

## TUNISIA

### Follow-up

### State Reporting - Action by State Party

#### CAT A/54/44 (1999)

#### 6. Decision of the Committee on the observations submitted by Tunisia

105. In accordance with article 19, paragraph 4, of the Convention and rule 68, paragraph 1, of its rules of procedure, the Committee, on 26 April 1999, decided, at its discretion, to include the observations on the Committee's conclusions and recommendations received from Tunisia on 27 November 1998 in its annual report. The text of the observations of the State party reads as follows:

"Comments by the Tunisian Government on the conclusions and recommendations of the Committee against Torture following its consideration of Tunisia's second periodic report:

"Tunisia, which has ratified the Convention against Torture, is one of the few countries to have made declarations under articles 21 and 22 of that Convention without entering any reservations. It would like to point out that, pursuant to article 32 of the Tunisian Constitution, conventions become law as soon as they are duly ratified.

"This political and legal commitment has been implemented in practice and in all circumstances, through the strict application of ordinary law, without any discrimination or exception. Moreover, though it was faced with barbaric criminal and terrorist acts perpetrated by fundamentalists throughout the period covered by the report (1990-1993), Tunisia did not declare a state of emergency, introduce special courts or employ special procedures, as permitted under article 4 of the International Covenant on Civil and Political Rights.

"The definition of torture, as given in article 1 of the Convention, is an integral part of Tunisian law, because the Convention became law as soon as it was ratified. Moreover, the international instrument takes precedence over national law in the hierarchy of legal standards, and national law is thus interpreted in conformity with the Convention's provisions.

"The concern raised by the Committee against Torture over the alleged wide gap between law and practice with regard to the protection of human rights in Tunisia has no basis in fact. All the abuses mentioned have been the subject of administrative and judicial investigation in conformity with the law. Moreover, political will has been demonstrated many times by the setting up of commissions of inquiry.

"Disciplinary as well as judicial penalties have been imposed on officials when their responsibility has been established. The statistics published by the special commissions of investigation as well as by the Higher Committee on Human Rights and Fundamental Freedoms provide tangible proof that no pressure or intimidation is used to prevent victims from lodging complaints, and they also refute the allegation that law-enforcement officials enjoy impunity.

"Furthermore, the fact that complaints are registered by the human rights units and the various administrative and legal bodies, and that the individuals concerned are safeguarded against any possible pressure, invalidates the allegations.

"All the existing legislation and regulations in Tunisia relating to persons under arrest are mandatory and must be strictly and promptly applied. Consequently, any infringement is severely punished with disciplinary and judicial measures. All departments with responsibility for places of detention are obliged to keep a special numbered register including the identities of all persons held in custody and indicating the time and date that the custody period begins and ends (article 13 bis of the Code of Criminal Procedure).

"Administrative checks are carried out regularly and severe penalties are provided for by law in articles 172 and 250 of the Penal Code to curb abuses. Following the conclusions of the report by the Chairman of the Higher Committee on Human Rights and Fundamental Freedoms, measures have been instituted to improve monitoring of entries made in the registers. Action is being taken in this regard to make officials more aware of human rights culture (circulars issued by the Minister of the Interior, notices in police stations, a code of conduct, training at police and national guard schools, etc).

"The Committee's conclusions that laws have not been enforced are totally unfounded.

"Immediate notification of an arrest to family members of the person being held in custody is not, as stated in the Committee's conclusions, a rule that is not adhered to in practice; it is in fact an administrative measure which is implemented with a view to consolidating the protection of human rights.

The Committee's comment should have been included in the recommendations rather than among the so-called 'subjects of concern'.

"A medical examination, which is a right expressly guaranteed by law and can be carried out at the mere request of the detainee or members of his or her family, is in fact ordered whenever allegations of torture are brought before the relevant administrative or judicial authorities. Clearly, therefore, the Committee's criticisms in that regard in no way reflect the real situation.

"We are surprised at the Committee's concern over the practice of carrying out autopsies in all cases of death in custody, since it was not a subject of discussion between the experts and the Tunisian delegation. Tunisia's report makes it clear that carrying out an autopsy is standard practice in all cases of death in places of detention and prisons, even when there is no allegation of torture. This practice conforms to the provisions of article 48 of the law of 1 August 1957 governing the civil registry and the provisions of article 87 of the decree of 4 November 1988 on prison regulations.

"The Committee's comment on arrests made by plain-clothes agents who refuse to show identification or a warrant is unfounded. Officers who carry out arrests, whether they are in official uniform or in civilian clothing, are obliged to disclose their identity and to show their professional card. An officer failing to fulfil this obligation, may be subject to disciplinary and criminal proceedings (article 250 of the Penal Code). Any record of a statement taken by an officer who has

not specified his or her identity is annulable, since it violates the interests of the accused and the fundamental rules of procedure (article 199 of the Code of Criminal Procedure).

"The Committee's conclusions on allegations of sexual or other abuse against women members of the families of detainees and exiled persons are so obviously biased as to be absurd.

"The Tunisian delegation has already refuted these allegations in an exhaustive legal and practical analysis drawing attention to the lies and manipulation perpetrated by extremist elements, which are intended to tarnish Tunisia's image and arouse the sympathy of the countries where they live, in the hope of obtaining permission for their families to join them.

"The Tunisian authorities challenge anyone to produce the slightest evidence in support of these allegations.

"Tunisia would like to point out its significant achievements in protecting and promoting women's rights, and to express its indignation at the Committee's conclusions on the subject, which it judges to be entirely unsubstantiated. Needless to say, the false allegations which prompted these conclusions have not been the subject of petitions to the courts or human rights units.

"Moreover, as the Committee recognizes, Tunisia prides itself on the fact that it does not grant extradition requests for political refugees. It would like to point out, however, that the task of assessing the potential risk of torture in requesting countries belongs to the Indictment Division of the Tunis Court of Appeal, which is responsible for extradition matters. This court has a duty to observe the provisions of article 3 of the Convention, an integral part of Tunisian law which the judge is bound to respect.

"The Tunisian Government wishes to express its profound regret at the Committee's conclusions, which have ignored Tunisia's report as well as the responses given by its delegation in the recent discussions.

"Some of the points made in the conclusions were not even raised as subjects for discussion between the members of the Committee and the Tunisian delegation. This leads us to believe that the conclusions were reached in advance and they clearly reflect the totally unjustified positions of certain non-governmental organizations."