates are allowed family contacts and exposure to the outside world. The competent authorities (the Prisons Administration and judicial authorities) have responded favourably to requests for unhindered visits or to allowing inmates attend funerals of their next-of-kin as shown in the table below.

Year	*Unhindered visits (authorised by prisons authority)*	*Unhindered visits (authorized by judicial authorities)*	*Total*	*Funerals*
2003	13 902	197	14 099	41
2004	19 081	258	19 339	60
2005	15 108	352	15 460	32
2006	22 128	449	22 577	44
2007	10 945	226	11 171	57
2008	22 630	369	22 999	122
2009*	11 816	47	11 863	119
Total	**115 610**	**1 898**	**117 508**	**475**

* To 31 July 2009.

Health care

91. The Prisons Administration attaches special importance to health care provided to inmates from the moment they come under the prisons responsibility. Upon arrival, inmates undergo a medical examination which is followed by periodic check-ups up to their release date. Medical care is provided by specialists in all areas. In addition to health services provided by the prisons establishments, inmates benefit from treatment and convalescence services provided by public hospitals. The table below lists the figures for the types of services provided to inmates from 1999 to 2008.

Data/Year	*In-patient*	*General clinics*	*Specialist clinics*	*Out-patient*	*Inmates in hospitals*	*Days in hospital*
1999	233 593	213 183	20 410	19 791	1 124	567
2000	244 007	215 656	15 726	18 772	101	8 306
2001	276 680	247 085	15 497	16 825	1 113	8 240
2002	249 988	232 307	26 681	16 518	1 121	10 014
2003	244 831	215 975	28 856	17 330	1 253	7 837
2004	242 675	212 754	29 921	15 333	1 209	6 567
2005	212 126	184 482	27 644	14 420	1 174	6 434
2006	247 658	217 911	13 054	17 087	1 240	8 003
2007	259 576	234 050	12 019	15 797	1 117	6 504
2008	289 721	257 881	12 116	18 479	1 189	7 036

92. Mental care assumes extra importance with a mental care unit in every prison establishment. The term mental health care was introduced by the 14 May 2001 law which states in article 1, paragraph (2), that “inmates shall have access to health care and mental care”. Mental care specialists assess the condition of inmates through the sessions they conduct with them and with deviant juveniles to help mitigate the effects of incarceration and being in a new environment not only to be punished, but also for correctional purposes.

93. Assessment studies are conducted on inmates who show symptoms of ill mental health or who are found to have behavioural problems. Some inmates undergo psychological tests to determine the effects of incarceration on their character. The outcomes of these studies are used to improve the quality of mental care provided in prisons. The Prison Administration is making every possible effort to increase the level of specialized mental care in its establishments. Activities in the mental sphere over the period from 1999 to 2009 are as follows:

Data/Year	*Reception*	*Sessions*	*Case studies*	*Share of group dynamics*	*Inmates benefiting from specialist care*
1999	1 170	3 070	75	67	217
2000	1 843	3 721	93	38	357
2001	4 769	7 225	84	32	821
2002	3 445	4 900	145	42	470
2003	3 309	3 184	150	44	565
2004	5 239	5 826	457	65	997
2005	6 442	14 902	348	71	980
2006	7 635	13 050	419	134	609
2007	7 729	17 586	669	238	953
2008	6 646	17 726	893	250	1 615

94. As a result of this mental care, the inmate suicide rate, which stands at 0.00033 per cent, is practically negligible. This is attributed mainly to the intensive discussion sessions organized by the mental unit staff in each prison. The sessions contribute to mitigating the effects of tension the inmate undergoes. Moreover, prisons management ensure that any inmate diagnosed with mental problems is examined by a specialist. The table below lists the cases of suicide in prisons from 2005 to 2009.

Year	*Number of cases*
2005	3
2006	1
2007	1
2008	1
2009	1

95. Prisons management take additional precautionary measures in dealing with certain categories of inmates to prevent them from contemplating suicide. Observation of conduct and behaviour, and intensive sessions of discussion are among these methods which are intended for inmates who are:

- Involved in cases of violence, murder, moral deviancy, arson or other acts as a result of unusual circumstances or family disputes.
- Returned to prison after appearing before an investigating judge, pronounced guilty as charged, finished the questioning process or sentenced to long periods in prison.
- Informed of the death of a close family relative.
- Notified of civil suit decisions leading to the loss of their property.

Correctional measures

Education and training

96. Prisons management coordinates efforts with the competent education authorities to help inmates sit their exams in prison. Every prison has its own library and reading room with books and periodicals for inmates to borrow. Inmates may order newspapers and magazines at their own expense and in accordance with regulations in place at the prison.

97. The Prisons Administration has afforded several inmates the opportunity to sit for national exams at all levels over the years and as follows:

Academic year 2003-2004

98. During this academic year:

- Five inmates sat for the baccalaureate test with one inmate from Qabis prison passing the follow-up exam.
- One inmate from Tunis prison passed the French baccalaureate test.
- One inmate from Tunis prison obtained the *licence* in behavioural science.
- Two inmates from Tunis prison passed their third grade secondary education exam.

Academic year 2004-2005

99. During this academic year:

- Six inmates sat for the baccalaureate test with two from Burj Al-Roumi and Monastair prisons making the grade.
- One inmate from Tunis prison passed the French baccalaureate test.
- One inmate from Safaqis prison obtained the *licence* in law.

- Two inmates from Tunis prison passed the first and second grades secondary education exams.

Academic year 2005-2006

100. During this academic year:

- Nine inmates sat for the baccalaureate test with one inmate from Burj Al-Amiri prison passing the exam.
- Twelve inmates continued their secondary education at different levels.

Academic year 2006-2007

101. During this academic year:

- Twelve inmates sat for the baccalaureate test with two of them from Jarboub and Qabis prisons passing the exam.
- Fourteen inmates continued their secondary education at different levels.

Academic year 2007-2008

102. During this academic year:

- Seven inmates sat for the baccalaureate test with one of them passing the test.
- Six inmates continued their secondary education at different levels.

Academic year 2007-2008

103. During this academic year:

- Seven inmates sat for the baccalaureate test with one inmate from Rajeem Matouq prison passing the follow-up exam.
- Ten inmates continued their secondary education at different levels.
- One inmate defending thesis in journalism and communication

104. Inmates may receive private tuition organized by the prison management or may choose to follow the national curricula while serving his sentence. This arrangement is aimed at the reduction of the levels of illiteracy and to help school leavers resume their education in order to help them acquire further skills. The following table summarizes the figures for the adult education programmes from 2000 to 2009.

Year	*Successful candidates*	*Men*	*Women*
2000	363	363	
2001	568	519	49
2002	701	616	85
2003	578	536	42
2004	654	606	48
2005	620	589	31
2006	704	651	53
2007	730	680	50
2008	752	701	51
2009	902	854	48

105. Inmates are given guidance on the selection of vocational skills, whether professional, artisanal or agricultural, taking into account their physical ability and intellectual aptitude. Training specialists from different organizations are used to run different aptitude tests and successful inmates are awarded qualification certificates at the end of their training period.

106. In conformity with article 39 of the prisons law, awarded certificates do not contain reference as to where and how the qualifications were obtained. The policy aims to enable released inmates to enter the labour market and to reintegrate into society. Qualified inmates who continue to serve their sentence and are used for prison work do so within the working hours set forth by law.

107. To safeguard the rights of inmates, article 19, paragraph (8), of the prisons law guarantees the enjoyment of privileges provided under Law No. 28 of 21 February 1994 on work health and safety. The following table provides figures on prisoner training.

Year	*Course*	*Beneficiaries*	*Date of course*
2007	One	68	January
	Two	47	April
2008	One	196	January
	Two	169	April
2009	One	220	January
	Two	161	April

108. As for deviant children, the six-monthly pedagogical method continues to be employed by all correctional centres. To that end, the following steps have also been taken:

- Helping children under the semi-open system to follow the curricula of the Ministry of Education using the same pedagogical aides such as text books, guides and teaching methods.
- Allowing children under the intensive education system to follow the private tuition scheme.
- Commemorating Knowledge Day and awarding achieving students for their performance as the case is with other educational institutions.

109. Children in correctional institutions are also allowed to take up vocational and agricultural training under the supervision of the Ministry of Education, the Ministry of Agriculture and the Ministry of Water Resources making them eligible to obtain recognized qualifications.

Employment

110. Based on the premise that human dignity is one of the most important pillars of human rights and that there is no dignity without work to help earn a living, the Prisons Administration's factories unit has placed particular emphasis on nurturing the desire among inmates to be involved in serious work to get them accustomed to earning a decent living.

- Providing employment opportunities to 450 inmates at the unit's workshops.
- The diversification of skill-oriented jobs such as sweet manufacturing (women's prison in Manouba, 1998) and shoe manufacturing (civil prison in Burj Al-Roumi, 2002).

- Spending 110,000 dinars(USD 95,000) on occupational safety equipment in 2004.
- Creating revenue-generating jobs to make inmates appreciate the work and to prepare them for reintegration after release. Revenue earned by inmates is divided into two portions, the first to be used while inmates are serving their sentence and the second to be paid to their families or to them personally upon release.
- Providing incentives to employed inmates through entering their products in trade fairs and exhibitions, nationwide.

Rehabilitation

111. The rehabilitation programme which started in 1992 aims to enable inmates acquire a skill or learn a profession that will help them earn a living. The scheme has been a source of satisfaction since its introduction. It guarantees the minimum level of dignity for those who committed offences, help reintegrate them into society and prevent them from reoffending.

112. The programme is the flagship of the correctional efforts by the prison establishment for the following reasons:

- Inmates who undergo rehabilitation programmes receive vocational, agricultural or artisanal training over a period of six months to be followed by a test supervised by experts from the Ministry of Employment and Vocational Training, and the Ministry of Agriculture, after which the inmate is given a certificate of qualification without reference to his status as having served time in prison.
- Over the period of rehabilitation, inmates receive lectures in the social, psychological and legal spheres complemented by education on managing finances and health care to prepare them for life after prison.

113. Upon completion of the rehabilitation course, inmates are given a rehabilitation pardon allowing them to return to free life armed with the knowledge that can help prevent them from reoffending. The table below lists the numbers of inmates who benefited from the rehabilitation pardon system between 2006 and September 2009.

Year	*Number of inmates*
2006	650
2007	688
2008	833
2009	1 009

Educational and sport activities

114. The educational and sport programmes are intended to help inmates and deviant children use the time available to them for recreational activities to help mitigate the effects of imprisonment. The activities also help inmates express themselves. Article 19 of the prisons law provides for the rights of prisoners to physical and mental exercise within available resources. Several clubs covering fine arts, handcrafts, music and theatre exist in several prison establishments.

115. All prisons have their own in-house radio stations that broadcast selected programmes to help inmates with daily life. All wards and cells have television sets, a number of which are linked to a video system. Other activities include:

- Cultural events to mark national and international celebrations.

- Theatre performances
- Fairs displaying inmates' work.
- National exhibitions for prisoners' artefacts and the permanent exhibition for prisons and correctional institutions.
- Sport activities within the perimeters of the prison.
- Sport competitions between prison wings or against other prison establishments.

Administrative measures

116. Several administrative measures aimed at improving the methods of work in and management of correctional institutions have been undertaken over the period covered in this report. The very same measures have also contributed to strengthening the human rights supervisory mechanisms. Prominent among these measures are:

Entrusting the Ministry of Justice with the management of correctional institutions

117. The decision to transfer the responsibility of supervising correctional institutions from the Ministry of the Interior to the Ministry of Justice represents a landmark in the functioning of the penal justice system in Tunisia. With such a shift of authority, prisons and correctional institutions are not only brought out of the security component of the State into a juridical sphere, but also underscores the support extended to the judiciary in overseeing the implementation of punitive sentences. Prior to that decision, the judiciary had practically no role in the process other than the prescription of sentences. The provisions of the Code of Criminal Procedure confines the role of the public prosecution to the implementation of the punitive measures prescribed, hand the guilty to the prison authorities, hand copies of returned verdicts to the accused, as well as other tasks with no direct connection to the implementation of punishment. As such, the role is limited to the narrow implementation of court rulings.

Bringing human rights under the umbrella of the Ministry of Justice and the creation of the post of the General Coordinator for Human Rights

118. As part of the policy to protect human rights and to uphold their principles in theory and in practice, a decision was adopted in 2002 to incorporate human rights activities into the work of the Ministry of Justice and a General Coordinator for Human Rights was appointed for that purpose. The decision is a reflection of the strategic approach by the State towards human rights and the linkage between those rights and the rule of law and the justice system. The approach is also a part of the strategic options for the comprehensive development outlined in the constitutional reform of 2002.

119. The mandate of the General Coordinator focuses on establishing direct links with other departments within the Ministry of Justice and Human Rights including the Prisons Administration in all areas related to human rights issues. He has the authority to cooperate and coordinate efforts with human rights entities in other ministries with special emphasis on the Ministry of the Interior and Local Development and the Ministry of Foregin Affairs. This official network provides an important and effective supervisory mechanism for protection and intervention in accordance with the law while concentrating on awareness and prevention.

Strengthening the role of administrative supervision

120. These measures involve citizens' liaison bureaus and the impartiality of disciplinary committees created under the prisons law.

The role of the citizens' liaison bureaus in receiving applications

121. The bureaus at the Ministry of Justice and Human Rights and at the Prisons' Administration refer applications by citizens for examination, replies and follow-up.

Impartiality of the disciplinary committee

122. Following a visit by the head of the human rights cell to one of the prisons, his attention was drawn to the case of an inmate who was the subject of disciplinary action. Investigation of the case unveiled failure to respect the principle of impartiality because the person selected to head the committee was the head of one of the prison units and was party to the dispute with the inmate. Moreover, the decision by the committee did not observe the rule of consulting the prison doctor 10 days before enforcement. A report on the case was submitted to the Minister of Justice and Human Rights who issued a circular on 13 November 2008 on the guarantees that should be afforded to inmates before being placed in solitary confinement as a disciplinary measure. The circular emphasizes the respect for legal procedures and measures including the composition of the disciplinary committee, the requirement to obtain the written advice of the prison doctor prior to making a decision and due consideration for the gravity of the violation committed when determining the length of the punishment.

Judicial measures

123. Among the most important legal guarantees introduced over the period covered by this report to protect the rights of claimants alleging being subjected to torture and ill-treatment is the dual criminal justice system and the creation of a sentence enforcement judge position with wide-ranging powers.

Dual criminal justice system

124. Under Law No. 43 of 17 April 2000, a dual criminal litigation system was put in place for the first time in Tunisia's legal history. Before the above date, rulings by criminal chambers attached to the courts of appeal could not be challenged for being a form of second degree litigation. Such decisions could only be taken to the Court of Cassation.

125. This change introduced is in conformity with the international standard that guarantees parties the right to seek redress at two levels in the criminal sphere. Article 14, paragraph (5), of the International Covenant on Civil and Political Rights stipulates that "everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law". By the same token, article 40, paragraph 2(b) (v), confirms the right of a child who is considered to have infringed the penal law to have the decision reviewed by a higher competent authority or judicial body.

126. Accordingly, the Tunisian legislator brought domestic law into line with international standards through the adoption of the abovementioned law and amending certain articles in the Code of Criminal Procedure and introducing similar provisions to child legislation by Law No. 53 of 22 May 2000.

127. A dual criminal justice system for the elderly is based on referral to a first instance court comprising five judges to consider criminal cases referred to it by the indictment division. Rulings by these courts can be appealed in a higher court where five senior judges sit. The right to bring the ruling made by an appeals court before the Court of Cassation remains valid.

Introduction of a sentence enforcement judge post with wide-ranging powers

128. As a measure of bolstering the principles of the penal system in Tunisia with regard to human rights including the human dimension of the punishment prescribed, the reintegration of the offender into society and showing respect for his dignity, the State created the post of a sentence enforcement judge with wide-ranging powers to enable him to fulfil his role.

129. The introduction of the post of a sentence enforcement judge came under Law No. 77 of 31 July 2000 which amended and supplemented certain articles of the Code of Criminal Procedure. Article 2 of the Law amends the title of Chapter one, Part V, of the Code as follows: "Implementation of penal sentences and the sentence enforcement judge". This role was further strengthened by the adoption of the 29 October 2002 law.

