United Nations A/HRC/24/42/Add.1

General Assembly

Distr.: General
30 July 2013

Original: English

Human Rights Council
Twenty-fourth session
Agenda item 3
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 of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff

Addendum

Mission to Tunisia (11–16 November 2012)*

Summary

Since January 2011, Tunisia has rapidly undertaken a multiplicity of transitional justice initiatives, mainly related to truth-seeking and reparations. While successive Governments have commendably striven to respond expeditiously to emerging claims from victims, there is an urgent need to place the largely unrelated and ad hoc measures taken to date in a comprehensive framework.

The transitional justice measures adopted in Tunisia have been mainly designed with an "event-based" or "period-based" approach, which has led to the creation of different categories of victims of past gross human rights violations and, as a result, to a serious fragmentation among those groups, as well as within society itself. The central means to reversing this trend consists in the adoption of a human rights perspective that treats gross violations of certain types of rights as the sole factor giving access to redress and other transitional justice measures, regardless of the event or period when the violation occurred, the cause to which the victims may have adhered or the group to which the victim belongs.

With human rights at the core of the transitional justice agenda, more headway needs to be made urgently in the areas of guarantees of non-recurrence and prosecutions. The establishment of effective institutions, mechanisms and procedures is central to the prevention of the recurrence of similar gross human rights violations. This chiefly includes legal,

* The summary of the present report is circulated in all official languages. The report, which is annexed to the summary, is circulated in the language of submission, Arabic and French only.

institutional and personnel reforms in the crucial areas of justice and security. Lack of reform in these areas coupled with the persisting failure to bring alleged perpetrators of gross violation to justice might in the long term lead to a situation where trust of the population in State institutions is virtually impossible to re-establish.

Prosecutions and trials, besides aiming at establishing a chain of command leading up to the actual gross violation, should abide by international human rights standards and allow for effective victim participation. Only transitional justice measures that are designed and implemented in a manner compliant with the rule of law and centred on the notion of human rights will be sustainable and effective in enhancing and protecting human rights, reversing the fragmentation process and furthering reconciliation as a final objective.

Annex

[Arabic, English and French only]

Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (11–16 November 2012)

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I. Introduction

1. Pursuant to Human Rights Council resolution 18/7, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, conducted an official visit to Tunisia from 11 to 16 November 2012, at the invitation of the Government.

2. The purpose of the visit was to assess the measures taken by the Government in the areas of truth-seeking, justice, reparation and guarantees of non-recurrence, and to advise the authorities and society on finding sustainable ways in the process of transitioning to an order based on the rule of law.

3. During his visit, the Special Rapporteur met with the Minister for Human Rights and Transitional Justice, the Minister for Justice, the Deputy Secretary of State of the Ministry of Finance, the Deputy Chief of Cabinet at the Ministry of Foreign Affairs and the Rights and Liberties Commission of the National Constituent Assembly. He also held meetings with the Court of Cassation and the Directorate of Military Justice. While in Tunis, he conducted meetings with the Technical Committee on Transitional Justice, the National Fact-Finding Commission and the National Commission of Investigation on Corruption and Embezzlement. He also travelled to Sidi Bouzid, where he met the Governor and the chiefs of police and of the national guard. In Gafsa, the Special Rapporteur met with the Regional Technical Subcommittee on Transitional Justice. During his mission, he met with a large number of victims and a wide range of civil society and professional associations in Tunis, Sidi Bouzid and Redeyef. He also held meetings with the United Nations country team and the diplomatic corps. He thanks everyone who shared their valuable and important experiences and insights.

4. The Special Rapporteur thanks the Government for the invitation and the cooperation extended to him throughout his visit. He also expresses his appreciation to the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Tunisia for its support in the preparation of and during the visit.

II. Context of the visit

A. Political context

5. Following the events that occurred between 17 December 2010 and 14 January 2011 and the fall of President Ben Ali, Tunisia was ruled by successive interim Governments until the political party Ennahda formed a ruling coalition with two other parties (known as the “troika”) following the elections held on 23 October 2011.

6. The Special Rapporteur conducted his visit at a critical time, when the constitutional drafting process by the National Constituent Assembly was under way and the country was in the midst of efforts to move from a regime marred by repression and corruption to a society based on the rule of law. Work on a bill on transitional justice had progressed to a point that the technical committee of the recently established Ministry of Human Rights and Transitional Justice had already produced a first version. On 22 January 2013, the bill was submitted by the Ministry to the National Constituent Assembly.

7. In February 2013, following the assassination of an opposition leader and subsequent street protests and severe tensions within Tunisian society, the Prime Minister resigned. In March 2013, the new Prime Minister (and former Minister for the Interior) formed a new Government, which included appointments of persons without official party

affiliation to the posts of the Minister for Justice, for the Interior, for Defence and for Foreign Affairs.

B. Continuing and new human rights obligations

8. Prior to the uprising, Tunisia was party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination , the Convention on the Rights of the Child and the two Optional Protocols thereto, the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol thereto, and the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto.

9. Following the ousting of President Ben Ali, Tunisia acceded to the Optional Protocol to Convention against Torture, the first Optional Protocol to the International Covenant on Civil and Political Rights, and the International Convention for the Protection of All Persons from Enforced Disappearance. In October 2012, the Government issued a decree withdrawing all previous reservations made with regard to the Convention on the Elimination of All Forms of Discrimination against Women. The State also ratified the Rome Statute of the International Criminal Court.

III. Underlying challenges to the transitional justice process

A. Proliferation of event-based redress initiatives and the displacement of human rights

10. Since January 2011, Tunisia has rapidly undertaken a multiplicity of transitional justice initiatives, mainly related to truth-seeking and reparations. Such initiatives are interpreted by the Special Rapporteur as a commendable indication of the interest on the part of the Government and of the determination of civil society to take seriously the issues of concern to his mandate.

11. A central characteristic shared by all the initiatives is that they are designed around specific events or periods of time rather than on types of human rights violations. In the present report, the Special Rapporteur will elaborate on the significance of this choice.

1. National Fact-Finding Commission

12. One of the first initiatives was the establishment in February 2011 of the National Fact-Finding Commission. The Commission was mandated by decree-law 8/2011 to investigate abuses and violations that occurred in the period of 17 December 2010 until the accomplishment of the Commission's objectives. The Commission Chairman was appointed by decree, and he in turn selected the other 15 Commission members from among independent competent national personalities, including nine women, following consultations with civil society.

