



# International Covenant on Civil and Political Rights

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## Human Rights Committee Ninety-second session

### Summary record of the 2513th meeting

Held at Headquarters, New York, on Tuesday, 18 March 2008, at 10 a.m.

*Chairperson:* Mr. Rivas Posada

## Contents

Consideration of reports submitted by States parties under article 40 of the Covenant  
(*continued*)

*Fifth periodic report of Tunisia (continued)*

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08-27808 (E)

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*The meeting was called to order at 10.05 a.m.*

**Consideration of reports submitted by States parties under article 40 of the Covenant** (*continued*)

*Fifth periodic report of Tunisia (continued)*  
(CCPR/C/TUN/5; CCPR/C/TUN/Q/5 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Tunisia resumed their places at the Committee table.*

2. **The Chairperson** invited the Committee to continue its consideration of the fifth periodic report of Tunisia (CCPR/C/TUN/5) and drew attention to the list of issues (CCPR/C/TUN/Q/5) and the replies of the Tunisian Government (CCPR/C/TUN/Q/5/Add.1).

3. **Mr. Pérez Sánchez-Cerro** said that lack of freedom of expression in Tunisia continued to give cause for concern. According to reports by special rapporteurs, the sole press agency in Tunis was a public company that enjoyed a monopoly over national news and filtered information through to other media. The current situation therefore did not guarantee the rights provided for in article 19 of the Covenant. The establishment of other agencies would permit diversification of news coverage and encourage independent journalism. While censorship was not exercised officially, it did occur in practice, as attested to by the pressure on and incentives for journalists to write articles reflecting the political views of the Government.

4. Regarding terrorism, he was concerned that articles 49 and 51 of Act No. 2003-75 appeared to guarantee the anonymity of judges, thereby recalling the historical concept of “faceless judges”. Such anonymity did not allow concerned persons to seek legal recourse; furthermore, the definition of terrorist acts was too general. He wondered whether the Tunisian Government planned to amend Act No. 2003-75 in order to bring it into line with international standards of due process.

5. Finally, with regard to human rights defenders, what explanation could the delegation give for the continued reports of physical aggression, surveillance, travel restrictions and other such violations?

6. **The Chairperson** suggested that further comments on freedom of expression should be deferred until later in the meeting, when that issue would be addressed by the Tunisian delegation.

7. **Sir Nigel Rodley**, referring to the death penalty, said he welcomed the fact that the Mercy Commission (Commission de Grâce) now took into account only the period of detention under sentence of death, and not the gravity of the offence itself, before deciding whether or not to commute a sentence. However, he wondered what exactly was the purpose of considering that length of time. While hoping that it was not, as it might appear, to keep a person *in terrorem* until subsequent commutation of sentence, he underlined that that might nonetheless be a consequence. What was the period allowed the Mercy Commission in deciding to pronounce a commutation of sentence? The State party had taken a very positive step in formally stating that it was a *de facto* abolitionist State, but it would be preferable for the death penalty not even to be pronounced.

8. Turning to articles 7 and 9, he said that it had been nine years since, as Special Rapporteur of the Commission on Human Rights on the question of torture, he had made a request to visit Tunisia, and nearly a year since the current Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment had reiterated that request. He therefore welcomed the indication in the Tunisian delegation’s introductory statement that the State was now open to visits from the special procedures of the Human Rights Council and asked whether the current Special Rapporteur on torture might expect an invitation to visit in the near future.

9. With regard to allegations of torture or ill-treatment, he expressed concern at the statement that only allegations supported by solid evidence were recognized in Tunisia. Such language appeared to put the burden of proof on the individual, who was held in detention without access to the outside world. That was in fact a virtual negation of the rule that statements made under such conditions were not admissible in court. He therefore asked the Tunisian delegation to clarify the matter of the burden of proof.

10. Turning to the issue of prosecutions, he first expressed appreciation for the delegation’s efforts to furnish statistics. Had there, according to the official data, been any prosecutions under Act No. 99-90? If so, how many, against whom, with how many convictions and with what types of sentences? He further noted that most of the cases brought against public officials who might have been responsible for abuses had involved the police and the National Guard.