130. Several procedural measures were put in place to determine the terms of the office of the sentence enforcement judge. As such, the legislator authorized the judge to oversee all sentences depriving persons of their freedom serving their sentence in a prison establishment that falls under the mandate of the court. The terms of the office also grants the judge the power to recommend inmates for conditional parole. This is intended to diversify the entities responsible for upholding the rights of inmates and expand these rights. Article 342bis of the Code of Criminal Procedure states that "the sentence enforcement judge shall determine the conditions for serving a freedom depriving sentence in the prison establishment that comes under his jurisdiction". The legislator, moreover, authorizes the sentence enforcement judge to visit prisons, meet with inmates and to have access to their disciplinary records.

131. The same amendment bestows on the sentence enforcement judge the authority to grant conditional release for offences the sentence for which does not exceed eight months. Only the Minister of Justice enjoys a similar power. The role of the sentence enforcement judge has an important and positive impact on the conditions of inmates inside prisons. The table below provides a list of statistics of inmates who benefited from conditional release orders issued by sentence enforcement judges from 2002 to September 2009.

Year	*Number of detainees released*
2002	3
2003	616
2004	4 459
2005	5 593
2006	6 654
2007	7 717
2008	8 877
2009	7 656

132. The powers of the sentence enforcement judge have been expanded further through the important role given to him in enforcing community service sentencing. Article 336 of the Code of Criminal Procedure, as amended by the 29 October 2002 law, states that "the public prosecution and the parties to the case shall follow-up the implementation of the sentence prescribed in their respective area of concern".

133. The sentence enforcement judge, under whose authority the domicile of the convicted person is located or the court of first instance under the jurisdiction of which the sentence was issued if the convicted person has no abode on the Tunisian territories, shall continue to follow-up the implementation of the community service sentence handed down

with the assistance of the prisons authorities". The sentence enforcement judge is also responsible for the following procedures:

- Have the convicted person undergo a medical examination in accordance with article 18bis of the Criminal Code.
- Determine the establishment where the convicted person is to serve the sentence based on the list provided under article 17 of the Criminal Code while ensuring all occupational health and safety measures are adhered to.
- Inform the convicted person of the requirements under articles 336bis and 344 of the Code.
- Determine the type of work to be carried out by the convicted person, the working hours and the duration of the work, and obtain the approval of the Prosecutor General.

134. The sentence enforcement judge is also responsible for ensuring that the convicted person serves the community service sentence with the prison establishment reporting to him on continued basis. The judge, on his part, reports to the Prosecutor General. He may choose to amend the measures put in place in accordance with article 336 of the Code after consulting with the Prosecutor General.

No exceptional circumstances may be invoked as a justification of torture

135. In conformity with article 2 of the Convention which states that "No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture", all Tunisian legislation uphold this principle. The Republic of Tunisia, since independence in 1956, has only applied emergency measures in accordance with Article 46 of the Constitution on two occasions: in 1978 and 1984 when a state of emergency was declared.

An order from a superior officer or a public authority may not be invoked as a justification of torture

136. In conformity with article 2, Paragraph (3), of the Convention that "an order from a superior officer or a public authority may not be invoked as a justification of torture", article 41 of the Tunisian Criminal Code explicitly states that "following the orders of superiors shall not exonerate the perpetrator of an offence from punishment". This literally means that no person can contravene the law under the pretext of following orders from superiors for moral or hierarchical reasons to justify the commission of a crime.

Article 3

137. Tunisian law prohibits the expulsion, return "refoulement" or the extradition of an alien to another State where there are substantial grounds for believing that the person may be in danger of being subjected to torture, in particular when the other State is proven to have a record for collective or individual human rights violations. This principle applies to both Tunisian nationals and aliens:

Tunisian Nationals

138. The law in Tunisia prohibits the expulsion of Tunisian nationals or preventing them from returning to Tunisia, including those with dual nationalities. Article 11 of the Tunisian Constitution forbids the expulsion or prevention from return of a Tunisian national. Equally, article 312 of the Code of Criminal Procedure prohibits the extradition of a Tunisian citizen irrespective of the grounds for the request.

139. The penalty of exile has been abolished by Law No. 45 of 6 June 2005 which amends certain provisions of the Criminal Code. Following the abolition of the penalty of exile from the list of major sanctions in article 5 of the Criminal Code by the 2 July 1964 law, the reference to this form of punishment became irrelevant in other sections of the Code and the legislator stepped in to delete the reference to it in articles 68, 70 and 71 as an added measure of protection for the individual and his dignity.

Aliens

140. Law No. 7 of 8 March 1968 regulates the situation of aliens living on Tunisian territories, and the conditions for temporary and regular residence. It prohibits the expulsion of aliens except when their presence on Tunisian soil constitutes a threat to public security as stipulated in article 18 of the abovementioned law. Under these circumstances the Minister of the Interior is authorized to issue the expulsion order.

141. Aliens, however, can appeal the decision before the administrative judiciary. In the case of an alien fearing being exposed to torture in the State he is to be returned to, he may request the administrative tribunal to look into the request taking into account the conditions of applicability where there is evidence of systematic and flagrant collective or individual violations of human rights in that State.

142. Article 17 of the Tunisian Constitution provides for the prohibition of extradition of political asylum seekers, while part VIII, chapter IV, of the Code of Criminal Procedure deals with the extradition of alien offenders (articles 308 to 335).

143. Article 308 stipulates that extradition measures for offenders are governed by the provisions of part VIII of the Code unless these provisions are in conflict with international treaties. This goes to show that international law supersedes and replaces domestic legislation once international instruments are ratified in accordance with constitutional measures. Tunisia has concluded bilateral judicial cooperation agreements with several countries. Other international agreements relevant to the extradition of offenders such as the Convention against Torture have also been entered into. These agreements, through the application of Article 32 of the Tunisian Constitution, assume priority of implementation over the provisions of the Code of Criminal Procedure. This illustrates that legally ratified conventions supersede domestic legislation.

144. Accordingly, Tunisia undertakes not to extradite, expel or return any individual to any other State if justifiable reasons lead to the belief that the individual may face torture in that State. The judiciary and in particular the indictment division at the Court of Appeal in Tunis, which comprises a panel of a presiding judge and two other judges as councillors, is responsible for the examination of extradition requests. All decisions are taken in accordance with the requirements of a fair trial and the careful consideration of all the legal and actual circumstances surrounding the case. If the panel has reason to believe that the person to be extradited faces torture, it will turn down the request and its decision is binding on the executive. Article 323 of the Code of Criminal Procedure stipulates that “in cases to the contrary, the indictment division, the decisions of which are not subject to appeal, shall give a justifiable decision regarding the extradition request. If the indictment division deems the requisite conditions for the extradition are not met or if there is an explicit error in the procedure, it shall reject the request. This decision is final and extradition shall not take place”. It is worth noting here that over the period covered by this report no cases of extradition contrary to the provisions of the Convention have taken place.

Article 4

145. Tunisia ensures that all acts of torture and ill-treatment are punishable offences under criminal law. The same sanctions apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture and that these offences are punishable by appropriate penalties which take into account their grave nature.

Ensuring that all acts of torture and ill-treatment are punishable by law

146. Within the framework of strengthening the mechanisms and measures related to human rights, the State made it clear in the previous report to the Committee that the Criminal Code contains several provisions dealing with violations committed by public officials. They include:

147. Article 101 punishes the use of violence by any public official or his equivalent found guilty of the unjustifiable use of violence against other persons while in the line of duty with five years in prison and a fine. This article comes under the section "abuse of authority". This means that this provision only applies to public officials charged with protecting public security or enforcing laws and regulations, or the enforcement of government or judicial orders.

148. The same punishment is handed down to any public official found guilty of infringing on the individual freedom of others or uses violence or ill-treatment against an accused, witness or an expert to obtain a statement or confession (article 103, paragraph (1)). The threat to use violence or ill-treatment by a public official is punishable by six months in prison (article 103, paragraph (2)).

149. Any public official, or his equivalent, found guilty of using other persons for purposes other than the functions ordered by the State in the public interest is punishable with two years in prison. If found guilty of infringing on individual freedoms or the use of violence as an act of torture, a public official may be denied certain rights such as serving in a public office, entering into certain professions, or losing the right to vote, carrying arms or wearing official medals.

150. The Tunisian criminal law has adopted an expanded notion of the term public official. Article 82 of the Criminal Code, as amended by Law No. 33 of 23 May 1998, defines a public official as "a person who is granted official powers, is employed by an agency of the state, local authority, state establishment or any other entity responsible for the management of a state facility".

151. An equivalent of a public official is any person charged with performing a public duty, acting on behalf of a public entity or tasked by the judiciary to perform a judicial duty. For a person to be a public official and to resort to violence or ill-treatment constitutes a major offence leading to harsher punishment by the legislator. Judges take this element into account when handing down sentences.

152. As such, punishment for acts of violence or ill-treatment by public officials against other individuals in the conduct of their duties which may lead to depriving individuals of their freedom as a result of the actions of the public officials are very severe. The Criminal Code also prescribes punishment for the use of direct, indirect, physical or moral violence.

153. Harsher punishment is meted out to any public official found guilty of grave acts leading to serious injuries to the victim. The commission of an act of torture by a public official is punished under article 237 of the Criminal Code (as amended in 1989) whereby an act of abduction or hijacking leading to physical disability or illness is punishable with imprisonment for life. The same punishment applies to the detention or holding of a person in custody without a judicial order leading to disability or illness (article 251of the Criminal

Code). If the disability or illness results from the action to impound a vehicle, a vessel or an aircraft, the act is punishable with 10 to 20 years in prison (article 306bis).

154. If a public official is found guilty of a premeditated act of violence against a person, the Criminal Code makes a distinction between each individual case depending on the gravity of the damage caused on two grounds:

- If the act of violence does not lead to a significant or permanent damage to the health of the victim, the punishment prescribed is 15 days in prison and a fine (article 319).
- If the attack results in a lasting effect on the health of a victim, such as wounds caused by beating, the offence is punished with one year in prison and a fine (article 218 *et seq*). If premeditated violence is used, a prison term of three years is prescribed. An act of violence causing the loss of a limb or rendering it useless, facial deformation or disability of no more than 20 per cent is punishable by five years in prison. If the level of disability exceeds 20 per cent, the sentence is raised to six years.

155. A punishment of between six months and five years and a fine are prescribed for any person who threatens to use force against another individual regardless of the capacity of the perpetrator and the method used. Punishment is doubled if the threat was used as an order or as a condition even when issued orally (article 222 of the Criminal Code as amended in 1977). The use of a weapon to threaten another individual, even without the intent to use it while on official duty, is punishable with one year in prison and a fine.

Prohibition of all acts of torture and ill-treatment in jurisprudence

156. Tunisian jurisprudence has been referred to in dealing with several cases of ill-treatment and abuse of power during the period covered by this report. The judiciary has had no hesitation in pursuing the perpetrators and bringing them to justice. Examples of such cases are:

157. Decision No. 1120 of 25 January 2002 by the Tunis Court of Appeal: three prison officers were sentenced, under articles 218 and 219 of the Criminal Code, to four years in prison for acts of violence against an inmate, causing permanent disability of more than 20 per cent.

158. In this case, M.P.M. was taken into custody at Tunis prison on 24 March 2000 as a result of an argument with prison officers over his refusal of prison food. The officers tied his hands behind his back, chained his feet together and he was put in solitary confinement for a period of four days. During this period he was subjected to beating to the extent he was no longer able to stand on his feet on his own. As a result, he was transferred to the nursing unit at the prison on 2 May 2000 and then to Rabita Hospital before being transferred again to Charles Nicolas Hospital where he was operated on and had both legs amputated on 11 May.

159. Early information on the case led the Prosecutor General to launch an inquiry against all those suspected of the abuse of their powers and complicity under article 32 and 101 of the Criminal Code. Other charges were sought under articles 32, 114, 218 and 219 of the Criminal Code for the use of excessive force by a public official leading to permanent disability. The judgement of the court ordered the State to pay the victim 307,000 dinars (Euro 220,000) in damages.

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

161. In this case, T.P. was riding his motorcycle on 8 August 2000 when he was ordered to stop by a traffic police officer. He refused and fled the area and was chased by the officer who shunted his motorcycle from behind causing him to fall to the ground. The victim was attacked by the officer and sustained physical injuries which required his transfer to hospital where he died.

162. Decision No. 1546 of 3 April 2002 by the Tunis Court of Appeal: a National Guard officer was sentenced to 16 months in prison for acts of violence resulting in permanent disability of more than 20 per cent under articles 218 and 219 of the Criminal Code. The State was ordered to pay the victim 18,000 dinars in compensation.

163. In this case, M.P. was riding his motorcycle on 21 July 2000 without wearing a helmet. When he was spotted by a police car, he decided to escape using different routs until he lost control of the motorcycle and fell to the ground. One of the officers in the vehicle hit him with a stick and caught him between the forehead and the right eye causing a deep gash which required an operation at the El-Hadi El-Rayess Eye Hospital. The victim lost sight in the right eye fully and his disability was estimated at 30 per cent.

164. Decision No. 2645 of 12 March 2005 by the Tunis Court of Appeal: three police officers were sentenced to prison terms ranging from 12 to 18 months for acts of violence by public officials in the performance of their duties under article 101 of the Criminal Code.

165. In this case, P.E., with a criminal record, was pursued by several police officers on 9 November 2004. He sought refuge in one of the rooms of his house. The officers entered the house and beat the victim with sticks before bringing him out of the house and beat him again severely causing his death. The officers involved were brought to justice and received the punishment mentioned above.

166. Decision No. 10372 of 2 February 2007 by the Tunis Court of Appeal: a police station chief was sentenced to a fine of 500 dinars for acts of violence by a public official in the performance of his duties under article 101 of the Criminal Code.

167. The acts in this case occurred on 23 March 2006, when B.L., who had been arrested together with several young people, suffered a broken hand after being violently assaulted by the chief of the El-Ouardia police station.

168. Tunis Court of Appeal judgement in Decision No. 12494 of 3 March 2009 convicted four police officers of ill-treatment leading to the death of a person in custody. Two of the officers were each sentenced to prison terms of 20 years for assault and battery causing unintentional death. The other two officers were sentenced to terms of 15 and 10 years' imprisonment respectively for complicity.

169. The acts in this case occurred when an altercation broke out between M.S. and police officers in the town of Soliman after the former refused to pay for drinks he had consumed at the Medi Sea Hotel. The officers sprayed him with gas and assaulted him, before tying him up and placing him in a car. These actions led to the victim's death.

170. Monastir Court of Appeal judgement in Decision No. 1579 of 11 June 2009 convicted two police officers of committing acts of violence while on duty. The officers in question were each sentenced to two years in prison.

171. In this case, F.B. was attacked at the nightclub of the Cap Serail Hotel by a police officer when he tried to confront the officer who wanted to take the victim's female companion outside the premises. The officer handcuffed the victim and his companion and beat them with a baton all over their bodies before forcing them into a police car.

172. The following table shows the number of police officers who were prosecuted for ill-treatment and to whom final judgements were handed down during the period covered by this report.

Year	*Number of officers*
1999	4
2000	5
2001	2
2002	3
2003	9
2004	27
2005	33
2006	29
2007	43
2008	32
2009 (until 25 September)	41
Total	**228**

173. The term "ill-treatment" does not refer only to offences referred to under article 2 of the Convention. They come under articles 101 to 105 on the abuse of authority. They include the following:

- Abuse of authority, accompanied by violence
- Use of violence by public officials during the performance of their duties
- Use of violence against suspects to extract confessions
- Arbitrary arrest and detention
- Miscellaneous forms of abuse of authority and ill-treatment

174. It should be noted that prosecutions and convictions in such cases do not exclude any other disciplinary action which the authorities may deem necessary to take against their officers in accordance with the principle that a criminal and a disciplinary offence attract dual penalties. The perpetrators of such offences generally face disciplinary proceedings of dismissal from service. The table below shows the number of officers removed from their posts in accordance with article 53 of the statute of the Internal Security Forces, following prosecution for ill-treatment:

Year	*Number of officers*
1999	1
2000	1
2001	-
2002	7
2003	2
2004	2
2005	2
2006	-
2007	-

Year	*Number of officers*
2008	2
2009 (until 25 September)	-
Total	**228**

Article 5

175. The State has put in place sufficient judicial measures to exercise its jurisdiction over crimes of torture and ill-treatment which fall under the remit and jurisdiction of the courts, regardless of the time and place of commission. In accordance with the provisions of the Code of Criminal Procedure, Tunisian courts have the jurisdiction over crimes of torture and ill-treatment committed on Tunisian soil, and on board vessels and aircraft registered in Tunisia. These courts have the same jurisdiction when the perpetrator or the victim of the acts is a Tunisian national.

