

## TUNISIA

### CCPR A/32/44 (1977) 10/

119. The Committee considered the provisional report submitted by Tunisia at its 28<sup>th</sup> and 29<sup>th</sup> meetings, on 17 and 18 August 1977, respectively.

120. The report was introduced by the representative of the State party who informed the Committee that a supplementary report had been submitted to the Secretariat and that it would be available to the Committee shortly as document CCPR/C/1/Add.7/Rev.1. In his substantive introduction, the representative of Tunisia explained that the Covenant had been incorporated into domestic law and that, in cases of conflict between international law and domestic law, the former would prevail. He described in detail the provisions in the Constitution which guarantee the civil and political rights of the people and compared them with those of the Covenant. He made special mention of the provisions concerning equality of the sexes, the right of the child, freedom of expression and the right of peaceful assembly. He informed the Committee that, in 1956, Tunisia had adopted a Code of Personal Status which prohibited polygamy and recognized the equality of rights of men and women in divorce. The penal institutions were now organized with a view to re-educating and rehabilitating offenders. Members of the Committee expressed their appreciation for the detailed additional information provided by the representative of Tunisia in his introduction.

121. The questions put by members of the Committee are summarized below:

(a) Noting that many articles of the Tunisian Constitution stated that limitations to human rights are to be "laid down by law", some members asked for more detailed information regarding the statutory grounds for limitations. In reply, it was said, with various examples, that these limitations were imposed on reasonable grounds for the safeguarding of public order. They were not wider in scope or more severe than those which were permitted under several articles of the Covenant.

(b) Clarification was requested on the implementation of the principle of equality of the sexes, in particular as regards divorce and inheritance. The representative of the Government stressed that both spouses had equal rights to initiate divorce proceedings. The law concerning inheritance still provided that women receive only one half of the amount allocated to men. According to some commentators, this rule might be justified on the ground that men were legally bound to contribute to household expenses, whereas wives were to a certain extent free to do so or not.

(c) The question was asked whether there had been a state of emergency since Tunisia attained independence and, if so, what laws had been suspended and which provisions of the Covenant had been affected. The reply was that a state of emergency had been proclaimed once and that was before the coming into force of the Covenant.

(d) In answer to a request for information concerning available remedies, the representative of the Government said that Tunisia had established a dual system of jurisdictions, civil and criminal courts, on the one hand, and administrative courts, on the other. Appeals procedures were available before the civil and criminal courts, but not before the administrative courts. The right to counsel was guaranteed before all jurisdictions.

(e) Information was sought regarding the imposition of the death penalty. The reply was that capital punishment was imposed only for the gravest crimes such as parricide, and that it was rarely carried out. A request for pardon was automatically sent to the Head of State.

(f) Some members asked whether there were at present persons who were detained for political reasons. The representative of Tunisia said that political trials in Tunisia concerned mainly some students who were guilty of subversive activities and created public disorder. Political prisoners were detained not because of their opinions, but because of their attempts to overthrow the Government or because they had committed acts of violence. There were only a few such prisoners at the present time. More precise information regarding the number of such detainees would be forwarded later.

(g) Some members requested clarification on the limitations which may be imposed on freedom of movement. The answer was that all persons, citizens and foreigners alike, were as a rule quite free to travel through the country and across frontiers. There were some reasonable restrictions, however, such as the requirement of a government authorization for visiting areas where military bases were located.

(h) Questions were put concerning the legal conditions for the establishment and functioning of associations and, in particular, whether there was only one trade union allowed in each economic sector. It was said in reply that non-profit-making associations needed prior administrative authorization. Workers were free to join or not to join trade unions, which were federated in a few nationwide organizations. The right to strike was recognized, but strikes were considered illegal if they were organized without prior attempt at conciliation. No one had been imprisoned because of participation in a strike.

(i) In answer to queries regarding the legal status of children born out of wedlock, it was stated that such children had the same rights as legitimate children, after a legal finding had been made as to the identity of the parents.

(j) Further information was requested on nationality requirements for the exercise of political rights, particularly considering article 21 of the Constitution which limited to persons "born of Tunisian fathers" eligibility for election to the National Assembly. The representative of Tunisia replied that this requirement was a reasonable one, in accord with article 25 of the Covenant, since it was meant to ensure a minimum degree of patriotism among the members of the most powerful organs of the State. The representative of Tunisia further gave precisions concerning the Law of Nationality.

(k) Whether and, if so, under what conditions, could the individual request the courts or administrative authorities to apply the Covenant against a law or regulation contrary to its provisions.

(l) Whether or not there is provision for corporal punishment and, if so, the grounds upon which, and the manner in which, it may be inflicted.

(m) Further information on the conditions under which pre-trial detention may be ordered and on the length of such detention, as well as on the extent to which pre-trial detainees may enjoy assistance by counsel.

(n) More detailed information concerning the organization, competence, and procedure of the administrative and judicial courts.

(o) Whether there are courts or tribunals which deal specifically with political offences and, in the affirmative, whether there is a right of appeal against the decisions of such courts.

(p) Further information concerning the conditions under which freedom of expression and freedom of association may be exercised.

(q) Information on measures in the economic and social fields which have affected civil and political rights.

122. The representative of the Government assured the Committee that, in compliance with its request, he would make arrangements to provide the Committee with the texts of the Constitution, the Civil Code, the Code on Nationality and other pertinent legislation relevant to the mandate of the Committee.

## **CCPR A/42/40 (1987)**

105. The Committee considered the second periodic report of Tunisia (CCPR/C/28/Add.5/Rev.1) at its 712<sup>th</sup> to 715<sup>th</sup> meetings, held on 30 and 31 March 1987 (CCPR/C/SR.712-715).

106. The report was introduced by the representative of the State party who expressed his Government's support for the work being carried out by the Committee. The Tunisian people had a particularly keen awareness of human rights and Tunisia had been pursuing the aims of the Covenant even before ratifying it in 1968. A great deal had been accomplished during the 30 years since national independence was achieved, including the promulgation of the Code of Personal Status, which granted to women rights that they did not enjoy in many other countries, and the enactment of laws relating to elections, freedom of association, the press, and the rights of religious and other minorities. The Tunisian Government and legislature were determined to continue promoting individual freedoms by means of further legal instruments. Draft legislation was in preparation or under consideration to liberalize regulations relating to police custody and pre-trial detention and to prohibit any political party from claiming to represent a particular religion, race, region or ethnic group, advocating violence or fanaticism, or attacking the rights conferred by the Code of Personal Status.

### Constitutional and legal framework within which the Covenant is implemented

107. With regard to that issue, members of the Committee wished to receive information concerning the relationship between the Shariah and Tunisian law. They asked whether the Covenant could be enforced directly and whether any court decisions had been directly based on its provisions or if any laws had ever been disregarded on the ground that they were incompatible with the Covenant. Questions were also raised concerning promotional activities and publicity for the Covenant and the extent of public awareness of its provisions, and the factors and difficulties, if any, affecting the implementation of the Covenant. Inquiries were made about the activities of the Tunisian League for Human Rights, and examples of collaboration between the League and the public authorities were requested. It was asked whether the League was consulted regularly with respect to draft legislation, what its powers were with regard to the investigation of complaints of violations, whether the public was aware of its activities, and whether there were other non-governmental organizations besides the League whose purpose was to promote human rights. Members also wished to know about the status of pending bills relating to police custody, pre-trial detention, political parties and amendments to the Penal Code, and they asked what restrictions had been placed on the freedom of action of political parties. It was also asked what arrangements there were for providing an effective remedy in cases of alleged violations of rights under the Covenant and whether such procedures were the same as those involving breaches of ordinary law, whether administrative decisions had ever been rescinded by the courts on grounds of non-conformity with the Covenant, whether any periodic human rights conferences or seminars had been held for the legal profession, whether the public was aware that Tunisia's report was currently being considered by the Committee, and whether the Committee's reports and general comments were available in Tunisian libraries or were otherwise distributed to judges, lawyers and others. Members also wished to know whether there was any special machinery to ensure the full force of constitutional provisions guaranteeing the rights enshrined in the Covenant, whether the shariah was considered to be the most fundamental law of the land or could be modified by constitutional provisions or ordinary laws

and whether a conflict between the Covenant and the shariah could arise and, if so, how such a conflict would be resolved. Several members inquired whether Tunisia was considering ratifying the Optional Protocol to the Covenant.

108. In his reply to questions raised by members of the committee, the representative of the State party recalled that Islam was a way of life as well as a religion and closely paralleled the reasoning and ethics underlying modern law. The International Congress on Comparative Law, meeting at The Hague, the Netherlands, in 1952, had recognized Islamic law as based on the principles of justice and universality. While historically the shariah had been a source of law and social progress, it could not supplant positive law and could not be applied as a measure having the force of law. The Constitution proclaimed Islam to be the state religion in Tunisia and established a number of state obligations in that regard, including the requirement, in article 38, that the President had to be a Muslim. At the same time, the Constitution also provided that all citizens had the same rights and duties and were equal before the law, and stipulated that such equality was without discrimination on religious grounds. Religious considerations played no role in fundamental matters such as the acquisition of nationality (which was based on parentage and place of birth) or the right to vote or to stand for public office. All restrictions on personal status that had affected non-Muslims had been removed since the enactment of the Code of Personal Status. Constant efforts were being made to liberalize that Code further, such as the provision in article 54 of the revised Code, pursuant to which de jure guardianship of children immediately passed to the mother upon the death of the father.

109. All the provisions of the Covenant were directly enforceable since duly ratified treaties formed an integral part of domestic legislation. In the absence of an internal law giving effect to a provision of the Covenant the provision itself would suffice. Thus, for example, a judge would be obliged, pursuant to article 14, paragraph 6, of the Covenant, to give effect to a claim for damages in a case of miscarriage of justice, even though the Penal Code provided only for the annulment of a wrongful conviction. Pursuant to their obligations under article 2, paragraph 2, of the Covenant, the legislature and Government had taken a number of measures to give effect to the rights recognized therein and explicit references were made to the Covenant in domestic legislation, such as the Medical and Scientific Experimentation Act, which contained a reference to article 7 of the Covenant. The problem of a law being contrary to a provision of the Covenant had not arisen, but in such a case a judge would be bound to respect the superior status of the Covenant, which was tacitly, if not formally, acknowledged. The ratification of the Covenant by Tunisia had been reported in all the mass media and the text of the Covenant had been reproduced in its entirety in the Journal officiel. The Head of State had issued numerous official statements on various occasions reaffirming Tunisia's attachment to the United Nations ideals of peace and human rights. The Government had also helped to organize public exhibitions and lectures on United Nations human rights activities, the mass media had carried relevant special features, and civics and history teachers had been requested to give special lessons about human rights. There was a chair of public liberties in the law faculties of the Universities at Tunis and Sousse where the provisions of the Covenant were studied in detail. Copies of the Covenant were available in libraries and wherever the Journal officiel was sold. In practice, there were no difficulties in implementing the provisions of the Covenant, except in the matter of rights of succession and inheritance, in respect of which Tunisian society was not yet prepared to accept full equality between men and women.

