



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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COMMITTEE AGAINST TORTURE  
Forty-first session  
(3-21 November 2008)

**DECISION**

**Communication No. 291/2006**

*Submitted by:* Saadia Ali (represented by counsel)

*Alleged victim:* The complainant

*State party:* Tunisia

*Date of the complaint:* 2 March 2006 (initial submission)

*Date of present decision:* 21 November 2008

*Subject matter:* Torture and ill-treatment by police

*Substantive issues:* Systematic monitoring of interrogation rules and practices; custody and treatment of detainees and prisoners; impartial investigation whenever there are reasonable grounds for believing torture has taken place; right to complain to the relevant authorities; right to redress

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\* Made public by decision of the Committee against Torture.

*Procedural issues:*

Failure to exhaust domestic remedies; abuse of the right to submit complaints

*Articles of the Convention:*

Article 2, paragraph 1, in conjunction with article 1; article 16, paragraph 1; articles 11, 12, 13 and 14, separately or in conjunction with article 16, paragraph 1

**[ANNEX]**

**Annex**

**DECISION OF THE COMMITTEE AGAINST TORTURE UNDER  
ARTICLE 22 OF THE CONVENTION AGAINST TORTURE AND  
OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT  
OR PUNISHMENT**

**Forty-first session**

**concerning**

**Communication No. 291/2006**

*Submitted by:* Saadia Ali (represented by counsel)  
*Alleged victim:* The complainant  
*State party:* Tunisia  
*Date of the complaint:* 2 March 2006 (initial submission)

*The Committee against Torture*, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Meeting* on 21 November 2008,

*Having concluded* its consideration of complaint No. 291/2006, submitted to the Committee against Torture by Saadia Ali under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Having taken into account* all information made available to it by the complainant and the State party,

*Adopts* the following:

**Decision under article 22, paragraph 7, of the Convention against Torture**

1. The complainant is Ms. Saadia Ali, a French-Tunisian national born in 1957 and currently a resident of France. She claims to be a victim of violations of the following articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: article 2, paragraph 1, taken in conjunction with article 1, or, alternatively, article 16, paragraph 1; and articles 11, 12, 13 and 14, taken separately or in conjunction with article 16, paragraph 1. She is represented by counsel. The State party made the declaration under article 22 of the Convention on 23 October 1988.

**The facts as presented by the complainant**

2.1 The complainant was born in Tunisia and holds dual French and Tunisian nationality. Her usual place of residence is in France. On 22 July 2004, during a trip to Tunisia, the complainant

accompanied her brother to the court of first instance in Tunis, where he was to retrieve a document he needed for his forthcoming wedding. The official on the counter on the ground floor asked the complainant for the file number; she told him the number had been lost. The official told her she needed to open a new file, a procedure that would take three months. The complainant explained to him that the document was needed urgently for her brother's wedding, and asked him if he could not find the file by using her brother's name, date of birth and address to search for it. The official said he could not and, when she insisted, told her to let him get on with his work. She retorted that it was plain to see that he was not working and added, "If you want to know the truth, it's thanks to us that you are here". The official asked to see her papers and she gave him her French passport; he then asked her to follow him. The complainant followed him, telling him, "I hope you're not going to give me any problems. I know that Tunisia is a democratic country, unless it is just pretending to be one". At this point, her brother begged the official to excuse his sister for what she had said. The official told him nothing would happen to her.

2.2 The complainant followed the official to the office of the vice-president of the court, where a man began to question her. He asked her to confirm what she had said to the official, including the phrase "It's thanks to us that you are here", which she did. He then wrote something in Arabic on a piece of paper and asked her to sign it. As she did not understand what was written, she refused to sign it. The man called a plainclothes policeman and exchanged looks with him; the policeman asked the complainant to follow him. They went back down to the ground floor and along a corridor, where the complainant noticed that people seemed to be giving her worried looks, which deepened her unease. She tried to phone, using her mobile phone, Action by Christians for the Abolition of Torture (ACAT) in Paris, whose number she had. She managed to give her name and say that she was in Tunisia before the plainclothes policeman took her mobile phone and turned it off.

2.3 The complainant claims she asked him where they were going, but that he twisted her arm, out of sight of onlookers. Each time she protested, he increased the pressure. At that point she began to have serious worries about her safety. He took her down some stairs to the basement, to an entry hall where there was a desk and a guard, who snatched her bag from her. He made her go into a corridor where two women were sitting. The complainant asked where they were, to which one of the women replied in Arabic "*eloukouf*", adding, in French, that it meant "prison".

2.4 According to the complainant, another guard - a tall, beefy man with a big nose, fat lips and curly hair - came out of a door in the corridor and began punching and kicking the complainant. He swore at her as he continued to punch and kick her. The force of the blows forced the complainant further down the corridor, until she was outside cells containing about 50 handcuffed men. The guard ripped off her scarf and dress. The complainant was not wearing a bra and found herself half-naked. The guard hit her again and threw her to the floor. He took her by the hair and dragged her to an unlit cell, where he continued punching and kicking her on the head and body. The complainant huddled up and begged for mercy, screaming and in fear for her life. The guard pounded her on the head, back, buttocks, legs, knees and feet, all the while swearing at her and making threats against her family. She was already half-naked, and thought the guard was going to rape her. She was also fearful for the safety of her family in Tunis and

France, and thought she was going to die in the cell. She lost consciousness under the hail of blows. When she came to, she asked for a glass of water, but the guard refused to give her one.

2.5 The complainant adds that the guard made her leave the cell and left her beside the two women in the corridor, who tried to comfort her. The plainclothes policeman who had taken the complainant to the basement took her back to the ground floor, where she found herself in a room with him and a uniformed police officer. They laughed at her and insulted her and her Egyptian husband. The complainant wondered how they knew her husband was Egyptian, and began to fear for his safety. The plainclothes policeman took her to the stairs, which she recognized as the stairs that led down to the basement, whereupon she begged him not to take her down there, as she was afraid she would be beaten to death. He took her into an office where there were some women, one of whom introduced herself as a judge and asked her to confirm that she had said "It's thanks to us that you are here". The complainant did not reply, but started to cry. The judge told her she would be imprisoned for three months, and that that should teach her a lesson. She requested that her family be informed, but the judge refused. The plainclothes policeman spoke up for her, saying "I don't think she'll do it again". The judge asked the complainant to sign a document in Arabic, but she refused. The plainclothes policeman returned her bag and mobile phone, and asked her to check that everything was there. The complainant noticed that the ring she wanted to give her brother's fiancée was no longer in the bag. She tried to ask the policeman about it, but he immediately asked if she was accusing them of something. She said no, for fear of reprisals, and rushed out of the court. Later, she noticed that €700 were also missing.

2.6 The complainant states that the next day and the day after that, she went to the emergency clinic of Charles Nicolle hospital in Tunis for treatment. She obtained a medical certificate stating that she had been beaten on 23 July 2004, although the correct date was 22 July 2004.<sup>1</sup> She returned to France on 27 July 2004, and consulted a doctor in Paris on 30 July 2004. The medical examinations confirmed that she had been beaten and that her body was covered in bruises ("multiple ecchymoses: left arm, right foot, right buttock") and lesions ("contusions", "contusions on the right wrist"). She had received a severe blow to the head ("cranial trauma"), which had given her constant headaches ("cephalalgia") and had various swellings ("oedema"), and she would need two weeks to recover from her injuries barring complications.<sup>2</sup> The abuse and ill-treatment caused her severe trauma, as shown by, for example, a state of constant anxiety, serious sleep problems and significant loss of short-term memory.<sup>3</sup> This also led to

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<sup>1</sup> Attached to file.

