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الدورة التاسعة عشرة

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير المقرر الخاص المعني بالتعذيب وغيره من ضروب المعاملة أو العقوبة القاسية أو اللاإنسانية أو المهينة، خوان إ. منديس

إضافة

البعثة إلى تونس*

موجز

يتضمن هذا التقرير استنتاجات وتوصيات المقرر الخاص المعني بالتعذيب وغيره من ضروب المعاملة أو العقوبة القاسية أو اللاإنسانية أو المهينة، السيد خوان إ. منديس، عن بعثته إلى تونس في الفترة من ١٥ إلى ٢٢ أيار/مايو ٢٠١١.

يعرب المقرر الخاص عن تقديره للحكومة الانتقالية لتوجيهها دعوة إليه لزيارة البلد، مما يدل على استعداد تونس للانفتاح على التدقيق المستقل والموضوعي في حالة حقوق الإنسان بها. ويشكل التصديق على عدة صكوك دولية لحقوق الإنسان، بما فيها البروتوكول الاختياري لاتفاقية مناهضة التعذيب وغيره من ضروب المعاملة أو العقوبة القاسية أو اللاإنسانية أو المهينة، ومبادرة وزارة العدل المهادفة إلى وضع مشروع إطار قانوني لمواءمة التشريعات الوطنية مع المعايير الدولية لحقوق الإنسان مظهراً من مظاهر حسن النية والالتزام بإصلاح النظام القانوني في تونس.

* يُعمم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في المرفق للموجز، فيُعمم باللغة التي قُدّم بها وباللغة الفرنسية فقط.

ومع الترحيب بتوافق الآراء الرفيع المستوى عبر الطيف السياسي بشأن الحاجة إلى إلغاء التعذيب وسوء المعاملة، وبسلسلة من الخطوات الإيجابية المتخذة من أجل إقامة العدالة مرة أخرى فيما حدث في السابق ومؤخراً من أفعال التعذيب وسوء المعاملة، يلاحظ المقرر الخاص أنه بالنظر إلى أن التعذيب موروث من النظام السابق وإلى أن التحقيق في ادعاءات التعذيب وسوء المعاملة لم يكن يجرى في الوقت المناسب دائماً، لا يمكن القول إن ثقافة الإفلات من العقاب لم تعد سائدة. وعلى الرغم من أن إساءة معاملة المحتجزين تُرتكب أساساً، على ما يبدو، في الفترة الأولى من الاحتجاز، فقد رُصدت أيضاً حالات من إساءة المعاملة في مراحل متأخرة من الاحتجاز. وفي حين أنه يوجد عدد هائل من الأوامر الإدارية التي تنظم معاملة المحتجزين، فإن تنفيذها بفعالية يتطلب إنشاء آليات للإنفاذ والرصد.

واستناداً إلى اجتماعات عُقدت مع صانعي القرارات والضحايا وممثلي المجتمع المدني، حدد المقرر الخاص قضيتين شاملتين لهما أهمية حاسمة في مكافحة التعذيب وسوء المعاملة بفعالية، وتستلزمان من الحكومة أن توليهما عناية عاجلة لتأمين العدالة تحقيقاً للانتقال الناجح: أولاً، التحقيق السريع والشامل في جميع حالات التعذيب وسوء المعاملة، وملاحقة مرتكبيها، وتوفير وسائل انتصاف فعالة وتعويضات تشمل خدمات رد الاعتبار إلى جميع ضحايا التعذيب وسوء المعاملة؛ وثانياً، وضع ضمانات قوية في مواجهة التعذيب وسوء المعاملة عن طريق الإسراع بإدخال إصلاحات دستورية وتشريعية وإدارية.

وفي هذا السياق، وفيما يتعلق بالانتهاكات المرتكبة في ظل نظام بن علي، يوصي المقرر الخاص بإجراء تحقيقات ملائمة وشاملة في جميع حالات التعذيب، وملاحقة مرتكبيها، وتقديم خدمات التعويض ورد الاعتبار إلى الضحايا. وفيما يتعلق بالإساءات المرتكبة في أثناء الثورة وما بعدها، يوصي المقرر الخاص بأن تنجز لجنة تقصي الحقائق المنشأة للتحقيق في هذه الأحداث أعمالها في أقرب وقت ممكن، وبأن تلي استنتاجاتها تحقيقات وملاحقات، متى لزم الأمر، دون المزيد من التأخير، وبأن يحصل الضحايا على تعويض كاف ورد اعتبار. وفيما يتصل بمنع التعذيب، يوصي المقرر الخاص بالتعجيل بالإصلاحات الدستورية والتشريعية والإدارية لكفالة إرساء ضمانات قوية في مواجهة التعذيب وسوء المعاملة.

ويدعو المقرر الخاص المجتمع الدولي إلى مساعدة تونس في مكافحتها للتعذيب وسوء المعاملة بتوفير الدعم المالي والتقني.

Annex

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Tunisia (15 to 22 May 2011)

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I. Introduction

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, conducted a visit to Tunisia from 15 to 22 May 2011, at the invitation of the interim Government. The purpose of the mission was to look into the violations committed during the Ben Ali regime; to assess the abuses committed during and after the revolution (the period of 17 December 2010–May 2011); and to identify measures needed to prevent torture and ill-treatment in the future.
2. During his seven-day mission, the Special Rapporteur met with the Prime Minister, the Secretary of State for Foreign Affairs and other officials at the Ministry of Foreign Affairs; the Minister of Justice and other officials at the Ministry of Justice; the Minister of the Interior; the General Director of National Security; the Director General of the National Guard; the Director of External Relations and International Cooperation; the Head of the Human Rights Unit; and other representatives of the General Directorate of National Security, the General Directorate of the National Guard, the Directorate of the Judicial Police and the interim Government.
3. Outside of the Government, the Special Rapporteur met with the Chair of the National Commission to Establish the Facts of Abuses and Violations from 17 December 2011 until the Elimination of their Cause (hereinafter referred to as the fact-finding commission); the spokesperson of the High Authority for the Achievement of the Revolution's Objectives, Political Reform and Democratic Transition; the Chair of the Commission Investigating Cases of Embezzlement and Corruption; and a broad range of civil society organizations, lawyers and victims and their families. In addition, the Special Rapporteur held meetings with the United Nations Country Team, the International Committee of the Red Cross (ICRC) and the diplomatic community.
4. The Special Rapporteur visited places of deprivation of liberty, and police stations in Tunis, Bizerte and Kasserine. In all of those places, the Special Rapporteur was able to hold private interviews with detainees.
5. The Special Rapporteur wishes to thank the Ministry of Foreign Affairs and the Ministry of Justice for issuing an authorization letter providing him with unrestricted access to all detention facilities in accordance with the terms of reference for fact-finding missions by special rapporteurs of 1998 (E/CN.4/1998/45, annex V). He regrets, however, that despite his repeated requests he did not receive a similar letter from the Ministry of the Interior, although the latter orally indicated that the Special Rapporteur could visit any place of detention of his choice.
6. While accepting to visit some places of detention proposed by the Government, such as the Bouchoucha detention centre, the Special Rapporteur also sought to conduct unannounced visits to prisons and other detention facilities. However, authorities insisted on having the Special Rapporteur's itinerary for visits outside Tunis; it appeared that in Kasserine, for example, the prison authorities were expecting him when he arrived. In Bouchoucha, the Special Rapporteur heard from detainees that the mattresses were put in place and juveniles were separated from adult detainees just prior to his visit. While he assumes that most preparations were well intended, they contradict the very purpose of unannounced visits and independent fact-finding. The Special Rapporteur wishes to emphasize that his fact-finding is fully effective only if he enjoys unrestricted freedom of inquiry, including by conducting visits of detention without prior announcement.
7. Due to time constraints, the Special Rapporteur selected a representative sample of places and facilities to visit in different parts of the country. The testimonies heard shared the same pattern and consistency, and were corroborated by forensic expertise.

