

TUNISIA

CAT A/45/44 (1990)

406. The Committee considered the initial report of Tunisia (CAT/C/7/Add.3) at its 46th and 47th meetings, held on 25 April 1990 (CAT/C/SR.46 and 47).

407. The report was introduced by the representatives of the State party, who emphasized that since 7 December 1987 a series of reforms and a set of measures had been adopted in Tunisia that had made it possible to assure political stability, to consolidate democracy and to strengthen civil and political rights. In that context, the ratification by Tunisia, on 23 September 1988, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without any reservation being entered on articles 20, 21 and 22 was a logical sequel to its earlier commitments and confirmation of its attachment to universal values.

408. After describing the legal order of Tunisia, the representative said that Tunisian positive law abounded in legislation that punished torture in all its forms and that the machinery for safeguarding human rights established in Tunisia guaranteed the full and complete application of the Convention against Torture. He referred to the measures taken to ensure the scrupulous implementation of the new legislation and especially the Convention against Torture, including: the regulation of police custody and pre-trial detention; the elimination of the State Security Court; the abolition of forced labour; the amnesty of prisoners convicted for offences committed on political or trade union grounds before 7 November 1987; and the authorization granted for Amnesty International to open a section in Tunisia. He drew the attention of the Committee to the fact that at the present time there was not a single political prisoner in gaol and that since 7 November 1987 no person sentenced to death had been executed.

409. In conclusion, the representative of the State party said that clearly a great deal of work still needed to be done in order to ensure that everyone fully enjoyed the rights conferred on him in the best possible material conditions and that at present the concern of the Government and the Tunisian law-maker, convinced of the essential role of the law in effecting the transition from words to deeds, was to consolidate the rights of the individual and individual freedoms by new legal instruments.

410. The members of the Committee welcomed with satisfaction the report of Tunisia and the representative's statement, which had rounded off the information contained in the report. They commented that the information provided showed that the changes that had come about in Tunisia in 1987 had strengthened human rights in that country and had produced reforms that were directed along the lines of the provisions of the Convention against Torture.

411. At the same time, clarifications were requested on certain points and especially on the character and the legal significance of the "National Agreement"; on the competence and legal status of the Tunisian Human Rights League and on the principle of dual jurisdiction adopted in Tunisia. Referring to the implementation of the Convention in Tunisia, members of the Committee inquired about the legal criteria on which the classification of legal standards was established, according to which the conventions ratified by Tunisia occupied an intermediate position between the Constitution and the ordinary laws; what was the practice for the application of provisions of the

Convention by the appropriate courts and particularly in the event of conflict between its provisions and existing legal standards; whether the publication of the Convention in the Journal Officiel was sufficient to ensure its dissemination adequately within the country. Members also wished to know how the legislative measures enacted by the Tunisian Government had been applied in view of the brief period of time that had elapsed since the change that had occurred in 7 November 1987 and whether the Government had come up against obstacles or opposition in that regard.

412. With regard to article 1 of the Convention, members requested additional information on the death penalty, which was still in existence in Tunisia, and in particular on the cases in which that penalty could be carried out; whether it was actually pronounced; on how and under what conditions it was carried out; and on how many cases the death penalty had been pronounced. They also wished to know whether individuals had been sentenced to corporal punishment and whether, in certain circumstances, prisoners could be held incommunicado and, if that were the case, on what grounds and for how long.

413. In connection with article 2 of the Convention, members asked whether persons arrested were treated in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners; what were the conditions of detention prior to November 1987 and what were the measures that had led to an appreciable and rapid improvement in these conditions in the years 1988 to 1990. Clarifications were requested on the régime of detention in “semi-open” prisons; on the number of prisons and the number of prisoners in Tunisia. They also inquired whether there was a problem of overcrowding in the prisons in Tunisia, as occurred in many other countries; the conditions under which solitary confinement as a disciplinary measure was effected, whether there were remedies against that measure, and whether it was subject to supervision; the conditions, procedural and financial, for carrying out a medical examination requested by persons held in police custody; the conditions of detention for female prisoners with children up to the age of three; the distinction drawn between “re-educational work” and “forced labour”.

414. In connection with the application of article 4 of the Convention, members of the Committee asked for clarifications on the provisions of the Penal Code dealing with misuse of authority by public officials and inquired as to when these new provisions had been incorporated into the Penal Code.

