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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his mission to Tunisia

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I. Introduction

1. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, conducted a visit to Tunisia, from 30 January to 3 February 2017, at the invitation of the Government, to assess progress Tunisia achieved in its law, policies and practice in the fight against terrorism, measured against its international human rights obligations, in particular in the area of investigation, detention, arrest and trial of terrorist suspects, measures taken to prevent terrorism domestically and abroad, as well as the rights of victims of terrorism and persons negatively impacted by counter-terrorism measures..
2. The Special Rapporteur thanks the Government of Tunisia for having extended an invitation to visit the country and commends the transparency and the constructive and co-operative way in which the Government facilitated his visit, which allowed a frank and open dialogue. Furthermore, the Special Rapporteur would like to thank the United Nations system in Tunisia, in particular the Office of the High Commissioner for Human Rights, the United Nations Country Team and the Resident Coordinator's office in Tunis for providing valuable support throughout his visit.
3. The Special Rapporteur is particularly grateful to the heads of all governmental institutions whom he met. He had valuable exchanges of information and views about the Government's efforts to combat terrorism with the Minister of Justice, the Minister of Defence, the Minister in charge of relations with constitutional bodies, the State Minister of Foreign Affairs, the Senior Adviser to the President of the Republic in charge of counter-terrorism issues, prosecutors and investigative Judges of the Counter-Terrorism Judiciary Pole, the Head of the Central Bank and the Tunisian Financial Analysis Committee, the National Commission on Counter-Terrorism, the National Commission on Prevention of Torture, magistrates for the court of first instance of Tunis, and the Counter-Terrorism Judiciary Institution.
4. The Special Rapporteur also had discussions with law enforcement officials from the Counter-terrorism Unit of the Judicial Police, officials from the General Directorate for International Cooperation and senior officers at the Ministry of Interior, the Presidents of the High Committee for human rights and fundamental liberties, and the Truth and Dignity Commission, the High Authority of Audio-visual communication (HAICA), the National institution for protection of personal data and the Syndicat national des journalistes en Tunisie. He also met with lawyers, journalists and civil society organizations. The Special Rapporteur visited the Mornaguia prison and the Gorjani judicial police compound.
5. The Special Rapporteur shared his preliminary findings with the Government of Tunisia at the end of his visit, on 3 February 2017.

II. General context pertaining to human rights and counter-terrorism

6. Since 2014, Tunisia has lived under the threat of security attacks and suffered an increasing number of acts of terrorism. Initially attacks have occurred in the mountainous regions bordering Algeria, where several law enforcement officials were assassinated by groups described as "terrorists". The security challenges which culminated with two deadly terrorist attacks at the Bardo Museum in Tunis and on a beach in Sousse in March and June 2015 respectively caused the death of over 60 civilians. Both attacks had devastating consequences on the Tunisian vital tourism industry and prompted the government to adopt significant security measures. Another attack took place in Tunis in November 2015, when a bus carrying Tunisian presidential guards was attacked and exploded on one of the main avenues in Tunis. Since then, security incidents and terrorist attacks mainly affected the border areas with Libya and the mountainous region bordering Algeria. The main such attack took place in March 2016 in Ben Guardene, on the Libyan border, which killed 54 people. Against this backdrop, authorities have faced the challenge of having to respond to these threats and incidents in a way that conforms with Tunisia's international human rights obligations.

7. Although Government intensified its counter-terrorism efforts in 2016, terrorism remained a serious challenge. Currently, according to the authorities, there are four types of terrorist threats facing the country, namely the presence of armed groups in the mountains in the North; the presence of sleeper cells and support for active terrorist groups; trafficking in arms coming from Libya; and the issue of foreign terrorist fighters returning from conflict zones in Iraq, Syria, and Libya. As of 2014, according to unofficial sources, up to 6,000 foreign fighters from Tunisia, mostly male but also including female jihadists, were estimated to have travelled to join various armed groups in Syria and Iraq, mostly ISIS. By 2017, they were variously estimated at around 3000, a large number having been either killed in combat or decided to return home. Terrorist attacks and other insecurity factors have contributed to the deterioration of the socio-economic conditions that had laid the ground for the 2011 popular unrests and related change of regime. There has been a growing sense of frustration and social discontent, in particular in the south and south-west of the country, calling for employment, equal economic opportunities, and transparent wealth distribution. Limited economic improvements and a high unemployment rate, particularly affecting youth, has made certain regions of Tunisia fertile ground for recruitment by radical groups.