He wondered whether there had been any proceedings against officials of State security agencies, in whose premises people were often detained and interrogated.

11. **Ms. Wedgwood**, referring to access to prisons and sites of detention, said that according to conversations she had had with members of the International Committee of the Red Cross (ICRC), visits to prisoners were subject to a confidentiality clause. Further to Sir Nigel Rodley's remarks, she emphasized the obligation for every site to be visited by independent monitoring bodies; otherwise, there would always be problems in overseeing personnel engaged in the act of detention, regardless of the supervision procedures employed.

*The meeting was suspended at 10.20 a.m. and resumed at 10.35 a.m.*

12. **Mr. Labidi** (Tunisia), in response to Ms. Chanet's questions on the existence of jurisprudence that directly applied international human rights standards, agreed that most of the examples provided in Tunisia's fifth periodic report had related to personal status. That said, Tunisian jurisprudence was generally known for its openness in applying the law, including the direct application of international treaties. A few examples of cases tried by the Administrative Tribunal and relating to freedom of opinion and expression had in fact been provided in his delegation's written replies. The decisions in each case, including those of the Constitutional Council, indicated that international treaties had higher authority than national laws. It was extremely desirable for all Tunisian judges to directly apply international treaties, as that fostered the positive development of Tunisian jurisprudence and guaranteed general freedoms.

13. **Mr. Tekkari** (Tunisia) said that, with a view to further developing a human rights culture and encouraging judges to apply standards of international law, a collection of national and international texts relating to human rights had recently been prepared and would be distributed to all Tunisian judges. The collection, which would be updated regularly, was confirmation of Tunisia's concern to ensure the continued observance of human rights.

14. As to whether Tunisia intended to accede to the Optional Protocol to the Covenant, he said that it was necessary to carry out a study before acceding to any human rights instrument. For example, Tunisia's review of the Convention on the Rights of the Child

and the Convention on the Elimination of All Forms of Discrimination against Women had enabled it to resolve a number of concerns in those areas. Tunisia did not fear individual complaints; on the contrary, it believed that such complaints furthered the development of international law. In sum, Tunisia was primarily concerned with achieving effective engagement, but looked forward to formal accession to the Optional Protocol in the future.

15. Reiterating the fact that Tunisia was a de facto abolitionist State, he said that his Government's attitude was not a static one. Regarding the commutation of sentences, all cases involving capital punishment were eligible for presidential pardon, which could be granted based on a report by the Mercy Commission. The novelty was the consideration of the objective criterion of the length of time elapsed from when the death sentence was pronounced. Those who suffered from the crimes in question needed to be appeased before commutation was pronounced, especially since capital punishment was imposed only for the most heinous crimes. Finally, although there was a movement for the abolition of capital punishment, supported in part by the Government, public opinion was not yet ready for such a step.

16. Replying to Sir Nigel Rodley's question on visits by special procedures of the Human Rights Council, he said that Tunisia had expressly indicated its intention to invite United Nations special rapporteurs as well as regional rapporteurs. As part of that initiative, an invitation might be extended to the Special Rapporteur on torture.

17. Regarding time limits on custody and the possibility of legal recourse in the event of excessively long or undue detention, the Criminal Code provided for a number of guarantees, including that the family be informed and that the detainee be maintained in good health. Moreover, the police officer responsible for the custody was under the authority of the public prosecutor. Violation of the rules was considered to constitute the offence of arbitrary detention, under article 103 of the Criminal Code, giving rise to a criminal sentence and also payment of damages, pursuant to the Act of 30 October 2002.

18. **Mr. Khemakhem** (Tunisia) said that, while the Tunisian authorities respected the ruling handed down by the European Court of Human Rights in the Saadi case, they had some concerns about the grounds for

that decision. In particular, although the judgment asserted that enforcement of the decision to deport the applicant to Tunisia would result in a violation of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, it was unclear how the Court had arrived at that conclusion.