Jurisdiction of Tunisian courts in considering crimes of torture committed on Tunisian territories

176. When a case is referred to the courts, jurisdiction and territoriality apply to offences involving torture and violent attacks. Article 129 of the Code of Criminal Procedure authorizes the court in the territory where the act was committed, where the domicile of the suspect is situated, where the suspect has been known to reside or where the suspect was arrested, to exercise its jurisdiction over the case. This provision applies when there is a conflict of jurisdiction between Tunisian courts or a Tunisian court and a foreign court. Reference has been made earlier to the torture cases considered by the Tunisian courts.

Jurisdiction of Tunisian courts over crimes of torture committed on board vessels or aircraft registered in Tunisia

177. In the case of the jurisdiction Tunisian courts over crimes of torture committed on board vessels and aircraft, Law No. 85 of 15 August 2005 amends article 129 of the Code of Criminal Procedure to stipulate that "the court where the act was committed, where the domicile of the suspect is situated, where the suspect has been known to reside or where the suspect was arrested shall exercise its jurisdiction over the case.

178. The first court to consider the case shall issue the ruling. If the offence is committed on board a vessel or an aircraft registered in Tunisia or leased minus the crew to an operator based on Tunisian soil, the case shall under the jurisdiction of the court at the port of docking or landing.

179. The same court shall have jurisdiction over the case even if one of the above-mentioned conditions is not met if the suspects are on board the vessel or the aircraft. No such cases have been reported over the period covered by this report.

Jurisdiction of Tunisian courts over crimes of torture when the perpetrator is a Tunisian national

180. The jurisdiction of Tunisian courts extends to crimes committed by Tunisian nationals outside Tunisian territories as provided for in article 305 of the Code of Criminal Procedure where it states that " a Tunisian citizen may be prosecuted and placed on trial by Tunisian courts for a minor or major offence, committed outside the territory of the Republic, that is punishable under Tunisian law, unless that crime is not punishable in the country in which it was committed, or the accused can show that he was definitively

sentenced abroad and that the sentence has been served or has lapsed or that he has benefited from an amnesty. The provisions of the above paragraph apply to any person who acquires the Tunisian nationality after the commission of the offence. No cases of this nature have been reported over the period covered by this report.

Jurisdiction of Tunisian courts over crimes of torture when the victim is a Tunisian national

181. The jurisdiction of Tunisian courts extends also to trying cases of offences committed against Tunisian nationals under articles 307 and 307bis of the Criminal Code. Article 307 stipulates that "a foreigner who commits, as a principal or as an accessory, a minor or a major offence outside Tunisian territories which harms the security of the State, or who engages in counterfeiting the national currency, is liable to prosecution under Tunisian law if arrested on Tunisian territories or was extradited".

182. Article 307 bis of the Code states that "any person who commits, as a principal or as an accessory, a minor or a major offence outside Tunisian territories against a Tunisian national may be prosecuted. A person may only be prosecuted by the public prosecution service upon the request of the victim or his representatives. The accused may not be prosecuted if he can show that he was definitively sentenced abroad and that the sentence has been served or has lapsed or that he has benefited from an amnesty".

183. The case of a Tunisian man who committed suicide in a prison cell in the city of Beaune, France, using his trousers' belt, investigated by the Tunis Court of Instance under case file No. 89641/2, the case of the Tunisian man found on 18 June 2008 hanging from a lamp post with marks of violence on his body in the rural village outside the city of Foggia, Italy, investigated by the Tunis Court of Instance under case file No. 08613/5, or the case Tunisian national found stabbed by a knife inside an apartment in the city of Wiesbaden, Germany, investigated under file No. 74231/13 on 26 March 2009, serve as examples of this jurisdiction. All three cases are still under investigation.

Article 6

184. Tunisian law, when legal conditions are met, allow for the detention or the holding in custody of an individual on Tunisian territory for an offence punishable by an abolished piece of criminal legislation. The detention or the holding in custody must comply with the legal procedures in place and the detention must not be arbitrary or as an act of reprisal. The detention period must comply with the time limits set by law for investigation, trial and extradition. The State is responsible for conducting the initial investigation of the events of the case.

185. Any foreign national detained or in custody is given assistance to contact the nearest consular service of the State of which he is a national or the consular service of his country of residence, if he is stateless, immediately. Upon the arrest and detention of any such individual, the Tunisian authorities inform the authorities of the detainee's country of the arrest immediately, send notification of the beginning of the initial investigation and indicate if the individual is to be tried.

186. It must be noted that with regard to the provisions of this article, application is based on Article 32 of the Tunisian Constitution which stipulates that "treaties come into force only following their ratification and provided they are applied by the other party. Treaties ratified by the President of the Republic and approved by the Chamber of Deputies have a higher authority than that of laws".

187. In conformity with this article of the Convention, all guarantees provided in the Code of Criminal Procedure are afforded to the accused during questioning. The Code

mandates the Prosecutor General to question the person immediately, to establish his identity and to inform him of the document used to authorize the arrest and to take a statement (article 309 of the Code of Criminal Procedure). Then, the foreign national is brought before the indictment division at the Tunis Court of Appeals "within 15 days from the date of being informed of the arrest warrant. The person shall be questioned and his statement taken. The public prosecution and the accused shall be heard and the latter may use a counsel and an interpreter. The accused may be released on bail at every stage of the investigation in accordance with the provisions of the law" (article 321 of the Code of Criminal Procedure).

188. According to the procedures, a foreign national may be summoned for questioning. Failure to appear before an investigating judge may lead to an arrest warrant detailing the charges against the person to be issued authorizing law enforcement officers to execute the warrant. The investigating judge, after questioning the suspect, may issue a detention order after consulting with the Prosecutor General if the act committed is punishable with imprisonment or a harsher sentence. During the initial questioning, the suspect may choose not to answer any questions without the presence of a lawyer of his own choice and an interpreter. If the suspect is remanded after the initial questioning, he has the right to ask to be visited by his lawyer at any time. These general procedures show that a detained foreign national has access to a representative of his own State in spite of the absence of an explicit provision to that effect. However, in practice and as a customary measure this access is possible.

189. Since the Convention is the subject of this report, it is considered an integral part of the Tunisian legal system from the date of ratification in 1988 and as provided for in Article 32 of the Constitution, mentioned above. Article 6, Paragraphs (3) and (4) of the Convention complement the provisions of Tunisian law. A detained foreign national may not only contact his lawyer, who is normally appointed by the country's diplomatic mission, at all times (article 70 of the Code of Criminal Procedure), but also "to communicate immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides" as required under article 6, paragraph (3), of the Convention. Moreover, judicial cooperation agreements signed by Tunisia with other countries regulate the methods of communication in accordance with article 6 of the Convention.

Article 7

190. By virtue of its ratification of the Convention, Tunisia ensures that, if a person accused of the offences described in article 4 of the Convention is present on its territories and that this person is not extradited, the case is heard by the Tunisian competent authorities.

191. Although Tunisian law is strict when it comes to punishing acts of torture and ill-treatment, the rights of a suspect are also protected whether during the arrest, the questioning or the trial phases. It must be noted that acts of torture are considered as serious public law offences. So, even if the act was a minor offence and the opening of an investigation is optional, it is customary that the judicial authorities launch an investigation whenever the suspect is a public official to ensure a fair trial.

192. Procedures and prescribed punishment remain the same regardless of where the offence was committed or the nationality of the perpetrator. Tunisian law guarantees any suspect, Tunisian or a foreign national, accused of committing an act of torture or ill-treatment a fair trial at all the procedural and judicial stages.

Guarantees provided by Tunisian law for a fair trial during the pre-trial phase

193. Tunisian law provides persons suspected of committing acts of torture or ill-treatment and other offences with the following guarantees:

The right not to be detained or kept in preventive custody except in extraordinary circumstances

194. Article 85 of the Code of Criminal Procedure underscores the principle of resorting to pre-trial detention as an exceptional measure. It explicitly states that "an accused person may be remanded in custody for committing minor offences or major offences, or when serious allegations had been made which necessitate detention as a security measure to prevent further offences from being committed or to ensure that a penalty was enforced or to facilitate investigation".

The right to be informed immediately of an arrest warrant for police custody or pre-trial detention

195. The notification of the warrant serves two purposes: The justification for resorting to any of the two measures and the grounds for issuing the warrant to appeal the decision, and to be aware of the rights guaranteed while in police custody or in pre-trial detention.

The right to have a lawyer

196. This right is exercised by the accused using a lawyer of his own choice or having a lawyer assigned to him. The presence of a lawyer during questioning by the judicial police has been made possible by Law No. 32 of 22 March 2007 which complements certain provisions in the Code of Criminal Procedure compelling officers to inform the accused, before questioning, of his right to "have a lawyer of his own choice with him and to include this in the statement" and to inform the lawyer of all the measures taken against his client. It should be noted that all cases referred to under the comments on article 4 of the Convention cover all the legal guarantees of having a lawyer at the disposal of the accused.

The right to communicate with the outside world

197. The right to communicate with the outside world during detention entails several other rights emanating from the measure. They include the right to contact a member of the family, the right of a detained foreign national to contact a representative of his government as provided for in article 13bis of the Code of Criminal Procedure and article 36 of Law No. 52 of 2001 on the regulation of prisons, the right to use doctors and the right to receive visits while in detention or in preventive custody.

The right of a person in pre-trial detention to appeal the legality of the decision

198. The decision by an investigating judge to place the accused under pre-trial detention may be appealed before the indictment division, which is a higher authority, in accordance with article 87 of the Code of Criminal Procedure. One of the new additions to Tunisian legislation with regard to pre-trial detention is that it is imperative that any extension must be justified, a measure that confirms the exceptional nature of preventive custody.

The right to allow the accused sufficient time to prepare his defence

199. An accused person, in detention or free, has the right to have sufficient time to prepare his defence. Sufficient time means the period required to contact his lawyer to

review his case file and evidence presented against him, and to gather evidence in support of his argument from witnesses.

200. It should be noted that certain hearings before criminal courts may continue working late into the night because of the intensive presence of lawyers. The courts' long working hours aim to respond to the requests of the accused to prepare for his defence, in person or through his legal counsel.

The rights of the accused during questioning

201. One of the most important rights afforded to an accused person under Tunisian legislation is the presence of a lawyer during questioning as guaranteed by Law No. 32 of 22 March 2007 on the prohibition of obtaining confession under duress. Article 199 of the Code of Criminal procedure renders any confession obtained under duress null and void and provides for possible prosecution of those responsible for such acts.

202. The Tunisian Court of Cassation has, since the late 1960's, set the precedent that "although confession constitutes the most solid proof of guilt, its use is at the absolute discretion of the judge. Judges may, by law, rely on a confession if it was convincing and satisfy the conscience of the judge" (Court of Cassation Decision No. 6124 dated 16 April 1969 N.M.T. vs. R.C.O, 1970, p. 132).

203. In another decision, the Court of Cassation states explicitly that "the relevant court is obliged to consider all substantive evidence which may have a bearing on its decision. As such, the rejection of a court of evidence negating the confession makes the contested decision lacking in motive and open to appeal" (Court of Cassation Decision No. 8616 dated 25 February 1974, N.M.U. vs. R.C.C. 1, 1975, p.81).

The right to silence

204. Article 74 of the Code of Criminal Procedure confirms this right by stipulating that "if an accused person refuses to answer questions or pretends he is not able to answer questions, the investigating judge shall warn him that the failure to answer does not bring the questioning to a conclusion. The warning shall be entered into the statement.

The right of the accused to use an interpreter

205. Tunisian Legislation affords an accused person the right to have an interpreter during questioning if he cannot understand or speak the language of the court as provided for in article 66 of the Code of Criminal Procedure. The Tunisian Court of Cassation, in several of its decisions, has considered the right of an accused person to have access to an interpreter as one of the basic rights the denial of which renders any procedures null and void (Court of Cassation Decision No. 54929 dated 29 December 1993).

The right to humane treatment during detention

206. An accused person in police custody or in pre-trial detention has the right to be treated in a humane way, a right explicitly enshrined in Article 13 of the Tunisian Constitution which states: "any person deprived of his freedom has the right to be treated humanely and with respect for his dignity in accordance with the conditions set forth by law".

Guarantees provided by Tunisian law to ensure a fair trial during hearings

207. At the forefront of the guarantees provided under Tunisian law is the right of a party to have his case heard before a competent, independent and an impartial court created in accordance with the provisions of the law. Article 65 of the Constitution provides that

judges are independent and are subject to no authority other than the law. Articles 66 and 67 of the Constitution stipulate that judges are appointed by the President of the Republic following their nomination by the Higher Judicial Council. Their functions are regulated by the law on the regulation of the status of judges, with the Council maintaining the authority for employment, promotion and discipline.

208. Article 23 of the of the law governing the regulation of the judiciary, the Higher Judicial Council and the regulation of the status of judges provides that "judges shall deliver justice with impartiality and without consideration for the persons or interests involved. They may not pronounce judgement based on their personal knowledge of the case and may not express an opinion, orally or in writing, even in an advisory capacity, in cases other than those under their jurisdiction".

209. The rules of hearings and civil and criminal procedures allow for raising concerns about the impartiality of the court if, for example, a sitting judge had already been involved in another phase of the case. The Code of Criminal Procedure provides guarantees for the impartiality of the court in chapter VI dealing with the disqualification of judges (articles 296 to 304). In addition to these rights, Tunisian law provides the following guarantees:

The right of the presumption of innocence

210. This right is inherent in Article 12, paragraph (2), of the Constitution which states: "Any accused person is presumed innocent until proven guilty in a court of law where he is guaranteed the right to defend himself". Tunisian jurisprudence has repeatedly served reminders of the need to apply the principle of "beyond reasonable doubt" (Court of Cassation Decision No. 25744 of 12 Nonmember 2005 N.M.U.R.C. 1, 1990, p.15). The Court of Cassation Decision No. 2859 of 17 October 2005 confirmed this principle by stating that "doubt favours the accused. To acquit an accused person is better than finding an innocent person guilty".

The right not to have the law applied retroactively

211. Article 13, paragraph (1), of the Constitution provide for this right. It states: "The sentence is personal and cannot be pronounced except by virtue of a law existing prior to the punishable act". Part I of the Criminal Code stipulates that "Crimes are punished under existing laws. If a law enters into force before a decision is pronounced and the text of the new law is more lenient, it shall apply".

212. In one of its decisions, the Court of Cassation considered that "It is obvious that no punishment can be handed down except when a law covering the crime already exists as provided in part I of the Criminal Code which reflects the legality of the punishment (Court Of Cassation Decision No. 12658 of 25 October 2001, N.M.U.C.O., 2001, p. 194).

The right of the accused not to be tried for the same offence twice (double jeopardy)

213. Article 132bis of the Code of Criminal Procedure which was added in 1993 states that: "No person, acquitted by a court, shall be tried again for the same offence even under a different legal context". The Court of Cassation Decision No. 8943 of 9 March 2005 states that "the principle of a juridical link applies when the same offence is heard twice by a court. The second judgment is considered null and void". In another decision, No. 16926 of 1 December 2007, it pronounced the opinion that "no person, acquitted by a court, shall be tried again for the same offence even under a different legal context".