8. The Special Rapporteur wishes to express his gratitude to the Office of the United Nations High Commissioner for Human Rights (OHCHR); the United Nations Country Team, the Resident Coordinator and others involved in organizing the visit, for the excellent assistance prior to and throughout the mission.

9. The Special Rapporteur shared his preliminary findings with the Government at the close of his mission. He sent a preliminary version of the present report to the Government in English on 3 October 2011 and a French language version on 28 November 2011.

II. Legal framework

A. International level

10. Tunisia is party to the main United Nations human rights treaties prohibiting torture and ill-treatment, including the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women. More recently, on 29 June 2011, the interim Government ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the first Optional Protocol to the International Covenant on Civil and Political Rights, and the International Convention for the Protection of All Persons from Enforced Disappearance. On 24 June 2011, Tunisia ratified the Rome Statute of the International Criminal Court. Following an assessment mission from 26 January to 2 February 2011, OHCHR opened the first United Nations human rights office in Tunisia.

B. Regional level

11. Tunisia subscribed to the Cairo Declaration on Human Rights in Islam (1990), a guiding document that does not require ratification. It acceded to the Arab Charter on Human Rights (2004), without ratifying it. It is also a State party to the African Charter on Human and Peoples' Rights (through accession) and had ratified the Protocol thereto on establishing an African Court on Human and Peoples' Rights (2004).

C. National level

12. The drafting of a new Constitution will be entrusted to the Constituent Assembly, scheduled to be elected on 23 October 2011.

13. The Special Rapporteur was informed of the initiative of the Ministry of Justice to develop a draft legal framework for the harmonization of national legislation with international human rights standards. He hopes that swift follow-up steps will be taken to reform the national legislation to ensure its compliance with human rights standards and implement the legislative amendments.

14. The Special Rapporteur was informed that the interim Government intended to revise the statute of the Higher Committee on Human Rights and Fundamental Freedoms to bring it into compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). He notes the initial efforts to

draft a decree for establishing a national human rights institution (NHRI) and reaffirms the need for this institution to be in full compliance with the Paris Principles. However, he regrets that since the removal from office of the newly appointed head of the Higher Committee in May 2011, the interim Government has not made significant progress towards establishing the new NHRI. The Special Rapporteur notes that a new President of the Higher Committee was appointed in late August by the interim President of Tunisia. However, he stresses that this appointment should not be at the expense of enabling legislation which would provide for the establishment of a NHRI in compliance with the Paris Principles.

1. Prohibition of torture in national legislation

15. Torture is outlawed by article 101bis of the Criminal Code. The article, which was added to the Code by Law No. 89 of 2 August 1999, stipulates that:

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.

16. The Special Rapporteur notes that this definition of torture is incomplete and not fully in conformity with article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The current legislation does not provide for victims to pursue the criminal liability of commanders for acts of torture committed by their subordinates. The Special Rapporteur emphasizes the importance of penalizing all acts of instigation, consent or acquiescence of torture by public officials or other persons acting in an official capacity, including those who order subordinates to torture or who cover up torture after the fact.

2. Safeguards against torture and ill-treatment during arrest and detention

17. The Special Rapporteur notes that article 152 of the Code of Criminal Procedure 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), and that the Code of Criminal Procedure renders any confession under duress null and void and provides for possible prosecution of those responsible for acts leading to such conditions. However, he expresses concern that in practice there appears to be no instruction to the courts with regard to implementing the latter rule or ordering an immediate, impartial and effective investigation if the rule is violated. Moreover, the Special Rapporteur observes that, in practice, confessions obtained under torture are not expressly excluded as evidence in court. He is further concerned that there are no clear procedures in place prescribing the measures to be taken by courts should evidence appear to have been obtained through torture or ill-treatment, in order to ensure in practice the absolute respect for the principle of inadmissibility of evidence obtained through torture, except against a person accused of torture, in accordance with article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He recommends that the State legislation provide for a means whereby an individual could challenge the legality of any evidence, in any proceeding, plausibly suspected of having been obtained by torture.

18. Article 13bis of the Code of Criminal Procedure limits the period of *garde à vue* (police custody) to three days, with one extension for a similar duration. 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. The same article makes it mandatory for the judicial police to have a detainee examined by a doctor upon the request of the detainee or his relatives.

19. Although the Prosecutor General must give reasons supported by a written statement when authorizing extensions of the *garde à vue* period, the Special Rapporteur observes that the law does not explicitly prescribe the point at which the initial period of *garde à vue* officially starts.

20. The Special Rapporteur expresses concern about the excessive length of *garde à vue* during which detainees do not have access to a lawyer. In addition, given the practice of the past regime and the fact that ill-treatment normally happens prior to the registration of police arrest, the Special Rapporteur expresses concern about the period of deprivation of liberty soon after arrest and before the detainee is officially acknowledged to be in *garde à vue*, as it is during this period when the basic safeguards are generally not provided for in practice. In this regard the Special Rapporteur welcomes the expressed intention of the authorities to allow detainees immediate access to a lawyer.

3. Complaints and investigations of acts of torture and ill-treatment

21. Tunisian law provides for three different types of redress mechanisms for persons alleging to have been subjected to torture or other human rights violations: legal, administrative and national.

22. Legal redress mechanisms include the public prosecutors and their deputies, investigating judges, sentence enforcement judges and other courts of law. According to article 26 of the Code of Criminal Procedure, the Prosecutor General, investigating judges and the judges of indictment office are mandated with receiving complaints and carrying out investigations.

