The Role of the Justice Sector in Combating Torture in Tunisia: A Guide for Judges and Prosecutors

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Foreword

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Torture, in all its forms, is incompatible with the general principles of human rights as enshrined in the Universal Declaration of Human Rights of 10 December 1948 and as adopted by all States within the framework of Geneva Convention III relative to the Treatment of Prisoners of War and Geneva Convention IV relative to the Protection of Civilian Persons in Time of War of 12 August 1949.

This international protective trend is supported by the UN Convention Against Torture, which has been ratified by 154 member states, and the UN Committee Against Torture. However the recorded results in this field still fall short of expectations, as many countries continue to systematically commit these types of gross violations of human rights and fail to abide by their international obligations for various reasons and excuses, including through legal and jurisprudential controversy about the definition of the term “torture”, using instead terms such as “ill-treatment”, “excesses” and “abuse”.

For the purpose of justifying them, acts of torture are often attributed to individual actions, for example, performed by a hostile and aggressive person or by someone following immoral and unethical superior orders, especially in the context of an ideological regime that enjoys social and institutional support.

Perhaps the economic, political, and social conditions existing in some societies increase the complexity of this phenomenon. In particular, the acceptance and tolerance of the phenomenon of torture where the torturer lives or works, and the resulting impunity for torture, can contribute to making a torturer feel part of the group.

Torture can be both physical and psychological. The psychological effects of torture can be more serious as they can last a lifetime, leaving an almost unforgettable chronic impact. Some of the long-lasting effects of torture are the inability of victims to face crises, difficulties with social communication, feelings of shame and humiliation, feelings of inferiority and lack of sense of honour and self-pride. This is in addition to the physiological and physical impact of torture, which can include insomnia, anxiety, inability to concentrate, memory disorders, and feeling terrorized and depressed.

In order to consolidate the international instruments on human rights which aim to protect the lives of individuals, as well as their health and dignity, two main areas of law exist: International Humanitarian Law and International Human Rights Law. These bodies of law aim to protect human life from the threat of torture, or cruel, inhuman or degrading treatment or punishment; to guarantee the basic rights of the persons subject to criminal prosecution; and to protect women, children and groups with special needs. Despite these bodies of international law, violations of human rights continue to take place, including massacres of civilians and establishment of detention camps.
At the national level, Tunisia has ratified most of the major international covenants and instruments for the protection of human rights in all their different dimensions, comprehensiveness and interdependence, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the Rome Statute of the International Criminal Court, among others. These instruments have been translated and put into practice on the ground, in particular following the January 2011 revolution that was based on principles of justice, equity, dignity, freedom, and protecting and defending human rights. For example, Decree Law No. 106-2011 of 22 October 2011 amended Article 101(bis) of the Penal Code to broaden the list of persons who can be held responsible for committing the crime of torture to include, in addition to the perpetrator, accessories to the crime as well as any official who orders, agrees to, or keeps silent about an act of torture. Furthermore, the statute of limitation for the crime of torture was extended from 10 to 15 years and punishment became more severe if the torture targeted a child or resulted in death.\(^1\)

In the same way that the National Committee for International Humanitarian Law, established by virtue of Decree Law No. 1051 of 20 April 2006, is concerned with raising awareness regarding the principles of international humanitarian law, spreading its culture, and developing and implementing its rules at the national level, Organic Law No. 43 of 21 October 2013 was issued to create the National Authority for the Prevention of Torture (\textit{Instance nationale pour la prévention de la torture}), which is granted broad powers by the legislation to prevent and combat torture.

It should also be highlighted that the new Tunisian Constitution, adopted in January 2014, incorporates human rights principles into the Tunisian legal system. Article 23 expressly guarantees the protection of human dignity and physical integrity, and prohibits all psychological and physical torture. Article 23 also states that the crime of torture may not be subject to any statute of limitations.

It is certain that the upcoming process of bringing the national legislation in line with the provisions of the Constitution, especially in the areas of protecting human rights and freedoms, will cover many areas such as the Penal Code and the Code of Criminal Procedure, as well as laws relating to prisons and corrections, and rehabilitation and reintegration of offenders, in light of the requirements of Articles 27 and 30 of the new Constitution which address the right of prisoners to humane and dignified treatment, and their right to rehabilitation and re-integration, as well as the right to fair trial guaranteeing an adequate defence.

One of the most pressing issues that must be addressed is the adoption into the national Penal Code provisions relating to international crimes, to ensure deterrence from the commission of crimes against humanity, and to incorporate universal jurisdiction for such\(^1\) The statute of limitations for the crime of torture has since been removed entirely following the adoption of Law No. 2013-43 of 23 October 2013.
crimes in order to prevent impunity for genocide, war crimes, crimes of aggression, and crimes against humanity.

We would like also to remind people of the important role played by the judiciary and jurisprudence in protecting and implementing human rights. The judiciary is the true guardian of liberties and rights, embodying the notion that:

'Deficiencies in the national law in terms of human rights, if any, are to be repaired through the role of the justice system.'

We hope that this work will enrich the Tunisian Law Library and becomes a guiding reference for legal practitioners in general, and judges and prosecutors in particular, as a tool for combating impunity for torture and helps victims to access their rights.

We also would like to thank all those who contributed to preparing this guide, especially DIGNITY - Danish Institute Against Torture, and the Ministry of Justice Working Group which consists of the honourable judges:
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General Preface

The concept of “human rights” is based on the recognition of the dignity and values that are inherent to all members of humanity. There may be varying definitions of human rights—some define it as a discipline which is of interest to everybody, especially those living in the context of a particular State in which they should benefit from the protection of both national and international laws, and that the protection of these rights is in conformity with the necessities of maintaining public order. Others believe that human rights are the study of the personal rights recognised at the national and international level, which ensure the protection of human dignity on the one hand, and the maintenance of public order on the other hand.

There is another definition of human rights which is a mix between constitutional law and international law, whose mission is to defend, in a direct and organised manner, the rights of individuals against abuses of power by State officials. They are also defined as a group of rights and protections that must be fulfilled for all human beings equally and without discrimination.

The Universal Declaration of Human Rights is the basis of the international human rights legal framework and is the source of inspiration for a large number of legally binding international human rights treaties and conventions. The Declaration also serves as international recognition that the basic rights and liberties it enshrines are inherent to all human beings and applicable to them equally and without discrimination of any kind, including discrimination based on race, colour, sex, language, religion, political and other opinion, national or social origin, property, birth, or any other status.

The comprehensive humanitarian character of such rights gives them a moral character, and makes them non-derogable and inalienable, and may not be violated, as long as they are inherent to human beings.

The international human rights legal framework sets out the obligations of States. When States become party to international human rights instruments, they assume obligations and duties under international law to respect, protect, and fulfil their human rights obligations by ensuring their effective implementation. In other words, States must refrain from interfering in and diminishing the enjoyment of human rights. States parties to the international human rights instruments are obligated to protect individuals and groups from human rights violations and must take the steps necessary to facilitate the enjoyment of fundamental human rights.

By ratifying international covenants and conventions on human rights, the State pledges to put in place the necessary measures to ensure the implementation of human rights, and to bring its national legislation into conformity with their international obligations. Consequently, the domestic laws of the State serve to ensure that fundamental human rights enshrined in the international instruments ratified by the State are respected, protected and fulfilled.
Regardless of the number and diversity of these rights, preserving and protecting human dignity and freedom constitute the basis of the international endeavour to respect, protect and fulfil human rights. Protection of human dignity requires that all human beings enjoy the right to life, the right to liberty, and the right to be free from torture and cruel, inhuman or degrading treatment or punishment.

The right to be free from torture is a fundamental right protected by a range of international human rights instruments. Article (5) of the Universal Declaration of Human Rights stipulates that nobody may be subject to torture or to other cruel, inhuman or degrading treatment or punishment. Article (7) of the International Covenant on Civil and Political Rights provides the same guarantee.

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted and opened for signature, ratification, and accession by virtue of UN General Assembly Resolution No. 39/46 of 1st December 1984. According to the preamble of this Convention, States parties agree to ratify the Convention to promote the effectiveness of the fight against torture, and to recognise that the fundamental rights which it seeks to protect are derived from the inherent dignity of all human beings.

Article 1 of the Convention provides the definition of torture and Article 2 sets out the obligations of all States parties to take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under the jurisdiction of the State. The Convention also clearly prohibits any justifications for torture, including a state of emergency or orders issued by a superior officer.

The Republic of Tunisia ratified the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 23rd September 1988. Tunisia ratified the Optional Protocol to the Convention Against Torture by virtue of Decree Law No. 5 of 19th February 2011, which was adopted into Tunisian domestic legislation by the National Constituent Assembly by virtue of Article 25 of Organic Law No. 43-2013 of 21st October 2013.

While Tunisia has ratified both the UN Convention Against Torture and its Optional Protocol, and has made some amendments to relevant Articles of the Code of Criminal Procedure and the Penal Code, the full scope of the obligations arising from these instruments have not yet been fully incorporated into domestic law. This includes a discrepancy between the definition of torture under Article 1 of the Convention and the definition found under Article 101(bis) of the Tunisian Penal Code. There are also discrepancies between domestic law and international standards with regard to detainees’ right to access a lawyer from the outset of detention and the lawful duration of the period of police custody (garde à vue).

It should be noted that at the time of this writing, there is a bill before the National Constituent Assembly which is aimed at amending relevant provisions of the Code of Criminal Procedure to incorporate a number of legal safeguards. These proposed
provisions would reduce the duration of the lawful period of police custody, and allow detainees arrested on suspicion of a felony or misdemeanour carrying a prison sentence to have the presence of a lawyer during the interrogation and investigation. Incorporating the right of detainees to access a lawyer would bring the national legislation into conformity with the noble principles set forth under the provisions of Tunisia’s Constitution relating to Rights and Freedoms of Citizens. This section provides persons held in police custody the right to access a lawyer, affirms the presumption of innocence, and provides for the right to fair trial guarantees for an adequate defence.

Enabling those under police custody to access a lawyer, and confirming the presumption of innocence and the right to a fair trial in which the defence is granted all the necessary guarantees during the prosecution and trial phases would contribute to expediting the process of bringing domestic law into conformity with the constitutional provisions mentioned above and the applicable international human rights standards.

Within this framework, this Guide is the product of the joint efforts of the Ministry of Justice Working Group, which is composed of Tunisian judges, and experts from DIGNITY - Danish Institute Against Torture. It was also submitted for review to a significant number of judges who participated in a series of round table workshops which were held to study the Guide and obtain feedback and recommendations on its content.

The aim of this guide is to help actors in the Tunisian justice sector, in particular members of the Public Prosecution, investigating judges and criminal tribunal judges in their work. It will also facilitate their access to the relevant international instruments relating to the investigation and documentation of cases of torture cases, with a view to pursuing and prosecuting perpetrators, providing access to justice for victims of torture, and granting them fair and adequate compensation. This is particularly important given that Tunisia has ratified most of the relevant international instruments and that they have, according to Article 20 of the Constitution, superior status to domestic legislation (and inferior status to the Constitution), and as such must be applied in practice.
Introduction

Allah, Glorified be He/she, says in the verse (70) of Al-Isra Chapter "And We have certainly honoured the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference".

The fact that Allah honours man and privileges him over all other creatures is a clear indication of the importance of the human being, and the need to preserve him or her and to prohibit all practices that might lead to the impairment of human dignity or threats to the physical and psychological integrity of the human being.

Torture is considered one of the worst practices which undermines human integrity, in that it causes severe physical and psychological pain which has a profound impact on the affected person as well as those who surround him or her. Torture also constitutes a grave violation of human rights, and its prohibition is considered absolute under international human rights law. The prohibition on torture was one of the first issues considered by the United Nations during the establishment of the human rights legal framework, as it touches on the most serious civil and political rights. In this context, international law clearly recognizes State responsibility for acts of torture committed by its agents, such as prison and security officials, among others. It also obliges the State to take effective legislative, administrative, judicial and other measures to prevent acts of torture in any territory in its jurisdiction under any circumstances.

While there is international consensus regarding the importance and necessity of the prohibition against torture, which is included in the major international human rights instruments, and while many national laws criminalise acts of torture with increasingly severe punishment for perpetrators, in practice, torture continues to be practiced, in some cases systematically, against both men and women as well as against those with opposing political and ideological sympathies and affiliations, and for various objectives and purposes.

Within this framework, Tunisia has chosen to combat the crime of torture by putting in place the necessary legislative framework, in conformity with the relevant international human rights standards, with a view to combating the phenomenon of impunity for torture, and to ensure perpetrators face accountability and to ensure protection of the rights of victims. This is a matter that is entrusted to the judiciary as it is the authority responsible for the application of laws.

This Guide is divided into two parts. The first part addresses the legislative framework pertaining to the prevention and prohibition of torture, while the second part addresses the role of the prosecution authority and the judiciary in this regard.
Part 1: The Crime of Torture in Tunisian Law

As the crime of torture involves a direct and brutal assault on the physical and psychological integrity of the human being and is in complete contravention to the right to security of the person and a dignified life, Tunisia has taken the steps necessary to ratify the international conventions relating to prohibiting and combating torture. Tunisia has also taken steps to strengthen the national system for the protection of human rights, and to confront all practices that would undermine the protection of human dignity. In doing so the legal framework relating to the crime of torture is complementary to and in harmony with the international human rights framework. The crime of torture is addressed at a number of levels, starting with the Constitution, followed by international covenants and finally by domestic legislation.
Section 1: At the Constitutional Level

The Constitution of Tunisia is the supreme law of the land, and determines the structure and policies of the State. All national legislation must be in conformity with the principles and rules contained in the Constitution.

The Tunisian Constitution promotes the State's policy against torture through the provisions contained in the section on Rights and Freedoms, which are focused on strengthening of human rights principles, and ensuring respect for human dignity and protection against all forms of violations of dignity.

Article 23 of the Constitution addresses this issue and reads: "The State shall protect human dignity and physical integrity and prohibits psychological and physical torture. Crimes of torture are not subject to any statute of limitations."

It can be said that the inclusion of this provision in the Constitution is aimed at preventing any attempts to carry out such illegal acts and major violations of human rights which may be practiced by the regime, and to put an end to the possibility of perpetrators escaping accountability under the pretext that the limitation period to file a complaint has lapsed.

Furthermore, in the framework of combating torture and putting in place protective measures to prevent illegal acts that may occur in places of detention, especially as most cases of torture occur during the period of police custody or pre-trial detention, Article 29 of the Constitution stipulates that "No person may be arrested or detained unless in flagrante delicto or by virtue of a judicial order. The person placed under arrest must be immediately informed of his or her rights and the relevant charges. The detainee has the right to be represented by a lawyer. The period of arrest and detention shall be defined by law." This Article consolidates the principle of freedom and protection of the detained person against any illegal practices that he/she may be subjected to and which may impair his dignity and humanity, in particular given that it permits a detained person to secure legal representation from the outset of the preliminary investigation. This will also serve to reduce acts of torture, due to the presence of external supervision during the interrogation period.

On the other hand, Article 30 of the Constitution provides that "Every prisoner shall have the right to humane treatment that preserves their dignity." This article is of paramount importance because, as mentioned above, places of detention often foster an environment in which torture becomes more likely or possible. The fact that the Constitution includes an article regarding the humane treatment of prisoners, which also guarantees the protection of their dignity, recognises the State’s policy for humanising conditions in places of detention and combating torture and ill-treatment.
Section 2: International Commitments

Article 20 of the Tunisian Constitution stipulates that "International agreements approved and ratified by the National Constituent Assembly have a status superior to that of domestic law and inferior to that of the Constitution."