13. The Commission did not dispose of subpoena or seizure powers, but gathered information by means of interviews with families of those deceased during the period under investigation and with injured persons in all regions of the country. It also paid in situ visits to venues where the alleged violations had been committed. In addition, the Commission visited the general prosecutor's office, military courts and various administrative services. It also conducted interviews with physicians at hospitals and visited prisons.

14. While struggling with the lack of precise regulations regarding the procedures to be employed, the unclear time frame of the mandate and insufficient financial means to accomplish its objectives, the Commission contributed significantly to the ongoing truth-seeking process. The report of the Commission,[1] issued in May 2012 and more than 1,000 pages long, documented 338 deaths and the wounding of 2,147 people during the period from 17 December 2010 to 23 October 2011, and affirmed that 132 persons had been killed and 1,452 injured in the period between 17 December 2010 and 14 January 2011. The names of the deceased or injured victims were listed in the annex to the report. According to the Commission, 66 per cent of those killed had died from gunshot wounds. In addition, it found that 82 per cent of fatalities and 76 per cent of those injured were younger than 40 years of age, and that 95 per cent of all victims were male. In its report, the Commission indicated that institutional responsibilities for the violence lay with the Presidency and the Ministries of the Interior, Defence, Health and Communication. It also found that police forces appeared to have been responsible for 99 per cent of the violations between 17 December 2010 and 14 January 2011 investigated by the Commission. After that date, the military, having assumed some internal order functions, was considered responsible for 49 per cent of violations.

15. The Commission recommended a series of legislative and institutional reforms, including human rights protection at the constitutional level, effective victim and witness protection, the reform of the justice, security and penitentiary systems, as well as of the media. The Commission made specific recommendations in relation to other transitional justice measures, such as the establishment of a reparations programme for victims and their families, including adequate medical treatment, and the establishment of a "truth entity", the functions and period of investigation of which were to be specified by a national debate.

16. In the discussion with the Special Rapporteur, the members of the Commission indicated that they had not been informed about the steps that the Government had taken following the submission of the Commission report, and how the Commission's work would feed, or has fed, into any official actions taken. The Commission noted the discrepancy between the numbers of victims listed in the annex to the report and the lists of victims drawn up by other entities. Some members pointed to the deteriorating situation of a large number of victims owing to the absence of official rehabilitation programmes, and noted that assistance was mainly provided by private associations. Specifically, the members mentioned the concern to reintegrate victims into society, which they considered particularly important given that the majority of the victims were under 40 years of age. Bearing in mind the wealth of information accumulated by the Commission, the Special Rapporteur finds it disappointing that the Commission seems not to have been involved in discussions on the overall transitional justice strategy.

2. Reparation and amnesty for former political prisoners

17. On 19 February 2011, the first interim Government issued a decree-law granting amnesty to more than 500 political prisoners of the former regime, most of whom had been convicted or were facing charges under the counter-terrorism law. Article 2 of the decree-law stipulated that all those concerned by the amnesty also had a right to be reintegrated into their previous employment and could request reparation. While prisoners have been released and some of them reintegrated, lack of action on reparation has led to protests and discontent.

[1] Available in Arabic from www.tunisienumerique.com/wp-content/uploads/RAPPORT-04052012.pdf.

3. Financial compensation for victims of the revolution

18. According to the information received, the interim authorities governing until October 2011 provided relatives of those killed during the uprising with financial compensation of two instalments of 20,000 Tunisian Dinars (around $12,750) in February and December 2011, respectively. Injured persons received two instalments of 3,000 Tunisian Dinars each ($1,900). It appears, however, that no clear criteria were defined to determine who had been injured as a result of excessive use of force by the State. Furthermore, the beneficiaries seem to have not been informed about the rationale for and amount of compensation. The Special Rapporteur received information according to which several families of those killed had partly refused compensation, raising claims for justice and revelation of the truth; others are still waiting to receive the compensation promised.

4. Reparation for "martyrs" and their families

19. On 24 October 2011, decree law No. 97 on reparation for the families of the "martyrs" and wounded persons of the revolution was promulgated. "Martyrs" were defined as "persons who risked their lives for the revolution, died or were victims of physical harm causing them an infirmity, during the period extending from 17 December 2010 to 19 February 2011". The decree created the Commission for the Martyrs and Injured of the Revolution, to be in charge of coordinating the compensation process and preparing a list of eligible persons.

20. The decree-law provided for compensatory measures for victims and families of martyrs, including a monthly pension, free medical care in public hospitals and free public transport. While free medical care in public hospitals was offered, the injuries of some victims required equipment and/or treatment that the public facilities did not have or could provide. According to the information received, medical care did not extend to psychosocial treatment.

21. Other measures contained in the decree-law were of symbolic character, such as the construction of a monument paying homage to the martyrs and other victims of the revolution, the establishment of a museum for the preservation of national memory, the naming of streets and public squares after martyrs and the annual celebration of the anniversary of the revolution.[2] The decree-law also provides for the incorporation of a chapter on the struggle of human rights defenders during the revolution in school programmes. While the renaming of places and streets seems to be ongoing, the Special Rapporteur was not able to ascertain the progress made in relation to changes made to curricula in public education.

5. Displacement of a human rights-based approach and social fragmentation

22. The measures mentioned were initiated in an ad hoc manner and designed to provide redress to victims of specific events or periods of time. While the Special Rapporteur commends the willingness of the Government to undertake such initiatives, an "event-based" approach inevitably has serious consequences, the main one being that it gives rise, by its very nature, to different categories of victims and, ultimately, that it both manifests and results in the displacement of the notion of human rights. With an event-based approach, access to the various initiatives for redress is triggered not by rights but by affiliation or some other reason, thereby defeating one of the fundamental aims of transitional justice measures, which is to strengthen human rights regimes.

[2] A/HRC/WG.6/13/TUN/1, paras. 39-41.

23. The measures taken to date have come with conditions, being associated with a specific event or period of time. With no such affiliation, no redress is available. This concern was specifically raised in meetings that the Special Rapporteur held with victims and civil society in the region of Gafsa, and particularly in Redeyef, where an uprising in 2008 led to gross human rights violations that, at the time of the visit, remained unaddressed, given that these events were not on the list of events covered by a specific initiative. Since then, access to some of the measures has been granted to some of these victims through their integration into an initiative covering another event. The disparities in treatment for victims, however, only highlight the complications engendered by the event-based approach.