<sup>2</sup> Medical certificate dated 30 July 2004 attached to file.

<sup>3</sup> The complainant also provides a statement from a human rights activist in Tunisia who says that she saw the complainant in August and that the bruises and marks were still clearly visible. The activist had learned of the complainant's questioning from ACAT on 22 July 2004 and had immediately contacted a representative of the French Ministry of Foreign Affairs in North Africa. The activist also posted an article on the Internet on 15 December 2004 to publicize the case.

family problems, and the complainant made several visits to a psychologist at the Centre Françoise Minkowska in Paris, as well as to a psychiatrist, who prescribed her anti-depressants available only on prescription.<sup>4</sup>

### **The complaint**

3.1 As far as the exhaustion of domestic remedies is concerned, the complainant claims to have contacted a lawyer in Tunis on the day after the events. The lawyer found out that she had been given a three-month suspended prison sentence for attacking an official. On 30 July 2004, the lawyer filed a complaint on behalf of the complainant, describing her detention and the abuse she had suffered at the hands of the security officers, classifying the abuse as torture.<sup>5</sup> He attached copies of the medical certificates to the complaint and asked the prosecutor to open a criminal investigation. The complaint implicated the president of the national security centre at the Palais de la Justice, the court of first instance and all those who would be accused during the investigation. The complaint was rejected by the office of the State prosecutor at the court of first instance, with no reasons given. It has not been possible to obtain any document or official court stamp attesting to the rejection.

3.2 The complainant claims she tried unsuccessfully to pursue the domestic remedies available under Tunisian law. She maintains that there are no effective remedies available in Tunisia for torture victims; the rejection of the complainant's complaint is not an isolated case, as has been documented by several non-governmental organizations: "Many citizens encounter enormous difficulties in trying to file a complaint against police officers who have used violence against them. A complaint filed at a police station or office of the State prosecutor is rejected and sometimes the accused officer is in charge of the investigation."<sup>6</sup> Such practices are contrary to internationally recognized standards on the administration of justice and, in particular, on the work of prosecutors.<sup>7</sup> They are also contrary to articles 25 and 26 of the State party's Code of

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<sup>4</sup> Attached to file.

<sup>5</sup> Complaint attached to file, with a translation into French. It also lists the objects not returned to the complainant after she was abused.

<sup>6</sup> See the attached 2001 report by the National Council of Liberties in Tunisia and the Tunisian League of Human Rights. See also the other reports mentioned by the complainant, including those by Amnesty International, the World Organization against Torture, the International Federation of Human Rights Leagues, the International Commission of Jurists, Human Rights First and Human Rights Watch. See also the press release issued on 16 November 2005 by several United Nations experts concerned with the situation in Tunisia, on freedom of expression and assembly and the independence of the judiciary.

<sup>7</sup> Counsel refers to the summary record of the first part (public) of the 358th meeting of the Committee against Torture, held on 18 November 1998 (CAT/C/SR.358, para. 23), and the Guidelines on the Role of Prosecutors adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, Cuba, 27 August-7 September 1990).

Criminal Procedure, which stipulate that the State prosecutor represents the public prosecutor's office at the court of first instance and is responsible for "recording all offences and receiving all reports sent to it by public officials or private individuals, as well as complaints from injured parties" (art. 26). The refusal to register a complaint is the consequence and proof of the arbitrary exercise of the functions of the prosecutor. As this practice is common and widespread with regard to the victims of torture and cruel, inhuman or degrading treatment at the hands of the police and other security forces in the State party, the remedies provided for by law cannot be considered effective and available.

3.3 According to the complainant, in addition to the usual criminal prosecution by the authorities, the victim of a crime can initiate criminal proceedings by becoming a party to the prosecution. However, the legal system governing this procedure renders it a sham. Article 36 of the Code of Criminal Procedure permits the injured party to start criminal proceedings by initiating the prosecution if the prosecutor has dropped the case. However, if the prosecutor takes no decision either to drop or pursue the case, the victim cannot initiate proceedings of his or her own accord. The Committee has considered that such a failure to act on the part of the prosecutor poses an insurmountable obstacle to the use of this legal procedure, as it makes it highly unlikely that the criminal proceedings initiated by the civil party will bring relief to the victim.<sup>8</sup> In the present case, in which registration of the complaint was refused, it was impossible for the prosecutor to take a decision. Consequently, according to the complainant, it must be concluded that the rejection of the complaint constitutes an insurmountable obstacle to the initiation by the complainant of criminal proceedings.

3.4 The complainant explains that, under article 45 of the Code of Criminal Procedure, any person who becomes a civil party to the prosecution is liable under civil and criminal law towards the accused if the case is dropped. As the criteria for terminating proceedings are not clearly defined, and any decision to do so is subject to external pressures, this provision exposes the complainant to serious risks of punishment. The complainant notes that the Committee has already expressed concern that this provision may in itself constitute a violation of article 13 of the Convention, as the conditions for filing a complaint could be seen as "intimidating a potential complainant".<sup>9</sup> In the light of the risks posed by this procedure, it cannot be considered either effective or accessible.

3.5 According to the complainant, the civil action referred to in article 7 of the Code of Criminal Procedure is entirely dependent on the criminal proceedings, in that it must be associated with criminal proceedings or must be brought after a conviction has been handed down by the criminal courts. In the present case, the complaint by the complainant was rejected. The criminal proceedings were not instigated because the complaint was rejected by the office of the prosecutor, who neither dropped the case nor opened an investigation into it, rendering access to a civil remedy impossible.

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<sup>8</sup> Communication No. 207/2002, *Dragan Dimitrijevic v. Serbia and Montenegro*, Views adopted on 24 November 2004, para. 5.4.

<sup>9</sup> Summary record of the first part (public) of the 358th meeting of the Committee against Torture, held on 18 November 1998 (CAT/C/SR.358, para. 29).

3.6 According to the complainant, the general climate of impunity for the perpetrators of torture and the judiciary's lack of independence in Tunisia render any remedy ineffective.<sup>10</sup> The complainant was the victim of arbitrariness in the Tunisian legal system, in that she was sentenced to a term of imprisonment following a summary trial without due process. There was no investigation into the facts in the case, she was not told what she was being charged with, she had no access to a lawyer and there was no prosecutor at the trial.<sup>11</sup> The judge did not take into account the violence inflicted on the complainant, even though she appeared before her in an extremely fragile and disturbed state.<sup>12</sup> The penalty imposed was disproportionate and the complainant was not formally notified of her conviction: all she had done was to criticize an official for careless behaviour, but her words were taken as an attack.<sup>13</sup> After sentencing her to three months' imprisonment, the judge reduced the sentence after the plainclothes policeman intervened, since the complainant would not "do it again". This interference in the administration of justice is evidence of the lack of separation of the judicial and executive powers.

3.7 In conclusion, the complainant alleges that Tunisian legislation theoretically provides remedies for individuals in situations like hers, but in practice they are futile and inadequate. Accordingly, the complainant had no access to a domestic remedy that could be expected to give her any relief. The requirements of article 22 of the Convention have therefore been met and the complaint is admissible.

3.8 The complainant claims that, with regard to the alleged violation of articles 1 and 2 taken together, the State party failed in its duty to take effective measures to prevent acts of torture and used its own security forces to submit the complainant to acts comparable to acts of torture. The aim was to punish and intimidate her because of what she had said to the official. The abuse to which the complainant was subjected was, in her view, comparable in its gravity to that in other

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<sup>10</sup> See footnote 6 above.