The right to defence

214. This right is enshrined in articles 69, 70, 72 and 141 of the Code of Criminal Procedure where the latter provides for "the assistance of a lawyer before a court of first instance at the premises of a court of appeal when hearing cases involving a major offence, and before an appeals district criminal court at the court of appeals. If the accused does not appoint a lawyer, the presiding judge shall appoint a defence counsel. The law regulating the legal defence profession provides that "the legal defence profession is free and independent to help in the administration of justice". As such, it is a public service with a professional character. If the accused does not have the means to appoint a lawyer, he may request legal aid.

215. The Tunisian Court of Cassation has emphasized in several of its decisions that failure to avail the accused of the right to have a lawyer during hearings is a violation of the right to a fair trial and makes the verdict returned open to appeal (Court of Cassation Decision No. 19713 of 1 October 1986, M.U.C.P.1.O 1987, p. 130).

The right to be present during hearings

216. The Code of Criminal Procedure provides for the right of the accused to be present at hearings (first instance and appeal) with two exceptions. Article 141 states that "an accused person tried for a minor or a major offence punishable by a prison sentence shall appear in person before the sentencing court. If the offence is not punishable by a prison sentence or in all cases of a civil suit, the accused may appoint a lawyer to represent him. The competent court may summon the accused if it sees fit to do.

217. If an accused person, or his representative, does not appear before a court when summoned, the court may proceed with the hearing and issue a judgment in absentia if the accused has not been personally informed of the hearing. The judgment is considered as pronounced in the presence of the accused if he has been personally informed of the hearing but decides not to attend". A decision in absentia remains open to appeal in accordance with article 175 *et seq* of the Code of Criminal Procedure.

The right to a public hearing

218. This right is guaranteed under article 143 of the Code of Criminal Procedure in that "the presiding judge shall conduct the hearings and ensure the orderly running of the proceedings. The hearing shall be public in the presence of the representative of the public prosecution and the parties to the case, unless the court itself, or upon a request by the prosecution, decides that the proceedings must be held in-camera for public security reasons or for morality considerations. This must be indicated in the official records of the hearing".

219. The Court of Cassation has, in several of its decisions, upheld the principle of public hearings to ensure that justice is served, transparency is achieved and the rights of the parties are protected. It emphasizes that any ruling for an in-camera hearing, the court must explain and justify its decision or risk having the ruling overturned for breach of the principle of public hearings (Court of Cassation Decision No.6306 of 21 August 1968).

The right to calling witnesses and the right to cross-examination

220. Any person charged with a major offence has the right to ask for calling his own witnesses or to cross-examine prosecution witnesses. This is an embodiment of the principle of equality of opportunity to the prosecution and the defence. Article 154, paragraph (2), of the Code of Criminal Procedure provides that challenging the statements taken or reports prepared by the judicial police is only possible through an affidavit or a court testimony.

221. Court of Cassation Decision No. 3865 of 24 September 2005 states that "the failure by the court to respect the right of the accused to hear a witness and to challenge his testimony makes the court's decision incompatible with the right to a fair defence and opens the decision open to appeal". In another decision, No. 11073 of 8 March 2006, the Court rules that "a ruling in a case where proper preparation for the verdict was not possible due to the failure to summon a witness at the appropriate time renders the judgement open to appeal for breach of the rights of the accused".

The right to have a verdict returned in public

222. Article 121 of the Code of Civil and Commercial Procedure reaffirms this principle. It states that "...charges brought against an accused person and the supporting evidence does not constitute a verdict unless pronounced in a public hearing in the presence of all the judges who signed the judgment". Article 165, paragraph (2), of the Code of Criminal Procedure upholds the same principle by stating: "the ruling shall not be final until it is pronounced in a public hearing in the presence of the judges who signed it".

The right to appeal

223. According to Tunisian law, the right to appeal or to litigation in various degrees is guaranteed. It should be noted that Law No. 43 of 17 April 2000 provided for a dual system of criminal hearings for the first time in Tunisia's legal history. Prior to that date, decisions by criminal courts of instance at the appeal courts could not be challenged but could be referred to the Court of Cassation. The same system applies to the provisions in Law No. 53 of 22 May 2000 governing the status of children.

224. A dual system of criminal litigation is based on a court of instance where five judges sit to hear cases referred by the indictment division. The decisions of the court of instance are then reviewed by a court of appeal comprising five judges of a higher rank. The principle of referral of criminal cases reviewed by courts of appeal to the Court of Cassation remains unchanged.

Article 8

225. As a State party to the Convention, Tunisia considers that the offences referred to in article 4 are extraditable offences in any extradition treaty existing between States parties and that as a States party it undertakes to include such offences as extraditable crimes in every extradition treaty to be concluded with other parties. Tunisia also considers this Convention as the legal basis for extradition in respect of such offenses if it receives a request for extradition from another State party with which it has no extradition treaty.

226. It should be noted that the Tunisian Constitution has a provision that prohibits the extradition of political asylum seekers as the only exception to the undertakings entered into under the Convention. The Code of Criminal Procedure, which includes a similar exception, provides for the extradition of individuals suspected of committing acts of torture or ill-treatment. A review of the instruments ratified by Tunisia shows that none of them excludes acts of torture from extradition.

227. Extradition conditions and procedures come under the provisions of the Code of Criminal Procedure (articles 308 to 330). These provisions, however, are superseded by international instruments in the form of bilateral agreements or international conventions. In accordance with the principle of supremacy of international conventions over domestic law, this article supersedes relevant laws and is applicable when there is a conflict between the two.

Article 9

228. Within the framework of judicial cooperation agreements concluded, Tunisia extends all possible legal and judicial assistance in cases of torture and ill-treatment governed by confirmed judicial decisions. This assistance covers the handing over of evidence in its possession needed to achieve progress in the case.

229. Article 331 of the Code of Criminal Procedure cites examples of the forms of judicial cooperation Tunisia extends to other States with which it has no agreements. It states that "in the case of non-political legal procedures launched in a foreign state, indictments issued by these states shall be received through the diplomatic channels and shall be referred to the Ministry of Justice. They shall be dealt with in accordance with Tunisian law. If both parties agree, the judicial authorities in both states may have a direct exchange of indictments".

230. In the same context, article 332 of the Code provides that "if a foreign government deems it necessary to notify a person on Tunisian soil of a judicial process or of a court decision, the notification shall be addressed to the person in accordance with the provisions of articles 316 and 317 with an Arabic translation, when required. The notification shall be carried out by the public prosecution. The same procedure shall be followed in returning the response to the requesting government".

231. Tunisia's international cooperation undertakings make it practically impossible for perpetrators of acts of torture to escape justice and punishment when they are on Tunisian soil or when they are at large abroad.

Article 10

232. Tunisia is making every effort to include education and information on the total prohibition of torture in the training programmes for law enforcement officers, civilian or military, and medical and public service staff who are connected in one way or another with dealing with detained persons or persons in custody facing pending investigation. This prohibition of torture is also included in the revision of the laws and regulations governing the functions of such officials.

Education and information on the prohibition of torture in training programmes

233. Tunisia attaches great importance to education and places particular emphasis on the promotion of a human rights culture. The conviction is that education constitutes the principal means by which such a culture may be disseminated and behaviour may be changed for the better, 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 promoted. For all these reasons, education in Tunisia has assumed paramount importance with 7.5 per cent of the Gross Domestic Product (GDP) – one of the highest in the world – has been allocated to education.

234. Moreover, the State has ensured that education becomes the suitable environment for human rights awareness taking into account the integration between men and women and inclusion of all segments of society including the disabled and those with special needs.

235. Over the period covered by this report, the subject of human rights continued to be taught at institutes and colleges in the context of Tunisian legislation and the relevant international treaties. Qualifications in human rights is part of the degree awarded to graduates of the faculty of human and social sciences in Tunisia who go on to teach the subject at institutes and schools.

236. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and other international instruments pertaining to victims of abuse of power are taught in training schools for the security forces (the National Guard and the police), as well as in the Prisons and Rehabilitation Training School, the Higher Institute of the Judiciary and the Higher Institute for Lawyers.

237. Vocational courses, forums, lectures and round-table discussions are organized for lecturers on human rights and fundamental freedoms (the Constitution, system of the republic and the basic rights enshrined in the international instruments relevant to human rights). As part of the 10-year plan for human rights (1995-2004), a national committee for human rights education was set up on 4 April 1996 under the chairmanship of the Minister of Education.

238. Integration of information on the prohibition of torture into training courses for law enforcement officers has been key to disseminating human rights culture for some time now and efforts have been made to deepen and widen the integration process so as to reach all law enforcement officers especially officers from the Ministry of the Interior and Local Development and the Ministry of Justice and Human Rights.

239. It should be noted that the various security entities receive basic human rights training averaging 40 hours in addition to training in conduct and discipline in dealing with citizens. Subjects relevant to human rights include: basic culture, the Universal Declaration of Human Rights, national and international mechanisms, the evolution of the legislative systems, international conventions with special emphasis on instruments pertaining to torture and other cruel, inhuman and degrading treatment. Security officers also receive 10 hours of training on the evolution of the human rights system in Tunisian legislation, the ideal methods of respecting the physical safety of a detainee, analysis of the integral and universal Tunisian approach to human rights, the relationship between the security officer and the citizen and strengthening respect for human rights.

Education and information on the prohibition of torture in training programmes for officials and officers of the Ministry of the Interior and Local Development

240. In training schools for the security forces, awareness-raising and training courses is complemented by instruction on human rights and ethical conduct in basic, specialist and ongoing training for the different ranks, including cadres and police deputies. Similarly, the Centre for Training and Retraining of the Ministry of the Interior and Local Development plays an active role in disseminating a culture of awareness of human rights among staff at the Ministry. Among the steps taken in compliance with article 10 are the following:

Human rights as a taught subject

241. Efforts by the training institutions of the Ministry of the Interior and Local Development continue to focus on the dissemination of human rights culture among staff of the Ministry following the adoption of policy paper no. 504 of 15 June 1994 on the integration of the subject of “human rights” into the curriculum at all levels.

242. The Ministry’s paper highlights the introduction of the topic of training and re-training purposes. It also emphasizes the importance of reminding officers of the role they play as public officials in displaying a civilized and cultured approach in dealing with citizens. It also serves as a reminder of the punishment resulting from the abuse of authority in the form of torture and violation of individual rights, freedoms, and property or any other form of cruel, inhuman or degrading treatment. Senior officials at the Ministry are responsible for ensuring that the behaviour of subordinates in the Internal Security Force, wherever they serve, is in line with the principles of the Universal Declaration of Human Rights.

243. Trainees at the Higher Institute of Internal Security Forces are required, inter alia, to carry out research and studies on human rights. Subjects studied during the 2009 academic year included torture and degrading treatment as addressed in Tunisian law, legal instruments on countering terrorism, a new and more progressive approach to the penalty of imprisonment, and the offences of trafficking in women and children.

Seminars and study days

244. Over the period covered by this report, the Ministry of the Interior and Local Development has organized a host of meetings and seminars on the subject of human rights, including:

- Scheduled talks and seminars as part of training courses and workshops run at training schools for the security forces at different levels
- Discussions on the theme of protecting human rights and public freedoms held during periodic seminars for district chiefs and regiment commanders as well as meetings of brigade commanders and police station chiefs
- Regional study days held in conjunction with the judiciary to raise awareness of the procedures applied and new amendments to existing legislation
- Weeks of training exclusively devoted to human rights and awareness-raising sessions of national mechanisms for human rights protection, organized at the National School for Auxiliary Police Officers in Bizerte

Re-publication of the human rights guide

245. The guide brings together United Nations and national literature on human rights along with updates. The guide has been distributed as a work and reference tool to all law enforcement officers. The main international instruments in the guide include:

- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment
- Extracts from the Code of Criminal Procedure relating to the custody and treatment of detainees
- The Act on the organization of prisons
- The Code of Conduct for Law Enforcement Officials
- The Standard Minimum Rules for the Treatment of Prisoners
- The principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- The declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief
- The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- The Basic Principles on the Role of Lawyers

Education and information on the prohibition of torture in training courses for judges and prison staff

246. The Ministry of Justice and Human Rights makes considerable efforts not only to administer justice, but also to provide human rights training and promote a culture of human rights, notably through the office of the National Coordinator for Human rights, the

Centre for Legal and Judicial Studies, the Higher Judicial Institute and the National School for Prisons and Rehabilitation.

The role of the National Coordinator for Human Rights and the Centre for Legal and Judicial Studies

247. To celebrate the World Day for Human Rights on 10 December 2005, two books were published in cooperation between the Documentation Centre at the office of the National Coordinator for Human Rights and the Centre for Legal and Judicial Studies at the Ministry of Justice. The first is entitled Human Rights: National and international Texts and the second comprises analyses of the provisions of the Universal Declaration of Human rights by 32 men and women judges.

248. As part of Tunisia's participation with the international community to celebrate the 60th anniversary of the adoption of the Universal Declaration of Human Rights, The office of the National Coordinator for Human Rights published a book, in hard and digital copies, containing all the international instruments pertaining to human rights ratified by Tunisia including the full text of the Convention against Torture. The Centre for Legal and Judicial Studies published several editions of a magazine on the judiciary and legislation in human rights.

Education and training in human rights culture at the Higher Judicial Institute

249. Since its creation in 1987, no fewer than 50 judges graduate from the Higher Judicial Institute each year. The Institute provides judges with a professional and modern training opportunity with special emphasis on human rights. The main training component covers a basic human rights theme regulated by two decisions by the Minister of Justice dating back to 26 June 1992 on human rights teaching methods at the institute. They aim to develop the knowledge of judges of international instruments, international trends, United Nations principles and regional approaches in dealing with human rights. The objective is to help judges acquaint themselves with the mechanisms of human rights protection and the bodies in charge of ensuring the implementation by member States of the instruments, especially the Committee against Torture.

250. On 26 June 1992, the Minister of Justice issued two decisions. The first, deals with the teaching of the subject of human rights in training courses at the Higher Judicial Council making the topic a main module. Lectures on the subject introduces the trainees to international conventions and recommendations, codes of conduct by the United Nations and other regional organizations, international protection mechanisms and comparative law. Lectures also aim to use applied illustrations, simulated trials and other aides to sharpen the human senses in understanding international measures to guarantee the rights of parties when administering justice. The subject is taught over to semesters.

251. Simulated trials show trainees examples of how to deal with an accused who alleges that confessions had been obtained from him through the use of torture, how to make use of medical examination expertise and how to refer the case file to public prosecution to investigate the allegations.

252. The second decision, which was also issued on 26 June 1993, focuses on teaching human rights as a complement to the acquisition of experience at the Institute. The decision calls on the institute to organize lectures for the development of judges skills and the expansion of their knowledge of international conventions, the protection of human rights, and the development of national legislation and jurisprudence in a manner that can contribute to strengthening human rights. Such lectures are organized as part of a study course, seminars at the Institute or at the courts and are attended by judges.

253. Human rights are taught at Higher Judicial institute as part of a training package or as part of continued training on the development and strengthening these rights. The approach has the following components:

International human rights mechanisms

- United Nations international agreements and other international instruments (declarations-recommendations-codes of conduct)
- Models of regional agreements from the Arab and Islamic cultures, and from the African, American and European continents.

Human right protection mechanisms

- In the context of the United Nations and other specialized agencies, the International Labour Organisation (ILO) and the regional organizations, and how they relate to the national legal and judicial systems.
- In the context of non-governmental organizations and the role they play in the dissemination of human rights culture and their protection.

254. He Institute continues to organize human rights seminars as part of the basic training of students or as a complement to other programmes for sitting judges. Students at the Institute present a wide range of theses to wrap up their studies in which they analyse the legal tools and international mechanisms used to develop and protect human rights, as well as the relevant national legal procedures.

255. Among the plethora of graduation theses presented by student are the following examples: National Mechanisms for the Protection of Human Rights, The Human Aspect of the Tunisian Criminal Law, The International Court of Justice, United Nations Committees Emanating from International Conventions, the New Prisons Law, Data Banks and hoe to Protect the Right to Privacy, The Role of the Registrar in the Protection of the Accused, Questioning Suspects, The Role of the Judge in Ensuring Gender Equality in Tunisian Law, The Rights of the Detainee and Fair Trial.