24. The Special Rapporteur stresses that, from a human rights standpoint, the violation of a right is a proper and sufficient reason to establish and secure access to redress mechanisms, including truth, justice, reparations and guarantees of non-recurrence. In this connection, he expresses the hope that the centrality of the category of "martyrs" in discussions about transitional justice in Tunisia does not obscure the fact that considerations such as the antecedent behaviour of the victim, desert or the identity of the perpetrator are not relevant when justifying the provision of redress. Against this background, the Special Rapporteur stresses that the obligations concerning justice, truth, reparations and guarantees of non-recurrence are a matter of human rights and of universal entitlement, and not dependent upon praiseworthy behaviour, having made a contribution to any given cause, having a particular affiliation or having participated or not in a particular set of events.

25. The Special Rapporteur emphasizes that the creation of different categories of victims through the establishment of initiatives dedicated to the redress of the victims not of human rights violations in general but of a particular set of events constitutes the most serious challenge facing the transitional justice process in the country. Such classification has rapidly evolved into a fragmentation among different categories of victims, and raises the question of equality of treatment not just among the different categories thus generated but, even more fundamentally, among them and victims who have suffered gross violations of a similar kind, except not during events/periods that have been the subject of one of the initiatives. This further undermines the idea that transitional justice measures are both the means to and manifestations of strengthening human rights regimes.

B. Privileging financial compensation

26. Another consequence of adopting an event-based approach to redress is the tendency to over-emphasize the reliance on reparation – and indeed, on monetary compensation— perhaps to the detriment of other transitional justice dimensions. While acknowledging that the needs of victims is urgent and that addressing them is something that cannot be postponed, the Special Rapporteur warns that reparations, particularly in the form of financial compensation, without systematic truth-seeking, justice and the various aspects of institutional reform, as well as other guarantees of non-recurrence, risk compromising their character as justice measures and may become, in the eyes of many, tokens of compensation distributed in order to gain the acquiescence of victims. This view was reflected in the opinions of victims brought to his attention who had refused to accept financial compensation in the absence of any actual prospect of discovering the truth of the violations endured.

27. In the above connection, the Special Rapporteur emphasizes that the four elements of transitional justice are interrelated and reinforce each other. Each of the measures on its own has a limited reach and will not be able to deliver justice to the victims and society, as

spelled out previously by the Special Rapporteur.[3] It is therefore necessary that the measures be conceived and implemented as part of an integrated policy.[4]

C. The continuing challenges of inclusiveness

28. In an effort to address the shortcomings of ad hoc transitional justice initiatives, the authorities have taken some noteworthy steps (whether these measures are also sufficiently human rights-centred to confront the problem addressed above is an independent question, the answer to which is pending).

1. Ministry for Human Rights and Transitional Justice

29. On 19 January 2012, the Government, by decree 2012-22, established the Ministry for Human Rights and Transitional Justice, tasked to develop strategies to address human rights violations committed in the past "on the basis of the pursuit of the truth, judgement and reconciliation in accordance with the principles of transitional justice as adopted at the national level, in order to reinforce the democratic transition and to contribute to national reconciliation", as well as guaranteeing and promoting human rights. The Special Rapporteur notes the concerns expressed by various stakeholders that the Ministry may limit the role played by civil society and its involvement in the deliberations regarding the overall transitional justice framework. Whether their concerns are valid depends much on the openness that the Ministry shows to civil society. While there is nothing in the establishment of such a Ministry that makes the expressed concern unavoidable, it seems that, in practice, the Ministry has yet to allay the apprehensions of civil society.

2. National consultations insufficient to mend the fragmentation of society

30. In an order issued by the Ministry of Human Rights and Transitional Justice on 9 October 2012, a technical committee, to be facilitated by the Ministry, was tasked to prepare a bill on transitional justice to be submitted to the National Constituent Assembly. The Committee expressed an interest in establishing a national consultation as part of the process and, to that effect, carried out an ambitious and formally organized national dialogue on transitional justice. Interest in consultations is often expressed in transitional situations but rarely institutionalized; hence, the Special Rapporteur wishes to highlight the underlying commitment to such consultation processes and to commend the Committee for taking this issue seriously. There is much to appreciate in the plan to have formally organized consultations and, particularly, in the idea of taking the consultations to the regions. Given the relative dearth of formal experience with processes of this scope in other transitional situations, the difficulties posed by such an endeavour should not be underestimated.

31. The process was divided into two stages. In April 2012, a national dialogue on three thematic issues was held in Tunis. The second stage was held for a period of three weeks in September and October 2012, with 24 consultations organized in different regions of the country. Apparently, no official consultations have been held since.

32. In meetings the Special Rapporteur held in different parts of the country, questions were repeatedly raised about whether the consultations had elicited the views of a sufficiently broad range of stakeholders and, more specifically, about the criteria used for selecting participants in them. The view that political affiliation was used in a way that

[3] A/HRC/21/46, paras. 22-27.

[4] Human Rights Council resolution 18/7, preamble.

resulted in the overrepresentation of supporters of the governing party was frequently expressed. Furthermore, the voices of women, so crucial in the deliberations of a country on how to move ahead, were not sufficiently represented.

33. In conversations held, and in particular in those held outside the capital, the Special Rapporteur learned that the consultations had been unable to bridge the gap between the urban coast and the interior of the country. As such, they seem to have tracked the status quo ante that the very transitional justice process is intended to address.

34. Lastly, and with an eye to both the future of the experience in Tunisia and further consultation efforts elsewhere, the Special Rapporteur takes the opportunity to emphasize that, regardless of how ambitious and well-intended the structure of formal dialogues are, consultations should not be conceived of as one-off instances. Capturing with sufficient sensitivity and efficacy the views of individuals and civil society about transitional justice requires the establishment of ongoing mechanisms of consultation. This is particularly important in contexts where at least in some areas and with respect to some topics individuals have been given few reasons to think that they are entitled to raise claims based on rights, so their views about questions of justice are developing over time and, it is hoped, aided by the transitional justice processes themselves.

D. Achieving a comprehensive transitional justice strategy through a truth commission

35. One suitable opportunity to place the ad hoc transitional justice initiatives into a comprehensive framework was provided by the work on the draft basic law on the foundations and fields of transitional justice. The Special Rapporteur commends the technical committee and the Ministry for their efforts to create a legal framework that refers to the four elements of transitional justice and provides for the possibility of adopting a more systematic approach to transitional justice.