19. It would appear that the Court had been influenced by the ongoing campaign of disinformation against Tunisia, which had resulted in the dissemination of a number of fictitious claims regarding the ill-treatment of Tunisian nationals. For instance, following the refusal of the Canadian authorities to grant refugee status to a Tunisian citizen who had failed to declare that he had a criminal record in France, Amnesty International had maintained that he would be at risk of torture or ill-treatment if he returned to Tunisia. However, the individual in question had been welcomed home by friends and family and had not expressed any concerns for his own safety. In addition, security concerns had prompted the deportation from France of a Tunisian national convicted of involvement in the assassination of an Afghan general. Despite claims that he might be tortured upon his return to Tunisia, the citizen concerned was safe and well.

20. The judicial authorities had opened investigations into each of the allegations made by the World Organization against Torture, which were taken very seriously by the Government. While some of those investigations had been closed for lack of evidence, others were ongoing. Lastly, the new article 101 bis of the Criminal Code had been applied by the ordinary courts in only a handful of cases. In one such case, four prison guards found guilty of mistreating a detainee had been sentenced to four years' imprisonment. The victim, whose injuries had necessitated the amputation of both his legs, had been awarded approximately US\$ 250,000 in damages. The hierarchical superiors of the perpetrators had not been prosecuted because there had been no evidence to suggest that they had ordered the ill-treatment.

21. **Mr. Tekkari** (Tunisia), responding to a series of questions on counter-terrorism measures, said that the law on terrorism and money-laundering (Act No. 2003-75) was often misunderstood because it was read selectively. In accordance with article 11 of the law, individuals could not be prosecuted for merely having the intention to commit a terrorist offence; prosecution was possible only when such an intention was acted

upon. It was clear from the provisions of the United Nations Convention against Transnational Organized Crime that the definition of intent applicable to organized crime differed from that used in the realm of ordinary law.

22. Read in conjunction with relevant legislation on professional secrecy, article 22 of the law on terrorism and money-laundering did not force lawyers to breach client confidentiality agreements. However, all individuals acting in their personal, rather than professional, capacity were bound by the reporting requirement set out in that article.

23. He expressed concern about the Committee's reference to "faceless judges" and stressed that all criminal proceedings in the State party were a matter of public record. On the other hand, as evidenced by the provisions of the United Nations Convention against Transnational Organized Crime, it was perfectly legitimate to conceal the identity of witnesses, judicial police officers or members of the judiciary if the purpose of such measures was to ensure the proper administration of justice. Suspects and their legal teams were entitled to request the lifting of those measures, which, in practice, were implemented only in exceptional cases where the aforementioned individuals were in real danger. To date, those measures had not been used during criminal proceedings relating to terrorist offences. Tunisia had been a victim of terrorism and remained a target. The authorities were therefore striving to strike a balance between the need to adopt effective counter-terrorism measures and the need to give priority attention to the protection and promotion of individual human rights.

24. With regard to women's rights, the State party had made significant progress towards its ultimate goal of achieving gender equality by, inter alia, outlawing polygamy. It was determined to pursue those efforts in spite of the negative reactions of some elements of society.

25. In response to the questions posed by Mr. Bhagwati, he said that the composition of the High Committee on Human Rights and Fundamental Freedoms must reflect a broad spectrum of views. Independent members of the High Committee were selected on the basis of their human rights experience and their personal integrity, and representatives of ministerial departments were not permitted to participate in its decision-making or voting processes.

The High Committee's recommendations on the matters of which it was seized were routinely taken into consideration by the Government.

26. During the reporting period, the Ombudsman had made 92 recommendations, of which 73 had been implemented. One such recommendation had led to the preparation of a legislative proposal on the right of appeal against rulings handed down by the property courts. At the invitation of the entities concerned, the Citizen Supervisor visited public institutions and made recommendations for improvements. As far as the recruitment of judges was concerned, the executive branch was responsible only for prescribing the eligibility rules for participation in competitive examinations. Selection panels were composed exclusively of eminent members of the judiciary.