256. To expand the judges' knowledge in the area of human rights laws and conventions and to encourage them to refer to their texts on regular basis, the Institute organizes basic training covering several subjects.

Human rights education and culture at the National School for Prisons and Rehabilitation

257. The Prisons and Rehabilitation Administration, which has come under the supervision of the Ministry of Justice, has made human rights a core subject for all trainees taking basic training programmes for recruits, and for officers taking practical training courses. Moreover, numerous refresher courses have been held to improve the skills of prison officers, deepen their knowledge of and familiarize them with the latest developments in human rights. These courses have focused on the following themes: Rights and duties of prisoners and related regulations, treatment of prisoners, and dialogue and communication skills. The Administration has also organized human rights awareness-raising days for all prison units' officers run by Administration staff from headquarters.

Prohibition of torture in laws and regulations governing the functions of law enforcement officers

258. In addition to the references made in this report to the prohibition of torture and the obligation to treat persons deprived of their freedom with dignity as provided in domestic laws and in the Constitution in conformity with article 2 of the Convention, efforts continue by the Minister of the Interior and Local development, and the Minister of Justice and

Human Rights to issue circulars to law enforcement officials setting the most strict standards for the protection of the dignity of individuals.

Circulars and administrative orders issued by the Ministry of the Interior regarding the treatment of detainees and persons in pre-trial detention

259. Several circulars have been issued by the Minister of the Interior regarding the treatment of detainees and persons in pre-trial detention and the sanctions imposed in cases of violations including Circular No. 895 of 16 Decemebr1991 which calls for displaying the oath recited by Internal Security officers upon the assumption of their duties. The text highlights the responsibility of each officer to respect the chain of command and the laws. The oath is read before the president of the competent court of instance with an official record of the ceremony.

260. Efforts continue to publish the minimum treatment standards of detainees. They are the subject of Circular No. 904 of 24 December 1991 the text of which is on display in all police stations and National Guard posts. All officers are urged to comply in full with these instructions.

261. In order to raise the level of awareness among law enforcement officers of the need to respect human rights and of the moral and legal responsibility they shoulder, The Minister of the Interior issued Circular No. 72 of 24 February 1992 making it obligatory on every Internal Security Forces officer in a command position to sign an undertaking to respect human rights and public freedoms.

262. Moreover, efforts continue to improve relations between officers and citizens as stated in Circular No. 6 of 3 January 1992 which makes it mandatory for each officer to comply with the law in the performance of their duties and to avoid any abuse of authority that may lead to their prosecution before the courts. Circular No. 53 of 12 February 1992 urges officers to make every effort to improve relations with citizens and to show understanding and patience. The table below lists the orders and circulars by the Ministry of the Interior and Local Development to officers.

Year	*Serial number*	*Subject*
1999	Administrative Order No. 456 of 9 February 1999	Instructions on the transport and supervision of persons in preventive custody
2000	Administrative Order No.2363 of 16 June 2000	Instructions on the transport and supervision of persons in preventive custody
2001	Administrative Order No.1156 of 28 April 2001	Civilized and good treatment methods between officers and citizens
	Operations Memorandum No.22 of 1 June 2001	The relationship between officers and citizens
	Administrative Order No.7210 of 24 July 2001	Summons to citizens and civilized treatment
	Administrative Order No. 3993 of 19 October 2001	Better conditions of custody rooms

Year	*Serial number*	*Subject*
2002	Administrative Order No.3661 of 19 October 2002	Better conditions of custody rooms
	National Security Telegram No. 12922 of 14 October 2002	Better conditions of custody rooms in line with the principles of human rights
2003	Operations Memorandum No.28 of 11 August 2003	Respect of the rights of the accused during questioning
2004	Operation Memorandum No.6 of 25 February 2004	Greater attention to the relationship between administration and citizen and support for human rights
	Operations Note No.8 of 10 March 2004	Better security arrangements for detainees in security premises
2004	Administrative Letter No.39 of 7 April 2004	Better conditions of custody rooms
2005	Administrative Letter No.40 of 7 April 2005	Amendment of provisions of the Code of Criminal Procedure to strengthen legal and judicial guarantees for suspects to allow the presence of a lawyer of the suspect's choice when questioned
2007	Order No.1259 of 21 May 2007 amending Order No.982 of 3 May 1993	Relationship between the administration and clients
	National Security Telegram No.11391 of 5 October 2007	Better conditions of custody rooms in line with the principles of human rights
	Circular No.37 of 18 October 2007	Better reception of citizens and transparency of treatment
	Operations Memorandum No.38 of 14 December 2007	Specifications of custody rooms
	Operations Note No.39 of 24 December 2007	Relationship between the administration and citizens
2008	Administrative Letter No.145 of 6 November 2008	Strengthening investigation skills among officers with greater respect for human rights and fundamental freedoms at the preliminary stage of investigations

Distribution of circulars, notes, instructions and administrative orders issued by the Ministry of Justice and Human Rights on the respect of the dignity of prisoners

263. To further strengthen the implementation of the legal provisions pertaining to the right to litigation and other judicial guarantees afforded to prisoners, the Minister of Justice and Human Rights has issued several circulars in 2007 and 2008 to that effect. Among them are the following:

264. Circular No. 89/08 of 17 March 2008 deals with appeals to the Court of Cassation regarding judgements in criminal cases and with ensuring the timely preparation of copies

of these decisions. It also covers keeping records of the judgements and the relevant legal text.

265. Circular No. 647/01 of 13 November 2008 focuses on the guarantees afforded to inmates when punished with solitary confinement. It emphasizes the need to respect the composition and impartiality of the disciplinary committees, and the need to adhere to the procedures set forth by the law when using this exceptional measure which is only intended for serious violations relating to inmates safety and the security of the prison establishment.

266. Circular No. 98/09 of 6 January 2009 regulates the conditions of persons in pre-trial detention at investigation and prosecution bodies. It reaffirms the importance of updating the situation of all persons in custody through the involvement of the competent judicial authorities, the prison service and the Inspectorate General of the Ministry. The prosecution is urged, whenever possible, not to return case files to investigating judges to conduct further investigative work, but rather carry out the entire work themselves. The table below lists some of the orders, notes and administrative orders issued to prison and rehabilitation institutions' law enforcement officers over the period from 1999 to 2009 to bolster the rights of prisoners:

Year	*Serial number*	*Subject*
1999	Administrative Order No.2 of 7 January 1999	Provisions of the segregation of inmates under the age of 20 years from other prisoners
	Administrative Order No.192 of 19 October 1999	Respect of prison internal regulations by disciplinary committees
	Administrative Order No. 215 of 19 November 1999	Transfer of inmates to serve their sentence
2001	Operations Note No.328 of 26 January 2001	Reporting the use of violence against prisoners during investigation
2002	Operations Note No.136 of 9 September 2002	Follow up of the Judicial situation of inmates
	Administrative Order No.218 of 12 December 2002	Measures to be taken in case of a hunger strike
2003	Operations Note No.73 of 24 April 2003	Prisoner visits without restrictions
2003	Operations Note No.98 of 6 June 2003	Securing inmates personal effects
2004	Operations Note No.62 of 23 April 2004	Cleaning campaign for all prison and rehabilitation units
	Administrative Order No.95 of 28 June 2004	Procedures and measures for the use of inmates in prisons external dormitories
	Operations Note No.110 of 28 July 2004	Care for reception and visits areas
	Operations Note No.126 of 13 September 2004	Creation of prisoner hairdressing space
	Administrative Order No.131 of 21 September 2004	Setting up of psychological working group

Year	*Serial number*	*Subject*
	Operations Note No. 151 of 28 October 2004	Classification of prisoners by location
2005	Administrative Order No.11 of 14 January 2005	Permission for unrestricted visits by mentally disabled members of family
	Note No.64 of 30 March 2005	Medical cases requiring special attention
	Note No.67 of 4 April 2005	Measures required for medical examination before check-in
	Operations Note No.133 of 10 August 2005	Bathing schedule for inmates and child prisoners
	Administrative Order No.158 of 27 October 2005	Improving accommodation and catering services, and care programmes
2006	Note No.6 of 12 January 2006	Distribution of medication prescribed to inmates
	Operations Note No.18 of 26 January 2006	Strengthening rehabilitation measures of inmates
	Administrative Order No.60 of 27 March 2006	Group dynamics shares
	Administrative Order No.104 of 6 June 2006	Screening inmates for eligibility for rehabilitation programmes
	Administrative Order No.147 of 9 October 2006	Dental care in prisons
2007	Operations Memorandum No.75 of 5 June 2007	Follow- up of cases of inmates at Al-Amal Centre, Jabal Al-Wasat
	Operations Note No. 85 of 25 June 2007	Release of inmates to visit next of kin who are seriously ill or to attend funerals
	Administrative Order No.99 of 1 August 2007	Implementation and follow-up of vocational and agricultural training
	Circular Note No.40 of 8 November 2007	Measures for proper reception of citizens and transparency of administration
2008	Operations Note No.55 of 4 April 2008	Informing inmates of action taken on their requests
	Operations Note No. 57 of 28 April 2008	Strengthening rehabilitation of inmates
	Administrative Order No.91 of 22 May 2008	Better information about the condition on some inmates
2008	Administrative Order No.93 of 23 May 2008	Conclusion of a cooperation agreement regarding reintegration of released inmates and child prisoners between the Prisons Administration and the Prisoner Reintegration

Year	*Serial number*	*Subject*
		Association
	Operations Note No.110 of 23 June 2008	The creation of a committee to look into the accommodation conditions of inmates
	Operations Note No.161 of 11 November 2008	Order by the Minister of Justice and Human rights on the guarantees afforded to inmates when placed in solitary confinement
2009	Circular Note No.15 of 27 January 2009	Expanding social services to inmates' families
	Administrative Order No.52 of 11 February 2009	Improving psychological care in prisons
	Memorandum No. 36 of 25 February 2009	Improving health services for inmates with chronic diseases and serious illnesses
	Note No.39 of 23 March 2009	Attention to inmates' appearances
	Operations NoteNo.48 of 2 April 2009	More attention to disabled inmates

Article 11

267. In accordance with this article, the State is required to conduct systematic verification of the investigation and questioning methods used, the implementation of police custody and pre-trial detention measures and the treatment of persons deprived of their freedom. The State continues to strengthen the rules and mechanisms to guarantee the efficiency of oversight with the aim of preventing cases of torture.

Systematic oversight over investigation and questioning practices and methods

268. The systematic oversight of the implementation of investigation rules and questioning methods aim to prevent acts of torture or ill-treatment is two-pronged: Judicial oversight and oversight exercised by the administration.

Judicial supervision

269. The judiciary exercise control over the methods used by officers of the judicial police when questioning individuals through the public prosecution service and investigating judges, while the work of investigating judges is supervised by the indictment division.

Judges' oversight of questioning by judicial police officers

270. It should be noted at the outset that according to article 11 of the Code of Criminal Procedure each police commander, officer, station chief, National Guard officer and Non-Commissioned Officer (NCOs) and centre commander is answerable to the Prosecutor General in their capacity as adjutants.

271. All the above law enforcement officers are required by the provisions of the abovementioned article to report to the Prosecutor General immediately about any action taken, including all questioning activities carried out. As such, their activities come under the direct oversight of the Prosecutor General. Judicial police officers are prohibited from

conducting any investigation without the prior written judicial authorization of the Prosecutor General, except in the cases of flagrant offences, minor and major.

272. Law enforcement officers from the above agencies also come under the oversight of the investigating judges when they execute the warrants issued to them. All actions undertaken by law enforcement officers, with the exclusion of the issue of warrants which are exclusively within the remit of an investigating judge, come under the full supervision the judges.

273. In order to strengthen the legal guarantees during questioning, Law No. 32 of 22 March 2007 was enacted to reaffirm the right of a suspect to choose a lawyer to be present while giving a statement to officers authorized to do so by the judiciary. It goes without saying that the presence of the lawyer constitutes a fundamental guarantee of the rights of a suspect. The lawyer bears witness to all proceedings.

Oversight by the indictment division over the functions of investigating judges including questioning

274. In order to protect the rights of suspects during the investigation process, particularly during questioning, the Tunisian legislator has introduced a series of regulations that govern the role of an investigating judge. Prominent among such regulations is that investigating judges can only hear witnesses and question individuals in the presence of a minute's taker as stipulated in article 53 of the Code of Criminal procedure. Questioning sessions are also attended, in addition to the minute's taker, by a lawyer and an interpreter, when necessary in accordance with article 72 of the Code. Article 73 provides that the Prosecutor General may choose to attend the questioning session. The presence of all the mentioned individuals is a guarantee for the enjoyment of fundamental rights by a suspect.

275. The indictment division enjoys wide-ranging powers to oversee the work of investigating judges, including questioning. The office has no hesitation in declaring any action that is not in conformity with the rules and regulations or with the legitimate interests of the accused null and void as provided for in article 199 of the Code of Criminal Procedure. The same article stipulates that any decision taken by the indictment division determines the scope of annulment. Such a decision may cover one or several aspects of the measures taken or may decide to abandon the process altogether. In this case, the investigating judge is obliged to review all the procedures outlined by the indictment division.

Oversight by the administration

276. To ensure a sound administration of justice, the Inspectorate General of the Ministry of Justice and Human Rights conducts periodic inspections of the functioning of courts to pinpoint shortcomings in their work. It also looks into non-compliance complaints by parties to the case and launch inquiries to investigate these claims.

277. Article 13 of Order No. 1330 dated 20 July 1990 regulates the functions of the Inspectorate General under the authority of the Minister including the oversight of all courts, with the exception of the Court of Cassation, and other Ministry departments.

278. Other responsibilities include the collection and analysis of inspection reports prepared by the presidents and prosecutors at the Courts of Appeal, each within their area of competence, to ensure the proper functioning of the courts where they sit. It also looks into means of improving the functioning of the courts.

279. As of the beginning of December 2008, The Inspectorate General has established a special statistical data system linking the inspectorate to the Prisons Administration to ensure that pre-trial detention periods are not exceeded. The system relies on the

information communicated by the Prisons Administration to the Inspectorate regarding detainees held and helps in:

- Having an overview of the general pre-trial detention situation, the overall number of detainees in all investigation and indictment divisions, and the periods of their detention.
- The immediate intervention of the Inspectorate to draw the attention of the judicial authority to the overstay of detainees using the following classification:
    - Three months (standard)
    - Six months (follow-up signal)
    - Ten months (warning signal)
    - Fourteen months (Take measures to avoid overstay of detainee)
- Conducting field visits based on the analysis of the data in the system as well as reporting shortcomings and remedies.

280. To ensure the efficiency of the data system, a circular dated January 2009 was issued to underline the importance of updating the information concerning detainee's lists held by the Prisons Administration and to verify their compatibility with courts' records.

281. Inspection units at the Ministry of the Interior and Local Development, on the other hand, carry out administrative oversight over the conduct of Internal Security Forces personnel to ensure that there are no violations.

282. According to paragraph 2 of Order No. 1 of 8 January 2008 regulating the functions of the Higher Inspectorate of the Internal Security Forces. The Inspectorate is charged with the following tasks:

(a) Conducting overt and covert surveillance of the work of Internal Security, National Guard, Civil Defence and Customs Services units at all times to ensure that tasks are performed in accordance with the law and the chain of command;

(b) Reporting to the Minister of the Interior and Local Development on all actions taken and providing observations on the activities of Internal Security Forces and Customs Services personnel;

(c) Presenting the Minister with a comprehensive annual evaluation report reviewing the performance of the personnel and the units with the appropriate advice.

283. The Higher Inspectorate is composed of smaller structures which include a police and national security unit and a customs service inspection unit. They oversee the conduct of staff, and responds to complaints and observations on the performance of personnel.

284. Paragraph 15 of the above-mentioned Order regulates the procedure to be followed when reporting an infraction by a staff member that requires disciplinary measures of the second degree. In this case, the senior inspector submits a report with details of the violation and the justification for the sanction recommended to the Minister asking for the suspension of the officer involved. The authority with the powers to discipline staff has to approve the punishment prescribed.