III. Legal framework

A. Tunisia's international human rights obligations

8. Tunisia is a party to all the main international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic Social and Cultural Rights (ICESCR), the Convention against Torture (CAT), the International Convention on the Elimination of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, as well as some optional protocols. It is also party to the Rome Statute of the International Criminal Court, the Convention on the Prevention and Punishment of the Crime of Genocide, the Geneva Conventions of 12 August 1949 and Additional Protocols thereto, 63 ILO Conventions and 1 Protocol, including all eight ILO fundamental conventions, UNESCO Convention against Discrimination in Education, as well as the UN Convention Relating to the Status of Refugees and its additional Protocol.¹

9. Tunisia has accepted almost all individual complaints procedures established under UN human rights treaties, including: ICCPR-OP 1, article 1; OP-CEDAW, article 1; OP-CRPD, article 1; OP-ICESCR, article 1; OP-CRC-IC, article 5; ICERD, article 14; CAT, article 22; ICRMW, article 77; and ICPPED, article 31. Inquiry procedure: OP-CEDAW, article 8; CAT, article 20; ICPPED, article 33; OP-CRPD, article 6; OP-ICESCR, article 11; and OP-CRC-IC, article 13.

B. National legal framework

10. Following the popular uprising in Tunisia demanding social, economic, civil and political rights, which began on 17 December 2010 and culminated in the ousting of President Ben Ali on 14 January 2011, Tunisia entered a period of transition during which time it has become a beacon of hope in the region. Its commendable efforts in preventing violent extremism and countering terrorism should be grounded in human rights and serve as a model for the region and beyond.

11. Since the adoption of the new Constitution on 26 January 2014, Tunisia has held parliamentary elections, in October 2014, and presidential elections, in November and December of the same year. On 2 December, the first democratically elected Parliament, began implementing its ambitious plans in adopting the organic and other laws pertaining to the reform of the legal and judicial system as stipulated in the Constitution, including the counter-terrorism legislation.

¹ For a full review, see Annex to A/HRC/WG.6/27/TUN/2.

12. The Preamble to the Constitution stipulates that the State is built on the principle of the separation of powers and a balance between them. It also declares that the State must guarantee the supremacy of the law, respect for freedoms and human rights, the independence of the judiciary and equality of rights and duties between all male and female citizens. Article 20 of the Constitution also affirms that the State's international obligations take precedence over domestic law.

13. Chapter V of the Constitution establishes the judicial power as one of the three branches of State. It includes important guarantees for the independence of judges, prosecutors and lawyers as the main actors of the judicial system. The Supreme Judicial Council, established by articles 112 to 114 of the Constitution, is responsible for the effective administration of justice and the independence of the judiciary. Article 113 of the Constitution affirms that the Supreme Judicial Council is self-managed, and ensures its administrative and financial independence by preparing its draft budget and discussing it before the competent parliamentary committee. The Constitution also establishes the Constitutional Court as an independent judicial body that oversees the constitutionality of laws, besides performing other tasks specified by the Constitution.

14. Following a number of terrorist attacks, a state of emergency was declared by the President of Tunisia, as per article 80 of the Constitution, in July 2015 and extended until October 2015. It was declared again in the aftermath of the November 2015 attack and extended several times ever since, most recently in November 2017 for three months. The Special Rapporteur expresses his concern about the legality and persistency of the extension of the far reaching emergency powers, which are set forth and provided to the law-enforcement officials by the old 1978 Presidential Decree n 78-50 and extended by the decision of the head of executive power.

15. On 7 August 2015, Tunisia reinforced its anti-terrorism legislation with the promulgation of a new Organic Law on the Fight against Terrorism and Money Laundering (2015 Law) that repealed and replaced the old 2003 anti-terrorism law. That law had become obsolete since the 2011 political change since investigation and prosecution authorities were reluctant to invoke it, because many in Tunisian society believed that it had been one of the instruments of political repression of the previous regime. The 2015 Law promote increased protection of human rights, including a measure to strengthen the attorney and doctor privileges and the right of journalists to protect their sources² and another that criminalizes unauthorized government surveillance.³

16. The 2015 Law provided for the creation of a new National Commission on Counter-Terrorism (NCCT) and streamlined the handling of terrorism cases by referring them to the Specialized Judicial Anti-Terrorism Unit in Tunis, which consists of the unit of judges and criminal investigation department specialized in terrorism cases, rather than to judicial units at the governorate level. The 2015 Law includes all the offenses addressed in the 19 international instruments on terrorism.⁴ Despite the obvious improvements, the new Law was adopted with flaws discussed in this report.