23. Article 342, paragraph 3, of the Code 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. Inmates can also request to meet with the sentence enforcement judge during one of his periodic inspection tours of the prison (article 17, paragraph 7, of Law No. 52 of 2001).

24. National redress mechanisms include the Higher Commission on Human Rights and Fundamental Freedoms, which is tasked with receiving complaints, including cases involving acts of torture or ill-treatment. If reconstituted in accordance with the Paris Principles, the Commission could potentially be constituted into a credible, independent and reliable complaints mechanism.

25. Administrative redress mechanisms include citizens' liaison bureaus at the Ministry of Justice and at the Prisons Administration.

III. Assessment of the situation

A. Before the revolution

1. Endemic practice of torture and ill-treatment

26. The Special Rapporteur received many reports and testimonies indicating that the Ben Ali regime was marked by widely reported cases of torture and ill-treatment. The systematic practice of torture and ill-treatment was deeply entrenched and institutionalized within the security sector, with torture being practiced and abetted by law enforcement officials, the former State Security Department (DSS, also known as the “political police”), Ministry of the Interior personnel and prison staff, with complete impunity.

27. Torture and ill-treatment was pervasive in detention centres, particularly in the DSS. The Special Rapporteur received testimonies and reports indicating that torture was orchestrated by the DSS under the authority of the Ministry of the Interior and practiced by all police forces. Certain victims were reportedly kept in custody and subjected to various forms of torture within the Ministry of the Interior headquarters itself.

28. In addition, according to various sources, the use of torture intensified after the entry into force of the counter-terrorism legislation of 10 December 2003 (Law No. 2003-75).

29. The Special Rapporteur heard credible testimonies about a pattern of a lack of timely and adequate investigation of torture allegations by prosecutors or investigative judges.

2. Political prisoners

30. The Special Rapporteur received information indicating that the overwhelming majority of persons convicted for politically motivated offenses in Tunisia, some arrested under the 2003 anti-terrorism law, were reportedly sentenced by military courts to life imprisonment after unfair trials marred by allegations of torture and other ill-treatment.

31. The Government announced on 19 February 2011 that all political prisoners had been released and that others had been awarded conditional release or a presidential pardon. The Special Rapporteur is concerned that while some of the detainees of the Ben Ali period may have benefitted from the general amnesty,¹ there is no strategy in place to hold the perpetrators of past violations accountable and to ensure reparation and effective remedy. No programme of remedies, including the means for as full rehabilitation as possible, were contemplated by the interim Government at the time of the visit.

3. Impunity

32. The Special Rapporteur was informed that complaints of torture were rarely investigated under the Ben Ali regime.² The judiciary has reportedly been tightly controlled by the executive branch. In the majority of cases, the investigating judge would refuse to register complaints of torture out of fear of reprisals, and complaints lodged by victims to

¹ Decree No. 1 of 19 February 2011. According to the Ministry of Justice, 5,200 prisoners, including political prisoners, have been released under the amnesty.

² See also the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his mission to Tunisia (A/HRC/16/51/Add.2).

the prosecution were almost always dismissed immediately.³ The practice of admitting a confession obtained under torture into evidence was widely practiced by judges. In addition, forensic assessments generally were not conducted or, if they were, their credibility was undermined by many deficiencies or falsified conclusions.

33. The Special Rapporteur learned that during the period from 1999 to 2009 (September), 246 police officers were prosecuted for ill-treatment and misconduct. Out of 246 initiated prosecutions, 228 final judgments were handed down during the same period. Reportedly, only seven criminal convictions for acts of torture and ill-treatment were handed down against law-enforcement and prison officials under article 53 of the statute of the Internal Security Forces.

4. Safeguards

34. Tunisian security practice has not adhered strictly to regulations requiring the prompt registration of persons arrested, immediate notification of family members, limitation of pretrial detention, medical examinations in response to allegations of torture, and autopsies in all cases of deaths in custody. This has also been pointed out by the Committee against Torture and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.⁴

35. The previous regime permitted no independent oversight of places of detention, with the exception of granting ICRC access to prisons as of 2005. After the revolution, the interim Government opened the prisons up to external inspection by international, and some national, human rights organizations.

B. The situation during and after the revolution

1. Excessive use of force and abuses committed during the revolution

36. The Special Rapporteur received numerous accounts and eyewitness testimonies from families of persons killed or wounded during the period December 2010 to January 2011. Witnesses who had participated in protests in Tunis, Kasserine and Bizerte, consistently alleged that despite the largely peaceful nature of the demonstrations, the security forces frequently intervened with excessive use of force. According to some reports and testimonies, the authorities used tear gas and live ammunition. Some eyewitnesses reported snipers shooting protesters from rooftops. According to some official accounts, between 8 and 12 January 2011, police and security forces shot 21 peaceful protesters in Kasserine and Tala alone.

37. Figures on the death toll and injuries suffered during the events of December 2010 to January 2011, vary. According to an OHCHR report,⁵ figures obtained from the Ministry of Justice indicate that between 17 December 2010 and the end of January 2011, 147 persons had died during, or in circumstances surrounding, the demonstrations, while another 510 had been injured. Several human rights organizations have reported a much higher number of killings since the beginning of the protests. According to them, the death toll reached

³ Concluding observations of the Human Rights Committee (CCPR/C/TUN/CO/5), para. 11.

⁴ *Official Records of the General Assembly, Fifty-fourth session, Supplement No. 44 (A/54/44)*, para. 97 and A/HRC/16/51/Add.2, para. 22.

⁵ OHCHR, "Report of the OHCHR Assessment Mission to Tunisia, 26 January - 2 February 2011", para. 39.

approximately 400, including detainees killed in prison. The head of the fact-finding commission told the Special Rapporteur that he estimated that the number of dead would rise to about 200 and the injured to about 800; the final total could take up to one year to determine.

38. The Special Rapporteur received information according to which, during the same period, fires and other incidents in several prisons resulted in the deaths of 72 prisoners. It is not clear what happened in the prisons at the time. According to reports, in at least four prisons (Monastir, Mahdia, Bourj al-Roumi and Gabès) inmates died by asphyxiation, burns or bullet wounds following intervention by security forces. At the Bourj al-Roumi prison the Special Rapporteur observed the damage to several cellblocks that had been held for several weeks by the inmates.

2. Abuses committed after the revolution

39. On 5 May 2011, a wave of new protests broke out, with hundreds of demonstrators demanding the departure of the second interim Government. The police reacted, according to numerous reports, with violence against journalists and protesters. Police subjected a total of 15 reporters and photographers working for local and foreign media to beatings and insults and confiscated their equipment. The Special Rapporteur welcomed the initiative of the Ministry of the Interior to issue a public apology and to open an inquiry into the incidents.

