



**International Covenant on
Civil and Political Rights**

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Human Rights Committee

**Sixth periodic report submitted by Tunisia under
article 40 of the Covenant pursuant to the optional
reporting procedure, due in 2019^{*, **}**

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* The present document is being issued without formal editing.

** The annex to the present report is on file with the Secretariat and is available for consultation. It may also be accessed from the web page of the Human Rights Committee.



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Introduction

1. Tunisia is submitting its sixth periodic report on the International Covenant on Civil and Political Rights pursuant to article 40 of the Covenant and in line with paragraph 22 of the concluding observations that the Human Rights Committee issued in April 2008 following its consideration of the fifth periodic report of Tunisia. This report was produced according to the approved simplified reporting procedure and in response to the list of issues to be taken up in connection with the consideration of the sixth periodic report of Tunisia, as received on 27 April 2018.
2. Tunisia previously submitted information on the follow-up to the concluding observations of the Human Rights Committee (CCPR/C/TUN/CO/5) on 17 March 2010.
3. The National Committee for the Coordination, Preparation and Submission of Reports and Follow-up to Recommendations on Human Rights, established pursuant to Government Order No. 1593 of 2015, prepared the present report in accordance with the established guidelines in order to respond to the list of issues.

Drafting methodology and process

4. To facilitate a participatory approach to reporting, the National Committee organized a series of consultations in coordination with the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the French Development Agency in Tunis. These meetings, which resulted in the issuance of a set of recommendations (see Annex 1), comprised the following:
 - Meetings with representatives of independent constitutional bodies, held on 10 January and 1 April 2019.
 - Meetings with civil society representatives, including:
 - A meeting held in Hammamet on 27 February 2019 that was attended by 36 participants, including representatives of six associations;
 - A meeting held in Kairouan on 15 March 2019 that was attended by representatives of public bodies as well as human rights associations operating in Kairouan, Kasserine and Sidi Bouzid governorates (some 102 participants, including representatives of 33 associations);
 - A meeting held in Tunis on 29 March 2019 that was attended by 88 participants, including representatives of 20 associations.
5. The National Committee for the Coordination, Preparation and Submission of Reports and Follow-up to Recommendations on Human Rights trusts that the present report will provide an opportunity for enhancing communication between Tunisia and the Human Rights Committee, particularly as the previous periodic report was submitted in 2006 and considered in 2008. This report will facilitate a review of the most important legislative, institutional and procedural developments pertaining to the issues raised, and focuses in particular on the period since the submission of the common core document.

Part One

General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

6. This report is being submitted at an important point in the history of Tunisia, which has witnessed fundamental changes in the wake of the revolution of 14 January 2011, including the emergence of a new political system and efforts to build a modern society and establish mechanisms for democratic transition.

7. This period has seen the restrictions that previously impeded the exercise of a number of freedoms being lifted, thus allowing Tunisian men and women to exercise their rights. Important signs of change include an increase in the number of civil society organizations and political parties and the development of pluralism in the Tunisian media, developments which underscore how change is being driven by human rights principles.

8. Several important elections have been held during this period. These including the election of the National Constituent Assembly in 2011 and the legislative and presidential elections held in late 2014. The first municipal elections were held in 2018, in keeping with the provisions of the Constitution.

9. In the light of the State's experience of promoting peaceful democratic transition through dialogue, the Tunisian National Dialogue Quartet, which brought together four key components of civil society, was awarded the Nobel Peace Prize in 2015. This underscored the international community's recognition of the country's efforts to move forward in a civilized manner through consensus-building and efforts to ensure respect for human rights.

10. Since the submission of its common core document, Tunisia has continued to adopt legislative, institutional and practical measures in the area of human rights, in accordance with the 2014 Constitution and international norms. This report will highlight efforts made by Tunisia in that regard.

11. Since 2016, Tunisia has strengthened its legal system by ratifying international and regional treaties in the area of human rights. These include the following:

- Optional Protocol to the Convention on the Rights of the Child on a communications procedure;¹
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;²
- Tunisia has also made a declaration in July 2018 under article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights accepting the competency of the African Court on Human and Peoples Rights to receive complaints submitted by individuals and non-governmental organizations. Tunisia was also asked to host the fifty-first ordinary session of the Court, which was held in Tunis in November 2018. This was the first session of the Court held outside its headquarters;
- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse;³
- Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and its Additional Protocol regarding supervisory authorities and transborder data flows.⁴

12. Pursuant to Part VI of the Constitution, Tunisia issued Organic Act No. 47 of 2018 on common provisions applicable to independent constitutional bodies,⁵ in order to establish a general framework governing the work of those bodies as well as their guiding principles. Tunisia also issued Organic Act No. 51 of 2018 on the Human Rights Commission⁶ (see para. 3(b)).

¹ By Presidential Order No. 62 of 2018.

² By Presidential Order No. 61 of 2018.

³ By Presidential Order No. 5 of 2018.

⁴ By Presidential Order No. 75 of 2017.

⁵ Organic Act No. 47 of 7 August 2018 on common provisions applicable to independent constitutional bodies. Available at: www.legislation.tn/fr/detailtexte/Loi-num-2018-47-du----jort-2018-066__2018066000471.

⁶ Organic Act No. 51 of 29 October 2018 on the Human Rights Commission. Available at: www.legislation.tn/detailtexte/Loi-num-2018-51-du----jort-2018-089__2018089000511.

13. To strengthen national efforts to combat corruption, Tunisia issued Organic Act No. 10 of 2017 on reporting corruption and protecting whistle-blowers⁷, Organic Act No. 59 of 2017 on the National Anti-Corruption Authority⁸ and Act No. 46 of 2018 on declaring profits and interests, combating illicit enrichment and preventing conflicts of interest.⁹

14. The Assembly of People's Representatives is currently considering a bill on the authority for sustainable development and the rights of future generations.

15. The National Authority for the Prevention of Torture was established in 2017 and provided with its own separate budget in 2018 pursuant to the act by which that body was established.¹⁰ The National Authority carries out numerous activities in fulfilment of its mandate and is currently preparing its initial report.¹¹

16. Key laws that strengthen the human rights system include the following:

- Organic Act No. 61 of 2016 on preventing and combating human trafficking;¹²
- Organic Act No. 58 of 2017 on eliminating violence against women;¹³
- Organic Act No. 50 of 2018 on eliminating all forms of racial discrimination;¹⁴
- Organic Act No. 29 of 2018 promulgating the Local Government Code;¹⁵
- Amended Elections and Referendums Act, enacted pursuant to Organic Act No. 7 of 2017;¹⁶
- Organic Act No. 9 of 2019¹⁷ amending Organic Act No. 26 of 2015 on combating terrorism and preventing money-laundering.¹⁸

17. Institutional measures taken include the establishment in 2017 of the Ministry of the Interior Directorate General for Human Rights,¹⁹ which is concerned, primarily, with listening to citizens' concerns pertaining to human rights and public freedoms, offering

⁷ Organic Act No. 10 of 7 March 2017 on reporting corruption and protecting whistle-blowers. Available at: www.legislation.tn/detailtexte/Loi-num-2017-10-du-07-03-2017-jort-2017-020__2017020000101.

⁸ Organic Act No. 59 of 24 August 2017 on the National Anti-Corruption Authority. Available at: www.legislation.tn/detailtexte/Loi-num-2017-59-du-24-08-2017-jort-2017-071__2017071000591.

⁹ Act No. 46 of 1 August 2018 on declaring profits and interests, combating illicit enrichment and preventing conflicts of interest. Available at: www.legislation.tn/sites/default/files/news/ta2018461.pdf.

¹⁰ Organic Act No. 43 of 21 October 2013 on the National Authority for the Prevention of Torture. Available at: http://www.legislation.tn/detailtexte/Loi-num-2013-43-du-21-10-2013-jort-2013-085__2013085000431.

¹¹ The website of the National Authority may be visited at: <http://www.inpt.tn/index.php?id=2>. The Authority's app may also be downloaded from that site.

¹² Organic Act No. 61 of 3 August 2016 on preventing and combating human trafficking. Available at: www.legislation.tn/detailtexte/Loi-num-2016-61-du-03-08-2016-jort-2016-066__2016066000611.

¹³ Organic Act No. 58 of 11 August 2017 on eliminating violence against women. Available at: http://www.legislation.tn/detailtexte/Loi-num-2017-58-du-11-08-2017-jort-2017-065__2017065000581.

¹⁴ Organic Act No. 50 of 23 October 2018 on eliminating all forms of racial discrimination. Available at: http://www.legislation.tn/detailtexte/Loi-num-2018-50-du-23-10-2018-jort-2018-086__2018086000501.

¹⁵ Organic Act No. 29 of 9 May 2018 promulgating the Local Government Code. Available at: <http://www.legislation.tn/sites/default/files/news/ta2018291.pdf>.

¹⁶ Organic Act No. 7 of 14 February 2017 amending and completing Organic Act No. 16 of 26 May 2014 on elections and referendums. Available at: www.legislation.tn/detailtexte/Loi-num-2017-7-du-14-02-2017-jort-2017-014__2017014000071.

¹⁷ Organic Act No. 9 of 23 January 2019 amending and completing Organic Act No. 26 of 7 August 2015 on combating terrorism and preventing money-laundering. Available at: http://www.legislation.tn/detailtexte/Loi-num-2019-9-du-23-01-2019-jort-2019-009__2019009000091.

¹⁸ Organic Act No. 26 of 7 August 2015 on combating terrorism and preventing money-laundering. Available at: http://www.legislation.tn/detailtexte/Loi-num-2015-26-du-07-08-2015-jort-2015-063__2015063000261.

¹⁹ By Governmental Order No. 737 of 9 June 2017. Available at: <http://www.legislation.tn/sites/default/files/news/ta20177373.pdf>.

them advice, receiving and processing petitions and complaints, communicating with national and international human rights bodies and mechanisms, and providing human rights training to the country's internal security forces.

18. In September 2018, eight public bodies²⁰ signed a memorandum of understanding on the establishment of the Association of Independent Public Bodies. The purpose is to strengthen cooperation and coordinate on work, programmes and projects with a view to promoting a culture of citizenship and upholding human rights.

Part Two

Specific information on the implementation of articles 1–27 of the Covenant, including with regard to the previous recommendations of the Committee

1. Constitutional and legal framework within which the Covenant is implemented (art. 2)

19. With regard to the measures taken to ensure the full incorporation of the provisions of the Covenant into the national legal system, ratified international treaties, which, pursuant to article 20 of the Constitution, have a status superior to that of domestic laws and inferior to that the Constitution, are incorporated into the country's legal system using several methods, including the following:

- By making explicit reference in national legislation to the fact that a particular law is to be applied in accordance with international norms. For example, article 1 of the Organic Act on combating terrorism and preventing money-laundering provides that the Act “supports international efforts in this field, in accordance with international norms and within the framework of ratified international, regional and bilateral conventions”. Article 1 of the Organic Act on preventing and combating human trafficking provides that the Act “aims to promote national coordination and international cooperation in the fight against trafficking in persons within the framework of ratified international, regional and bilateral treaties”.

20. That approach was, moreover, adopted in Organic Act No. 53 of 2013 on the establishment and regulation of transitional justice mechanisms, which was issued prior to the promulgation of the 2014 Constitution.²¹

- By incorporating the rights and provisions set forth in certain international normative instruments into national laws, as is the case with the Act on eliminating violence against women, which explicitly calls for non-discrimination between the sexes, equality and respect for human dignity, or by incorporating the definition of discrimination against women provided in the Convention on the Elimination of All Forms of Discrimination against Women or the definition of violence provided in the Declaration on the Elimination of Violence against Women into those laws.

21. Similarly, article 6 of the Act on the Human Rights Commission provides: “The Commission shall consider any matter relating to the respect, protection and promotion of human rights and freedoms in their universal, global, complementary and interdependent meaning, in accordance with ratified international instruments, declarations and treaties ...”

²⁰ The bodies included the following: the Independent High Authority for Elections; the National Anti-Corruption Authority; the Independent High Authority for Audiovisual Communication; the National Authority for the Prevention of Torture; the Commission on Access to Information; the National Authority for the Protection of Personal Data; the National Authority for the Prevention of Human Trafficking; and the High Committee for Human Rights and Fundamental Freedoms.

²¹ Organic Act No. 53 of 24 December 2013 on the establishment and regulation of transitional justice mechanisms. Available at: http://www.legislation.tn/detailtexte/Loi-num-2013-53-du-24-12-2013-jort-2013-105__2013105000531.

- By aligning laws with international norms: a steering committee has been established to ensure that the country's laws are aligned with the Constitution and international standards. To that end, the steering committee reviews laws for constitutional, civil society and human rights bodies.

22. A number of ministerial committees have been established, including the Code of Criminal Procedure Review and Criminal Code Review Committees at the Ministry of Justice. Those two committees have held national and regional consultations on the outcome of their work. The Code of Criminal Procedure Review Committee submitted its final report to the Prime Minister in April 2019.

23. The Human Rights Commission can also propose legislation that, in its view, is consistent with international norms.

24. Several judgments have been handed down that are relevant to the application of the provisions of the Covenant by the judiciary. These include the following:

- A judgment issued by a court of first instance in Tunis on 9 July 2018 that affirmed the right of a woman affected by gender identity disorder to change her registered gender. The court invoked article 17 of the Covenant and case-law of the European Court of Human Rights regarding respect for privacy;
- A judgment issued by the Criminal Chamber of the Court of First Instance in Ariana on 31 December 2015 upholding the inviolability of the home. The court affirmed: "The Constitution of 2014 enshrines the provisions of international covenants as well as comparative experiences that affirm the universality of values across different cultures. Article 17 of the International Covenant on Civil and Political Rights of 1966 provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Furthermore, article 12 of the Universal Declaration of Human Rights provides that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks. There is no freedom without such inviolability." The ruling concluded by affirming that the failure to uphold guarantees relating to the inviolability of the home rendered the raid and inspection procedures null and void;
- A petition dated 28 September 2016 that was submitted by the Office of the Public Prosecutor at the Court of First Instance in Qaranbaliyah in connection with the Faisal Barakat case. The Office affirmed in that petition that "it is undeniable that torture is a serious violation of human rights under international human rights law in general and under the provisions of the international and regional treaties ratified by the Tunisian State in particular, including articles 3 and 5 of the Universal Declaration of Human Rights of 10 December 1948, article 7 of the International Covenant on Civil and Political Rights (...) and article 5 of the African Charter on Human and Peoples' Rights (...). It is also clear that ratification by the Tunisian State of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, pursuant to Act No. 79 of 11 July 1988, underscores the commitment by Tunisia to the international policy on the prohibition of torture and its recognition that the absolute prohibition of torture constitutes one of the fundamental principles of international public order and a peremptory international norm in the area of human rights from which no derogation is permitted, in accordance with article 54 of the Vienna Convention on the Law of Treaties." The petition affirmed the retroactivity of the law on torture, which was thus applicable in the case of the late Faisal Barakat, even though he had been subjected to torture in 1991, prior to the adoption of legislation criminalizing torture in 1998.

25. To disseminate knowledge of human rights treaties among judges, courses on those treaties and their application as well as specialized training courses on applicable international norms in the fight against smuggling and trafficking were held for practicing judges between 2015 and 2018. Those courses were attended by 125 judges from all parts of the country, including judges working in the Office of the Public Prosecutor, investigating judges, court officials and 28 reference judges specializing in the offence of

human trafficking. Several courses have also been held for that purpose for family judges and public prosecutors at courts of first instance who specialize in cases involving violence against women (see Annex 2).

26. The Ministry of National Defence has created an integrated programme for teaching human rights and international humanitarian law in military schools and academies at all training stages in order to raise awareness of universal human rights principles and the importance of upholding international treaties in the course of military interventions in the field. The Ministry also holds courses on human rights for senior military and civilian leaders at the National Defence Institute and numerous ministry personnel participate in national and international human rights seminars, courses and workshops.

27. With regard to the establishment of the Constitutional Court, the Constitution provides that the provisions in that regard will enter into force once all members of the first Constitutional Court have been appointed. Until that time, a provisional commission has been established to monitor the constitutionality of draft laws, in accordance with Organic Act No. 14 of 2014.²² As of October 2018, the provisional commission had issued 17 rulings.²³

28. Organic Act No. 50 of 2015 on the Constitutional Court²⁴ provides that the Court is to be composed of 12 members. Four of the twelve members of the Court are to be appointed, respectively, by the Assembly of People's Representatives, the Supreme Judicial Council and the President of the Republic. The Assembly of People's Representatives elected one female member of the Court but was unable to elect other members because no other candidate was approved by a two-thirds majority.

29. With regard to the establishment of a national human rights institution that is consistent with the Constitution and the Paris Principles, the Act on the Human Rights Commission was promulgated following national and regional consultations with various stakeholders. The Commission has a wide-ranging mandate and extensive powers and endeavours, primarily, to monitor respect for and safeguard and strengthen human rights. It also monitors all human rights violations, and conducts necessary investigations and takes legal steps to address those violations. It is prohibited for any party to interfere in the work of the Commission.

30. The members of the Commission must be independent and available to work full-time in order to be elected by the Assembly of People's Representatives. They shall enjoy immunity in the exercise of their functions in accordance with the Constitution and the law. They shall be appointed by means of a special hiring mechanism.

31. The Commission shall enjoy administrative and financial independence in accordance with article 4 of Act No. 74 of 2018. The Commission shall be allocated an independent budget which shall be drawn up and debated by the Assembly of People's Representatives. The budget shall be implemented independently and without ex-ante control.

32. Pursuant to a decision issued by the chair of the electoral commission of the Assembly of People's Representatives on 15 February 2019, nominations for membership of the Commission may now be submitted.