415. With reference to article 5 of the Convention, members of the Committee, noting that the application of paragraph 1 of that article did not appear to give rise to any difficulty in Tunisia, commented that the report did not state clearly whether the provisions of paragraph 2 were also directly applicable and asked for additional information.

416. In connection with the application of article 7 of the Convention, members commented, with reference to paragraph 114 of the report, that the definition of torture contained therein was more restrictive than the definition appearing in article 1 of the Convention, since torture might leave no visible lesions and cause only mental trauma, and they inquired how that question was regulated by Tunisian law. They also asked how many complaints had been made in such cases.

417. Concerning the application of article 10 of the Convention, members of the Committee wished to know whether the training programme for police and prison personnel included instruction

relating to torture and ill-treatment; whether similar instruction was provided for doctors, army personnel and security forces. They also asked whether courses on human rights were provided in university teaching programmes in general and in law faculties in particular. Noting with interest that in hospitals, forensic services were provided by specialized medical personnel who carry out medical examinations of the corpses of victims of violence or torture, they asked whether their existence did not mean that torture continued to be practiced, and how many cases of torture had been reported or noted after the reforms introduced in 1987.

418. With regard to the application of article 11 of the Convention, members of the Committee, noting that under Act No. 87-70 of 26 November 1987, amending the Code of Criminal Procedure, police custody of a suspect could not exceed four days unless the Public Prosecutor decided to extend it, asked about the treatment to which the person being held during these four days was subjected and, in particular, whether he could be held incommunicado. They also inquired about the respective number of prisoners serving sentences or awaiting trial held in Tunisian prisons.

419. With reference to article 12, members of the Committee asked whether security officials or members of the national guard had recently been the subject of investigations, prosecutions or convictions and, if that were the case, for the Committee to be provided with relevant statistical data.

420. In connection with article 14 of the Convention, members of the Committee asked for details about the physical and psychological rehabilitation of victims of torture and of the opportunities existing for victims of torture to obtain compensation and to avail themselves, in certain cases, of legal aid.

421. With regard to the application of article 15 of the Convention, members of the Committee asked, with reference to paragraph 157 of the report, whether it would not be better in this case to apply directly the provisions of article 15 of the Convention, which did not call for intervention by a judge.

422. The representative of the State party, in response to the general questions raised by the members, declared that the questions put in connection with the consideration of the initial report of Tunisia had been pertinent in that they drew attention to the work which still had to be done in order to improve Tunisian legislation. He clarified the relationship between the Tunisian Constitution, international conventions and Tunisian internal law, stating that duly ratified international agreements had legal standing higher than internal laws. He said that difficulties occasionally arose in applying certain provisions of international conventions, in particular, in connection with drafting the necessary decrees and regulations and putting them into force. However, he pointed out that, in general, Tunisia had experienced no major difficulties in applying international conventions, and that no changes in its Constitution had been required. The representative provided the Committee with detailed information on the legal status and the value of the "National Agreement", as well as on the status and competence of the Tunisian Human Rights League.

423. The representative of the State party described in detail the procedures for dealing with human rights violations and, more specifically, for implementing the Convention against Torture, and gave explanations on the conflicts that existed between the Penal Code, the Code of Criminal Procedure

and international conventions. As for the principle of two jurisdictions established in Tunisian judicial law, he said that the principle was more philosophical than legal in tenor; as in many other countries, the system of justice had been so organized that it guaranteed people's rights and promoted the interests of sound justice.

424. Turning to the questions raised in connection with specific articles of the Convention, the representative stated that the Penal Code promulgated in July 1913 did not fully correspond to the provisions contained in article 1 of the Convention. He pointed out that the concept of torture had been certainly subsumed within the meaning of the term "unlawful infringement". However, express mention of torture would be made in the relevant provisions of the Penal Code when it was revised. In that connection, he informed the Committee that between September 1988 and April 1990 there had been 16 cases of violence and/or "unlawful infringement".

425. As for the application of the death penalty, he stated that the Penal Code provided that the death penalty should be carried out by hanging; but, he underlined, during the past two and a half years there had been no executions in Tunisia, and the Head of State had exercised his constitutional right to commute the death sentence to a sentence of life imprisonment. On the question of the execution of pregnant women, he said that a pregnant woman could not be executed until after she had given birth; that the authorities had no intention of allowing indirect torture and there had always been a degree of indulgence for humanitarian reasons towards women who gave birth in prison.