40. Also in the context of these demonstrations, the Special Rapporteur heard direct victim testimony about the arbitrary arrest and beatings of a group of young people that included more than 20 minors. Together with about 46 adults, they were arbitrarily detained and taken to a detention centre without any access to a lawyer or notification to their families; they were set free at 4 a.m. in one of the most dangerous areas of Tunis. During about 12 hours of detention, detention officers forced them to kneel and remain in uncomfortable positions. The forensic examination of one of the young men was consistent with the allegation of being beaten by several policemen.

3. Conditions in places of detention

(a) Prisons

41. The Special Rapporteur received reports that, with an average prison population of 26,000 prisoners,⁶ prisons and other places of detention have been heavily overcrowded. While the recent general amnesty, conditional releases and a presidential pardon considerably reduced the size of the prison population, the destruction of several prisons during the revolution has reportedly contributed to continued overcrowding.

42. The Special Rapporteur observed that the conditions of prisons and detention centres visited varied from adequate to unsatisfactory. Some areas of concern were unhygienic conditions, including insufficient sanitation, the presence of bedbugs and other pests, poor ventilation and lighting, and overcrowding. The Special Rapporteur heard complaints about the irregular provision of adequate food and water, a lack of privacy and insufficient family visits.

⁶ Number in penal institutions, including pretrial detainees. International Centre for Prison Studies, World Prison Brief: Tunisia, available from www.prisonstudies.org/info/worldbrief/wpb_country.php?country=50. The brief cites figures provided by the Ministry of Justice of Tunisia, as at January 2011.

43. Medical centres existed; however, it seemed they were not always accessible to detainees upon request, due to a shortage of doctors. While doctors were on duty in two prisons visited, the Special Rapporteur heard allegations that detainees sometimes had to wait weeks for an appointment. In the establishments visited, the Special Rapporteur detected dreadful oral hygiene, with multiple and significant dental problems requiring urgent treatment. The accompanying forensic expert did not detect situations of detainees with infectious contagious diseases, such as tuberculosis.

44. The Kasserine prison was composed of a large compound with several large dormitory cells that have natural light and a fresh air supply through an iron grid. One of the cellblocks was overcrowded, housing about 70 detainees in three rows of beds, with very little space to move between the rows, although it seemed well maintained. The Special Rapporteur notes that the prison provides no separation of convicted and pretrial detainees. The prison allegedly held no minors at the time of the visit. The cells included a shower, toilet and sink. In most cases, toilets in cells were open and did not allow for privacy. According to the prison director, the Kasserine civilian prison accommodated 277 prisoners; of these, nine were women, 176 had been convicted and the rest were awaiting trial.

45. The Bourj al-Roumi prison in Bizerte, the oldest prison in Tunisia, was divided into two wings: one old and one new, each housing 450 detainees. During the revolution, detainees took control of the detention facility for several weeks; as a result, the main part of the prison was destroyed. Medical facilities were also affected. Of 32 cells, only 7 were operational at the time of the visit. The cells included a shower, an open toilet and a sink in a deplorable hygienic state. The poor kitchen conditions clearly affect hygiene. The cells visited were overcrowded, housing up to 80 detainees in each, in two rows of beds, with very little space to move.

46. According to the prison administration of Kasserine, and confirmed by detainees, the prisoners were allowed one two-and-a-half-hour walk within the compound per day. In Bizerte, inmates were allowed two one-hour walks each day. In both establishments, three meals a day were served. Depending on behaviour and the sentence, detainees in Kasserine could work in the kitchen and in maintenance and cleaning, for which they were paid a wage. Of 277 prisoners, 30 (about 11 per cent) were employed. Inmates in Kasserine had access to a library and literacy classes.

47. In both establishments, the Special Rapporteur heard complaints about the general visiting policy. Detainees were allowed to have one visit of 20 to 30 minutes per week. During family visits, children under 12 were allowed direct access to their imprisoned parent; however, for conjugal visits, special permission was needed. Under Tunisian prison regulations, detainees are not allowed to place phone calls. In case of emergency, the social assistance office can place calls on behalf of inmates.

48. According to the prison administration, each newly arrived person undergoes an obligatory medical examination. This information, however, was not confirmed by detainees.

49. The Special Rapporteur notes that in the majority of cases the detainees were not subjected to forensic medical examinations following detention, while in several cases, injuries presented clear medical evidence of torture and mistreatment. The medical personnel are accountable to the prison administration, whereas ideally such staff should instead report to a general public health institution. Moreover, the medical staff in the prison did not have specific training in assessing, interpreting and documenting cases of torture and ill-treatment.

Acts of torture and ill-treatment

50. Although most of the detainees examined at random denied being subjected to any kind of torture or degrading treatment inside the prison establishments, in a small number of cases, traumatic sequelae and injuries observed presented clear physical medical evidence of the type of torture and ill-treatment inflicted (namely, physical oedema of the scrotum, small burns on the testicles and recent scars in the anal sphincter). Several detainees showed psychological alterations and elements suggesting depression and post-traumatic stress and requiring appropriate neuropsychological and psychiatric assessment and assistance, which they did not appear to receive.

51. During his visits to places of detention, the Special Rapporteur observed that corporal punishment does not seem to be widely used. According to the detention centres' management, punishment cells were no longer used after the revolution and solitary confinement was not practiced as a means of punishment. In Bizerte, however, the Special Rapporteur found that a group of detainees had been held, while handcuffed, in an isolation cell for at least 15 days before being released a few minutes before his visit. The forensic expertise of one of the detainees transferred from another prison offered evidence consistent with his allegations of being beaten and ill-treated.

52. In none of the prisons and detention facilities visited had any disciplinary measures or sanctions been taken against prison staff in the recent past. The prison director in Kasserine, for example, did not recall any disciplinary wrongdoings by penitentiary guards or his subordinates for which disciplinary measures should have been applied.

53. According to the prison authorities, the penalty enforcement judge visits the facility three times a week and any detainee can meet and file a complaint with him. However, some detainees in Kasserine and Bizerte indicated that they have never seen him, or mentioned that they were prevented from meeting him. Some detainees mentioned that ICRC and the Tunisian League for the Defence of Human Rights also pay regular visits.

(b) *Police custody*

54. The Special Rapporteur visited the Soukra police station and the police detention centre at Bouchoucha, which serves the Tunis metropolitan area. He also visited the infamous DSS facility located in the basement of the Ministry of the Interior. The facility, now closed, had been used during the Ben Ali regime for holding suspects in secret and for subjecting them to torture and ill-treatment.