2. Transitional justice (arts. 3, 6, 7, 9, 14 and 26)

33. Organic Act No. 53 of 2013 regulates the various areas of transitional justice, including truth disclosure, memory preservation, accountability, reparations, rehabilitation

²² Organic Act No. 14 of 18 April 2014 on the provisional commission to review the constitutionality of draft laws. Available at: www.legislation.tn/detailtexte/Loi-num-2014-14-du-18-04-2001-jort-2014-032_201403200014.

²³ Further details are available at: <https://legislation-securite.tn/ar>.

²⁴ Organic Act No. 50 of 3 December 2015 on the Constitutional Court. Available at: www.legislation.tn/sites/default/files/news/ta2015501.pdf.

and institutional reform, and established the Truth and Dignity Commission to ensure the effective implementation of that process.

34. The Truth and Dignity Commission carried out numerous activities during its mandate. It submitted its final report on 31 December 2018 in accordance with the aforementioned Act²⁵ to the President of the Republic, the President of the Assembly of People's Representatives and the Prime Minister. Key activities carried out by the Commission have included the following:

- In the area of reparations and rehabilitation:

35. In 2016, the Commission approved a research and investigation manual on the measures and procedures to be followed when receiving and investigating cases. By the end of the mandate of the Commission, a total of 62,720 files had been submitted by individuals and groups. These petitions also pertained to the "victim region" and covered the various time periods within the mandate of the Commission. The Commission also broadcast the proceedings of 14 public hearings on media platforms, including 9 hearings that took place in 2017 and 2018, and held 49,654 closed hearings.

36. Following a preliminary screening process, some 16,105 petitions pertaining to violations of economic, social and cultural rights and 38,488 petitions pertaining to violations of civil and political rights were considered. These included 14,984 grave human rights violations.

37. A total of 13,586 requests for urgent intervention were addressed, including through the provision of assistance by the Ministry of Women's Affairs, the Family, Children and the Elderly, the Ministry of Social Affairs and the Ministry of Health. During the mandate of the Immediate Care and Urgent Intervention Unit, the Commission issued 537 intervention orders to address the needs of victims, at a total cost of some 3.3 million Tunisian dinars.

- In the area of reconciliation:

38. In 2015, the Commission approved a manual on arbitration and conciliation procedures, which set forth criteria for reconciliation processes. Furthermore, in accordance with the provisions of the Act and on the basis of the recommendations of the National Consultations on the Comprehensive Reparation and Rehabilitation Programme for Victims of Human Rights Violations, held between March and December 2017, the Commission issued General Framework Decision No. 11 of 29 May 2018 on the criteria for reparations and rehabilitation. Accordingly, the Commission issued 10 lists of separate decisions regarding the compensation of victims of violations in February 2019.²⁶

39. Furthermore, and as reported in a communication issued by the Commission on 13 July 2018, five executive arbitral decisions were issued by the first president of the Tunis Court of Appeal with a view to addressing the situation of victims of human rights violations through the arbitration and conciliation mechanism.

- In the area of truth disclosure, institutional reform and memory preservation:

40. The Commission has organized a number of meetings on the need to establish a special institution to ensure the preservation of records pertaining to transitional justice and on reforming State institutions with a view to preventing the perpetration of further rights violations in the future.

- In the area of accountability:

41. Article 7 of the Organic Act on the establishment and regulation of transitional justice mechanisms provides that accountability is the responsibility of the judicial and administrative authorities. Thirteen chambers specializing in transitional justice have been established in Tunis, Sfax, Gafsa, Gabes, Sousse, El Kef, Bizerte, Kasserine, Sidi Bouzid, Medenine, Monastir, Nabeul and Kairouan. Those chambers have been assigned to hear 25 cases involving grave human rights violations, including murder, torture and the enforced

²⁵ See: <http://www.ivd.tn/rapport/doc/1.pdf>.

²⁶ For further information, see the website of the Commission: www.ivd.tn.

disappearance of persons. Those cases are still pending or in their preliminary stages (see Annex 3).

Observations on the decision taken in March 2018 by Assembly of People's Representatives:

42. In a plenary session held in March 2018, the Assembly of People's Representatives voted by 68 votes not to extend the mandate of the Commission (two parliamentarians abstained in the vote). However, the Commission continued its work in accordance with article 18 of Organic Act No. 53 of 2013 by assigning numerous cases to competent chambers. This is because the Commission can, itself, decide to extend its term under a reasoned decision, which must be communicated to the Assembly of People's Representatives so that the Assembly can establish a committee to consider the recommendations of the Commission and to take all necessary and precautionary measures upon the completion of the Commission's mandate.

43. In an emergency ruling, the Administrative Court decided to suspend the decision of the Truth and Dignity Commission of 3 July 2018, concerning the conclusion of its activities and the transfer of its assets to other authorities, pending a ruling in the original case, which was communicated by the Minister of State Property and Real-Estate Affairs to the Commission on 2 January 2019.

44. In its ruling, the Court authorized the Commission to continue to wind down its activities until 31 May 2019, but prohibited the Commission from taking on any further work under its original mandate pursuant to the Organic Act on the establishment and regulation of transitional justice mechanisms.

3. Combating corruption (arts. 14, 25 and 26)

45. In implementation of the Constitution, a number of laws have been promulgated in line with the United Nations Convention against Corruption. Those laws also take into account targets 16.5 and 16.6 of the Sustainable Development Goals, particularly in the areas of good governance, anti-corruption and the promotion of transparency at all levels. They include the following:

- Organic Act No. 22 of 2016 on the right of access to information,²⁷ which entered into force in April 2017 and provided for the establishment of the Commission on Access to Information. The Commission, which has been provided with adequate resources, began its activities in 2017 following the election of its members by the Assembly of People's Representatives. It has considered approximately 500 cases and issued more than 200 decisions;
- Organic Act No. 77 of 2016 on the Economic and Financial Judicial Authority at the Tunis Court of Appeal,²⁸ which is responsible for investigating, following up on and issuing rulings in connection with complex economic and financial crimes and related offences at both initial and appellate stages. Eleven investigating judges and top level judicial assistants to public prosecutors, as well as judges in the indictment and criminal chambers of primary and appellate divisions have been appointed to provide training in judicial cooperation, special investigative methods and research techniques used in the investigation of economic offences. Techniques used in the fight against corruption are also taught as part of the basic training course for judges at the Higher Institute of the Judiciary to ensure that all judges receive training in that area.

²⁷ Organic Act No. 22 of 24 March 2016 on the right of access to information. Available at: http://www.legislation.tn/detailtexte/Loi-num-2016-22-du-24-03-2016-jort-2016-026__2016026000221.

²⁸ Organic Act No. 77 of 6 December 2016 on the Economic and Financial Judicial Authority at the Tunis Court of Appeal. Available at: http://www.legislation.tn/detailtexte/Loi-num-2016-77-du-jort-2016-104__2016104000771.

46. The Economic and Financial Judicial Authority has dealt with numerous cases involving money laundering, customs, currency exchange and tax-related offences, the embezzlement of public funds, bribery (both active and passive) and the misuse by public officials of their positions in order to obtain an undue advantage for themselves or for others or to undermine the public authorities (see Annex 4).

- Organic Act No. 10 of 2017 on reporting corruption and protecting whistle-blowers, which provided for the creation of a joint committee that includes representatives of the National Anti-Corruption Authority and the Office of the Prime Minister. That committee, which considers requests for protection and issues decisions on the status of whistle-blowers, has received nine requests for protection and, on the basis of those requests, has issued eight orders for protection measures to be implemented. Following the entry into force of Organic Act No. 10, the Anti-Corruption Authority received 75 requests for protection in 2017 and referred five criminal cases involving reprisals against whistle-blowers to the courts;
- Organic Act No. 59 of 2017 on the National Anti-Corruption Authority. Elections are currently taking place to select the Authority's nine board members. In accordance with Organic Act No. 59 and the Organic Act on common provisions applicable to independent constitutional bodies, the National Anti-Corruption Authority enjoys administrative and financial independence and is assigned its own independent budget.

47. The National Anti-Corruption Authority has now been allocated the necessary human and financial resources to carry out its mandate (see Annex 5).

- Act No. 46 of 2018 on declaring profits and interests, combating illicit enrichment and preventing conflicts of interest. The National Anti-Corruption Authority has established an e-portal for the online submission of notifications. It has received 75,837 notifications, including 53,729 submitted online and 10,756 submitted by letter;²⁹
- The Organic Act on the Audit Court, ratified on 16 April 2019.

48. The following have also been issued:

- Government Order No. 1158 of 2016 on the establishment of good governance units and the regulation of their activities.³⁰ The main duties of those units, which have been established in most ministries, are to ensure the effective application of good governance principles, combat corruption, and facilitate the development and ensure the effective implementation and evaluation of national and sectoral programmes, strategies and action plans to consolidate good governance and prevent corruption. The units also follow-up on cases in which corruption has been reported, particularly as regards the measures taken, the final outcome of those cases and relevant statistics, including cases that have been subject to reviews or audits;
- Government Order No. 416 of 2018 amending Order No. 1039 of 2014 on public procurement.

49. At the operational level, the National Anti-Corruption Authority has developed a national strategy,³¹ the goals and objectives of which include the following:

- Promoting the active engagement of communities and encouraging citizens to play a key role in State-led efforts to entrench good governance and combat corruption;
- Enhancing transparency and access to information with regard to public service oversight and the management of public expenditure and resources;

²⁹ For further information, see the website of the Authority: www.inlucc.tn.

³⁰ Government Order No. 1158 of 12 August 2016 on the establishment of good governance units and the regulation of their activities. Available at: http://www.legislation.tn/detailtexte/D%C3%A9cret%20Gouvernemental-num-2016-1158-du-12-08-2016-jort-2016-074__20160740115832.

³¹ National Good Governance and Anti-Corruption Strategy 2016-2020. Available at: http://www.undp-aciac.org/publications/ac/compendium/tunisia/%D8%AA%D9%88%D9%86%D8%B3_2016-2020.pdf.

- Enhancing accountability and combating impunity with a view to guaranteeing all citizens equality before the law.

50. According to its 2017 report,³² the Authority has received:

- 9189 complaints, of which 5,223 fell within its mandate. A total of 245 cases were referred to the judiciary;
- 2229 requests for information and follow-up in connection with cases submitted to the Authority.

51. To promote cooperation and coordination among the judiciary, the Ministry of Justice and the National Anti-Corruption Authority, the General Administration for Criminal Affairs has established an office to follow up on cases of financial corruption referred by the Authority to the courts in Tunisia.

52. The Economic and Financial Judicial Authority has established a register of all cases submitted to it by the National Anti-Corruption Authority to facilitate the monitoring and investigation of those cases. That register may be accessed by the National Anti-Corruption Authority upon request if further information is required.

53. The country's ministries and many public institutions have concluded partnership agreements with the Authority and several have issued internal memorandums to strengthen the work of their good governance units. These include the Ministry of National Defence, which has empowered the Inspectorate General of the Armed Forces to receive and address notifications from the Authority regarding suspected cases of corruption.

54. Furthermore, the Ministry of the Interior, in collaboration with the United Nations Development Programme (UNDP) and the Korea International Cooperation Agency, has been implementing a project to promote good governance and public accountability. Within the context of the country's innovative community policing policy, the Ministry is currently formulating a code of conduct in pilot centres for the internal security forces that enshrines good governance and anti-corruption principles.

55. Organic Act No. 62 of 2017³³ on reconciliation in the administrative sphere is in line with the transitional justice process as it applies only to public officials who, by implementing the instructions of their superiors, do not receive any material benefit as a result of their actions.

4. Non-discrimination and equality between men and women (arts. 2, 3, 20 and 26)

56. The Constitution includes provisions prohibiting all forms of discrimination and enshrining the principle of equality. Its preamble provides that the State guarantees equality of rights and duties among all male and female citizens, and justice among regions. Article 15 stipulates that public administration is organized and operates in accordance with the principles of impartiality and equality, while article 21 provides that male and female citizens are equal in terms of their rights and duties and are equal before the law without any discrimination. Article 46 provides that the State ensures equality of opportunity between men and women in terms of taking on responsibilities in all fields and that the State seeks to attain parity between men and women in elected assemblies, while article 47 states that the State is required to provide all children with all forms of protection on a non-discriminatory basis. Article 48 provides that the State must protect persons with disabilities from all forms of discrimination. Article 102 enshrines the right to a fair trial within a reasonable time period and the right to equality before the law.

57. The principle of positive discrimination is enshrined in article 12 of the Constitution, which provides: "The State shall seek to achieve social justice, sustainable development

³² See the website of the Authority: www.inlucc.tn.

³³ Organic Act No. 62 of 24 October 2017 on reconciliation in the administrative sphere. Available at: http://www.legislation.tn/detailtexte/Loi-num-2017-62-du-24-10-2017-jort-2017-085__2017085000621.

and balance between regions on the basis of development indicators and the principle of positive discrimination.” Article 139 states that local authorities must adopt the mechanisms of participatory democracy, which promote equality in terms of rights and duties.

58. In line with these requirements, national laws are currently being revised to ensure their compatibility with the Constitution and ratified international treaties by a steering committee established for that purpose (see paragraph 14). Furthermore, article 41 of the Act on the Human Rights Commission provides for the establishment of a subcommittee to combat all forms of discrimination.

59. Key legislation to promote non-discrimination and equality includes the following:

- The Local Government Code, which provides for gender equality and equality of opportunity for men and women;
- Paragraph 4 of article 18 of Organic Act No. 15 of 2019³⁴ on the budget, which provides for budgets to be drawn up in line with goals and indicators that promote equality and equality of opportunity for men and women and non-discrimination among all groups within society;
- Act No. 46 of 2015 amending Act No. 40 of 1975, which grants both parents the right to obtain and validate travel documents for minor children. That right was formally granted only to the father.

60. The Organic Act on the civil service and the Labour Code provide for non-discrimination on the basis of sex in the public and private sectors in accordance with article 40 of the Constitution (which guarantees work on the basis of competency and fairness).

61. At the institutional level, the Peer Council for Equality and Equal Opportunities between Women and Men³⁵ has been established to introduce a gender-based approach to planning and budgeting with a view to eliminating all forms of gender-based discrimination and achieving equality between men and women in terms of their rights and duties.

62. In June 2018, Tunisia adopted the National Plan for Institutionalizing Gender for the period 2016–2020 with the aim of incorporating a gender-based approach in planning, programming and budgeting in various developmental areas, in line with the country’s Development Plan 2016–2020 and Sustainable Development Goal 5, particularly target 5.1.

63. The Commission on Equality and Individual Freedoms was established pursuant to Presidential Order No. 111 of 13 August 2017 to propose reforms to promote individual freedoms and equality in line the Constitution and international norms. The Committee submitted its report in that regard in August 2018³⁶ and the recommendations contained therein are now being discussed at the national level.

64. In practice, the 2014 Code of Conduct and Ethics of Public Officials³⁷ enshrines equality and non-discrimination on the basis of race, sex, nationality, religion, belief, political opinion, regional affiliation, wealth, employment status or any other grounds as principles governing the activities of public bodies.

³⁴ Organic Act No. 15 of 13 February 2019 on the budget. Available at: www.legislation.tn/detailtexte/Loi-num-2019-15-du-13-fevrier-2019-jort-2019-015__2019015000151.

³⁵ Established pursuant to Government Order No. 626 of 25 May 2016 on the establishment of the Peer Council for Equality and Equal Opportunities between Women and Men. Available at: <https://legislation-securite.tn/ar/node/45818>.

³⁶ The report of the Commission is available at: <https://colibe.org/%D8%A7%D9%84%D8%AA%D9%82%D8%B1%D9%8A%D8%B1/?lang=ar>.

³⁷ Order No. 4030 of 3 October 2014 on the ratification of the Code of Conduct and Ethics of Public Officials. Available at: http://www.legislation.tn/detailtexte/D%C3%A9cret-num-2014-4030-du-03-10-2014-jort-2014-090__2014090040303.

4.1 Combating racial discrimination

65. The Organic Act on the elimination of all forms of racial discrimination was promulgated by Tunisia in implementation of the recommendations of the Committee on Enforced Disappearances and in the light of its developing jurisprudence in that area and the relevant United Nations convention, particularly with regard to the definition of racial discrimination. Article 2 of that Act stipulates that racial discrimination means “any distinction, exclusion, restriction or preference based on race, colour, descent, national or ethnic origin or other forms of racial discrimination as provided by ratified international treaties that disrupts, impedes or prevents the enjoyment or exercise on an equal basis of rights and freedoms or entails additional duties or burdens. Any distinction, exclusion, restriction or preference established between Tunisians and foreign nationals does not constitute an act of racial discrimination provided that it does not target a specific nationality and is in line with the international obligations of the Republic of Tunisia.”

66. The purpose of that Act is to “eliminate all forms and manifestations of racial discrimination in order to protect the dignity of human beings and achieve equality among individuals in respect of the enjoyment of rights and the fulfilment of duties, in accordance with the provisions of the Constitution and the international treaties ratified by the Republic of Tunisia. The Act establishes procedures, mechanisms and measures to prevent all forms and manifestations of racial discrimination, and protect the victims and punish the perpetrators thereof.”

67. Victims of racial discrimination are also entitled to psychosocial counselling, legal protection and fair and adequate judicial redress. The Act recognizes racial discrimination as a separate offence that may, in some cases, be accompanied by aggravating circumstances.

68. The Act provided for the creation of the National Commission to Combat Racial Discrimination and a draft government order is being formulated to regulate its mandate, organization and activities. The Commission is concerned, primarily, with compiling and monitoring relevant data and designing and proposing appropriate public strategies and policies to eliminate all forms of discrimination.

69. As for measures taken to combat racial discrimination at the level of the judiciary, it should be underscored that no discriminatory measures whatsoever impede access to justice and no request for Tunisian citizenship is rejected on grounds of race. Immediately following the entry into force of Organic Act No. 50 of 2018, the Sfax Court of First Instance sentenced a mother of a pupil to a prison term for perpetrating the offence of racial discrimination against a teacher because of his colour.