27. Lastly, on the issue of prison visits, it should be noted that the High Committee on Human Rights and Fundamental Freedoms, as well as ICRC, regularly visited Tunisian detention centres and made relevant recommendations. Members of non-governmental organizations (NGOs) were also permitted to visit prisoners with a view to preparing them for release and social reintegration. In order to protect the privacy of the individuals concerned, however, consent was required for such visits. Since the agreement concluded between the Government and ICRC included a confidentiality clause, the State party was unable to reveal the content of the latter's reports on its prison visits, but the effect of those visits had been overwhelmingly positive and had contributed to changing the mentality of prison staff and administrators. With a view to building on those positive developments, the Government had recently invited Human Rights Watch to visit detention centres in Tunisia.

28. **Ms. Chanet** said that Tunisia's policy on capital punishment could not be truly abolitionist if it included criteria for the length of the waiting period before a death sentence could be commuted. There was no need for such criteria if all death sentences were to be commuted systematically in any case. Moreover, they added an extra penalty to the one already imposed by suspending a sword of Damocles over the head of the person condemned and amounted to cruel, inhuman or degrading treatment or punishment.

29. Concerning unlawful detention, the delegation had only addressed the issue of compensation and

arbitrary detention. Article 9, paragraph 4, of the Covenant, however, did not necessarily relate to arbitrary detention. Detention could be unlawful without being arbitrary. Furthermore, compensation was made only after the event. The provision in question related to the right of any person detained to take proceedings before a court without delay. The delegation's response made it clear that there was no such court to meet the requirements of that provision.

30. The replies of the delegation to the questions raised about torture, including issues relating to the burden of proof, the anonymity of interrogators, the failure to prosecute offenders and the Saadi case heard by the European Court of Human Rights, implied that it was denying that torture existed in Tunisia. In practice, however, such a denial meant that the necessary preventive measures were not being taken.

31. With respect to statements concerning the difference between attempting and preparing to commit a terrorist act, the work of Mr. Jean Pradel did not reflect the entire literature on the issue and his theories had had difficulty in gaining acceptance in the case law and legislation of his own country, France.

32. **Sir Nigel Rodley** said, with regard to the Mansouri case referred to in the report of the World Organization against Torture of March 2008, that the law requiring the individual superior to be shown to have ordered the treatment in question was a serious obstacle to ensuring hierarchical responsibility. The Convention against Torture did require the establishment of liability based on *respondeat superior*. The suggestion that it was for the victim of torture not only to demonstrate what had been done by the individuals if they could be identified but also to prove that the superior authorities of those individuals had given particular orders established an unreasonable burden of proof. It also encouraged superior authorities to issue undocumented orders or make hints and leave it to junior officers to bear criminal responsibility for what might be done on that basis.

33. With respect to the Saadi case, in dealing with charges of violations of human rights in general and torture in particular there were bound to be some false allegations. Persons who had signed confessions might wish to absolve themselves of responsibility by making false allegations against the police or other detaining or interrogating authorities. In that connection, he was astonished by the unwillingness of many Governments

to provide those authorities with the means to demonstrate that they had behaved properly. However, as a Special Rapporteur, he had always made it clear in his reports to the Commission on Human Rights that he would give the benefit of the doubt to the individual when making urgent appeals, not as a means of accusation against authorities but rather of ensuring that there was no ill-treatment. It was inaccurate to say that there had been some kind of defamatory campaign in the Saadi case; the Government of Italy had not sought to defend the argument that there had been a risk but had simply argued that the risk should be treated in a particular juridical way in a national security case. The European Court of Human Rights had had information from Amnesty International and Human Rights Watch. The Committee had enough experience of human rights organizations over the years to be doubtful when Governments made accusations that there had been campaigns against them, particularly by the two NGOs in question.

34. He invited the delegation to comment on information which had appeared in *The Washington Post* on 2 September 2007 about two Tunisian nationals, Abdullah al-Hajji and Lofti Lagha, who had been held without charge for five years at Guantánamo Bay and then returned to Tunisia. One had told his lawyer that he had been coerced into making a confession. There was little information on the other detainee except that he had been held in detention without access to a lawyer in the Ministry of the Interior for 10 weeks. The testimonies of long-term detention in the Ministry and elsewhere had been too numerous to discount. He urged the delegation to consult with its authorities on the reality which might be behind many of the allegations of ill-treatment. He would like to know whether the Special Rapporteur on torture would indeed receive an invitation to visit the country.