17. In November 2016, the National Strategy on Counter Terrorism was approved by the President. It contains four pillars: prevention, protection, prosecution and response. The Prevention pillar addresses the root causes, legally prohibits incitement, stresses the role of education in promoting a culture of peace, dialogue, tolerance and respect of different cultures and beliefs, fosters the prevention of radicalization in prisons, promotes the protection of vital infrastructure, and organizes the exchange of information and coordination of activities. The Protection pillar deals with the issues related to combatting terrorism, developing CT protection plans, cooperation between intelligence agencies, organising up-to-date information and communication systems, setting up Border Control mechanisms, and controlling the financing of terrorism. The Prosecution pillar seeks to strengthen the national capacities to fight terrorism through use of legal and judicial measures, and enhancing international legal cooperation. The Response pillar provides for the globally and regionally

² Article 37 of the 2015 Law

³ Article 64 of the 2015 Law

⁴ For the full list of the international legal instruments to prevent terrorist acts see here: <https://www.un.org/counterterrorism/ctif/en/international-legal-instruments>

aligned crisis response and management mechanism, victims of terrorism, role of protected witnesses, and rights of detainees.

18. The Special Rapporteur commends the commitment expressed by all official authorities and institutions to counter terrorism and prevent violent extremism not only through security measures but also via concerted action in the social, political, economic, judicial and human rights areas. He was assured that the 2016 National Strategy to Counter Terrorism had been drafted in this spirit and had been taking into account the UN standards in this regard. The Special Rapporteur is calling on the authorities to make the strategy public and to translate it into a concrete and well-coordinated national action plan for each ministry. It should prescribe each governmental agency its role and deadlines to contribute towards prevention, protection, prosecution and response through the application of the human rights centred approach. The Special Rapporteur is happy to provide technical or advisory assistance to the Government in this regard.

IV. Key human rights concerns

19. Despite many positive developments, the Special Rapporteur would like to share some observations, concerns and recommendations with regard to existing abusive emergency legislation and powers vested on police, the over broad definition of terrorism, prolonged periods and conditions of detention, the use of executive orders to restrict freedom of movement and impose house arrest without proper judicial review, allegations of ill-treatment and torture as well as the use of counter-terrorism law and other legislative acts against journalists.

A. Definition of terrorism under the counter-terrorism legislation

20. The Special Rapporteur is concerned that the definition of terrorism contained in the 2015 Law is overly broad and fail to comply with international human rights standards of legal certainty. Even though the law includes a preamble explicitly emphasizing the importance of respect for constitutional rights and international conventions in the field of human rights and humanitarian law, the way it defines terrorism remains ambiguous. The law defines *inter alia* as a terrorist offense⁵ the act of “causing harm to private and public property, vital resources, infrastructures, means of transport and communication, IT systems or public services” when they are part of an individual or collective enterprise aiming⁶ at intentionally spreading terror among the population or forcing the government or an international organization to accomplish an act or abstain from so doing. Such a definition could allow the repression of certain non-violent acts that are not of a terrorist nature as defined by international law.

21. Furthermore, several provisions of the 2015 Law carry the risk of the gradual broadening of the definition of terrorism to acts that do not amount to, and do not have sufficient connection to, acts of serious violence or harm. Article 5 prohibits incitement to terrorism and article 31 prohibits the “praising and justification of terrorism” through the use of a broad definition which fails to respect international law requirements for restricting the right to freedom of expression. According to the 2015 Law, any person who is found to have “publicly and clearly praised” a terrorist crime, the perpetrator of a terrorist crime, an organization or an alliance connected with terrorist crimes, their members or their activities, could be sentenced to up to five years in prison. Terrorism offences also include accusation of apostasy, including *takfeer* (calling another Muslim an unbeliever), or to make appeal, or incitement to hatred, animosity between races, doctrines and religions or promoting or praising terrorism, which is punishable by one to five years of imprisonment and a fine of five thousand to ten thousand dinars. This articles pose a clear risk of unjustified restrictions on the freedom of expression of individuals and groups that legitimately and peacefully exercise their right to freedom of expression.

⁵ The *actus rei* are listed in articles 14-36 of the 2015 Law

⁶ The *mens rea* is defined in article 13 of the 2015 Law

22. The Special Rapporteur considers that any definition of terrorism should be confined to acts or threats of lethal violence that are committed for political, religious, ideological or any other motives, and that are aimed at spreading fear or terror among the public or parts of the public or to coerce a population or a government or an international organization to take or refrain from taking any action. Contrary to the basic international human rights standards, the 2015 Law criminalises a broad spectrum of acts of a non-violent nature, including the peaceful exercise of the rights to freedom of expression, assembly and association. The definition of terrorism may have a particularly negative impact on citizens in general, and civil society actors in particular, as simple demonstrations that may be accompanied by a certain amount of disorder could be criminalised as acts of terrorism. The implementation of such law can thus result in excessive punishments being applied to people who are little more than peaceful protesters.