55. The Bouchoucha detention centre was divided into two wings, holding detainees in *garde à vue*. Men, about 25 at the time of the visit, were held in one large cell in one wing, and women and juveniles were held in the second wing at the far end of the facility. A separate quarter for elderly and ill people was empty. A corridor from the men's cell led to an open courtyard where detainees could walk or smoke during certain hours of the day. There was no shower in the cell, only a sink and limited access to water for washing. The adjacent sanitary facility was in poor condition, but detainees maintained an adequate level of hygiene in the facility. The cell had several mattresses and blankets on the floor, but no chair or table, and was relatively well maintained.

56. While the entire detention centre was generally in an acceptable physical state, the Special Rapporteur was told that the mattresses were brought in, and juveniles were separated from adults, only a few days before his visit.

57. Some of the detainees were new arrivals; a few were in the extended period of *garde à vue*. Overall, the Special Rapporteur did not hear allegations of prolonged periods of detention in violation of the six-day limit of *garde à vue*. The Special Rapporteur found that dates of arrest, transfer to other facilities and release from custody were properly registered

and records maintained. For the most part, the registries in police stations were adequate, although on at least two occasions the Special Rapporteur found inconsistencies in the registering of the date of arrival of a detainee. In another case, the detainee was supposed to be released the day the Special Rapporteur visited the premises, as the *garde à vue* limit had been exceeded. In at least two cases in Bouchoucha, the names of detainees had not been registered.

58. From detainees currently in prison, the Special Rapporteur heard consistent allegations and testimonies about acts of torture and ill-treatment that had taken place during the periods of arrest and interrogation. The mistreatment allegedly consisted mainly of trauma caused by punches, kicks, slapping and, occasionally, blows with objects, and verbal insults and threats. In at least two cases the Special Rapporteur heard allegations about being subjected to electric shocks to the testicles and the introduction of foreign objects into the anus.

Acts of torture and ill-treatment

59. The Special Rapporteur heard consistent allegations that torture and ill-treatment continues to be practiced by the police forces, in the form of beating with a stick, kicking, slapping, burning with a cigarette, verbal abuse and threats, during the arrest and first hours of apprehension and during interrogation.

60. The Special Rapporteur received information and heard allegations indicating that torture and ill-treatment take place during arrest and interrogation in one of the secret premises allegedly used by the judicial police in Kasserine. A forensic examination of one detainee who alleged that he had been beaten and burned with a cigarette during the interrogation in such a place revealed medical evidence consistent with the allegation. One detainee described a police facility with horrific sanitary conditions where suspects were taken for interrogation; most were severely beaten and mistreated in order to force them to confess.

61. The Special Rapporteur heard testimonies that during interrogation, suspects had been kept in holding cells where the toilet was full of excrement. One detainee described how the interrogators forced his head into the excrement-filled toilet as punishment for not confessing to charges. In an attempt to verify this information, the Special Rapporteur visited a police facility located near the Kasserine penitentiary that had holding cells in a basement that was clearly not in use at the time of the visit. A secret detention centre allegedly used by the judicial police could possibly exist in another location, also not far from the Kasserine prison, but the Special Rapporteur was unable to locate it.

(c) *Women in detention*

62. The Special Rapporteur observed that women and juveniles were held separately from men and adults, respectively, both in prison and police custody. However, in Bouchoucha he was told that juveniles had been separated from adults prior to his visit. The conditions in the women's section were considerably better than those in the men's wings in civilian prisons in Kasserine and in the Bouchoucha detention centre. In Kasserine, women detainees seem to enjoy a more liberal regime than men. Inmates were allowed to prepare their own food and had some newspapers at their disposal. Female guards were employed for women and juvenile detainees in the places of deprivation of liberty visited. The Special Rapporteur commends the State for temporarily releasing pregnant women from custody to enable them to deliver in a public hospital. The Special Rapporteur saw no female prisoners in the Bourj al-Roumi facility.

63. The Special Rapporteur did not receive any serious complaints regarding the conditions or any allegations of violence from women offenders. In at least one case, he heard that detainees feared reprisals if they complained to the Special Rapporteur. A small, dark punishment cell was located beside the women's cell in Kassarine and women offenders alleged that prison wardens had used it recently as a means of punishment for insubordination.

4. Prisoners on death row

64. The Special Rapporteur regrets that, due to time constraints, he was unable to visit prisoners on death row. He nevertheless obtained (during and after the visit) credible information about the conditions of some inmates sentenced to death.

65. Capital punishment is provided for in the Criminal Code (article 5). Since 1991, the Tunisian authorities have maintained a de facto moratorium on executions and generally commute death sentences following a decision of the official commutation commission. The Special Rapporteur was told that the Centre for Legal and Judicial Studies of the Ministry of Justice had been entrusted with preparing a specific study on the subject. He was informed that, in the meantime, steps to commute the death sentences of inmates to prison sentences continue to be taken on a case-by-case basis.

66. In a credible report received by the Special Rapporteur, one prisoner on death row at al-Mornaguia prison stated that, following a hunger strike he had initiated to demand that he be allowed visitors, a privilege denied to death row prisoners, he had been held for approximately eight months in solitary confinement in a so-called "punishment wing" separated from other death row prisoners. He was confined to his cell for 22 hours a day. Twice a day he was allowed one hour in the courtyard; during that time he was not allowed any contact with other prisoners. Seeking to remedy his situation, he sent letters to the Minister of Justice and the Director-General for Prison Administration, to demand an independent inquiry into the accusations against him, which he assumed formed the basis of his isolation detention regime. The Special Rapporteur welcomes the decision of the Ministry of Justice to launch an inquiry into the circumstances of this case.

C. The way forward

1. Transitional Government: challenges facing the country

67. On 14 January 2011, former President Ben Ali fled the country. On 17 January 2011, a Government of national unity composed of members of the former President's party and the Constitutional Democratic Rally was formed. On assuming power, the interim Government announced the creation of two committees to advise on political and legal reforms and to investigate corruption, as well as a commission to investigate grave violations of human rights committed since 17 December 2010. On 27 January, after protests demanding the removal of the agents of the former Government, the Prime Minister announced a cabinet reshuffle and the formation of a second interim Government. On 25 February, the Prime Minister resigned and was replaced by an interim Prime Minister, who formed a new interim Government on 7 March 2011.

68. The current interim Government assumed its mission following decades in which the very foundation of the rule of law and the implementation of the absolute prohibition of torture had been absent at the judicial and executive levels. Therefore, it has come under immense pressure to break the cycle of impunity and restore justice for past and recent acts of torture and ill-treatment. In response, the interim Government has taken some steps

towards ensuring accountability, democratic governance and long-term reforms. However, it faces the usual challenges of transition, and a crisis of legitimacy and leadership, as well as public scrutiny, growing frustration, disappointment and criticism over the delayed delivery of justice. Moreover, the “wait and see” attitude of the interim administration may be hampering the possibility of taking bold steps to achieve justice for past abuses and provide victims of torture with rehabilitation services.