110. With reference to questions relating to the Tunisian League for Human Rights, the representative explained that the League had been set up on 7 May 1977 with the assent of the Minister of the Interior, in accordance with Act No. 59-154 of 7 November 1959 relating to associations. The League had four objectives, namely to defend and protect the fundamental freedoms set out in the Constitution and laws of Tunisia and the Universal Declaration of Human Rights, to assist private individuals whose rights had been threatened, to defend democratic freedoms and social justice and work for measures to ensure a just peace between nations, and to oppose any form of arbitrariness, violence, intolerance or discrimination. Membership of the League was open to all citizens. In accordance with article 2 of its charter, it was independent of the Government and of political parties. In 1985, at the time of its second congress, it had had 3,500 members. The League published and disseminated without restrictions a monthly newsletter and also a bulletin in French or Arabic. There was genuine co-operation between the League and the authorities: it had been associated with the consideration of the bills on police custody and pre-trial detention and consulted on the draft regulations concerning the rights and duties of prisoners; members of the Committee of Management were periodically received by the Head of State and the Minister of the Interior; and it had investigated complaints from relatives about the ill-treatment of prisoners and had been allowed to examine the prisoners concerned and to publish the findings of medical experts. The Government did not control the League's activities or publications and always gave careful consideration to its views and recommendations. The League was affiliated to the International League for Human Rights. The Government also consulted other non-governmental organizations and trade unions about matters relating to their fields of interest.

111. Responding to other questions, the representative stated that the draft bill reforming the provisions of the Penal Code relating to police custody and pre-trial detention was seen as a measure of liberalization in the interest of promoting individual rights. It had been submitted to the Chamber of Deputies but not yet enacted. The draft bill relating to political parties was also awaiting enactment, which was expected in the near future. That bill, which would supersede the Associations Act of 1959, had been designed to regulate political parties so as to facilitate their participation in political life and in elections - functions which went beyond the role played by associations - and to enshrine their rights as public entities. The obligations imposed on political parties were designed not to restrict their freedom but to maintain the progress that had been made since independence in the area of human rights and the dignity of the citizen. For example, political parties could not be tied to a particular ethnic group or religion; to be authorized, they had to show that their purpose was in keeping with the provisions of the Constitution and therefore the Covenant. Appeals against the abuse of administrative powers could be filed before the Administrative Tribunal, which had received 1,768 such appeals during the period 1972-1986 and had ruled on 1,375 of them. In 193 cases the Tribunal had annulled the relevant administrative decisions. There was no mechanism in Tunisia for verifying the constitutionality of laws, but the annulment of administrative decisions by a tribunal could have the effect of negating certain laws through non-enforcement.

#### Self-determination

112. With regard to that issue, members of the Committee requested information concerning Tunisia's position with respect to apartheid and the right to self-determination of the peoples of Namibia and Palestine.

113. In his reply, the representative of the State party said that his country had always been opposed to apartheid and to the racist régimes in southern Africa and firmly supported the right of peoples to self-determination, freedom and independence. Tunisia was a party to the International Convention on the Suppression and Punishment of the Crime of Apartheid and had played an active role in seeking action by the Security Council following the Sharpeville massacre and Steve Biko's death. Tunisia firmly condemned the illegal occupation of Namibia by South Africa, supported the United Nations Council for Namibia and a settlement of the Namibian problem on the basis of Security Council resolution 435 (1978), and recognized the south West Africa People's Organization (SWAPO) as the only legitimate representative of the Namibian people. Regarding Palestine, his country had always insisted that Israel recognize the legitimate and inalienable rights of the Palestinian people and considered that the Palestinian problem could be solved only through recognition of the Palestinian people's right to self-determination and independence under the leadership of the Palestine Liberation Organization (PLO), its sole legitimate representative.

#### State of emergency

114. With regard to that issue, members of the Committee asked which measures, provided for under Decree No. 78-50, had actually been applied after the proclamation of the state of emergency by Decree No. 84-1 of 3 January 1984. Members inquired specifically as to whether the circumstances had been sufficiently grave to justify the declaration of a state of emergency, particularly since, as indicated in the report, it was possible to apply the emergency measures "flexibly" and in a manner "more symbolic than real"; they also asked whether the National Assembly had a role to play in the promulgation or prolongation of a state of emergency.

115. In responding to questions raised by members of the Committee, the representative explained that the riots had started in the southern part of the country and later spread to the north and had become so serious that public safety and the orderly operation of public institutions could no longer be guaranteed. It had therefore become necessary to take certain emergency measures as provided in Decree No. 78-50. Since the authorities had been able to regain control of the situation rather quickly, it had been possible to avoid resort to all of those measures. Action had been essentially limited to the imposition of a curfew, prohibition of public demonstrations, and limited searches aimed at recovering public and private property that had been taken by pillagers. In addition, three theatres and three amusement halls for young people had been closed. No restrictions had been placed on freedom of opinion or expression nor had anyone been placed under house arrest. Decree No. 78-50 provided, inter alia, for consultations between the President of the Republic, the Prime Minister and the President of the Chamber of Deputies concerning any state of emergency.

#### Non-discrimination and equality of the sexes

116. With regard to that issue, members of the Committee wished to receive information on affirmative action to overcome discrimination, particularly any action by the Ministry of the Family and Women's Affairs to promote full equality of the sexes, the participation of women in public life, implementation of articles 2 and 26 of the Covenant - given the absence of a general provision on non-discrimination in the Constitution, the treatment of aliens, particularly with respect to the extent of restrictions on their rights as compared to those of citizens, and the acquisition of nationality, in relation to the equality of sexes. Members wished to know whether foreign women married to

Tunisian men also received immediate legal custody of their children upon the death of their husbands and whether any initiatives had been taken to modify the Code of Nationality so that children could also acquire Tunisian nationality through their mothers.

117. In his reply, the representative of the State party reaffirmed that important progress had been made by Tunisia during the past 30 years with respect to the emancipation of women and in ensuring their participation in the process of development. The Code of Personal Status, adopted on 13 August 1956, had abolished polygamy and forced marriage, established a minimum age for marriage, instituted a legal basis for divorce and improved the status of women with respect to inheritance rights. Important measures had also been adopted to make access to education, employment and public life easier for women. The gains in education were particularly striking, the proportion of girls in primary school having grown to 48 per cent by 1984; in secondary school from 22 per cent in 1955 to 38.6 per cent in 1983; and in higher education from 7 per cent in 1956 to 35 per cent in 1983. Some 400,000 women were now working, constituting about 20 per cent of the labour force. Women held some 5.5 per cent of civil service posts, 110 posts in the judiciary, with two seats being reserved for women on the Higher Council of the Judiciary. Women occupied many posts in teaching, medicine and the law, and were even to be found in the armed forces and the police. There were also women members of the Chamber of Deputies and one woman had recently been appointed as a sub-prefect.

118. The participation of women in public affairs had also increased significantly over the years. There were currently 14 women members of the Destourian Socialist Party's Central Committee, seven women members of the Chamber of Deputies - some 5 per cent of the total - and 478 female municipal counsellors. Women were also playing increasingly important roles through such organs as the National Union of Tunisian Women, the Women's Affairs Commissions of the Destourian Socialist Party and the General Union of Tunisian Workers. While there was no general non-discrimination provision in the Constitution, the basic human rights contained therein were guaranteed without any discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, wealth or birth. Furthermore, the International Covenant on Civil and Political Rights, ratified by Tunisia by virtue of Act No. 68-30 of 29 December 1968, formed an integral part of the country's judicial system, ranking below the Constitutional but above ordinary domestic laws. Its provisions, including the prohibition of discrimination contained in article 2 and 26, were part of Tunisia's positive law. Foreign women enjoyed the same rights regarding the custody of children as Tunisian women.

119. Tunisian nationality could be transmitted to children by either the father or the mother. The fact that transmission through the mother was limited to cases where the father was unknown, stateless, or of unknown nationality did not constitute discrimination but merely reflected the father's status as head of the family. A further illustration of that point was provided by the fact that, under article 25 of the Code of Nationality, if a mother acquired Tunisian nationality after being widowed, she automatically transmitted such nationality to her minor unmarried children. While there might be minor differences or problems relating to the modalities of application of such provisions, in the representative's view the legislation in that area was essentially fair. Nationality by marriage could be passed on by Tunisian spouses of either sex. Citizenship could be acquired by foreign women through a simple declaration after two years of residence and by men through naturalization. For humanitarian reasons, article 13 of the Code of Nationality provided for the



acquisition of Tunisian nationality immediately upon marriage by women who, under their national laws, automatically lost their own citizenship upon marriage to a foreigner. Such dispositions were in conformity with the Convention on the Nationality of Married Women, which Tunisia had ratified in 1967.

120. Responding to questions concerning the treatment of aliens, the representative stated that Tunisian law did not discriminate against foreigners except in civic matters relating to the sovereignty of the Tunisian people, such as voting or holding public office. The Constitution specifically guaranteed to foreigners such rights as freedom of conscience and religion, freedom of opinion, assembly and association (including trade-union rights), the confidentiality of correspondence, and the presumption of innocence. Foreigners could not be extradited for political offences, for violating their military service obligations, or if they faced possible execution. Foreigners subjected to extradition proceedings benefited from all legal safeguards and could be extradited only after the issuance of a presidential decree.

#### Right to life and integrity

121. With regard to that issue, members of the Committee wished to receive information concerning positive action to reduce infant mortality, statistical data relating to the application of the laws on abortion, protection against medical experiments without consent and the status of efforts to revise Act No. 78-22 of 8 March 1978 relating to civilian labour service. Members of the Committee also wished to know how many executions had taken place since 1985 and what crimes had been committed by the five persons executed in 1985, whether persons who performed abortions or assisted in procuring an abortion were liable to punishment and who had the ultimate responsibility for deciding whether or not a pregnancy should be terminated, whether, under Tunisian law, life was considered to exist from conception or only from birth and in the former case whether an aborted foetus enjoyed protection from medical experimentation. It was also asked how many individuals had been killed as a result of the use of firearms by the security forces against demonstrators, pursuant to article 21 and 22 of Act No. 69-4, what measures had been taken to avoid abuses of that Law and how many investigations had been effected or punishments meted out in connection with such abuses, whether law enforcement officials were given appropriate instruction regarding the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Code of Conduct for Law Enforcement Officials, whether allegations of torture or similar offences were promptly and independently investigated, and whether any law enforcement officials had ever been charged with such violations and appropriately punished. In addition, members of the Committee inquired as to the status of draft amendments to the Code of Penal Procedure, which, *inter alia*, reduced the period of pre-trial detention to a minimum and gave detainees the right to request a medical examination during or on expiry of a period of police custody. Referring to the assertion in the report that civilian service under Act No. 78-22 of 8 March 1978 differed from forced labour in that the person performing it received remuneration, one member expressed doubt that the fact of receiving remuneration automatically removed the forced character of the labour. Another member drew attention to the Committee's general comment on article 6 (No. 6 (16)), 5/ which stressed that, although the abolition of the death penalty was not expressly stipulated in the Covenant, the wording of the article strongly suggested that abolition was desirable.