426. With reference to the questions related to the conditions of detention in prisons, the representative said that new prison regulations had been promulgated in a decree of 7 November 1988, and as a result of various amnesties some 11,000 prisoners had been released. A number of prison doctors, psychologists, psychiatrists and wardens had been recruited, but the major development brought about by the decree had been the creation of a new relationship between prisoners and the prison administration, as prisoners' rights had been enshrined in law. As of 20 April 1990, there had been some 9,300 prisoners out of a total population of approximately 7 million. The overall prison area was 20,420 square metres, an average of 2.19 square metres per prisoner. That area did not include space used for kitchens, exercise yards, workshops, etc. He emphasized that Tunisian legislation provided for solitary confinement only as a disciplinary measure for misconduct within a prison and gave detailed information on the modalities in the application of that punishment. As for the right of persons in custody to a medical examination, he stated that the detainee himself, his immediate relatives or his spouse could make the request for medical examination; the Public Prosecutor, under the Code of Criminal Procedure, could also order a medical examination. In theory, the State would pay for the medical examination if the person did not have the means at the time he was placed under a custody order, but in practice the State paid regardless of the persons's means.

427. In connection with application of paragraph 2 of article 5 of the Convention, the representative said that Tunisian law was silent on the matter of universal jurisdiction. Until the Reform Commission finished its work on harmonizing Tunisian law with the Convention and thus closing any loopholes, such matters would have to be decided by Tunisian judges, with reference to the precedence of international agreements over internal law. As for how foreign sentences were enforced, he said that the exequatur procedure was adopted, except where precluded for reasons of

public order.

428. With reference to the questions raised on article 7 of the Convention, the representative said that Tunisian law did not consider torture to be aggravated by the fact that a torturer was a public official, although intimidation by public officials was already punishable by law. He undertook to bring the Committee's criticisms on aggravating circumstances for torture to the attention of the Tunisian authorities and Reform Commission.

429. In relation to the questions raised on article 9 of the Convention, the representative declared that both the judicial and administrative branches of the court system had commissions of magistrates, drawn from many sectors of society, which examined requests for legal aid. That aid was available on production of a certificate, called a "certificat d'indigence", from a responsible person stating that the person seeking aid did not have the necessary means. He was unaware of any cases in which such an application had been refused.

430. In response to the questions raised in connection with the application of article 10 of the Convention, the representative said that at the university level there was a third-year course entitled "Public freedoms", consisting of some 40 hours of lectures which referred to all the major human rights conventions. In the training schools for security forces the concepts of human rights and public freedoms were taught, although no course on the prohibition of torture as such had yet been introduced. At the Military Academy, courses were given on human rights and the prohibition of torture.

431. As for the difference between re-educational work and forced labour, the representative explained that re-education was a minor penalty and played a social role. It was imposed in cases of idleness and exploitation of others' resources. Such work was done in semi-open prisons, where prisoners were allowed out on certain conditions.

432. Replying to the questions raised on article 14, the representative indicated that the use of the term "reparation" in the report had been an oversight, but it was true that victims of violence or torture should have compensation, rather than mere redress. It was customary in Tunisia to view the after-effects of violence or torture as being threefold: financial, moral and physical. Whereas compensation could address the first of those, hospitalization or other treatment might be required for the latter two, and discussions were taking place within the Reform Commission on the advisability of offering such facilities as part of the compensation awarded to victims. He pointed out that in accordance with the Act of 6 August 1982, the internal security forces were defined as the police, the National Guard and the prison and re-education establishment staff. All of them were subordinate to the Ministry of the Interior.

433. In conclusion, the representative of the State party declared that despite its achievements, Tunisia was aware of the remaining problems and the authorities were determined to improve matters. They would certainly take account of the remarks made by the members of the Committee. He assured the Committee that all the documents and statistics requested would be transmitted to the Committee.

434. The members of the Committee welcomed the developments in the area of human rights that

had taken place in Tunisia since November 1987, and thanked the Tunisian representatives for their introduction and replies to the questions asked by members of the Committee. They expressed hope that the still existing discrepancies between the Convention and internal legislation could be remedied as soon as possible, and that replies on all unanswered questions would be provided in the next report, which was due in four years' time.

CAT A/54/44 (1999)

88. The Committee considered the second periodic report of Tunisia (CAT/C/20/Add.7) at its 358th,

359th and 363rd meetings, held on 18 and 20 November 1998 (CAT/C/SR.358, 359 and 363) and has adopted the following conclusions and recommendations:

1. Introduction

89. Tunisia ratified the Convention on 23 September 1988 and made the declarations provided for in articles 21 and 22.

90. Its second periodic report was due on 22 October 1993. The Committee regrets that the report was received on 10 November 1997 only.