<sup>11</sup> According to counsel, this violates article 141 of the Code of Criminal Procedure ("the assistance of a counsel for the defence is compulsory in the court of first instance ... when it is ruling on a criminal offence ... if the accused does not select a counsel, the president of the court will appoint one of his own accord"), as well as principles 10, 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173 of 9 December 1988. See also general comment No. 20 of the Human Rights Committee, para. 11.

<sup>12</sup> Counsel refers to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, of the Council of Europe, which requires the judge to take appropriate steps if there are any signs of ill-treatment (CPT Standards, CPT/Inf/E (2002) 1, para. 45).

<sup>13</sup> Counsel refers to communication No. 1189/2003, *Fernando v. Sri Lanka*, Views adopted on 31 March 2005, in which the Human Rights Committee found that there had been a violation by the State party of article 9 of the Covenant in that the author had been sentenced to one year of rigorous imprisonment for raising his voice in court and refusing to apologize.

cases in which the Committee considered that such abuse constituted acts of torture.<sup>14</sup> The complainant was also subjected to objectively credible threats that she and members of her family would be raped and to insults and obscenities that caused mental suffering which itself amounted to a form of torture.<sup>15</sup> The circumstances and unfolding of events, as well as the insults, leave no doubt that the intention was to trigger feelings of humiliation and inferiority.<sup>16</sup> The complainant was stripped by force by a person of the opposite sex in the presence of many other persons of the opposite sex. Tearing off her clothes could not be justified by security concerns: it was intended specifically to humiliate her. It also indicates a departure from the Standard Minimum Rules for the Treatment of Prisoners, article 8 (a) of which requires institutions that receive both men and women to keep the whole of the premises allocated to women entirely separate.

3.9 According to the complainant, it is clear that this abuse was inflicted by public officials, as required by article 1 of the Convention, as it was committed by civil servants and members of the forces of law and order acting in that capacity. Moreover, this physical abuse was intentionally inflicted with the aim of punishing her for her remarks to an official. The various officials before whom the complainant was brought questioned her solely about those remarks, and the judge sentenced her on the basis of those remarks.

3.10 According to the complainant, the State party also failed in its obligation to take effective legislative, administrative, judicial or other measures to prevent acts of torture. For over 10 years, international human rights treaty-monitoring bodies have been expressing concern about the widespread use of torture and have made recommendations to get the State party to

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<sup>14</sup> Counsel refers to communication No. 207/2002, *Dragan Dimitrijevic v. Serbia and Montenegro, cit.* (a young detainee not charged with any offence beaten repeatedly by police officers in a police station), and communication No. 49/1996, *S.V. et al. v. Canada*, Views adopted on 15 May 2001 (complainant brutally assaulted by soldiers and beaten about the head until he lost consciousness).

<sup>15</sup> Counsel refers to the report of the Special Rapporteur on the question of torture contained in document A/56/156: "It is the Special Rapporteur's opinion that serious and credible threats, including death threats, to the physical integrity of the victim or a third person can amount to cruel, inhuman or degrading treatment or even to torture, especially when the victim remains in the hands of law enforcement officials" (para. 8).

<sup>16</sup> Counsel refers to the case law of the European Court of Human Rights, which has considered that, in order to establish whether treatment is degrading, it is necessary to determine whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with article 3 of the European Convention on Human Rights. The Court concluded that obliging a person to strip naked in the presence of a person of the opposite sex shows a clear lack of respect for the individual concerned, who is subjected to a genuine assault on his or her dignity (see *Valašinas v. Lithuania*, application No. 44558/98, ECHR 2001-VIII, and *Iwańczuk v. Poland*, application No. 25196/94, 15 November 2001).

take effective measures to curb this practice.<sup>17</sup> According to the complainant, acts of torture and ill-treatment continue to take place and the Committee has mentioned several provisions of the State party's legal system that are not applied in practice, including the 10-day maximum period for pretrial detention and the obligation to have a medical examination carried out when there are allegations of torture.<sup>18</sup> The constant denial of these allegations by the State party contributes to a climate of impunity for those responsible and encourages the continuation of the practices in question. It follows that the State party has violated article 2, paragraph 1, read in conjunction with article 1.

3.11 With regard to the alleged violation of article 11, the complainant claims that the acts of torture to which she was subjected were not an isolated incident or mistake. According to her, the widespread use of torture by the Tunisian security forces has been widely documented, but the serious concerns expressed by the Committee and other treaty bodies<sup>19</sup> about practices affecting detainees do not seem to have led to a review of the standards and methods that could put an end to such abuse. According to the complainant, the gap between the law and practice in Tunisia indicates that the State party is not keeping under systematic review interrogation rules, instructions, methods and practices with a view to preventing any cases of torture. The State party is thereby in breach of article 11, taken either on its own or in conjunction with article 16, paragraph 1.

3.12 The complainant goes on to claim, in respect of the alleged violation of article 12, that the Committee's jurisprudence on cases of torture and ill-treatment has elaborated on the obligation to carry out an investigation whenever there is reasonable ground to believe that an act of torture has been committed.<sup>20</sup> This obligation exists whatever the grounds for the suspicions. The complainant notes that the Committee has considered that allegations of torture are of such seriousness that a State party has an obligation to proceed automatically to a prompt and impartial investigation as soon as there is reasonable ground to believe that an act of torture has been committed.<sup>21</sup> In cases involving allegations of torture, it is not even necessary to submit a formal complaint. It is sufficient for the victim to bring the facts to the attention of the authorities

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<sup>17</sup> See footnote 6.

<sup>18</sup> Concluding observations of the Committee against Torture, A/54/44 (1999), paras. 97 and 98. Counsel points out that these concerns were referred to by the Human Rights Committee in its concluding observations on Tunisia's report in 1995 (A/50/40 (1995)).

<sup>19</sup> Including those expressed by the Committee against Torture and the Human Rights Committee after their consideration of the State party's reports.

<sup>20</sup> Counsel refers to communications No. 187/2001, *Dhaou Belgacem Thabti v. Tunisia*, Views adopted on 14 November 2003, para. 10.4; No. 60/1996, *Baraket v. Tunisia*, Views adopted on 10 November 1999, para. 11.7; and No. 59/1996, *Encarnación Blanco Abad v. Spain*, Views adopted on 14 May 1998, para. 8.6.

<sup>21</sup> Communication No. 187/2001, *Dhaou Belgacem Thabti v. Tunisia*, Views adopted on 14 November 2003, para. 10.4.

to place them under an obligation promptly to investigate the allegation.<sup>22</sup> In the present case, the complainant was so upset when she appeared before a judge that her appearance suggested she had been abused. She subsequently gave a lawyer instructions to submit a complaint on her behalf, describing the incidents and expressly classing them as torture. Two articles on the brutal treatment inflicted on the complainant were also disseminated. In the complainant's view, the State party deliberately refused to take any measure that might throw some light on the accusations being made, which amounts to an aggravated violation of the obligation to conduct an investigation under article 12, taken either on its own or in conjunction with article 16, paragraph 1.

3.13 In respect of her allegation under article 13, the complainant notes that the Committee has established that it is sufficient for the victim simply to formulate an allegation of torture to oblige the authorities to investigate the allegation. Neither a formal complaint nor an express statement of intent to institute criminal proceedings is required.<sup>23</sup> In the present case, the State party deprived the complainant of any remedy that might have led to ascertaining the facts and setting compensation.