Systematic oversight over the implementation of the regulations governing police custody and pre-trial detention, and the treatment of persons deprived of their freedom

285. The State has strengthened and developed a series of judicial and other oversight mechanisms in relation to the rules governing police custody and pre-trial detention, and

the treatment of persons deprived of their freedom with the aim of preventing acts of torture or any other form of human rights violations.

Judicial oversight mechanisms

286. The strengthening of judicial oversight mechanisms covers ensuring the full implementation of regulations concerning police custody and pre-trial detention, and increasing the oversight efficacy of public prosecution. The introduction of the post of a sentence enforcement judge serves to ensure a humane treatment of persons deprived of their freedom.

Development of the oversight role of public prosecution over the implementation of regulations concerning police custody and pre-trial detention

287. Since the 1980s, the criminal justice system has witnessed an important quality leap towards strengthening human rights and fundamental freedoms with emphasis on the inviolability of individual rights and the presumption of innocence. This has led to the regulation of police custody and pre-trial detention. Prior to 1987, there was no time limit set for keeping a suspect in police custody by the judicial police. Law No. 70 of 26 November of 1987 (amended) sets forth an initial detention period of four days with the notification of the Prosecutor General. This period may be extended in writing by another four days. In exceptional circumstances a two-day extension may be granted.

288. Law No. 90 of 2 August 1999 reduced the period of custody to three days with one extension only for another three days. Police custody comes under the oversight of the Prosecutor General who has the sole authority to extend the period of custody in exceptional circumstances and to order a medical examination of the suspect within four days.

289. The same Law provides that during or after custody a suspect, a representative, a member of family or a spouse may request a medical examination. This request must be entered into the case file which should also include the start and end of detention and the times of the questioning periods the suspect underwent.

290. Like police custody, Pre-trial detention was not regulated before 1987. Law No. 70 of 26 November of 1987 set forth a period of six months with one extension for minor offences and two extensions for major offences for a period of six months in both cases. The enactment of Law No. 114 of 22 November 1993 led to the reduction of the extension periods to three months once and four months two times, respectively.

291. To reaffirm the protection of individual dignity, the questions of police custody and pre-trial detention have been elevated to, along with the presumption of innocence and the right to a fair trial and defence, to the constitutional level following the constitutional reform introduced on 1 June 2002.

292. In order to provide a wider scope of guarantees during the pre-trial period and to strengthen the supervisory role of public prosecution in the implementation of police custody and pre-trial detention regulations, the 4 March 2008 law amended articles 13bis, 57 and 85 of the Code of Criminal Procedure to include explicit provisions stating that any decision to extend police custody or pre-trial detention must be supported by a written statement outlining the factual and legal grounds for the decision. Under this law, the Prosecutor General who monitors police custody are required to evaluate the grounds for an extension, such as the need to establish whether or not an offence has been committed and to prevent further offences from being committed. They must weigh up factors of the extension pertaining to the investigation such as the hearing of witnesses and the apprehension of an accused person who has absconded, and must assess the overall evidence used to justify holding the person in custody.

293. The fact that an investigating judge must justify a pre-trial detention order allows the indictment division, on appeal, to assess the validity of grounds given and to take an appropriate decision, verifying, inter alia, compliance with mandatory release orders, in accordance with the principle that freedom must be the rule and deprivation of liberty the exception to the rule.

Introduction of the post of sentence enforcement judge for better judicial oversight over persons deprived of their freedom

294. The office of the sentence enforcement judge was created by Law No. 77 of 31 July 2000 with the powers of the office further expanded by Law No. 92 of 29 October 2002 which amended and supplemented the Code of Criminal Procedure.

295. The abovementioned laws set forth the terms of reference of the sentence enforcement judge as follows:

- Oversight of the enforcement of a custodial sentence in a prison establishment in the region that comes under the jurisdiction of the sentencing court.
- Visiting prisons once every two months to inspect conditions of inmates.
- Informing the family judge of the conditions of children accompanying women inmates to take one of the measures provided in article 52 of the Child Protection Code which include putting a child under the kafala system or with a foster family, referral to a special social or educational institution, or placing the child in a training or education centre.
- Meeting inmates who wish to be interviewed or he decides to interview in a private office. The sentence enforcement judge may decide to present the management of a prison establishment with a list of inmates he may wish to interview in a private office based on complaints or information made available to him.
- Inspection of the disciplinary record. It should be noted that disciplinary measures are regulated by articles 22 to 26 of the Prisons Law which can be summarized by the presence of a disciplinary committee inside the prison, the composition of which is determined by article 26. The committee, after interviewing the inmate and collecting evidence, may take disciplinary action if the inmate is found to have violated prison rules or prison security. Punishment may include a warning or a reprimand by the prison warden, suspension of family visits for a maximum of 15 days or placing the inmate in solitary confinement with toilet facilities for a maximum period of 10 days. The Tunisian legislator, through authorising the sentence enforcement judge to inspect the disciplinary record of the prison, aims to make sure that the judiciary has oversight over disciplinary action taken inside prisons.
- Requesting the prison management to provide inmates with social services such as the resolution of family disputes or difficulties facing children at school. It should be noted that the prison management submits an annual social services report to the judge to enable him to intervene in resolving such problems.
- Authorizing the temporary release of an inmate to visit a spouse or next of kin in cases of serious illness or death. The measure is intended to help the inmate maintain family ties and a social link with life outside prison.
- Remain informed, in writing, by the prison doctor of any serious health conditions. This information aims to make the judge aware of specific health situations, to determine the reasons for the existence of such cases and to take the appropriate measures to remedy the situation. Action taken by the judge may include notifying

the Prosecutor General of the use of violence against an inmate or to inform the prison warden of the deterioration of the health of an inmate for lack of medical care. The judge can request immediate action to save the life of an inmate and determine the responsibility for this deterioration.

- Submission of an annual report containing the judges' observations and recommendations to the Minister of Justice to enable the Minister to have an overview of the prison situation nationwide.
- Submission of proposals to grant certain inmates conditional release, an authority that goes beyond overseeing the enforcement of the sentence and extends to the consequences of the implementation of the punishment. Visits conducted by the judge to acquaint himself with the conditions of inmates through meetings with prisoners and prison management enable him to determine if certain inmates can be considered for conditional release having fulfilled the required conditions. The legislator, however, saw that at this stage the judge should have the power to propose the release only, not to grant it. Conditional release is authorised by a committee upon a recommendation from the sentence enforcement judge or the Director-General of the Prisons Administration.

296. The table below illustrates the evolution in the role of the sentence enforcement judge from the judicial year 2003/2004 up to the first half of the judicial year 2008/2009.

Function	*20003/2004*	*2004/2005*	*2005/2006*	*2006/2007*	*2007/2008*	*2008/2009**
Oversight	265	210	277	182	255	235
Conditional release	2 975	4 960	4 925	5 219	6 105	2 404
Visits	190	182	243	230	302	258
Leave Permits	172	116	97	147	136	39
Prison doctors' notification**	33	35	34	50	26	12

* 2008/2009: First half of the judicial year.

** Number of serious cases reported by prison doctors to the judge.

Non-judicial oversight mechanisms

297. Non-judicial oversight mechanisms are of different types. In addition to the administrative structures, bodies and human rights institutions, oversight mechanisms have been expanded over the past few years to include foreign non-governmental organizations known for their impartiality and experience.

Administrative oversight structures and bodies

298. In addition to the role played by the inspectorates of the Ministry of the Interior and Local Development, the Ministry of Justice and Human Rights, and the Prisons Administration, in overseeing the functions and performance of their staff, human rights units at the various ministries and Citizens' Watch organization make a positive contribution to protect human rights against violations.

Human rights units at the ministries

299. In the early 1990s, human rights units were established at the Ministry of Justice and Human Rights (one of its tasks is to receive human rights-related complaints from citizens), the Ministry of the Interior and Local Development (one of its tasks is to receive citizens' complaints and to deal with them) and the Ministry of Foreign Affairs (one of its tasks is to establish a link with United Nations' bodies and international non-governmental

organisations working in the field of human rights, and to follow up the fulfilment of Tunisia's commitments to its ratification of international human rights conventions). All these bodies, within their area of competence, contribute to monitoring the human rights situation and report to their supervisory authority.

Citizens' Watch

300. This plan, which was introduced in the early 1990s, is one of main administrative reform tools and is a means of ensuring that citizens receive a good standard of administrative services. The remit of a person performing a Citizens' Watch is to apply to public administrations for services like an ordinary citizen to gauge the quality of services rendered by public officials in the day-to-day business of the various administrations. The checks also cover the reception afforded to citizens, working conditions for staff and the general appearance of the premises.

301. Persons involved in the scheme, when conducting their watch duty, are not permitted to divulge the nature of their mission or interfere in the work of the inspected administration. He is required to keep the confidential nature of the mission during and after its completion. The individuals selected for this task report to the Public Service Quality Control Administration which collates all the gathered information into a monthly report that is sent to the ministries concerned to take the appropriate measures to avoid shortcomings or to commend officials who excel.

National human rights institutions

302. In addition to the important role played by the Higher Commission for Human Rights and Fundemental Freedoms to protect and strengthen human rights protection, the Administrative Mediator Office contribute significantly to the protection of human rights especially in dealing with citizens' grievances for public administration abuses.

The Higher Commission for Human Rights and Fundamental Freedoms

303. The Commission is a national institution which was established by Order No. 54 of 7 January 1991. Its status was the subject of a major review by Law No. 37 of 16 June 2008 with special emphasis on the juridical nature of its identity which was brought into line with the Paris Principles. The Commissions mandate and structure were expanded, and its independence and method of work strengthened in the following ways:

Change of juridical nature

304. Among the amendments and additions introduced under the 2008 Law are:

- Elevating the text regulating the work of the Commission into law.
- Granting the Commission administrative and financial independence.
- Authorising the Commission to open nationwide offices.
- Expansion of mandate

305. The expansion of the mandate covers:

- Enabling the Commission to automatically deal with any situation related to supporting human rights and fundamental freedoms and authorizing it to draw attention to any violations of these rights.
- Contributing to the preparation of and expressing views on draft reports to be submitted to United Nations bodies and to regional organizations.

- Following up the observations and recommendations by United Nations bodies and regional organizations when Tunisia's reports are submitted and discussed.
- Contributing to the drafting of human rights education national plans and programmes and their implementation.
- Cooperating with United Nations bodies and regional organizations.

Expanding the structure and ensuring independence and diversity of representation

306. Emphasis has been laid on a number of principles relevant to the structure of the Commission. They include:

- Ensuring independence through the presence of various social actors and representatives of civil society.
- Ensuring stability in the membership with mandates set at three years, renewable by an order.
- The non-participation of ministry representatives in the voting process.
- The provision of basic structures and sufficient funds to ensure the smooth functioning of the Commission and to guarantee its independence.

Improving the methods of work

307. Improvements have targeted the following aspects:

- Establishing relations with non-governmental organizations and other bodies active in the field of human rights.
- Issuing statements to the public about its activities

308. Among the most important activities of the Higher Commission as a human rights protection mechanism can be summarized as follows: receiving and following up of complaints of human rights violations, mediating in resolving contentious human rights issues, conducting visits to prisons and custody centres, and carrying out fact-finding missions.

Receiving and following up complaints about human rights violations

309. Receiving and following up complaints about human rights violations is an important mechanism of protection. The Higher Commission for Human Rights and Fundamental Freedoms has, since its creation, received several complaints either through direct contact, correspondence or telephone communications. Thanks to the open-door policy adopted by the Higher Commission, between 800 and 900 complaints have been received. They have been carefully scrutinized and referred to the relevant ministries for action while following up the outcome and reporting to the complainants about developments.

310. The various departments at the Ministry of Justice and Human Rights look into the complaints referred to it by the Higher Commission. In view of the diversity of questions raised by such complaints, they are referred to the relevant departments. Requests for amnesty and reinstitution of rights are referred to the General Administration for Criminal Affairs while complaints pertaining to human rights violations such as allegations of attacks on inmates by a security or prison officer are referred to the head of the Human Rights Unit. The Unit launches on-the-spot investigations and reports to the supervisory body which then entrusts the case to the judiciary when sufficient evidence has been gathered.

Mediation role

311. In the cases where there is no need to refer the complaint to the representatives of the ministries due to the social nature of the case in question, the head of the Higher Commission mediates between the complainant and the accused to try and resolve the dispute amicably. The same applies to other more complicated cases which require a higher level of intervention. In such cases the Higher Commission refers the dispute to the President of the Republic to decide on the case. It should be noted that the mediation role played by the head of the Higher Commission is limited to cases that are not referred to the Administrative Mediator.

Supervisory role

312. The Head of the Higher Commission conducts unannounced visits to the various prison establishments, detention units and juvenile shelters. The visits are intended to verify the level of compliance with the laws regulating these institutions, conditions of detention of persons deprived of their freedom and to ensure the compatibility of the applied national measures with international standards.

313. A case in point is the surprise visits carried out by the head of the Higher Commission to Qairawan, Burj Al-Roumi and Burj Al-Amiri prisons in 2002. In the same year, he conducted surprise visits to a number of security stations in the provinces of Bin Arous and Nabil as well as other visits to detention centres in the province of Bizerte. Other visits included the Social Protection and Reintegration Centres in Al-Tadamoun and Haishar quarters. Following these visits he submitted a report to the President of the Republic with his observations and recommendations.

314. Over the past five years, the head of the Higher Commission has conducted 18 visits to prison establishments and a visit to the juvenile borstal in Moorouj. During these visits, he inspected the holding cells and the facilities available, and interviewed inmates on one-on-one basis to hear their observations. Most of the complaints raised revolved around their status as detainees pending trial or the sentences handed down to them and their eligibility for amnesty or conditional release.

315. The various departments of the Ministry of Justice and Human Rights assume the responsibility of acting upon the recommendations referred to them by the head of the Higher Commission. One example of such action is the creation of additional rest areas and spaces for inmates with special needs following a visit to Rabita prison.

Fact-finding role

316. On two occasions, the President of the Republic entrusted the head of the Higher Commission with the task of forming fact-finding missions. The first was on 20 June 1991 following allegations of violations of human rights, and the second on January 2003 to investigate the conditions of detention of persons deprived of their freedom in prisons. The work of the two missions led to several conclusions and recommendations which were implemented later.

Administrative Mediator

317. Administrative arbitration was introduced by the order of 10 December 1992 to be followed by Law No. 51 of 3 May 1993 which determined the terms of reference of the Mediator. This law was amended by Law No. 21 of 14 February 2002 which set the Mediator's term of office at five years that is renewable. The amendment also underlines the independence of the Mediator from any public authority in the exercise of his or her duty.

318. The Mediator is tasked with looking into individual complaints made by persons in relation to administrative matters connected with the State, national public groups, administrative public institutions, public establishments and other entities in charge of administering a public facility. He also considers complaints submitted by moral entity on condition the request is submitted by an individual with a direct interest. The Mediator may not intervene in cases which are already being heard by a court of law, nor may he review a judicial order. He may, however, make recommendations to the administrative authority concerned.

319. The notion of appointing a mediator stems from the desire to provide citizens with protection from the administration when their rights and interests are compromised without the possibility of having legal or material recourse. The Administrative Mediator's main task is to protect the rights of citizens through intervening to reconcile the citizen with the administration in several areas pertaining to the refusal to or delay in the implementation of an administrative judge's decision. He also protect the citizen's right to a speedy compensation of property when all or part of the property is expropriated for the public interest or when the citizen's interests are affected as a result of the failure of the administration to provide the adequate service. In order to ensure the efficacy of the interventions by the Administrative Mediator, measures have been simplified by removing any statute of limitation on complaints or the expiry of the time limit to lodge a complaint before the courts.

320. As a result of the positive outcomes of the Administrative Mediator's scheme and as part of the administrative reform process under a policy of decentralization which aims to help citizens benefit from the services of the Mediator, Decision No. 884 of 27 April 2000 was adopted to determine the administrative and financial terms of reference of all regional mediation offices. Order No. 3221 of 13 December 2005, on the other hand, determines the territorial authority of the mediation offices in Sousa, Safaqis, Gafsa and El-Kef.