122. In his reply, the representative of the State party explained that infant mortality had decreased from 200 per 1,000 in 1952 to between 50 and 60 per 1,000 currently with a further reduction to between 18 and 28 per 1,000 expected by the end of the century. Among the measures that had led to such impressive results, he cited the requirement for pre-marital medical certificates, the establishment of a minimum marriageable age of 17 for women and 20 for men, the pursuit of maternal and child health protection policies that had led to the creation of some 119 mother and child care centres between 1966 and 1985, the establishment of a preventive paediatrics department at the Medical Faculty of the University, a multi-pronged effort to combat malnutrition through the improvement of living standards and through nutrition education, legislation to promote breast-feeding and to regulate the production and sale of food for infants, and a complete programme of compulsory vaccination. In addition, an extensive preventive health and vaccination programme had been undertaken by the Government in the schools.

123. Abortion was regulated under the Penal Code, particularly article 214 as amended in 1973. Under that law, abortion was punishable by from two to five years imprisonment and fines of up to 10,000 dinars. However, pregnancies might be terminated artificially within the first three months, in authorized clinics or hospitals, by doctors legitimately exercising their profession. Beyond three months, abortions might be carried out only in cases where the health or mental state of the mother was endangered or where the child risked grave illness or infirmity if born. There had been a total of 20,860 "social abortions" in 1984 as compared with 19,248 in 1979 - thus the number of such operations had essentially remained stable. The performance or abetting of abortions was punishable only in cases where it was carried out illegally, such as when it was performed at an unauthorized facility. The woman concerned always had the final say about having an abortion. The fact that abortion was basically prohibited was a reflection of the Tunisian philosophy of respect for the human being from the time of conception. While abortion was permitted in certain cases for birth control purposes it was expected that the abortion rate would drop as other methods of birth control came into greater use.

124. Regarding medical experimentation, the representative recalled that, under article 2 of Act No. 73-496 of 20 October 1973, respect for human life was the primary duty of doctors under all circumstances. Medical experimentation was covered under articles 57 to 69 of the Act, which provided, *inter alia*, that any such experiments had to be in conformity with moral and scientific principles, had to be carried out at public hospitals by scientifically qualified personnel under medical supervision, and that the benefits sought had to correspond to the risks to which the patient was being exposed. Medical experimentation could not be introduced into therapy unless it contributed to the treatment. As indicated earlier, article 7 of Act No. 85-91 of 22 November 1985 provided, *inter alia*, that medical or scientific experiments had to be conducted in conformity with

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5/ Official Documents of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V.

the relevant provisions of the Covenant. Regarding efforts to amend Act No. 78-22, an interdepartmental committee was shortly to present a final draft text to the Council of Ministers for approval and subsequent transmission to the Chamber of Deputies. Tunisia had always been willing to review its domestic legislation to ensure that it conformed to international agreements and was ready to do so also in that instance. It should also be noted that all of the civilian service assignment

committees and civilian service centres had been closed since 1981.

125. Responding to other questions raised by members, the representative acknowledged that, in view of the increase in violence against women, which had unfortunately accompanied their growing emancipation, it had been necessary to extend the death penalty to cover rape. Three persons had been executed for rape since the enactment of the new law in 1985 - for crimes that were particularly abominable. The death penalty was seldom carried out; there had been no executions in 1983, only seven in 1984 and only five in 1985. Eight persons sentenced to death in 1984 had been pardoned. The use of weapons by security personnel was under strict control. Firearms could be used only in cases of serious disturbance of public order and after several warnings had been given. The use of firearms had been authorized during the 1984 riots only after four days of serious disturbances, including looting and 30 incidents of violence. Law enforcement officials in Tunisia were given a special course in civil liberties at which all international conventions and pertinent laws were explained. The practice of torture by law enforcement officials was subject to punishment and a number of offenders had been sentenced to hard labour in 1981. The draft amendment to the Code of Penal Procedure restricting the period of police custody was expected to be adopted by the Chamber of Deputies at its current session.

#### Liberty and security of person

126. With regard to that issue, members of the Committee wished to receive information on the duration of preventive detention, the observance of article 9, paragraph 4, of the Covenant, particularly in relation to detention in institutions other than prisons, solitary confinement, laws and practices concerning the treatment of persons in custody and pending trial, and the conditions of hard labour and control of institutions in which persons sentenced to hard labour were detained. Members also wished to know whether remedies such as habeas corpus or amparo existed, what the actual permissible period of pre-trial detention was and whether it could be extended at the express request of the examining magistrate, when and through what procedure detainees could contact a lawyer, what arrangements had been made to ensure compliance with the Standard Minimum Rules for the Treatment of Prisoners and to afford prisoners the opportunity to lodge complaints and obtain a medical examination, and whether a claim for compensation for illegal detention or imprisonment could be made by the victim only against the official concerned or also against the State. Several members drew attention to the importance of the Committee's general comment (No. 8 (16)) 5/ on article 9 of the Covenant and pointed out that it called, inter alia, for the prompt presentation of a detained person in court. Attention was also drawn to the need to extend the provisions of article 9, paragraph 4, to all relevant categories, such as illegal immigrants, vagrants and drug addicts.

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5/ Official Documents of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V.

127. In his reply, the representative of the State party said that regulations relating to preventive detention were contained in the Code of Penal Procedure. Paragraph 84 of the Code provided that the measure was an exceptional one, to be decided upon by an examining magistrate who could order detention only in cases of gross crimes, to prevent further offences, to ensure execution of a sentence or to guarantee the authenticity of the information that had been provided. When less serious offences were involved the detainee could be held only for a maximum of five days.

Detention was always temporary and subject to revocation. As indicated earlier, the Chamber of Deputies was expected to act in the near future on a draft bill that, *inter alia*, stipulated the maximum period of detention for various crimes and offences and that afforded detainees more effective remedies. The tabling of that bill showed that the Tunisian Government wished to give full effect to the provisions of the Covenant. Regrettably, some delays had occurred in the Chamber of Deputies but the Government was striving to enact the text as swiftly as possible. The period of investigative custody by the judicial police varied between 4 and 48 days, unless otherwise authorized by the Public Prosecutor or the examining magistrate. The draft bill currently before the Chamber of Deputies would limit the period of custody to a maximum of four days, which would correct any problems caused currently by protracted administrative procedures.

128. Detention in hospitals or psychiatric wards was ordered only in cases where the person's mental condition was deemed detrimental to individual safety or public order. Within 10 days of the issuance of such an order, the detainee or a person acting on his behalf could have recourse to a medical legal commission, which acted on a case-by-case basis. While the findings of that commission were not subject to appeal, they could be challenged before the Administrative Tribunal on the grounds that the commission had exceeded its authority. A person could also be deprived of liberty as part of a re-educative work decision pursuant to Decree-Law No. 62-17 of 15 August 1962. Re-educative work was carried out on state farms, separate from prisons. Solitary confinement was applied chiefly as a result of a decision by an examining magistrate in the interests of the inquiry or as a disciplinary measure decided by the prison disciplinary board, which consisted of the deputy director of the prison, a welfare worker, the reporting warder and an inmate representing the detainee. Abuses relating to solitary confinement were rare and subject to severe administrative sanctions against the prison officials concerned. Persons in custody pending trial were kept separate from prisoners serving a sentence, could freely contact a lawyer or correspond with him or with the court, and receive meals from the outside or family visits when authorized by a judge. Persons serving sentences of hard labour were subject to the same penitentiary system as other prisoners, but served their sentences either in high-security prisons or special areas in regular prisons. No special system prevailed for women sentenced to hard labour, who served their sentences in a separate cell block in the women's prison at Manouba. Since 1965 convicted persons had ceased to be shackled or put to arduous work such as stone-breaking.

129. With regard to prison conditions, the representative noted that, while surveys of detention centres, particularly that carried out in 1977 by the Tunisian League for Human Rights, indicated that efforts had been made to treat delinquents humanely and to rehabilitate them, it was planned to improve conditions further through the introduction of new internal regulations stipulating the rights and obligations of detainees in prisons and educational action centres. The Tunisian League for Human Rights had reviewed the draft of the proposed new regulations and found them satisfactory. They were to be put into effect through an administrative circular as soon as the views of other relevant bodies had been received. Finally, he explained that compensation of the sort envisaged in article 9, paragraph 5, of the Covenant was provided for under the Code of Obligations and Contracts. In cases of petty offences the State assumed responsibility, but in serious cases the official was himself liable. The State was under no legal liability to make restitution, but in practice it did so if the official concerned was unable to do so.

#### Right to a fair trial

130. With regard to that issue, members of the Committee wished to receive additional information concerning the modalities for the appointment of judges, the functions of the Higher Council of the Judiciary and the appointment of its members as well as the scope of the Code of Military Justice. In that connection it was asked whether that Code was also applicable to civilians. Members also wished to know how soon after arrest a person could contact a lawyer, what remedies were envisaged under the draft bill relating to pre-trial detention for appealing against the rejection of an application for release, whether administrative regulatory decrees issued by the President could be annulled if considered unlawful and, if so, under what procedures, whether there were any special courts in Tunisia other than military tribunals and whether such courts were bound by the ordinary rules of civilian and military procedure, whether accelerated procedures under common law were applicable to felonies and how petty offences were handled, whether the independence and impartiality of judges of the Administrative Tribunal were secured in the same way as those of other judges, and whether it was possible to appeal against a decision of the Administrative Tribunal in cases involving the State and against a sentence of the military court. In addition, referring to article 128 of the Code of Penal Procedure, which apparently precluded the possibility of appeal against a criminal court decision and therefore seemed to be incompatible with article 14, paragraph 5, of the Covenant, one member requested clarification of the statements dealing with the matter in paragraph 102 of the report (CCPR/C/28/Add.5/Rev.1).