3.14 The complainant claims that she is the victim of a violation of article 14. According to her, the State party denied her right to obtain redress and the means for full rehabilitation, as it prevented her from making use of the legal channels for this purpose. The international courts have consistently held that allegations of torture made against the authorities of a State party are of such seriousness that a civil action alone cannot provide adequate redress.<sup>24</sup> Full redress comprises compensation for harm suffered and an obligation on the State party to establish the facts related to the allegations and to punish the perpetrators of the violations.<sup>25</sup> By not following

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<sup>22</sup> Communication No. 6/1990, *Henri Unai Parot v. Spain*, Views adopted on 2 May 1995, para. 10.4.

<sup>23</sup> Communications No. 59/1996, *Encarnación Blanco Abad v. Spain*, cit., para. 8.6; No. 113/1998, *Ristic v. Yugoslavia*, Views adopted on 11 May 2001, paras. 9.6-9.8; and No. 6/1990, *Henri Unai Parot v. Spain*, cit., para. 10.4.

<sup>24</sup> Counsel refers to the jurisprudence of the Human Rights Committee (communications No. 563/1993, *Nydia Erika Bautista de Arellana v. Colombia*, Views adopted on 27 October 1995, para. 8.2; and No. 778/1997, *José Antonio Coronel et al. v. Colombia*, Views adopted on 24 October 2002, para. 6.2) and of the European Court of Human Rights (*Assenov et al. v. Bulgaria*, Judgment of 28 October 1998, *Reports of Judgments and Decisions, 1998-VIII*; *Aydin v. Turkey*, Judgment of 25 September 1997, *Reports of Judgments and Decisions, 1997-VI*; and *Aksoy v. Turkey*, Judgment of 18 December 1996, *Reports of Judgments and Decisions, 1996-VI*).

<sup>25</sup> Counsel refers to the jurisprudence of the Human Rights Committee (communications No. 749/1997, *McTaggart v. Jamaica*, Views adopted on 31 March 1998, para. 10; No. 540/1993, *Ana Rosario Celis Laureano v. Peru*, Views adopted on 25 March 1996, para. 10; and No. 84/1981, *Barbata et al. v. Uruguay*, Views adopted on 21 October 1982, para. 11).

up on the complainant's complaint, and by not proceeding with any kind of public investigation, the State party deprived her of the most basic and most important form of redress, in violation of article 14.

3.15 According to the complainant, with regard to compensation, even if this constituted sufficient redress for victims of torture, she was denied access to it. The civil actions theoretically available to her were in practice inaccessible. Tunisian law permits the complainant to undertake a civil action where no criminal proceedings have been initiated, but the complainant must waive the right to pursue any criminal proceedings (Code of Criminal Procedure, art. 7). Even supposing that the complainant could win the case without the benefit of criminal proceedings, this limited form of redress would be neither fair nor adequate. If the State party was permitted to provide purely financial compensation to the complainant or other victims of torture and thereby claim to have fulfilled its obligations in this respect, that would amount to accepting that the State party is entitled to evade its responsibility in exchange for a certain sum of money. The complainant has not received the means for her rehabilitation, while the abuse inflicted on her has left deep psychological scars. Nor has she been able to obtain compensation for the property taken from her during her detention. In the light of all these points, the State party has deprived the complainant of fair and adequate compensation or redress of any kind, in violation of article 14, taken either on its own or in conjunction with article 16, paragraph 1.<sup>26</sup>

3.16 The complainant considers that, with regard to the alleged violation of article 16, the serious abuse inflicted on her was tantamount to torture. If, however, this interpretation is not accepted, it is maintained that such treatment constituted cruel, inhuman or degrading treatment within the meaning of article 16.

3.17 In conclusion, the complainant asks the Committee to recommend that the State party take the necessary measures to conduct a full investigation into the circumstances surrounding the torture in her case, to communicate the outcome of the investigation to her and to take appropriate measures to bring those responsible to justice. She also asks the Committee to recommend that the State party take the necessary measures to ensure that she receives adequate and full redress for the harm suffered, including the cost of the medical care needed for her rehabilitation and the value of the property taken from her.

#### **State party's observations on admissibility and complainant's comments**

4. On 12 December 2006, the State party informed the Committee that the complaint in question, registered as case No. 5873/4, was the subject of a judicial investigation at the Tunis court of first instance. The investigation is taking its course.

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<sup>26</sup> Counsel refers to communication No. 161/2000, in which the Committee considered that, even though article 16, paragraph 1, makes no mention of article 14 of the Convention, the State party nevertheless has an obligation to grant redress and fair and adequate compensation to the victim of an act in breach of article 16 of the Convention (*Herrera v. Colombia*, Views adopted on 2 November 1987, para. 9.6).

5. On 9 February 2007, counsel for the complainant said that, despite having had nine months in which to reply to the complainant's allegations, the State party had addressed neither the admissibility nor the merits of the communication. As far as admissibility was concerned, the State party simply stated that the complainant's case was the subject of an internal judicial procedure without producing any evidence or details of the existence of such a procedure - such as judicial or procedural files or other official documents - or even indicating the type and nature of the procedure or whether the procedure was likely to result in a legal remedy that might satisfy the requirements of the Convention, in accordance with rule 109 (9) of the Committee's rules of procedure.<sup>27</sup> Moreover, the State party made no comment on the merits of the case.

#### **Additional observations by the State party**

6.1 With regard to the admissibility of the complaint, on 30 March 2007 the State party indicated that all necessary measures had been taken, at the current stage of the procedure, to enable the complainant to substantiate the claims in her complaint. As soon as the Tunisian authorities had been notified by the Committee of the complainant's communication, the Ministry of Justice and Human Rights, acting in accordance with article 23 of the Code of Criminal Procedure, referred the matter to the State prosecutor of the Tunis court of first instance. The preliminary inquiries were conducted by the Tunis prosecution service, which undertook the necessary investigations: the evidence collected was insufficient to justify a prosecution and the prosecution service decided on 27 June 2006 to open a preliminary judicial investigation, and ordered an investigating judge to investigate the incidents that are the subject of the complaint, including the circumstances of the arrest of the complainant on 22 July 2004 and the alleged incidents in relation thereto. The case was registered with the investigating judge as case No. 5873/4.<sup>28</sup> According to information received from the public prosecutor's office, the investigating judge proceeded to hear several witnesses and question individuals implicated by the complainant, and also seized documents that could be used as evidence. The matter is taking its course in accordance with the law pending completion of the investigation.

6.2 In its desire not to interfere in a matter that falls under the jurisdiction of the courts and not to influence the normal course of the investigation, the State party explains that it has refrained from submitting, at this stage of the procedure, any comments on the merits of the case, which would be contrary to the universally accepted principle of non-disclosure of the confidential findings of an investigation. The State party has restricted itself to the above-mentioned points pending the conclusion of the investigation, which, at this late stage of the procedure, should be completed shortly.

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<sup>27</sup> "... the State party is required to give details of the effective remedies available to the alleged victim in the particular circumstances of the case ...".

<sup>28</sup> The State party attaches a registration certificate and an unofficial translation into French: "The registrar responsible for the fourth investigations office of the court of first instance in Tunis hereby certifies that the case registered as No. 5873/4, concerning the investigation of an unknown person in accordance with article 31 of the Code of Criminal Procedure, for the purposes of determining the circumstances of the arrest of Ms. Saadia Ben Ali on 22 July 2004 and the alleged events in relation thereto, is still under investigation."