23. During his visit the Special Rapporteur was informed that since May 2015, twenty associations were dissolved by judicial decision for having mishandled their funds or having links with terrorist acts and 150 associations were suspended by a Secretary of the State of Tunisia decision on similar grounds. In several cases, criminal prosecution were initiated against journalists and bloggers for reporting about terrorist attacks, which, despite the fact that the terrorist charges were eventually dropped, has fostered an atmosphere of fear among media community in Tunisia. The denigration, in some media or by certain officials, of human rights NGOs and defenders following each terrorist attack, particularly during 2015, contributed to a climate of fear and uncertainty, and raise concerns over the state obligation to protect human rights defenders.

24. The Special Rapporteur recommends that the Government undertake a revision of the definition of terrorism in the 2015 Law and to bring it into line with the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2395 (2017) and 2396 (2017); the Human Rights Council resolution 35/34; and the General Assembly resolution 49/60, 51/210, 72/123 and 72/180. All these resolutions require that States to ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

25. While there is no internationally agreed definition of terrorism, and States thus resort to establishing their own definitions, the Special Rapporteur stresses that Tunisia should ensure that national counter-terrorism legislation should be limited to the countering of terrorism as properly and precisely defined on the basis of the provisions of international counter-terrorism instruments, and be strictly guided by the principles of legality, necessity and proportionality. The definition of terrorism in national legislation should be guided by the model definition proposed in Security Council resolution 1566 (2004) and the 1994 Declaration on Measures to Eliminate International Terrorism and the 1996 Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, which were approved by General Assembly.⁷ The seriousness of, and punishment for, a criminal conviction must be proportionate to the culpability of the perpetrator. No one should be convicted of participating in a terrorist act, or facilitating or funding terrorism, unless it can be shown that they knew or intended to be involved in terrorism as defined under the national law.

B. Lack of due process before the Pôle Judiciaire de lute contre le terrorisme

26. During the visit, the Special Rapporteur was informed that investigations and prosecutions are ongoing against more than 1500 individuals, accused of terrorist acts. Less than 10% of those have been sentenced and the rest continue to be deprived of their liberty for prolonged periods of time without having been found guilty of any offence. The Special

⁷ See, the General Assembly resolutions 49/60 and 51/210, which have been continuously recalled by the GA in its resolutions on measures to eliminate international terrorism, the latest A/RES/72/123 (pp8).

Rapporteur encourages the authorities to accelerate efforts to complete these judicial proceedings including by providing the Pôle Judiciaire de lute contre le terrorisme with adequate human resources, and by simplifying and shortening the complexities of the criminal justice system.

1. Lengthy pre-trial detentions and prolonged investigations

27. In December 2014, the Specialized Judicial Anti-Terrorism Unit (Pôle Judiciaire de lute contre le terrorisme) was established to decrease the number of cases dealt with by the First Instance Court in Tunis. The Unit is composed of the public prosecutor, investigating judges, indictment chamber judges and judges of the criminal and correctional chambers of first instance and appeal. It is tasked with investigating terrorism-related cases (instruction des dossiers) and transferring them to the judicial chambers of the First Instance Court for adjudication. The Special Rapporteur notes with concern that there are only 8 investigation magistrates assigned to deal with more than 3000 pending cases. There are estimated more than 1500 detainees held under terrorism related charges.

28. The 2015 Law permits courts to close the hearings to the public and to withhold information on victims, witnesses and any other relevant person on the ground of confidentiality, including from the defendants and their legal counsel. The law also extends the period of police custody pending issuance of a charge (*garde a vue*) to 5 days renewable twice for a total of 15 days (article 39 and 41). Act No. 2016-5 providing for amendment of the Criminal Procedure Code entered into force in June 2016 prescribes access to a lawyer whilst in police custody and during the pre-trial detention period. However, the access to a lawyer can be delayed for up to 48 hours in cases of terrorism.

29. This provision raises serious concerns about the fairness of the proceedings. These concerns were confirmed by reports received by the Special Rapporteur about trials proceedings conducted in camera and about reliance by certain judges on self-incriminating confessions made during police custody. The Special Rapporteur received credible allegations of torture and other ill-treatment, arbitrary arrests, violation of the right to be informed of the charge, of the right to legal counsel, lack of independent medical examinations, as well as admission of evidence obtained by torture in breach of Tunisia's obligations under article 7 of ICCPR and article 15 of the Convention against Torture.