This Article is evidence of the constitutional recognition of the principle of legislative supremacy of ratified international agreements, which become not only applicable, but also have a superior status to the laws of the State, in situations where these areas of law may be in conflict. This is precisely what was envisioned by the Tunisian legislators. Therefore, all law enforcement officials must respect this principle of the supremacy of ratified international agreements over the internal laws of the State.

In this context, it should be recalled that Tunisia has ratified all the international instruments related to the issue of torture, thereby recognising the protection of fundamental human rights and the prohibition of all forms of torture and other violations of human dignity.

The following is a presentation of the international instruments ratified by Tunisia, as well as a presentation on the international definition of the crime of torture and the most important principles contained therein.

Subsection 1: International Instruments

A. Relevant International Conventions Ratified

* Universal Declaration of Human Rights of 1948: Establishes the principle of the prevention of torture in Article 5, which states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Similarly, Article 3 states that “everyone has the right to life, liberty and security of person.”
* The four Geneva Conventions of 1949 and the two Additional Protocols: The first convention relates to the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. The second convention relates to the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. The third relates to the Treatment of Prisoners of War, and the fourth relates to the Protection of Civilian Persons in Time of War.

Common Article 3, which appears in all four Geneva Conventions, regulates non-international armed conflict, i.e. a conflict that is contained within the boundaries of a sovereign state party to the convention, and prohibits at all times and in all places “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture....”

The Tunisian State has ratified the Geneva Conventions and their two Additional Protocols, and thus is required to pursue efforts to develop the mechanisms referred to in these instruments in order to ensure the proper application of and respect for international humanitarian law.


Article 7 of the ICCPR states: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

* Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity: Ratified by Tunisia through Law No. 11 of 10th March 1972, this treaty clarifies that war crimes and crimes against humanity may not be subject to any statute of limitations, as is usually applicable to ordinary crimes. Hence, the crime of torture, classified as a war crime and a crime against humanity, may not be subject to any limitation period, with the basic aim being to prevent perpetrators of torture from escaping punishment.


Some of the important principles included in this Convention are:
- Criminalising torture, with no exceptions or justifications for superior orders.
- Prosecuting a perpetrator of torture who is found in any territory of any State Party, regardless of where the torture took place or the nationality of the perpetrator.
- The possibility of carrying out an international investigation when there is confirmed information indicating that torture took place in the territory of any State Party.
- International cooperation and judicial assistance among State Parties when conducting a judicial investigation into acts of torture.

* **Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:** Adopted by the United Nations General Assembly on 18th December 2002. Tunisia acceded to the Optional Protocol on 7th May 2011. The Protocol provides for the establishment of the Subcommittee for the Prevention of Torture, as well as the establishment of a system of regular visits to places of deprivation of liberty, which are to be undertaken by both the Subcommittee as well as a national visiting body, also known as a National Preventive Mechanism, in order to prevent torture in places of deprivation of liberty.

* **International Convention on the Elimination of All Forms of Racial Discrimination:** Adopted by the United Nations General Assembly on 21st December 1965 and entered into force on 4 January 1969 and ratified by Tunisia on 13th January 1967. Under this Convention, States Parties undertake to adopt immediate measures to eliminate discrimination and incitement, and pledge, with due regard to the principles embodied in the Universal Declaration of Human Rights, to consider all dissemination of ideas based on racial superiority or hatred, all incitement to racial discrimination, and all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, a crime punishable by law. Also, State Parties undertake to guarantee the right of everyone to the security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or foundation (Articles 4 and 5 of the Convention).

* **International Convention for the Protection of All Persons from Enforced Disappearances:** Adopted by the United Nations General Assembly on 29th December 2006 and ratified by Tunisia on 29th June 2011, this Convention aims to develop mechanisms for the protection of persons from the crime of enforced disappearance, as well as taking necessary precautions to prevent such acts, fighting enforced disappearance in all its forms, and punishing the perpetrators of such acts.

* **Convention on the Elimination of All Forms of Discrimination Against Women and the Declaration on the Elimination of Violence Against Women:** Adopted by the General Assembly on 20th December 1993 and ratified by Tunisia in 1985, this Convention protects the rights of women, including the right to not be subjected to torture.

* **UN Convention on the Rights of the Child of 1989:** Tunisia acceded to this convention on 29th November 1991 under Law No. 92. This Convention provides in its Article 37 that State Parties shall ensure that:
  - No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.
- No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

- Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

- Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.

* **1951 Convention relating to the Status of Refugees and its related Protocol of 1967:** This Convention adopted the general principles of the Universal Declaration of Human Rights. Perhaps the most important of refugee rights are the right to life, the right to protection of the physical integrity of the body against torture and ill-treatment, the right to obtain citizenship, and the principle of non-refoulement or the prohibition of extradition to a country where his life or freedom would be threatened because of his race, religion, nationality, membership of a particular social group or political opinion.

The 1951 Refugee Convention is consistent with Article 3 of the UN Convention Against Torture, which requires States parties to refrain from expelling, returning or extraditing a person to another state if there are substantial grounds for believing that he/she would be in danger of being subjected to torture.

* **The Rome Statute of 1998:** Adopted on 10 November 1998 and entered into force in 2002, whereby the International Criminal Court was established. Tunisia ratified the Rome Statute on 19th February 2011 under Decree No. 4. The Statute refers to the crime of torture in Articles 7 and 8 as the following:

- **Crime Against humanity:** The definition of torture as a crime against humanity in the Rome Statute is more inclusive than the traditional concept of the crime of torture as it does not provide that torture may only be committed at the hands of public officials, but also includes acts committed by private groups, individuals or units, including terrorist or criminal organisations. Under the Rome Statute, the definition of torture also differs from that found in the Convention Against Torture in that it does not require a specific purpose, such as to obtain a confession, for an act to be considered torture.

- **War Crime:** Torture or inhuman treatment can constitute war crimes, including biological experiments. The pillars of this crime include infliction of pain on a
person so as to obtain information or a confession, that person be covered with protection under one or more of the Geneva Conventions of 1949, and that the perpetrator be aware of this.

B. Regional Instruments and Bodies

* African Charter on Human and Peoples' Rights: Adopted by the Organisation of African Unity on 27th June 1981 and entered into force on 21st October 1986. Article 5 states that “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”

* Arab Charter on Human Rights: Adopted by the Council of the League of Arab States at the sixteenth Arab summit hosted by Tunisia on 23rd May 2004. Article 8 of the Charter states that: “No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment.”

* African Commission on Human and Peoples' Rights and the African Court of Human and Peoples' Rights: The African Commission on Human and Peoples’ Rights was established with a mandate to promote the rights enshrined in the African Charter on Human and Peoples’ Rights and ensure their protection in Africa. The Commission also established new mechanisms such as the Special Rapporteur on Prisons, Special Rapporteur on Women, and Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and all of them are mandated to report to the Commission.

* Arab Human Rights Committee: The Arab Human Rights Committee is established under the Arab Charter on Human Rights. State Parties undertake to submit reports on the measures taken to give effect to the rights and freedoms set forth in the Charter and explain the progress made to enjoy them. The Commission studies and discusses these reports, and expresses its observations and recommendations to the League Council through the Secretary-General.

C. Related Principles, Codes of Conduct and Protocols

* Istanbul Protocol of 1999: The Istanbul Protocol is a Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The guidelines it contains outline the minimum criteria that must be applied by States authorities and officials to ensure the effective investigation and documentation of torture.

The Istanbul Protocol defines torture in the same way that it is defined under Article 1 of the UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. It is a guide enabling States to respond to one of the most important aspects of the protection of individuals from torture, namely the effective documentation of evidence of torture which can make it possible to hold perpetrators accountable. The
Protocol includes the important means and principles of investigation that will help judges and physicians to investigate allegations of torture and carry out effective documentation thereof. It is the duty of states under international law to investigate all allegations of torture promptly, impartially, and effectively. Among others, the Istanbul Protocol requires that those conducting such investigations seek the statements of victims of torture and preserve evidence, including medical evidence relating to the alleged act of torture, for use as evidence in the prosecution of those responsible. It also requires those conducting investigations to attempt to identify individuals who can provide information about the alleged act, and to take the necessary steps to determine the time and place of torture. The authorities responsible for carrying out the investigation must be given the authority and mandate to obtain all information available to carry out an effective investigation, and to compel all those who might be involved in acts of torture to disclose information about such acts. At the same time, it is necessary to provide all potential victims, witnesses, and their families protection from violence or the threat of violence.

The Istanbul Protocol also sets out the obligations of medical experts involved in the investigation of torture, who are required to act according to the highest ethical standards and conduct the examination in accordance with the established standards of medical practice. All such examinations should be conducted in private. The Istanbul Protocol also emphasises the importance of preparing a written medical report accurately and promptly following examination.

* Code of Conduct for Law Enforcement Officials: Adopted by United Nations General Assembly in Resolution 34/169 of 17 December 1979. Article two states the following: “In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons. Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances....”

* Principles of Medical Ethics Relevant to the Role of Health Personnel: Adopted by United Nations General Assembly Resolution 37/194 of 18th December 1982. The preamble of the resolution states: “Adopts the principle of medical ethics related to the role of Health personnel, particularly physicians, in protecting prisoners and detainees from torture or other cruel, inhuman or degrading treatment or punishment.” Principle 2 of the Principles of Medical Ethics states: “It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.”

* Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment: Adopted under United Nations General Assembly Resolution 43/173 of 9th December 1988. Principle 6 states that “No person under any form of detention or
imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.”


* Basic Principles on the Role of Lawyers: Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana from 17th August 1990 to 9th September 1990. These principles focus on the right of detainees to access a lawyer from the first hours of detention and other special safeguards in criminal justice matters.

* Code of Conduct for Law Enforcement Officials: Adopted by the United Nations General Assembly on 17th December 1979. Article 5 of the Code explicitly states that no law enforcement official may inflict, instigate or tolerate any act of torture, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, or internal political instability as justifications for abuses.

* Principles on the Effective Investigation and Documentation of Torture: Recommended for adoption by the United Nations General Assembly on 4th December 2000. Principle 2 stipulates that states shall ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated. Even in the absence of an explicit complaint, an investigation must be undertaken.

Subsection 2: Guarantees Resulting from International Commitments

In their effort to protect human rights, safeguard the dignity of human beings, and promote and protect those rights by developing a legal system that ensures the freedom of the people and respects the principle of equality among them, the relevant international instruments have given paramount importance to the rights of individuals facing criminal investigation and prosecution, and to the corresponding obligations of States in taking the necessary domestic legal measures to ensure the application and respect of international law in this regard. Such guarantees can be categorized into three levels: (a) procedural guarantees during the period of police custody, pre-trial detention, and interrogation; (b) guarantees arising from the obligations of the judiciary; and (c) guarantees related to the general standards of fair trial procedures.
A. Guarantees during Police Custody, Pre-trial Detention, and Interrogation

According to Articles 9 of the International Covenant on Civil and Political Rights (ICCPR), “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” Article 10 of the same instrument states that: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”

Moreover, according to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, a detained person shall have the right to defend himself or to be assisted by legal counsel. He/she shall be informed of his rights by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising these rights. If a detained person does not have access to legal counsel of his own choosing, he/she has the right to be provided a legal representative by a judicial or other authority. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.

In addition to the right a lawyer, persons arrested on suspicion of crime also have the right to undergo a full medical examination which shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment and thereafter medical care and treatment shall be provided whenever necessary. A detained or imprisoned person or his counsel shall have the right to request or petition a judicial or other authority for a second medical examination or opinion. Where a detained or imprisoned person has undergone a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured.

A detained person shall have the right to refuse to speak and shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide, without delay, on the lawfulness and necessity of the detention. In the same context, paragraph 4 of Article 9 of the ICCPR recognises that “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”

With regard to the interrogation of detained suspects, according to Article 11 of the UN Convention Against Torture, “Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.”
Similarly, Article 17 of the International Convention for the Protection of All Persons from Enforced Disappearance requires that “Each State Party shall assure the compilation and maintenance of one or more up-to-date official registers and/or records of persons deprived of liberty, which shall be made promptly available, upon request, to any judicial or other competent authority or institution authorised for that purpose by the law of the State Party concerned or any relevant international legal instrument to which the State concerned is a party. The information contained therein shall include, as a minimum:

- The identity of the person deprived of liberty;
- The date, time and place where the person was deprived of liberty and the identity of the authority that deprived the person of liberty;
- The authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty;
- The authority responsible for supervising the deprivation of liberty;
- The place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty;
- Elements relating to the state of the health of the person deprived of liberty;
- In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains;
- The date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer.”

Principle 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, similarly states that the reasons for the arrest, the time of arrest and the taking of the arrested person to a place of custody shall be duly recorded, as well as the identity of the law enforcement officials concerned and precise information concerning the place of custody. Such records shall be communicated to the detained person or his counsel, if any, in the form prescribed by law.

According to Article 16 of the same body of principles, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he/she is kept in custody.

With regard to the duration of the period of pre-charge detention, Article 9(3) of the ICCPR states that “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings.”

**B. Judges’ Obligations**

Article 12 of the Convention Against Torture states that “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever
there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”

Also, Article 13 of the Convention Against Torture states that “Each State Party shall ensure that any individual who alleges he/she has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”

These guarantees and commitments fall mainly on the public prosecution and investigating judges who are responsible for addressing cases of torture when complaints are submitted. They are required to take swift actions in responding to a complaint of torture so as to avoid the disappearance of any physical signs of torture before the investigation is completed, as well as to ensure that the investigation is prompt and impartial. It is the duty of the court to ensure that perpetrators of crimes are not able to escape justice and punishment.

As stated in Article 15 of the Convention Against Torture, “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

The necessary components of a fair trial, as stated in Article 14 of the ICCPR, include that “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against them, or of their rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. In the determination of any criminal charge against them, everyone shall be entitled to the following minimum guarantees, in full equality:

- To be informed promptly and in detail in a language which he/she understands of the nature and cause of the charge against them;
- To have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing;
- To be tried in their presence, and to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require, and without payment by them in any such case if they do not have sufficient means to pay for it;
- To examine, or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;
- To have the free assistance of an interpreter if they cannot understand or speak the language used in court;
- Not to be compelled to testify against themselves or to confess guilt.”
C. General Criteria relating to independence of the judiciary

The Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the United Nations General Assembly through Resolution 40/32 of 29 November 1985 and Resolution 40/146 of 13th December 1985, aim to assist Member States in ensuring and realising in practice the independence of the judiciary. The Basic Principles set out how to achieve equality before the law and ensure the right to a fair and public trial by an independent and impartial court of competent jurisdiction. It also recognises the role played by judges, and their responsibility for taking decisions relating to the life and freedom of citizens, their rights, duties and properties. The Basic Principles include the following:

• The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country.
• The judiciary shall decide matters before it impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
• The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
• Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
• The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
• It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.
• The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.
• Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.
Subsection 3: The Definition of Torture in International Law

Article 1 of the UN Convention Against Torture defines torture as:

“All act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he/she or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

Elements of the crime of torture

Conditions of Torture

• An intentional act.
• Severe physical or mental pain or suffering inflicted on an individual.