70. As to whether, in accordance with article 48 of the Constitution, disability-based discrimination is explicitly prohibited in an anti-discrimination law, it should be noted that although that article does not provide for the adoption of a specific anti-discrimination law, Orientation Act No. 83 of 2005 on the advancement and protection of person with disabilities, which was promulgated prior to the ratification by Tunisia of the Convention on the Rights of Persons with Disabilities, is designed to “guarantee equality of opportunity for persons with disabilities and to promote their interests and protect them against all forms of discrimination.” That Act is currently being revised to align it with the Convention and in the light of the recommendations of the Committee on the Rights of Persons with Disabilities, which has recommended that an explicit prohibition of disability-based discrimination should be included in an anti-discrimination law.

71. Disability is considered an aggravating circumstance for offences involving racial discrimination, violence against women or trafficking in persons.

4.2 Combating racial hatred and other grounds of discrimination

72. Article 52 of Decree No. 115 of 2011 on freedom of the press and publishing stipulates that “Anyone who, by using one of the methods set forth in article 50 of this decree, directly promotes hatred among races, religions or peoples by inciting discrimination, hostile actions or violence or by disseminating ideas that are based on racial discrimination shall be liable to a prison term of between 1 and 3 years and a fine of

between 1,000 and 2,000 dinars.” Furthermore, article 9 of the Organic Act on the elimination of all forms of racial discrimination provides that: “Anyone who commits one of the following acts shall be liable to a prison term of between 1 and 3 years and/or a fine of between 1,000 and 3,000 dinars:

- Inciting hatred, violence, segregation, separation, exclusion or making threats thereof against any person or group of persons on a racially discriminatory basis;
- Using any means to disseminate ideas based on racial discrimination or racial superiority or hatred;
- Using any means to commend racially discriminatory practices;
- Establishing, joining or participating in a group of organization that unambiguously and repeatedly supports racial discrimination;
- Supporting racist activities, associations or organizations ...”

73. Racial discrimination is not an aggravating circumstance under the Tunisian Criminal Code, which is currently being reviewed to align it with international norms.

74. The Ministry of Justice does not keep statistics on the offences set forth in article 52 of Decree No. 115, or the offences set forth in article 14 of the Organic Act on combating terrorism and preventing money-laundering that involve incitement to hatred or animosity among races. Steps are now being taken to establish database on such information.

75. To more clearly define the offences set forth in article 14 of the Organic Act on combating terrorism and preventing money-laundering, that Act was amended in 2019. Article 13 of the amended Act defines the perpetrator of an act of terrorism as “any person who, by any means, pursues a personal or collective aim involving one of the acts referred to in article 14 or in articles 28 to 36 of the present Act, which is intended, by its nature or context, to spread terror among the population or to wrongfully coerce a State or an international organization into doing something that it should not do or into refraining from doing something that it should do. An individual who participates in a hostile action in the course on an armed conflict is not considered to have perpetrated a terrorist offence.” This has provided a clearer definition of what constitutes a terrorist offence by emphasizing that, in order for them to be considered acts of terrorism, all acts set forth in article 14, including incitement to hatred or animosity among races, must have been perpetrated intentionally in order to “spread terror among the population or to wrongfully coerce a State or an international organization into doing something that it should not do or into refraining from doing something that it should do.”

4.3 Combating discrimination on grounds of sexual orientation

76. All forms of discrimination, hatred and incitement on the basis of sexual orientation are contrary to the Constitution and all individuals, irrespective of their sexual orientation, enjoy all the rights to which they are entitled. Practically speaking, a ruling to that effect was handed down at first instance in 2018 (see paragraph 15). Any violation or impairment of those rights is an offence.

77. Article 230 of the Criminal Code is being reviewed by committee that has been established for that purpose, which has yet to submit its final report. Medical examinations pursuant to article 230 are carried out only with the consent of the person concerned, and there is no presumption that that individual has perpetrated the offence. The person concerned may refuse such a medical examination. Pursuant to the Code of Medical Ethics, a forensic doctor who fails to respect the wishes of the individual concerned is liable to disciplinary action or a criminal penalty.

78. The Commission on Equality and Individual Freedoms has proposed that the act set forth in article 230 should no longer be considered an offence or that the penalty prescribed for that offence should be reduced from a custodial sentence to a fine. That proposal is now being discussed at the national level. Furthermore, a number of parliamentarians have

proposed the adoption of a Code of Individual Rights and Freedoms,³⁸ which would prohibit of all forms of discrimination, including on the basis of sexual orientation.

79. There are currently no statistics on the application of article 226 ter, which criminalizes morally offensive acts (see paragraph 61) or article 230 (see Annex 6). The Ministry of Justice does not maintain statistics on the number of allegations of harassment, assault and ill-treatment of persons because of their sexual orientation, which are categorized as ordinary offences.

80. In a relevant case, a member of the Shams Association, which advocates on behalf of homosexuals, was violently attacked by two people. An investigation into the incident was opened on the basis of a report in that regard that was published on a news website on 7 December 2018. The two assailants were arrested and sentenced to prison terms even though the victim had chosen not to move forward with legal proceedings.

4.4 Eradicating gender-based discrimination

81. Article 23, paragraph 4, of the Personal Status Code states that “the husband, as head of the family, shall provide for the needs of his wife and children to the extent of his means and in accordance with their status in terms of household needs. The wife shall contribute to the family’s expenses if she has property.” Consequently, the status of the head of the family has no effect under Tunisian law except with regard to expenditure. Steps are now being taken to align the Personal Status Code with the Convention and international standards.

82. With regard to the inheritance system in Tunisia, it should be recalled that the Constitution guarantees equal rights and duties for all male and female citizens. Accordingly, the President of the Republic has proposed legislation in the light of a recommendation made by the Commission on Equality and Individual Freedoms to revise certain legal provisions on inheritance, in particular to ensure that sisters receive the same share of an inheritance as their brothers. That proposed legislation is currently being considered by the Assembly of People’s Representatives.

83. With regard to custody, article 58 of the Personal Status Code sets forth general and specific conditions for both men and women but does not provide specific conditions that must be met only by the mother in order for her to be awarded custody. Instead, conditions are stipulated for both the mother and father and the period of custody depends on their statuses and situations. Even if not all the conditions set forth in the Code are met, the mother may still be awarded custody instead of the father. The conditions set forth in article 58 have been clearly defined with a view to upholding the best interests of the child, in line with article 47 of the Constitution and article 4 of the Child Protection Code, which are concerned with the protecting the child’s best interests. Thus, the judge must endeavour to uphold the best interests of the child and is not compelled to revoke the mother’s custody if she marries anyone other than a relative in a decree of consanguinity that precludes marriage to the child in her custody (maharam). It is therefore rare that rulings are issued that deny custody to the mother merely because she has remarried.

4.5 Child marriage

84. Child marriage is not a widespread phenomenon in Tunisia, and only a very few isolated cases have occurred. It was previously possible to request to contract a marriage with a minor pursuant to article 227 bis of the Criminal Code, which provides that a marriage may be contracted with a female child aged between 13 and 18 years with whom sexual intercourse has taken place, provided that the minor in question consents to the marriage, and that this results in the cancellation of any legal procedure, prosecution or penalty, or pursuant to article 5 of the Personal Status Code, under which a judge may permit the guardian of a female minor to contract a marriage with that minor. Under the Act on eliminating violence against women, and in line with target 5.3 of the Sustainable

³⁸ Submitted to the Assembly of People’s Representatives on 11 October 2018 under file No. 71/2018. See the website of the Assembly of People’s Representatives.

Development Goals, the first method is no longer permitted. The second method is still permissible but takes place only rarely (see Annexes 7 and 8).

85. With regard to the judgment issued by the El Kef Court of First Instance, the facts of the case indicate that the child victim went with her mother to a hospital in the capital to request an abortion. However, in view of the fact that she had only just turned 14 years of age, the hospital contacted the Tunis Judicial Police Department and an investigation was launched in accordance with article 227 bis of the Criminal Code. In a statement, the girl confirmed that she had had a romantic relationship with one of her sister's in-laws and had begun a consensual sexual relationship with him. The couple had been making preparations for their wedding and therefore wished to have an abortion with a view to avoiding problems in the future. When questioned, the twenty-year old defendant confirmed his involvement with the girl and his eagerness to marry her. In view of prevailing social mores, the two families also requested the marriage to take place in order to avoid any stigmatization.

86. As article 227 bis, which provides that the marriage with the minor results in the suspension of legal proceedings, remained in force, and as article 5 of the Personal Status Code stipulates that a request to contract a marriage may be submitted in order to safeguard the interests of the child, provided that consent for the marriage is given by the child's guardian and his or her mother, the family magistrate applied those legal provisions, particularly as the two families wished to resolve the matter urgently and the affected individual remained determined to marry and rejected all efforts to provide her with shelter, psychological support or health care prior to her marriage to the offender.

87. Although the draft Organic Act on eliminating violence against women was, at that time, still under consideration by parliament, the Ministry of Justice submitted a new proposal, namely that article 227 bis should be amended with the deletion of the paragraph concerning marriages brought before the courts and their effects, and requested that the matter should be considered at the earliest opportunity so as to forestall situations in which judges found themselves obliged to apply the law in a specific manner because of the circumstances of a particular case.

4.6 The current impact of the prohibited customary marriage practice known as orfi

88. Pursuant to article 36 of Act No. 3 of 1957, customary marriages or marriages that are contracted in contravention of legal norms are prohibited under Tunisian law. It is an offence to contract any such marriages, which are considered null and void (see Annex 9 for details regarding the number of such marriages). Such marriages have no effect except as provided in article 36 bis of the aforementioned Act, namely:

- Establishing filiation;
- Establishing that bigamy has occurred, which is deemed to have commenced from the date of the issuance of the marriage licence;
- Prohibiting marriages contracted between close relatives.

4.7 Abortion

89. Although article 214 of the Criminal Code establishes in principle that abortion as well as all efforts to facilitate an abortion are prohibited, an exception is made when an abortion is carried out in the first three months of pregnancy, and thereafter "when the mother's health or psychological state may be compromised by the continuation of the pregnancy or when it is believed that the unborn child suffers from a serious illness or disability."

90. To promote sexual and reproductive health, especially among teenagers and other young people, the National Office for the Family and Population has enhanced its provision of services in that area with a view to preventing unprotected sex and repeated abortions. The Office has also enhanced access to health services in order to entrench the right of all individuals to sexual and reproductive health-care services, and carries out more than 60,000 interventions in that area every year.

91. Women in rural areas have also benefitted from the provision of enhanced health-care services, which has been achieved, in particular, by enhancing accessibility to those services through the expansion of the network of primary health-care centres. Reproductive health and family planning clinics provide services to rural women free of charge and on a non-discriminatory basis among regions.

92. To address the challenges faced by some married and single women in rural areas that impede their access to abortion services, the Ministry of Health has developed a plan of action to promote family planning and reproductive health services and to address the various self-imposed and external risks and obstacles that may undermine the right of rural women to access those services. Contraceptives and educational and medical services are provided free of charge in 36 centres located throughout the country, while 32 mobile teams and two mobile clinics also provide such services, particularly for women in isolated areas.

5. Violence against women (arts. 2, 3, 6, 7 and 26)

93. The last paragraph of article 46 of the Constitution stipulates that the State shall take measures to eliminate violence against women. Accordingly, and in line with established international norms, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and target 5.2 of the Sustainable Development Goals, Tunisia ratified the Act on eliminating violence against women, which entered into force on 15 February 2018. That Act adopts a comprehensive approach based on four axes, namely prevention, protection, deterrence and support, irrespective of who perpetrates the violence or the context in which it occurs, whether this is in private, including within the family, or in the public sphere.

94. The Act includes provisions applicable to both male and female children and incorporates amendments that have been made to the Criminal Code, including, in particular, by:

- Increasing the penalties for sexual violence against a child, including acts of sexual harassment;
- Establishing for the first time that an act of incest in which a child is raped by a relative is an offence;
- Revising the definition of rape so that it applies to both males and females, irrespective of the nature of the act perpetrated and the method used, with all such acts considered non-consensual if the victim is under 16 years of age;
- Making it an offence to have intercourse with a male or female child between 16 and 18 years of age, even if the intercourse is consensual, and providing for application of article 59 of the Child Protection Code if the perpetrator is a minor;
- Eliminating the possibility of impunity for an offence perpetrated against a child by making it unlawful for the perpetrator to marry the victim even if consent for the marriage is granted or if the perpetrator elopes with the girl.

95. The Act also provides that political violence against women constitutes a form of violence that is subject to punishment, thereby widening the scope of relevant international treaties, which only oblige States to ensure equality in the political sphere. Civil society stakeholders active in this area are now advocating for and mobilizing support for steps to be taken to ensure that relevant international instruments address the issue of violence, and particularly political violence, and for the establishment of an international legal conceptual framework that will facilitate the adoption of comparable legislation in that area.³⁹

96. The Act provided for the establishment of a national observatory to combat violence against women. The key duties of the observatory include:

³⁹ Study on the inclusion of gender-based political violence in international instruments (not available online).

- Monitoring cases of violence against women and conducting key research into the phenomenon;
- Monitoring implementation of legislation and policies and evaluating their impact and effectiveness;
- Facilitating the development of national strategies, practical joint and sectoral measures and guiding principles for eliminating violence against women;
- Cooperating and coordinating with the authorities concerned with following up on and monitoring respect for human rights with a view to developing and strengthening the system of rights and freedoms;
- Expressing its views on educational and training programmes for all relevant personnel and proposing mechanisms to further develop those programmes and follow up on their activities more effectively.

A government order concerning the activities and the administrative and financial organization of the national observatory has been drafted.

97. With regard to the criminalization of marital rape and domestic violence, the Act on eliminating violence against women does not include the expressions “marital rape” or “domestic or family violence” but adopts an approach whereby those terms are all covered by its provisions. Article 2 of the Act provides: “This Act covers all forms of gender-based discrimination and violence against women, irrespective of the perpetrator (spouse, father, son, etc.) and where the violence takes place (within the family, in the workplace, in the street ...)”. Therefore marital rape and domestic or family violence are all addressed by provisions of the Act.

98. Article 3 of the Act defines sexual violence as “any action perpetrated or statement made with the aim of subjecting a woman to the sexual desires of the perpetrator or another individual through the use of coercion, deception, pressure or any other method to weaken or overcome the will of the victim, irrespective of the perpetrator’s relationship to that victim.” Accordingly, this includes sexual violence between spouses and, given that rape is classified as sexual violence, marital rape is considered a criminal offence and perpetrators thereof subject to punishment, particularly as the new article 227 of the Criminal Code does not exempt husbands from punishment for the acts criminalized under the Act.

99. The Act recognizes domestic violence as either a separate offence or as an aggravating circumstance to another offence, as explained below:

- Domestic violence is considered an aggravating circumstance if the perpetrator is an ascendant or descendant of the victim or is one of the spouses, and perpetrates one of the violent acts stipulated in articles 208 (new), 218 (new), 219 (new), 222 (new), 226 ter (new), 227 (new), 228 (new) and 223 (new) of the Criminal Code;
- Domestic violence is considered a separate offence if a spouse is subject to habitual abuse (art. 224, para. 2).

100. The national strategy to combat violence against women at different stages of their lives, developed since 2007 with the support of the United Nations Population Fund, adopts a participatory approach and is designed to address all forms of violence against women, raise awareness of the seriousness of that phenomenon and protect society from its negative repercussions. The strategy was relaunched in 2012 and is ongoing.

101. The strategy has the following four themes:

- The collection and use of data;
- The provision of a range of relevant services;
- Social mobilization and sensitization of society in order to achieve institutional and behavioural changes;
- Promoting the rule of law.

102. Those themes are consistent with provisions of the Act on eliminating violence against women. Implementation of the strategy therefore provides for implementation of that Act.

103. With regard to the first theme, a survey on violence against women conducted by the National Office for the Family and Population revealed that that 47.6 per cent of the women interviewed who were between the ages of 18 and 64 years had experienced some form of violence at least once during their lifetime.⁴⁰ That survey was followed by a study conducted in 2015 by the Centre for Research, Documentation and Information on Women, in collaboration with the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), entitled “Gender-based violence in the public sphere”, which ascertained that 53.5 per cent of the women interviewed in the study had been subjected to some form of violence in the public sphere.⁴¹ This underscored the need to extend the scope of Act to ensure its applicability in both the private and public spheres.

104. Other studies that have been carried out in that area include an assessment study on “the provision of services to women victims of violence in Tunisia” (2017), a psychosocial study on “social representations of violence against women among young and elderly men” (2018) and an analysis of women’s security in the different Tunisian governorates (2019).

105. A national plan on indicators of violence against women was developed in 2018. The plan, which adopts a participatory approach, is currently being implemented at the sectoral level by top-level ministries (i.e. the Ministries of Justice, the Interior, Health, Social Affairs, and Women’s Affairs, the Family, Children and the Elderly).

106. With regard to the second theme of the strategy, a pilot project to establish collaborative mechanisms to address the needs of female victims of violence in the Greater Tunis area has been launched jointly by the Ministry of Women’s Affairs, the Family, Children and the Elderly, the National Office for the Family and Population and UN-Women. In that connection, a number of sectoral protocols were signed in late 2016 by top-level ministries with a view to establishing key principles and procedures for dealing with female victims of violence in each sector. Mini-guides have also been issued to provide further clarification on that matter.

107. To further enhance coordination, a joint agreement on the provision of support to female victims of violence was signed by the aforementioned ministries in January 2018.

108. The Inspectorate General at the Ministry of Justice has circulated a justice sector protocol on dealing with female victims of violence and the joint agreement on the provision of support to female victims of violence to all courts and called for their implementation. The Ministries of the Interior and Defence have also called on their staff to implement the provisions of Organic Act No. 58 of 2017.