131. In his reply, the representative of the State party explained that the appointment of judges was governed by Act No. 67-29 of 14 July 1967 and that of administrative judges by Act No. 72-67 of 1 August 1972, as amended in 1983. Judges were recruited by competition from among law graduates who had also successfully completed a course at the Higher Judicial Institute. They were appointed by the President of the Republic after their qualifications had been studied by the Ministry of Justice and assessed by the Higher Council of the Judiciary. Senior lecturers and lecturers in the Faculty of Law and lawyers with at least 10 years experience could be appointed without undergoing a competition. Administrative judges were recruited mainly from among candidates who had successfully completed the higher course of the National School of Administration; however, at least 25 per cent of the vacancies were filled by an examination open to civil servants with a degree or equivalent qualification in law or economics and five years of relevant experience. Such judges were appointed by Presidential Decree on the recommendation of the Prime Minister. They enjoyed the same immunities as other judges and could be disciplined only for professional misconduct. Their Higher Council, which was similar to the Higher Council of the Judiciary, was chaired by the Prime Minister. The Higher Council of the Judiciary was presided over by the Head of State, with the Minister of Justice serving as Vice-President and senior judges, including the first presidents of the Court of Cassation and of the Tunis Court of Appeal and the President of the Land Court, serving as *ex officio* members. Four elected representatives of the judiciary also served on the Council, two of whom had to be women. The Permanent Military Court, consisting of four military judges and a civilian president, was competent to deal both with infractions of military discipline and criminal cases involving members of the armed forces, but could not hear civil cases, which had to be referred to the regular courts. Its judgement could be reviewed by the Court of Cassation with one military judge added to the bench. A Court of National Security, established in 1968 to deal with cases of internal or external security, was also still in existence, but had not functioned for several years since such cases were dealt with, in practice, by the regular courts.

132. Responding to other questions raised by members, the representative explained that, pursuant

to article 79 of the Code of Penal Procedure, a person detained under an arrest warrant had to be brought before a court within three days of his admission to a public prison. The examining magistrate could not receive any statement from a detainee at his first hearing until he had been informed of his right not to reply except in the presence of a lawyer of his choice. Thus, a detainee could contact a lawyer within three days of his arrest at the latest. Article 70 of the Code provided that a detainee charged with a crime could communicate at any time with his lawyer immediately after his first appearance and that in no case could contact with a lawyer be prohibited. However, a detainee in criminal police custody could not communicate with his lawyer, although the latter could make representations on the prisoner's behalf to the Public Prosecutor, under whose authority the detainee was being held, or to the examining magistrate. The liberalization relating to release from pre-trial detention, envisaged under the draft amendments to the Code of Penal Procedure, would allow detainees to appeal to the court, within four days, against the rejection by an examining magistrate of a request for release and would provide for a definitive ruling by the court on the appeal within a maximum of eight days. Regarding the possibility of appeals against presidential administrative decrees, he stated that such decrees could not be appealed on substantive grounds, but their implementation could be challenged on grounds of unlawfulness. To avoid that problem the President always sought and acted upon the advice of the Administrative Tribunal as to the lawfulness of the regulations that were to be promulgated through such decrees. Accelerated procedures were not used in felony cases and petty offences were dealt with by the cantonal courts. All criminal sentences were subject to review, in accordance with the modalities described in article 77 of the Code of Penal Procedure.

#### Freedom of movement and rights of aliens

133. With regard to that issue, members of the Committee wished to know whether the travel restrictions in Act No. 75-40 of 14 May 1975 were compatible with article 12, paragraph 3, of the Covenant, and whether the period of assigned residence under Act No. 68-7 of 8 March 1968 could be prolonged indefinitely.

134. In his reply, the representative stated that restrictions regarding the issuance, renewal or extension of passports, contained in articles 13 and 15 of Act No. 75-40, were in complete conformity with article 12, paragraph 3, of the Covenant. They related only to minors, persons liable for military service and persons being sought by the Public Prosecutor in connection with judicial proceedings, and to the refusal of passports for reasons of public order, national security or injury to Tunisia's good name. Passports could be withdrawn only if the holder had lost Tunisian nationality or for reasons of irregularity or national security. All such grounds were interpreted restrictively so as to minimize any possible interference with individual liberties. Those to whom passports had been refused could appeal to the Administrative Tribunal and ultimately to the Minister of the Interior, with whom the final decision rested. Assigned residence under article 19 of Act No. 68-7 only affected an alien who was unable to leave Tunisia immediately. Its duration was thus limited to the period during which the alien was unable to leave.

#### Right to privacy

135. With regard to that issue, members of the Committee wished to receive information concerning protection against arbitrary or unlawful interference with privacy, the family and home, particularly

with regard to postal and telephone communications, and to know whether information obtained through the tapping of telephones was considered admissible as evidence by the courts.

136. In his reply, the representative stressed that privacy, the home and family enjoyed ample protection under Tunisian Law. He referred in that regard to a number of provisions of the Press Code and the Code of Penal Procedure, including those providing for the imposition of fines or imprisonment for divulging information concerning proceedings relating to libel, paternity, divorce or abortion. In libel proceedings even the truthfulness of the allegation was not admitted as a defence if the allegation related to private life. Persons who, without authorization, divulged the contents of correspondence, whether transmitted through the mail or by optical or electromagnetic means, were also subject to fines or imprisonment, as was anyone who disclosed confidential information of a private character obtained through a professional relationship. Similarly, unauthorized and unjustified entry into a person's home by law enforcement agents was punishable under the Penal Code. Entry or search was lawful only when undertaken pursuant to authorization by an examining magistrate or to prevent the commission of a crime or in a case of in flagrante delicto. Telephone lines could be tapped with court authorization for grave reasons but information so obtained was not admissible as evidence.

#### Freedom of religion and expression

137. With regard to that issue, members of the Committee wished to receive additional information concerning religious freedom, particularly in the light of the fact that Tunisia had a state religion, and regarding the application of the Press Code, with special reference to the refusal to register new periodicals and to the practice relating to the prohibition of foreign periodicals. Members also wished to know whether it was permissible in Tunisia for a person, including a Muslim, to change his religion, and why the designation of the Grand Rabbi was subject to the issuance of a decree. It was asked whether the requirement, under the Press Code, for prior notification of publications to the Ministry of the Interior was compatible with article 19 of the Covenant and whether refusal of an authorization to publish could be appealed, whether allegations concerning the suppression of a number of opposition publications and periodicals, including a French-language book by Mr. Moncef Marzouqi, were correct, whether government assistance to publishers was subject to political conditions, whether publications other than newspapers or magazines were also subjected to the requirement of prior notification or to any form of censorship and whether such works could be banned for reasons other than those applicable to the press. Members also asked whether all individuals or only registered publishers were free to publish, whether regulations affecting radio and television provided adequate guarantees to ensure the public's right freely to receive, seek and impart information and ideas of any kind, whether officials refusal of authorization to publish or failure to respond to an application could be appealed to the Administrative Tribunal on any grounds other than misuse of authority, and whether the duration of suspension of a periodical was fixed by law or could be extended indefinitely by the judicial authorities. One member, considering that the general requirement for prior notification regarding new publications resulted in a degree of government control over opinion and expression beyond the limits prescribed in article 19, paragraph 3 (b), of the Covenant, asked whether the review of the Press Code planned for the 1986 session of the legislature had actually taken place. Another member, noting that the line between religious or racial hatred, which the Tunisian Government had made laudable efforts to prevent, and war propaganda was thin, expressed the hope that the legislature would consider the possibility of

also outlawing the latter.

138. In his reply, the representative of the State party explained that, although Islam was Tunisia's state religion, article 5 of the Constitution guaranteed freedom of conscience and protected the free exercise of religion. As the religion of nearly all Tunisian citizens, Islam received assistance from the State for the building and maintenance of mosques and for the salaries of religious auxiliaries. The free exercise of Judaism was guaranteed under Act No. 57-78 of 11 July 1958, and of Catholicism by an international agreement with the Holy See concluded on 27 June 1964. Other religions could also be practiced freely and there was no law against changing one's religion. The Grand Rabbi, like the Mufti, was a high dignitary having access to the Head of State. He was appointed by decree upon nomination by the Jewish community.

139. Regarding freedom of opinion and of the press, he stated that, since the adoption of the Press Code in 1975, there had been only one case of refusal of authorization of a new publication, a decision which had subsequently been upheld by the Administrative Tribunal. Local or foreign periodicals could circulate freely and only two foreign periodicals had been seized within the past five years. During 1986 a total of 13 locally published books or writings, which were contrary to public morals or had defamed the Head of State, had been seized and there had been three such cases during the first three months of 1987. As indicated earlier, refusal of authorization of a periodical could be appealed on grounds of abuse of power, which comprised the concept of violation of a right. Some of the periodicals mentioned as having been suppressed as opposition publications were not, in fact, opposition papers and had not been suspended but had voluntarily ceased publication. The maximum period of suspension of a periodical was six months and such suspensions were appealable. All publications received the same type of assistance and advantages from the Government without discrimination. The publication of books was not subject to any requirement of prior authorization nor were publications other than periodicals subject to prior controls or to censorship of any kind. No foreign-language book had been prohibited or seized in recent years.

#### Freedom of assembly and association

140. With regard to that issue, members of the Committee wished to receive information on the application of restrictions to the right of peaceful assembly established by law, on the current status of the proposed new act relating to the formation and functioning of political parties, and on articles of the Labour Code concerning the relationship between domestic and foreign trade unions and restrictions relating to the position of foreign workers in trade unions. Members of the Committee also wished to know how many political parties had participated in the most recent elections and how many were currently represented in the legislature, how it was possible to ensure that democratic principles were respected within the internal processes of political parties and whether the judiciary had a role to play in that regard, whether trade unions could be organized only along professional lines or also at the level of a particular industry or enterprise, in accordance with ILO Convention No. 87, whether the prohibition of foreign unions in Tunisia also precluded the affiliation of Tunisian trade unions to world-wide labour organizations, and whether trade-union leaders, including the Secretary-General of the General Union of Tunisian Workers (UGTT), were being detained and, if so, on what charges and under what penal régime. With reference to the draft bill concerning the organization of political parties, discussed in paragraph 132 of the report, clarification was requested of provisions relating to conditions for the issuance of authorizations to



form political parties, particularly the requirement of respect for democratic principles within the internal functioning of political parties and the prohibition of parties basing themselves on racial, religious or ethnic ties, as well as the exclusion from political life of persons who had served prison terms.