Purposes of Torture

• Obtaining information or a confession from the person or a third person.
• Punishing a person for an act he/she or a third person has committed or is suspected of having committed.
• Intimidating the tortured person or a third person.
• Torture for any reason based on discrimination of any kind.

Perpetrators of Torture

• A public official
• A person acting in an official capacity.

The UN Convention Against Torture also imposes an obligation on State Parties to ensure the prevention of torture and other forms of ill-treatment. Article 2 states that “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” Article 16 states that “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment.”

It must be emphasised that the main objectives of these international laws are to prevent torture, reduce its recurrence, compensate the victims and prosecute the perpetrators of the crime of torture.
Main Objectives

Prevention of Torture

Reducing the Recurrence of Torture

Trial of the Perpetrators of the Crime of Torture

Compensating the Victims
State Obligations under the Convention Against Torture

- Take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

- No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

- An order from a superior officer or a public authority may not be invoked as a justification of torture.

- No State Party shall expel, return ("refoule") or extradite a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture.

- For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

- Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

- Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.
Legislative, administrative, and judicial actions and measures imposed on the state:

Under the Convention Against Torture, the Member State must take several actions to combat torture, including:

- Various inspection visits to places of detention, whether on regular, non-regular, or unannounced basis, and whether they are comprehensive or partial visits or even for specific issues.

- Require special qualifications in the persons who make the visits, so that they are qualified and impartial.

Cases in which the state shall take the necessary actions to establish its jurisdiction over the crime of torture:

- Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in Article 4 in the following cases:
  
  o When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State.
  
  o When the alleged offender is a national of that State.
  
  o When the victim is a national of that State, if that State considers it appropriate.
  
  o Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him to any State that may exercise torture on him.
  
  o This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.
State Obligations for the Prevention of Torture:

- Ensuring that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

- Including the prohibition on torture and ill-treatment in the rules or instructions issued in regard to the duties and functions of any such law enforcement personnel.

- Systematic review of interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

- Competent authorities shall proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

- Any individual who alleges he/she has been subjected to torture in any territory under its jurisdiction has the right to submit a complaint, and to have his case promptly and impartially examined by its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against any ill-treatment or intimidation as a consequence of the complaint or any evidence given.

- Nothing shall affect any right of the victim of torture or other affected persons to obtain compensation.

- Any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.
Legal status of the Convention Against Torture:
The Convention is binding on everyone, regardless of the degree of their participation. It represents binding rules and regulations, which may not be breached under any circumstances.

Tunisia is internationally obligated to combating torture:

- Supremacy of ratified international conventions over domestic laws (Article 20 of the Constitution).
- Legislative reforms to harmonise national law with international law.
- Ratification of the majority of relevant international conventions and related regional agreements.

- International legal framework has established:
  - Basic guarantees that must be ensured through the various phases of investigation and trial, in accordance with international standards.
  - Guarantees related to the independence of the judiciary and to the right to fair trial.
  - Comprehensive international definition of the crime of torture (elements, conditions, description of the perpetrator.)

- The main objectives of international legal framework are:
  - Prevention of torture.
  - Reducing the recurrence of torture.
  - Compensating the victims.
  - Holding perpetrators accountable.

The international conventions and bodies of principles are aimed at safeguarding victims from torture, ensuring States take the necessary steps to protect human dignity and preventing perpetrators from enjoying impunity. What actions must the state take? And how does it contribute to this effort?
Section 3: At the Legislative Level

The establishment of a comprehensive strategy in order to combat torture requires a multi-faceted, integrated approach which consists of three main components:

- An effective legal framework prohibiting torture.
- Effective application of this legal framework in practice.
- Mechanisms for monitoring the legal framework and its application procedures.

It is without question that an effective legal framework is an essential component of any efforts to combat torture. But the mere existence of a law is insufficient to prevent torture—the law must be correctly understood and strictly applied in order to prevent perpetrators from enjoying impunity. The integrated approach for the prevention of torture also requires direct prevention efforts such as independent, non-judicial mechanisms to carry out regular monitoring and unannounced visits to places of detention and awareness-raising campaigns regarding the prevention of torture and ill-treatment.

The Tunisian legislature recognised the seriousness of the crime of torture from the moment the Penal Code was amended, through Act No. 99-89 of 2nd August 1999, to include the crime of torture. Through this Act, a new section (Section 5) was added to the Penal Code, entitled “Abuse of authority and failure to carry out the duties of a public position.” However, the Tunisian legal framework relating to the crime of torture can be described in two phases:

**First Phase:** The period prior to issuing decree No. 106 of 22 October 2011, which sought to amend and complete the Penal Code and the Code of Criminal Procedure.

**Second Phase:** The period after issuing the decree which made significant amendments to the sections of the Penal Code dealing with torture.

These amendments were adopted in the context of the practical application of the international conventions ratified by Tunisia, including the Convention Against Torture, and were aimed at protecting human dignity by enacting supportive and protective laws carrying serious punishments for perpetrators of torture, as well as accelerating the disclosure of such acts.

**Subsection 1: The Content of the Amendment**

The October 2011 amendment to the Penal Code sought to expand the definition of torture (subsection A), expand the list of persons who can be held responsible for torture (subsection B) and increased the severity of the punishment for convicted perpetrators (subsection C).
A. Broadening the Definition of Torture:

The original text (pre-October 2011 amendment) of Article 101bis of the Penal Code read as follows: “a public employee or anyone in a similar position, while carrying out their official duties or as a direct result of their duties, who subjects a person to torture shall be punished by imprisonment for a term of eight years.”

According to Article 82 of the Penal Code an employee is defined as “any person who had bestowed upon them powers of public authority or works for a state agency, local or municipal authority, legal or public institution or other organisations that contribute to a public facility operation.

A public employee is defined as one who operates in the capacity of public official and who was elected to represent a public agency or who was appointed by justice to undertake judicial commission.”

The definition of torture in this pre-October 2011 provision was: any act which results in “severe pain or suffering, whether physical or mental, being intentionally inflicted on a person for such purposes as obtaining from them or a third person information or a confession, punishing them for an act which they or a third person has committed or is suspected of having committed, or intimidating or coercing them or a third person, or for any reason based on discrimination of any kind.”

Following the October 2011 amendment, the definition of torture was broadened to encompass other circumstances which did not exist in previous versions of the Penal Code.

According to the revised version of Article 101bis, torture is defined as “any act by which severe pain or suffering, whether physical or moral, is intentionally inflicted on a person for such purposes as obtaining from them or from a third person information or a confession, to punish the person for an act s/he/she or a third person committed or is suspected of having committed. Intimidation and pressure exerted over an individual for the purposes of obtaining information or a confession is considered as torture.

Inflicting pain and suffering, threats or coercion for any reason of racial discrimination falls within the scope and concept of torture. Any pain or suffering arising only from, inherent in or incidental to lawful sanctions is not considered as torture.”

This expansion mainly appears through some new phrases and additions which did not exist in the previous version:

- The term “moral” – old part 101 (bis) used the term “mental”, and of course the term “moral suffering” is much more inclusive than “mental suffering” which
includes, among others, verbal abuse, death threats or threats against the victim’s family, solitary confinement and others.

- The term “exerting pressure” was added, which wasn’t included in the old text referring to treatment such as sleep deprivation which can amount to torture.

- The term “coercion” – was also added in the new text, to cover situations, for example, in which a victim is forced to watch a sexual assault or his sanctity is undermined.

- The term “racial” was added, so the new text refers to racial discrimination while the old text referred only to “discrimination.” The reference to just racial discrimination is inconsistent with the definition found in Article I of the Convention Against Torture which refers to discrimination on any grounds. It should also be noted that in the French version of the Penal Code (as opposed to the Arabic version, which is under discussion here), Article 101bis refers to discrimination only, without reference to “racial discrimination.” This version is in line with the Convention text. Legislative intervention is necessary to rectify the conflict between the French and Arabic texts of the Penal Code, and to ensure the definition of torture in the Tunisian legislation is consistent with that found in the Convention Against Torture. It is likely that the term “racial” was inadvertently entered, especially given that in taking into account the reasons, explanations and arguments offered prior to the introduction of the amendments, there was no intent to restrict it to “racial discrimination” and that in the debates and discussions held, references were made to various types of discrimination.

- A full paragraph was added – the fifth paragraph that stipulates “Torture does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions.” This paragraph did not exist in the old version of Article 101bis and was added for clarification and to remove any ambiguities, which arose in the past regarding the application of law.
The crime of torture is established when three components are confirmed: the legal component, the physical component, and the intention component.
It is necessary to distinguish between the crime of torture under article 101bis of the Penal Code and other similar crimes such as the crime of severe violent assault by a public employee under Article 101 of the Penal Code, along with Article 224 which relates to maltreatment, and Article 250 which relates to the crime of detaining a person...
without legal authority. This distinction is necessary because the crime of torture requires a particular intent, which is the object and purpose of torture, namely for extracting a confession or information or for reasons of discrimination or for reasons of punishment.

The particular criminal intent is considered the most important criterion in terms of distinguishing between torture on the one hand and similar crimes that do not amount to torture on the other. Ill-treatment or violent assault by a public employee does not amount to torture unless the perpetrator intended to extract a confession or information from the victim, to punish the victim, or for any reason based on discrimination of any kind.

**B. Broadening the list of persons who can be held accountable for torture**

The amended Article 101bis expands the list of persons who can be held responsible for torture. The new Article 101bis stipulates that “a public employee or a similar person, who orders, incites, agrees to or remains silent about an act of torture, in the performance of his duties or in connection with the performance of his duties, is considered as a torturer.”

The old text of Article 101bis restricted those who could be held accountable for torture to public employee or someone acting in that capacity, who subjects an individual to torture in the exercise of his functions.

The new text of Article 101bis is wider and more comprehensive, as well as more in line with the definition found in Article 1 of the Convention Against Torture. This is a logical amendment, as the crime of torture usually involves many parties in addition to the perpetrator himself, such as the person who ordered the torture, those who witnessed it, among others.

**C. Increasing the punishment for torture**

The amendments relating to the crime of torture adopted under Decree No. 106 of October 2011 also include punishments for perpetrators, both physical and financial. Under the revised Article 101ter, “a public employee or a similar person, shall be punished by imprisonment for 8 years and fined ten thousand dinars, if they commit the acts mentioned in Article 101bis of this Code while exercising their functions or as a result the exercise of their function.”

It should be noted that the term of imprisonment stipulated in the old version of Article 101bis was maintained by the amendment, while a new financial penalty was added comprising a fine of ten thousand dinars. The amendment increased the punishment in aggravated cases: in cases where the torture resulted in amputation of a limb, broken bones or permanent disability, the period of imprisonment is increased to 12 years and the fine to twenty thousand dinars.
Similarly, if torture is inflicted on a child, the period of imprisonment is 10 years and the fine is twenty thousand dinars. If torture of a child results in amputation of a limb, broken bones or permanent disability, the period of imprisonment is 16 years and the fine is twenty-five thousand dinars.

Any case of torture that results in the death of the victim carries a term of life imprisonment, however this does not preclude the possibility of more severe punishment, if deemed necessary, applicable under the provisions of the Penal Code relating to violent assault.

In addition, the amendment of October 2011 amended the fine stipulated under the old Article 103 from one hundred twenty dinars to five thousand dinars, while maintaining the same term of imprisonment.

The question that should be considered in light of these amendments is whether the definition of torture under the Tunisian Penal Code is in conformity with the definition found in Article 1 of the Convention Against Torture.

The definition contained in Article 1 of the Convention Against Torture is broader than the definition found in Article 101bis of the Penal Code, in particular in relation to the specific intent for carrying out torture. Under the Convention definition, the purposes for which torture can be committed are not limited to obtaining information or a confession but also include “to punish a person for an act he/she committed or is suspected of having been committed by him or a third person.” This element of torture is not included in Article 101bis of the Penal Code.

Similarly, with regard to the persons who can be held accountable for torture, the Convention definition refers to a public official as well as those acting in an official capacity, while Article 101bis is limited to the public employee or similar person.

It is therefore necessary to broaden the scope of the legislation criminalising torture in Tunisia so as to include all physical and moral acts which amount to torture, and expand the list of persons who can be held accountable for torture, to be in conformity with international law and the international treaties and conventions ratified by the Republic of Tunisia.

**Subsection 2: Procedural Amendments**

At the procedural level, Decree No. 106 of October 2011 included numerous procedural amendments to the Penal Code, relating to the crime of torture, including clarifying cases in which exemption or commutation of a sentence may apply (subsection 1), the statute of limitation for public prosecution (subsection 2), and cancelling of all evidence obtained through torture (subsection 3).
A. Situations warranting exemption from or mitigation of punishment

Article 101c, which was added to the Penal Code through the above-mentioned Decree No. 106 of October 2011, stipulates: “A public employee or similar person shall be exempted from the penalties applicable to acts stipulated in Article 101bis of this Code, if having took the initiative, before the competent authority became aware of the matter, and after he/she received the order to carry out torture, was encouraged to commit torture or was informed of the occurrence of torture, by reporting information about the torture to the administrative and judicial authorities, and as a result is able to thwart or prevent an act of torture.

The established penalty decreases by half if reporting the information about the torture leads to the cessation of the torture, identification and arrest of the some or all of the perpetrators, or prevention of injury or death of a person being subjected to torture.

The established lifetime imprisonment for torture resulting in death, as stipulated in Article 101bis of this Code, is replaced by a term of imprisonment of twenty years.

Reporting of the crime after torture has been detected or after an investigation has been initiated will not be taken into consideration for the purposes of reducing the applicable sentence.

Anyone who reports an act of torture in good faith will not be liable for prosecution for damages or considered criminally responsible.”

It is clear that this Article contains provisions which can serve to help uncover or detect acts of torture, in particular in the form of pardon and exemption from punishment for all individuals who report an act of torture, whether they received an order to commit torture, were encouraged to do so, or became aware about its occurrence and took steps to cease the act.

Mechanisms that would help further detection of crimes of torture and represented in forgiveness and exemption to anyone who informs the relevant authorities of crimes of torture whether they received an order of this, was incited to do or became aware about its occurrence provided that their initiative helps to cease the act.

This new part acknowledges cases under which the penalty is reduced such as reporting information leading to preventing the continuity of torture, detection of its perpetrators, capturing them, avoiding occurrence of damage or killing of a person. Lifetime imprisonment penalty for the crime of torture resulting in death would be changed to twenty years imprisonment in accordance with the mentioned Part provided the report is made before torture detection or investigations are commenced and this is a logical condition because reporting after the act or investigations are commenced is useless.
B. Terms of Prescription of Public Lawsuits

Article 23 of the Tunisian Constitution requires that “The state protects human dignity and physical integrity, and prohibits mental and physical torture. Crimes of torture are not subject to any statute of limitations.”

As Article 4 of the Convention Against Torture provides that:

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity and participation in torture.
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Experts in international law, international human rights law, and international humanitarian law are of the opinion that crimes related to torture are serious crimes, which, like war crimes and genocide crimes, should not be subject to any statute of limitations. Ensuring that the crime of torture is not subject to a statute of limitations is one of the most important legal factors that States party to the Convention Against Torture must adopt in order to guarantee to respect for its provisions and to prevent the occurrence of this crime. In effect, if the crime of torture can be subject to a statute of limitations, then perpetrators of torture will be able to escape accountability and punishment as soon as the prescription period has passed, which is in direct contravention to the central objective of the Convention Against Torture, which is prevention of torture, and combating impunity for torture.