Oversight by non-governmental organizations

321. Among the initiatives undertaken as part of the cooperation with international human rights organizations, special mention should be made of the agreement signed in April 2005 by the Tunisian authorities and the International Committee of the Red Cross whereby the latter is permitted to visit all prisons and detention centres, observe detention conditions, question inmates of its own choosing without a representative of the relevant administration being present, and make comments and recommendations to the competent authorities. Over the period from June 2005 to 31 December 2006, The Committee carried out 61 visits to 18 police stations, nine National Guard centres and 28 prisons all over the country. During these visits, representatives of the Committee conducted thousands of private interviews with detainees. Between January 2007 and 30 June 2009, the Committee carried out 66 visits to prisons and six visits to correctional institutions. Other facets of cooperation with the Committee include the training of judges, public prosecution staff and prison officers.

Article 12

322. The State is committed that the competent Tunisian authorities conduct prompt and impartial investigations when there is reasonable belief that an act of torture has been perpetrated on any of the territories under their jurisdiction. There is a strong political will within the State to ensure the full implementation of this article in every day's life, that the rights of victims are upheld and that there is no impunity for those responsible for torture.

323. A closer look at the special procedures adopted to ensure prompt and impartial investigations launched in such cases shows that the measures are not confined to those

carried out by the judicial authorities, which are well known for their impartiality and integrity, but extends also to the investigations conducted by the administrative authorities with all impartiality and transparency. The same principles apply to the investigations conducted by the Higher Commission for Human Rights and Fundamental Freedoms.

Judicial investigations

324. There are several judicial authorities charged with carrying out prompt and impartial investigations whenever there is reasonable belief that acts of torture have been committed on Tunisian soil. First among these authorities is the public prosecution represented by the Prosecutor General, investigating judges and the judges of the indictment office.

Investigations conducted by prosecutors

325. Article 26 of the Code of Criminal Procedure stipulates that the Prosecutor General is responsible for looking into all offences and is charged with receiving information from public officials and citizens about crimes and complaints from victims of violations. Except in cases of major offences and proven minor offences, he may not carry out any investigations but may conduct preliminary inquiries to gather more information on evidence related to the crime. He may also, as a rule, interview suspects, receive statements and prepare records of interviews.

326. The above article makes it clear that the Prosecutor General, upon receipt of complaints or information on the commission of an act of torture on Tunisian soil, can conduct preliminary inquiries to gather more information on the evidence related to the crime. He may also, as a rule, interview suspects, receive statements and prepare records of interviews. This process ensures a prompt and efficient approach that can allow the gathering of evidence to present to an investigating judge.

Investigations conducted by an investigating judge

327. Taking into account the seriousness of the acts of torture, investigating judges make every possible effort to find the truth and examine all available avenues to ensure that the case is successful in court. Article 69 of the Code of Criminal Procedure explicitly states that an investigating judge may do without certain formalities when there is a need to question someone or try to prevent a situation where the witness is in danger from occurring, or if there is a risk of losing evidence to prove involvement in the offence.

328. Once investigation work is completed, the investigating judge refers the case file to the Prosecutor General who should decide, within eight days, either to refer the case to a competent court of law, to keep the case pending, to order further investigation or to shelf the investigation for ineligibility to consider it. Once the Prosecutor General has made his decision, the investigating judge issues an order on the charges brought against the suspect or suspects based on the request of the former.

Investigations conducted by indictment offices

329. An indictment office is not a court of law. It is, rather, a second degree investigation court. Article 116 of the Code of Criminal Procedure grants an indictment office the authority to carry out supplementary inquiries by one of its counsels or by the investigating judge, to issue new warrants, or to conduct its own investigation on matters not examined after hearing the views of the representative of the prosecution.

330. The conclusion that can be drawn from the provisions of the above article is that an indictment office, when dealing with a case involving the commission of an act of torture on territories under its jurisdiction, may conduct supplementary inquiries and to issue new

warrants if there is reason to believe that certain individuals were not investigated, when appropriate.

Administrative investigations

331. Administrative investigations into acts of torture when there is reasonable belief they have been committed on Tunisian soil are divided into two types. Investigations that are carried out at the level of the administration of justice within the Ministry of Justice and Human Rights, and investigations conducted by the inspectorates of the Ministry of the Interior and Local Development.

Investigations at the level of the administration of justice

332. Administrative inquiries at the level of the Ministry of Justice and Human Rights departments, specifically at the level of the head of the human rights unit which directly linked to the office of the Minister and the General Inspectorate of Human Rights, are conducted by judges at the Ministry when a complaint of the commission of an act of torture or ill-treatment on Tunisian soil is lodged with the Ministry, or if a case is reported when other inquiries or field visits are conducted.

333. In such cases, it is customary that the head of the human rights unit or an inspector from the Inspectorate General, or both of them, visit the prison establishment where a case is reported to conduct a preliminary inquiry and report immediately to the Minister of Justice and Human Rights. The Minister then gives permission to the relevant judicial authority to issue warrants and take the necessary measures to examine the evidence incriminating the accused when there is proof that the acts committed are offences and go beyond the remit of disciplinary bodies.

Administrative investigations at the level of inspectorates at the Ministry of the Interior and Local Development

334. Established in 2004, the Higher Inspectorate for Internal Security Forces and Customs Services at the Ministry of the Interior and Local Development is responsible for conducting administrative investigations when the Ministry is made aware of a complaint involving the commission of an act of torture or ill-treatment on Tunisian soil or if a case is reported when other inquiries or field visits are conducted.

335. Like its counterpart at the Ministry of Justice and Human Rights, inspectorates at the Ministry of the Interior and Local Development refer the outcome of administrative investigations to the judiciary through the administrative hierarchy for any legal action to be taken against any Internal Security Forces officers proven to have committed an act of torture or ill-treatment in addition to the disciplinary action taken.

Investigations by fact-finding committees

336. As mentioned earlier, the head of the State has instructed the head of the Higher Commission for Human Rights and Fundamental Freedoms to establish fact-finding committees on two occasions. The first, on 20 June 1991following claims of human rights violations and the second, in January 2003 to investigate the conditions of detention in prisons of persons deprived of their freedom.

337. The work of the first committee led to a number of recommendations and conclusions showing that certain violations have been committed as separate acts by some officers despite regular reminders and updates about proper treatment. The Higher Commission was kept informed of the judicial steps taken against the perpetrators as well as the disciplinary measures they were subjected to.

338. On 19 October 1991, the head of the State instructed that the outcome of the work of the committee and its recommendations are made public. They underscore the importance of punishing perpetrators of violations, conducting a thorough investigation of allegations, determining what cases require punishment, raising awareness of international instruments and the consequences of their violation, outlining the cases and penalties provided for in international instruments and Tunisian law, creating a mechanism for the follow-up of the implementation of conventions, how the judiciary should deal with individual and exceptional cases, disseminating human rights principles at all education levels and through the media, and strengthening cooperation among human rights bodies through better coordination.

339. As for the second committee, it recommended the creation of a working group that included, in addition to the head of the Higher Commission for Human Rights and Fundamental Freedoms as ex-officio chairman of the committee, several national figures from the members of the Higher Commission and external candidates.

340. The head of the Higher Commission submitted the group's report to the President of the Republic on 16 February 2003. It contained observations on and assessment of the accommodation situation in prisons with special emphasis on overcrowding in some of these prisons and the health and psychological impact of the phenomenon on inmates.

341. To remedy the overcrowding problem, the head of the State underlined the importance of dealing with its causes through several measures that were published in the various media outlets. They include:

- A review of the situation of detainees awaiting trial under the principle that pre-trial detention is an exceptional measure.
- The wider use of release on bail or against collateral for offences that do not constitute a threat to the safety of individuals and their property.
- Strengthening the application of the law concerning community service as a substitute for custodial sentences for certain offences through awareness-raising campaigns of the correctional element involved among the persons concerned and the institutions that accommodate convicts.
- Making available sufficient numbers of beds in prisons short of supplies in the earliest possible time.

342. The committee also examined the health and psychological care provided to inmates and commended the efforts made to eliminate communicable diseases as a result of the preventive measures put in place. It noted, however, that there are other areas that required strengthening such as more specialized manpower and equipment. In this respect, the head of the State has authorized the following:

- The completion of the creation of the integral health units in Qabis and Nadhour prisons following their introduction to other prisons.
- Expediting the installation of X-ray units in prisons lacking them and in remote prisons.
- Improving health conditions and strengthening the numbers of specialized medical psychology staff.
- The introduction of morning physical exercise to all prisons.
- Increasing manpower, supplies and space due to the positive impact of these elements on the prevention of reoffending and their contribution to reintegration into society.

- Reviewing the conditions for eligibility for amnesty to ensure that the highest number of inmates can benefit from the system and to enable them to earn a decent living after release.
- Strengthening retraining programmes for prison officers to keep them abreast of the latest methods of dealing with inmates.
- Placing greater emphasis on the role of a sentence enforcement judge in overseeing the conditions of inmates in the main prisons as part of his supervisory role over accommodation, implementation of sentences and granting conditional release.

343. The committee also examined the implementation of inmate education programmes such as the eradication of illiteracy, vocational training, and sport and cultural activities.

Article 13

344. Tunisia ensures that any individual who alleges to have been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined by the competent authorities. Equally, the State ensures that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of a complaint or any evidence given.

345. A closer look at the institutional system put in place by law to receive complaints from individuals alleging being subjected to torture shows a noticeable development thanks to the State's desire to diversify such institutions on the one hand, and to make the voice of those deprived of their freedoms heard when necessary, on the other. By the same token, a close examination of the texts shows that there are legal rules that protect complainants and witnesses as a consequence of submitting a complaint.

Mechanisms for the protection of the right of any person who claims to have been subjected to torture to have the case promptly and impartially examined by a competent authority

346. The existing system allows for three different redress mechanisms when it comes to allegations of torture and other human rights violations. They are legal, administrative and national mechanisms with the latter involving national institutions active in the field of human rights.

Legal redress mechanisms

347. These mechanisms include the public prosecutors and their deputies, investigating judges, sentence enforcement judges and the courts of law.

Public prosecutors and their deputies

348. Article 26 of the Code of Criminal Procedure provides that the Prosecutor General is responsible for looking into all offences and is charged with receiving information from public officials and citizens and accepts complaints from victims of violations. He is promptly informed by his deputies about offences brought to their attention in the conduct of their functions and present their reports to him.

349. According to articles 30 and 31 of the same Code, the prosecutor General may decide, when presented with a complaint or when information is brought to his attention, that the complaint has not been sufficiently justified and may order a temporary inquiry into the case in the absence of a suspect by instructing an investigating judge until such a time when charges are brought against specific individuals.

Bringing a civil suit before an investigating judge or a court if a case is dismissed by the public prosecution

350. Tunisian law ensures that a victim of a criminal act has the protection against the public prosecution's dismissal or rejection of the complaint by allowing individuals the right to bring a civil suit before an investigating judge or before a competent court. Article 36 of the Code of Criminal Procedure stipulates that the dismissal of a case by the Prosecutor General does not prevent an individual from bringing in a civil action before a court of law. Article 37 of the same Code provides that a civil suit may be brought before an investigating judge or the competent court at the same time when a public case is being heard under article 7 of the Code.

351. Procedures for bringing a civil suit are regulated by article 38 of the Code of Criminal Procedure. It states that "the competent court or the investigating judge shall consider the application for a civil suit and may choose to declare the suit irreceivable. The irreceivability of the action may be raised by the public prosecution, the accused, the party civilly liable or any other civil party. The investigating judge shall issue a judgement after referring the case file to the public prosecution. This judgement is subject to appeal before the indictment office within four days of the date of referral in the case of the Prosecutor General and within four days from notification for all other parties".

352. The legislator has made it easy for a party to bring a civil suit. Article 29 of the Code of Criminal Procedure states that "a civil suit shall be presented in writing signed by the complainant or his representative to the Prosecutor General, investigating judge or the competent court as the case warrants".

353. Tunisian law, however, provides for a dual responsibility, both civil and criminal, for bringing an unjustified suit. Article 45 provides that if a civil suit brought after a public action is dismissed, the accused party may seek damages for proven false accusations without prejudice to criminal prosecution. Article 46 of the Code states that if an accused is acquitted, the court may fine the party that brought the civil suit 50 dinars and may charge the party with defamation, if proven.

Submission of complaints of allegations of torture and ill-treatment to a sentence enforcement judge

354. Article 342, paragraph (3), of the Code of Criminal Procedure states that a sentence enforcement judge may wish to meet with inmates or other persons in a private office and that he may wish to examine the disciplinary record book. The provisions of this article lead to the conclusion that there are two methods of receiving complaints by inmates. The first, is when the inmate requests an audience with the sentence enforcement judge while the judge is on a periodic inspection tour of the prison. The second, is when the judge receives information or complaints from the relatives of inmates citing allegations of torture or ill-treatment. In this case the judge instructs the head of the prison to bring the inmate before him in a private office. Moreover, article 17, paragraph (7), of Law No. 52 of 2001 which regulates prisons provides for the right of every inmate to request a meeting with a sentence enforcement judge to present his complaints and demands.

Submission of complaints concerning allegations of torture and ill treatment to the judiciary

355. Article 141 of the Code of Criminal Procedure stipulates that an accused facing charges for an offence punishable by imprisonment must be present in person while article 143 of the same Code states that the presiding judge is to question the accused during the sentencing session and is in charge of all necessary arrangements.

356. The presence of the accused in person with his counsel before the court in a public hearing is an important guarantee to enable him to present to the court all the necessary arguments about his questioning by the police or by an investigating judge. An accused who has been subjected to torture or ill-treatment has the right to submit a complaint to the court presenting it with the evidence available to him and to ask for a medical examination. The court may also choose, of its own accord, to make the accused undergo a medical examination if it had reason to believe that he may have been subjected to such acts.

357. There is a special interest in ensuring that requests by inmates are forwarded to the competent judicial authorities for consideration and action, and that the outcome is communicated to the inmate. The requests cover wide-ranging issues such as visits without restrictions, medical examination outside the prison, intervention with specific ministries to continue with studies, pardons, reinstitution of rights, accommodation conditions and smoking in cells. The table below lists the number of requests by inmates to the judicial authorities from 2007 to 20 October 2009.

Year	*Number of requests*
2007	164
2008	202
2009	167

Administrative redress mechanisms

358. As part of the State's policy to ensure that individuals are able to have their complaints of allegations of violations of their rights or of shortcomings in the functioning of public administrations are heard by a competent authority, efforts have intensified over the past years to set up the necessary structures for the receipt and follow-up of such complaints, both to guarantee redress when such complaints are proven to be founded or to prevent future shortcomings or violations.

359. In order to enable individuals to determine which authority has the competence to look into their grievances, the early 1990s saw the creation of the post of a judicial guide in all courts of law with the main task of directing citizens to the appropriate authority for lodging a complaint. Administrative redress mechanisms responsible for receiving complaints include:

Citizens' relations bureaus

360. Bureaus at the Ministry of Justice and Human Rights and at the Prisons Administration receive requests from citizens and refer them to the relevant departments for examination, preparation of responses and follow-up action.

Human rights units at ministries

361. These units deal mainly with complaints on human rights violations. One such example is what is provided in article 5 of Order No.1330 of 20 July 1992 on the regulation of the work of the Ministry of Justice and according to which the unit at the Ministry is charged with accepting complaints from litigants in human rights cases.

362. The table below lists the complaints and requests received by the citizens' relations bureau and the human rights unit. They are not confined to cases of human rights violations, acts of torture or ill-treatment only, but also cover all human rights issues in general and the rights of litigants in particular.

Period	*Complaints and requests*	*Decision rates*
2004	4 854	93%
2005	3 349	95%
2006	2 297	88%
2007	3 666	94%
2008	3 704	95%

Inspection bodies at ministries, and security and prison institutions

363. As mentioned earlier in this report, inspection units at both the Ministry of the Interior and Local Development and the Ministry of Justice and Human Rights play a significant role in investigating complaints of allegations of human rights violations. They also follow up on the outcome of the investigation, the referral of the accused to the judiciary for prosecution and the submission of cases of those involved in lesser offences to the disciplinary bodies.

