EXECUTIVE SUMMARY OF THE ALTERNATIVE REPORT SUBMITTED THE COMMITTEE AGAINST TORTURE BY ACAT AND FREEDOM WITHOUT BORDERS DURING THE REVIEW OF TUNISIA

1- AN INADEQUATE DEFINITION OF TORTURE (ARTICLES 1 AND 4)

1-1 NON-RETROACTIVITY OF ARTICLE 101BIS OF THE CRIMINAL CODE

The crime of torture has only been criminalized in the Tunisian Criminal Code in 1999. Magistrates refuse to apply Article 101bis on torture retroactively. Therefore, perpetrators of abuses committed before 1999 can only be prosecuted for the offence of violence, the crime of violence with aggravating circumstance or for the crime of sequestration.
In practice, until now, the magistrates have always chosen to qualify the facts as offences punishable by five years of imprisonment or less, despite their seriousness.
ACAT-France and FWB invite the Committee to recommend that the State party take all necessary measures to ensure that torture crimes committed prior to 1999 are brought to trial for offences punishable by sentences that reflect the gravity of the crime.

1-2 THE STATUTE OF LIMITATION FOR VIOLENCE

The offences expires after three years and the crimes after ten years. After the revolution, Tunisian authorities committeed not to use the statute of limitation concerning acts of torture, no matter when the facts where perpetrated.
In 2015, in a worrying turnaround, judges from the Criminal chamber of the Tunis court of first instance chose to retain the statute of limitation in an emblematic case of torture perpetrated in the 1990s.
ACAT-France and FWB invite the Committee to recommend that the State party ensure that the statute of limitation for crimes that constitute serious breaches of human rights committed during the Ben Ali regime only takes effect from the revolution on.

1-3 THE CRIMINALISATION OF TORTURE BASED ON DEFINITIONS INCONSISTENT WITH THE CONVENTION

In 1999, Tunisian legislature introduced Article 101bis into the Criminal Code, which criminalises torture in itself. The Tunisian definition of torture is more restricted than the UN's definition in terms of the objectives and the authors of the act.
In 2011, Article 101bis was amended. The new definition of torture is even further removed from the Convention definition than the previous one.
The list of objectives associated with the act was considerably shortened, excluding from the definition of torture pain and suffering inflicted as punishment among other objectives.
Conversely, the list of acts that may qualify as being considered as "torture" has been lengthened to include intimidation and harassment.
ACAT-France and FWB invite the Committee to recommend that the State party:

- ***amend Article 101bis of the Criminal Code criminalising torture in order to bring it in line with the Convention ;***
- ***adopt a text that clarifies the scope of application in time of the old and new versions of Article 101bis of the Criminal Code.***

2- THE REFORM OF POLICE CUSTODY: PROGRESS AND LIMITATIONS (ARTICLE 2)

On 16 February 2016, the Assembly of the Representatives of the People adopted bill n°2016-5 that reduced police custody periods, provided for access to a lawyer from the beginning of police custody and reasserted the right to see a doctor. This reform, which has not yet been implemented, introduces

some progress that will certainly contribute to preventing acts of torture being committed. However, its positives are severely hindered by exceptions made in cases where individuals are arrested in the context of the fight against terrorism. Furthermore, to date the security forces have avoided their legal obligations in practice on a number of occasions, and nothing guarantees that the same will not be the case with the new law, in the absence of any stringent monitoring of police custody carried out by an independent judicial body.

2-1 THE REDUCTION OF POLICE CUSTODY PERIODS MITIGATED BY THE EXCEPTION OF ANTI-TERRORISM LAW

Law n°2016-5 reduces police custody periods to 48 hours renewable once for crimes, 24 hours renewable once for offences and 24 non-renewable hours for misdemeanours and minor offences.
Custody periods are much longer for individuals suspected of terrorism who can be kept in custody for five days renewable twice. Furthermore, the new law allows the investigating judge or public prosecutor to delay a detainee's access to their lawyer by 48 hours.
In practice, although the legal police custody periods are indeed complied with to a greater extent than seen prior to the revolution, the lawyers continue to report cases in which police custody periods have been exceeded.
ACAT-France and FWB invite the Committee to recommend that the State party ensure that the legal duration of custody is complied with and that renewal of custody periods is exceptional and motivated by the public prosecutor.