Article 24 of Law No. 43-2013 dated 23rd October 2013 and related to the National Authority for the Prevention of Torture provided that “the new fourth paragraph added to part 5 of Penal Code contained in part 3 of the decree No. 106 of 2011 dated 22nd October 2011 is abolished and replaced with the following provisions: The prosecution of cases of torture is not subject to a statute of limitations.”

Article 9 of the basic law No. 53-2013 dated 24th September 2013, related to the establishment and regulation of the transitional justice process, included that “actions resulting from the violations mentioned in article 8 of this law are not subject to a statute of limitations” and the crime of torture is listed in the list referred to in article 8 of the law referred to.

Subsequently, the ambiguity resulting from article 5 of the Penal Code, which established a statute of limitations of 15 years for the crime of torture, is henceforth removed completely.
C. Invalidity of Confessions Obtained through Torture

The above-mentioned Decree Law No. 106 of 2011 also added a second paragraph to Article 155 of the Penal Code which states “Testimony or confessions of the accused or witnesses declarations are considered to be null and void if it is proved that they were made as a result of torture or coercion.” This is a very important addition and complies with Article 15 of the Convention Against Torture. Confessions by an accused person made to a first instance investigator and witness testimony which are proven to have been obtained under torture will be considered null and void. In addition, any police report resulting from torture will not admissible as evidence against an accused.

The question of concern here is who shall decide on the nullification of these confessions and testimonies?

This question is generally raised before the investigating judge (juge d’instruction) assigned to the original case or before the court of justice (i.e. first instance, criminal chamber). In such cases, either a report is drafted and submitted to the Public Prosecution, or the accused person alleging torture is advised to submit a complaint to the Public Prosecution which will be responsible for taking the necessary measures to follow up on this.

In cases where the allegation that evidence was obtained through torture is found to be valid, or a final judgment is issued convicting the perpetrator of the alleged act of torture, then the aggrieved person may demand nullification of the confession given that it was obtained through torture, and may follow the appropriate avenues for justice provided by law, in line with Article 199 of the Criminal Procedure Code, which states “Is annullable, any act or judgment violating the laws of national order, fundamental rules of procedure, or interests of the accused.”

However, according to Article 15 of the Convention Against Torture, “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” Therefore, and in line with the requirements of the Convention which is superior to domestic law, any confession made by an accused person in any legal proceedings which is proven to have been made as a result of torture must be declared inadmissible.
Subsection 3: Other Laws Supporting Anti-Torture

During 2008 and 2013, laws of a special significance were issued with special importance for human rights, combating torture and ending impunity for torture.

A. Law No. 37 of 2008

The Higher Committee for Human Rights and Fundamental Freedoms was established by virtue of law No. 37-2008 of 16 June 2008. It is a national legal entity with financial independence aimed at promoting and protecting human rights, consolidating their values, disseminating the culture of human rights, and ensuring the respect for human rights in practice. In this framework, it is concerned with:

- Expressing opinions about issues which it is consulted on, with the possibility of the expressing opinions on any matter related to human rights and fundamental regardless of whether it is consulted, and drawing attention to violations of human rights.
- Providing recommendations to the President of the Republic to ensure support for human rights and fundamental freedoms at the national and international levels, including to ensure that legislation and practices are in compliance with the requirements of international and regional agreements related to human rights and fundamental freedoms.
- Carrying out any duty commissioned/delegated by the President in this field.
- Acceptance of submissions and complaints relating to breaches of human rights and fundamental freedoms, conduct hearings and, where appropriate, referring complaints to other competent authorities for commitment, informing applicants about their submissions and complaints by means of available media and making reports on such complaints to the President.
The Higher Committee for Human Rights and Fundamental Freedoms shall also be responsible for:

- Research and studies in the field of human rights and fundamental freedoms.
- Contributing to the preparation of reports to be submitted by Tunisia to UN bodies and committees as well to regional bodies and institutions and to express its opinions to such bodies.
- Following-up on observations and recommendations issued by UN bodies and from regional bodies and institutions following examination of Tunisia’s State party reports, and making proposals for the implementation of such recommendations.
- Contributing to the creation of a culture of human rights and fundamental freedoms through organising regional, national and international conferences, distribution of printed materials and organising lectures on matters related to human rights and fundamental freedoms.
- Contributing to the preparation of plans and programs related to human rights education and participation in implementing relevant national plans.
- Working to support and develop Tunisia’s advancements and accomplishments in the field of human rights and fundamental freedoms.

The Higher Committee for Human Rights and Fundamental Freedoms is also charged with:

- Cooperating with competent UN and regional institutions national human rights institutions of other countries.
- Cooperating with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights and making appropriate contribution to its work as well as with the regional groups of the institutions mentioned.
- Participating in meetings organised by national and international human rights organisations.

The Chairman of the Higher Committee, without prior notice, shall carry out inspection visits to places of deprivation of liberty, including penitentiary and reformatory institutions, detention centres, juvenile detention and observation centres, and community facilities for people with special needs, to ensure the application of national legislation related to human rights and fundamental freedoms.

As the Chairman of a special commission delegated by the President of the Republic, he/she shall carry out research and investigations of human rights and fundamental freedoms and submit such reports to the President.

B. Law No. 43 of 2013

Tunisia ratified the Optional Protocol to the Convention Against Torture (OPCAT) on 17 May 2011, which among other obligations, requires the establishment of an independent national preventive mechanism (NPM) to combat torture within a year of ratification. The
Tunisian NPM, the National Commission for the Prevention of Torture was established via basic Law No. 43-2013 dated 23 October 2013.

This law establishes the National Commission for the Prevention of Torture, and sets out its core duties and activities as follows:

- Paying regular and unannounced periodic monitoring visits to places of detention in order to protect persons deprived of their liberty from torture;
- Receiving statements or notifications about possible cases of torture;
- Expressing opinions in drafts of legal and ordinal texts related to the prevention of torture;
- Proposing recommendations and policies for prevention of torture and following up on their implementation.

This law also determines the authority bestowed upon the National Commission within the framework of performing its duties, as well as its relationships with other relevant bodies, and requires such bodies to cooperate with it including by providing the necessary facilities as may be required.

It should be noted that this law expands the list of places of detention to specifically include civil prisons, child reformatory centres, shelters, child observation centres, detention centres, psychological institutions, refugee and asylum seekers centres, migrants centres, quarantine centres, transit areas in airports, disciplinary centres and vehicles used to transport persons deprived of their liberties.

The main concern with regard to this law is the content of Article 13 relating to the possible objection to visiting some places of detention, where there are “compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited” which forms a barrier to the work and tasks of National Commission. This exception is a general one and contravenes the requirements of article 2 of the UN Convention Against Torture which states:

“No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any public emergency may be invoked as a justification of torture”.

C. Law No. 53 of 2013

By virtue of basic Law No. 53 of 2013 dated 24th December 2013 relating to the establishment and regulation of the transitional justice process, the Truth and Dignity Commission was established. It is mandated to undertake its tasks with complete neutrality and independence, including: data collection, monitoring grave violations and verification and documentation thereof, establishment and maintenance of a database of victims of torture including information on the type of violation and reparation received (collective, individual, moral, etc.).
The Truth and Dignity Commission enjoys wide powers including access to public archives; receiving complaints related to violations and investigating them with all means available; and taking suitable measures for witnesses, victims and experts’ protection and to all involved in an investigation. The Commission has the right to ask for the assistance of appropriate public authorities to implement its tasks connected with fact-finding, interrogation and protection.

One of the most important issues contained in this law, found under article 8 of Law No. 53, is the establishment specialised human rights chambers in the courts of first instance and courts of appeal made up of specially trained judges and wish jurisdiction over crimes of serious human rights violations. The crime of torture is explicitly mentioned in article 8. Article 9 of the same law states that the crimes listed under article 8 shall not be subject to any statute of limitations.

The importance of the removal of the statute of limitations for the crime of torture must be pointed out, and is indicative of the seriousness of the crime and the resulting physical and psychological effects. It is also significant in light of the fact that the presumed perpetrators are public or similar employees and may have experience and professional capacities that could enable them to escape from punishment.

The removal of the statute of limitations for torture pursuant to this law is consistent with the Tunisian constitution, as mentioned earlier, as well as with the contents of international conventions ratified by Tunisia.
The national law continuously seeks to prevent torture and supports combating it:

- Law No. 89 of 1999 dated 2 August 1999 includes for the first time the crime of torture in the Tunisian legislation. Interest in the subject is mainly manifested through the allocation of a full section in the Penal Code in the fifth section under the title of “Abuse of powers and failure to carry out public service duties.”
- The legal system for the crime of torture has seen a great development pursuant to the decree No. 106 of 2011 dated 22nd October 2011 related to the revision and completion of the Penal Code and its Procedures through introducing important revisions to those sections relevant to the crime of torture, including:
  - The expansion of the definition of torture.
  - The expansion of persons who can be held responsible for torture.
  - Imposing harsher sentences.
  - Specifying exemptions and mitigations in terms of the punishment for specific cases of torture.
  - Removing the statute of limitations for torture.
  - Prohibiting the use of evidence obtained through torture.

In addition to the number of laws supporting to combating torture:

- Law No. 43 of 2013 establishing the National Authority for Prevention of Torture.
- Law No. 53 of 2013 establishing the transitional justice process, including Truth and Dignity Commission.

- The national debate aiming at harmonising national legislation with Tunisia’s international obligations is ongoing, and further legislative intervention is needed, as well as an effective judiciary, to ensure that Tunisia’s international obligations are applied at the national level.
Part Two: Judiciary and The Crime of Torture

The crime of torture is one of the most serious crimes committed against personal freedom and physical safety. The eradication of torture requires the establishment of a powerful legal system capable of effectively addressing this crime. However, it is also important to establish a legislative framework which enables acts of torture to be identified. While such a framework is necessary to ensure punishment for perpetrators and protection of the rights of victims, it is insufficient if the judiciary is unwilling or unable to effectively apply the law, to hold perpetrators accountable and issue suitable judgments against them on the one hand and to compensate victims for the physical and emotional hurt and damage that befell them, on the other.

The importance of the role of the judiciary in combating impunity cannot be underestimated, especially in light of the difficulty of proving the crime of torture with regard to the place and circumstances in which it was carried out, which in many cases puts victims in a weaker position when having to confront perpetrators, who are in most cases part of the body responsible for investigating the crime of torture. Thus, it is important that the judiciary is familiar with the role it plays and what responsibility it has in the various stages of the case.

A discussion of the judiciary’s role in combating torture is two-fold, and requires discussion of how the judiciary imposes its authority upon likely perpetrators prevent the occurrence of torture, and what role it plays once the crime of torture has occurred in the form of adjudicating cases resulting in appropriate criminal judgements and overseeing the implementation of the punishment against convicted perpetrators.

This role is carried out by the judges in their different positions. Here, we are of course referring to the Tunisian judicial system, which is somewhat different than other comparable systems in the fact that in Tunisia, judges are charged with overseeing the research and investigation of crimes, alongside the prosecution authority.

With regard to the preventive role of the judiciary, this relates to the period of pre-charge detention as most crimes of torture occur during this stage. Detention and preventative detention are considered to be special procedures and legally legitimate acts that affect the individual freedom of the person, the use of which the Tunisian legislation has regulated in the Penal Code and Code of Criminal Procedure.

Detention:

According to the Code of Criminal Procedure, the judicial police, commissioners of police governors, officers, heads of the departments, commissioned officers and customs associates may lawfully detain a suspect for three days which requires them to inform the Public Prosecutor of the suspect’s detention.
Article 13 (bis) of the Code of Criminal Procedure stipulated a period of detention of three days as a first period, extendable by written notice once for the same period by the Public Prosecutor. This extension is subject to the discretionary power of Public Prosecutor in writing (one day, two or three days) and is required to be authorised and justified in writing. Article 13 (bis) of the Code of Criminal Procedure stipulates that the above-mentioned judicial police commissioners must make written statements of the proceeding including obligatory provisions for protection of suspects as follows:

- Informing the suspect of the charges brought against them;
- Informing the suspect of their legal rights and their right to receive a medical examination.
- Notifying the detainee’s relatives of his whereabouts.
- Signature of judicial police commissioner and the detained in the police record. If the detainee refuses to sign the record, this should be noted in the record.

The Tunisian legislator has obligated the judicial police commissioners to maintain a record in the detention centres where suspects are held (in many cases, in the tribunals where the trials take place), with its page numbered and signed by the Public Prosecutor or one of his assistants, which contains the following information:

- The detained person’s identity.
- Time and location of their trial.
- Informing the suspect’s family of their detention.
- Informing the suspect of their legal rights and their right to receive a medical examination.

Detention of children entails special features. Under the Tunisian Penal Code, detention of minors aged from 13 to 18 years is subject to special procedures which aim to guarantee them major protections such as:

- Prohibition of detention minors unless permission has been granted in writing by the Public Prosecutor.
- Not taking a statement from the child by the initial investigator unless in the presence of their legitimate guardian and recording all details of the child’s age.
**Preventive Detention:**

This is an exceptional means of detention provided for under Article 85 of the Penal Code, which needs to be taken into consideration. Article 85 provides for preventive detention in cases where:

- A person is suspected of involvement in major offences, serious crimes or crimes in flagrante delicto, or minor offences.

- There exists strong evidence that requires detention to guarantee the avoidance of committing further crimes or to guarantee the investigation can be carried out with effectively.

Article 85 of the Code of Criminal Procedure states that “**accused persons may be held in pre-trial detention in the case of serious or in flagrante delicto offences and whenever there are substantial grounds for believing that detention is necessary as a security measure to prevent further offences, as a guarantee that the sentence will be served or as a means of protecting information.**

**Pre-trial detention in the above cases may not exceed six months.**

If the examination proceedings so warrant, the examining magistrate may, on advice from the Public Prosecutor and on the basis of a reasoned order, extend the detention period once in the case of an ordinary offence and twice in the case of a serious offence, for a maximum period of six months each time.

**Bearing in mind that an appeal may be lodged against the extension order.”**

If preventive detention under Article 85 the Penal Code is permitted following a justified decision on factual and legal grounds, and if those investigating the case determine that extension of the preventive detention is necessary, under Tunisian law, the case is transferred to the Investigating Judge who decides whether to keep the suspect detained and authorise the extension of the period of preventive detention pursuant to a justified decision according to the nature of the particular crime in question.

The permissible extension period varies according to the classification of the crime. In the case of a misdemeanour where the penalty should not exceed five years in prison, it can be extended once for a maximum of three months in duration. In the case of a felony where the penalty should not exceed five years of prison, it can be extended twice, provided that duration of each extension does not exceed four months. The extension decision is still subject to appeal.

- The suspect spends the preventive detention period in prison, in line with the Ministry of Justice.
Please note that at present there is a draft law under revision within the Code of Criminal Procedure which aims to reduce the allowable period of pre-charge detention and preventive detention.

To achieve effective methods on monitoring the crime of torture and punishing the perpetrators, the judicial authorities shall identify all phases related to identifying the crime of torture, starting from raising public awareness and putting it into practice, conducting thorough search and investigations in order to reach the delivery of the suitable verdicts against the criminal in order to ensure deterrence and to limit the side effects for the victim.