2. Inhumane prison conditions

30. The Special Rapporteur is particularly concerned about the prison conditions he witnessed in the Mornaguia Prison, which severely fall short of international minimum standards. The prison is approximately 150 % over capacity, with more than 90 prisoners crammed into dormitories with inadequate space, natural light, sleeping and sanitary facilities. These conditions systematically violate the rights of prisoners and place considerable burden on staff. These conditions affect all categories of prisoners. However, they disproportionately affect those charged with terrorism because they are less likely to be granted provisional release than other suspected offenders; their cases may take years to come to trial; and they receive the longest sentences.

31. The Special Rapporteur is also concerned about the measures taken within the prison system to reduce the risk of terrorism recruitment and radicalization. Whilst conscious of the risk involved in allowing free movement of prisoners, measures that segregate individuals in solitary confinement for prolonged periods of time may raise issues of inhuman and degrading treatment.

3. Use of torture and ill-treatment and impunity

32. During his visit, the Special Rapporteur was informed by the Government that there are strong legal safeguards in place against torture and ill-treatment such as the right to file complaint about torture and ill-treatment, the right to legal counsel and to contact a person of one's choice upon arrest, which are afforded to all detainees under the Tunisian Code of Criminal Procedure. The Government has admitted that there were several cases of torture and ill-treatment, but all are dealt with and investigated diligently.

33. The Special Rapporteur was informed that 230 cases of torture were presented to national courts after pre-trial investigation between July 2014 and January 2015. Of these 165 were still in the investigation phase in April 2016, and in two cases only, perpetrators were convicted and were handed down suspended sentences. Whilst disciplinary sanctions have been at times imposed against perpetrators of torture during the past five years, only one case resulted in firm criminal conviction and sentence to two years imprisonment, under article 101 bis of the Criminal Code. The Special Rapporteur notes with concern that in 2015 around 200 torture complaints were lodged, however, as of September 2016, no judgements have been issued, a number of complaints have been dismissed and the majority is still pending.

34. During his meetings with the representatives of civil society organisations, the Special Rapporteur was informed of the growing number of allegations of torture and ill-treatment made by lawyers and human rights groups during court proceedings. He was also told of frequent excessive use of force during the arrest of persons suspected of terrorism offences and excessively long pre-trial detention, as well as cases of lengthy detention without charges. Law enforcement officials have been complaining that after they arrest suspects, the judiciary often releases them due lack of sufficient evidence or because of legal vacuum. In some cases, family members of suspects have been arrested. These persons, sometimes arrested in groups, have alleged that they were ill-treated during arrest and interrogation. The Special Rapporteur has also received reports about the practice of incommunicado detention of suspects before their arrest has been officially registered cases, detention during which claims of torture were made.

35. Reportedly, torture and ill-treatment occur in the security sector, in particular, when a person is held in the custody of the police and National Guard on terrorism related charges. Although the police are under the authority of the public prosecutor during investigations, the Committee against Torture noted in its recommendations to Tunisia in May 2016 that the public prosecutor was not practically involved in monitoring interrogation, but rather exercised judicial oversight over the measures taken by the police. The Committee highlighted reports that the Ministry of Interior has sometimes refusing to reveal the identity of officers suspected of torture to the judge in charge of investigating an allegation of torture, on the ground of a deliberate misinterpretation of the counter-terrorism law.

36. The Special Rapporteur is concerned that impunity for acts of torture and ill-treatment remains widespread. He echoes the Committee against Torture, which expressed its concerns that whilst torture is recognized as a crime in the Tunisian Criminal Code in article 101 bis, the definition of torture is not in conformity with the definition set out in article 1 of the CAT. In particular it does not refer to “punishment as one of the prohibited purposes of torture and limits “discrimination” to “racial discrimination”. The Committee against Torture also noted with concern that article 101 bis provides for the exemption from punishment of public servants or their equivalents who admit and denounce acts of torture “in good faith”, which opens the door to impunity.

37. The Special Rapporteur is concerned over consistent reports about the lack of due diligence by judges and the judicial police when investigations allegations of torture or ill-treatment. These officials, who report to the Ministry of Interior, are responsible for investigating cases of violence committed by State officials. The prosecutors receiving complaints of torture sometimes decide to conduct preliminary inquiries instead of sending the case to an investigating judge, thus preventing the victim from filing a criminal complaint and seeking damages.

38. The Special Rapporteur calls for increased vigilance by all authorities involved in implementing Tunisia’s commitment to eradicate ill-treatment and torture. He commends the Government for its progress in this area, however he expresses concern over the fact that allegations of torture or other forms of ill-treatment made by persons suspected or accused of terrorism acts, their lawyers and human rights defenders do not systematically result in rapid and thorough independent investigations. He recommends, as an immediate step, the introduction of a legal and procedural reform to guarantee access and effective presence of a defence lawyer immediately upon arrest and not after 48h after, as it is currently the case. He also recommends the equipment of video cameras in all places where persons suspected of terrorism are detained and interrogated.