6.3 The State party notes that the opening of a judicial investigation is a legal remedy that satisfies the requirements of the Convention, in accordance with rule 109 of the Committee's rules of procedure. Once the judicial investigation has been opened, the investigating judge in charge of the case proceeds, in accordance with article 53 of the Code of Criminal Procedure, to hear the complainant, collect statements from witnesses, question suspects, visit the scene where necessary to make the usual observations, seize objects that could be used as evidence, order expert reports where necessary and take all necessary steps to establish the truth, considering evidence that both incriminates and exonerates the suspect.

6.4 According to the State party, complainants can also become a party to the prosecution by presenting themselves to the investigating judge conducting the investigation: this enables the complainant to follow the procedure as it takes its course, to submit conclusions where necessary and to appeal against the decisions of the investigating judge. Once the investigation is concluded, the investigating judge issues an order containing one of the following findings: (a) that there are no grounds for prosecution, including if the judge thinks that criminal proceedings are not in order, that the acts concerned do not constitute an offence or that there is insufficient evidence against the accused; (b) that the accused should be referred to the appropriate court, including if it is established that they committed the acts of which they are accused, and which are classed as offences or misdemeanours by law; or (c) that the accused should be referred to the indictments chamber, where the acts that have been proved constitute a criminal offence.

6.5 The State party explains that orders are communicated to the civil party, who may, within four days of notification, lodge an appeal against any order that adversely affects his or her interests. The appeal takes the form of a written or oral statement and is received by the registrar of the investigations office. The indictments chamber rules on the appeal; its decisions are enforceable with immediate effect. If the indictments chamber finds that the acts do not constitute an offence or that there is insufficient evidence against the accused, it discharges the accused. If, on the other hand, there are sufficient indications of guilt, it refers the accused to the appropriate court - in this case, the criminal court or the criminal section of the court of first instance. The indictments chamber can also order a further investigation, entrusting it either to one of its judges or to the investigating judge. It can also, under its power to raise issues, order new proceedings and investigate or order an investigation into acts that have not yet been investigated. Once notice of the decision has been served, the civil party can launch an appeal on points of law against a decision of the indictments chamber in the following cases: when the chamber orders the discharge of the accused; when it declares the civil action inadmissible; when it declares the criminal prosecution time-barred; when it finds, either of its own motion or in response to objections by the parties concerned, that the court to which the case was referred did not have jurisdiction; or when it fails to rule on one of the counts.

6.6 The State party argues that the complainant may also, if it is established that he or she has suffered injury as a direct result of an offence, pursue a claim for damages in civil proceedings. These proceedings can be held simultaneously with the criminal prosecution or separately, in a civil court, as set out in article 7 of the Code of Criminal Procedure. Civil proceedings in criminal courts are initiated by becoming a party to the prosecution; when pursued through the

trial court, they are aimed at obtaining compensation for harm suffered. A person can become a civil party to a criminal prosecution by submitting a written request, signed by the plaintiff or his or her representative, to the court handling the case. The court considers the admissibility of the application to become a civil party and, where appropriate, declares it admissible. The court concerned joins the application to the merits, and rules on both in a single judgement. However, when the civil party is acting as the principal, the court issues an immediate ruling on the application.

6.7 In conclusion, the State party considers that the present communication is inadmissible under article 22 of the Convention, given that it has been established that the available domestic remedies have not been exhausted. The remedies recognized by Tunisian legislation to all plaintiffs are effective and enable them to substantiate the claims that are the subject of their complaint in a satisfactory manner. Consequently, the submission of the complaint by the complainant to the Committee is unjustified.

### **Complainant's comments on the State party's observations**

7.1 On 23 April 2007, the complainant wrote that the launch of an investigation by the Tunisian authorities solely as a result of the communication submitted to the Committee constitutes further irrefutable evidence of the ineffectiveness and futility of domestic remedies in Tunisia. The incident at the origin of the complaint took place on 22 July 2004 and the complainant immediately took steps to have her representative file a complaint with the appropriate authorities on 30 July 2004. Referring to the initial communication, the complainant reiterates that the Tunisian authorities refused to investigate her complaint or even to accept that it should be examined. The Tunisian judicial system offers no remedies to the victims of torture and ill-treatment, and it is therefore futile to attempt to exhaust them. The fact that the Tunisian authorities took no action for 23 months after the complaint was submitted, and that they then, as they have admitted, launched an investigation solely because the complaint had been submitted to the Committee, provides further evidence of the futility of attempting to exhaust domestic remedies in Tunisia. The action taken by the State party in response to her complaint is symptomatic of the tactics used by the State party to discourage complainants and to prevent their cases from reaching the Committee, and does not reflect a genuine desire to investigate and prosecute officials of the State party.

7.2 The application of remedies in Tunisia is, according to the complainant, unreasonably prolonged, given that the State party waited 23 months before launching an investigation which is still in its preliminary phase, that is, in the phase where evidence is collected. No charges have yet been laid, still less have any proceedings been initiated. Even supposing that the investigation would be conducted in good faith and lead to the prosecution of the perpetrators, it could reasonably be expected that the proceedings would be very long, and perhaps drawn out over several years. Given the delay of 23 months before the investigation was even opened, these facts support the conclusion that the application of domestic remedies is unreasonably prolonged. The complainant draws attention to the jurisprudence of the Human Rights Committee, which concluded that "a delay of over three years for the adjudication of the case at first instance, discounting the availability of subsequent appeals, was 'unreasonably prolonged' within the

meaning of article 5, paragraph 2 (b), of the Optional Protocol”.<sup>29</sup> In the present case, it is certain that this three-year limit set by the Human Rights Committee will be exceeded, since the investigation by the Tunisian authorities is still in its preliminary phase. The complainant reiterates that the State party’s failure to launch an investigation for 23 months constitutes a violation of article 12 of the Convention.<sup>30</sup>

7.3 According to the complainant, given the persistent refusal by the State party to comment on the merits of the complaint, the Committee should base its decision on the facts as she describes them. The Human Rights Committee and the Committee against Torture have consistently maintained that due weight must be given to a complainant’s allegations if the State party fails to provide any contradictory evidence or explanation.<sup>31</sup> The complainant reiterates that, in her case, the State party has not expressed any view on the merits; the complainant, however, has correctly proceeded to substantiate her allegations with a number of documents, including copies of her medical records, her complaint to the Tunisian judicial authorities, witness statements and a large amount of supplementary documentation. She considers therefore that the Committee should base its decision on the facts as described by her. As to the State party’s claim that it cannot comment on the merits of the complaint as long as the internal investigation is ongoing, the complainant argues that responsibility for both the delay in instigating the internal procedure and the delay pending its conclusion lies with the State party, as it did not take any action for two years and finally acted only when her complaint was submitted to the Committee. The unreasonable delay in the internal procedure as a result of the State party’s failure to act should not detract from the complainant’s case to the Committee. To allow it to do so would be to do wrong both to the complainant and to the cause of justice.

7.4 According to the complainant, the State party has not been able to demonstrate that remedies are effectively available to victims in Tunisia. She points out that, under the rules of international law, the Committee considers “effective” only those remedies available to the victim not only in theory but also in practice.<sup>32</sup> She argues that the judicial system in Tunisia is not independent and the courts generally endorse the Government’s decisions. In situations where it has been clearly demonstrated that access to the courts is denied to individuals like the complainant, the burden of proof is on the State party to prove the contrary. In the present case,

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<sup>29</sup> Communication No. 336/1988, *Fillastre and Bizouarn v. Bolivia*, Views adopted on 5 November 1991, para. 5.2.