141. In his reply, the representative of the State party explained that, under Act No. 69-4 of 24 January 1969, the authorities must receive prior notice of the time, place, purpose and object of public meetings, which normally had to end at midnight. Meetings regarded as posing a threat to public order or security could be prohibited by the authorities, but only by written order that was subject to appeal to the Administrative Tribunal on grounds of abuse of power. Such restrictions applied only to public meetings in which anyone could participate. Private meetings, including trade-union assemblies, could be held freely without any restrictions. Marches and street demonstrations were subject to restrictions similar to those relating to public meetings and could be prohibited for the same reasons. Aliens were free to join any Tunisian trade union and could hold positions of leadership therein with the approval of the Minister of Labour. National trade unions were entirely free to affiliate to regional or international trade-union federations and the UGTT was in fact affiliated to several such federations, including the International Confederation of Free Trade Unions. However, for historical reasons dating back to the period of the French Protectorate, foreign trade unions were prohibited from establishing local chapters. Under the Labour Code, which was the only legislation regulating trade-union activity, it was possible to establish a union freely, the only requirement being a simple notification to the authorities to inform them of the organization's existence. Any detained union leaders were in that situation for violations of ordinary laws and not on account of their union-related activities. The former Secretary-General of a trade-union federation had benefited from measures of clemency, such as access to newspapers, television, and visits from family members and others, including a recent visit by Mr. Blanchard, Director-General of the International Labour Organization. Regarding the participation of political parties in the elections held on 2 November 1986, three parties - the Destourian Socialist Party, the Communist Party and the United Popular Force Party - had presented candidates on separate lists but as part of a common National Front. There had also been some independent candidates, notably in Sfax, but only the National Front candidates had been elected.

142. Responding to questions concerning the draft legislation relating to political parties, the representative emphasized that it was still at the stage of a draft and subject to change. Thus, provisions such as those relating to the possible disqualification of convicted former politicians were not yet definitive and, in any case, there was no question of disqualification for reasons other than clearly specified infractions, such as embezzlement or corruption. The general thrust of the draft bill was clearly in favour of greater pluralism and democracy in the country's political life. There was no intention whatsoever to prevent parties from existing and presenting themselves at elections, the question was simply to find the best way of providing a legal underpinning for political pluralism. The conditions and measures of control currently under discussion were considered as a necessary minimum to ensure responsible participation in political and public life. Thus, the prohibition of political parties based on religious or ethnic considerations was desirable precisely in order that political pluralism could flourish.

Right to participate in the conduct of public affairs

143. With regard to that issue, members of the Committee wished to receive information on the exercise of and restrictions on political rights, particularly for non-Muslims, and on legislation and practice regarding access to public office, including the possibility of a non-Muslim attaining high public office.

144. In responding, the representative of the State party said that, under the Constitution and laws of his country, the exercise and enjoyment of political rights was accorded to all Tunisian citizens without distinction, including non-Muslims. Non-Muslims were eligible, as were all other qualified citizens, to vote or to hold public office. Any mention in a public official's dossier of his political, philosophical or religious opinions was prohibited by law. Non-Muslims could also accede to high administrative or political office and examples of that fact were too numerous to mention. The sole exception was the constitutional requirement that the Head of State had to be a Muslim, which reflected the eagerness of the country's leadership at the time of independence to preserve the national identity and the cultural and religious values of the Tunisian people.

#### Rights of minorities

145. With regard to that issue, members of the Committee wished to receive information concerning the application, in practice, of article 27 of the Covenant.

146. In his reply, the representative of the State party explained that, owing to certain historical and geographical factors that reinforced the laws and practices guaranteeing the rights covered in article 27 of the Covenant, such as the exposure of Tunisia to various civilizations and peoples, including the Berbers, Phoenicians, Romans, Vandals, Byzantines, Islamic Arabs, Spaniards, Turks and French, no difficulties were being encountered in connection with the implementation of that article. The arrival of two great waves of refugees - Jewish colonists at the Isle of Jerba some 25 centuries ago and Andalusian Muslims in the fifteenth and sixteenth centuries - had also contributed considerably to Tunisia's tradition of tolerance. The Tunisian population was highly homogeneous ethnically and those of the Jewish faith constituted the only religious minority. As indicated earlier, the right to teach and to exercise the Jewish religion, which was assisted financially by the State and by local communities, was fully guaranteed.

#### General observations

147. Members of the Committee expressed their thanks and appreciation to the State party's delegation for informing the Committee of the progress made in implementing the Covenant as well as of the difficulties encountered in that regard in the current social and political context in Tunisia. Members noted that the examination of Tunisia's second periodic report was taking place at a time when important legal changes were under consideration in that country, which would affect the treatment of detainees, the penal legislation and the establishment and functioning of political parties. In the light of Tunisia's significant accomplishments in the human rights field, they expressed confidence that the Committee's comments and concerns about certain remaining difficulties, including those relating to the implementation of article 19 of the Covenant, would be brought to the attention of the Tunisian Government.

148. In concluding the consideration of the second periodic report of Tunisia, the Chairman also

thanked the delegation for its co-operation and for having engaged in an open and constructive dialogue with the Committee.

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495. The Committee considered the third periodic report of Tunisia (CCPR/C/52/Add.5) at its 990<sup>th</sup> to 992<sup>nd</sup> meetings, on 16 and 17 July 1990 (CCPR/C/SR.990-992).

496. The report was introduced by the representative of the State party, who highlighted developments since the submission of Tunisia's second periodic report, and in particular events since 7 November 1987, the date on which Mr. Ben Ali had become President of the Republic. Tunisia had thus firmly embarked on the promotion of human rights and personal freedoms, with due respect for its tradition of openness and tolerance. Several commissions had been set up to review the principal legislative texts in force and to ensure that the provisions of the international instruments, immediately applicable under 52 of the Constitution, were fully respected. In addition, on 7 November 1988, a National Covenant had been formulated establishing national sovereignty, the republican régime, pluralism and respect for the rights of individuals. In such a structure, equality between men and women constituted a priority, in accordance with the preamble and article 6 of the Constitution. Nevertheless, such protection was necessarily limited in the socio-cultural environment prevailing in Tunisia.

497. Emphasizing his Government's democratic and liberal policy, the representative of Tunisia said that legislation relating to political parties had been enacted on 3 May 1988. However, anyone who wished to found a political party was obliged to comply with a number of rules to ensure that the achievements of the past and present were maintained in the future. Thus, the principles and policies of the parties must exclude fanaticism, racism and any other forms of discrimination, and they were explicitly forbidden to base their actions on a particular religion, language, race or region. In addition, a special body competent to consider complaints by citizens who felt that the authorities were not complying with that legislation had been set up within the administrative jurisdiction.

498. There had been other developments in connection with the freedoms of religion, expression and association, such as, for example, the granting to the Tunisian branch of Amnesty International authorization to undertake its activities in complete legality, and the amendment of the Press Code on 2 August 1988, under which the banning of a newspaper fell within the exclusive jurisdiction of the courts. Among the many other developments were the abolition of the Court of State Security, the unreserved ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment, the abolition of the penalty of force labour, the amnesty granted to persons convicted of political offences and the fact that no person under death sentence had been executed since 7 November 1987. An Act of 18 April 1990 had extended the powers of the Constitutional Council set up in 1987 by enabling it to be consulted on all draft organizational legislation and draft legislation relating to fundamental rights.

### Constitutional and legal framework for the implementation of the Covenant

499. On this point, the members of the Committee asked: whether, during the period under consideration, there had been any cases in which the provisions of the Covenant had been directly invoked in the courts, mentioned in judicial decisions, or considered by courts as prevailing over those of a domestic law held to be at variance with the Covenant; whether the commissions set up, inter alia, to review the Penal Code and the Code of Penal Procedure and to reform the judges'

statute had completed their work; what were the revisions, if any, proposed or envisaged by those commissions and their effect on the enjoyment of the rights listed in the Covenant; what action had been taken during the period under consideration by the Tunisian League for Human Rights to promote and protect the enjoyment of human rights; what effect the National Covenant had had on the implementation of the rights covered by the International Covenant; and what were the prospects for ratification by Tunisia of the Optional Protocol to the Covenant.

500. Further information was also requested on the status of the International Covenant in Tunisian domestic law with regard to the possibility for victims of a violation of the Covenant to lodge an appeal which would be both effective and prompt and, in particular, on the “convergent mechanisms” mentioned in the report, which had been developed by Tunisia in order to guarantee the freedoms recognized by the Covenant. It was also asked: whether consideration had been given, within the context of the reform of the judges’ statute, to modification of the operation of the Higher Council of the Judiciary so as to give it greater independence *vis-à-vis* the Executive; what activities had been undertaken in order to make the Covenant’s provisions better known; whether the establishment of a multi-party system could be reconciled with a Constitution formulated on the basis of the single-party system; and whether representatives of political forces that were not officially recognized had participated in the adoption of the National Covenant.

501. On the question of relations between the Government and non-governmental organizations for the protection of human rights, clarification was requested concerning the independence of the Tunisian League for Human Rights, the extent of its competence with regard to allegations of violations of human rights and compensation for the victims of such violations, and its activities in the area of the promotion of human rights. It was also asked whether it had been consulted before Tunisia’s periodic reports had been drafted and what activities had been undertaken by the Tunisian branch of Amnesty International.

502. On the question of the expansion of the competence of the Constitutional Council, it was asked whether that body was competent to express an opinion to the President of the Republic on the conformity of draft legislation with the Covenant, how were its members appointed, what was the duration of their mandate, in which circumstances could they be removed, in what way was its independence ensured, and what were the effects of its decisions, in particular if it declared a law unconstitutional. In this connection, it was asked whether consideration was being given to the establishment of another mechanism, independent of the Legislature and the Executive, which could take enforceable decisions.

503. In reply to the questions asked about the status of the Covenant in Tunisian domestic law, the representative of the State party pointed out that article 32 of the Tunisian Constitution established the primacy of international conventions over national law. Moreover, certain legislative texts, such as the Political Parties Act or the Act relating to medical and scientific experiments, referred explicitly to the relevant provisions of the Covenant. In the event of conflict between an international standard and a domestic legal provision, the judge tried as far as possible to apply the international rule even if in certain very rare cases, such as the principle of equality with regard to inheritance, the social environment prevented that from being done. Judges were nevertheless made aware of the Covenant and did not hesitate to apply it directly if it was expressly invoked as applying to the case in question.

504. On the question of the commissions which had been set up to review Tunisian legislation, the representative of the State party said that although several of them had not yet completed their work, draft texts concerning police custody, pre-trial detention and the abolition of forced labour had been adopted following their recommendations.