109. It should be emphasized that, prior to the issuance of the Act on eliminating violence against women, the Ministry of Justice coordinated the efforts of the Inspectorate General at the Ministry, the National Guard Department of Judicial Affairs and the Ministry of the Interior Judicial Police Department pertaining to the issues addressed by that Act, including its provisions concerning the work of judicial police officers, the Office of the Public Prosecutor and family judges. The Ministry also reviewed reports on investigations and technical and medical interventions and provided relevant units with good examples of these to be used as models when writing up reports on cases involving violence against

⁴⁰ National Survey on Violence against Women in Tunisia, National Office for the Family and Population, Spanish Agency for International Development Cooperation, 2010.

⁴¹ The survey sample comprised 200 randomly selected geographic areas (clusters) in seven economic zones (Greater Tunis, North-East, North-West, Central-East, Central-West, South-East and South-West). In each cluster, 15 women and 5 men between the ages of 18 and 64 were interviewed. The study revealed that:

- 78.0 per cent of women interviewed had been subjected to psychological violence in the public sphere;
- 41.2 per cent of women interviewed had been subjected to physical violence in public sphere;
- 75.4 per cent of women interviewed had been subjected to sexual violence in the public sphere.

women or children. This has strengthened compliance with the Act and the Code of Criminal Procedure.

110. With regard to institutions and services, implementation of the Act and the strategy has led to:

- The establishment of a specialized unit in every National Security and National Guard district in all the country's governorates with a mandate to investigate all cases of violence against women and children. Those units report every six months on the activities undertaken. A total of 127 units have been established, including 72 units within the National Security forces and 57 units within the National Guard;
- The appointment of a deputy State prosecutor for cases involving violence against women at courts of first instance, including military courts, to investigate crimes of violence against women;
- The creation of departments within courts of first instance to address cases involving violence against women whose specialized staff include public prosecutors and family and investigating judges. Steps are now being taken to bring the work of those departments into line with international norms with a view to ensuring that the rights of women victims of violence are fully upheld.

111. With regard to current statistics, the juvenile protection department and the central unit entrusted with investigating offences involving violence against women, both of which are overseen by the Judicial Police Department Office of Social Protection, and the 70 specialized units overseen by the Directorate General of Public Security registered 35,988 cases of violence against women and girls, including physical, emotional, sexual, economic and political violence between 16 February and 30 November 2018. Some 90.68 per cent of those cases pertained to violence against women and 9.32 per cent to violence against girls. Legal proceedings were initiated in 8,198 cases and 515 individuals were arrested (see Annex 10).

112. The Inspectorate General at the Ministry of Justice also compiles statistics on the number of cases involving physical violence that are recorded by district courts (see Annex 11) and criminal chambers at courts of first instance (see Annex 12), as well as on cases involving violent offences that result in facial disfigurement (see Annex 13) and sexual assaults, disaggregated by type of offence (see Annex 14).

113. Cases in which a spouse was violently assaulted accounted for 0.051 per cent of the total number of cases brought before civilian and military courts between 2013 and 2017.

114. In 2017, as part of its ongoing efforts to support female victims of violence, Tunisia established a telephone helpline (which can be reached by dialling 1899/80101030) to listen to and provide counselling services to female victims of violence. The Ministry of National Defence has also established a telephone helpline for reporting cases of sexual harassment in the military and commissions the Inspectorate General of the Armed Forces and the Defence Intelligence and Security Agency to conduct all necessary investigations in that regard.

115. A map of the services available to women victims of violence and women in situations of vulnerability has been drawn up in collaboration with OHCHR and the United Nations Population Fund. Steps are now being taken to update that map and make it available on the website and the app.

116. The Ministry of Social Affairs has also taken numerous steps to protect women and child victims of violence, who are a particularly vulnerable group within society. To that end, the Ministry provides social and psychological support and has established specialized social welfare centres for children and specialized support and orientation centres with a view to rehabilitating victims and facilitating their reintegration into public life.

117. To facilitate the provision of comprehensive counselling services, the Ministry of Women's Affairs, the Family, Children and the Elderly established a pilot governmental centre for the protection of women victims of violence in 2016, which listens to their concerns and provides them with counselling, shelter, psychosocial and legal support and training to facilitate their social and economic reintegration into society. Furthermore, and

as part of a programme to promote gender equality launched in cooperation with the European Union and the United Nations Population Fund, three counselling centres and four shelters for women victims of violence have been established in various parts of the country, in partnership with associations active in that field.

118. The Psychological Care Centre for Women and Child Victims of Violence, established in Ben Arous Governorate in 2012, is another institution that provides educational and health services to women and children who have been subjected to violence or who witness violence within their families.

119. To address the third theme of the strategy, awareness-raising programmes have been carried out in Gafsa, Jendouba, Kairouan, Sfax and Zarzis since 2016, that is, prior to the promulgation of the Organic Act on eliminating violence against women. Those programmes have been attended by more than 189 participants.

120. Since the promulgation of the Organic Act, the Ministry of Women's Affairs, the Family, Children and the Elderly in cooperation with the American Association of Lawyers and Judges, has continued to run awareness-raising programmes in ten regions across Tunisia, namely Beja, Bizerte, Kairouan, Kebili, Le Kef, Mahdia, Nabeul, Sfax, Tozeur and Tunis. More than 300 participants have attended those programmes.

121. The training of judges, law enforcement officials and other relevant personnel is of paramount importance. Steps taken in that regard include the following:

- Addressing the theme of violence against women in ongoing training courses for judges with less than six years' experience. Specialized training courses (see Annex 2) are held nationally and regionally by the Higher Institute of the Judiciary in cooperation with OHCHR, the United Nations Office on Drugs and Crime and the International Development Law Organization. Work is also underway to develop a training manual for judges on that subject and to design courses to train trainers from the judiciary;
- Incorporating training modules on the legal definition of violence against women in basic training courses for security personnel recruited during the current year, and developing training modules to be used as part of ongoing training courses for those dealing directly with the issue of violence against women and children;
- Holding 11 training courses at the National School for National Security Personnel and Police Officers and the National Guard Training School between April/May and December 2018. Those courses, which were held in collaboration with the United Nations Children's Fund Tunisia country office, were attended by 380 specialized police and national guard officers as well as students at security and national guard training institutions;
- Holding a training course for 27 regional staff at the Ministry of Social Affairs and designing a training programme for 80 social workers and 60 social welfare specialists, in cooperation with UN-Women.

122. As part of the fourth theme of the strategy, a communication plan has been developed to promote the preventive aspects of the Organic Act with the aim of raising awareness of the dangers of violence and its social, psychological and economic repercussions.

123. In 2017, an awareness campaign was launched in the Greater Tunis area to combat violence against women on public transport under the slogan "Sexual harassers, get off the bus now." That campaign was extended to Sfax Governorate in 2018. The government and civil society organizations have, moreover, carried out a number of field activities and sought to raise awareness of the issue through television advertisements and campaigns on social media.

124. In that connection, security units and relevant departments at the Ministry of the Interior also protect children from physical and sexual violence by conducting patrols and other preventative security activities in the streets and other public spaces with the aim of preventing all forms of abuse and exploitation of children.

125. With regard to the budget allocated for the implementation of the Organic Act on eliminating violence against women, the new State Budget Act, which was approved in February 2019, adopts a programmatic approach to the preparation and implementation of budgets, which will facilitate efforts to draw up and oversee the budget for implementing the Organic Act, particularly by top-tier ministries. Furthermore, numerous collaborative programmes implemented as part of the country's international cooperation activities have mobilized significant resources for the implementation of the strategy and the Organic Act, including the Programme for the Promotion of Equality between Women and Men, which is being implemented by the Ministry of Women in cooperation with the European Union, and a programme entitled: "Enhancing Support for Women and Girl Victims of Violence", which is being implemented by the Government of Tunisia in partnership with UN-Women.

126. Despite these efforts, a number of practical constraints are impeding implementation of Organic Act No. 58 of 2017, including as explained below:

- There is a need to put in place the necessary infrastructure for the provision of services to women victims of violence, especially in courts, as spaces for that purpose were rarely incorporated into court buildings when they were first built. Cases involving women victims of violence are currently dealt with in spaces set aside for cases involving family issues;
- Despite efforts to raise awareness of the Act, a significant number of women remain unaware of its provisions, particularly those on decisions relating to and requirements for protection, the forms of protection provided and the security and judicial authorities enforcing protection decisions. The courts have, on numerous occasions, attempted to address that challenge and the Ministry of Women is also working with civil society to address the issue;
- There are an insufficient number of training courses and capacity-building programmes for law enforcement officials, including public prosecutors and investigating and family judges. Judges are now receiving training so that they can provide guidance to their colleagues;
- In terms of statistics, although the Ministry of Justice has put in place a system for compiling data on violence against women that uses the aforementioned criteria, that system continues to be based on information provided by the courts, which manually count the number of cases brought before them on the basis of documentation and court files. As a result, the statistical data is general in nature because it pertains only to the numbers of cases involving physical, sexual or conjugal violence, and not to all offences addressed in the Act on eliminating violence against women. Additional support and training in this field should therefore be given to statistical staff at courts of first instance, courts of appeal and the national statistics authorities.

6. Counter-terrorism measures (arts. 2, 7, 9, 10, 12 and 14)

127. Act No. 75 of 2003 on supporting international efforts to combat terrorism and prevent money-laundering has been repealed by the Organic Act No. 26 of 2015 on combating terrorism and preventing money-laundering, article 2 of which obliges all public authority personnel, including members of the national army and military law enforcement officials, to uphold that Act and ensure respect for the guarantees enshrined in the Constitution and international, regional and bilateral treaties ratified by Tunisia, including the International Covenant on Civil and Political Rights.

128. In that regard, it should be noted that the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism visited Tunisia in 2017.⁴²

⁴² See the report contained in document A/HRC/40/52/Add.1.

6.1 The state of emergency

129. In the light of the security situation in Tunisia and with a view to combating terrorism, a state of emergency was declared and has been extended on several occasions, in accordance with Decree No. 50 of 1978.

130. Under the laws in force, those negatively affected by an action taken during a state of emergency may file a complaint with the administrative judiciary, which has issued several judgments upholding the position of the Ministry of Interior, which was found to be in compliance with the law, and rejecting appeals lodged against its decisions.

131. In accordance with the Constitution, a draft Organic Act regulating the state of emergency is currently being formulated with a view to balancing the need to uphold public security and the need to respect human rights. It will provide that restrictions on rights and freedoms may only be imposed with a view to upholding public security or national defence, that any measures taken to that end should be in conformity with the principle of proportionality and necessity, and that the judiciary should monitor compliance by the competent authorities in that regard.

6.2 Guarantees of due process

132. The independence and competency of the judiciary are among the most important criteria for a fair trial. Pursuant to Organic Act No. 26 of 7 August 2015, an independent specialized judicial body has been nominated to deal with terrorist offences. To that end, the Tunis Court of First Instance No. 1 has been given exclusive jurisdiction to hear cases involving terrorism, which are no longer brought before military tribunals. Public prosecutors and investigating judges at the Court carry out all necessary preliminary and urgent investigations in accordance with their mandates and then refer terrorism cases to the Counter-Terrorism Judicial Authority so that it can complete all necessary investigations.

133. To take into account the particular needs of children, Organic Act No. 9 of 2019 strengthened the composition of the Anti-terrorism Judicial Authority by providing for the inclusion of “representatives of the Public Prosecution, investigating judges, indictment chamber judges, a children’s judge and judges at the first instance and appeals chambers of the Juvenile Court who specialize in cases involving children.

6.3 Safeguards for suspects

134. Article 43 of Organic Act No. 26 of 2015 stipulates that it is obligatory for investigations to be conducted in respect of all terrorism offences. This is because of the complexity of those crimes and the fact that most acts of terrorism are categorized as criminal offences. This provides an important safeguard for defendants as the investigating judge ensures respect for the rights and freedoms enshrined in the Constitution.

135. Individuals detained in connection with terrorism offences enjoy the same safeguards as other suspects: they may contact a lawyer, inform their families of the detention, request a medical examination or treatment and enjoy the right to submit a complaint in the event of a violation of their physical inviolability or human dignity, in accordance with article 4 of the aforementioned Act and Act No. 5 of 2016 amending and completing certain provisions of the Code of Criminal Procedure.⁴³

136. However, in view of the complexity of terrorist offences compared with ordinary offences and the length of the preliminary investigation phase, which includes a preliminary review of the case, the collection of evidence and the identification of the perpetrators with a view to ascertaining the legal nature of the act committed, and in the light of the special coordination procedures that must be followed by prosecutors in the various parts of Tunisia and the relevant counter-terrorism prosecutor at the Anti-terrorism Judicial Authority, article 39 of the aforementioned Act sets limits on the time a suspect may be detained, providing that the suspect may not be held in detention for more than five days

⁴³ Act No. 5 of 16 February 2016 amending and completing certain provisions of the Code of Criminal Procedure. Available at: www.legislation.tn/detailtexte/Loi-num-2016-5-du---jort-2016-015__2016015000051.

although, pursuant to article 41 of that Act, the period of detention may be extended twice. Any extension must, however, be made in line with legal safeguards that ensure respect for the rights of the suspect, and, pursuant to the fourth paragraph of article 41, must be on the basis of a reasoned decision that includes the factual and legal grounds justifying the extension. In practice, the prosecutor usually verifies the facts and circumstances of the case to ensure that any extension of the period of detention is strictly necessary.

137. With regard to the appointment of a lawyer for those held in detention in connection with terrorism cases, although such appointments are not explicitly provided for in Organic Act No. 26 of 2015, article 4 of that Act provides for the application of the Code of Criminal Procedure, article 13 ter of which stipulates, however, that: “The public prosecutor may, in terrorist cases and where the investigation so requires, deny permission to the lawyer, for a period not exceeding forty-eight hours from the time at which the suspect is remanded in custody, to visit and meet with the suspect, to attend the suspect’s hearing or interrogation, or review documents related to the case.”

138. Furthermore, article 57 (new), paragraph 6, of Act No. 5 of 2016 stipulates that “the investigating judge may, in terrorist cases and if the investigation so requires, deny permission to the lawyer to visit, consult with, or attend the hearing or interrogation of the suspect or review documents related to the case in connection with which he or she is being interrogated for up to forty-eight hours from the time at which the suspect is remanded in custody unless the public prosecutor has previously ruled otherwise.

139. This prohibition is an exceptional rather than automatic provision, in accordance with which the public prosecutor or the investigating judge enjoys discretionary powers in a specific area, i.e. cases involving terrorism, that may be exercised in order to conduct investigations in that regard. The prohibition may be applied for only a limited time period, after which the lawyer may attend all preliminary investigation procedures with his or her client. This exceptional provision is therefore justified, limited in scope, and subject to all safeguards provided by law.

6.4 Definition of terrorism

140. Act No. 26 of 2015 does not provide a definition of terrorism due to the difficulty of defining the phenomenon empirically and due to the lack of an international definition. Article 13 of that Act defines the perpetrator of a terrorism offence as “any person who, by any means, pursues a personal or collective aim involving one of the acts referred to in articles 14 to 36, which is intended, by its nature or context, to spread terror among the population or to wrongfully coerce a State or an international organization into doing something that it should not do or into refraining from doing something that it should do”.

141. In the light of the recommendations of the United Nations on the prevention of torture and the outcomes of the universal periodic review, that definition was amended pursuant to the adoption of Organic Act No. 9 of 2019, which defines the perpetrator of a terrorism offence as “any person who, by any means, pursues a personal or collective aim involving one of the acts referred to in article 14 or in articles 28 to 36 of the present Act, which is intended, by its nature or context, to spread terror among the population or to wrongfully coerce a State or an international organization into doing something that it should not do or into refraining from doing something that it should do. An individual who participates in a hostile action in the course of an armed conflict is not considered to have perpetrated a terrorist offence.” This has provided a clearer definition of what constitutes a terrorist offence by emphasizing that, in order for them to be considered acts of terrorism, all acts set forth in article 14, including incitement to hatred or animosity among races, must have been perpetrated intentionally in order to “spread terror among the population or to wrongfully coerce a State or an international organization into doing something that it should not do or into refraining from doing something that it should do.” Articles 14 to 36 establish terrorism offences, distinguishing among offences that cause death, involve physical violence, or are directed against persons who enjoy international protection. These important changes in approach are intended to further regulate, combat and punish terrorism offences, in line with the recommendations communicated by the United Nations to Tunisia in that regard.

6.5 Travel bans

142. Passports and travel documents are regulated by Act No. 40 of 1975. To bring the provisions of that Act into line with article 25 of the Constitution, which pertains to freedom of movement, as well as with international treaties, particularly the International Covenant on Civil and Political Rights, that Act was amended pursuant to Organic Act No. 45 of 2017, a key document that enshrines the right to freedom of movement. The amendment provides for the incorporation of a key safeguard, namely the automatic lifting of travel bans upon the expiry of legally-prescribed time limits. The amended Act also stipulates that any travel ban must be on the basis of a reasoned decision that includes the factual and legal grounds justifying that ban, and recognizes the right of the individual affected to appeal the decision imposing the travel ban or the denial of re-entry into the country. The amended Act also provides a number of key safeguards, most importantly by revoking the competent authorities' power to withdraw an individual's passport while also imposing a travel ban, as had previously been sanctioned by article 15 of the Act, which had entrusted the judicial authorities with that double power during criminal proceedings and trials.⁴⁴

143. In the light of the prevailing security conditions in 2012, the Ministry of Interior implemented a number of precautionary measures. These included the S/17 Questioning Before Crossing border measure with a view to combating the activities of extremists and those facilitating their movement into conflict zones. That preventative security measure is taken in exceptional cases and is imposed only on individuals proven to be active members of the illegal terrorist organization Ansar al-Sharia in Tunisia, as well as individuals intending to enter or returning from conflict zones. The measure is also imposed on individuals released from prison following their involvement in terrorism-related activities and individuals who have joined terrorist groups based in the country's western highlands.