36. The Special Rapporteur would like to briefly make his main observations and express his concerns regarding the bill of January 2013.[5] As a first general observation, it should be noted that the bill is more expansive with regard to the definition of terms and internal functions than overall strategy. Indeed, the bill is more a law establishing a truth commission (albeit one with a broad set of functions, to be discussed below) than a law on transitional justice expressing a truly comprehensive approach to the issue. For instance, the bill is short on questions of institutional reforms and criminal prosecutions.

1. Mandate and functions of the commission

37. In addition to the function of investigating and disclosing the truth concerning human rights violations familiar from truth commissions worldwide, the bill assigns to the commission notably ambitious functions on reparations and issues relating to corruption. First, it would be responsible not merely for making recommendations concerning reparations but also for administering a reparations programme of its own creation. Second, the bill attributes to the commission broad powers to deal with the issue of corruption, to both recommend institutional reforms and address individual corruption cases through an arbitration and reconciliation committee. This is a novel experiment that, predictably, will pose significant challenges, not the least given the range of competencies called for by the commission's different functions. Truth commissions with simpler attributions have already

[5] The Special Rapporteur will share a more detailed analysis of the bill in his ongoing bilateral exchanges with the Government of Tunisia.

faced challenges in meeting their goals. The Special Rapporteur stresses that some of the functions that the bill assigns to the commission, for example, the administration of reparations and the work on corruption cases, will very likely overburden the commission and, as a consequence, distract it from its very core functions as a truth commission.

38. Specifically, the work on financial files, which will, in accordance with the bill, give the commission arbitration functions with an eye to the settlement of cases, will not only bring an enormous administrative burden but also carry significant reputation and credibility risks, given that arbitration in matters of corruption is likely to be controversial. Settling individual cases of corruption will require quasi-judicial procedures in order to guarantee minimal fairness in decisions that cannot be appealed; a huge workload is therefore to be expected. Settling cases by arbitration will involve a significant likelihood of defeating the expectations of the public, which is likely to have maximalist aspirations of recovery and punishment, even when the main parties to arbitration find the outcome acceptable; hence the reputation and credibility risks.

39. The particularly broad mixture of functions assigned to the commission is challenging not only on account of the different technical competencies required to carry out human rights investigations and at the same time deal with the financial files, but also in terms of the dispositions required for completing these different tasks successfully, and the criteria by which these efforts will be assessed. The very same commission that is mandated to be proactive with recommendations for prosecutions and vetting will also be expected to act as an arbitration and settlement body. The Special Rapporteur would like to highlight the importance of anticipating the enormous challenges and internal tensions that this combination of functions is likely to generate.

2. Selection of commission members

40. The seriousness of the transitional justice efforts made by the Government will be judged as initio by the political will to establish a selection mechanism that allows for the appointment of truly impartial and independent commissioners. According to articles 20 to 27, the bill leaves the responsibility for selecting the members of the independent truth and dignity commission to a political body, the National Constituent Assembly, and, in first instance, to a committee composed of the President or Vice President of the Assembly and the presidents of the parliamentary blocs. Leaving the selection of commissioners to a political body is not objectionable; in the given circumstances, however, and in the light of recent political tensions and the above-mentioned social fragmentation, the authorities may well consider the establishment of additional procedural safeguards to ensure the commission's independence in both its functioning and appearance. Such safeguards could include a clearer nominating process, which would encourage greater involvement of civil society in proposing candidates; requiring the Assembly to hold public hearings with and about at least a short list of candidates; making changes to the first instance appointment procedure so that this responsibility is not given to a committee likely to track existing political lines; and tightening the criteria of eligibility of commission members so that only persons with a track record of independence of all narrow partisan affiliations (and not just independence of one party as in the current draft (art. 23)) are considered.

E. Uneven prosecutions and concerns about the use of military justice

1. Scope, systematic nature and impartiality of prosecutorial efforts

41. Tunisia has prosecuted and tried alleged perpetrators of gross human rights violations committed during both the uprising and previous periods, particularly the Ben Ali era. With regard to violations perpetrated during the uprising, the Tunis and Le Kef trials are to be highlighted. Both trials targeted officials of the former regime at the highest

level. In the Le Kef trial, former President Ben Ali, two former Ministers for the Interior, four Directors General of the Security Forces and 16 other high-ranking and lower-ranking members of the security forces stood trial before the Le Kef Permanent Military Tribunal for the murder and attempted murder of demonstrators in the governorates of Le Kef, Jenouba, Béja, Siliana, Kasserine and Kairouan in the period from 17 December 2010 to 14 January 2011. In June 2012, the trial resulted in 13 convictions, including a life sentence in absentia for the former President and 12 years of imprisonment for former Minister for the Interior Rafik Haj Kacem. In the Tunis trial, 43 defendants, including Ben Ali and high-ranking officials of the security sector, were tried before the Permanent Military Tribunal of Tunis for the killing of protesters in the cities of Tunis, Ariana, al-Manouba, Ben Arous, Bizerte, Nabeul, Zaghouan, Sousse and Monastir. This resulted in July 2012 in a life sentence for the former President, and prison sentences from five to 20 years for other high-ranking officials. Both the Le Kef and the Tunis trials are now being appealed. In addition, proceedings were held before the Permanent Military Tribunal of Tunis and the Permanent Military Tribunal of Sfax against lower-level members of the internal security services for killings in Ouardanine, and Sfax and Regueb, respectively.

42. Efforts to ensure criminal justice after a transition are complex and may be subject to criticism of various sorts, even by supporters of the idea of using courts in such circumstances - which, the Special Rapporteur strongly emphasizes, is a matter of legal obligation. It is important to distinguish three different types of criticisms. Prosecutorial efforts and trials may be (a) too narrow, focusing on too few cases and individuals; (b) disorganized, unsystematic, haphazard, obeying no clear strategy; and (c) politically biased, targeting only some individuals that can be safely scapegoated, thereby offering de facto immunity to others, for partisan political reasons.

43. During his visit, the Special Rapporteur heard accounts of the above-mentioned types of criticism, among others. The fact that some trials have been held and that they have included high-ranking members of the previous regime is noteworthy. It is nonetheless evident that a significant number of perpetrators alleged to have been involved in the commission of gross violations during the uprising have not yet been prosecuted or tried.