505. Replying to the questions asked about the Tunisian League for Human Rights, he emphasized that the League was particularly representative of the collective conscience of the population. The League and its governing bodies enjoyed absolute independence and its officers reflected all shades of political opinion. Its budget was patterned on that of an association. Its members were authorized to visit detainees. It had thus recently visited a number of detention centres, including the central prison in Tunis, in order to ascertain whether the authorities were complying with prison regulations and had found that substantial improvements had been made in that respect. The League was kept regularly informed by the Government of draft legislation affecting the rights of individuals. A senior official of the Ministry of the Interior directly answerable to the Minister was responsible for receiving all complaints or requests from the League and conducting inquiries in order to take action on them. Those activities had had very favourable consequences in many areas including, for example, the withdrawal of passports and suspension of deferment of military service in the case of students who had disrupted public order by instigating strikes at universities. In addition, the League was almost automatically consulted on any draft legislation relating to human rights and public freedoms, and had been associated with the drafting of the National Covenant.

506. Replying to other questions, the representative of Tunisia emphasized the fact that all the forces of the nation, including several political movements, had been involved in preparing the National Covenant, which was the tangible expression of the consensus the various political trends had sought to achieve in order to foster respect for the principles on which there was broad agreement in Tunisian society. Since the basis for this agreement was voluntary accession with a view to contributing to national development in peace, dignity and respect for freedoms and the human person, there was therefore no legal obligation to respect the National Covenant. The question of the ratification of the Optional Protocol to the Covenant was still being studied, although a priori there was no objection to its ratification. The provisions of the Covenant were taught in some establishments, such as the Police College, in order to promote respect on the part of future law enforcement officials for the principles established in the Covenant. The Constitution had not been conceived from the viewpoint of a single party system and it had therefore simplified the recent adoption of the organic law on the plurality of political parties. Tunisia had a presidential system in the context of which checks had been devised in order to counterbalance the extensive powers available to the President of the Republic. Moreover, the principle of life presidency had been abolished. With regard to the independence of the Judiciary, judges were appointed by the President of the Republic, due account being taken of the proposals submitted to him by the Higher Council of the Judiciary, which was made up of ex officio members and of members elected by their peers, thereby guaranteeing its independence. Judges might not be prosecuted unless the Council had lifted their immunity.

507. Answering the questions raised in connection with the Constitutional Council, the representative stressed that its creation only a few weeks after the Declaration of 7 November 1987 indicated an intention to establish a tradition in respect of consultations on the constitutionality of legislation in Tunisia. A recent law, dated 18 April 1990, stipulated that this body must obligatorily

be consulted by the President of the Republic prior to the submission of draft organic laws and draft laws relating to fundamental rights to the Chamber of Deputies. When the Council considered certain legislation to be at odds with the Constitution, the President of the Republic could refer the draft for reconsideration to the ministerial department concerned and, usually, the draft was regarded as unconstitutional. In all cases, the President was required to communicate the opinion delivered by the Constitutional Council to the Chamber of Deputies. The Council could also be seized of any question relating to the organization and functioning of institutions. The possible seizing of the Constitutional Council to hand down opinions a posteriori on the constitutionality of legal texts, however, was still under discussion but, for the time being, was contemplated only for some stage in the future. Its members, whose number had been reduced from 11 to 9, (including the President of the Republic himself), were appointed by the President of the Republic and were made up of ex officio members and other prominent persons. The length of the mandate of those persons was left to the discretion of the President of the Republic whereas the ex officio members by right sat as long as they occupied their post.

### State of emergency

508. With regard to that issue, members of the Committee wished to know whether there were any legal provisions, other than article 46 of the Constitution, relating to the introduction of a state of emergency and, if so, whether they were in conformity with the provisions of article 4, paragraph 2, of the Covenant. Additionally, it was inquired what the maximum duration of the state of emergency was: whether the National Assembly could adopt measures to bring the state of emergency to an end if it considered that circumstances justified it; and whether there was some form of judicial control over measures taken during such an emergency. Clarification was also sought of the extent of discretionary power held by the administrative authorities during a state of emergency.

509. In his reply, the representative of the State party explained that the decree of 26 January 1978 regulating the state of emergency had only been applied twice, in January 1978 and January 1984. In those cases the legislative and executive authorities had taken care that nothing was done beyond what was expressly stated in the decree. Furthermore, there was an administrative tribunal which was competent to deal with all administrative decisions and abuses and which pronounced an application for stay of action when necessary. Notwithstanding the state of emergency, there was no reduction in the power of that tribunal to oversee the decisions of the administration in all circumstances.

### Non-discrimination and equality of the sexes

510. With reference to that issue, members of the Committee wished to receive detailed information regarding current plans to remove from Tunisian legislation remaining inequalities, such as those relating to inheritance, the granting of nationality by virtue of filiation, discrimination against the female spouse under article 407 of the Penal Code and the husband's prerogatives as head of the family; and on the activities undertaken to enhance the role and status of women during the reporting period, particularly by the National Union of Tunisian Women. In addition, it was inquired whether there was any plan to secure equal treatment for all working mothers; whether the Education Act mentioned in the report also covered university education for women; whether filiation of a child

could also be established through the wife or through an unmarried mother; and whether provisions were made for maternity leave in employment sectors other than the civil service. Clarification was, in particular, sought concerning areas where discrimination still existed in practice such as in the area of inheritance, where there seemed to be a clear conflict between the provisions of the Covenant and Tunisian legislation.

511. In his reply, the representative of the State party noted that the process of implementation of the principle of equality of the sexes in Tunisia since its independence had been a gradual one. Such evolution had had to avoid any false step that would have negatively affected family stability, based on ancestral rules and traditions. However that had not prevented the legislature from adopting many positive measures such as abrogation of polygamy and divorce by repudiation, equality in guardianship of children, the granting of custody of the child to the mother in case of the father's death, and the award of a pension to a spouse who had suffered moral or material injury. As regards nationality, the wife or mother could transmit her nationality to husband or child under certain conditions and a foreign child could obtain Tunisian nationality on the basis of a simple declaration made during the year before attaining majority. Article 207 of the Penal Code dated from 1913, when polygamy had been widely practiced in Tunisian society. It would surely be revised towards greater equality in the context of the current revision of the Penal Code. Concerning the prerogatives of the husband as head of the family, it had to be recalled that the rights and duties of the spouses, as provided by the Code of Personal Status, corresponded to the functions actually carried out in the household by the man and woman. Women were represented on municipal councils in a proportion of 14 per cent, and six women had recently been elected as members of Parliament. There was a woman in the Government and girls constituted 44 per cent of the school population.

512. Inequality between the sexes still existed, but steady progress was being made towards more equitable legislation. For example, judges in divorce cases were obliged to give priority to the wife in respect of the family home. With regard to inheritance, it was to be noted that since the Tunisian family generally had a strong sense of unity, the prospects of girls were not usually prejudiced. However, it was impossible to force the pace in that particular area, and to overturn principles that were 14 centuries old.

### Right to life

513. With regard to that issue, members of the Committee inquired whether any revision of the Penal Code, with a view to curtailing the number of offences currently punishable by the death penalty, was being contemplated. In addition, information was sought regarding the difficulties which prevented the introduction of a bill to abolish the death penalty, and the application of such penalty to crimes of rape.

514. In his reply, the representative of Tunisia said that a special review commission on criminal legislation had proposed that the number of offences punishable by the death penalty should be reduced. Since 1987, no death sentences had been carried out; they had all been commuted to life imprisonment. The exact length of the sentences which would actually be served would, however, depend on factors such as the conduct of prisoners. He further agreed that the list of offences punishable by the death penalty was long and that it should be shortened as a first step.



## Liberty and security of the person and treatment of prisoners and other detainees

515. In connection with those issues, members of the Committee wished to know whether there had been any allegations of torture and similar offences during the reporting period and, if so, whether appropriate investigations were made and offenders brought to trial; what measures for fighting unemployment and preventing delinquency were being contemplated by the Tunisian authorities other than compulsory civil labour; whether there were any plans to repeal Act No. 78-22 of 8 March 1978; and what proportion of persons accused of offences or crimes were held in pre-trial detention and what percentage of the latter were detained for a period as long as 18 months. They also requested information on detention in institutions other than prison and for reasons other than crimes.

516. Additionally, detailed information was requested on 23 alleged cases of torture and three suspicious deaths in custody. In that regard, it was inquired whether those responsible had been tried, whether victims had been compensated, and what practical steps were being taken to bring an end to such practices. Members wondered what procedure, other than that of Act No. 87-70 of 1987 relating to the recording by police officers of any acts of violence committed against persons held in police custody, was followed in regard to allegations of torture or ill-treatment; and whether failure to provide medicines for detainees was considered as constituting ill-treatment. Clarification was also sought of the implementation of article 13 bis of the Penal Code, according to which magistrates were entitled to delegate the interrogation of suspects to police officers.

517. With regard to detention in custody, it was inquired whether detainees were entitled to apply for the assistance of a lawyer or to communicate with their families; what the maximum period was of detention in custody and on what basis such a period could be extended; the extent of the examining magistrate's power to decide on the duration of periods of detention; and what legal provisions, if any, were applicable to detention without trial. It was also asked whether there was any legislation governing the detention of drug addicts, vagrants, or persons with infectious diseases; whether a person detained in a psychiatric hospital had the right to apply for a judicial review of his case; and whether hard labour had been abolished by Act No. 89-23 of 1989. Lastly, members observed that obligatory civilian labour, used as a means for combating unemployment, appeared to be incompatible with article 8 of the Covenant.

518. In his reply, the representative of the State party emphasized that subsequent to the changes which occurred on 7 November 1987, it had been a priority of the authorities to implement effectively both the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and relevant domestic legislation. The Government was therefore making every effort to make the various relevant services aware of their responsibilities and to establish administrative structures to detect and investigate cases of abuses of power. During the reporting period, there had been 20 allegations of cases of torture, two thirds of which had been found justified. Those responsible had been sentenced to terms of imprisonment and automatically suspended from their posts. Concerning the three cases of violent deaths in penal establishments, ad hoc investigations supported by medical evidence had shown that they involved suicide. One hundred and twenty nine cases of abuse of power by public officials had also been brought before the courts and, so far, nine sentences of imprisonment had been imposed. The dangers inherent in the multiplication of commissions rogatoires were recognized, but the lack of a sufficient number

of examining magistrates made that practice unavoidable for the present.

519. Responding to other questions, the representative pointed out that the 1978 Act introducing civilian labour had been designed to benefit young people who were not following courses of study and had no employment. They were employed in various kinds of public works, received vocational training, and were paid the equivalent of the minimum guaranteed wage. Since a wide range of other measures had been taken to combat unemployment and delinquency, the system of civilian labour might eventually no longer be needed in the future. Pre-trial detention of six months extendable to 18 months was perhaps too long, and it was also recognized that owing to the slowness of the judicial process, it was not unusual for a lengthy period to elapse before a case came to trial. The Tunisian Government was endeavouring to solve the problem by setting up a new institute for the training of magistrates and by creating more courts. The term "detention" was only appropriate in the case of persons deprived of their liberty as a result of a court sentence. There were no other grounds for detention. Any citizen who was mentally ill and who represented a threat to public order or public safety could be interned in a psychiatric hospital, but only following an order issued by the Minister of Public Health. An appeal against such internment could be made by the person concerned or a relative to a joint medical and legal committee. A draft Mental Health Act had recently been introduced under which only hospitals and health institutions would be authorized to intern persons suffering from mental disorders.