2. Positive aspects

91. During the period covered by the report measures were taken by the authorities to build a legal and constitutional framework for the promotion and protection of human rights. The Committee welcomes the establishment of a number of human rights posts, offices and units within the executive branch and within the civil society. The Committee also welcomes the efforts that were made to raise the level of awareness of the principles of human rights in the society. The Committee noted, in particular, the publishing of a code of conduct for law enforcement officials, the setting up of human rights departments in Tunisian universities and the establishment of human rights units in some key ministries.

92. The Committee also notes that, for the first time, an independent commission of investigation was established to examine the allegations of abuses that took place in 1991.

93. The Tunisian Constitution provides that duly ratified treaties have a higher authority than laws. Thus, the provisions of the Convention take precedence over domestic legislation.

3. Factors and difficulties impeding the application of the provisions of the Convention

94. The Committee is aware of the challenges that were facing the Government during the period covered by the report. However, the Committee emphasizes that no exceptional circumstances can ever provide a justification for failure to comply with the terms of the Convention.

4. Subjects of concern

95. The Committee reiterates its views that the definition of torture under Tunisian law is not in conformity with article 1 of the Convention, as the Tunisian Criminal Code, inter alia, uses the term "violence" instead of torture and article 101 of the Criminal Code penalizes the use of violence only when it is used without just cause.

96. The Committee is concerned over the wide gap that exists between law and practice with regard to the protection of human rights. The Committee is particularly disturbed by the reported widespread practice of torture and other cruel and degrading treatment perpetrated by security forces and the police, which, in certain cases, resulted in death in custody. Furthermore, it is concerned over the pressure and intimidation used by officials to prevent the victims from lodging complaints.

97. The Committee is concerned that many of the regulations existing in Tunisia for arrested persons are not adhered to in practice, in particular:

- (a) The limitation of pre-trial detention to the 10-day maximum prescribed by law;
- (b) The immediate notification of family members;
- (c) The requirement of medical examination with regard to allegations of torture;
- (d) The carrying out of autopsies in all cases of death in custody.

98. The Committee notes that arrests are very often made by plain clothes agents who refuse to show any identification or warrant.

99. The Committee is particularly disturbed by the abuses directed against female members of the families of detainees and exiled persons. It has been reported that dozens of women were subjected to violence and sexual abuses or sexual threats in order to put pressure on or to punish their imprisoned or exiled relatives.

100. The Committee feels that, by constantly denying these allegations, the authorities are in fact granting those responsible for torture immunity from punishment, thus encouraging the continuation of these abhorrent practices.

101. The Committee notes further that the State party does not accede to requests of extradition of political refugees. The Committee expresses its concern that this should not be the only exception for refusal of extradition. In this regard, the Committee draws the attention of the State party to article 3 of the Convention, which prohibits the extradition of a person if "there are substantial grounds for believing that he would be in danger of being subjected to torture".

5. Recommendations

102. The Committee calls upon the State party to put an end to the degrading practice of torture and to eliminate the gap between the law and its implementation and in particular to take up the following measures:

- (a) To ensure strict enforcement of the provisions of law and procedures of arrest and police custody;
- (b) To strictly enforce the procedures of registration, including notification of families of persons taken into custody;
- (c) To ensure the right of victims of torture to lodge a complaint without the fear of being subjected to any kind of reprisal, harassment, harsh treatment or prosecution, even if the outcome of the investigation into his claim does not prove his or her allegation, and to seek and obtain redress if these allegations are proven correct;

(d) To ensure that medical examinations are automatically provided following allegations of abuse and an autopsy is performed following any death in custody; and that the findings of all investigations concerning cases of torture are made public, and that this information should include details of any offences committed, the names of the offenders, the dates, places and circumstances of the incidents and the punishment received by those who were found guilty.

103. The Committee urges the State party to take the following measures:

(a) To reduce the police custody period to a maximum of 48 hours;

(b) To bring the relevant articles of the Criminal Code into line with the definition of torture as contained in article 1 of the Convention;

(c) To amend the relevant legislation to ensure that no evidence obtained through torture shall be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

104. The Committee urges the State party to submit its third periodic report by 30 November 1999.