<sup>30</sup> Communication No. 8/1991, *Halimi-Nedzibi v. Austria*, Views adopted on 18 November 1993.

<sup>31</sup> The complainant refers to the Views of the Human Rights Committee on the following communications: No. 1353/2005, *Njaru v. Cameroon*, Views adopted on 19 March 2007; No. 1208/2003, *Kurbonov v. Tajikistan*, Views adopted on 16 March 2006; and No. 760/1997, *Diergaardt et al. v. Namibia*, Views adopted on 25 July 2000.

<sup>32</sup> The complainant refers to the jurisprudence of the Human Rights Committee (communication No. 147/1983, *Arzuada Gilboa v. Uruguay*, Views adopted on 1 November 1985).

the State party has not met this burden of proof because it has merely described the theoretical availability of remedies without contradicting any of the numerous pieces of evidence provided by the complainant to show that these remedies are not available in practice.<sup>33</sup>

**Additional observations by the State party and additional comments by the complainant**

8.1 On 27 April 2007, regarding the complaint that the complainant claims to have filed on 30 July 2004 through her representative, the State party maintained that the file contains no credible evidence confirming her allegations. The rules of evidence exclude the attribution of evidentiary weight to certificates and documents drawn up on the complainant's own behalf. Consultation of the complaints register, the IT database and registered mail of the office of the Tunis prosecution service shows no record of the filing of the complaint. The prosecution service's alleged refusal to receive the complaint would in no way have prevented the complainant from filing the complaint by any means that would leave a written record.

8.2 On 2 May 2007, the complainant pointed out that the submission of a written affidavit constitutes a generally accepted form of evidence. She reiterated her previous arguments and said that the State party was deliberately refraining from recording complaints of official misconduct.

**Additional observations by the State party and additional comments by the complainant**

9.1 On 31 July 2007, the State party said that Tunisian legislation provides for severe penalties against perpetrators of torture and ill-treatment. Numerous examples demonstrate that recourse to the Tunisian courts in similar cases has been not only possible but also effective. The Tunisian courts have reached decisions in dozens of cases concerning law enforcement officials on various charges. The sentences handed down have ranged from fines to up to 10 years' unsuspended imprisonment. Provisions are in place for disciplinary measures against law enforcement officials, and they may also be brought before the disciplinary council of the Ministry of the Interior and Local Development. Statistics published by the ministries concerned prove that no pressure or intimidation is used to prevent victims from filing complaints, and that there is no impunity.

9.2 The State party points out that the complainant's case remains under examination, and domestic remedies have therefore not been exhausted. The State party points out that it has consistently provided the Committee with all available information on the question, as well as on the preliminary investigation conducted by the Tunis prosecution service and the preparatory examination assigned to one of the investigating judges of the Tunis court of first instance (case No. 5873/4). On 8 May 2007, the investigating judge communicated the whole procedure to the public prosecutor, after having heard several witnesses, questioned the persons accused by the complainant and seized documents that could constitute evidence. Pursuant to article 104 of

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<sup>33</sup> The complainant refers to her initial communication, as well as the chapter on Tunisia in the *World Report 2007* by Human Rights Watch, in which it is stated that: "Prosecutors and judges usually turn a blind eye to torture allegations, even when the subject of formal complaints submitted by lawyers."

the Code of Criminal Procedure, the prosecutor set out written petitions for further investigations, including a summons sent to the complainant at her current residence in France. The investigating judge therefore undertook further measures by ordering, on 29 June 2007, an international letter of request to transmit a summons to the complainant in France, for her to present herself before the judge on 14 August 2007. The case is still under way. The State party requests the Committee to defer its decision on the merits pending the completion of the investigation.

10. On 30 August 2007, the complainant said that the State party had adduced no new argument. Regarding the State party's contesting the lack of effective remedy in Tunisia, the complainant notes that the State has not furnished any evidence in support of its allegations. The complainant contests the State party's affirmation that the case is still under way, since she has not received any communication on that subject. If there had been any developments in the State party, she would have been informed by her Tunisian lawyer, who confirms that he is not aware of any new development and has not been contacted by the Tunisian authorities in this case. Consequently, the State party's claims that there have been developments in the national proceedings must also be considered as completely unfounded.

#### **Additional observations by the State party**

11.1 On 25 October 2007, the State party presented copies of judgements that provide irrefutable proof that the Tunisian judicial authorities do not hesitate to prosecute cases of abuse of power by law enforcement agents, particularly acts of violence and ill-treatment, and to impose severe penalties if they are found guilty. Since criminal proceedings are without prejudice to the authorities' right to initiate disciplinary proceedings against officials, on the principle that criminal and disciplinary offences may be tried separately, the perpetrators of such offences are also generally subjected to disciplinary measures resulting in dismissal. The State party also lists cases brought against police and prison officers and officers of the National Guard in the Tunisian courts between 2000 and 2006. The State party states that it has always endeavoured to set up the necessary mechanisms to protect human rights, particularly monitoring and inspection mechanisms, while facilitating access to justice. In addition, human rights training courses for law enforcement agents have been introduced. This information shows that domestic remedies are effective and efficient. The State party points out that judicial proceedings are under way and that exhaustion of domestic remedies is a fundamental principle of international law. It requests the Committee to defer its decision for a reasonable period to allow the domestic courts to fully investigate the events referred to in the complaint. The complainant's persistence compels the State party to reveal some elements of the case that raise questions as to the complainant's credibility.

11.2 Firstly, the State party notes that the medical certificate corresponding to the complainant's visit to Charles Nicole hospital is dated 24 July 2004 and refers to events that occurred on 23 July 2004, whereas her complaint states that she went to the hospital the day after the alleged events, that is, 23 July 2004. This double contradiction of the facts as reported by the complainant herself is such that it eliminates any causal link between the injuries she alleges and her appearance at the court of first instance in Tunis. Secondly, according to a statement by one of the complainant's fellow detainees, taken by the investigating judge, the complainant had tried to bribe her, offering her money to make a false statement on her behalf to the effect that the complainant had been subjected to acts of violence by the arresting officers. Thirdly, the

complaint states that, immediately after her arrest on 22 July 2004, the complainant tried to use her mobile phone to call ACAT. Such a reaction immediately following her arrest suggests a premeditated act and a strategy planned in advance to simulate an incident that would provide the opportunity to submit a complaint against the Tunisian authorities. Fourthly, the hearing of the complainant's fellow detainees showed that she had not been subjected to ill-treatment. In this regard, the State party refers to its comments of 31 July 2007 as well as to summonses sent to the complainant at her addresses in Tunisia and France. This attests to the diligence with which the judge handling the case has been proceeding, despite the complainant's prevarication. The judge organized a hearing of the persons involved in the case, notably the police officers on duty on the date of the events at the centre of the complaint and the fellow detainees whose names were listed in the prisoners' register kept at the court of first instance in Tunis.

### **Deliberations of the Committee on admissibility**

12.1 At its thirty-ninth session, the Committee considered the admissibility of the complaint and, in a decision of 7 November 2007, declared it admissible.

12.2 The Committee ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter had not been and was not being examined under another procedure of international investigation or settlement.