520. The period of custody was fixed by law at four days, renewable once, with the possibility - as an exception - of a further two days. Under no circumstances could custody legally exceed 10 days, a period that was considered to be reasonable given various practical difficulties involved in making it shorter - such as the lack of judicial police officers competent to conduct inquiries. Exceptional cases where the period of custody had been longer were thoroughly investigated and sanctions had been imposed. A number of commissions were actively engaged in seeking the greatest possible harmonization of all Tunisian Codes with the provisions of the Covenant. Efforts were being made, for example, to eliminate shortcomings in respect of the practical possibility for a detained person to contact a lawyer and his family. The law of 26 November 1987 on custody and pre-trial detention allowed detained persons or members of their family to call for a medical examination during or at the end of the period of custody. Any refusal had to be the subject of a written statement countersigned by the detainee.

#### Right to a fair trial

521. With regard to that issue, members of the Committee asked, in view of the executive branch's discretionary powers in respect of the appointment, assignment and tenure of judges, how the independence and impartiality of the judiciary was guaranteed in Tunisia. They also wished to know whether there was any free legal aid and advisory scheme and, if so, how it operated. Additionally, observing that an appeal to a higher instance was not always possible in the case of sentences for criminal offences, it was asked whether measures were being adopted to eliminate that deficiency, which appeared not to be in conformity with the provisions of article 14, paragraph 5, of the Covenant. With reference to Tunisian military courts, members asked whether decisions of a military court could be reviewed by the Court of Cassation; whether there was any discernible tendency to reduce the competence of the military courts; and how the competence of military or ordinary courts would be determined in cases involving a group of defendants including members

of the armed forces.

522. In his reply, the representative of Tunisia recalled that the Higher Council of the Judiciary, which was composed of ex officio and elected members, had to endorse all proposals in respect of the appointment of judges, whose independence and impartiality were fully guaranteed by constitutional and other provisions. Legal aid was available in accordance with a decree of 1956 which provided for the assignment of lawyers to defend the interests of demonstrably needy persons. Free legal consultations were, however, not currently available in Tunisia. Subject to certain exceptions regarding administration law, Tunisian legislation offered all the judicial guarantees, including the automatic reduction of sentences under certain conditions and the right of appeal. Military courts were long-established institutions, duly constituted and of a non-exceptional nature, functioning in accordance with the normal rules of law. Such courts dealt with the totality of any cases involving military personnel. They included passing judgement with regard to any non-military co-defendants. It had not been deemed necessary to dismantle those courts, which were presided over by civilian judges, but the question would be kept under review.

#### Freedom of movement and expulsion of aliens

523. With reference to that issue, members of the Committee wished to know how often the issuance, renewal or extension of a passport had been restricted during the reporting period, pursuant to Act No. 75-40 of 14 May 1975 and whether the lodging of an appeal against an expulsion order issued by the Minister of the Interior had suspensive effects. Clarification was also requested on the conformity with article 12 of the Covenant of the restrictions on the issuance or the renewal of a passport in a case where an individual might injure the good reputation of Tunisia. Further information was requested about the 196 persons whose passports had been withdrawn and whose rights had been restored as a result of the intervention of the Tunisian League for Human Rights. Further details were also requested on the concept of expulsion as understood in Tunisian law, on the Minister of the Interior's possibility of delegating his authority in connection with the signing of expulsion orders, and on the right of Tunisian citizens to leave their country.

524. Answering the questions on restrictions on the issuance of passports, the representative of Tunisia explained that the cases that allowed limitations were defined very restrictively by the Act of 14 May 1975. Such limitations were applicable either at the request of the Office of the Attorney-General or when the person concerned was the subject of legal proceedings, or was wanted for a crime or offence or in order to serve a term of imprisonment. Other restrictions involved considerations of public order, security and injury to the good reputation of Tunisia abroad. The considerations of public order and security were related to the activities to combat the major international problems constituted by the drug trade, the abduction of individuals for the purposes of prostitution, serious crime and terrorism. The expression "good reputation" used in that context was outdated and no longer consistent with Tunisia's current goals. Nevertheless, in the case of Tunisians perpetrating crimes or offences abroad, for example, offences of procuring committed by nationals in third countries, the restriction on the issuance or renewal of a passport on the ground that an individual might injure the good reputation of the country was still fully justified. All limitations on the issuance of passports were applied with the utmost care and the committees entrusted with the dossiers were subject to governmental supervision. Further, anyone incurring a limitation which he considered to be unlawful or irregular could file an appeal on the grounds of

abuse of authority to the Administrative Tribunal. Of the 296 cases in which persons had requested the intervention of the Tunisian League for Human Rights, almost 200 had been resolved.

525. Answering other questions, the representative of Tunisia explained that under the Act of 8 March 1968, only the Minister of the Interior - no delegation of authority being possible in that area - could issue an expulsion order against any alien whose presence in Tunisian territory constituted an immediate threat to public order. A stay of execution might be granted for a limited period for humanitarian or material reasons and was issued within 24 hours. The expulsion order could be appealed. In any case, there had been no instance of expulsion since 1987. He explained that should an alien be unable to leave Tunisia, he would be granted a stay of execution for humanitarian reasons and made subject to a restricted residence order until he could leave the country.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

526. The members of the Committee asked: what were the prescribed procedures for official registration or for obtaining necessary authorizations by religions or religious sects other than Islam, Catholicism or Protestantism and the Jewish faith; how many such smaller religious sects were actually established in Tunisia; and whether any local periodicals had been seized or any foreign periodicals banned by the Minister of the Interior during reporting period. They also asked for information concerning the activities of the Higher Communication Council since its establishment in January 1989. It was also asked: whether the founding of periodicals was subject to mere notification or whether official permission had to be granted by the Minister of the Interior; what were the grounds on which this permission could, if necessary, be refused; and whether it was possible to appeal against a decision of the Minister of the Interior refusing permission for publication or a decision by a court of first instance banning publication of a periodical. Clarification was requested concerning libel by the press and, in particular, the means of defence available and the right of reply provided for in the Press Code. It was asked whether there was a growing tendency to offer less protection to political and other personalities against the danger of libel or whether instead there continued to be a relatively rigid system of protection for public figures. The question was also raised of the extent to which objectivity was guaranteed on radio and television, whether there was an agency that regulated radio and television broadcasting, whether there were regulations guaranteeing the right of everyone to seek, receive and impart information and ideas of all kinds, and whether journalists were represented on the board of directors or took part in the appointment of the editor. Information was requested about restrictions on the freedom of expression and their conformity with article 19 of the Covenant.

527. In reply to the questions asked, the representative of the State party noted that the exercise of religious freedom was a right embodied in the Constitution and fully guaranteed in practice. The Press Code had undergone fundamental changes. For example, the Public Prosecutor could no longer ban newspapers or periodicals *sine die* simply at the request of the Ministry of the Interior. The Ministry of the Interior could now seize only a single issue of the publication in question, and then only in grave circumstances. The Ministry of the Interior had taken such steps on three occasions. The measures had been of a special nature and had been prompted by serious breaches of the law and disturbances of public order, to the exclusion of any other consideration. The Higher Communication Council had been established to devise measures designed to guarantee full freedom

of expression, information and communication, facilitate the development of legislation in that field, and develop and improve and quality of the technical infrastructure of communications. It was also engaged in ensuring observance of the principle of pluralism and of the right of various political tendencies to express their views on radio and television. With regard to defamation in respect of the press, he cited a specific example demonstrating that, while the Press Code contained provisions which could be described as archaic, the interpretation and application of the legislation remained flexible. The Press Code also recognized the right of persons who considered themselves to have been injured by a press article to have a correction inserted in the organ which published the original article.

528. Replying to other questions, he said that the authorization issued by the Ministry of the Interior for the founding and publication of a newspaper, periodical or journal was an administrative decision, and such authorizations were granted only to applicants who fulfilled all the necessary conditions. With regard to the freedom of conscience of journalists, there was no law in Tunisia prohibiting journalists from participating in the management of the company with which they were associated.

#### Freedom of assembly and association

529. The members of the Committee asked: whether the three new political parties formed since the adoption of Act No. 88-32 of 2 May 1988 had participated in the parliamentary and presidential elections of 2 April 1989 and, if so, how many votes they had received; what was the current political composition of the Tunisian Parliament; and how many applications for authorizations concerning the operation of political parties had been rejected, and for what reasons, under the Organic Law of 2 May 1988.

530. In reply, the representative of the State party said that the three parties formed following the adoption of the Act of 2 May 1988, bringing the number of political parties in Tunisia to seven, had received between 0.15 per cent and 0.37 per cent of the vote in the recent parliamentary and presidential elections. Victory in the legislative elections had gone to the candidates of the Rassemblement Constitutionnel Démocratique, which had won all 141 seats in the Chamber of Deputies. Under the Organic Law of 1988, any organization wishing to set itself up as a political party must meet a number of conditions, the principal ones concerning the observance and protection of human rights and the attainments of the nation, the republican system, its basic precepts, the principle of the sovereignty of the people and the principles governing personal status. If an application to form a political party was rejected, it was usually because it had not been presented in the correct form. However, one application had recently been rejected on the grounds that some founders of the group had been sentenced to unsuspended prison terms of three years. Any decision to reject such an application was open to appeal before a special chamber of the Administrative Tribunal.

#### Protection of the family and children

531. Members of the Committee asked for further information: on the links between the Higher Council for Child Affairs and the Ministry of Childhood and Youth; on the activities undertaken by those two bodies since their formation; and on the implementation of articles 53 and 55 of the

Labour Code concerning the employment of minors.

532. The representative of the State party replied that the Higher Council for Child Affairs was a specialized interdepartmental advisory body which assisted the Minister of Childhood and Youth - who presided over it - in formulating government policy regarding childhood. The Inspectorate-General of Labour, which was responsible for monitoring implementation of the provisions of the Labour Code, including those of articles 53 and 55, was a body of specialized and sworn civil servants authorized to report violations of the Labour Code to the Public Prosecutor.

#### Right to participate in public life

533. Members of the Committee asked whether the disfranchisement of persons sentenced to an unsuspended term of imprisonment exceeding three months or to a suspended term exceeding six months was for life or limited to a specified period. It was also asked whether there had been cases of persons of the Islamic faith being dismissed from the civil service.