2. Addressing the past and restoring justice: fighting impunity and investigating torture claims

69. The interim Government has undertaken a series of positive steps, including considering a reform of the State security apparatus, dismantling the so-called political police, and reviewing national legislation to bring it into line with international standards. It has also pledged to remove legal obstacles to reopening the cases of homicide and torture of the past and has dismissed a number of high- and mid-ranking officials from the Ministry of the Interior and the Ministry of Justice.

70. The Special Rapporteur welcomes the announcement of the Ministry of the Interior on 7 March that it was disbanding the notorious DSS, also known as the “political police”. However, he notes that there is still a lack of clarity as regards the number of personnel affected by this change, and actions to determine their possible responsibility for serious crimes against human rights have not been made public. The Special Rapporteur was told by officials, including the Director General of Police, that members of the former DSS have not been excluded from the security forces but rather redeployed to other police units. He also heard allegations and observed widespread frustration that some elements of the security forces and former officials who may be responsible for violations of human rights have not been barred from politics.

(a) Investigating torture claims of the past

71. The Special Rapporteur has learned that some prominent members of Ben Ali’s regime have been arrested and face trial, including a former Minister of the Interior, several senior officials, and members of the presidential security guard. The interim Minister of the Interior informed the Special Rapporteur that 66 security officials had been arrested, 7 persons in the highest ranks prosecuted, and 42 officials were either forced to retire or retired voluntarily. However, the Special Rapporteur received no information as to specific cases launched, the status of the investigations, or proceedings or disciplinary measures imposed.

72. On 21 February 2011, the interim Government issued an international arrest warrant which sought the extradition of Ben Ali and family members from Saudi Arabia. In addition to charges of money laundering and the possession of unlicensed weapons, the interim Government charged Ben Ali and his wife with “plotting against the internal security of the State”, including the “instigation of disorder, murders and looting”. On 20 June, Ben Ali and his wife were tried and convicted in absentia for the first of the corruption charges. By all accounts, the trial was cursory and summary and no serious attempt was made to allow for an examination of possible exculpatory evidence or legal defences. Subsequent trials on 4 July and 10 August handed down sentences for 23 other defendants from Ben Ali’s inner circle.

73. The Special Rapporteur expects that Tunisia will investigate, prosecute and punish the cases of torture that happened under the Ben Ali regime, including the prosecution of the highest authorities if the evidence warrants it. For that reason, he looks forward to prosecutions for torture and other human rights violations, in addition to corruption. On the other hand, it must be emphasized that such prosecutions and trials must meet high

standards of fairness. In that regard, the initial cases against Ben Ali and other leaders, as described above, raise serious questions. The Special Rapporteur believes that trials in absentia are at least suspect from the perspective of international standards, although not necessarily unlawful if appropriate guarantees have been provided. However, the first exercise of in absentia jurisdiction against Ben Ali in Tunisia raises legitimate concerns.

74. The Special Rapporteur insists that the trial of Ben Ali and of all those connected to the crimes of his dictatorship must be in compliance with internationally recognized fair trial standards.

Challenges

75. The Special Rapporteur has learned that several hundred cases relating to torture and ill-treatment committed during the Ben Ali regime were filed with the Prosecutor's office. The legacy of the dependence of the judiciary on the executive and the lack of response regarding the status of their complaints have triggered some disgruntlement among the victims. The Special Rapporteur regrets that there is no clear strategy or timeline for addressing the huge backlog of cases and preserving the evidence of torture and abuse subject to adjudication as a matter of transitional justice. Furthermore, no official or institution seems to be in charge of these cases, nor of informing the public about the status of the complaints. The judiciary and the Prosecutor's office currently lack the capacity to process the volume of cases of torture and ill-treatment. Moreover, there does not seem to be a plan to provide legal assistance to victims interested in filing complaints.

76. A general mood of dissatisfaction with the remedial efforts prevails, coupled with frustration with the lack of public information as to the charges and status of those arrested and subjected to trial. The Special Rapporteur also heard consistent allegations that some representatives of the previous regime and high-ranking officials who have been responsible for perpetrating torture are still at large. The fact that some hold positions of power continues to jeopardize efforts to reform the entire system, and generates public frustration regarding accountability.

77. The Special Rapporteur is aware of discussions under way to create comprehensive justice mechanisms, such as a truth-seeking commission tasked with addressing the violations of the past and the legacy of torture and other abuses committed during Ben Ali's regime. As in other transitions to democracy, Tunisia is faced with the fact that cases accumulated over years might be neglected, as the judiciary is overburdened with the task of dealing simultaneously with the cases stemming from the Ben Ali regime, cases from the revolutionary period, new cases and ongoing reforms. Some interlocutors strongly supported the establishment of an ad hoc tribunal or another transitional justice mechanism to deal primarily with the cases of the past regime.

(b) *Addressing abuses committed during the revolution*

78. The fact-finding commission looking into the recent violations is tasked with investigating all "excesses and violations that took place since 17 December 2010". The commission is mandated to investigate, to alert and inform the Public Prosecutor, and to encourage victims and their relatives to file complaints. It has neither judicial nor prosecutorial roles, and cannot interfere with, replicate or supplant the institutions of criminal justice, nor can it determine compensation for victims. Cases that come to the attention of the commission are registered in accordance with the principle of confidentiality and referred to the judiciary for criminal investigation and prosecution. At the end of its mission, the commission will report to the President and to the public and submit its findings to the judiciary. Any relevant evidence, such as death certificates and medical records, is forwarded to the office of the Public Prosecutor. At the time of the visit

of the Special Rapporteur, the number of complaints received stood at 1,322, out of which 210 were cases of death and 714 were cases of injuries. About 200 cases were reportedly under adjudication.

79. At the time of the visit, the investigations led by the President of the fact-finding commission had implicated 12 unnamed senior officials allegedly responsible for violations committed after 17 December 2010. In addition to information on cases received, the fact-finding commission intends to formulate forward-looking recommendations, one being that the commission be transformed into a truth, reconciliation and justice mechanism.

Challenges

80. The Special Rapporteur recognizes that the fact-finding commission seems to have approached its work in a thorough and systematic manner. It has requested from prosecutors in each governorate reports of cases in process that relate to its mandate. However, the ability of the commission to subpoena and obtain documents held in public agencies is uncertain. Another source of frustration is the lack of information available to victims and the public about the status of investigations and the pace of prosecutions. The president of the commission has held at least four press conferences since its inception and the establishment of a website was planned to provide public access to information about the commission and its progress. However, there was no indication of when an authoritative report of the commission's findings was to be expected. In response to criticism for the lack of progress and transparency, the commission emphasized the need for sufficient time to ensure fair and complete investigations.