12.3 With respect to the exhaustion of domestic remedies, the Committee noted that the State party challenged the admissibility of the complaint on the grounds that available and effective domestic remedies had not been exhausted. In the present case, the Committee noted that the State party had provided a description of the remedies available, under law, to any complainant. Nonetheless, the Committee considered that the State party had not sufficiently demonstrated the relevance of its arguments to the specific circumstances of the case of this complainant. In particular, the Committee took note of the information provided by the complainant on the complaint she had instructed the lawyer to file with the prosecutor's office on 30 July 2004. The Committee considered that the insurmountable procedural impediment faced by the complainant as a result of the refusal to allow the lawyer to register the complaint rendered the application of a remedy that could bring effective relief to the complainant unlikely. Such a refusal rendered the State's suggested consultation of the complaint registers completely ineffectual. The Committee also noted that the State party, in its observations, indicated that an investigation was under way, but that it provided no new information or evidence that would allow the Committee to judge the potential effectiveness of that investigation, which had been launched on 27 June 2006, almost two years after the alleged incidents had taken place. The Committee concluded that, in the circumstances, the domestic proceedings had been unreasonably prolonged and considered that in the present case there was little chance that the exhaustion of domestic remedies would give satisfaction to the complainant.

12.4 The Committee took note of the State party's argument that submission of the complaint by the complainant was unjustified. The Committee considered that any report of torture was a serious matter and that only through consideration of the merits could it be determined whether or not the allegations were defamatory. With respect to article 22, paragraph 4, of the Convention and rule 107 of the Committee's rules of procedure, the Committee saw no further obstacle to the admissibility of the complaint.

12.5 The Committee against Torture consequently decided that the communication was admissible with regard to article 2, paragraph 1, taken in conjunction with article 1, or, alternatively, article 16, paragraph 1; and articles 11, 12, 13 and 14, taken separately or in conjunction with article 16, paragraph 1 of the Convention.

### **State party's observations on the merits**

13.1 On 23 January 2008, the State party argued that the Committee's decision on admissibility was based solely on the "misleading statements" of the complainant's Tunisian counsel. The new evidence obtained through the investigation, however, showed those statements to be unfounded. Indeed, when the complainant was heard by the investigating judge handling the case on 11 December 2007, she stated explicitly that "she had never filed a complaint of ill-treatment with the State prosecutor in Tunis because she was not aware of the procedures, nor had she instructed a lawyer to do so".<sup>34</sup> This revelation raises numerous questions, moreover, about the unstated motives of the complainant, who seems to have pursued international remedies in preference to domestic judicial ones. According to the State party, the domestic proceedings have not been unreasonably prolonged, as no complaint was ever received by the national judicial authorities, and those authorities decided to open a judicial investigation without delay, as soon as they had been notified by the Committee of the complainant's communication on 27 June 2006. This being the case, the complainant's Tunisian counsel twisted the facts in order to mislead the Committee. For all these reasons, the State party invites the Committee to reconsider its decision declaring the complainant's communication admissible.

13.2 The State party provides additional evidence revealed during the hearing by the investigating judge of the complainant, her brother and all the law enforcement officers on duty on the day of the incident at the court of first instance in Tunis, and during the confrontation of the complainant and the witnesses. When she was heard on 11 December 2007, the complainant repeated her version of events, as presented to the Committee. She admitted, however, that she had tried to bribe one of her fellow detainees, asking the woman to testify in her favour in exchange for an unspecified gift. During his hearing by the investigating judge on 4 January 2008, the complainant's brother confirmed that she had accompanied him to the court of first instance in Tunis on 22 July 2004. He explained that he was not present, however, during the events that gave rise to the complaint, as he had gone to have coffee, and that he had only learned of her altercation with the registrar on his return to the court. He went to the prosecutor's office, where he found his sister waiting to be brought before the prosecutor. He then decided to go home. Furthermore, he told the investigating judge that, when she returned home, his sister bore no sign of violence, and she did not inform any family member of the ill-treatment to which she had allegedly been subjected at the court. He added that his sister behaved normally on her return from the court and did not mention having been to the hospital clinic to seek treatment.<sup>35</sup> The State party reports that, during the hearing of the law enforcement officers on duty at the

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<sup>34</sup> The State party cites an annex in Arabic attached to its observations.

<sup>35</sup> *Idem*.

court of first instance in Tunis on 22 July 2004, the officers categorically denied the complainant's allegations, asserting that she had not suffered any ill-treatment.<sup>36</sup>

13.3 The investigating judge conducted the usual confrontations, during which the complainant repeated that she had been subjected to ill-treatment, identifying two of the three law enforcement officers as having been on duty on the day of the incident. Of those two officers, one, according to the complainant, had played no part in the alleged events. She identified the other officer as the one who had taken her to the court's jail, gripping her arm, which had caused her pain. She said that a third officer, not the one who had been brought before her, had been responsible for the ill-treatment inflicted. However, the officer who had been brought before her stated that he had been the third officer on duty on 22 July 2004. In addition, the complainant reaffirmed that she had asked one of her fellow detainees to testify in her favour in exchange for a gift. She also admitted that she had not informed her family of the ill-treatment on her return home. The persons detained along with her and the law enforcement officers reiterated that the complainant had not been subjected to any ill-treatment while being held in the court's jail. The complainant's brother repeated his previous statements.

13.4 According to the State party, the evidence contained in the investigation file confirms the double contradiction noted in respect of the medical certificate submitted to the Committee by the complainant (see paragraph 11.2 above). It also confirms that the complainant was not subjected to ill-treatment at the court of first instance in Tunis. Consequently, the State party requests the Committee to reconsider its decision declaring the complaint admissible, since domestic remedies have not been exhausted, the investigation is still under way and the evidence uncovered by the investigation as to the merits demonstrates that the complaint is baseless.

#### **Complainant's comments on the State party's observations**

14.1 On 7 April 2008, the complainant argued that the issue of admissibility had been settled by the Committee's decision of 7 November 2007. She made clear that she had indeed filed a complaint with the domestic courts and that she had twice travelled to Tunis in response to summonses by the investigating judge of the court of first instance, in order to be present at two hearings relating to the investigation into her complaint of torture and ill-treatment. The hearings were held on 11 December 2007 and 7 January 2008 at the fourth investigations office of the court of first instance. Three other hearings seem to have been organized, however, without her presence having been sought, on 30 August 2007, 31 August 2007 and 4 January 2008.

14.2 The complainant notes that the State party has included in the file a partial record of those hearings, contained in eight annexes in Arabic. The records are incomplete and confused and numerous passages have been omitted, without any explanation being provided by the State party. The complainant comments that these documents do not constitute records, since they do not reflect what was actually said during the investigating judge's interviews with the witnesses:

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<sup>36</sup> Idem.

they do not contain the statements as delivered by the witnesses but purport to be a summary thereof. The witnesses' actual statements remain unknown. These records therefore have no evidentiary value.

14.3 The complainant notes that, on 7 January 2008, on the conclusion of the hearings, she requested a copy of the complete file, including the records, but her request was refused. She was thus denied the opportunity to refute the State party's arguments and to submit to the Committee evidence from the file substantiating her complaint. She points out that, in its annual report on human rights practices, the United States Department of State expressed concern about the prevalence of this type of practice in Tunisia.<sup>37</sup> The applicant disputes categorically the veracity of the statements made by the witnesses during the confrontation. For this reason, she refused to sign the record of the hearings, and she explained clearly to the investigating judge why she was doing so.

14.4 According to the State party, the complainant stated "explicitly" before the investigating judge that she had never filed a complaint of ill-treatment. She notes, however, that the record of her evidence makes no reference whatever to any such statement on her part. Likewise, the State party asserts that she admitted having tried to bribe one of her fellow detainees. Yet the record contains no mention of any such statement by the complainant. The State party's assertions are thus false and without foundation.