144. To forestall potential problems in that regard, a team comprising representatives of relevant authorities and includes an administrative judge has been created in the Ministry of the Interior. That team aims to reduce the number of preventative measures imposed, to diligently review complaints submitted by citizens whose identities are similar to individuals against whom security measures have been imposed, and to issue certificates in that regard that may be shown at border crossings in order to clarify their status. The team also reviews petitions submitted in that regard on a case-by-case basis. Appeals against the border measure may be filed in a number of ways, including by submitting a complaint to the Ministry of the Interior or to the Administrative Court.

145. The confiscation of passports and searches can only be conducted if permission is obtained from a public prosecutor or and investigating judge as the case may be.

6.6 House arrest

146. Although Decree No. 50 of 1978 entrusts the executive branch of the Tunisian Government, and particularly the Minister of Interior, with broad powers, it does not place limits on its national and international human rights obligations. Indeed, although the Decree empowers the Minister of the Interior to place any individual under house arrest when "the actions of that individual are deemed to pose a threat to public security", article 5 of the same Decree stipulates that the State must take all necessary steps to ensure the well-being of all persons placed under house arrest and their families.

147. Furthermore, the status of many individuals who have been placed under house arrest is periodically reviewed and the measure may be partially lifted to allow them to move between their homes and their places of work or study. This clearly demonstrates that the main purpose of the measure is to restrict the movements of individuals with a view to preventing them from perpetrating acts of terrorism; house arrest is not imposed as a form of detention or imprisonment.

⁴⁴ See the report of the Rights, Freedoms and External Relations Committee (available on the website).

7. Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment (arts. 2, 6 and 7)

7.1 Capital punishment

148. Despite the seriousness of terrorism offences, Act No. 26 of 2015 stipulates that the death penalty may be imposed only if a terrorist offence results in the death of an individual. The penalty prescribed is thus the same as the penalty prescribed by the Criminal Code for the premeditated and intentional homicide. Only four death sentences have been handed down since the adoption of the Act.

149. Tunisia has not carried out the death penalty since 17 November 1991, even though a number of death sentences have been handed down by the courts. (See Annex 15). Tunisia is among the countries that have established a moratorium on the use of the death penalty pursuant to relevant General Assembly resolutions adopted in 2012, 2014 and 2016.

150. Judges are not obliged to impose the death penalty but may determine the penalty in line with the seriousness of the offence committed. Under Tunisian law, judges may adjust a penalty on the basis of the facts of the case; consequently they are not obliged to impose the death penalty by default for a terrorist offence for which that penalty is prescribed.

151. To further entrench the principles of due process and ensure respect for international norms, particularly those set forth in the International Covenant on Civil and Political Rights,⁴⁵ which provide for the imposition of an appropriate penalty for an offence, Organic Act No. 9 of 2019 empowers the judge to apply the provisions of article 53 of the Criminal Code, concerning mitigating circumstances and the reduction of penalties, and to take into account the seriousness of the terrorist offence committed. Annex 16 sets forth the offences for which the Act prescribes the imposition of the death penalty.

152. Moreover, pursuant to the Code of Criminal Procedure, there is no legal impediment preventing the issuance of a pardon or an acquittal in cases in which a death sentence has been handed down. Indeed, seven individuals who had been sentenced to death were acquitted in 2018 and one of those individuals also benefited from a general amnesty in 2017. In 2012, a total of 121 prisoners benefitted from a one-time special amnesty that commuted their death sentences to life imprisonment. A further 11 prisoners had their death sentences commuted to life imprisonment between 2012 and 2015. As of 14 January 2014, a total of 9 individuals who had been sentenced to death had benefitted from two special pardons, the first commuting their death sentences to life imprisonment and the second reducing their sentences from life imprisonment to prison terms of between 30 and 37 years.

153. Although a moratorium on the death penalty is in place, accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty will require a broad societal dialogue and consensus to be reached on that matter for any decision to be made.

7.2 The offence of torture

154. According to article 23 of the Constitution, the State protects human dignity and physical integrity, and prohibits mental and physical torture. The Constitution also enshrines the principle that the crime of torture is not subject to any statute of limitations, a principle which is also reflected in article 24 of Organic Act No. 53 of 2013 on the National Authority for the Prevention of Torture. Article 30 of the Constitution guarantees the right of all prisoners to humane treatment that preserves their dignity.

155. In addition, Act No. 5 of 2016 amending and completing certain provisions of the Code of Criminal Procedure provides a basic guarantee of the prevention of torture, inasmuch as it reduces the legal period of confinement and grants suspects the right to have a lawyer present during the initial interrogation and to request a medical examination.

⁴⁵ See the report of the General Legislation Committee of the Assembly of People's Representatives on the aforementioned draft Act, which is available on the website.

156. To align national legislation with the Constitution and international norms, including those set forth in the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and in order to follow up on the Committee's recommendations in that area, the Criminal Code is currently being reviewed with a view in particular to preventing torture, encouraging the use of alternative penalties and limiting the use of custodial sentences.

7.3 Measures to combat torture

157. The National Authority for the Prevention of Torture, which was established in 2016 pursuant to Organic Act No. 43 of 2013, is an independent public body with legal personality and financial and administrative independence. The National Authority is a preventive mechanism established in accordance with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which was ratified by Tunisia in 2011.

158. The main tasks of the National Authority include carrying out periodic, regular visits as well as unannounced visits to places of detention where persons are or may be deprived of liberty, ascertaining that accommodation for persons with disabilities upholds their right to privacy, ascertaining that no torture or other cruel, inhuman or degrading treatment or punishment occurs in places of detention, ensuring that those in detention are held in appropriate conditions and that penalties are implemented in accordance with national laws and international human rights standards.

159. The National Authority also receives and investigates notifications of possible cases of torture or cruel, inhuman or degrading treatment or punishment in places of detention and, as appropriate, refers them to the administrative or judicial authorities. It also carries out educational campaigns, holds seminars and issues publications to raise public awareness of the dangers of torture and oversees training programmes in its field of expertise.

160. Since 2016, the Ministry of Justice, in cooperation with Penal Reform International, has been implementing two projects concerning the imposition of alternative penalties and strengthening a human rights approach to the treatment of inmates in Messadine Prison and the Rehabilitation Centre for Juvenile Offenders in Sidi al-Heni.

161. In addition the Ministry signed an agreement on 12 January 2016 with the Ministry of Women's Affairs, the Family, Children and the Elderly that permits child protection officers to visit juvenile correctional facilities to investigate accommodation and living conditions and to ensure respect for children's rights. In December 2012 the Ministry of Justice signed nine memorandums of understanding with associations and organizations of human rights defenders, authorizing them to visit prisons. By late December 2016, those associations and organizations had conducted 664 visits. Action pursuant to the memorandums came to an end when the National Authority for the Prevention of Torture was assigned its mandate. The National Authority then concluded a cooperation agreement with the Ministry of Justice in April 2018 which set forth areas for cooperation and established coordination mechanisms.

162. Bodies wishing to visit prisons are now issued with a permit following case-by-case examinations of their requests. A memorandum of understanding was signed in that context with the Tunisian Human Rights League in July 2015, enabling it to visit prisons and correctional facilities for minors in conflict with the law to investigate the conditions of inmates. That memorandum of understanding was extended in October 2017.

7.4 Training in torture prevention

163. The Ministry of Justice is continuing its efforts to strengthen the capacity of judges and prison staff to combat torture. In cooperation with the Danish Institute against Torture, the Ministry issued a guidebook on combating torture in 2014 with a view to training 140 judges, including 60 trainers who are each expected to train between 10 and 15 judges at appellate courts and courts of first instance during the next two years.

164. Furthermore, the Higher Institute of the Judiciary, in cooperation with OHCHR, runs training courses for practicing judges and provided training on issues related to terrorism to 33 judges in 2015 and to 126 judges in 2017.

165. The Optional Protocol to the Convention against Torture was incorporated into the human rights curriculum of all categories of trainees at the National School for Prisons and Rehabilitation, who learn about the mandate of the Subcommittee on Prevention of Torture as an international preventive mechanism authorized to visit places of detention. Prison officers and staff have also received training from the International Committee of the Red Cross (ICRC).

166. Training is provided to judges and forensic doctors on the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol). To ensure that any acts of torture or other cruel, inhuman or degrading treatment are investigated effectively, judges are assisted by doctors who perform their duties and publish reports in accordance with the recommendations prescribed in the Protocol.

167. Since 2013, a number of training courses have been held in Tunisia and abroad for medical and paramedical personnel working in prisons. The courses, which were held in cooperation with the Ministry of Health, the Ministry of Justice, and ICRC, focused on inmate health. Furthermore, the Forensic Medicine Department at Charles Nicolle Hospital, in cooperation with the General Prisons Administration, has held numerous training courses for prison physicians in Tunisia, with several instructional modules being taught by national and international experts.⁴⁶

168. For its part, the National Authority for the Prevention of Torture conducted several training and awareness-raising workshops between October and December 2017 for staff working for public authorities in the various governorates of the country with a view to raising their awareness of the Authority and its mandate and to support efforts to combat torture. Those courses were attended by 322 staff at places at detention and personnel concerned with the situation of detainees working at the Ministries of Justice (Prisons department), National Defence, the Interior, Finance, Health and Social Affairs.

7.5 Statistical data

169. To facilitate the monitoring process, the Office of the Public Prosecutor attached to various courts of first instance maintains a register that contains records of any allegations of torture, the manner in which those allegations are addressed, the course of the investigations prior to the prosecution stage and court rulings. Since December 2008, the Inspectorate General at the Ministry of Justice has made use of a special statistical tool to ensure that time limits for pretrial detention are not exceeded.

170. To facilitate communication with inmates and listen to their concerns, the Directorate General for Prisons and Rehabilitation has installed complaints boxes at all prison facilities. Those boxes can be opened only by the prison director. The prison director may, however, also empower a judicial oversight body to open those boxes. A complaints office has also been established at every prison and correctional facility to receive and follow up on any complaints submitted.

171. A number of administrative orders and professional memorandums have been issued that stress the need to abide by legal regulations, ensure the good treatment of inmates, particularly those considered dangerous including inmates held in relation to cases involving terrorism, and ensure respect for their physical and moral integrity.

⁴⁶ These modules include the following:

- Health during incarceration;
- Medical ethics and places of detention;
- Intervention of a physician in a custody case;
- Hunger strikes;
- Isolation in solitary confinement;
- Torture and ill-treatment in places of detention.

172. Annexes 17 and 18 show the number of allegations of ill-treatment in prison facilities received in 2018 and the number of disciplinary measures taken that year when evidence showed that ill-treatment had taken place. In 2018, three cases involving ill-treatment in prison facilities were referred to the judiciary.

173. In the period covered by the initial report of the National Authority for the Prevention of Torture, which ended at the end of 2017, the National Authority received 104 notifications of possible cases of torture or ill-treatment (see Annex 19). In 2018, it received 125 notifications.

174. No deaths occurring as a result of violence were recorded in prisons during the reporting period. In 2018, however, 22 deaths due to illness were recorded. All those cases were referred to the judicial authorities, as are all deaths occurring in prison facilities, which are treated as suspicious pursuant to Act No. 52 of 2001 on the prison system (see Annex 20).

175. Furthermore, in accordance with article 22 of Act No. 70 of 1982 on the statute of the internal security forces, the military justice system has addressed crimes committed against demonstrators and protesters that occurred during the events of 17 December 2010/14 January 2011, as the ordinary judicial authorities refrained from examining those cases. It has opened investigations into the crimes committed, including intentional and premeditated homicide, intentional homicide and the intentional infliction of injuries, as well as complicity in those offences, with a view to bringing perpetrators to justice and providing compensation to the families of those who were killed or injured in the revolution. This has been achieved by enabling injured parties to file civil suits.

176. Convictions were handed down against a number of senior officials and security force leaders, including the Head of State during the events in question, the Minister of the Interior, the directors general of security, public security and presidential security, the chief of the National Guard and commanders of intervention units, as well as a number of field security officers. Significant material compensation was, moreover, awarded to victims and their families.

177. In order to combat torture and human rights violations, the Ministry of Interior employs its oversight and investigation mechanisms in order to conduct all necessary investigations into complaints, petitions and notifications regarding torture or ill-treatment and, if appropriate, takes disciplinary or punitive administrative action in that regard. In cooperation with UNDP, steps are now being taken to further enhance the domestic monitoring and investigation system and the mechanism for processing petitions and complaints.

7.6 Draft act No. 25 of 2015 on preventing attacks against the armed forces

178. This draft act was formulated in conformity with the Criminal Code and specific criminal legislation, including the Organic Act on combating terrorism and preventing money-laundering, and reflects developments in comparable legislation and international norms. In 2015, it was submitted to the Assembly of People's Representatives, which made several amendments, including to the name of the draft act and the addition of a several articles pertaining, in particular, to protecting security and military installations from unauthorized photography or broadcasting and increasing penalties for such acts. However, a number of concerns were raised, particularly with regard to human rights, including freedom of expression, and the Ministry of the Interior is currently reformulating the draft act in the light of observations made by relevant parties.

179. With regard to the legal norms governing the use of force by law enforcement officers, article 18 of the Constitution stipulates that one of the duties of the national army is to support the civil authorities in accordance with the law, which stipulates that the armed forces can intervene to perform security-related functions. The other, combat-related duties of the armed forces are still regulated by other legal provisions, including provisions based on international law on armed conflict.

180. Tunisian legislation also contains provisions that provide for exemption from criminal responsibility, including 39 to 42 of the Criminal Code: article 39 of the Code

addresses the issue of legitimate defence and article 42 provides for exemption from punishment for anyone who commits an offence pursuant to a legal provision or an order by a competent authority.

181. Article 59 of Organic Act No. 26 of 2015 stipulates that undercover agents or informants shall not be held criminally liable if they perpetrate, without malicious intent, actions required as part of an undercover operation. Article 72 of the same Act provides: “In addition to cases of legitimate defence, internal security force, military and customs officers shall not be held criminally liable if they resort to force or give orders for force to be used if this is required in order for them to carry out their duties, provided that this is within the limits of the law, institutional procedures and the instructions lawfully issued in the context of combating the terrorist offences set forth in the present Act.”

182. In addition, article 98 of the Code of Military Procedure and Penalties states:

The following shall not constitute an offence:

- The use of a weapon in order to apprehend deserters during a confrontation with the enemy or to stop acts of disobedience, looting or sabotage;
- The use of a weapon by a guard or sentry when an individual fails to comply with his or her orders after a third warning has been given.

183. Article 8 of Republican Decree No. 230 of 2013 on the declaration of a buffer zone and article 9 of Presidential Decree No. 120 of 2015 on the declaration of military and closed military zones also provide that articles 39 to 42 of the Criminal Code are applicable to officers responsible for the implementation of those decrees.

184. It should be noted that the aforementioned articles must be implemented in accordance with the provisions of Act No. 4 of 24 January 1969 on public meetings, processions, parades and gatherings, and that the principle of the gradual use of force must be applied, in accordance with the applicable laws in force.

185. A code of conduct for the internal security forces is being formulated as part of a joint project on security sector reform by the Ministry of the Interior and UNDP. The aim of the code is to enhance the conduct of internal security force personnel, improve their relationship with citizens, combat negative practices within the security forces and entrench the principle of respect for human rights and public freedoms. Consultations on the draft code are currently taking place.

8. Prohibition of slavery, trafficking and servitude and the rights of children (arts. 8 and 24)

8.1 Efforts made to implement Organic Act No. 61 of 2016

186. The Act provided for the creation of the National Authority for the Prevention of Trafficking in Persons, which is supervised by the Ministry of Justice. The Authority began operations pursuant to Government Order No. 219 of 2017 on the designation of its president, who is a third level judge, and its members, which include representatives of governmental and non-governmental bodies, who are appointed for a non-renewable five year term. The Authority has been in operation since January 2018. The Authority has prepared a draft government order regarding its organization and operating methods.

187. The Authority submitted its first annual report on 23 January 2019, a highly symbolic day which, pursuant to an official document issued in 1846, is celebrated as the national day commemorating the abolition of servitude and slavery in Tunisia.

188. Pursuant to article 46 of the aforementioned Act and with technical assistance provided by the United Nations Office on Drugs and Crime, the Authority formulated the National Strategy to Combat Trafficking in Persons for the years 2018 to 2023. To facilitate that process, the Authority adopted a participatory approach that involved holding workshops and consultations with all relevant stakeholders. An action plan was also developed to incorporate the key themes of the 2017–2019 Strategy. The 2018–2023

Strategy establishes a framework that is consistent with targets 5.2, 16.2 and 16.4 of the Sustainable Development Goals.

189. The 2018–2023 Strategy facilitates the adoption of comprehensive approach to trafficking, particularly in terms of implementing protection measures and providing assistance to victims. It also provides for the establishment of a database on trafficking in persons to facilitate the activities of the Authority.

190. The Authority has established a committee to harmonize the country's legislation on the exploitation of children. This is because, while approximately 75 per cent of cases of trafficking in persons involve the exploitation of children, and particularly their economic exploitation as beggars or domestic servants, inconsistencies among the definitions and penalties prescribed by various laws have impeded the characterization of offences and interventions to protect children.

191. The Authority is also drawing up regulatory provisions, including a draft government order establishing conditions and modalities for providing assistance and treatment to victims of trafficking free of charge.