534. Replying to the questions asked, the representative of the State party said that disfranchisement was not for life. Under articles 367 and 370 of the Code of Penal Procedure, rehabilitation could be granted after a period of three years following completion of the sentence, its prescription, or its reduction in the case of criminal penalties, and after one year following completion of sentence for other offences, subject to good behaviour during the period of detention. Furthermore, there was a very strictly applied rule in the Tunisian civil service, that no indication of the religion of a civil servant could appear in his file. No civil servant could be dismissed without a valid reason and, in any event, the gravity of the offence must be assessed by the Disciplinary Board. It was thus impossible to determine whether any of the many applications for repeal of administrative decisions were made by followers of Islam.

#### General observations

535. The members of the Committee welcomed the excellent report of Tunisia and the highly constructive nature of the dialogue between the Tunisian delegation and the Committee, which had provided the Committee with a clearer picture of the rapid changes which had taken place in Tunisia since 1987. The release of political prisoners, the creation of new institutions, the introduction of political pluralism and the efforts made to bring the whole legislative system more into line with the provisions of the Covenant constituted irrefutable progress in the protection of human rights and augured well for the future. Some members of the Committee, however, said that their misgivings had not been entirely allayed, particularly with regard to the length of time for which and the conditions under which persons could be held in custody and the continued existence of a number of measures which discriminated against women, particularly those concerning inheritance. Concerns were also expressed about compulsory civilian labour being in conflict with the provisions of article 8 of the Covenant; cases of torture or ill-treatment in police stations; the death penalty which, while actually never imposed, was still provided for in too many cases; the legislation on passports and a number of provisions of the Press Code concerning defamation and the banning of periodicals; the lack of effective and prompt remedies; and certain restrictions on the ability to form political parties.

536. The representative of the State party said that the dialogue with the Committee had provided his delegation with a better understanding of the shortcomings of the human rights situation in Tunisia and assured the Committee that the comments made would be passed on both to the Government and to the various commissions responsible for reviewing legislation. The Committee would then be kept informed of the reforms undertaken, as they were adopted.

537. In concluding the consideration of the third periodic report of Tunisia, the Chairman thanked the Tunisian delegation for its spirit of co-operation. The substantial progress made since the beginning of restructuring in Tunisia was evidence of the Government's political will to pursue that course and to bring to the human rights situation such improvements as were still needed in a number of areas.

## CCPR A/50/40 (1995)

79. The Committee considered the fourth periodic report of Tunisia (CCPR/C/84/Add.1) at its 1360<sup>th</sup> to 1362<sup>nd</sup> meetings, on 18 and 19 October 1994, and adopted 10/ the following comments:

### 1. Introduction

80. The Committee welcomes the timely submission of the fourth periodic report of Tunisia and appreciates the promptness with which the State party continues to meet its reporting obligations under the Covenant. The report contains useful and detailed information on measures taken by the Government, particularly with regard to legislative reform and institutional developments affecting the application of the Covenant. However, the Committee notes that the report does not contain sufficient information on factors and difficulties encountered in the implementation of the Covenant.

81. The Committee also welcomes the presence, during the examination of the report, of a high-level and competent delegation of experts knowledgeable in the implementation of the Covenant in Tunisia. The delegation provided much useful and updated information which facilitated a constructive dialogue with the State party.

### 2. Factors and difficulties affecting the implementation of the Covenant

82. The Committee is aware that Tunisia is in a period of economic, political and social transition and that it has to face the challenge of extremist movements.

### 3. Positive aspects

83. The Committee notes with satisfaction the attempt to build a comprehensive constitutional and legal framework for the promotion and protection of human rights. The Committee welcomes recent progress in enhancing and strengthening that framework, notably the establishment of a number of human rights posts, offices and units within the executive branch with a view to ensuring greater conformity of Tunisian law and practice with the Covenant and other international human rights instruments.

84. The Committee also notes with satisfaction recent legislation reforms aimed at bringing Tunisian law into closer harmony with the requirements of the Covenant. In this connection, the Committee welcomes changes in the Penal Code, which have reduced the duration of prevention detention and strengthened sanctions in cases of family violence directed against women. The Committee also welcomes recent reforms in the Personal Status Code and other laws aiming to guarantee and reinforce the equal rights of women in a number of areas, including divorce, custody and maintenance, and to strengthen the protection of women against violence.

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10/ At its 1382<sup>nd</sup> meeting (fifty-second session), held on 2 November 1994.

### 4. Principal subjects of concern



85. The Committee cannot conceal its disappointment with the deterioration in the protection of human rights in Tunisia in the period under review. It is concerned, in particular, about the growing gap between law and actual practice with regard to guarantees and safeguards for the protection of human rights. Although there is now in place an impressive array of State organs for the promotion and protection of human rights at various levels, the Committee notes that they have been concentrated exclusively within the executive branch of the Government. Consequently, it is not clear whether there are sufficiently independent mechanisms within the public administration and the judiciary to effectively monitor and enforce the implementation of existing human rights standards, including the investigation of abuses.

86. The Committee is particularly concerned about continuing reports of the abuse, ill-treatment and torture of detainees, including deaths in custody under suspicious circumstances. In this connection, it appears that Tunisian regulations are not strictly adhered to with respect to the prompt registration of persons arrested, the immediate notification of family members, the limitation of pre-trial detention to the 10-day maximum, the requirement of medical examinations whenever allegations of torture or other abuse are made and the carrying out of autopsies in all cases of death in custody. It is also not clear whether these and other requirements are being systematically monitored or whether investigations are automatically undertaken in all cases where there are either allegations or suspicious circumstances indicating that torture may have taken place. The Committee is also concerned that present laws are overly protective of government officials, particularly those concerned with security matters; it is particularly concerned that those government officials who have been found guilty of wrong-doing remain anonymous to the general public, becoming immune from effective scrutiny.

87. The Committee is concerned about the independence of the judiciary. It is also concerned by the reports on harassment of lawyers who have represented clients accused of having committed political offences and of the wives and families of suspects. With respect to article 6 of the Covenant, the Committee is concerned about the large number of crimes in Tunisia for which the death penalty may be imposed.

88. The Committee regrets that, despite the significant progress that has been achieved regarding the equal rights of women, there remain a number of outdated legal provisions that are contrary to the Covenant. Those provisions concern the status of married women and their equal rights in matters of child custody, the transmission of nationality and parental consent for the marriage of minor children. The Committee is also concerned about legal discrimination against non-Muslims with respect to eligibility for public office.

89. The Committee is concerned that dissent and criticism of the Government are not fully tolerated in Tunisia and that, as a result, a number of fundamental freedoms guaranteed by the Covenant are not fully enjoyed in practice. In particular, it regrets the ban on the publication of certain foreign newspapers. The Committee is concerned that those sections of the Press Code dealing with defamation, insult and false information unduly limit the exercise of freedom of opinion and expression as provided for under article 19 of the Covenant. In this connection, the Committee is concerned that those offences carry particularly severe penalties when criticism is directed against official bodies as well as the army or the administration, a situation which inevitably results in self-censorship by the media when reporting on public affairs. The Committee also notes with concern

that it is not clear how procedures ensure independent review on the merits, including judicial appeal, in cases where those provisions of the Press Code have been invoked.

90. The Committee is concerned that the Associations Act may seriously undermine the enjoyment of the freedom of association under article 22, particularly with respect to the independence of human rights non-governmental organizations. In this connection, the Committee notes that the Act has already had an adverse impact on the Tunisian League for Human Rights. The Committee believes that the Political Parties Act and the conditions imposed on the activities of political parties are not in conformity with articles 22 and 25 of the Covenant. The Committee is also concerned that, under the Passport Act, the grounds for refusing a passport are not clearly specified by law in a way that complies with article 12 of the Covenant, leaving open the possibility of refusal on political or other unacceptable grounds.

91. The Committee is concerned that, while generally there is a well-protected freedom to practice and manifest one's religion, this right is not made available in respect of all beliefs.

##### 5. Suggestions and recommendations

92. The Committee recommends that steps be taken to strengthen the independence of human rights institutions in Tunisia and thereby close the gap between law and practice and enhance the confidence of the public in those institutions. The Committee emphasizes that the work of the "médiateur administratif", the Presidential Human Rights Commissioner and any commission investigating reports of human rights abuses should be transparent and the results should be made public. The Committee notes that a better balance is needed between State and private institutions concerned with human rights and, in that connection, suggests that steps be taken to provide more encouragement to human rights non-governmental organizations in Tunisia. The Committee also recommends that steps be taken to strengthen the independence of the judiciary, particularly from the executive branch.

93. The Committee strongly recommends that the State party consider ratifying or acceding to the First Optional Protocol to the International Covenant on Civil and Political Rights. Acceptance of the First Optional Protocol would strengthen the capacity of the Government with respect to inquiries into allegations of human rights abuses and also in regard to further elaborating jurisprudence relating to human rights matters.

94. With respect to reports of torture and abuse of detainees, the Committee strongly recommends closer monitoring of the arrest and detention process; systematic, prompt and open investigation into allegations; prosecution and punishment of offenders; and the provision of legal remedies for victims. There should be strict enforcement of registration procedures, including prompt notification of family members of persons taken into custody, and the 10-day limit to preventive detention. Steps should also be taken to ensure that medical examinations are automatically provided following allegations of abuse and that thorough autopsies are performed following any death in custody. In all cases where investigations are undertaken, the findings should be made public.

95. The Committee also recommends that the State party take steps to reduce the number of crimes for which the death penalty may be imposed and envisage acceding to the Second Optional Protocol

to the Covenant.

96. With respect to discrimination, the Committee recommends that a further review of relevant legislation be undertaken with a view to amending the law where necessary in order to bring it into conformity with the requirements of the Covenant. Such a review should focus on the equal rights of women, particularly in regard to their parental and custodial rights and the transmission of nationality, as well as on existing legal impediments to the equal participation of non-Muslims in presidential elections.

97. The Committee recommends that measures be taken to ensure the exercise of freedom of opinion and expression in accordance with article 19 of the Covenant. In particular, there should be a review and, where appropriate, amendment of those provisions of the Press Code which unduly protect government policy and officials from criticism. Provision should also be made for independent judicial review of all sanctions imposed under the relevant act.

98. The Committee also recommends that a review be undertaken of the Associations Act, the Passport Act and the Political Parties Act to ensure that they are in full conformity with the requirements of the Covenant. With respect to freedom of religion, the Committee recommends that there be close and independent monitoring of the exercise of that right by all groups in Tunisia. The Committee emphasizes that its general comment on article 18 should be reflected in government policy and practice.