39. The Special Rapporteur welcomes the creation and election of the members of the National Commission on Prevention of Torture in March 2016. He urges the Government to ensure that this institution aimed at preventing torture, is sufficiently funded through State budget in order to ensure its effective and unimpeded operational capacity throughout the entire territory of the country, and that its institutional independence be rigorously respected.

C. Use of abusive emergency powers in violation international law

40. The Special Rapporteur is gravely concerned about routine extension of the states of emergency in Tunisia since July 2015 despite the decrease of the number of terrorist attacks in the country. According to the Ministry of Interior, since the state of emergency was introduced, up to the time of the visit, security forces had conducted more than 500 house raids and had prevented at least 19,000 individuals from travelling to conflict zones in Libya, Syria, Iraq or elsewhere. Most of the restriction measures imposed described below were ordered and implemented in the absence of judicial oversight. They resulted from secret administrative orders of the Ministry of Interior. The Special Rapporteur is concerned that the lack of judicial oversight over these decisions, denies those subjected to them the right to appeal the legality, necessity and proportionality of the measures imposed on them. The Special Rapporteur regrets that despite his appeal to the Government at the end of his visit this abusive practice continues.

1. Abusive imposition of house arrest

41. According to the Government, since the declaration of the state of emergency in July 2015, about 150 individuals were placed under house arrest. This measure appears to be taken without any legal basis in the 2015 Law. The persons targeted were all considered “high risk” security detainees. No arrest warrants were issued by competent courts. The arrests followed secret administrative orders by the Ministry of the Interior.

42. Presidential Decree no. 78-50, of 26 January 1978 on the state of emergency, empowers the Ministry of Interior to place an individual, considered as a security threat, under house arrest or to confine him/her to a specific area and exercise control over the execution such orders (Art 5). House arrest orders appear to be issued for an unlimited time duration and require the individual subjected to them to report twice a day to, and sign in up at, the local police station.

43. The Special Rapporteur urges the Government to fulfil its obligation under article 9 of ICCPR to protect all individuals from arbitrary deprivation of liberty. According to General Comment 35, the deprivation of liberty may take different forms including house arrest.⁸ Hence, it can be imposed only by the judicial decision and subject to appeal as provided by article 9. The right to access to judiciary is non-derogable and must be ensured at all times, even during a state of emergency.⁹

2. Restrictions of freedom of movement and of the right to travel abroad

44. With regards to confinement to a specific area, the Ministry of Interior has been reported to issue what are referred to secret “S10 orders”. Individuals under such orders are normally confined to their city or town. Those placed under house arrest and “S10 orders” are notified of the imposed restriction verbally by police and not presented with a written document, the justification of which, or its direction, could be questioned, challenged or appealed against. The Special Rapporteur urges the Government to discontinue this practice as it is contrary to article 12 of ICCPR.

45. Restrictions of the right to leave the country have also been imposed on people suspected of traveling to foreign countries as “foreign fighters” and/or to engage in terrorist activities. These restrictions appear to have no basis in the 2015 Law. Suspects have been systematically banned from leaving the country. No judicial order sanctions or oversees the travel ban and those subjected to it did not receive any written order or explanation. The

⁸ Para 5 of the General Comment 35

⁹ Para 16 of the General Comment 29

restriction of movement similarly results stems a secret administrative order by the Ministry of Interior, and referred to as “S17 order”. The suspects are notified of the ban but do not receive any official document explaining its legal basis, thus preventing possibility to challenge it.

46. The Special Rapporteur reminds the Government its obligation to ensure freedom of movement and the right to travel abroad under article 12 ICCPR. Even if this right is restricted by the executive or law-enforcement decision it must be legal, reasoned, justified and subject of judicial oversight and appeal.

3. House searches and surveillance

47. According to information received by the Special Rapporteur persons suspected of terrorist activities or of being connected with individuals suspected of terrorist activities, are often subjected to frequent house searches as well as to constant surveillance by the law-enforcement. These surveillance and search measures do not seem to be authorized by courts, or submitted to judicial oversight. House searches are conducted without warrants and involve not only the houses of suspected individuals but also those of their relatives and of any individuals they are suspected to be in contact with. House searches are often conducted late at night and excessive force is often alleged against suspects and their families. The 1978 Presidential Decree empowers the Ministry of Interior to order searches both during the day and night (article 8) In this regard, the Special Rapporteur would like to bring to the attention of the Government its obligation to respect article the right to privacy and inviolability of home provided by article 17 of ICCPR.