2-2 THE IMPOSSIBILITY OF CHALLENGING CUSTODY OR THE RENEWAL OF CUSTODY

The Tunisian Code of Criminal Procedure provides for no recourse in order to challenge being placed in custody or having the custody period renewed.
Persons taken into custody can sometimes spend several hours with no knowledge of the reasons for their arrest or are forced to try and deduce the reasons based on the questions asked during police interrogations.
ACAT-France and FWB invite the Committee to recommend that the State party entrust an independent judicial body with overseeing motives and renewals for and of custody.

2-3 THE PERSISTENT USE OF TORTURE AND MISTREATMENT

The use of torture continues to be employed frequently against victims with diverse backgrounds: young Muslims suspected of belonging to terrorist groups, persons suspected of common law offences, as well as rappers, bloggers and young activists thought to have voiced hostile views of the government. The past years, several young men arrested for common law offences have died in police stations in suspicious circumstances.
Security forces frequently use excessive force during arrest, for exemple in the frame of fight against terrorism or crackdown on protests. Tortures and ill-treatment are even more frequent in custody where it aims at obtaining information or confession.
Finally, prison wardens are also responsible for acts of ill-treatment and torture against prisoners in order to punish those considered disobedient.
ACAT-France and FWB invite the Committee to recommend that the State party entrust an independent judicial body with overseeing custody conditions, and set up a system by which the detainee may appeal to this body.

2-4 ACCESS TO A LAWYER THAT REMAINS IMPEDED BOTH IN LAW AND IN PRACTICE

The law that currently applies guarantees a detainee access to a lawyer only when he is interrogated upon rogatory commission by an investigating judge. In practice, this right is frequently breached and detainees are forced to sign statement saying they refused legal counsel.
Law n°2016-5 – which has not entered into force yet - will afford suspects the right to a lawyer during custody. There are two exceptions to this law: when the suspect explicitly rejects their right

to the assistance of a lawyer or when the latter does not attend at the time they are summoned to attend. This run the risk of leading to abuses in practice.
ACAT-France and FWB invite the Committee to recommend that the State party remove custodial detainees' ability to reject the assistance of a lawyer in order to prevent judicial police officers from pressuring detainees to give up this right.

2-5 INSUFFICIENT MEDICAL EXAMINATIONS

Article 13bis of the Code of Criminal Procedure requires judicial police officers to notify suspects in custody of their right to a medical examination. This examination is brief as it is done in a rush in the presence of police officers, and is therefore not a true documentation of torture or mistreatment.
In addition, lawyers often have difficulty accessing medical examinations of their clients in custody when the examinations take place.
ACAT-France and FWB invite the Committee to recommend that the State party:

- ***ensure that custody medical examinations are only carried out by doctors overseen by the Ministry of Health and who are trained to documenting torture and illtreatment;***
- ***amend Article 13bis of the Code of Criminal Procedure to require that doctors directly transmit the custody medical examination report to the public prosecutor or investigating judge responsible for handling the case in the context of the custody.***

3- A POOR TRACK RECORD IN THE FIGHT AGAINST IMPUNITY (ARTICLES 12 AND 13)

3-1 OBSTACLES TO OPENING AN INVESTIGATION

Magistrates' unwillingness to report torture
Despite the fact that, upon the insistence of lawyers, investigating judges are increasingly agreeing to record allegations and any potential signs of torture, they very rarely submit these allegations to the public prosecutor, as required by Articles 13 and 14 of the Code of Criminal Procedure.
They often refuse to order a forensic appraisal, even when the allegations of torture may affect the validity of the reports submitted by the judicial police, which is most often the case.
When magistrates do agree to order lego-medical appraisals, the latter are not carried out until several weeks later, and sometimes even months later.
ACAT-France and FWB invite the Committee to recommend that the State party force the investigating judges, who are informed of allegations of torture or ill-treatment, to immediately and systematically denounce this offence to the state prosecutor, by virtue of Articles 13 and 14 of the Code of Criminal Procedure.

Access to an ineffective complaints' system in prison
Upon arriving in prison, the detainee is given a compulsory medical examination which should be an opportunity to record the signs of abuses inflicted in custody. In practice, this medical examination is sometimes delayed and is more often than not cursory. This can be explained by a number of reasons linked to a shortage of medical staff, as well as their lack of experience in torture and mistreatment medical documentation.
Concerning torture or ill-treatment perpetrated in jail, detainees who complaint before the penitentiary administration or the prosecutor run the risk of facing reprisal from wardens.
ACAT-France and FWB invite the Committee to recommend that the State party:

- ***Train the medical staff working in prison in torture and illtreatment documentation;***
- ***order the state prosecutors to urgently process complaints for torture filed by inmates who risk being kept in detention and sentenced based on forced confessions;***
- ***protect victims that are still in detention.***

Access to the complaints system after a victim's release
After their release, the victims who lodge complaints are faced with a number of dissuasive obstacles. First, they may face retaliatory measures (intimidation, police or judicial harassment, torture, etc.).