**Setting in motion the public action and prosecution:**
Public Prosecution

**Search and Investigation:**
Investigating Judge

**Delivery of sentence:**
Criminal Chamber

**Section 1: Public Prosecution**

The Public Prosecution is the judicial body that is legally responsible for exercising public action and ensuring the prosecution of suspected perpetrators of crime to bring them to justice. However, before engaging in its prosecutorial role, the Public Prosecution can play an important preventive function to protect those who are deprived of liberty from torture and similar abuse by requiring that legal proceedings be respected during the preliminary investigation period, as well as while serving their sentence.

**Subsection 1: Preventative Role of the Public Prosecution**

Article 10 of the Code of Criminal Procedure determines which parties that can perform the functions of the judicial police. In addition to judicial figures, non-judicial parties
such as police commissioners and officers, officers of the National Guard, and heads of the departments and administrative staff who have been granted authorisation under special laws, the power to investigate certain crimes.

It is made clear to the above-mentioned parties that when undertaking duties of the judicial police, they are still obligated to submit to the precedent and appendage monitoring of the public prosecution represented mainly by the Public Prosecutor before the Court of First Instance with regard to territories and its associates, hence the importance of preventive role manifested by the public prosecution.

The potential for the crime of torture to take place is at its highest during period of initial investigation by the judicial police, especially when interrogations are carried out without the presence of other parties, who are meant to monitor the integrity of the investigations and particularly the lawyer of the suspect. Starting from here and pursuant to the legal authority of the judicial police commissioners who directly supervise places of detention, and to ensure the practice of the successful supervising role, the public prosecution has to ensure its authority through:

- Visiting and inspecting detention centres, preventive detention and prison facilities including but not limited to police departments, prisons, and corrections centres…, this is periodic and without prior notice during working hours and in particular during night shifts, to ensure the non-violation of the detained or prisoners’ rights, as well as to prevent detention of suspects without legal authorisation, and to monitor the physical status of the place of deprivation of liberty.
- Hearing from some of the detained or prisoners during the inspection visits after random selection to learn about their detention circumstances and to what extent has the officer adhered to basic standards. The interview shall be individual, private and away from persons in charge of the department being visited.
- Monitoring detention records found in each detention department and inspecting any breaches contained and investigating the supervisors if necessary.
- Ensuring the application of laws and provisions of Article 13(bis) of the Penal Code represented by respecting the suspect’s right to inform family members of his/her detention and exercising his/her right to a medical examination and to be seen by a doctor during the detainment period to monitor any health changes which may occur.
- Studying the initial investigations which occurred during the first period of detention and avoiding any automatic extension of the detention period.
- Adherence to the requirement of having the suspect present when authorising an extension of the preventive detention period.
- Compliance with confrontation of the suspect when presenting him to the public prosecution after the end of the detention period and before deciding in the crimes in flagrante delicto proceedings to ensure non-existence of any signs or traces of physical abuse and taking the necessary actions immediately in case of discovering an unusual state.
Informing those persons in charge of the place of detention in court of the necessity to hold a record that includes the suspect’s identification details and their notes in case of the presence of the suspect who has any traces of violence subjected upon them and informing the public prosecution immediately when inspecting, anything which raises suspicion.

Article 9 of the International Covenant related to civil and political rights states; “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.” The same article obligates the authority to inform the detainees promptly, in a language which he understands, of the reasons for his arrest and the charges against him, as well as to bring him promptly before a judge or other officer authorised by law to exercise judicial power and to entitle him to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

Subsection 2: Deterrent Role of the Public Prosecution

Article 12 of the Convention Against Torture states that “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”

According to the Committee Against Torture, simply an allegation of torture by an individual is considered sufficient “reasonable grounds” to require the initiation of an investigation.

Article 13 of the Convention Against Torture provides that “Each State Party shall ensure that any individual who alleges he/she has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

It is therefore a duty of members of the public prosecution responsible for dealing with the crime of torture to investigate these crimes committed by public employees and prosecute them.

Article 15 of the UN Guidelines on the Role of Prosecutors states: “Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.”

Under Tunisian law, the Public Prosecution is represented by the advocates general to the Court of Appeals, each within their territorial jurisdiction, under the patronage of the Ministry of Justice as provided for under Article 23 of the Code of Criminal Procedure.
They are responsible for the application of the criminal law in the whole territory of the republic, each according to their territorial competence, and they have the power to supervise the representatives of the public prosecutor at the Court of Appeal.

It is the prosecutors and his deputies who undertake the duties of the prosecutor at the trial courts (Court of First Instance), which are responsible for determining all criminal charges, for collecting information made available by public officials or ordinary persons regarding crimes, and for receiving complaints from victims and their representatives in accordance with Article 26 of the Code of Criminal Procedure. From this standpoint, it can be said the Public Prosecution can become aware of an allegation of torture in a number of ways: (1) through different sources; (2) when it is informed of this, they take the necessary actions for search and investigation, and (3) it makes the decision, whichever they see suitable.

A. Sources of Notification to the Public Prosecution of the Occurrence of Crimes of Torture

Article 26 of the Code of Criminal Procedure stipulates that “The Public Prosecutor is in responsible for ascertainment of all offences, for the receipt of denunciation which are made to him regarding and by public officials, and to receive complaints from aggrieved parties.”

Under Article 18 of the Code of Criminal Procedure, the Public Prosecutor employs different means and sources. Article 18 stipulates that “complaints and optional denunciations can be made verbally to an officer of the judicial police, who must include it in the official record (proces verbale) minutes, which he/she signs with the
complainant or the person making the denunciation, and if the latter decline to sign or are unable to sign, this shall be reflected in the official record.

Complaints may also be made in writing and in this document. In such cases, the complaint must be signed by the complainant, their proxy or their legal representative. The complaints shall include the facts which motivate prosecution, and the means of evidence.”

It is apparent from this provision that the sources of notification of the existence of the crime may vary depending on the multitude of intervening elements in the subject. It is possible for representatives of the public prosecution to directly or indirectly undertake investigation of the crime of torture through:

* Reports being composed by the public prosecution representative after the direct identification of signs of torture on the victim during an inspection visits to places of pre-charge detention (garde a vue), preventive detention or prisons and correction centres, or during when the victim is brought before a judge, whether this is at the initial hearing or during the proceedings against him, when a victim alleges that his/her confession was obtained through torture.

* Notification mandates, from the judicial police before the drafting the record (process verbale) of the preliminary investigation, of the occurrence of an incident of torture. These mandates can be taken into account for the opening of an investigation in light of the information that they contain, regardless of whether the investigation is on-going, anytime that the public prosecutor or his representative, on the basis of his discretionary authority considering the seriousness of the contents of the mandate.

* The official record of the investigation (proces verbale) regarding the crime of torture from the Public Prosecution, after drafting by the judicial police. This record may involve defendants in custody (in flagrante delicto) or defendants who are at liberty or who are on the run (normal proces verbale). While there are not many such cases, it is possible for the victim to make a complaint of torture to the police or the National guard. It is therefore important for the judicial police to draft an official record (proces verbale) which is followed by the hearing of the victim, as well as the collection of evidence and the hearing of witnesses, as well as referring the victim for a medical examination, before sending the investigation record to the Prosecution for decision.

* Complaints filed by the victim or by those acting on his/her behalf, which make up the majority of cases, and which are presented in the form of a memorandum which includes general information relating to the complainant and their capacity in submitting the complaint, information regarding the facts of the incident and the alleged perpetrator, the location where the incident occurred and under what circumstances, and the means for proving the allegations contained in the complaint, either witnesses or medical evidence. Using this information, the representative of public prosecution undertakes suitable actions after verifying seriousness of the complaint. Usually, the representative of the public prosecution conducts the investigations him/herself in these cases by listening to
the victim and referring them for a medical examination before the signs of abuse vanish. They also must listen to the suspects before making a suitable decision and giving permission to launch an investigation.

The International Covenant on Civil and Political Rights in Article No. 2 requires “Each State Party to the present Covenant undertakes to ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”

Notifications: Public Prosecutor may receive reports that include some incidents that constitute the physical material part of the crime of torture and the sources of these notifications are varied, including:

- Petitions filed by one of the family members of the aggrieved or activists in the field of human rights, such as civil society organisations.
- Notifications from national human rights bodies such as the Higher Commission for Human Rights and Fundamental Freedoms established under Law No. 37 of 2008 and Truth and Dignity Commission established under Law No. 53 of 2013 National Commission for the Prevention of Torture established under Law No. 43 of 2013, which the legislation tasked with carrying out visits to places of deprivation of liberty and filing reports after the inspection detailing any violations.
- Notifications from related institutions such as hospitals which may receive a patient from a place of detention who bears signs of torture. In such circumstances, a report is drafted and submitted to the Public Prosecutor. Doctors are among the best-placed persons to identify injuries that may be consistent with torture.
- Notifications from people in charge of pre-charge detention centres (garde a vue) and prisons represent an important source in monitoring torture cases. When a suspect arrives at a place of detention bearing marks that may indicate torture, it is possible for the persons responsible for the place of deprivation of liberty to prepare a report regarding the physical marks and to submit this to the Public Prosecutor who should take appropriate action, while emphasizing the need to transfer him to another detention facility to ensure his safety and proper conduct of investigation.
- Reports filed by the courts and by investigating judges. In many situations, when an accused person is brought before a judge, s/he alleges to have been tortured and that his confession should not be considered because it was obtained through torture. In such cases, it is important that the court or the investigating judge prepares a report indicating the allegation of torture, and submitting this to the prosecutor who will decide whether to open an investigation and take other appropriate measures, on the condition that the main case against the defendant continues to be heard without awaiting the outcome of the Prosecutor’s decision. Once it has been proven through investigation that the confession was obtained through torture, the victim may file an appeal through the remedies available in
law depending on the stage of the case against him (appeal, cassation, judicial review).

- Reports of the application of sentences judge, who is responsible for monitoring the enforcement of sentences and who is responsible for the proper execution of custodial sentences in the prisons in the territory of the competent court. It is this judge’s responsibility to visit penitentiary institutions at least once every two months (realistically and according to a ministerial bulletin, visits are every week). This report is sent to the Public Prosecutor in the case of discovery of crimes such as torture. Paragraph 7 of Article 17 of Law No. 52 of 2001 related to the prison system gives prisoners the right to meet with the application of sentences judge to receive their complaints and requests.

- Correspondence from magistrates in the headquarters of the Ministry of Justice and particularly issued from the General Inspectorate and Department of Criminal Affairs, which respond to complaints received from different sources. In the course of an investigation, it is possible they may come across an incident of torture, which is then referred to the Public Prosecutor of the Court of the First Instance in the appropriate jurisdiction.

- In this concern, it shall be remembered that since 3 May 2001, the date when the prison administration was moved under the tutelage of the Ministry of Justice pursuant to Law No. 51 of 2001, it has become possible for the Inspection Commission of the General Inspectorate in the Ministry of Justice to carry out inspection visits to prisons and detention centres and during these inspection visits, it may discover the existence of torture cases, which it refers to the Public Prosecutor after drafting a report of these findings.
B. Actions Taken by the Public Prosecution

After becoming seized of the matter, whether directly or indirectly, the public prosecution undertakes many actions that differ according to the source of the commitment, but which converge in the decisions taken and the resulting decision.

- Examination of the complaint, official record (proces verbale) or report begins after their inclusion in the record being prepared for the matter, which will depend on the source of the matter. Complaints are included in a special record, which is the same for official records (proces verbale) and notifications received concerning crimes of torture. It would be welcomed to establish a special register for the crime of torture, which would facilitate collecting data regarding the prevalence of complaints of torture as well as follow up on cases.
- Verification of the facts is undertaken, to determine that the formal conditions are fulfilled and in particular the status of the victim and certain facts relating to the territorial competence of the Public Prosecution. Once the verification is complete and the conditions deemed fulfilled, the representative of the Public Prosecution undertakes an examination of the merits of the case.
• The law authorises representatives of the Public Prosecution to conduct investigations directly or with the assistance of the judicial police mandated to undertake such activities, pursuant to Article 26(2) and (3) of the Code of Criminal Procedure: “he/she cannot, with the exception of a crime or major offence committed in flagrante delicto, perform investigative acts, but he/she can perform an initial search as guidance to collect crime evidence, the suspect shall be fully interviewed, statements taken and minutes thereof drafted. He/she can commission a judicial police officer to carry out actions in relation to serious crimes and crimes in flagrante delicto, which are in his competence.”

Concerning the crime of torture, it is preferable for the preliminary investigation to be undertaken directly by the Public Prosecution to the extent that perpetration of the crime of torture is associated with the extracting confessions (specific criminal intent). Perpetrators are usually of the public employees, who have the status of judicial police. In cases where the investigation is undertaken by judicial police officers, certain obstacles may arise such as the camaraderie between colleagues which could cause an investigation to deviate from its correct trajectory.

In addition, it is important to emphasise the need for timeliness and promptness in carrying out such investigations, in particular before physical traces of torture have disappeared. Representatives of the Public prosecution can commission a doctor to examine the victim’s injuries and prepare a report in this regard, which is taken into consideration before a decision is taken. It is possible for the representative of the Public Prosecution to interview witnesses and provide them with security while they are providing testimony at police stations or national guard offices, or in different branches of the security agencies.

In this context, it is worth recalling that Article 12 of the Convention against Torture states that “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”

C. Decisions taken by the Public Prosecution

Article 30 of the Criminal Procedure Code provides that the “Public Prosecutor appreciates the follow up to complaints and denunciations that are received by him.”

When all investigations regarding the complaint, the notification or the official record (proces verbale) are complete, the representative of the Public Prosecution can decide on the matter. After conducting a preliminary investigation, it is then possible to determine whether to proceed with the case or not, as this allows the Public Prosecution to classify the facts and determine which crime they constitute. The classification of the facts is considered one of the most important steps in light of the influence on the type of crime and the nature of the decision.
Besides the capability of actions adaption and crime determination that can be formed in these actions, action adaption is the most important stage due to the effect of this on the crime quality and the procedure nature that shall be taken.

Decisions of the Public Prosecution can be divided into three categories: either to take no further action on the complaint; to send refer the complaint for another crime; or to open an investigation.

**First: No further action**

When it becomes clear to the representative of the Public Prosecution that the complaint procedure has not been followed correctly, and investigations conducted yield no information to show that the alleged crime may have occurred, then a decision is made not to pursue the investigation.

It should be noted that the decision to take no further action on a complaint may not be subject to appeal, however it remains an interim decision which is possible to review either spontaneously by the Public Prosecution or by the complainant, who may request that the public action is undertaken on his own responsibility, according to Article 36 of the Code of Criminal Procedure which stipulates that "a decision of the Public Prosecutor to take no further action in the case shall not prevent the injured party from exercising the public right of action under his own responsibility. In this case, the complaint may, as a civil party, either request the opening of an investigation or cite the accused person directly before the court."
The demand to open a public action under the victim’s own responsibility continues the processing of the complaint along the wishes of the complainant, either by requesting the opening of an investigation or requesting direct referral of the case to the court (when the matter is related to misdemeanour).

**Second: Referral for another Crime**

The phase of classification of the facts is one of the most important parts of the complaint process. The representative of the Public Prosecution undertakes to classify the facts according to the elements presented before him, after checking the evidence and arguments presented. The fact that torture is similar to many other crimes is a particularly acute problem, as many other offences may share the physical component of the crime of torture. For example, assault in the form of severe violence by a public official in the performance of his duties, which is prohibited under article 101 of the Penal Code, or the crime of abuse which is prohibited under article 224 of the Penal Code, or the crime of detaining a person without legal permission which is prohibited under article 250 of the Penal Code. However, all these crimes differ fundamentally from the crime of torture in the legal aspect. Indeed, the crimes mentioned above carry sentences not exceeding five years’ imprisonment while the crime of torture is considered more severe and a felony offence carrying more harsh punishment; hence, the importance of the distinction between torture and other lesser crimes and the role of the Public Prosecution in the classification of the crime.