44. Even setting aside reservations regarding in absentia trials, ultimately, the sincerity of criminal justice efforts cannot be asserted merely by the willingness to open prosecutions or even try cases of members of a previous regime not only wholly discredited but largely on the run. The real test will rather be whether the criminal justice system is both allowed and enabled to operate wherever the evidence leads it, and on the basis of clear and deliberate investigatory and prosecutorial strategies that reflect a commitment to attaining a full picture of the entire chain of command that made the violations possible, and to holding to account those responsible, regardless of all other considerations, including their current status or past political affiliations. As argued by the Special Rapporteur in his report submitted to the General Assembly, criminal prosecutions that are not derailed by the positions of power of alleged perpetrators or influenced by political considerations are an effective way of signalling a commitment to the idea that the law applies equally to everyone, a basic dimension of the rule of law.[6]

45. Nothing in the visit persuaded the Special Rapporteur that a comprehensive prosecutorial strategy to deal with alleged cases of gross human rights violations had been set in place. Investigations, prosecutions and trials against perpetrators of alleged gross human rights violations committed prior to the uprising, in particular during the administration of Ben Ali, as well as those relating to the uprising itself, have been conducted to date in what appears to be an ad hoc manner, despite the fact that the cases

[6] A/67/368, paras. 46-57.

involve violations that include torture and other forms of ill-treatment, secret detention and widespread prolonged arbitrary detention – in other words, the sort of system crimes that require complex and relatively stable structures, the dismantlement of which requires deliberate and comprehensive prosecutorial strategies.[7]

2. Use of military courts

46. According to article 22 of the Law on Internal Security Forces, military courts have the competence for offences committed by members of the security forces in the course of duty, regardless of the identity of the victim. As a result, all complaints against law enforcement officers, including those relating to gross human rights violations, are tried before military courts in Tunisia.

47. Decree-law No. 69 of 2011, amending the Military Justice Law of 1957, introduced new elements aimed at providing attributions of independence to the military justice system. The main changes included the removal of the obligation of the general prosecutor to inform and receive confirmation from the Minister for Defence prior to criminal proceedings; the revocation of the power of the Minister for Defence to suspend the execution of convictions issued by military courts; the creation of a two-tier jurisdiction structure headed by the Court of Cassation; mixed composition of military courts, securing the participation of both military and civilian judges; and the establishment of a military judicial council in charge of appointments, promotions and disciplinary measures.

48. While appreciating the various reforms steps taken, the Special Rapporteur notes that the institutional independence of military judges remains questionable by the fact that the Minister for Defence presides over the above-mentioned military judicial council. Furthermore, military judges are appointed by decree following the proposal by the Minister further to a decision of the said council; civilian judges are appointed by decree following a proposal by the Minister for Justice and the Minister for Defence.

49. The Special Rapporteur would like to note positively that law No. 9 of 29 July 2011 entitles victims to be a *partie civile* in proceedings before military courts and to make claims for reparation for the harm suffered on the basis of the rules applicable in the ordinary criminal procedure code. While this judicial route should have been possible for victims having participated in proceedings before military courts after 29 July 2011, including the Le Kef and Tunis trials, the Special Rapporteur was not in a position to ascertain the practical impact that this new provision has on victims, and particularly the effectiveness of their rights to justice and reparation. He nonetheless takes this opportunity to stress the importance of victims' participation in such trials, particularly given that they relate to alleged gross human rights violations.

50. In discussions with various stakeholders, the Special Rapporteur learned that a large proportion of the population sees the military courts as being more independent than the civilian justice courts. He associates this perception with the important reforms undertaken in the area of the military justice system and the special role played by the military during the period from December 2010 to January 2011, both of which need to be acknowledged. The lack of measureable progress in reforming the civilian court system is, however, also inevitably behind this widespread perception. The fact that citizens consider military courts to be more effective in securing their rights than civilian courts speaks to the challenges that

[7] One of the cases relating to the Ben Ali era is that of Barraket Essahel, in which 244 members of the military were arrested on the accusation of having prepared a coup d'état in 1991, a large number of whom were subsequently subjected to torture and other ill-treatment. The former President was sentenced to five years of imprisonment in 2012; other high-level officials received between two to five years (raising additional questions with regard to proportionality between crime and sentence).

the judicial system in Tunisia currently faces. Obviously, the solution cannot consist merely in a decision to move to unreformed civilian courts; such a solution also lies in an earnest and systematic effort to improve their reliability.

51. In discussions held with the Directorate of Military Justice, the Special Rapporteur learned of plans to specialize the military justice system further in order to minimize the appearance of civilians before military courts. In this regard, the Special Rapporteur highlights the need to shift the competence to try members of security and military forces for human rights violations to the civilian justice system, a process that should be pursued alongside comprehensive reform of the civilian judiciary, to guarantee its full independence and impartiality.

F. Insufficient progress in guarantees of non-recurrence

52. The Special Rapporteur notes, in particular in the context of the Constitution drafting process, an increasing awareness of the importance to put in place institutions and procedures to prevent the recurrence of gross human rights violations.

1. Strengthened human rights protection

53. Since October 2011, the National Constituent Assembly has been working on a new draft Constitution. The Special Rapporteur notes the catalogue of rights and freedoms enshrined in articles 22 to 48 of the third draft. The initiative to establish an independent constitutional court with which individuals may directly file complaints on alleged violations of their constitutional rights and freedoms is a commendable project. Furthermore, he also took note of the plans to establish an authority of good governance and anti-corruption as an action following up on the suggestions made by the National Commission of Investigation on Corruption and Embezzlement.

54. Furthermore, a number of key pieces of legislation central to the right of citizens to participate in political life, including laws on political parties, freedom of association, assembly and expression, and press and media freedom have been adopted following respective draft legislation prepared by the High Commission for the Realization of Revolution Objectives, Political Reforms and Democratic Transition.

2. Justice sector reform

(a) Judicial system under the former regime

55. The judicial system under the previous regime was characterized by a judiciary that was heavily influenced by the executive.[8] The majority of members of the former High Judicial Council came from the executive branch or were magistrates appointed by the Government. Only a minority of members was elected. Under the former Constitution, the Council was in charge of the appointment, promotion and transfer of and disciplinary measures against magistrates. It was the executive branch, however, that played the decisive role in appointments. The majority of magistrates were appointed by presidential decree on the proposal of the High Judicial Council, while higher-level judicial positions were directly filled by the executive branch. Judges who had the courage to speak out against the misuse of the judiciary for political interests were often arbitrarily transferred to distant regions without their consent.

[8] Organic law No. 67-29 of 1967 (amended by organic law No. 2005-81).