81. The Special Rapporteur was told that, as some police officers are subject to military jurisdiction, some cases had been forwarded by civil judges to military courts. That practice contributes to confusion as to the role and function of law-enforcement officials and of the military, and it complicates the development of a truly civil police.

3. Redress, reparation and compensation

82. Regarding victims of violations committed during the revolution, the Special Rapporteur welcomes the initiative of the interim Government to grant symbolic preliminary compensation to victims of the revolution and their families in the amount of 20,000 Tunisian dinars in the event of a death, and 3,000 Tunisian dinars in the event of an injury. While this measure is encouraging, it is unclear how the amount of compensation was determined, whether it is adequate, how the victims were identified, which methodologies were used to determine varying degrees of injury, how material damages and commensurate awards were quantified, and how proof can be established in the absence of a forensic examination or medical certificate. Moreover, at least one autopsy report examined by the forensic expert was of a very low quality.

83. In many cases, victims and survivors have rejected the token compensation, emphasizing instead the need for accountability and the prosecution of offenders as the priority among the elements of their right to reparations. Several officials told the Special Rapporteur that these compensation awards are intended to be symbolic and that other forms of redress and reparations will be provided through the appropriate legal process.

84. The Special Rapporteur believes that it is imperative to provide reparation and rehabilitation to victims of the past regime. However, he has received reports and testimonies indicating that efforts to that end are hampered by the lack of infrastructure and a sufficient legal framework. The public health system of Tunisia reportedly does not have any specialized services that could provide medical, psychological or social rehabilitation for primary and secondary victims of torture.

4. Establishing an effective framework to prevent torture and ill-treatment

85. The Special Rapporteur welcomes the high-level consensus across the political spectrum in Tunisia on the need to abolish torture and ill-treatment and break the cycle of impunity in order to move forward. In this respect, the Special Rapporteur again emphasizes the critical role of an independent judiciary in restoring justice and accountability for past abuses committed by the previous regime and those abuses committed during the revolution and in its aftermath.

86. Several officials told the Special Rapporteur that the practice of torture and ill-treatment has decreased following instructions reportedly sent by the highest officials of the security services. He also heard, however, credible testimonies that beatings of detainees upon arrest or within the first hours of pretrial detention and during interrogation continue in this transitional period.

87. The Special Rapporteur welcomes the abhorrence of torture and the commitment to eradicate it expressed at all levels of the interim Government. In particular, he welcomes the circular on preventing torture in prisons that was being prepared at the time of his visit and that was to be distributed to all prison administrators. The Special Rapporteur calls upon all law enforcement bodies and security forces to unconditionally adhere to the principles of the prohibition of torture and ill-treatment. He also requests the authorities to exert a concerted effort to ensure that these instructions reach the very top of the chain of command and ensure that no law-enforcement agents are exempted from criminal liability for acts of ill-treatment or torture committed by them or their subordinates. The Special Rapporteur is of the view that, in order to build the people's confidence in law-enforcement institutions, measures taken to counter abuses, redress injustices and offer remedies and reparations should be communicated openly and transparently.

88. The Special Rapporteur is of the opinion that authorities must ensure comprehensive structural and legislative reforms to guarantee effective safeguards, including access to a lawyer during the first hours of apprehension and unimpeded access to an indictment judge while detained. Independent and democratic oversight of the security services is necessary to avoid a relapse into past practices of torture and ill-treatment. A thorough and fair performance review for every law-enforcement agent should be conducted with a view to vetting and disqualifying those known to have committed abuses and to restoring the public confidence and trust in security forces.

IV. Conclusions and recommendations

A. Conclusions

89. **The Special Rapporteur welcomes the willingness of the interim Government to cooperate with his mandate with a view to eradicating torture and ill-treatment and to ensuring that the roadmap to justice is laid down at the earliest possible stage following the downfall of the Ben Ali regime. The current transition represents an historic opportunity to begin to establish accountability, to ensure reparations to victims and to institutionalize safeguards.**

90. **The ratification of several international human rights instruments, including the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the initiative of the Ministry of Justice to develop a draft legal framework for the harmonization of national legislation with**

international human rights standards are a manifestation of good will and commitment to reform the legal system of Tunisia.

91. The Special Rapporteur welcomes the expressed intention of the Ministry of Justice to amend the definition of torture contained in the Criminal Code in order to bring it into full conformity with article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the intention of the authorities to provide detainees with immediate access to a lawyer during the first hours of detention and police custody. He calls on the Government to ensure that the absolute prohibition of torture is included in the Constitution, both in its preamble and as a binding provision.

92. Given the lack of effective safeguards during arrest and interrogation, persons deprived of their liberty are extremely vulnerable to torture and ill-treatment. The Special Rapporteur concludes that although the practice of torture and ill-treatment has decreased, incidents of torture and ill-treatment continue to occur during arrest, while in custody and during interrogations.

93. The Special Rapporteur notes that conditions in certain wings of the Bizerte prison amount to inhuman and degrading treatment. In the Kasserine prison and in the Bouchoucha detention centre for inmates in *garde à vue*, the conditions in general appeared to be in line with international standards. However, the limited access to medical, dental and psychiatric services remains of concern in practically all places visited.

94. The Special Rapporteur observes that although the legislation provides for various complaints mechanisms, essentially from within the judicial apparatus (A/HRC/16/51/Add.2, para. 27), the fact remains that these mechanisms are marred by allegations of a lack of independence and ineffectiveness and that the complaints are essentially addressed to the same body alleged to have perpetrated the ill-treatment. Such circumstances jeopardize their public credibility, making them de facto non-functional. In addition, the Special Rapporteur notes that, in practice, access to the sentence enforcement judge is either not granted or substantially delayed. The Special Rapporteur further observes that prisoners are not necessarily or sufficiently informed of their rights to make a complaint and that there are no mechanisms in place to protect the complainants against reprisals by the prison administration.⁷

95. The Special Rapporteur notes that the judicial system faces a great challenge to deliver justice for past cases as quickly as possible while conducting effective and fair investigations. He also recognizes that the severe shortfall of professional human resources and technical capacity pose obstacles to the possibility of completing criminal investigations in complex cases. The Special Rapporteur believes that silence and lack of transparency about these limitations trigger frustration with and mistrust of the system.

96. While welcoming the closure of the basement on the premises of the Ministry of the Interior, the Special Rapporteur calls upon the Government to ensure that the interrogation rooms within the headquarters of the Ministry of the Interior are dismantled, and that the secrecy and the legacy of this building and the evidentiary legacy of the torture facilities is finally revealed to the public. Such measures will be

⁷ The Special Rapporteur was told that if a detainee wishes to lodge a complaint, he is provided with paper on which to write the complaint, which is then submitted to the prison administration.

essential among the steps the Ministry of the Interior will have to take to rebuild its public image and trust.