35. **Ms. Wedgwood** enquired whether ICRC was permitted to visit any site it wished. She also asked whether the Tunisian Government was considering ratifying the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, which would enable the Court to take original jurisdiction of individual complaints.

36. **Mr. Bhagwati** said he would like to know the percentage of cases which had been taken in appeal as a result of the introduction of the right of appeal in

criminal cases in Tunisian law. He would also appreciate information on human rights training for law enforcement officials.

37. **Mr. Tekkari** (Tunisia) said that the Government did not interfere in the activities of human rights defenders so long as they acted lawfully. When their rights were infringed, they could take proceedings before a court. When there was any complaint about ill-treatment the court rather than the complainant was responsible for providing supporting evidence. The complainant must simply show that the facts were reliable. In the Mansouri case, the complainant had not presented evidence but, rather, filed a serious complaint. It was the medical report which had led to the sentencing. Concerning the liability of superior authorities, they were not immune from sentencing when their responsibility for an offence was established. However, there could be no presumption of liability in criminal cases. In the Mansouri case, the superior authorities in question had not been found accountable for the offence in any way.

38. With respect to the doctrinal discussion on the definition of terrorism, Mr. Pradel's opinions were shared by others, including Mr. Jean-Paul Laborde, in his work *Etat de droit et crime organisé*. They were also reflected in the United Nations Convention against Transnational Organized Crime, which, like Tunisian law, defined terrorism as an organized crime.

39. While the Covenant did not require States parties to abolish the death penalty, his Government had embarked on an abolitionist course in the interest of human rights. It had made a solemn commitment not to execute persons sentenced to death. Although those persons would have their sentences commuted to prison terms, that could not be done immediately following the sentencing. The Mercy Commission had established criteria for a period between the time of sentencing and commutation of the penalty. Although a pardon was requested automatically, the lapse of time made it easier for the victims to accept commutation. The policy followed took into account the rights of both the person sentenced and the victims. In addition, for various reasons, society had not yet accepted the abolition of the death penalty.

40. There had indeed been false accusations of torture and ill-treatment made for political purposes which had been presented to the United Nations, in particular. Of course, that in no way signified that acts

of torture had not occurred. The relevant judicial authorities followed up on all serious allegations of torture and ill-treatment and unfailingly punished any such acts when they were proved, in accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

41. Concerning the two Tunisian nationals previously held at Guantánamo Bay, their lawyers' allegations that their clients had been ill-treated had not been proved. One such allegation involved makeshift eyeglasses which allegedly had not met the prisoner's health requirements. It had turned out that the prisoner had not wished to exchange the glasses, which had been issued to him by the United States authorities and were made of plastic for security purposes.

42. Concerning the question raised about the Special Rapporteur on torture, he was indeed invited to visit the country. ICRC had visited the country several times without restriction. It had contacted some 5,000 prisoners and visited every facility it wished. Lastly, human rights training was provided to all law enforcement officials, including police officers, customs officials and magistrates. The Ministry of Justice and Human Rights had worked with the Ministry of the Interior to provide such training. In addition, human rights manuals were distributed to the relevant officials and the rights of prisoners were posted in prisons.