4. Abusive emergency powers

48. The Special Rapporteur expresses his grave concern that the abusive emergency powers, which are set forth in the 1978 Presidential Decree n 78-50, and are granted to law-enforcement institutions, impinge substantially on the full enjoyment of the international human rights norms, including those accepted by Tunisia, in particular the right to freedom of movement, the right to leave one’s country and the right to privacy, as well as the non-derogable right to access to court, the prohibition of arbitrary deprivation of liberty and due process guarantees.¹⁰ According to the information received from the UN depository, the Government of Tunisia has never submitted its notification of derogation from the corresponding provisions of ICCPR, which is a clear breach of Tunisian international obligations.¹¹

49. The routine extension of the state of emergency with overreaching executive and law-enforcement powers that infringe upon the full enjoyment of human rights and fundamental freedoms amount to permanent state of emergency, which is prohibited under the international law. The routine extension of the state of emergency in the absence of a notification of derogation, detailing the rationale for the derogations, violate article 4 of ICCPR. The Special Rapporteur urges Tunisia to undertake immediate measures to discontinue this abusive practice and repeal and replace current emergency legislation in line with its obligations under the article 4 of ICCPR.

D. Handling of Foreign Terrorist Fighters and their families

50. Reports suggest that Tunisia is the biggest “country exporter” of Foreign Terrorist Fighters (FTFs) to conflict zones in the region, in particular in Syria. The Government informed that Special Rapporteur that there are no official statistics of Tunisian nationals serving as FTFs in conflicts. However, some 5,000 - 7,000 Tunisian fighters are said to have joined ISIL/Daesh groups in Libya, Iraq and Syria, many of whom were killed and hundreds of whom are estimated to have returned to Tunisia.

51. Some latest figures shared by the Government date back to January 2015, estimating that the total number of Tunisian fighters in Syria is 2800 FTFs including 600 killed and 568

¹⁰ Para 16 of the General Comment 29

¹¹ Article 4 of ICCPR and General Comment 29

returnees to Tunisia. Almost 90% of these combatants joined ISIL/Daesh. The Ministry of Interior informed the Special Rapporteur that it had detailed information about returnees and that among the measures taken against them were imprisonment, restriction of movement and tight security surveillance. The Special Rapporteur has observed a growing public sentiment against the return of these FTFs, regarded as a threat of further violence in Tunisia, as well as to the national and regional security. According to some Governmental officials, the return of FTFs and their interaction with sleeper cells may result in the formation of an armed organisation against the state.

52. The Special Rapporteur is fully cognizant of the threat of further terrorist and other violent attacks caused by the return of FTFs as well as violent radicalisation of individuals on the fringe of society. The return home of individuals who may have committed all sorts of crimes, including terrorism, with an experience of warfare and combat, is no doubt an issue of utmost concern, that any Government concerned with the protection of its population, must take very seriously indeed. The Special rapporteur however, must remind the Government of Tunisia's obligations under article 17 of ICCPR, which states that everyone has the right to enter and leave one's own country. A delicate balance must thus be struck, between countering terrorism and ensuring security in society on the one hand, and ensuring the respect of human rights. In this regard, the Special rapporteur advises that any limitation of rights must be lawful, pursuant to a legitimate aim and necessary to achieve that aim. Collective expulsions are strictly prohibited by the international law. States may only expel a person who is lawfully in the territory, or whose legality of entry or stay is disputed, in pursuance of a decision reached in accordance with law. If the Government is seeking to prevent entry or remove individuals from their territory they must respect the absolute prohibition of non-refoulement under customary law as well as under international human rights law, notably, under the Convention against Torture or, insofar as they come within the Refugee Convention, must not place them at risk of persecution on the grounds identified in the Convention.

53. The Special Rapporteur recommends the Government to undertake appropriate measures to protect the rights of the children and families of the FTFs returning to Tunisia in accordance with its obligations under the international law, in particular with international human rights law, humanitarian law and refugee law.