In many cases, complaints lodged with the prosecutor are registered but are not followed up despite lawyers' insistence
Besides, the lines between the civil and military legal systems are blurred for torture crime so that some complaints are neglected because they have not been lodged before the right court.
Finally the statute of limitation is becomimg a major obstacle to justice for the victims.

ACAT-France and FWB invite the Committee to recommend that the State party:

- ***ensure that an investigation is promptly opened for any complaint for torture or ill-treatment;***
- ***Take any measure - including criminal and disciplinary sanctions - to protect the victims who file complains from retaliatory measures, be this physical or moral violence or harassment by the police or the judiciary;***
- ***Amend Article 22 of Act No. 82-70 of 6 August 1982 concerning the general status of the internal security forces, as well as the Military Justice Code, so that only civil courts have jurisdiction for crimes of torture and ill-treatment.***

3-2 THE INVESTIGATION: A LONG DRAWN-OUT PROCESS

The excessive length of investigations

When the investigation at last begins, it is often very late, which gives time for any signs of beating to fade.
For the entire duration of the initial investigation lead by the prosecutor, the victim can't participate as a « partie civile ». She/he is passive, and has no way of ascertaining if the investigation is being conducted seriously and diligently.
The initial investigation of the prosecution and the investigation of the examining magistrate last for months. After this stage, too often, the case is abandoned *de facto* before the crucial stage of questioning the alleged torturers.
In some few cases, the examining magistrate has carried out a significant number of investigative actions. But the cases are still not brought before a trial court, and victims are not given any reason for this.

ACAT-France and FWB invite the Committee to recommend that the State party:

- ***order the prosecutors to send the complaints for torture with sufficient corroboration to an investigating judge so that the victims can join the case as an injured party (« partie civile ») and actively participate in the investigation;***
- ***ensure that the investigation respect a reasonable length as defined by the Committee's jurisprudence.***

Investigators' lack of diligence

The very few investigations for torture or ill-treatment that were actually completed by an examining magistrate showed many shortcomings which can be explained in part by the lack of diligence of the magistrates. They did not try to gather all the available evidence most probably with the intention to cover the torturers.

ACAT-France and FWB invite the Committee to recommend that the State party:

- ***guarantee that investigations for torture or ill-treatment are assigned to magistrates who have no former link with either the victim or the accused;***
- ***order the prosecutors and investigating magistrates to conduct rigorous investigations, notably by questioning all relevant witnesses and all suspects mentioned by the victims.***

The medical record, crucial evidence

Magistrates working on torture cases pay much attention to forensic documentation. This documentation faces several obstacles. First, few medical examiners are trained in torture documentation, in accordance with the Istanbul Protocol.
Moreover, the examination is often carried out late, or not at all, and the marks have had ample time to heal.

Finally, the medical examiners do not always show the necessary diligence. Sometimes, they draw conclusions - generally in favour of police officers - without explaining why they have set aside other equally valid assumptions or more importantly without implicating the security forces.
When they can't get a prompt forensic appraisal, magistrates ask to have a copy of the victim's prison medical file, if the victim was imprisoned after being tortured. This medical record often proves to be insufficient and, sometimes the prison management blocks the file being sent to the magistrate.
ACAT-France and FWB invite the Committee to recommend that the State party:

- ***demand that the magistrates promptly decide to carry out a physical and psychological expert appraisal when they are informed of allegations of torture or ill-treatment;***
- ***order prison directors, who have been asked by a magistrate to comply with a medico-legal expert appraisal, to transfer the detainee(s) to a hospital within no more than one week so that the expert appraisal can be carried out;***
- ***assign the physical and psychological medico-legal expert appraisals for torture victims to doctors trained in the Istanbul Protocol; these doctors should present their findings in accordance with the Protocol's requirements.***