43. **Mr. Romdhani** (Tunisia), referring to questions on freedom of opinion and expression, said that every effort had been made in the past two decades to promote press freedom in Tunisia and ensure that all citizens had free access to sources of information. Since 1987 no newspaper or magazine had been suspended and no journalist had been imprisoned. Article 8 of the Constitution guaranteed freedom of the press and of expression, supported by the Press Code which had been amended several times in the interests of greater liberalization. The Press Code no longer provided for the offence of "defamation of public order" or for imprisonment under its own provisions; it reduced the maximum period of suspension of a publication from six to three months; it increased the proportion of journalists required to hold university degrees; and it abolished the legal deposit requirement for publications. Journalists enjoyed freedom of professional organization and had recently elected their first syndicate; they practised their profession without any interference from the Government. Moreover, the

President of the Republic often called on journalists to desist from self-censorship. Nearly all the print media in Tunisia were financially independent, thanks largely to revenue from advertising, which was unregulated. There were no restrictions on the publication of opposition newspapers; they had every freedom to criticize the Government, which even provided them with material support, thereby enabling them to appear more regularly and contributing to the significant growth of the newspaper industry in recent years. Radio and television programmes regularly featured representatives of the opposition parties. The State no longer exercised a monopoly over broadcasting, which since 2003 had been moving increasingly into the private sphere, particularly by virtue of international satellite links, to which there was unrestricted access: the majority of households owned satellite dish receivers. Similarly, the Government was endeavouring to ensure universal access to the Internet, with particularly favourable conditions for media professionals and encouragement for the creation of websites. As for books, their publication received State support and was not subject to any control. Lastly, the Higher Communication Council, established as an advisory body in 1988, had become an autonomous institution with larger representation of opposition forces and civil society.

44. **Mr. Tekkari** (Tunisia), taking up question 17 on the list of issues, emphasized that the prohibition contained in the Electoral Code against Tunisians expressing an opinion for or against a Presidential election candidate to foreign media applied only to the electoral period. As there was unequal access to foreign audio-visual media, that prohibition ensured greater equality between candidates. Moreover, the penalty was purely financial and did not take the form of deprivation of liberty. He referred the Committee to article 37 of the Electoral Code, which, in the same spirit, ensured transparency of electoral financing and eliminated any unfair advantage between candidates, particularly in terms of access to the mass media.

45. **Mr. Fellous** (Tunisia), turning to question 18, said that article 8 of the Constitution, together with legislation adopted in 1969, guaranteed freedom of assembly, subject to internationally recognized conditions, such as there being no threat to public order and no infringement of the law; for that purpose, officers were required to be appointed. No additional measures were needed to ensure compliance with article 21 of the Covenant. Every day numerous

meetings were held throughout the country on human rights questions, including at public venues. He cited examples of NGOs such as Amnesty International that had recently held such public meetings in Tunisia.

46. **Mr. Tekkari** (Tunisia), with reference to question 20, said that since 1988 no authorization had been required from the public authorities in order to set up an association. A simple declaration sufficed; if no objection was expressed by the public authorities, the association would be considered established three months after the date of deposit of such a declaration. In the event of an official refusing to accept the declaration, there were other legal means of having the declaration registered, in particular through the services of a notary. In addition, the Administrative Tribunal could overturn a decision to refuse permission to establish an association; it had done so in a number of recent cases.

47. **Mr. Chagraoui** (Tunisia), addressing the question of the protection of Berber culture (question 21), said that the Tunisian blueprint for society, in place for some 50 years, transcended the logic of a majority or minority culture. The mainsprings of the country's heritage were cross-fertilization, equal citizenship, solidarity and universality. At school and university, history was taught from the earliest times to the modern age in a global perspective, without any attempt to differentiate between the Arab and Berber strands of the population; article 6 of the Constitution guaranteed the equality of all citizens, regardless of religious or ethnic allegiance; similarly, all citizens enjoyed equality in respect of education and the fruits of development; and, lastly, every effort was being made to combat any tendency towards Islamocentrism and to resist the paradigm of a clash of civilizations.

48. **Mr. Ayed** (Tunisia) said that in the 14th century A.D. Ibn Khaldun had written that the Berbers ate couscous, wore burnouses and shaved their heads. While the latter characteristic varied according to fashion, the first two applied to all Tunisians. From the viewpoint of both religion and language, Tunisia was a homogenous country, whether of Arabized Berbers or Berberized Arabs, and had forged a unity in diversity down through the ages; therein lay its richness. Had there been any discrimination against any population group, it would certainly have been noted by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.

*The meeting rose at 1.05 p.m.*