56. The Minister for Justice had the competence to initiate disciplinary proceedings against "any failure by a magistrate in duties, honour or dignity" before the Disciplinary Council of the High Judicial Council conducting the procedure. In the absence of a code of ethics defining the rules of judicial conduct and the elements that constitute a disciplinary offence, the Ministry and the Council were able to initiate proceedings without the minimal constraints afforded by a precise definition of the relevant "failures". To make matters worse, after 2005, there was no judicial recourse possible before an administrative court against the disciplinary decision. Instead, the concerned judge had to address the Remedy Commission of the very same High Judicial Council.

57. Public prosecutors worked under the hierarchic control of their respective chiefs and the authority of the Ministry of Justice.[9] This arrangement, combined with the discretionary power of the prosecutor to assign files to an investigating judge of his or her choice, led to a lack of effective investigations and prosecutions into gross human rights violations.

(b) Status of reform initiatives

58. The above-mentioned situation reflects a dire need for reform. Too little progress, however, has been made, indeed even initiated, in structural terms, in particular as the uprising occurred almost two and a half years ago. The strategic plan for 2012-2016 prepared by the Ministry of Justice mainly contains reform initiatives aimed at modernizing the Ministry and strengthening the administration of the judiciary and judicial processes. The institutional reforms includes the creation of a "judicial pol" attached to the court of first instance of Tunis, in charge of corruption cases. The plan also envisages legislative revisions strengthening the autonomy of prosecutors and ensuring that lawyers have access to detained persons from the time of arrest. The plan does not, however, contain major proposals for structural reforms ensuring the independence and self-regulation of the judiciary.

(c) Absence of a functioning high judicial council

59. Following the adoption of the provisional Constitution in December 2011, the former High Judicial Council was suspended. A draft organic law for the establishment of a provisional body supervising the judiciary was submitted to the National Constituent Assembly in June 2012. This temporary body was meant to fill the gap until a new independent permanent judicial entity administering and overseeing the judiciary was created. Six months after the visit of the Special Rapporteur, the draft organic law had still not been adopted, and consequently no temporary body was in place. Given the central role that such a higher judicial entity has to play to ensure the independent, self-regulated administration of the judiciary, this delay undermines the reputation of and public confidence in the justice system.

(d) Arbitrary dismissals

60. During his visit, the Special Rapporteur learned about several dismissals of judges, including the decision by the Ministry of Justice, published in July 2012, to dismiss several dozen magistrates two months earlier. In his discussion, the Minister for Justice noted that due process requirements had been afforded to the magistrates concerned. Nonetheless, the Minister failed to provide the Special Rapporteur with concrete figures or with detailed information. From several other meetings that the Special Rapporteur held, it appeared that the decisions had been made without adequate respect for due process guarantees, including for the right to be informed about the specific reasons for one's dismissal. Instead,

[9] Law No. 67-29, art. 15; Criminal Procedure Code, art. 21.

decisions were reportedly founded on broad, generalized allegations of corruption and of "loyalty to the former regime". It also seemed that only after a professional judicial association declared a strike were the persons concerned granted the right to appeal to an administrative court. An undetermined but small number of the judges dismissed have reportedly been reinstated.

61. While highlighting that the vetting of members of the judiciary is a requirement for effective guarantees of non-recurrence, the Special Rapporteur underscores the fact that such initiatives should not be conducted in an arbitrary and piecemeal fashion, but rather as part of an overall strategy, and that dismissals can only follow procedures that are respectful of the requirements of the rule of law and international human rights standards. It is in this connection that he takes note of the draft organic law of 2012 pertaining to the vetting of the judiciary and legal profession. According to the draft, a committee is be established, comprising 11 members elected by an absolute majority of the National Constituent Assembly from among judges, attorneys at the Court of Cassation and academia specialized in law to investigate ex officio cases of financial corruption of members of the judiciary, cases pertaining to the rendering of illegal judgements, and other crimes committed within the framework of defending the former regime in the period from 7 November 1987 to 14 January 2011. The decisions of the committee are to be appealable before the competent administrative court. The Special Rapporteur would like to stress that the draft Organic Law is, on the one hand, severely underdeveloped, even in terms of definitions and institutional set-up and procedures and, on the other, overambitious in that it includes in its purview the vetting of lawyers in private practice. He insists on the importance of guaranteeing that vetting processes comply with international due process standards.

62. As an example of the need to view the different elements of transitional justice in a comprehensive manner, it should be noted that, without an actual vetting of the judiciary it is unlikely that the cases that the Truth and Dignity Commission will forward to the judiciary for prosecution in accordance with article 45 of the draft law could be dealt with in a reliable way.

3. Security sector

(a) Security sector under the previous regime

63. The opacity of the structure of and procedures followed within the internal security sector under the former President and the secrecy of large parts of the relevant legislation make a detailed description difficult. The internal security services, consisting of the national police, the national guard, the civil protection force and prison guard functioned under the direct control of the President.

64. The intelligence apparatus was characterized by an absence of any publicly accessible regulation of its role and functions. The Directorate of State Security, with its *Police judiciaire*, which has been abolished in the meantime, largely misused legislation through an overly broad definition of terrorism. This unjustifiably restricted the enjoyment of human rights pertaining to the exercise of peaceful activities, including dissent and political opposition through legitimate associations.[10]

65. As concluded by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment following his mission to Tunisia in 2011, the systematic practice of torture and ill-treatment was deeply entrenched and institutionalized within the

[10] See also A/HRC/16/51/Add.2, para. 60.

security sector, with torture being practised and abetted by law enforcement officials, the former State Security Department, the personnel of the Ministry of the Interior and prison staff, with complete impunity.[11]

66. During his visit, the Special Rapporteur held several meetings with victims of torture and other gross human rights violations and/or family members. Given the gross and systematic nature of the violations, which in their viciousness defy the notion that this is what a legitimate system of law would have required from its officers, the victims and their families understandably fail to see any justification for the continued membership of so many alleged perpetrators of torture or other gross violations in the security services. The family members of several victims referred to the difficulties of seeing those responsible for the torture or death of loved ones still wearing a uniform and performing official functions. These family members reported instances of repeated imprisonment and torture that, in several cases, led to death (in at least one case, insanity came first). In almost all cases, family members and direct victims referred to the disruptive impact on the employment and livelihood of the families that resulted not only from prolonged imprisonment and its natural consequences but also from the active efforts of security services to prevent victims (even post-release) from holding jobs by means of draconian administrative control measures.