192. The Authority has also provided training to numerous stakeholders, including the following:

- Reference judges, including 28 prosecutors and 14 investigating judges, practicing judges and judicial assistants (200 training course participants);
- Internal security force officers: four training courses for trainers, attended by 25 judicial police officers, which led to the selection of eight national-level trainers; four regional courses, attended by 104 participants, were also held;
- Ministry of Social Affairs staff: a number of training courses and workshops on identifying victims were held. Those courses were attended by staff at social care centres and trained 26 staff so that they could act as investigative focal points;
- Child protection officers: 25 officers were trained as trainers. Training courses were also held for 41 regional child protection officers;
- More than 2,000 participants who attended 29 training sessions organized in partnership with the International Organization for Migration in 2018.

193. Four military judges participated in a training course on human trafficking organized by the Partnership for Peace Training Centre in Ankara with a view to enhancing their capacity to deal effectively with data on human trafficking and raise their awareness of key mechanisms and measures to combat that phenomenon.

194. To protect victims of trafficking, the Authority:

- Provides free medical assistance and treatment;
- Provides guidance on judicial and administrative procedures that must be followed to obtain compensation;
- Assists in the compilation of files with a view to obtaining legal aid;
- Receives notifications of trafficking in persons and refers them to the competent judicial authorities.

195. According to the report of the National Authority for the Prevention of Trafficking in Persons, there were 780 victims of trafficking in 2018 and 742 victims in 2017. The Authority received 430 notifications, 81 per cent of which were submitted by civil society and 9.6 per cent of which were communicated to the Authority automatically. A total of 489 telephone calls were received on a dedicated hotline from callers wishing to follow up on files or the status of notifications or to request information. There were 413 cases of trafficking in persons, including 336 women. The Authority referred 58 cases to the judiciary. The tables contained in Annexes 21, 22 and 23 provide the key statistics on trafficking in persons contained in the report of the Authority.

196. With regard to the support provided to victims, social welfare centres run by the Ministry of Social Affairs provided assistance to approximately 70 victims in 2017 and

2018, including 36 children, the majority of whom were male. Those centres provided temporary accommodation, social care and counselling services to victims and ensured that their basic needs were met through the social welfare system.

197. The Ministry of Health also provided medical assistance to 69 victims between January and December 2018. Sixty per cent of victims were female and 15 were foreign nationals, including 13 victims from Côte d'Ivoire, one victim from the Republic of Congo and one victim from Burkina Faso. Children accounted for 45 per cent of the total. The victims were between 11 and 54 years of age and the average age was 21.6 years. The Judicial Health Unit, also known as *Injad*, provided assistance to 43 victims.

8.2 Together Against Child Labour

198. In line with the principles established by the Worst Forms of Child Labour Convention, 1999 (No. 182) and the Minimum Age Convention, 1973 (No. 138), Tunisia has formulated a national plan on combating child labour for the period 2015–2020. The national plan is designed to establish practical mechanisms and bolster awareness of the need to prevent children from joining the labour market. The most important axes of the national plan include the following:

- Harmonizing legal provisions that support efforts to combat child labour;
- Creating an integrated and participatory framework involving all relevant bodies;
- Developing the institutional and technical capacities of stakeholders;
- Supporting efforts to protect children who are most at risk of economic exploitation.

199. In 2017, the National Institute of Statistics, in cooperation with the International Labour Organization, completed a multiple indicator cluster survey⁴⁷ that sampled 12,800 households. The survey revealed that 179,900 children between the ages of 5 and 17, equivalent to 7.9 per cent of Tunisian children, were in employment, with 136,700 children (6 per cent) performing dangerous work.

200. With the support of the International Labour Organization Office for the Maghreb countries and the United States Department of Labor Bureau of International Labor Affairs, Tunisia has launched the “Together Against Child Labour in Tunisia” project as part of the aforementioned national plan. The United States Department of Labor is providing some \$3 million in financial support to the project, which will run from January 2017 until May 2020.

201. This project aims to strengthen the capacity of the Government, workers’ and employers’ organizations and civil society to implement the national plan by improving their knowledge of child labour, including its worst forms, deepening public awareness of the problem, supporting social mobilization in the fight against child labour, creating a replicable system for monitoring cases of child labour and promoting alternative support and reintegration strategies to combat the phenomenon.

202. In that connection, the Ministry of Women’s Affairs, the Family, Children and the Elderly and the Ministry of Social Affairs have appointed 24 labour inspectors and 24 child protection officers as focal points in all governorates to monitor as well as to take and coordinate action to address the situation of economically exploited children.

203. Furthermore, the decision of the Minister of Social Affairs determining the types of employment in which child labour is prohibited has been revised and the jobs set forth in Annex 24 have been added to the list of hazardous occupations and trades.

204. To help address the root causes of the economic exploitation of women and children, the Ministries of Education, Social Affairs and Women’s Affairs, the Family, Children and the Elderly are implementing a number of programmes (see Annex 25).

⁴⁷ The survey is available at: <http://www.ins.tn/fr/publication/enqu%C3%AAte-nationale-sur-le-travail-des-enfants-en-tunisie-2017>.

205. Although Tunisia has ratified most international and Arab treaties on child labour and adopted a number of laws on the protection of children, it remains challenging to ensure respect for those treaties and laws given the precariousness of society, which tends to result in children dropping out of school and entering the labour market at an early age, where they are often exploited in insecure jobs or in the unregulated shadow economy.

206. In 2017, child protection officers at regional offices received 308 notifications of children begging or the economic exploitation of children. Some 39.9 per cent of those cases involved female children. The majority of cases (51 per cent of all notifications) involved adults exploiting children by making them beg. Twenty-six per cent of notifications involved children who had been compelled to work illegally in commercial enterprises. Due to the fact that it is rarely seen as a duty to report cases and because monitoring mechanisms remain weak, the number of notifications represents only a small percentage of the total number of cases.

207. In cooperation with the Council of Europe, the Ministry of Women's Affairs, Children, the Family and the Elderly has launched a national programme to protect children from all forms of sexual exploitation and abuse. The objectives of the programme include raising awareness about the seriousness of the phenomenon, building the capacities of stakeholders in the field in order to provide adequate protection for children and ensure that victims receive the care and support they require, developing an appropriate legislative framework rooted in the principles of legal protection for children and respect for their best interests, and establishing a network of professionals who work to combat the exploitation and sexual abuse of children.

9. Liberty and security of the person, lawful detention and the treatment of persons deprived of their liberty (arts. 2, 7, 9, 10 and 11)

9.1 Implementation of Act No. 5 of 2016

208. This Act has significantly strengthened legal safeguards for detainees inasmuch as it reduces the legal period of custody and grants suspects the right to have a lawyer present during the initial interrogation. During or upon the termination of custody, the detainee, his or her lawyer or a member of his or her family may submit a request to the public prosecutor or the judicial police for a medical examination to be performed. The public prosecutor must also regularly monitor the record of the arrest, the conditions of confinement and the condition of the detainee.

209. The Ministry of Interior maintains an official list of certified remand facilities. International and national organizations have been provided with copies of the list to enable them to conduct visits to monitor the conditions of, and submit reports on, detainees. Those organizations include the Tunisian Human Rights League, OHCHR, ICRC and the National Authority for the Prevention of Torture.

210. There has been an increase in the frequency of unannounced inspections carried out to assess the compliance of security units with the laws in force and best practices regarding the treatment of suspects, including the compliance of judicial police officers with the aforementioned recently adopted provisions, pursuant to which they are required to prepare reports in line with formal and substantive procedures and coordinate on an ongoing basis with the Office of the Public Prosecutor with a view to upholding the suspect's legal safeguards relating to his or her right to a defence and to a fair trial and ensuring his or her physical and psychological inviolability. Any violation of those safeguards is a criminal offence that is subject to severe penalties under the Criminal Code, article 101 bis of which provides for a punishment of life imprisonment for the offence of torture resulting in death.

211. A total of 105 judges received training in 2017 on the application of Act No. 5. Steps are now being taken to train trainers to raise awareness of its provisions.

212. In that regard, the Ministry of Interior issued a service note for judicial police officers in May 2016 on the application of the Act and the need to inform suspects of their legally-prescribed rights and safeguards.

213. Since September 2014, the Ministry has issued a publication on the guarantees afforded to individuals in custody that contains recommendations on the application of national laws and international standards in that area, including on ways to improve the care provided to detainees and steps that should be taken to ensure that detention facilities meet certain specifications and that detainees have access to appropriate sanitary and health-care facilities.

9.2 Offence of enforced disappearance

214. In the light of the recommendation made by the Committee regarding the incorporation of the prohibition of enforced disappearance into domestic legislation, issued following its consideration of the initial report of Tunisia in 2016, a draft law has been proposed by the committee established to review the Criminal Code for the inclusion of enforced disappearance, as defined by the International Convention for the Protection of All Persons from Enforced Disappearance, as a separate offence in the section of the Code on offences against persons.

9.3 Statistics on the number of persons in detention

215. Annex 26 provides details on the number of persons detained in connection with cases initiated by security units reporting to the Ministry of Interior.

216. A total of 13,271 suspects and 8,947 convicted persons, including 21,620 men and 598 women, are currently being held in Tunisian prisons. Annex 27 provides details on the capacity of each of the 24 prison facilities in Tunisia and the number of detainees being held in each facility.

9.4 Separation measures in prisons

217. To ensure that juveniles are held separately from other persons held in detention, Tunisia has provided separate accommodation for 56 juveniles being held in Mornaguia, Manouba, Sousse, Messadine and Sfax prisons, in accordance with article 99 of the Child Protection Code and article 10 of Act No. 52 of 2001 on the prison system.

218. A partnership agreement between the Ministry of Women's Affairs, the Family, Children and the Elderly and the Ministry of Justice was concluded in January 2015. Its purpose is to improve the services provided by correctional centres for children in conflict with the law and to develop intervention mechanisms so as to achieve the fundamental goals of those centres while respecting national and international norms on the rights of children.

219. With regard to the separation of accused persons from convicted persons, the classification scheme provided in articles 3 and 6 of Act No. 52 of 2001 has been adopted. Article 3 provides: "Prisons shall be grouped into three categories:

- Prisons for persons held awaiting trial;
- Prisons for convicted persons serving a custodial sentence or who are subject to more severe penalty;
- Semi-open prisons for persons found guilty of ordinary offences, which are authorized to organize agricultural labour.

220. This classification scheme shall be used to the maximum extent possible in the light of available resources. In all cases, however, a distinction shall be made between persons held awaiting trial and convicted persons." Article 6, moreover, provides: "prisoners shall be categorized as soon as they enter custody on the basis of sex, age, type of offence and criminal status, i.e. whether or not they have previously been taken into custody."

221. To entrench the principle of the specific treatment of individual prisoners and to facilitate the implementation of a scale of penalties, a new classification and reclassification mechanism has been formulated, which takes into account changes in prisoners' behaviour and the danger they pose. The mechanism provides for prisoners to be assigned to three types of prison facility:

- High security facilities, which accommodate high-risk prisoners;
- Medium-security facilities, which accommodate medium-risk prisoners;
- Semi-open facilities, which accommodate low-risk prisoners.

223. This mechanism has been implemented on an experimental basis in three prisons, namely Burj al-Amiri, Burj Erroumi and Mansoura prisons and, following an evaluation of that experience, will be implemented in all other prisons in the country.

9.5 Reducing prison overcrowding

224. In coordination with the ICRC regional delegation in Tunis, the Ministry of Justice organized a think tank with a view to submitting proposals aimed at reducing prison overcrowding in the short and medium term. Numerous seminars and workshops have also been organized to study the issue of prison overcrowding and a number of steps have been taken in the light of those activities at a variety of levels in order to:

- Reduce the number and duration of prison terms imposed. This is being achieved by:
 - Ensuring that pretrial detention is used only as an exceptional measure by encouraging judges to release accused persons on bond or bail or in accordance with conditional release measures rather than ruling that they should be held in custody;
 - Imposing alternative penalties to detention, as prescribed by law, and introducing other alternative penalties to prevent incarceration and to promote a policy of rehabilitation and reintegration. As part of the Judicial Reforms Support Programme implemented in cooperation with the European Union, a support system has been created pending the establishment of an integrated legal system. That support system has set itself numerous goals, including enabling judges to impose penalties that are consistent with the nature of the offence perpetrated and the personality of the perpetrator, reducing prison overcrowding, improving conditions of detention, reducing recidivism and allowing detainees to remain within their family and social environment;
 - Establishing a mechanism to achieve reconciliation through mediation in the penal system;
 - Finding alternatives to pretrial detention, such as judicial probation, electronic monitoring, the issuance of special pardons and the use of conditional release measures as a preliminary solution to the problem of prison overcrowding;
 - Developing reform and rehabilitation programmes for prisoners and providing them with support following their release in order to reduce the rate of recidivism.
- Upgrade the country's prison infrastructure. This is being achieved by refurbishing prisons and by increasing the cell capacity of Sfax, Mahdia, Monastir, Messadine, Sousse, Gabes and Burj al-Amiri prisons. The Directorate General for Prisons and Rehabilitation is also endeavouring to increase the living space allocated to each prisoner to comply with approved international standards, which specify that a minimum of four square meters should be provided. It is envisaged that an area of 3.42 square metres per prisoner will be provided by the end of 2022. Furthermore, recreational and health-care facilities, laundries and kitchens have been established in a number of prisons, such as the health-care centre at Burj al-Amiri prison, which comprises several different sections and areas designated for training, employment and rehabilitation activities. Another health-care centre has been established at Sfax prison, which can accommodate up to 300 prisoners.
- Strengthen the country's legislation. This is being achieved, in particular, by reviewing the Criminal Code and the Code of Criminal Procedure with a view to limiting the use of pretrial detention, encouraging the use of precautionary measures,

and extending the authority of judges to decide penalties, particularly conditional release, as well as to modify penalties. The penalties imposed for certain crimes are being revised, including as set forth in a draft illicit drug act currently before Parliament, which proposes that an individual should not be subject to prosecution if he or she requests to undergo medical and psychological treatment and does not leave the treatment facility or discontinue treatment without the consent of the doctors responsible for his or her care. Pending ratification of that draft act, Tunisia adopted Act No. 39 of 2017 on the partial amendment of Act No. 52 of 1992 on illicit drugs, pursuant to which, and in order to reduce the burden placed on prisons and detention centres, judges may consider as a mitigating circumstance the fact that an individual has only recently started using illicit drugs. A committee established by the Ministry of Justice is currently reviewing the Act on the prison system.

- Strengthen prisoners' family relationships. This is being achieved by granting prisoners in employment or training unhindered access to their families on average once every month and by allowing children under the age of 13 years ongoing and unrestricted access to prisoners, irrespective of the nature of the offence the prisoner has committed. As of Ramadan 2017, prisoners have been permitted to break their Ramadan fast with their relatives inside prisons, provided that specific criteria are met.

9.6 Visits to detention facilities

225. The authorities responsible for inspecting prison and correctional facilities conduct regular unannounced visits to places of detention to investigate problems and difficulties encountered in such facilities and to address existing transgressions. The Ministry of Justice has concluded several agreements to facilitate access to prisons, including an agreement concluded in January 2016 with the Ministry of Women's Affairs that permits child protection officers to visit juvenile correctional facilities to investigate accommodation and living conditions, and an agreement concluded with the National Authority for the Prevention of Torture (see paragraphs 144 and 145).

226. A visits committee established by the National Authority for the Prevention of Torture carried out 50 preventive visits in 2016 and 2017. Most of those visits were conducted in order to carry out a preliminary survey of different detention facilities, including, in particular, prisons and facilities where individuals are held in pretrial detention. The committee submitted reports to the competent authorities that set forth recommendations regarding detention conditions and underscored the need to put in place effective mechanisms to deal with allegations of abuse perpetrated against inmates by prison guards or their superiors.

10. Independence and impartiality of the judiciary (art. 14)

10.1 Measures taken to ensure the independence of the judiciary

227. The Constitution states that the judiciary is an independent authority and that judges are independent and subject only to the law in discharging their functions. Article 109 of the Constitution stipulates that all interference in the functioning of the judicial system is prohibited. The Constitution also provides for a number of safeguards. For example, article 104 provides that judges enjoy criminal immunity, which can only be lifted by the Supreme Judicial Council, while article 107 provides that a judge may not be transferred without his or her consent and that a judge cannot be suspended, dismissed or be subject to disciplinary sanctions except in accordance with the instances stipulated by law and subject to such guarantees as those established by law and by virtue of a motivated decision of the Supreme Judicial Council.

228. Furthermore, for the first time in the history of the Tunisian judiciary, all judicial structures have been combined in a single body, namely the Supreme Judicial Council.

229. In 2013, the Temporary Judicial Commission was established. It oversaw the ordinary judiciary between 2013 and 2016, while the Supreme Council of the

Administrative Court and the Supreme Council of the Accounting Department continued to function under the supervision of the Prime Minister. The Temporary Judicial Commission established a number of good practices, including listening to the concerns of judges, advertising for candidates to fill senior positions in the judiciary and holding debates among candidates for those positions.

230. The Special Rapporteur on the independence of judges and lawyers visited Tunisia in November–December 2014, during the mandate of the Temporary Judicial Commission.⁴⁸

231. The mandates of the Temporary Judicial Commission and the two Councils ended with the completion of the composition of the Supreme Judicial Council, whose members were elected in October 2016. The Supreme Judicial Council began to perform its duties in April 2017 pursuant to the adoption of Organic Act No. 19 of 2017 amending Organic Act No. 34 of 2016. The Supreme Judicial Council comprises four organs: the Council of the Ordinary Judiciary, the Council of the Administrative Judiciary, the Council of the Financial Judiciary, and a plenary assembly of the three Councils.

232. In the light of the inability of the Supreme Judicial Council to disburse its budget in 2017 and problems associated with 2018 budget, the Council now debates its budget separately before the Assembly of People's Representatives and disburses it on an as-needed basis (see Annex 28). The Supreme Judicial Council has also been allocated its own headquarters.