V. Conclusions and Recommendations

54. **The Special Rapporteur commends the commitment and efforts of the Government of Tunisia to promote and protect human rights and fundamental freedoms while countering terrorism. Since 2014, Tunisia has suffered an increasing number of acts of terrorism, and has lived under the threats of further attacks. While being signatory to almost all main international human rights treaties, Tunisia has endeavoured to respect and to ensure to all individuals within its territory and subject to its jurisdiction all rights related to, inter alia, the proper administration of justice, including the principles of equality before the law, the right to an effective remedy, the right to liberty and security, the presumption of innocence, the right to a fair and public hearing without undue delay by a competent, independent and impartial tribunal established by law, the fundamental procedural guarantees of persons charged with a criminal offence, and the principle of legality, as well as fundamental freedoms of opinion and its expression, religion or belief and peaceful assembly and association.**

55. **The Special Rapporteur welcomes the fact that the Government has undertaken necessary reform of its counter terrorism legislation by adopting the 2015 Law and the 2016 Strategy. Its commendable efforts in preventing violent extremism and countering terrorism should be more firmly grounded in human rights and serve as a model for the region and beyond.**

56. **The Special Rapporteur welcomes the creation of the National Commission on Counter-Terrorism, the Specialized Judicial Anti-Terrorism Unit (Pôle Judiciaire de lutte contre le terrorisme) and the National Commission on the Prevention of Torture. However, he notes with concern that the specialized judicial institution is under**

resourced and unable to effectively and efficiently deal with the growing workload, which result in prolonged deprivation of liberty of hundreds of individuals.

57. Along with these positive developments, the Special Rapporteur observed a number of serious issues with regard to abusive emergency legislation and powers vested on police, the over broad definition of terrorism, prolonged periods and conditions of detention, the use of executive orders to restrict freedom of movement and impose house arrest without proper judicial review, allegations of ill-treatment and torture as well as the use of counter-terrorism law and other legislative acts against journalists.

58. Specifically, the Special Rapporteur recommends that the Government and other relevant state institutions of Tunisia:

(a) Urgently review the definition of terrorism in the 2015 Counter-Terrorism Law and bring it into line with the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2395 (2017) and 2396 (2017); the General Assembly resolution 49/60, 51/210, 72/123 and 72/180; and the Human Rights Council resolution 35/34. This should ensure that the law's definition is as narrow as possible and serves as a basis to ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of Tunisia's obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

(b) Given the alleged the use of torture under the counter-terrorism framework, the judiciary must ensure that coerced self-incriminating confessions, or confessions incriminating others, are inadmissible as evidence in court. Ensure that judges are made aware of their obligation to listen to and promptly and thoroughly investigate any credible allegation by a defendant, his lawyer or his family, that he/she was subjected to torture or ill treatment by investigators during interrogation for the purpose of obtaining self-incriminating confessions or information implicating others. Ensure that judges undertaking their duty to investigate such allegations, are effectively protected against pressure, intimidation or any form of reprisal.

(c) As preventive measures against torture and ill-treatment of persons in law-enforcement custody, the Special Rapporteur recommends:

- the adoption of legal and procedural reforms to guarantee the presence of defense lawyers immediately upon arrest, instead of the current 48h practice, and throughout the interrogation and investigation process;
- to install video cameras in detention and interrogation facilities;
- to ensure that defendants (and other citizens) complaining to have been subjected to torture or ill-treatment are not subject to reprisals, and that they receive, on the contrary, adequate compensation if the allegation of torture is established.
- to ensure the availability of prompt, independent, adequate and consensual medical examinations at the time of arrest and at regular intervals thereafter. Medical examinations must also be provided as soon as a detainee enters a custodial or interview facility and upon each transfer
- to ensure that the newly created National Prevention Mechanism against torture is fully and adequately funded through the State budget in order to ensure its effective and unimpeded operational capacity throughout the entire territory of the country.
- to ensure the complete operational independence of the NPM;
- to introduce specific compulsory training programmes for law enforcement officials, investigators, prosecutors, judges and medical personnel, based on upon the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (also known as the "Istanbul Protocol").

The Special rapporteur, further recommends that:

(d) Tunisia to undertake immediate measures to discontinue the abusive (and internationally illegal) practice of routinely extending the extraordinary powers conferred to law-enforcement institutions under the state of emergency, which de facto normalises what should be an extraordinary legal regime.

(e) Tunisia repeals and replaces its current emergency legislation in line with its obligations under the article 4 of ICCPR. The Government should repeal and replace the 1978 Presidential Decree n 78-50, which set forth and provide for abusive emergency powers to the law-enforcement.

(f) the Tunisian Government to undertake immediate measures to ensure full respect of legality during the state of emergency and full enjoyment of non-derogable rights, including the right to access to courts and due process. The practice of abusive house arrest, restriction of freedom of movement and violation of privacy rights must be discontinued.

(f) The Special Rapporteur recommends Tunisia to undertake appropriate measures in handling the departure and return of FTFs with the view to ensure full respect of article 17 of ICCPR on freedom of movement, while ensuring that any restriction of the exercise of that right is lawful, pursuant to a legitimate aim and necessary to achieve that aim. The rights of the children and families of the FTFs returning to Tunisia should be protected in accordance with its obligations under the international law, in particular with international human rights law, humanitarian law and refugee law.