67. In contrast to the internal security services, the military forces experienced rather limited political influence from the previous regime. The population remains grateful to the military for its refusal to follow the orders of the former President to shoot at demonstrators during the uprising. This is also one of the reasons for which the military is generally perceived as a mostly apolitical force focused on the defence of the country.

(b) Status of reform initiatives

68. The information gathered by the Special Rapporteur would indicate that there has been no progress in the reform of the internal security forces. This concern does not regard so much the completion of structural security sector reforms, which is, admittedly, a complex and challenging undertaking, but rather the lack of any serious reform initiatives. This state of affairs is apparently due to the fact that several supporters of the former regime remain within the Ministry of the Interior, including in high-level positions.

69. While a number of high-level officials allied to the former regime were dismissed from the Ministry of the Interior in 2011, the dismissal in 2012 of key figures allegedly involved in gross human rights violations during the uprising was heavily opposed by the staff of the Ministry, including at high levels, and was eventually reversed. One high-level official in the Ministry suspected of involvement was promoted following an unsuccessful attempted dismissal.

70. Similarly, no apparent progress has been made in reforming the legislation of the security sector; much relevant legislation indeed remains unpublished. This situation is an obstruction to the process of transition. In this connection, the Special Rapporteur reiterates his view that legislative and structural reforms concerning the security sector, including the vetting of members of the security service, require a framework applicable to all, without discrimination, and should comply with international human rights standards.[12]

[11] A/HRC/19/61/Add.1, para. 26.

[12] E/CN.4/2005/102/Add.1, principle 36 (a).

(c) Calls by police for neutrality

71. The newly formed police associations have become vocal advocates for security sector reform. One of the main demands raised in conversations with the Special Rapporteur was ensuring that the principle of neutrality of the security services was enshrined in the new Constitution, in order to prevent any political instrumentalization of the internal security forces by the executive branch. He was also informed that the associations had submitted their own proposals for a reformed legal framework, including with regard to recruitment, promotions, training, remuneration and the preparation of a code of ethics.

(d) Need for urgent institutional restructuring and inquiry mechanisms

72. Transparency, oversight and accountability should be the guiding principles in the urgent institutional restructuring of the security sector. The establishment of effective mechanisms to enforce those principles, coupled with institutionalized vetting procedures that respect human rights standards, is a priority. Effective dialogue to this end of the authorities with civil society, including with relevant professional associations, should be the first step in this endeavour.

73. Past practices of torture and ill-treatment within the security sector should be investigated urgently and in an independent, impartial and expeditious manner, and the perpetrators found to be involved should be prosecuted and sanctioned in proportion to the violations committed. The cycle of impunity urgently needs to be broken. Measures for the prevention of similar gross violations should be put in place to ensure their non-recurrence, together with effective complaint procedures accessible to all. For example, safeguards during arrest and detention must be guaranteed in law and in practice, and a national preventive mechanism against torture should be established.

74. The Special Rapporteur warns that failure to address impunity would send a negative signal to Tunisian society. The lack of any visible reform coupled with the deep mistrust of the population in internal law enforcement bodies could in the long run lead to a situation where confidence in these institutions will be virtually impossible to re-establish.

G. National collaboration and international coordination

75. Establishing effective measures on truth-seeking, justice, reparation and guarantees of non-recurrence requires deliberately designed institutional coordination mechanisms. The four transitional justice areas straddle the competencies of not only the Ministries of Justice, the Interior and Human Rights, but also of Finance, Education, Health, and Social, Family and Gender Affairs, as well as others. They necessarily require their close and transparent collaboration. In his discussions with several ministries, the Special Rapporteur noted a limited awareness of the importance of effective collaboration and the significant effort called for in the implementation of relevant measures. He therefore reiterates that inter-agency collaboration is crucial to address the important challenges that lie ahead and to guarantee adequate service delivery to victims.

76. International cooperation could actually benefit from some coordination of its own, given that a multitude of donors, each with their own preferred project, interests, approach and set of requirements, can easily lead to an overload of projects without sufficient focus. Coherent reforms require an ongoing process of consultations and coordination among agencies interested in supporting the various areas of transitional justice, together with the Tunisian authorities, to agree on an efficient division of labour and thus ensure that the country does not lose sight of its core objectives.

IV. Conclusions and recommendations

A. Conclusions

77. **Since January 2011, Tunisia has rapidly undertaken a multiplicity of transitional justice initiatives that have mainly touched upon truth-seeking and reparations. While successive Governments have commendably striven to respond expeditiously to emerging claims from victims, there is an urgent need to place the largely unrelated and ad hoc measures taken to date in a comprehensive framework.**

78. **The transitional justice measures taken to date have been mainly designed with an "event-based" or "period-based" approach, which in itself gives rise to the creation of different categories of victims and, as a result, to a serious fragmentation among the different groups of victims thereby generated, as well as within the population, including civil society actors. If transitional justice measures are to be effective and society to come to terms with its past, this pattern of fragmentation needs to be urgently reversed.**

79. **The essential means to reversing this trend consists in the adoption of a human rights perspective that treats gross violations of certain types of rights as the sole factor giving access to redress and other transitional justice measures, regardless of the event or period when the violation occurred or the group to which the victim belongs. It is the only effective remedy to charges of improvisation, favouritism and lack of systematization.**

80. **With human rights at the core of the transitional justice agenda, more headway needs to be made urgently in the areas of guarantees of non-recurrence and prosecutions. The establishment of effective mechanisms is essential to the prevention of the recurrence of similar gross human rights violations. This chiefly includes legal, institutional and personnel reforms in the crucial areas of justice and security. Many alleged perpetrators of gross human rights violations remain active members of the security services. The Special Rapporteur warns that failure to address impunity would send a negative signal to Tunisian society. The lack of any visible reform coupled with the deep mistrust of the population in the justice and security sectors could, in the long run, lead to a situation where confidence in these institutions will be virtually impossible to re-establish.**

81. **Prosecutions should be conducted within the framework of an overall strategy aimed at retracing the complete chain of command leading up to the actual gross violation. Furthermore, prosecutions and trials should abide by international human rights standards and allow for effective victim participation. Only transitional justice measures that are designed and implemented in a manner compliant with the rule of law will be sustainable and effective in enhancing and protecting human rights, reversing the process of fragmentation and furthering reconciliation as one of the final objectives.**

B. Recommendations

82. **The Special Rapporteur calls on the Tunisian authorities and society to place human rights at the centre of all transitional justice efforts. In this spirit, he makes the recommendations below.**