233. The mobility plan drawn up by the Council of the Ordinary Judiciary for the period 2017–2018 was approved by its plenary assembly in September 2017. The Council also formulated a mobility plan for the period 2018–2019. It has also made a number of part-time judicial appointments to fill vacancies or support judicial activities, particularly in recently-established courts, and has made appointments to the military justice system.

234. In supervising promotions and judicial planning, the Council relies on a set of criteria that are published in advance. Those criteria, and particularly those pertaining to integrity and efficiency, are communicated to all judges when steps are taken to fill vacancies or to provide support to judicial activities. The Council takes into account the need to rotate staff and to promote equality, and also favours the appointment of female judges to nearby courts and to real estate courts because of the particular nature of their daily activities. To encourage staff to take up positions in the interior of the country, the Council ensures that transfer to such positions results in a promotion, which makes it easier for those staff to address any new challenges they might encounter. Some appointments are made on the basis of professional work plans that underscore the need for integrity and efficiency.

235. The Council of the Judicial Judiciary has established a number of special committees to work on the drafting of its rules of procedure and to prepare a draft act on the statute of judges. Another committee has been created to prepare a draft code of ethics for judges.

236. The Council of the Administrative Judiciary also drew up a judicial plan for 2018, in which it nominated the Administrative Court branch chiefs. It is in the process of preparing a draft act on the Administrative Court and the statute of judges.

237. The Council of the Financial Judiciary is preparing a draft organic act on the financial judiciary.

238. The Provisional Commission to Review the Constitutionality of Laws was established pursuant to Organic Act No. 14 of April 18, 2014,⁴⁹ and its six members were nominated in April 2014. The Provisional Commission continues to perform its duties pending the establishment of the Constitutional Court (see paragraph 18). In 2015, the

⁴⁸ The report of the Special Rapporteur on the independence of judges and lawyers on her mission to Tunisia is available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/26/Add.3.

⁴⁹ Organic Act No. 14 of 18 April 2014 on the provisional commission to review the constitutionality of draft laws. Available at: www.legislation.tn/detailtexte/Loi-num-2014-14-du-18-04-2014-jort-2014-032__201403200014.

Provisional Commission was allocated a budget of 120,000 dinars. Between 8 June 2015, the date on which it issued its first ruling, and 22 October 2018, when its most recent ruling was issued, the Provisional Commission issued 17 rulings, all of which have been implemented.

239. With regard to disciplinary action against judges, 96 disciplinary files were referred to the disciplinary board of the Supreme Judicial Council, a warning was issued to 17 judges and seven judges had their salaries docked on grounds of unauthorized absenteeism. Criminal proceedings were initiated against seven judges.

10.2 Access to justice and the guarantee of a fair trial

240. Article 108 of the Constitution provides: “Everyone shall enjoy the right to a fair trial within a reasonable period; litigants shall be equal before the law.” The Constitution also enshrines a number of safeguards, such as the right to presumption of innocence (article 27), the principle of the legality of offences and penalties and the principle of personal punishment (article 28) and the legality of arrest and detention (article 29).

241. In the context of Tunisia’s efforts to align its national legislation with international norms, the Ministry of Justice adopted the Strategy for Judicial Reform (2012–2016.) That aim of that strategy, the axes of which focused primarily on legislative reform and strengthening the country’s institutional framework, was to strengthen the independence of the judiciary and uphold the rights of litigants by restoring the confidence of citizens, professionals and other stakeholders in the judicial system.⁵⁰

242. The Ministry also formulated the Plan of Action for Judicial and Prison System Reform (2015–2019),⁵¹ whose two main axes focused on the quality of justice and the rights of litigants. Another axis focused on access to justice.

243. To implement the Plan of Action, several committees have been established to review laws and bring them into line with the Constitution and international norms relating to the right to a fair trial. These include committees established to review the Code of Criminal Procedure, the Criminal Code, the Code of Civil and Commercial Procedure, the Arbitration Code and the Child Protection Code. In addition, the Ministry has created committees tasked with drafting statutes applicable to judges of the ordinary, administrative and financial courts and to other legal professions.

244. Several programmes financed by the European Union are being implemented, including the Support for Partnership, Reforms and Inclusive Growth programme (SPRING), which supports reform of the judiciary in structural and human terms, the Judicial Reforms Support Programme, the Council of Europe programme run by the European Commission for the Efficiency of Justice (CEPEJ), which seeks to develop and enhance the capacities of the Court of Cassation and five other pilot courts, and the programme on “Strengthening Democratic Reform in the Southern Neighbourhood”, which supports the democratic and judicial reform process and promotes the independence and efficiency of the judiciary.

245. In light of judges’ mandate to investigate particularly complex crimes, specialized judicial authorities have been created, including the aforementioned Counter-Terrorism Judicial Authority and the Economic and Financial Judicial Authority.

246. As part of the European Union-financed programme to support reform of the judiciary, a programme to facilitate the speedy conclusion of criminal cases has been formulated. This new mechanism for dealing with complaints submitted directly to the Office of the Public Prosecutor and investigation records concerning suspects released on bail is designed to improve the performance of the courts, reduce the timeframe for judicial responses and reduce the number of judgments handed down in absentia with a view to

⁵⁰ Strategy for Judicial Reform (2012-2016). Available at: http://www.e-justice.tn/fileadmin/fichiers_site_arabe/Bureau_EPP/projets/doc_strat.pdf.

⁵¹ Plan of Action for Judicial and Prison System Reform (2015-2019). Available at: <http://www.ilacnet.org/wp-content/uploads/2015/02/Plan-daction-r--forme-de-la-justice-2015-19-FR-et-AR.pdf>.

strengthening enforcement of the law, and ensuring that steps are taken to uphold the rights of concerned parties within reasonable time limits while also complying with fair trial requirements and upholding human rights. The programme was launched in 2015 on a trial basis at the Manouba Court of First Instance and was launched in the country's other courts between October 2018 and April 2019. This programme has enabled litigants in criminal cases to keep abreast with proceedings in those cases and follow-up on their outcomes, has reduced the time needed for a judgment to be handed down in criminal cases and has improved sentence enforcement rates.

247. To uphold the right of access to the judiciary and the rights of litigants, a number of legal measures have been taken. Act No. 52 of 2002 on legal assistance provides that litigants who are unable to afford the costs of litigation may request the State to cover the costs of civil or criminal procedures regardless of whether they are plaintiffs or defendants. The accompanying table provides details on the numbers of requests for judicial assistance submitted during the reporting period (see Annex 29). This mechanism has also been strengthened in the administrative judiciary through the adoption of Act No. 3 of 2011 on legal assistance for the Administrative Court.

248. Given the particular nature of certain offences, such as terrorist offences and crimes involving violence against women, the State mandates that legal assistance must be provided to victims of those offences, as cases involving those offences may give rise to high legal costs.

249. To further enhance the country's legal assistance mechanisms with a view to ensuring that all enjoy the right to access the justice system, the Ministry of Justice established a committee at the Centre for Legal and Judicial Studies in 2017 to review the 2002 Act and to work with relevant stakeholders, including judges, lawyers and notaries to formulate a draft law in that regard. These efforts are consistent with target 16.3 of the Sustainable Development Goals, on ensuring equal access to justice for all.

250. As for practical measures taken to strengthen the country's judicial infrastructure, since 2011 the Ministry of Justice has taken steps to enhance the judicial map, in particular through the creation of five courts of appeal, which has strengthened the right to litigation on two levels and facilitated access to such courts. In establishing those courts of appeal, the Ministry took into consideration the work loads of existing courts, and the distances between courts and populated areas and this has helped to build bridges between the judiciary and litigants.

251. In view of the multiple areas of competence of the Administrative Court, particularly in connection with elections and the fight against corruption, 12 Administrative Court trial chambers have been established in different regions of the country in accordance with Government Order No. 620.

252. As for the military justice system, military courts comply with all criminal procedures relating to the principles of fair trial. In accordance with articles 69 and 141 of the Code of Criminal Procedure, the military examining judge and the criminal chamber appoint a lawyer to defend the accused in criminal cases if he or she is unable to do so.

253. Decree No. 69 of 2011 amending and completing the Code of Military Procedure and Penalties and Decree No. 70 of 2011 on the regulation of the military judiciary and the statute of military judges radically altered the military justice system and brought it into line with international fair trial standards. Military justice system reforms were based on the following:

- Standards of fair trial as set forth in international treaties and instruments, in particular the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights;
- The "principles governing the administration of justice through military tribunals", commonly known as the "Decaux principles".

254. In its resolutions 2005/30 and 2005/33, adopted in April 2005, the Commission on Human Rights referred to the above-mentioned principles, which are on the way to being formally recognized by the United Nations. It should be noted that the principle of overlap

and complementarity between the military and the ordinary judiciaries has been endorsed by government mechanisms and bodies in a number of judicial systems.

255. The aforementioned Decrees provide guarantees of fair trial in the military justice system by:

- Enshrining the principle of litigation at two levels;
- Revoking the power of the Minister of Defence to order prosecutions and discontinue punishments;
- Expanding the scope for lodging appeals against decisions issued by a military examining judge;
- Allowing for civil cases to be brought before military courts;
- Recognizing the possibility of suing for damages before the military courts;
- Recognizing the possibility of instituting a prosecution on one's own responsibility before the military courts;
- Strengthening the independence of military judges through the creation of a military justice council.

10.3 The prosecution of civilians in military courts

256. In cases tried by the military judiciary following the revolution, judgments were issued by judicial bodies that were composed, primarily, of civilian judges. Civilians are now brought before military courts only in connection with the following offences:

- A number of military offences prescribed in the Code of Military Procedure and Penalties, which are of particular relevance to the activities of military structures and personnel;
- Offences committed in barracks, military camps, or institutions or other sites used by army or armed forces personnel;
- Offences that directly undermine the interests of the military;
- Offences that, pursuant to specific laws or regulations, may be brought before military courts;
- Offences perpetrated by members of allied armies present on Tunisian territory and all offences that undermine the interests of those armies, unless the Tunisian Government has concluded special agreements with the governments of those armies that forestall any such action. Those courts may, pursuant to a special law, enjoy jurisdiction to consider all or certain offences that undermine internal or external security of the State;
- Ordinary offences committed against military personnel in or during the course of their duties.

257. The technical commission responsible for reviewing the jurisdiction of military courts is continuing its work in that area with a view to upholding article 110 of the Constitution and ensuring compliance with relevant international standards.

11. Right to privacy (art. 17)

11.1 Measures to uphold the right to privacy

258. Article 24 of the Constitution stipulates that the State shall "safeguard the right to privacy the inviolability of the home and the confidentiality of correspondence, communications and personal information."

259. The protection of personal information has been regulated by Organic Act No. 63 of 2004 on the protection of personal data, which is currently being reviewed to bring it into

line with international standards and with Council of Europe Convention No. 108 and the Additional Protocol thereto, both of which have been ratified by Tunisia.

260. As regards respect for the right to privacy in the context of counter-terrorism, section V of Part I of Organic Act No. 26 of 2015 provides that judicial authorization must be obtained in order to use special investigative methods, such as the interception of communications or audiovisual surveillance, and that those investigative methods may be used only for a limited period.

261. Moreover, since the establishment of the Information Access Authority in 2017, in 70 per cent of cases brought against authorities that have been subject to Organic Act No. 22 of 2016 on the right of access to information, those authorities have invoked the need to uphold the right to privacy and maintain the confidentiality of personal information in their defence.

262. Furthermore, circular No. 8 of 25 February 2019 prohibits public authorities from retaining or making copies of the national identity cards of individuals using their services, and provides that those authorities may only record essential data and the last three digits of individuals' national identity card numbers, including when lists containing personal information are published or cheques received.

11.2 Draft act amending Act No. 27 of 1993 on national identity cards

263. This draft act was withdrawn in January 2018 with a view to achieving consensus among all stakeholders on either the obligatory or optional use of biometric identity cards, while also complying with international norms in that area.

11.3 Draft digital code

264. This draft code, which is still being considered by the Government, is designed to "... enhance confidence in digital transactions, ensure the safety of telecommunication networks and digital space, and provide mechanisms to guarantee the rights and freedoms of Internet users" (article 1). The draft code contains an entire section on rights and freedoms and obliges operators of public telecommunications networks and internet service providers to respect the confidentiality of correspondence transmitted using those networks and to protect the personal information of users and their right to privacy, except as authorized by the judicial authorities within the context of investigations into criminal activity or as otherwise required by law. The draft act protects minors and persons lacking legal capacity by providing for the imposition of financial penalties on anyone who intentionally publishes content that contains pictures of, or information regarding, a minor or person lacking legal capacity on the Internet without the prior consent of that individual's guardian, and for the imposition of custodial penalties on anyone who uses the Internet or a public telecommunications network to intentionally abuse a minor or person lacking legal capacity.

265. With regard to the oversight functions of the Technical Telecommunications Agency, article 2 of Order No. 4506 of 2013 on the establishment of the Agency stipulates that it provides technical assistance in support of judicial investigations into information and communication system offences and is tasked with using national systems to monitor communications in accordance with international human rights treaties and legal frameworks relevant to the protection of personal information, including, in particular, the provisions of article 17 of the Covenant.

12. Freedom of expression (art. 19)

266. Article 31 of the Constitution guarantees freedom of opinion, thought, expression, information and publication and stipulates that those freedoms may not be subject to prior censorship. Article 32 provides that "The State guarantees the right to information and the right of access to information and communication networks." Article 49 of the Constitution regulates the restrictions that can be imposed on the exercise of the rights and freedoms, which must not, however, compromise their essence and stipulates: "Any such limitations

shall be put in place only for reasons necessary to a civil and democratic State and with the aim of protecting the rights of others, or based on the requirements of public order, national defence, public health or public morals, and provided there is proportionality between these restrictions and the objective sought.”

267. Decree No.115 of 2011 provides numerous guarantees in the area of freedom of expression that are in line with article 19 of the Covenant, including, most importantly, establishing that freedom of expression is a right, and that restrictions placed on that right must pass a three-step test, namely that they are legitimate, objective, proportionate and necessary. The Decree also provides for the abolition of the licencing system for periodicals and its substitution with a permit system, and for the protection of journalists and their sources. The Decree encourages all individuals who acquire information that may reveal facts or cases of corruption to publish it immediately or to enable the press, in its capacity as an oversight authority, to communicate that information to the public. The Decree also provides immunity from criminal prosecution for journalists, so as to protect them from any verbal or other abuse while performing or during the course of their work and protect them from any form of pressure from an authority. Any journalist who is subjected to abuse or threats thereof, whether orally, by inference or through actions, in connection with the exercise of his or her duties enjoys the status of a semi-public official and a penalty is imposed on the perpetrator thereof in accordance with article 125 of the Criminal Code.

268. Articles 50 to 77 of the Decree address offences committed by means of the press, which are categorized as incitement to commit a lesser offence, the perpetration of a lesser offence against individuals or the publication of prohibited material. The Decree also specifies the judicial steps that are taken in that regard and the penalties prescribed for those offences (articles 50 to 77).

269. Despite the paradigm shift that has taken place in the legal framework governing freedom of expression, the implementation of Decree No. 115 has failed to address all areas of concern, the most important of which is the continuation of criminal prosecutions against journalists and citizens publishing material in a manner that is not covered by its provisions, impediments preventing journalists from obtaining press cards attesting to their status as professional journalists, and the fact that the Decree is not applicable to all individuals working in the field of journalism. A review of Decree 115 was therefore initiated on the basis of a participatory approach in September 2016 in accordance with article 65 of the Constitution.

270. Although Decree No. 115 does not provide for custodial sentences for disseminating false news or information that is prejudicial or defamatory to a government official or semi-official or to the army, articles 128, 245 and 247 of the Criminal Code, as well as several articles of the Code of Military Procedure and Penalties, including, in particular, article 91, contain such provisions. The Ministry of Justice has no statistics on those offences.

271. Decree No. 116 of 2011 on the establishment of the Independent High Authority for Audiovisual Communication was adopted with a view to developing the audiovisual communication sector and promoting freedom of expression and a pluralistic and balanced media. The body provided for in the Constitution will replace the High Authority, which has established standards in that regard for public and private media outlets and associations.

272. A draft act on the new body was formulated and submitted to the Assembly of People’s Representatives where it was considered by the Rights, Freedoms and Foreign Relations Committee. Input on the draft was provided by various stakeholders, including from trades unions, civil society organizations and media professionals, who demanded, first and foremost, that the Government should withdraw the draft act and resubmit it following the incorporation of revised language regarding the sector.

273. At the same time, a draft audiovisual communication act has been formulated and steps are being taken in coordination with the High Authority for Audiovisual Communication for that draft to be reviewed by joint committee. It should be noted that the High Authority, the National Union of Tunisian Journalists and various specialist associations have called for the adoption of a single comprehensive act regulating both the new body and the broader audiovisual sector instead of two separate acts. A series of open

consultations took place in that regard in January and February 2018 and more extensive consultations are to take place with a view to submitting the draft for adoption.

274. With regard to measures taken to put an end to acts of harassment of human rights defenders, article 6 of Decree No. 188 on the regulation of associations provides: “Public authorities are prohibited from directly or indirectly obstructing or impeding the activity of associations”, while article 7 stipulates that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in this Decree.” The Ministry of Justice does not maintain statistics in that regard.

13. Freedom of association and assembly (arts. 21 and 22)

275. Articles 35, 36 and 37 of the Constitution provide for freedom of peaceful assembly and demonstration, the right to organize, the right to strike and the right to form parties, unions and associations.

276. The adoption of Decree No. 88 of 2011⁵² on the regulation of associations has had a significant impact on the freedom to form associations. The Decree provided for the abolition of the licensing regime and its replacement with a permit system. Any subsequent regulation of associations is achieved through legal action. The adoption of the Decree has facilitated an increase in the number of associations from approximately 8000 in 2010 to 22,076 associations by the end of 2018. A total of 364 human rights associations have been established since 2011, whereas only 29 had been established between 1959 and 2010.