The main element in distinguishing between the crime of torture and similar crimes is the presence of specific criminal intent, where the purpose of torture is extracting a confession and information from the aggrieved, or for the purpose of punishment or for any reason of discrimination on any grounds. If one of these elements is not verified by the facts under investigation and consideration by the Public Prosecution, then the Prosecution must send the suspect before a judge for the crime perpetrated (or open an investigation if necessary, bearing in mind that opening an investigation under the investigating judge is not obligatory for minor offences. If the intent is confirmed, the crime is classified as torture and the representative of the Public Prosecution authorises the opening of an investigation under the investigating judge.

**Third: Opening Investigations**

Article 47 of the Code of Criminal Procedure stipulates that it is “**obligatory to initiate a criminal investigation [ouvrir une instruction] in case of major offences and optional in case of minor offences, unless special provisions of the law provide otherwise.**” Crimes considered major offences are those carrying a punishment exceeding five years; crimes considered minor offences are those carrying a prison sentence of more than 15 days and less than 5 years or a fine over 60 Tunisian dinars and in accordance with Article 122 of the Code of Criminal Procedure.

It should be recalled that Article 101(bis) of the Penal Code provides for a punishment of a period no less than eight years for a person convicted of torture. Therefore, the crime of
torture is considered among the crimes that require an investigation before an investigating judge against one or more specific accused persons, or against those who will be discovered through the investigation.

A criminal investigation shall be initiated when evidence is provided as to the probability of the occurrence of torture or ill-treatment, the overall objective of which is confirmation of the facts related to the alleged torture incident so as to identify those responsible, facilitate their prosecution and ensuring reparation for the victim.

It should be noted that the Public Prosecution is responsible for initiating an investigation in case of any death in any place of detention, regardless of the reported reason for the death.

- The Public Prosecution plays a preventive role in combating crimes of torture before they occur through the random inspection visits to the places such crimes are likely to occur, namely places of detention, and through commitment and the ongoing follow-up on conditions of pre-trial detention.
- The public prosecution is key at the initial stage of start of decoding crimes of torture by:
  - Raising public action.
  - Performing the preliminary investigations.
  - Making decisions on whether to pursue cases.
- The Public Prosecution becomes directly engaged through inspection visits to places of detention, or when deciding on the records of flagrante delicto cases or when attending hearings, and becomes engaged indirectly when deciding on the official records (proces verbale) or notifications received from police and National Guard, and when deciding on the complaints submitted by victims or those acting on their behalf, as well when considering the notifications received from judicial or national departments or authorities.
- The Public Prosecution has the authority to search and investigate, conducting the searches and investigations directly, and to determine whether the facts indicate an act of torture, taking decisions as to whether to take no further action, to refer the case for another crime, or to send it forward for criminal investigation.
- Precedent and subsequent monitoring to ensure the guarantees during the garde a vue period and pre-trial detention, and urging respect for the appropriate procedures contribute to limiting the perpetration of torture.
- Ongoing follow-up and thorough searches and accurate decisions contribute to the reduction of impunity for perpetrators of torture and ensuring victims obtain reparation.
Section 2: Investigation Phase

The Investigating Judge commits - irreversibly and as per the Public Prosecution decision - to searching for the truth in the case he/she has been assigned, without considering other charges, unless requested otherwise by the Public Prosecution. Similarly, the investigation should be focused on the individuals mentioned in the decision to open a criminal investigation, and it is not possible to charge other individuals not named in the decision who may be identified in the course of the investigation, without consulting with the Public Prosecution. The only exceptions are flagrant delicto, as per the provisions of article 14 of the Code of Criminal Procedure, or in cases where when the complainant takes it in his own responsibility (partie civile) when the Public Prosecution takes a decision not to pursue the case further following the preliminary investigation, as provided for under article 36 of the Code of Criminal Procedure.

Tunisian Criminal Law gives much importance to the authority of the Investigating Judge, with legislators having dedicated a whole section in the Code of Criminal Procedure (sixty four articles, from articles 47 to 111) to it. The Investigating Judge is granted much authority with regards to research, examination, inspection, detention, testing or any other investigational activities required to ascertain the truth of the matter. The Investigating Judge is also granted the right to issue judiciary orders including custody, summons or temporary release, in order to complete the investigation.
Subsection 1: Powers of Investigating Judge While Investigating Crimes of Torture

Once a torture case is assigned to the Investigating Judge, s/he immediately begins with the investigation and takes all steps necessary to ascertain the truth. This consists mainly of hearing the victim, taking witness statements, questioning of the accused, issuing the necessary judiciary orders, arranging confrontations and ordering expertise, and the seizure of any evidence of interest to the case.

The Istanbul Protocol outlines the principles for an effective investigation and documentation of cases of torture and other forms of cruel, inhuman and degrading treatment or punishment. It also includes guidelines concerning the minimum standards to be met by different countries in order to guarantee an effective documentation of the crime of torture, and the necessity for investigations to be timely and prompt into any allegation of torture. Indeed, article 12 of the Convention Against Torture commits States parties to ensure that its authorities proceed to a prompt, impartial and effective investigation, wherever there are reasonable grounds to believe that torture has occurred in any of the provinces or territories under its jurisdiction.

It should also be noted in this context that even though the judge is authorised under the law to delegate some specific aspects of the investigation to the judicial police, the nature of the crime of torture and the nature of its possible perpetrator are such that the Investigating Judge should take the lead and carry out investigations into allegations of torture personally, as the judicial police might be (and usually are) involved in the said crimes, and therefore investigations carried out by judicial police officers on their own colleagues would make the outcomes of such investigations prone to suspicion.

It should also be noted that military tribunals are responsible for handling cases involving State Security officers as well as other cases mentioned in article 22 of the Internal Security Law of 1982. Investigations are then led by military investigating judges as per the processes stated in the Code of Criminal Procedure, and their decisions may be appealed in the Court of Appeals in compliance with article 6 of the Decree No. 69 of 2011, dated 29 July 2011, and related to the amendment of the code of pleadings and military sanctions.

Before deciding to close the case, the Investigating Judge undertakes many tasks that help him find the truth. They can be summarised in the following table:
A. Hearings, Interrogation and Confrontation

The hearings and interrogations carried out by the investigating judge are among the most important of the stage of the process, to the extent that it constitutes the primary point of departure for the matter. The rest of investigation tasks will only serve to support it or undermine the information obtained through the hearings and interrogations.

First: Hearing the Injured Party

This is usually the first task that the investigating judge carries out in order to document the identity of the victim of torture, and to receive his/her statement about the details of the crime which will serve as a basis for the case.

The judge may in some cases be required to visit a hospital facility to hear the victim, in cases where the victim is unable to travel due to his or her state of health.

Interviewing the presumed victim of torture is one of the most important steps because of the nature of these cases, and on that must be handled with care and due regard to the difficulty that victims may face in recounting painful details of the scene might cause psychological damage, such as a feeling of disability, weakness, or trauma. In light of this, exceptional measures must be taken by the judge, including the following:

− Being very careful when asking questions, reminding the injured person always of their status as a victim, of the procedures to be followed and of the reason for the interview.
− Informing the victim of his/her right to stop the investigation at any point, to ask for a break or to refuse to answer any question they do not wish to answer. Most of the time, the victim does not answer all questions in the first session. They may be traumatised by the details the questions call to mind.
Find a suitable way to make the victim feel comfortable and secure, and refrain from stopping them in case of conflicting or unrealistic statements which may be due to their weak psychological state.

Take all necessary security measures, such as guaranteeing their safety and that of their family, to allow them to express themselves freely and recount truthful details.

If the victim does not speak Arabic, the judge will assign a certified interpreter during the investigation. Given the troubling nature of the details that will be revealed by the victim, the judge may see the need to assign a psychologist (as per the Istanbul Protocol) as the victim may develop other symptoms associated with trauma.

The main purpose of the interview by the Investigating Judge is to gather as much information as possible from the victim, such as the circumstances that lead to the torture, the approximate date(s) and time(s) of the occurrence of torture, detailed descriptions of the persons involved in carrying out the torture, the methods of torture used, the harm caused as a result of the torture, description of any weapons or tools used, descriptions of witnesses to the crime of torture, etc.

In order to gather as much information, the following types of questions are usually asked in such cases: What happened? When did it happen? Who did it and why? Which nicknames did the assaulter(s) use? Which effects did that cause? Who witnessed it?

In this context, it should be recalled that the victim has the right to register with the Investigating Judge his/her intention to bring a civil action in accordance with the provisions of articles 36 and 47 of the Code of Criminal Procedure, which provide for the right to claim material and moral damages before the court handling the case.

Second: Hearing Witnesses

The hearing of witnesses is one of the most important elements for ascertaining the truth of a matter. The investigating judge will call anyone whose testimony he/she deems useful as a witness, either via administrative means or through a bailiff. In the case where a witness refuses to appear before the judge and does not comply with the order, the judge may, after taking the Public Prosecution’s opinion, impose a financial penalty. There is also the possibility that an arrest warrant may be issued against a non-compliant witness if he fails to appear after a second summons.

Before their testimony, the witness must pledge to say the truth and nothing but the truth and is notified that in case of giving false testimony, they will face prosecution for this.

In cases of torture, all means and resources should be at the disposal of the Investigating Judge to guarantee an effective investigation. The judge is authorised to officially oblige any person who might be involved in a crime of torture, including official personnel, to appear before him/her to give their testimony.
Witnesses who saw the victim before and during the arrest of the victim may be able to reveal information on his/her physical state before the arrest and detention, the circumstances that led to the arrest, the way it was conducted, the identity of the person(s) involved in the crime, as well as information about the methods, places, timings and dates of the torture.

Given the delicacy of matters of torture and the degree of influence of witness testimony on the outcome of the investigation, it is essential that the Investigating Judge ensure the safety of those witnesses and protect them from all forms of threat or intimidation related to their testimonies which are considered an important element of the documentation process. In practice, witnesses testifying in crimes of torture are generally subject to actual threats and verbal assaults by the accused perpetrators or those connected with the perpetrators, so as to attempt to pressure them to withdraw their testimony, as such testimony is considered be very important in order to charge the perpetrators and prosecute them in court. The Convention against Torture, in its Article 13, called upon each State Party to take the necessary measures to ensure the protection of witnesses.

It should be noted that Tunisian law does not include a clear law for the protection of victims and witnesses, which results in them facing threats to their life, physical integrity, freedom and property. The justice system cannot be effective without ensuring the safety of witnesses and victims from assault by accused perpetrators.

**Third: Interrogating the Suspect**

The interrogation of the accused perpetrators is one of the main roles that the Investigation Judge plays in the whole investigation process. The purpose is to ascertain the truth about the charge against the suspect, whether they admit it, deny it, admit it partially or add some information and parties to the case.

The judge undertakes to identify the suspect by taking all their personal information including their full name, profession and residence address. The judge informs the suspect of the acts s/he is accused of and the applicable legal provisions. The judge records the suspect's answer in this regard, while informing the suspect that they have the right to refuse to answer without the presence of their lawyer. This warning should be documented in the official record of the interrogation (*proces verbal*).

During the interrogation, the judge asks the suspect questions to seek clarification about the circumstances, causes and material evidence of the crime attributed to him/her. The judge receives the answers on these issues and includes them in the official record of the interrogation, which is then signed by the judge carrying out the investigation, the transcriber, the suspect and his/her lawyer, and the interpreter if present.

The overall objective of the investigation in a crime of torture is to prove the facts related to the crime and to identify the perpetrators to bring them to trial. In this context, the judge presents the accused with the statements of the alleged victim(s) and to obtain his
detailed and precise responses. He also confronts the suspected perpetrator with the witness testimonies and the evidence such as photos documenting the signs of torture, the items seized and the results of any expert testing. All of the suspect's answers are clearly documented in the interrogation report (proces verbale) and the prosecution has the right to attend the interrogation, as per article 73 of the Code of Criminal Procedure which states "the Public Prosecutor has the right to attend the questioning and confrontation of accused persons, and is not allowed to talk without asking for the Examining Magistrate's permission; but if denied, it should be mentioned in the report."

In case the suspect refuses to attend the interrogation, the investigating judge may issue a summons order in compliance with article 78 of the Code of Criminal Procedure. The judge may also issue a detention order in case he/she sees that all the findings and proofs show that the suspect is the real criminal. The judge then takes the opinion of the Public Prosecutor according to chapter 80 of the same code which enables the General Prosecution to appeal a judge's decision that is not in line with the prosecution requests.

Similarly, the law allows the investigating judge after examination of the accused and the finding of strong evidence proving his involvement in the commission of the alleged torture, to issue a detention warrant against the suspect after consulting with the Public Prosecution. Article 80 of the Code of Criminal Procedure allows the Public Prosecution to appeal the decision of the investigating judge, if this is opposes the opinion of the Public Prosecution.
Fourth: Confrontations

The law grants investigating judge the ability to arrange confrontations between the suspect and the victim, and witnesses and other suspects, in an attempt to ascertain the truth and prove the validity of the statements of the parties involved.

As in any normal procedure, when it comes to confrontations, the judge must present all statements to all parties. Normally, the judge would undertake this procedure when the statements of the suspect, victim and witnesses are conflicting. Confronting each party with the other party’s statements of the others helps to ascertain the truth.

B. Issuing Judicial Warrants and Taking Precautionary Measures

In addition to issuing a summons order if a suspect or witness refuses to show up, the investigating judge can also issue a warrant for the suspect accused of torture as a preventive measure by issuing a detention order if evidence arises proving the involvement of the suspect in the crime. He/she would thus ensure the execution of the penalty and the proper execution of the investigation process in accordance with Chapter 85 of the Code of Criminal Procedure. The judge may also take extra precautionary measures by prohibiting the suspect from appearing in certain locations, to remain within certain territorial limitations or even applying a travel ban.

C. Inspection and Profiling

In cases of torture, the judge may visit the crime scene to see all of the physical circumstances surrounding the crime. The crime scene may often be a detention room in a police station or in a prison.

Examination of the crime scene allows the judge to inquire into its circumstances, its conditions, its measurements, the number of individuals found therein, and the existence of certain data which could corroborate the information obtained through the interviews with the victim and witnesses, or other information could be beneficial to the case.

The Investigating Judge is allowed to visit all the places where items could be found that would help ascertain the truth in accordance with article 93 of the Code of Criminal Procedure. Upon discovery of documents or items which may help to uncover the truth, the judge may seize these after writing a list of items seized in the presence of the person the items are being seized from, and authorising their storage in an appropriate place depending on the nature of the items seized.
**D. Expert evidence**

The judge is allowed, in some cases, to request expert assessment or analysis to be carried out in order to ascertain the truth. These tasks are assigned to professional experts according to their area of expertise. They are normally assigned the list of tasks in an official order issued by the Investigating Judge.

When the crime is related to torture, medical evidence is considered to be one of the most important forms of evidence as it determines whether or not the physical signs are related to the crime of torture or not. Indeed, torture usually leaves long-lasting signs, but not all physical signs are torture-related. For this reason, the choice of forensic doctor to carry out a medical examination on an alleged victim must be based on their competency in the field and their level of training in the forensic documentation of torture. It is also important that they are familiar with the prison environment, arrest procedures, methods of torture used and the related physical signs these cause.