The establishment of a human rights subsidiary body at the Prisons Administration

364. In an effort to further develop the practical measures intended to strengthen the human rights system on the ground, a mechanism to protect inmates' rights through the establishment of a subsidiary human rights body to deal with inmates and deviant children. It is charged with receiving, analysing, following up and implementing human rights-related instructions. Health, social, custodial and prison accommodation conditions come under the remit of this body also.

365. In order to deal with inmates and deviant children's cases in an appropriate manner, the citizens' relations bureau receives individuals with complaints and refers them to the relevant body at the Prisons Administration. It should be noted that every prison or correctional establishment has a reception office dealing with requests and complaints submitted by inmates' families and gives them guidance. The table below lists the administrative measures taken against prison officers for acts of ill-treatment while performing their duty.

		Punishment		
Year	*Number of cases*	*First degree**	*Second degree**	*Dismissal*
1999	-	-	-	-
2000	9	7	2	-
2001	3	3	-	-
2002	1	1	-	-
2003	2	2	-	-
2004	8	4	4	-
2005	6	4	2	-
2006	1	-	1	-
2007	11	3	1	7
2008	11	7	4	-
Total	**52**	**31**	**14**	**7**
Grand total*				**52**

366. The new article 50, paragraph (a), of Law No. 58 of 13 June 2000, which amended and supplemented Law No. 70 of 6 August 1982 regulating the work of the Internal Security Forces, states that first degree disciplinary measures may include: a warning, a reprimand, a simple and a severe suspension from duty and a mandatory transfer. Detention periods, on the other hand, are governed by an order.

367. Paragraph (b) of the above article stipulates that second degree disciplinary measures may include: a demotion by one or two ranks and a reduction in salary they entail, a demotion of competency, a six-month suspension from duty and payment of salary and the dismissal from service without the denial of pension. (Reference was made to the prosecution of six officers out of 52. Four of the six received prison sentences and the remaining two were acquitted).

National redress mechanisms

368. The Higher Commission for Human Rights and Fundamental Freedoms play an important role in receiving complaints of allegations of violations of human rights, including cases involving acts of torture or ill-treatment. The Commission also receives requests for other human rights-related issues, such as the restitution of passports, pardons and the restitution of certain rights. Between May 2004 and April 2008, the following requests have been received:

Period	*Number of complaints and requests*	*Decision rates*
15 January 2003 to 30 April 2004	739	60%
1 May 2004 to 30 April 2005	806	65%
1 May 2005 to 30 April 2006	806	70%
1 May 2006 to 30 April 2007	1 056	75%
1 May 2007 to 30 April 2008	759	86%

Legal provisions governing the protection of a complainant or a witness from all forms of ill-treatment or intimidation

369. Tunisian law guarantees the protection of a complainant or a witness from all forms of ill-treatment or intimidation. Article 103 of the Criminal Code provides for the punishment of a public official who violates the freedom of another individual without legal justification, who inflicts or instigates another person to inflict violence or ill-treatment on an accused person, a witness or an expert to obtain a confession or a statement, with five years in prison and a fine of 120 dinars. In the case of only the threat to use violence or ill-treatment, the punishment prescribed is six months in prison. Over the period covered by this report, no cases of complainants being put under pressure or threatened have been recorded.

370. Article 222 of the same Code provides for the punishment of any person who threatens another person with the use of force, regardless of the method, with prison for a period ranging from six months to five years and a fine ranging from 200 to 2000 dinars. The punishment is doubled if the threat was used to give and order or to impose a condition even if only a verbal threat has been delivered.

Article 14

371. The State ensures that, in its legal system, the victim of an act of torture obtains redress and has an enforceable right to a fair and adequate compensation including the

means for a full rehabilitation and that in the event of the death of the victim as a result of an act of torture, his dependents are entitled to compensation.

The right of the victim of acts of torture to a fair and adequate compensation

372. Article 1 of the Code of Criminal Procedure recognizes the principle that any criminal act shall lead to a public prosecution and the imposition of punishment. It also provides for the principle of the right of the injured party to bring a civil suit to seek compensation. A person who is subjected to an act of torture may bring a public case under his own individual responsibility at the same time with a civil action, or may choose to bring an independent civil suit before a civil court. A civil suit may be brought by any person who suffered personal injuries as a direct result of the commission of the offence (article 7 of the Code of Criminal Procedure). It should be noted that if the injured party is not solvent, he may enjoy legal assistance to cover the cost of the trial including legal costs.

373. In accordance with article 49 of the statutes of the Internal Security Forces (Law No.70 of 6 August 1982), the authorities must afford victims the right to claim civil damages if an officer from the Forces is prosecuted for committing a wrongful act while on duty or during the performance of his functions.

374. In this context, reference is made to the Appeals Court decision 1120/2002/12 of 20 January 2002 which upholds a court of first instance ruling to sentence four officers to four years in prison for their abuse of authority by using excessive force in the course of performing their duty leading to the amputation of a limb of the victim. The court ordered the Ministry of Justice, as represented by a State prosecutor, to pay the plaintiff M.A.M. the sum of 200,000 dinars in compensation for physical injury, 100,000 dinars for psychological injury and 6,000 dinars in costs for artificial limbs to be fitted.

The right of detainees and persons proven innocent after conviction to compensation

375. The promulgation of a law recognizing the right of detainees and persons convicted but later found innocent to compensation is one of the most significant additions to the criminal justice system to protect individuals against arbitrary detention or arrest (Law No.94 of 29 October 2002 regarding compensation to detainees or persons convicted then proven innocent). The adoption of the law provides added guarantees to litigants; especially persons ordered to serve a prison sentence by a court of law and later found to be innocent. It explicitly provides for State responsibility for miscarriages of justice, the payment of compensation to the injured party, the regulation of legal and territorial jurisprudence of damages cases and the transfer of rights of the victim to the spouse, children and parents, when appropriate.

376. The law stipulates that only persons who had to serve a sentence or held in pre-trial detention and released definitively having been found to be innocent have the right to claim compensation. This means:

- Investigation decisions which are no longer susceptible to a review and prove the innocence of the accused either because the act does not constitute an offence, the offence cannot be attributed to the accused or because the offence did not take place.
- Final judgements of innocence regarding persons held in pre-trial detention, persons on bail and sentenced to serve a prison sentence before the case was dropped for the abovementioned reasons and persons who are acquitted after a review of their case.
- Judgements against an accused whose case has been settled by the judiciary.

Dismissed cases for insufficient evidence do not come under the above arrangements.

377. Since the entry of the abovementioned law into force, several cases have been brought before the Tunisian Court of Appeals. One example is Case No. 22 of 20 May 2005 where an individual was charged with forging currencies, being an accessory to handling, and dealing in and bringing counterfeit monies into the country. Having served six months in pre-trial custody, he was definitively acquitted by the court. He brought a case against the State for compensation under Law No. 29 of 29 October 2002 and was awarded 13,000 dinars in damages.

378. Another example is Case No. 47 of 30 May 2008 where a person was found guilty of abuse of confidence and was sentenced to four months in prison, which he served in full. It was later found that he had been convicted on the basis of two false testimonies and that both false witnesses have been prosecuted for perjury. He appealed the court's decision and requested the dismissal of the case against him. He also brought a case before the Tunisian Court of Appeals against the State for compensation and the Court found in his favour ordering the State to pay 30,000 dinars in damages. The following table illustrates the cases involving compensation pay-outs since the entry of the law into force up to 2008.

Number of cases	*Type of case*
4	Compensation ordered
1	Right to compensation no longer valid
53	No legal grounds for compensation
10	Cases under consideration
68	Total number of cases since introduction of the law

379. The dismissal of the 53 cases mentioned above is attributed to the application for compensation when the statutory deadline had already elapsed, the lack of legal requirements such as the person being responsible in full or in part for the initiation of the arrest, or the lack of sufficient evidence to uphold the case. It is logical that the number of such cases is not significant because of the rare incidences of error in the administration of freedoms-related justice.

Article 15

380. Tunisian law ensures that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings.

Prohibition of the use of any statement established to have been obtained or made under torture

381. Tunisian law does not recognize a confession obtained under duress and prohibits its use as evidence. Article 432 of the Code of Obligations and Contracts provides that a confession must be made of the person's own accord and that any violation of this principle renders the statement null and void. Article 50 of the same Code defines coercion as forcing a person to perform an act against his will, while article 51 states that coercion leading to physical or mental trauma, or fear of being subjected to bodily harm, violation of the honour of the family or denial of access to funds, all of which run contrary to the principle of accord. As such, any confession obtained from a person under torture cannot be used as evidence against him.

382. It should be noted also that article 13bis of the Code of Criminal Procedure makes it mandatory for the judicial police to have a detainee examined by a doctor upon the request

of the detainee or one of his relatives and that this request is included in the case report. The purpose of this provision is to verify if the detainee had been subjected to torture or not.

383. If the medical examination shows signs of torture or violence, the statement obtained from the person is considered null and void and cannot be used as evidence for violation of procedures. Article 155 states that only a statement that is prepared in accordance with the law and contains what was said and heard by a public official in the line of duty is valid.

384. Equally, the Rules of Evidence stipulate that harm inflicted, like any other piece of evidence, is subject to interpretation under absolute judgement and that if a judge is convinced that the confession obtained from the suspect was a result of coercion or torture he will discount that confession when issuing his ruling. In general, if it is judicially proven that torture has been resorted to, all applicable measures against the victim are compromised. Notwithstanding the prosecution of the officers who committed torture, a new investigation is launched and is conducted by different officers.

Prohibition by jurisprudence of the use of statements obtained under torture

385. Since the late 1960s, the Tunisian Court of Cassation has been of the view that although a confession is the ultimate evidence, it is, however, subject to the absolute interpretation of the judge and that he is not restricted by law not to accept a confession if the confession is clear and satisfies his conscience (Cassation Criminal Decision No. 6124 of 16 April 1969, N.M.V.S.C., 1970, p.132).

386. In another decision, the Court of Cassation affirms that "the competent court is obliged to respond to all substantive arguments that may have a bearing on its decision. Accordingly, an objection by the court to consider arguments contrary to the confession made by the accused renders the decision in question lacking in causation and subject to appeal" (Cassation Criminal No. 8616 of 25 February 1974, N.M.V.S.C1., 1975, p.81).

387. In another decision, the Court of Cassation confirmed that a confession obtained through the use of violence is considered null and void unequivocally. It makes reference to article 152 of the Code of Criminal Procedure which stipulates that the validity of a confession, like any other piece of evidence, if to be admitted must be left to the discretion of the presiding judge (Cassation Criminal Decision No. 12150 of 26 January 2005).

Article 16

388. When Tunisia became a State Party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, It undertook to prevent other acts which do not amount to torture, particularly when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other persons acting in an official capacity.

389. It should be noted that the provisions of article 103 of the Criminal Code, referred to in analyzing article 4 of the Convention, is comprehensive in nature and covers the acts of torture in their entirety. The said article states that " a public official who violates the liberty of another individual without legal justification, who inflicts or who instigates another person to inflict violence or ill-treatment on an accused person, a witness or an expert to obtain a confession or a statement shall be punished with five years in prison and a fine of 120 dinars. In the case of only the threat to use violence or ill-treatment, the punishment prescribed shall be six months in prison".

390. The Criminal Code also prescribes severe punishment for the threat to use violence or ill-treatment. Article 222 provides for punishment ranging from six months to five years and a fine for any person who threatens another person with an act that constitutes a

criminal offence regardless of the method used to deliver the threat. The punishment is doubled if the threat leads to giving an order or to the imposition of a condition even when the threat is delivered only verbally. Article 223 of the Code prescribes a punishment of one year in prison and a fine for any person who threatens another person with a weapon even without the intention to use that weapon.

391. Tunisian law adopts a wide spectrum for the definition of torture. It covers physical, moral or acts inflicted on the victim or a member of his family. For example, an act of abduction or hijacking is punishable with 10 years in prison. However, if the same offence is committed with the use of a weapon, the assumption of a false identity or the use of a fake official order, the punishment becomes imprisonment for life. The death penalty is prescribed if the act leads to the death of the victim (article 237 of the Criminal Code).

III. Additional information and replies to observations made by the Committee on the second periodic report

392. The time it took Tunisia to prepare the current report reflects the State's desire to paint a comprehensive picture of the full and integrated approach to reforming the national system. These procedural, substantive and practical measures are manifested in the universal approach to developing the legal, juridical and criminal mechanisms put in place to ensure the protection of individual freedoms and human rights.

393. Since the ratification of the Convention against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment in 1988 without any reservations, Tunisia has been committed to pursuing the path of reform which included the review and amendment of the Code of Criminal Procedure and the Criminal Code. Prominent among these changes has been the adoption of the definition of torture used in the Convention.

394. The current report contains an elaborate analysis of the evolution of the legal and constitutional framework aimed at the protection of human rights. It also outlines the efforts made to promote human rights education and the dissemination of human rights culture. These efforts by the various parties and organs have been strengthened by the powers invested in the Higher Commission for Human Rights and Fundamental Freedoms and the Administrative Mediator in the conduct of their functions and in the exercise of their territorial authority, and especially by the creation of the post of a human rights coordinator to oversee the cooperation between the human rights bodies within the Ministry of Justice and Human Rights, the Ministry of the Interior and Local Development and the Ministry of Foreign affairs. The constitutional reform of 2002, on the other hand, brought human rights affairs under the umbrella of the Ministry of Justice.

395. One of the main changes that took place over the period covered by this report is the adoption of the definition in article 1 of the Convention to be part of article 101bis of the Criminal Code. The measure is in compliance with the Convention and is in response to the concerns expressed by the Committee during the discussion of the previous report. The definition takes into account three main principles:

- Using the same language in the Convention
- The explicit reference to torture
- The prohibition of torture regardless of the motive

396. It must be emphasized that inmates receive good treatment without any discrimination within the rules of the law. This is one of the landmark features of the rule of the state of law as underscored by the 2002 constitutional reform. During the period

covered by this report no cases of persons being put under pressure or being subjected to threats to prevent them from reporting cases of torture have been recorded.

397. However, efforts continue to ensure that any violations and inappropriate actions taken by law enforcement officials are dealt with in the right manner. With regards to the observations raised about the use of torture in prisons and holding inmates in solitary confinement longer than prescribed by law, severe disciplinary and actual measures have been taken to demonstrate that impunity is not tolerated regardless of the capacity of the perpetrator.

398. The law applies to all errant officials. The rule of law is above any individual and its provisions prohibit the use of solitary confinement beyond what is prescribed in the punishment. It should be noted that deaths in prisons are investigated promptly and a juridical investigation is triggered automatically. The following table lists death cases in prisons from 2005 to 20 October 2009.

Year	*Number of deaths*
2005	44
2006	48
2007	27
2008	43
2009	30

399. According to the medical record, the deaths are attributed to:

- Myocardial infractions
- Cerebral strokes
- Advanced stages of cancer
- Septic shocks
- Suicide (see table on page 32)
- Attacks by others

400. It should be noted that over the same period two cases of attacks by others have been recorded. The first, an attack by a child on another child and the case was referred to the prosecution service. The second, involved an attack by four inmates on another who shared the same cell. The attackers were prosecuted.

401. With the annual prisons intake figures averaging 60,000, the rate of death does not exceed 1 per cent compared to 5.5 per cent in normal life outside prison.

402. The State has been keen to deal with all the shortcomings in Tunisian law (reducing custody periods, maintaining detention records, informing the families, medical examination...) to ensure that all arrests have been carried out in accordance with the law and taking into account all procedural steps and that detainees' families have not been subjected to any harassment. The authorities have gone as far as not preventing relatives of suspects who are still at large from travelling abroad to join other members of the family.

403. The law respects the individual nature of the offence and the relevant punishment. It ensures that victims' rights are upheld when complaints are considered or when the law is applied, and that the identity of the accused remains confidential and that their rights are protected when it comes to compensation. The judiciary investigates all serious allegations of obtaining confessions through the use of threats or under torture in the early stages of an inquiry.

404. The additional responses presented in this report on all the issues raised is an embodiment of the clear political options available to make legislation a reflection of the need to bridge any gaps that may exist between the text of the law and actual practice. The State is making every effort to ensure that any person, regardless of status or authority, does not escape punishment and that the rule of law prevails.