14.5 The complainant notes that certain documents submitted by the State party are incomplete, ending with unfinished sentences. She comments that the State party's observations contain inaccuracies. The State party asserts that the complainant's fellow detainees reaffirmed that she had not been subjected to any ill-treatment while being held in the court's jail. It is clear, however, on reading the record of their evidence, that the witnesses confirmed that they had not seen the complainant being ill-treated.

14.6 The complainant stresses that she did indeed make a complaint to the domestic courts, through her Tunisian counsel. She points out that she transmitted a copy of the complaint to the Committee. She rejects the allegation that she tried to bribe a witness. The investigating judge never took evidence from the witness in question. The accusation is thus illogical.

14.7 Regarding her brother's evidence, the complainant explains that she was too shocked and traumatized by the acts of torture and ill-treatment to which she had just been subjected to inform her family immediately of what had occurred. The injuries she sustained were to parts of her body that were covered by clothing, specifically her left arm, foot, buttocks, right wrist and head (but not her face), and could not therefore be seen by her family.<sup>38</sup> She explained all of these facts to the investigating judge. She comments that her relationship with her family is strained and that she did not therefore feel able to reveal to them the intimate details of the abuse

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<sup>37</sup> See United States Department of State, Country Reports on Human Rights Practices - 2007, Tunisia, 11 March 2008.

<sup>38</sup> The complainant cites the medical certificates attached to the initial complaint.

she had just suffered. The tensions in the complainant's family are confirmed by the record of the hearing of her brother: he stated that his sister had "ruined the atmosphere at his wedding".

14.8 Lastly, the complainant refers to new information that has recently become available attesting to the existence of numerous procedural irregularities that permeate the Tunisian justice system and establishing that torture and ill-treatment are common practices in Tunisia.<sup>39</sup> In conclusion, the complainant asserts that she has been consistent and has provided numerous details and that her version of events is therefore credible, and has been since the start of the proceedings. She has adduced a great deal of evidence to substantiate her complaint. The fact that she travelled to Tunisia twice to be present at the hearings demonstrates her good faith and her willingness to cooperate with the State party, with a view to shedding light on the case.

### **Consideration of the merits**

15.1 The Committee has considered the communication in the light of all information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

15.2 The Committee takes note of the State party's observations of 23 January 2008 challenging the admissibility of the complaint. It notes, however, that even though a judicial investigation was opened on 27 June 2006, the investigation has yet to result in a decision. It also takes note of the "records" of the hearings and confrontations organized in the course of the investigation, while observing that the documents produced by the State party seem to be summaries - rather than records - of the hearings; that they are incomplete, some passages having been omitted; and that the statements imputed to the complainant do not appear in them. It therefore considers that the points raised by the State party are not such as to require the Committee to review its decision on admissibility, owing in particular to the lack of any convincing new or additional information from the State party concerning the failure to reach any decision on the complaint after more than four years of *lis alibi pendens*, which in the Committee's opinion justifies the view that the exhaustion of domestic remedies has been unreasonably prolonged (see paragraph 12.3 above). The Committee therefore sees no reason to reverse its decision on admissibility.

15.3 Accordingly, the Committee proceeds to its consideration of the merits and notes that the complainant alleges violations by the State party of article 2, paragraph 1, taken in conjunction with article 1, or, alternatively, article 16, paragraph 1; and articles 11, 12, 13 and 14, taken separately or in conjunction with article 16, paragraph 1, of the Convention.

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<sup>39</sup> See United States Department of State, Country Reports on Human Rights Practices - 2007, Tunisia, 11 March 2008; Human Rights Watch World Report 2008; the concluding observations of the Human Rights Committee on Tunisia (CCPR/C/TUN/CO/5, 28 March 2008); and the European Court of Human Rights judgement of 28 February 2008 in the case of *Saadi v. Italy*, application No. 37201/06.

15.4 The Committee observes that the complainant has alleged a violation of article 2, paragraph 1, of the Convention, on the grounds that the State party failed in its duty to prevent and punish acts of torture. These provisions are applicable insofar as the acts to which the complainant was subjected are considered acts of torture within the meaning of article 1 of the Convention. In this respect, the Committee takes note of the complaint submitted and the supporting medical certificates describing the physical injuries inflicted on the complainant, which can be characterized as severe pain and suffering inflicted deliberately by officials with a view to punishing her for her words addressed to the registrar of the court of first instance in Tunis and to intimidating her. Although the State party disputes the facts as presented by the complainant, the Committee does not consider the State party's arguments to be sufficiently substantiated. In the circumstances, the Committee concludes that the complainant's allegations must be duly taken into account and that the facts, as presented, constitute torture within the meaning of article 1 of the Convention.

15.5 In the light of the above finding of a violation of article 1 of the Convention, the Committee need not consider whether there was a violation of article 16, paragraph 1, as the treatment suffered by the complainant in breach of article 1 of the Convention exceeds the treatment encompassed in article 16.

15.6 Regarding articles 2 and 11, the Committee considers that the documents communicated to it furnish no proof that the State party has failed to discharge its obligations under these provisions of the Convention.

15.7 As to the allegations concerning the violation of articles 12 and 13 of the Convention, the Committee notes that the prosecutor never informed the complainant's lawyer, or the complainant herself, whether an inquiry was under way or had been carried out following the filing of the complaint on 30 July 2004. The State party has, however, informed the Committee that the competent authorities took up the case as soon as they had been notified by the Committee of the complainant's communication and that the Tunis prosecution service decided on 27 June 2006 to open a preliminary judicial investigation. The State party has also indicated that the investigation is still ongoing, more than four years after the alleged incidents, without giving any details. In addition, the Committee notes that the prosecutor rejected the complaint filed by the lawyer and that the complainant has thus effectively been prevented from initiating civil proceedings before a judge. The Committee considers that a delay of 23 months before an investigation is initiated into allegations of torture is excessive and does not meet the requirements of article 12 of the Convention,<sup>40</sup> which requires the State party to proceed to a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture has been committed. Nor has the State party fulfilled its obligation under article 13 of the Convention to ensure that the complainant has the right to complain to, and to have her case promptly and impartially investigated by, its competent authorities.

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<sup>40</sup> Communication No. 8/1991, *Halimi-Nedzibi v. Austria*, Views adopted on 18 November 1993, para. 13.5 [delay of 15 months].

15.8 With regard to the alleged violation of article 14 of the Convention, the Committee notes the complainant's allegations that the State party has deprived her of any form of redress by failing to act on her complaint and by not immediately launching a public investigation. The Committee recalls that article 14 of the Convention not only recognizes the right to fair and adequate compensation but also requires States parties to ensure that the victim of an act of torture obtains redress. The Committee considers that redress should cover all the harm suffered by the victim, including restitution, compensation, rehabilitation of the victim and measures to guarantee that there is no recurrence of the violations, while always bearing in mind the circumstances of each case. Given the length of time that has elapsed since the complainant attempted to initiate proceedings at the domestic level, and given the lack of information from the State party concerning the completion of the investigation still under way, the Committee concludes that the State party has also breached its obligations under article 14 of the Convention.

16. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose a violation of articles 1, 12, 13 and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

17. Pursuant to rule 112, paragraph 5, of its rules of procedure, the Committee urges the State party to conclude the investigation into the incidents in question, with a view to bringing those responsible for the acts inflicted on the complainant to justice, and to inform it, within 90 days of this decision being transmitted, of any measures taken in conformity with the Committee's Views, including the grant of compensation to the complainant.

[Adopted in English, French, Russian and Spanish, the French text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

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