Similarly, the medical report should be realistic and carefully formulated. It should avoid any technical wording which means that only a professional could understand it, and it should be carried out in a prompt and timely manner, before the physical signs of torture disappear. In the same way that the Investigating Judge must create an environment of trust when interviewing a victim, so must the forensic doctor. Ensuring the victim feels comfortable with and trusting of the forensic doctor is essential for an accurate narration of the facts connected with the case. In order to gain the confidence of the victim, positive listening is required as well as delicacy and tact in conversing, in showing courtesy, as well as empathy. That requires that forensic doctors have the ability to create an atmosphere of trust and security that facilitates the disclosure of facts that may be of great significance, but which may be very sensitive, troubling or shameful. The doctor should also take into consideration the victim's right to take a break from the examination if this is needed, and also the victim’s right to refuse to answer some questions.

It is very important to mark the date of any previous injuries prior to the date of detention and any effects related to those. Similarly, questions and clarifications from the doctor should be carried out so as to establish a temporal narrative of the sequence of events experienced by the victim in the course of his/her detention. This will help the doctor uncover all important information necessary to determine the facts, such as details pertaining to injuries caused by specific methods of torture, which should be documented in colour photographs. It is also important to highlight that often torture causes destructive psychological effects as psychological torture does not leave physical signs on the body. The psychological assessment is also important and could reveal evidence of torture. The psychological aspect should therefore not be neglected.

The purpose of the medical report is to provide a clear technical opinion on the relationship between the medical condition of the victim and the allegation of torture. The test results and the said report are then submitted to the judicial authorities. The whole procedure must of course be in compliance with the Istanbul Protocol.
It should be noted that a victim may only put forward an allegation of torture for the first time when appearing before the Investigating Judge. Indeed, it is possible that an accused person, when brought before the Investigating Judge for an alleged criminal offense, announces that s/he has been subjected to torture by the investigators and that his confession was obtained through torture. In such cases, the Investigating Judge must issue a report to the Public Prosecution documenting these claims or advises the suspect to make a complaint directly to the Public Prosecutor, however the investigation into the original criminal charges continues in order to avoid delay in the case, notwithstanding Article 15 of the Convention Against Torture which states: “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

Subsection 2: Decisions Taken by the Investigating Judge

Once the investigation and search work are completed, the Investigating Judge forwards the whole file, including their own recommendations, to the Public Prosecution. The latter studies it for eight days then returns it back to the Judge who closes the case with one of the following decisions:

- No further action (classéement)
- Deferral of the case in favour of the competent court
- Separation of the proceedings
- Referral of the accused to the competent court
- Referral of the accused to the Criminal Division of the Court of Appeals of the Investigating Judge.
A. Decision not to take further action

The law enables the Investigating Judge to issue a decision to take no further action on a case if the elements of the case do not appear to amount to torture or if the perpetrator remains unknown. This decision may be appealed by the Public Prosecution or by the victim as a civil party, using the procedures described above.

However, it is important to note that it is possible to initiate a prosecution of the alleged torturer for the same facts if new evidence comes to light, such as new witness statements or investigation reports that were not made available to the Investigating Judge during the investigation and which may strengthen the allegations made by the victim and witnesses. In such a case, only the Public Prosecution or the Attorney General may resume the case, according to Article 121 of the Code of Criminal Procedure.

B. Deferral Decision

Article 105 of the Code of Criminal Procedure stipulates that if the judge sees that they do not have the jurisdiction to handle the case, they will issue an order to defer it to the competent jurisdiction. The Public Prosecution will then transfer the case along the evidence collected to the designated court and will be responsible for keeping the suspect in the same state.

In crimes of torture, the judge may relinquish the case if they discover, after investigating, that it falls under the jurisdiction of the military court, or if they discover that the crime was not committed in their jurisdiction, or the suspect was not arrested in that area and is not one of its residents.

C. Disjunction Decisions

In cases where several individuals are accused, and some have been arrested and others not, the judge has the right to split the case in order to speed up the investigation without having to wait for the arrest of suspects who are still at liberty. Once the Public Prosecution issues their recommendation, the judge issues a separate decision to keep looking for the suspects and keep holding the suspects that have been arrested until a decision about them is reached, as per article 104 of the Code of Criminal Procedure.

In light of the judge's commitment to investigating the crime of torture, they could issue an order to merge two cases together if the incidents, place and parties involved are identical. The judge may also press charges against a new suspect that was not initially included in the case after taking the Public Prosecution's opinion. After receiving the latter's consent, the judge starts investigating and questioning the suspect as per the abovementioned procedures. The new suspect is thus included in the case.
D. Decisions for Referring the Accused Person to the Competent Court

If the Investigating Judge considers that the facts constitute an offense punishable by imprisonment, he shall send the accused, depending on the case, before the District Judge or before the criminal court as appropriate, pursuant to Article 106 of the Code of Criminal Procedure.

When the Investigating Judge disagrees with the Public Prosecution about the nature of the charges assigned to the suspect, they refer them to the criminal chamber of the Court of First Instance responsible for the handling of misdemeanour offences. This is the case when the Judge discovers after investigation that the facts of the case amount to aggression or excessive use of force by a public official in the performance of his duties, prohibited under article 101 of the Penal Code, but do not amount to torture. The judge then refers the suspect based on the fact that the penalty applicable to the crime(s) of which they are accused does not exceed five years of imprisonment. This situation presents itself fairly often, as these crimes (aggression, excessive use of force) are similar to the crime of torture, but the distinction between these crimes and torture are that torture has a specific criminal intent.

It is also worth mentioning that this decision is subject to appeal whether by the Public Prosecution or the victim as a civil party. In case of appeal, the case is referred to the Indictment Division who determines if they support the judge's decision by referring the case to Misdemeanour Court or to return it to the Investigating Judge for further investigation procedures that have not yet been undertaken and that could have a direct incidence on the legal aspect of the crime. This may be carried out by one of the court's advisors. After hearing the Public Prosecution, the Court also has the right to issue a new tracking order or to investigate itself or by proxy about things that have not been subject to investigation.

E. Decisions for Referring the Accused Person to the Indictment Division

Article 107 of the Code of Criminal Procedure states that "when the judge sees that the acts of the crime are considered as a felony, he/she refers the whole case to the Indictment Division along with a declaration of the facts of the case and a list of the evidence..."

Accordingly, if the case is strongly supported by clear and concrete evidence, the testimonies of witness, medical evidence, technical evidence, and other expertises, the judge refers the case to the Public Prosecution, and then issues an order concerning the accused and the charges against them, and refers them to the Indictment Division of the Court of Appeals.

Article 112 of the same code states that "every Court of Appeals has at least one Indictment Division that includes a president and advisors,... and is assembled based upon the Public Prosecution's request whenever required."
The Indictment Division is considered to be a secondary investigation authority. It is charged with monitoring all the activities of the Investigating Judge, and it has the right to carry out supplementary investigation activities whether by one of its advisors or the Investigating Judge. It also has the right to issue a detention or release order.

If the Indictment Division sees that there is enough evidence to prove the charge against the suspect, it sends the accused before the competent court which is essentially the criminal chamber of the Court of First Instance, while giving its opinion on all the charges produced as a result of the procedures concerning each of the suspects referred. The decision of the Indictment Division also remains subject to appeal according to the requirements of Article 258 onwards of the Code of Criminal Procedure, which would provide more guarantees for all parties, given that any decision taken by the examining magistrate is subject to appeal and therefore is adopted only after it becomes final.
Investigating Judge

The Tunisian judicial system grants important and vast authorities at the following levels:

- **Investigating and searching:**
The purpose is to ascertain the truth and reveal probing or denying evidence through:
  - Hearing of the victim, witnesses.
  - Interrogating the suspect
  - Confronting the different parties
  - Issuing appropriate judicial orders and taking precautionary measures
  - Inspection and diagnosis
  - Attributing responsibilities to physicians and experts (in line with the Istanbul Protocol)

- **Decision-making:**
  - When all the work is completed and the case is ready for a decision, the Judge refers it to the Public Prosecution, who offers recommendations within eight days and then returns the case file to the Investigating Judge. The latter will then write the decision and seal it with the investigation seal, thereby closing the case by one of the following decisions:
    - Taking no further action
    - Deferring the case to the competent court
    - Separating the case
    - **Referring the accused to the competent court**
    - Referring the accused to the Indictment Division of the Court of Appeals.

- All of the Judge's decisions are subject to appeal by the Indictment Division as a secondary level of investigation.

Sixty four chapters (47-111) of the Code of Criminal Procedure deal with the role of the Investigating Judge in the undertaking of investigations and reaching a final decision. These provisions are supported by international laws and regulations, indicating a harmonious effort to ascertain the truth.
Section 3: Trial Phase

Once the research and the case’s proceedings are completed at the Court of Appeals’ Indictment Division, a decision is made to refer the case to the Court of the First Instance’s Criminal Division which will take on the case.

The case is sent to the secretariat of the criminal divisions’ trial courts so it can be entered into the public record, given a number, and assigned a legal hearing that will be publically announced.

Consequently, the legal division takes on the case. The case must be assigned no later than three months from the date the court is informed of the file, in accordance with the provisions of article 222 of the Code of Criminal Procedure.

Subsection 1: Structure of the Criminal Circuit

Under Law No. 43 of 2000 dated 17 April 2000, the Tunisian legislature applied a two-level prosecution system for criminal cases. This was done by creating criminal trial court division in all courts of the first instance located at appellate courts that review criminal cases. Before this, criminal prosecution was limited to appellate criminal divisions located in each Court of Appeals.
The preliminary criminal division of the court, in accordance with the stipulations of article 221 of the Code of Criminal Procedure, consists of a Chief Judge and four other judges. The Chief Judge is a Level III judge according to the Court of Appeals’ outline for this post. The four other judges are Level II judges, and the Deputy Public Prosecutor is an assistant prosecutor for the trial court.

**Subsection 2: Proceedings of the Criminal Session**

Criminal division hearings take place openly; however, in some cases, private hearings must be held. According to the law, this occurs in the two following instances:

* First, if the defendant or defendants are security officers of the judicial police force, including police officers, guards, or administration officials, in accordance with the provisions of paragraph 3 of article 22 of Law No. 70 of 1982 dated 6 August 1982 concerning the basic law for the internal security forces.

* Second, if the case’s evidence or proceedings include something that fails to meet standards of public morality or requirements for maintaining civil order, in line with the provisions of Article 143 of the Code of Criminal Procedure.

In each of these two cases, the court hearing are closed to the public– either due to a spontaneous request from the Chief Judge, or due to a request from the Deputy Public Prosecutor. The request is recorded in the hearing’s report, and the hall is cleared of everyone except the parties to the case.

The Chief Judge of the division presides over and organises the hearing. The judge starts by stating the case number and the names of the defendant, the victim (or the plaintiff, depending on the case), and their legal representatives.

Because lawyers must be appointed for felony cases, the chief judge inquires about the matter. If it is shown that the defendant does not have someone to represent him, a public defender is assigned to represent him.

- The chief judge starts by reciting the complete decision of the Indictment Division to the defendant, including the factual basis, legal documents, and the decision to transfer and adjudicate the case. When finished, the judge listens to the complainant or plaintiff, and then begins to interrogate the defendant or defendants (depending on the case). Following that, the witnesses give their statements, after they have sworn under oath and their integrity has been confirmed to be free from legal or other reproach, in accordance with article 96 and the subsequent articles of the Code of Criminal Procedure. Each person who feels their testimony is beneficial is allowed to give statements, even if their testimony is guided, and each of the defendant’s and plaintiff’s legal representatives may ask to question the defendant in the court, who can then accept or deny this request.
The legal representatives defend their parties in turn, and the final word goes to the defendant’s solicitor after legal battles, when appropriate, take place – and after the defendant’s plea, final statements, and requests.

- When the case is ready to be resolved, it is put on hold after the hearing for examination of the procedural demands, such as releasing the defendants with or without bond, subjecting the victim to a medical examination, adding evidence, completing supplementary tests, negotiating, or proclaiming the verdict. At this time, the court declares whether the verdict is guilty or not guilty.

**Subsection 3: Judgments handed down**

Criminal verdicts are required to be made publicly after the hearing. After legal negotiations in the consultation chamber, the division is required to return to the courtroom to announce the verdict in the presence of the defendant, pursuant to the provisions of article 164 of the Code of Criminal Procedure. The criminal division is able to issue two types of verdicts based upon the data provided in the case file.

If the division finds the evidence is not sufficient to prove the charge, it issues a verdict of not guilty. If it finds that the evidence presented is sufficient to issue a guilty verdict, it issues a guilty verdict for crimes of torture with specific intent or a similar crime, if appropriate.

**A. Cases of judgments of acquittal**

Article 170 of the CCP identifies just three ways in which the court can rule not guilty. They are as follows:

- The actions attributed to the defendants do not constitute a crime.
- The actions are unsubstantiated.
- The actions cannot be attributed to the defendant or defendants.

When there is a plaintiff, the court rules not to hear the public case and abandon the private case.

**B. Cases of Rendering Conviction Judgements**

The criminal division can determine that the actions attributed to the defendant do not constitute crimes of torture, but rather constitute another crime, which could be a felony or misdemeanor. In this case, the criminal division may issue a verdict in accordance with the law and the requirements of article 171 of the Code of Criminal Procedure, which reads as follows:

“If the criminal division considers it to be a felony under the law, and the proceedings show that it is only a misdemeanor or a violation, it has the authority to sentence and, if appropriate, decide upon the civil action.”
If there is sufficient evidence for the court to find the defendant guilty of a felony for the crime of torture, the court issues the appropriate verdict, and the sentencing remains subject to the discretion of the division, depending upon the evidence presented in the case. The verdict can also cover civil aspects for the plaintiff.

1. Penal Cases

Crimes of torture, in accordance with the provisions of Article 101 (repeated 101(bis) and 101(ter)) of the Penal Code, call for various, disparate punishments, as follows:

1. Imprisonment of 8 years and a fine of 10,000 dinars in the case of a crime of torture only.
2. Imprisonment of 10 years and a fine of 20,000 dinars in the case of a crime of torture carried out on a minor (18 years or younger), in accordance with the Child Protection Code.
3. Imprisonment of 12 years and a fine of 20,000 dinars in the case of a crime of torture resulting in amputation, disfigurement, or permanent disability.
4. Imprisonment of 16 years and a fine of 25,000 dinars in the case of a crime of torture exacted on a minor resulting in amputation, disfigurement or permanent disability.
5. Imprisonment for life with the possibility of more severe punishment exacted for an attack on a person that resulted in torture and ultimately death.

The criminal division, under its absolute discretion, can acknowledge extenuating circumstances with regards to the provisions of article 53 of the Penal Code.

Taking into account the original punishments, the court can also issue supplementary punishments, in accordance with respect to the provisions of Article 5 of the Penal Code, such as a judgment in addition to the imprisonment and fine. For example, if the defendants are members of the security forces, they could be barred from holding a public office or carrying a weapon. Likewise, the court can decide to publish the contents of a verdict that is issued for a case.