83. **In the area of a comprehensive transitional justice strategy, the Special Rapporteur recommends that the authorities:**

(a) Ensure that the notion of human rights guides the design and implementation of all transitional justice measures; in particular, guarantee that the violation of human rights is a sufficient reason for access to redress measures rather than other considerations relating to affiliation with or contribution or opposition to any given cause, or any other contingent factor;

(b) Ensure that a truly comprehensive policy, involving the four elements of transitional justice – truth, criminal justice, reparation and guarantees of non-recurrence – is effectively adopted, avoiding overreliance on any element to the exclusion of others;

(c) Ensure that the draft law on transitional justice, currently long on definitions but short on specifying functions, clearly establishes how the four different elements will be effectively adopted;

(d) Ensure effective victim participation in all areas of transitional justice while providing for adequate protection schemes;

(e) Find ways to ensure that the voices of society, and particularly victims, are taken into account in ongoing manner;

(f) Take effective efforts to remedy shortcomings in consultations, such as by reaching out to all sectors of society in a non-discriminatory manner, including women, thereby bridging the gap between the urban coast and the country's interior. Inclusive consultations are a precondition for reversing the trend of social fragmentation.

84. **In the area of truth-seeking, the Special Rapporteur recommends that the authorities:**

(a) Transparently present the actions taken and planned in response to the reports published by the National Fact-Finding Commission and the National Commission of Investigation on Corruption and Embezzlement, and explain how their findings and recommendations have been taken into account during the elaboration of the overall transitional justice strategy, and effectively incorporate the expertise and information of the two commissions in ongoing efforts;

(b) Revisit the suggested competences, functions and responsibilities of the new Truth and Dignity Commission to ensure it delivers on its core objective.

85. **In the area of justice initiatives, the Special Rapporteur recommends that the authorities:**

(a) Facilitate the adoption of a coherent and systematic prosecution strategy that does not lend itself to charges that it is too narrow, ad hoc or politically biased; the strategy should aim at establishing the full chain of command for gross violations during the uprising and preceding periods;

(b) Conduct prosecutions and trials in compliance with international human rights standards, and allow for the effective participation of victims in proceedings while affording adequate protection;

(c) Adopt legislation and guarantee in practice that the investigation and jurisdiction of cases involving gross violations of human rights, including those with the alleged involvement of military and security forces, are transferred from military courts to the ordinary civilian justice system, and ensure that the

jurisdiction of military tribunals is limited to military personnel who have committed military offences (assuming demonstrable progress by civilian courts);

(d) Consider the possibility of retrials or review of cases, conducted in accordance with international fair trial standards, in ordinary civilian courts, including the proposed constitutional court, for cases involving gross human rights violations previously tried before military courts.

86. **With regard to reparation, the Special Rapporteur recommends that the authorities:**

(a) Take a human rights-based approach when designing and implementing reparation schemes; the same type of violations should trigger the same possibilities and equivalent forms of redress;

(b) Ensure that there is no gender discrimination in relation to the provision of reparation, including financial compensation;

(c) Ensure that reparations include the provision of free medical and psychosocial assistance, on a continuing basis if warranted by the harm suffered, and measures that further the rehabilitation and reintegration of the victim and/or their family into society;

(d) Given the devastating effect of decades of deliberate marginalization of entire areas of the country, include collective reparations in such reparation schemes, in addition to and distinct from regional development initiatives.

87. **With regard to guarantees of non-recurrence, the Special Rapporteur recommends that the authorities:**

(a) Adopt strong institutional and procedural provisions for human rights protection, and reform the public education system by:

(i) Considering extending planned individual complaints procedures before the proposed constitutional court to all violations of constitutional rights resulting from the unconstitutional implementation of any acts of public authority;

(ii) Strengthening the competences and role of the Higher Committee for Human Rights and Fundamental Freedoms;

(iii) Revising the curricula of the public education programme to reflect historical changes, the importance of the rule of law in practice and the role that human rights defenders play in the transitional process.

(b) In the area of judicial reform, the Special Rapporteur recommends that the authorities:

(i) Adopt constitutional guarantees and legislation providing for the independence of the judiciary, and guarantee the conditions of service, appointment, mandate, promotion and discipline of magistrates in accordance with international standards;

(ii) Guarantee in law and in practice the self-regulation of the judiciary, including by putting an end to all forms of control and influence retained by the Minister for Justice;

(iii) Prioritize the establishment and functioning of a permanent, independent high judicial council in charge of administering the judiciary, including appointments, promotions and disciplinary procedures;

(iv) Define standards of misconduct that would trigger disciplinary action, adopt an ethical code for the judiciary and ensure that the high judicial council is the body responsible for the initiation and conduct of any disciplinary proceedings, in compliance with international human rights standards;

(v) Gradually establish security of tenure guaranteeing the irremovable status of judges, coupled with vetting initiatives, applied in a systematic manner and compliant with international human rights standards of due process;

(vi) Guarantee, in law and in practice, the impartiality of the Office of the Public Prosecutor, thereby ending the authority and control exercised by the Minister for Justice.

(c) In the security sector, the Special Rapporteur recommends that the authorities:

(i) Clearly define the competences of the different internal security forces, including intelligence services, ensuring that there is no overlap of competences; and also, at the constitutional level, the function of the military in external defence;

(ii) Guarantee, in law and in practice, the neutrality of the internal security forces, to prevent them from being unduly instrumentalized by the executive branch;

(iii) Establish effective oversight mechanisms to ensure transparency and accountability of the internal security forces, coupled with institutionalized vetting procedures that respect human rights standards;

(iv) Break the cycle of impunity and promptly investigate past practices of torture and ill-treatment, and other gross human rights violations, in an independent, impartial and expedient manner, and prosecute all allegedly involved perpetrators and sanction them, if found guilty, in a way commensurate with the violations committed;

(v) Effectively involve civil society, including victims and associations of law enforcement bodies, in deliberations on the design of security sector reform initiatives.

88. **The Special Rapporteur suggests that the Government establish an inter-agency coordination body to lead collaboration efforts on the implementation of the various transitional justice measures.**

89. **Lastly, the Special Rapporteur suggests that efforts be made to coordinate international assistance on transitional justice to guarantee that different initiatives reinforce one another, avoid working at cross-purposes or overloading capacities for change. Such a coordination mechanism can take many different shapes. The Ministry of Human Rights and Transitional Justice, together with OHCHR in Tunis, for example, could play a facilitating role in this effort.**