277. A number of challenges continue to impede the formation of associations, however, including the complexity of the procedures that must be followed in practice in order to establish an association, and the fact that Decree No. 88 is silent on a number of issues relating to the application process, potentially giving rise to legal difficulties.

278. The majority of the permit applications are returned to the structures concerned because they do not meet stipulated legal requirements, either because they have been not been completed correctly or because of their content. As a result, the establishment of an association depends, primarily, on addressing errors and providing any missing information required in the application within the legally-prescribed time limits. Problems often occur because of the manner in which the applications and required documentation are submitted and because the objectives of the association violate the provisions of articles 3 and 4 of Decree No. 88.

279. To raise awareness of how to submit applications that comply with relevant conditions, the General Directorate of Associations at the General Secretariat for Government Affairs has set aside two days a week to meet with applicants wishing to establish associations at its headquarters in order to explain those conditions clearly. Furthermore, since last year a pilot project has facilitated meetings in the various regions of the country between the authorities and those establishing associations with a view to addressing any problems in that area.

280. In line with the Constitution, the Units for Relations with Constitutional Bodies, Civil Society and Human Rights Organizations worked with civil society stakeholders to put forward an amendment to Decree No. 88. The rejection of that amendment led interested parties to adopt a different approach, however, and consensus has been reached on the need to retain and build on the existing Decree through the drafting of new legislation providing for:

- The creation of an online platform for the submission of association applications with a view to streamlining procedures for establishing associations, promoting financial transparency and enhancing association governance mechanisms;

⁵² Decree No. 88 of 2011 on the regulation of associations. Available at: www.legislation.tn/sites/default/files/fraction-journal-officiel/2011/2011A/074/Ta2011882.pdf.

- A review of the funding provided to associations by the State in order to ensure their sustainability and strengthen respect for the principle of equality among all associations;
- The creation of a legal system that facilitates the establishment of international non-governmental organizations in Tunisia;
- The creation of a legal system for institutions serving the public interest in order to distinguish them legally from other types of institution.

To that end, five regional consultations were organized in various locations throughout the territory of the Republic.

281. As of 2017, the following penalties that have been handed down pursuant to Decree No. 88:

- A total of 974 administrative penalties (warnings), the issuance of which falls within the mandate of the General Secretariat for Government Affairs, in accordance with article 45 of Decree No. 88. Those warnings were as follows:
 - A total of 576 warnings relating to financial provisions;
 - A total of 198 warnings relating to suspicions of terrorist activity and money-laundering;
 - A total of 200 warnings relating to ordinary offences.
- A total of 279 judicial penalties (suspensions of activity) the issuance of which falls within the mandate of the President of the Court of First Instance in Tunis, as represented by a State attorney, in accordance with article 45, second paragraph, of Decree No. 88. Those penalties were as follows:
 - A total of 14 orders to suspend activity issued in connection with financial provisions;
 - A total of 133 orders to suspend activity issued in connection with suspicions of terrorist activity and money-laundering;
 - A total of 132 orders to suspend activity issued in connection with ordinary offences.
- A total of 152 judicial penalties (legal dissolutions), the issuance of which falls within the mandate of the Court of First Instance in Tunis, as represented by a State attorney, in accordance with article 45, third paragraph, of Decree No. 88. Those penalties were as follows:
 - A total of 105 legal dissolution orders issued in connection with suspicions of terrorist activity and money-laundering;
 - A total of 47 legal dissolution orders issued in connection with ordinary offences.

282. With regard to the allegations that certain demonstrations held in January 2018 were suppressed, it should be underscored that the protests were marred by rioting and acts of vandalism, theft and looting in which a number of public institutions and private shops and cars were targeted. Forty-nine security personnel and several security force buildings were attacked and 45 vehicles belonging to the security forces were damaged. The security units involved made every effort to demonstrate restraint and to deal with the protest movements, riots and public disturbances in accordance with the law. A total of 328 individuals arrested by the security units in connection with acts of vandalism, attacks on public property and the looting of shops were brought before the courts. Between 9 and 15 January 2018, 34 investigations were carried out in various regions and national security districts. Those investigations concluded that the response by the security forces to the peaceful protests and to the riots that had taken place had been highly professional and lawful.

283. It should be noted that, in order to respond to the wave of protests that took place, the following steps were taken:

- The organization of four dialogue sessions, on 11, 16, 24 January and 8 February 2018, at the headquarters of the Ministry of Human Rights. Those sessions were attended by a number of civil society actors active at the national and regional levels. Participants discussed public affairs, the issues that had led to the wave of protests and potential solutions to those issues.
- The submission of proposals to the Government relating, primarily, to the convening of an ongoing national dialogue involving public bodies and associations active in relevant areas. That dialogue would take the form of periodic sessions, to be held at various times throughout the year, and would culminate in the drafting by a steering committee of a six-party report to be submitted to the Prime Minister on the main concerns of relevant associations and proposed solutions to those concerns. The report would also include an in-depth review of any actions taken in that regard.

284. The report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, who visited Tunisia between 17 and 28 September 2018, will be presented at the forty-first session of the Human Rights Council.

14. Treatment of refugees, asylum seekers and displaced persons (arts. 6, 7, 12, 13, 14, 24 and 26)

285. Article 26 of the Constitution provides: “The right of political asylum shall be guaranteed as prescribe by law. It shall be prohibited to extradite persons who have been granted political asylum.”

286. Although Tunisia ratified the United Nations convention on international protection and its additional protocol in 1967, it has yet to establish a national legal framework governing asylum. All asylum procedures and requests are therefore considered by the Office of the United Nations High Commissioner for Refugees (UNHCR), in accordance the rules and criteria that it has established in that regard.

287. The Government has formulated a draft asylum act that provides for the establishment of a national committee to consider asylum requests. However, discussions are still taking place with other relevant stakeholders on the text of the draft act.

288. Nevertheless, Tunisia upholds its international obligations by offering protections to the aforementioned groups, and particularly their most vulnerable members. Several refugee camps have been established in Tunisia, which is working in partnership with relevant international bodies to enhance the services provided to those groups pending practical solutions to their situation.

289. In March 2019, the Minister for Relations with Constitutional Bodies, Civil Society and Human Rights Organizations visited the centre established for migrants, refugees and asylum seekers in the city of Medenine in order to appraise conditions at the centre. The numerous challenges and difficult conditions discovered during that visit led to the announcement that the centre would be closed immediately and steps taken in coordination with relevant international organizations to transfer individuals living at the centre to other locations, in coordination with relevant international organizations. The issue is currently being studied in coordination with UNHCR, the International Organization for Migration and relevant national and international organizations.

15. Participation in public affairs (art. 25)

15.1 Additional penalties and the right to vote and stand for election

290. Article 5 of the Criminal Code states that additional penalties include the deprivation of rights and privileges, including the right to vote. The judiciary does not therefore impose such penalties, unless this is specifically provided for by law.

291. Article 5 of the Organic Act No. 16 of 2014 stipulates that “all male and female Tunisians whose names are included in the voter list and who are at least 18 years of age on the day prior to the date of the ballot shall be eligible to vote. They shall enjoy their civil

and political rights and shall not be subject to any form of disenfranchisement provided for in this act.” Article 49 bis stipulates that all voters who hold Tunisian nationality are eligible to stand for election to municipal or regional assemblies and may not be subject to any form of legal disenfranchisement.

292. Organic Act No. 16 of 2014 provides for both optional and mandatory additional penalties.

293. With regard to mandatory additional penalties, article 163 of the Organic Act provides: “Subject to the provisions of article 80, if the Audit Court determines that candidates or candidate lists have obtained financial support from abroad for their electoral campaigns, they shall be subject to a fine of between ten and fifty times the foreign financial support received. Members of a foreign-funded list shall lose their membership of an elected council. A presidential candidate who benefits from funding from abroad shall be sentenced to a prison term of 5 years. An individual candidate or member of an electoral list convicted of receiving funds from abroad in support of an electoral campaign shall be prohibited from standing for election for a period of 5 years from the date of their conviction.”

294. As regards optional additional penalties, article 166 of the Organic Act stipulates: “In addition to the penalties provided in the aforementioned articles, an additional penalty of deprivation of the right to vote may be imposed for a period of between 2 and 6 years in respect of an individual who has committed an electoral offence for which he or she was sentenced to a prison term of at least 1 year.”

15.2 Steps taken to ensure that the 2019 elections are properly conducted

295. The Independent High Electoral Commission was established pursuant to Organic Act No. 32 of 2012,⁵³ article 2 of which provides that the Commission is an independent and permanent body that is responsible for ensuring democratic, free, pluralistic, fair and transparent elections and referendums. It also exercises regulatory powers in its area of competence.

296. The Organic Act provides that the High Electoral Commission, whose independence is guaranteed by law, is not subject to oversight by any executive or legislative authority. The nine members of its council are independent, impartial and competent in their field and must be approved by a qualified majority of at least two thirds of members of the Assembly of People’s Representatives.

297. The dates of the 2019 legislative and presidential elections have, for the first time since 2011, been set in accordance with electoral cycle enshrined in the Constitution. The organization of elections within constitutional timeframes is a prerequisite for the stability of the State and for ensuring the effective enjoyment of the right to vote, as enshrined in the Constitution and relevant international treaties.

298. The Independent High Electoral Commission has faced a number of challenges. Nonetheless, following the renewal of the mandate of one third of its members and the election of a new chairperson on 1 February 2019, it was able to exercise its mandate by establishing dates for legislative and presidential elections. On 6 March 2019, the Commission announced that legislative elections would be held on 6 October 2019 (and on 4, 5 and 6 October 2019 for Tunisian citizens abroad) and that presidential elections would be held on 17 November 2019 (and on 15, 16 and 17 November 2019 for Tunisian citizens abroad).

299. These elections present numerous challenges that relate, primarily to updating the voter list to include as many individuals as possible. The voter list currently includes 5,400,000 voters but an estimated 3,400,000 individuals have not yet been registered. The Independent High Electoral Commission is mandated to maintain a comprehensive, accurate and up-to-date register of voters to enable them to exercise their right to vote and

⁵³ Organic Act No. 32 of 2012 on the establishment of the Independent High Electoral Commission. Available at: <http://www.legislation.tn/sites/default/files/fraction-journal-officiel/2012/2012A/101/Ta2012231.pdf>.

is required to target all relevant groups, including, in particular, unregistered voters, a high percentage of whom are women and young people. Other key challenges relate to building confidence in the electoral process, ensuring the transparency and integrity of the electoral process, and raising awareness among citizens of the need to participate in elections, which is especially important given the low voter turnout registered in the 2018 municipal elections.

15.3 The legal framework governing the electoral calendar

300. Article 3 of Organic Act No. 32 of 2012 stipulates that the Independent High Electoral Commission shall take all steps related to the organization, administration and supervision of elections and referendums in accordance with the provisions of that Act and electoral laws. Article 12 of Organic Act No. 16 of 2014 stipulates that voter lists shall be managed in accordance with a timetable drawn up by the Commission, while articles 14, 15, 16, 17 and 18 establish deadlines for settling disputes arising in connection with voter lists. Article 21 stipulates that nominations to stand in legislative elections are to be submitted in accordance with a timetable and procedures established by the Commission, article 26 establishes deadlines for the submission of nominations, article 27 establishes procedures for appealing decisions in that regard, and article 32 regulates procedures for rejecting nominations and compensating candidates.

301. With regard to presidential elections, articles 46, 47, 48 and 49 of the Act establish procedures and deadlines for appeals, the announcement of accepted candidates and for dealing with situations involving the withdrawal or death of a candidate.

302. Article 50 (new) regulates the timeframes for organizing election campaigns, as well as the monitoring of those campaigns, while article 101 (new) establishes deadlines for publishing announcements of upcoming elections. Articles 145 and 146 establish time limits for announcing and appealing election results.

15.4 Horizontal and vertical parity

303. Article 49 (nine) of Organic Act No. 7 of 2017 stipulates: “Nominations for membership of municipal and regional assemblies shall be made on the basis of the principle of parity between women and men and the rule that lists must alternate between the names of men and women. Lists that do not comply with that rule are inadmissible. Nominations for membership of municipal and regional assemblies shall also be made on the basis of the principle of parity between women and men heading party and coalition lists if those parties or coalitions are running in more than one electoral district. Parties and coalition lists that do not comply with that rule are inadmissible unless they are regularized within the legally-prescribed deadline established by the Commission for that purpose, in accordance with the procedures set forth in article 49 (six) of the present Act.

304. Organic Act No 29 of 9 May 2018 promulgating the Local Government Code gives legal expression to Section VII of the Constitution, concerning local government. Article 44 of the Organic Act enshrines the principle of parity, while article 106 enshrines the principle of equality and equal opportunity for women and men. The legal framework established by that Act is in line with target 5.5 of the Sustainable Development Goals on ensuring women’s equal participation in public life and decision-making.

15.5 Participation of women in public life and decision-making

305. The presence of women in legislative assemblies has increased over the last four years. Beginning with 25 per cent of the National Constituent Assembly at the start of the parliamentary era in January 2012, women’s representation rose to 30.59 per cent by June 2014. That increase is due to the method of drawing up electoral lists from the beginning on the basis of vertical parity. Out of a total of 217 deputies in the National Constituent Assembly, 78 are women. In the elections held in October 2014, a further 78 women were

elected to the Assembly of People's Representatives, where they comprise 35.8 per cent of the Assembly's 216 members.⁵⁴

306. Since the cabinet reshuffle that took place in November 2018, women have comprised 10 per cent of the 40-member Tunisian Government, with four women appointed to ministerial posts and to a State secretary position.

307. Women comprise 37.8 of public sector employees and 35.8 per cent of qualified officials in the civil service, with men making up the remaining 64.2 per cent. Women account for the following percentages of qualified officials in the civil service:

- 25.0 per cent of general directors;
- 30.1 per cent of directors;
- 33.8 per cent of assistant directors;
- 40.2 per cent of department chiefs.

308. The presence of women in the judiciary has also increased significantly, and rose steadily from 32.4 per cent of staff in 2010 to 43.12 per cent in 2018. Between 1986 and 2018, women made up a growing percentage of those joining the judiciary, with their share of the total doubling from 32 per cent to 68.5 per cent during that period. At present, women comprise 55 per cent of first level judges, 23 per cent of second level judges and 22 per cent of third level judges within the ordinary judiciary. Nevertheless, the number of female judges in decision-making positions remains low and no woman has been appointed to any of the seven most senior judicial positions in Tunisia.

309. Within the administrative judiciary, the number of female judges increased from 39 in 2010 to 61 in 2016.

310. Within the financial judiciary, the number of female judges increased from 30 in 2010, equivalent to 30 per cent of all financial judiciary judges, to 79 in 2016, equivalent to 45.14 per cent.

311. The number of women serving on the judicial councils has increased from five members, including four female judges appointed to the Temporary Judicial Commission, to 19 members. These include 10 female judges who have been appointed to the Supreme Judicial Council. This is equivalent to an increase from 10.5 to 42.2 per cent of judicial council members.

312. Women in the military have also been appointed to senior positions in the military judiciary, including the position of First Assistant to the Under-Secretary of State for Military Justice, which was held by a woman between 2014 and 2016. Since 2016, a woman has held the position of Under-Secretary of State for Military Justice, the most senior position within the military judiciary, while another woman been appointed military attaché to a Tunisian embassy abroad. Other women have been appointed to various leadership positions in the armed forces.

313. A total of 3,385 women and 3,809 men have been elected to serve on municipal councils, comprising, respectively, 47.05 per cent and 52.95 per cent of the country's municipal councillors. A total of 573 women heading electoral lists were successfully elected in municipal elections, equivalent to 29.55 per cent of all heads of electoral lists.

314. Annex 30 provides information regarding the number of women employed in the private sector in 2018.

15.6 Measures taken to increase the participation of women in public life

315. Attention is drawn to the National Strategy for Gender Mainstreaming, which places particular emphasis on enhancing the participation of women in political life and in the management of public affairs, and to the national plan of action for the implementation of Security Council resolution 1315 (2000) on women, peace and security, which includes a section on the participation of women in political life, in the management of public affairs

⁵⁴ See the official website of the Assembly of People's Representatives.

and in decision making with a view to fostering peace, resolving conflicts and combating terrorism.

316. In April, the Prime Minister issued a circular stipulating that both a woman and a man must be nominated for every governmental, civil service and decision-making position.

317. A set of scientific indicators have been developed on the basis of these strategies and plans and the outcomes of a number of relevant field studies. These include a study on women in decision-making positions in the public sector,⁵⁵ which was carried out by the Office of the Prime Minister in cooperation with UN-Women, and studies carried out by the Centre for Research, Study, Documentation and Information on Women (CREDIF),⁵⁶ which has also created practical mechanisms in that area, the most important of which include:

- A monitoring and follow-up mechanism on “Tunisian women in administrative positions in the public sector”;
- The National Committee for Promoting Equal Opportunities for Women and Men in Local Governance;
- A database entitled “Who is she Tunisia?” which contains information on the professional skills of women that can be used by the media to raise awareness of the role of women in various fields.

318. CREDIF also organizes regular seminars and awareness-raising workshops for different groups of women and female members of political associations and parties. These have included a series of workshops, held in March 2018, to enhance women’s advocacy and lobbying skills with a view to supporting women in local governance and female candidates in municipal elections.

⁵⁵ Study on women in decision-making positions in the public sector. Available at: http://www.unu-tn.org/Publications/Documents/228_Presence_des_femmes_dans_la_fonction_publique_et_acces_au_x_postes_de_decision_en_Tunisie.

⁵⁶ For further information, see the website of the Centre: <http://www.credif.org.tn/>.