97. While welcoming the dissolution of the so-called political police, and the arrest and ongoing trial and prosecution of several security officers, including high-ranking officials, the Special Rapporteur remains concerned that members of the State Security Department known to be responsible for human rights violations have been reintegrated in the system.

98. While welcoming the work of the fact-finding commission, the Special Rapporteur calls on the authorities to ensure that the misperception that the commission somehow supplants the judicial process of determining responsibility and/or liability for violations is addressed and that the public knows when the findings of the commission will be released.

B. Recommendations

99. In a spirit of cooperation and partnership, the Special Rapporteur recommends that the Government, with the assistance of the international community (the United Nations and other actors), take decisive steps to implement the following recommendations.

1. Impunity

100. The Special Rapporteur recommends that the Government:

(a) Take further measures to expedite investigations into incidents of excessive use of force, acts of torture and ill-treatment committed during and after the revolution; ensure that those responsible for excessive use of force are held accountable and that victims and their families are provided with effective redress and reparative measures, including compensation and rehabilitation; ensure the participation of victims in judicial proceedings and in the reparation process;

(b) Undertake prompt and thorough investigations of all cases of torture committed during the Ben Ali regime and launch public prosecutions immediately and conclude them without delay, where the evidence warrants it; ensure public acknowledgment of the plight of the victims, including the facts and acceptance of responsibility; apply judicial and administrative sanctions against perpetrators; publicly apologize; ensure that victims and their families are provided with rehabilitation and reparation;

(c) Ensure the removal of legal obstacles to reopening past cases of homicide and torture, and preserve the evidence of torture and abuse subject to adjudication, and preserve the evidence gathered from the victims of the past regime; ensure additional guarantees that no evidence of human rights abuses is tampered with or destroyed and that investigations into all killings follow the methods set out in the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions;⁸

(d) Ensure adequate legal aid for those victims of torture or ill-treatment who lack the necessary resources to bring complaints and make claims for redress,

⁸ Economic and Social Council resolution 1989/65, annex.

and make available to the victims all evidence concerning acts of torture or ill-treatment upon request;

(e) Enact legislation specifically providing a victim of torture with an effective remedy and the right to obtain redress, including compensation and as full rehabilitation as possible;

(f) Reassess the amount of symbolic compensation to reflect varying degrees of injury, the quantification of material moral damages resulting from the physical and mental harm caused, and how the evidence will be established in the absence of a forensic examination or medical certificate; establish concrete mechanisms and programmes to provide all victims with rehabilitation, including relevant infrastructures within the Ministry of Health, or through the funding of private medical, legal and other facilities, including those administered by NGOs specialized in providing medical, psychological, and social rehabilitation;

(g) Consider bilateral direct funding for civil society organizations assisting victims and their family members, as well the establishment of specialized services within the national health system. The United Nations Voluntary Fund for Victims of Torture is invited to consider requests for assistance by non-governmental organizations that work to ensure that persons who have been tortured have access to medical care and legal redress;

(h) Restore the public image of the judiciary by immediately instituting measures against endemic and institutionalized corruption of the judiciary and ensuring judicial independence; increase the current capacity of the Ministry of Justice and develop a strategy to deal with the backlog of cases;

(i) Encourage close cooperation between the judiciary and the fact-finding commission, and ensure that the population is aware that the Commission has neither judicial nor prosecutorial roles, and that it is not a redress or reparation body; publicize the expected release date of the Commission findings;

(j) Ensure that the fact-finding commission's findings and recommendations are published and disseminated widely, and that the confidential information on suspected perpetrators is transferred to the relevant prosecution authorities for further investigation and holding them accountable.

2. Conditions of detention

101. The Special Rapporteur recommends that the Government:

(a) Strengthen efforts to improve detention conditions, in particular with a view to providing health care, improving the quality of food and ensuring the separation of minors from adults and of pretrial prisoners from convicts;

(b) Introduce independent and effective complaints mechanisms within all places of detention and ensure that all detainees have unimpeded and unsupervised access to the enforcement judge upon request, that any complaints are followed up by independent investigations, and that complainants do not suffer any reprisals. Complaints mechanisms must be made known and accessible to the public, including to persons deprived of their liberty, through telephone hotlines or confidential complaints boxes in detention facilities.

3. Safeguards and prevention

102. The Special Rapporteur recommends that the Government:

(a) Have the highest authorities, in particular those responsible for law enforcement activities, declare unambiguously that they will not tolerate torture or similar ill-treatment by public officials and that those in command at the time abuses are perpetrated will be held personally responsible for them;

(b) Encourage judges and prosecutors to routinely ask persons arriving from police custody how they have been treated, and to order an independent medical examination in accordance with the Istanbul Protocol if they suspect that detainees have been subjected to ill-treatment; an ex-officio investigation should be initiated whenever there are reasonable grounds to believe that a confession was obtained through torture and ill-treatments;

(c) Ensure that safeguards during arrest and detention, such as rules governing warrants and access to a lawyer, are guaranteed in practice; amend the legislation to reduce the lawful duration of *garde à vue* to a maximum of 48 hours and ensure that access to a lawyer during the *garde à vue* period is provided for in law; ensure that a mandatory independent medical examination is conducted upon a detainee's arrival in prison; shift the burden of proof to prosecution, to prove beyond reasonable doubt that a confession was not obtained under any kind of duress; and consider video and audiotaping interrogations;

(d) Ensure that legislation concerning evidence to be adduced in judicial proceedings be brought in line with the provisions of article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment so as to explicitly exclude any evidence obtained through torture, and that persons convicted on the basis of such evidence are acquitted and released;

(e) Ensure that medical staff in places of detention are independent from the organs of justice administration, by transferring them from the Ministry of Justice to the Ministry of Health; provide training for the forensic medical services in the medical investigation of torture and other forms of ill-treatment;

(f) Establish an effective national preventive mechanism (NPM) in full compliance with the Paris Principles by either designating the national human rights institution as an NPM, or establishing a separate independent NPM in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(g) Ensure that security forces and other law-enforcement officers are trained and act in accordance with the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; provide systematic training programmes and awareness-raising campaigns on the principles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for public security personnel, legal professionals and the judiciary;

(h) Complete the ongoing reform and restructuring of the State security apparatus, and publicly announce the break with the previous regime by ensuring a comprehensive vetting process encompassing the Ministry of the Interior and the Ministry of Justice and by excluding all perpetrators of human rights violations from the security apparatus and bringing them to justice.

103. The Special Rapporteur requests the international community to support the efforts of Tunisia in implementing these recommendations, in particular in its efforts to reform its legal system, to establish a preventive framework against torture and ill-treatment and to provide appropriate training for police and prison personnel.