2. Civil Cases

Article 14 of the UN Convention Against Torture (CAT) reads: “Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation…”

Article 7 of the Code of Criminal Procedure provides that: “Each individual party that has sustained any damage or injury as a direct result of torture has the right to a civil case. Said individual may file the civil lawsuit at the same time as the Public Prosecution or he/she may file the civil case alone in the civil court…”

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The pronounced sentence, in addition to the original and supplementary sentencing, could also be compensatory in nature when the plaintiff exercises his right to file a civil case demanding compensation for the damages he/she has sustained as a result of torture. The damages for which the plaintiff seeks compensation must be a direct result of acts committed against the individual claiming damage and prove a crime of torture has been committed.

The damage can be material or moral, and the compensation for the victim, or plaintiff, would be monetary sums whose value is determined by the court based on the medical examinations and evidence presented in the case file. The amount would be paid on behalf of the defendant or split between the defendants.

The plaintiff may waive compensation for material damage and accept a request for rehabilitation. In this case, the plaintiff would request that the defendant be judged in a way that meets these demands.

**Subsection 4: Challenging the judgement handed down**

Regardless of the pronounced verdict, whether it is guilty or not guilty, each of the parties involved, including the Public Prosecutor, plaintiff, and defendant(s), has the right to appeal the Court of First Instance’s decision to a Court of Appeals. The appeals must be made no later than 10 days after the said decision is issued.

A victim who is not a plaintiff may request an appeal by requesting and obtaining the support and assistance of the public prosecutor; otherwise, the request will be denied.

The Criminal Division of the Court of Appeals reviews the aforementioned decision in case it is appealed. It is a five-member assembly headed by a presiding justice of a division of the Court of Cassation, and compromised of four judges - two Level III judges and two Level II judges - and a Deputy Public Prosecutor.

Because the victim may not initiate a case before the Court of Appeals’ Criminal Division (as per the provisions of article 42 of the Code of Criminal Procedure), the party making the appeal, with the exception of the Deputy Public Prosecutor, has legal recourse and may not retract the appeal with regards to the requirements of Article 217 of the Code for Criminal Procedure.

The appellate decision may be appealed to the Court of Cassation within the same timeframe, i.e. 10 days from the date the decision is issued, in accordance with the requirements of article 258 and the subsequent articles of the Code of Criminal Procedure.
Torture: From complaint to conviction

How can we guarantee a fair trial for the defendant without infringing upon the rights of the victim?

- Crimes of torture are a felony: A criminal division comprised of a head judge, four member judges and a deputy public prosecutor examine the case.

- Since 2001, criminal prosecution has become a two-tiered system with the goal of increased responsibility. The Court of Appeals’ Criminal Division is comprised of a head judge, four member judges, and a deputy public prosecutor.

- The Criminal Division issues verdicts, whether they be:
  - Not guilty, in the case unsubstantiated charges and a lack of unequivocal evidence.
  - Guilty: In this case, the criminal and civil cases are judged together, if there is a civil case pending.

- The verdict of a criminal case may be appealed to the Court of Appeals or the Court of Cassation.

A criminal conviction is the best route and ultimate proof that the perpetrator has been successfully prevented from escaping punishment and victim has been able to exercise his civil rights and gain redress for his grievances.
APPENDICES
Appendix no. 1

International and Regional Instruments' Websites

1- The Universal Declaration of Human Rights, issued on 10\textsuperscript{th} December 1948. ( /fm/documents/uldhl/ www.un.org)

2- The International Covenant on Civil and Political Rights, issued in 1966 http://www1.umn.edu/humanrts/arab/b003.html


4- International Convention on the Elimination of All Forms of Racial Discrimination for the year 1965 (www.ohchr.org/FR/ProfessionalInterest/pages/CERD.aspx)


6- United Nations Convention Against Torture of the year 1984 (www.ohchr.org/FR/ProfessionalInterest/pages/CAT.aspx)

7- The Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (www.achpr.org/fr/instruments/ opcat/)

8- The International Convention for the Protection of All individuals from Enforced Disappearance www.ohchr.org/FR/ProfessionalInterest/Pages/conventionCED.aspx

9- The First and Second Additional Protocols (issued in 1977) from the Third Geneva Convention Relative to the Treatment of Prisoners of War (www.icrc.org)

10- The Fourth Geneva Convention Relative to the Protection of Civilian individuals during Time of War of the year 1949 (www.icrc.org)

11- The Geneva Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or other Gases, in war and of Binstrumenteriological Methods of Warfare (www.icrc.org)

12- The Rome Statue of the International Criminal Court for the year 1998 (www.ice-cpi.int)

13- The First Geneva Convention of 1864 (www.icrc.org)
14- The Geneva Convention of 1906 (complementary and developed to the First Geneva Convention) 
(www.icrc.org)

15- The two Geneva Conventions of 1929, the first dated to 27/07/1929 and the second dated to 27/08/1929 (www.icrc.org)

16- The Geneva Convention of 12/08/1949 (www.icrc.org)

17- The 1951 Geneva Convention relative to the Status of Refugees (www.icrc.org)

18- Regulations blog for the conduct of law enforcement employees 
(http://www1.umn.edu/humanrts/arab/b042.html)

19- Principal proprieties of medicine occupations relative to health employees 
http://www1.umn.edu/humanrts/arab/b040.html

20- Istanbul Protocol 

21- African Charter on Human and Peoples' Rights 
http://www1.umn.edu/humanrts/arab/a005.html

22- Arab Charter on Human Rights 
http://www1.umn.edu/humanrts/arab/a003-2.html
Appendix no. 2

Complaint Form for The crime of torture

To the government’s representative at the primary court in....

Matter: Torture complaint

Complainant: (Full Identity).............................................

Offender:

That I, undersigned:............

Propound to your Excellency that on the date.................

I was arrested by..............

For being accused of.............

And that I was taken to.............................. at..................

Where I was tortured by one/a group of security agents
(Providing the identity of the assaulter or the name or surname and a description of the features (semblance) and the clothing and any other lead to the perpetrator) who attacked
(presenting the method and the reason for the torture)..................................

Which resulted in physical damage manifested in..................

Diagnosed by the medical certificate attached (if found) as well as psychological damage..........................

Reclaiming accordingly the judicial tracking against the offender(s) for a the crime of torture according to the provisions of iterated chapter 101 from the penal code.
Appendix no. 3

Hearing report form for a complainant in a the crime of torture

Today's date..........................
Has arrived to us, we.................
Complainant:.........................
And stated that on the incident's date..................
He/she was arrested by..................
And taken to.........................
Where he/she was subjected to......... by (person/group) of..................anonymous to
him/her but can identify him/them if presented, and they were
wearing..................................

Where they assaulted (detailed description)..............................

And he/she exhibited a medical certificate allowing him to rest for (a period of time if
found).............
And we observed on him/her......................
He/she also confirmed that the torture resulted in psychological damage manifested
in.......... 

And accordingly he/she reclams judicial tracking.
Appendix no. 4
Judicial Checklist for Medical Testimony

The checklist helps judges resolve torture and ill-treatment complaints by using the Istanbul Protocol criterion. It also helps forensic examinations in:

- Examining forensic evidence (physical and psychological) of torture and ill-treatment allegations.
- Evaluating damage (physical and non-physical) including pains and physical and mental impediments.
- Presenting a specialist's opinion on the possible reasons of physical and psychological marks and impediments.
- Evaluating internal consistency and the credibility of forensic information related to the case.
- Providing evidence that may help in detecting the torture perpetrators or proving their identities.

| 1. Has information related to the case been provided in the file properly? |
|-------------------------------------------------|---|---|---|---|
| Name of the concerned subject, date and place of birth, and social type | ☐ | ☐ | ☐ | ☐ |
| Reason of examination | ☐ | ☐ | ☐ | ☐ |
| Informed consent document | ☐ | ☐ | ☐ | ☐ |
| Date and place of evaluation | ☐ | ☐ | ☐ | ☐ |
| Evaluation period (usually several hours) | ☐ | ☐ | ☐ | ☐ |
| The presence of a translator during the evaluation | ☐ | ☐ | ☐ | ☐ |
| Were any obstacles or limitations present during the evaluation? | ☐ | ☐ | ☐ | ☐ |

| 2. Does the forensic expert carry the necessary qualifications? |
|---------------------------------------------------------------|---|---|---|---|
| Current occupation | ☐ | ☐ | ☐ | ☐ |
| Necessary medical training and/or clerkship | ☐ | ☐ | ☐ | ☐ |
| Specific forensic training | ☐ | ☐ | ☐ | ☐ |
| Past experience in documenting evidence related | ☐ | ☐ | ☐ | ☐ |
to torture and ill-treatment

Related publications and experience in teaching □ □ □ □ □

<table>
<thead>
<tr>
<th>3. Basic information available in the report</th>
<th>Yes</th>
<th>No</th>
<th>Partially</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical file and surgical operations including injuries</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Records of using or consuming narcotic substances</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Records of injuries, traumas, or mental illnesses not related to the alleged torture or ill-treatment</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4. Torture and ill-treatment allegations listed in the report</th>
<th>Yes</th>
<th>No</th>
<th>Partially</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Circumstances of the arrest and detention</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Detention and ill-treatment summary</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Circumstances that preceded the alleged torture and ill-treatment</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Written report on the alleged torture and ill-treatment</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Report on the methods of torture</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>5. Medical evidence of physical nature must contain the following</th>
<th>Yes</th>
<th>No</th>
<th>Partially</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>General description of the appearance</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Detailed description of protruding marks and chronic impediments</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Graphic anatomical drawings of scars and protruding injuries</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Physical report of positive and negative results related to the case</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Analytical and instructional photographs and reports</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>All marks and bodily scars not related to the torture</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>All information and useful data about the case's medical history: injuries, therapy and impediments</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td><strong>6. Medical evidence of psychological nature must contain the following</strong></td>
<td><strong>Yes</strong></td>
<td><strong>No</strong></td>
<td><strong>Partially</strong></td>
<td><strong>N/A</strong></td>
</tr>
<tr>
<td>History of the case's psychological state: beliefs, situations, life and personal experience, future plans, etc. (Note: this information is necessary to understand the case's psychological reactions and interpretation of the alleged disorder)</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Description of the methods of analysis and evaluation</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Current psychological complaints of the case</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Inventory of the case's past psychological situations and disorders</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Detailed description of protruding marks and chronic impediments</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Report about the mental state</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Evaluation of social placement</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Result of the diagnosis and psycho-analysis – optional by decision of the doctor</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Neurological and psychological analysis – if specified</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td><strong>7. Forensic expert's interpretation of the evidence</strong></td>
<td><strong>Yes</strong></td>
<td><strong>No</strong></td>
<td><strong>Partially</strong></td>
<td><strong>N/A</strong></td>
</tr>
<tr>
<td><strong>Physical evidence:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Analysing and linking the level of consistency between the protruding marks and the</td>
<td>□</td>
<td>□</td>
<td>□</td>
<td>□</td>
</tr>
</tbody>
</table>
impediments and the alleged ill-treatment

Analysing and linking the level of consistency between the results of the physical and bodily analysis and the alleged ill-treatment (Note: the absence of physical evidence does not eliminate the possibility of subjection to torture or ill-treatment)

Analysing and linking the level of consistency between the results of the medical evaluation and information related to methods of torture and their known subsequent effects on a specific area.

Use the Istanbul Protocol classification: (Not consistent - Consistent with – Highly consistent – Typical of – Diagnostic of).

<table>
<thead>
<tr>
<th>Psychological evidence:</th>
<th>Yes</th>
<th>No</th>
<th>Partially</th>
<th>N/A</th>
</tr>
</thead>
</table>

Analysing and linking the consistency of the psychological findings with the report about the alleged torture or ill-treatment.

Evaluating and clarifying whether the psychological findings were expected or are exemplary reactions to extreme exhaustion in the cultural and social media of the subject.

Link the variables that occur to posttraumatic findings with important events following the torture and the course of recovery.

Identifying synchronous anxiety factors affecting the case (ongoing persecution or exclusive immigration or asylum or family-related loss or the loss of a social role) and the psychological effect they might have on the case.

Describing physical circumstances that might clarify the clinical condition especially if related to the possibility of a head injury that might have resulted from the torture and/or the arrest.

Use the Istanbul Protocol classification: (Not consistent - Consistent with – Highly consistent – Typical of – Diagnostic of).
<table>
<thead>
<tr>
<th>8. Does the forensic evaluation contain information related to perpetrators of the alleged torture?</th>
<th>Yes</th>
<th>No</th>
<th>Partially</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who was disclosed and how was this done?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>The presence of a leading authority giving orders.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>9. Evaluation of the forensic expert of the credibility of the medical findings</th>
<th>Yes</th>
<th>No</th>
<th>Partially</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical evidence that the forensic expert tacitly believes is consistent and logical</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Whether the alleged victim has exaggerated physical or psychological marks or not.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>The ability of the alleged victim to present accurate information and a consistent report.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Contradictions that maybe interpreted as torture or other factors (like a former mental impediment)</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>10. The quality of the forensic expert's legal testimony before the court</th>
<th>Yes</th>
<th>No</th>
<th>Partially</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>The use of clear language and avoiding medical terms</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Providing additional details to describe damages and injuries</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Expressing opinions about the concerned persons using only the medical examination</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>The ability to describe conclusions and interpretations</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>The ability to support opinions and conclusions with proof and evidences</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Care in avoiding deducing legal conclusions</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Avoiding any misrepresentation or distortion resulting from advocacy or support.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>
Appendix no. 5

Judicial Pre-trial Checklist

The judicial pre-trial checklist helps judges decide on whether the detained were subjected to torture and/or ill-treatment during the arrest and the interrogation and the different stages of detention prior to the trial or not. In addition, the checklist helps to present the stages in which "confessions" may have been brought out using torture and/or ill-treatment by security agents.

If allegations of torture and/or ill-treatment were found or reasons to believe in their occurrence, the prosecutor or the judge must open a judicial search according to the requirements of the law and order the execution of a forensic analysis by independent experts who are fully qualified (governmental and non-governmental) to detect possible evidence and proof of the alleged physical and psychological ill-treatment.

When forensic experts request to carry out additional examinations and consultations and other operations, the judges must grant the execution of such recommendations.

When forensic analysis includes information about possible perpetrators, the judges must insert information about the employment course and other professional records of the perpetrators to be used as evidences in the case filed against them.

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Partially</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Was the arrested registered upon his detention?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>2. Was the arrested able to call his lawyer at the time?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>3. Has the arrested complained about physical or mental ill-treatment?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>4. Is the lawsuit based on a &quot;confession&quot; from the arrested?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>5. Are there any apparent traces of injuries on the arrested person's body and/or is there any reason to believe that he/she was subjected to physical and/or mental ill-treatment during the arrest?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>6. If so, were there any photographs taken of those injuries?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>7. Was the arrested able to undertake a forensic examination to detect any evidence of physical and/or mental ill-treatment within 24 hours of the arrest?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>8. Were the forensic experts given enough independence to detect evidence of physical and/or mental ill-treatment?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>
9. Were the forensic experts adequately qualified to detect evidence of physical and/or mental ill-treatment?

10. Was the arrested able to be examined by non-governmental forensic experts to detect evidence of physical and/or mental ill-treatment?

11. Did the forensic experts take international standards and Istanbul Protocol requirements into consideration in order to examine and document evidence of torture and/or ill-treatment properly?

12. Did any other parties such as a prosecutor or the police attend the forensic examination or any indication of compulsion?

13. Did forensic experts receive an informed approval before carrying out their forensic analysis?
Appendix no. 6
Anthropomorphic diagram that must be provided with every medical examination report to accurately indicate the site of damage.