Omnipotent security forces

The police sometimes hamper the investigation process by refusing to summon or arrest their colleagues suspected of torture.
In several cases of torture perpetrated by counter-terrorist brigades, high ranking officers from the Ministry of Interior have refused to give the magistrate the name of the agents that were potentially involved. They abusively relied on an article of the counter-terrorism law protecting those people to whom the law has entrusted the repression of terrorist offences.
ACAT-France and FWB invite the Committee to recommend that the State party:

- ***give the judicial inquiry unlimited access to the archives of the political police and the Ministry of the Interior which could be used as evidence in proceedings for torture or ill-treatment;***
- ***if the investigating judge requires help from the police, ensure that the police officers appointed have no links with the officers implicated, which might compromise their impartiality and independence;***
- ***set up a specialised police force reporting to the Ministry of Justice to conduct investigations into torture and ill-treatment;***
- ***amend the counter terrorism law to ensure that it cannot be invoked by senior officials in the security forces to refuse to give magistrates the names of the officers involved in the arrests or interrogations, who are subject to complaints of brutality or torture.***

No level playing field

The Tunisian Code of criminal procedure does not guarantee the « partie civile » - the victim who is a party to the proceedings – the right to participate in the judicial investigation in the same way as the prosecutor.
ACAT-France and FWB invite the Committee to recommend that the State party amend the Code of Criminal procedure so that injured parties can participate in the judicial investigation in the same way as the prosecutor, notably by entitling them to appeal against the investigating judge's refusal to do an act of investigation.

3-3 TRIALS SYMPTOMATIC OF CONCILIATORY JUSTICE

Stalled proceedings

Among the very few trials for torture or brutality perpetrated by State officials that have seen the light of day, some dragged on as the audiences were constantly adjourned.
ACAT-France and FWB invite the Committee to recommend that the State party guarantee that the trials will take place within a reasonable time frame.

Derisory sentences given the seriousness of the facts

Until now, with one exception, in the few trials that were held for acts of torture committed by public officials, the judges chose to classify them as acts of brutality rather than torture.
In certain cases, that can be explained by the fact that the physical abuse was perpetrated before torture was criminalised. In others, it is due to the magistrates erroneous acceptance of torture. In judicial practice, magistrates tend to reduce torture to extreme physical or mental pain and suffering carried out in order to obtain confessions or information.
Judges show considerable clemency towards public officials who have committed acts of brutality; When they are sentenced, they get a light sentence compared to the alleged crimes.
ACAT-France and FWB invite the Committee to recommend that the State party:

- ***train the investigating judges and the trial judges in the international law applicable to torture and notably in international case law so that they are better able to distinguish torture from ill-treatment;***
- ***Take all necessary measures to ensure that acts of torture are prosecuted as such and not categorised as ill-treatment;***

The impunity of magistrates and doctors who are accomplices in torture

To-date, no examining magistrate or prosecutor have been implicated for closing their eyes to the physical abuse when a victim is brought before them with visible marks of torture after their arrest, nor for having sent the victim back to the hand of the torturers. Health professionals continue to enjoy the same automatic immunity,
ACAT-France and FWB invite the Committee to recommend that the State party ensure that doctors and magistrates, who are accomplices in torture by failing to record physical abuse when the victim brings it to their attention, are prosecuted.

3-4 Missing statistics

The statistics mentioned in Tunisia's periodic report to the Committee Against Torture do not make it possible to assess if the work accomplished by the judiciary to investigate complaints of torture has been thorough. They do not specify how many complaints have been filed for acts of torture, so that we cannot know what proportion of complaints filed led to an investigation being opened.
Moreover, we would need to compare the alleged crimes with the legal classification given by the magistrates to get sure that acts constitutive of torture were not unfairly classified as 'acts of violence or brutality'.

4- The uncertainty of the transitional justice process (Article 14)

4-1 Partial reparation for victims

Concerning restitution, to our knowledge, to-date, no conviction has been quashed, dismissed or reviewed on the grounds that it has been delivered based on forced confessions. Therefore, there are probably still hundreds of convictions being served which were based on such confessions.
As for compensation, with the exception of the emergency compensation given to a small percentage of former prisoners, who were covered by the general pardon, nothing has been done in this area. No substantial compensation was given to the victims under the former regime nor to the victims that were tortured or arbitrarily detained after the revolution.
ACAT-France and FWB invite the Committee to recommend that the State party:

- ***As quickly as possible, adopt legislation which guarantees redress for victims of torture which includes the essential components of 'restitution', compensation, rehabilitation, satisfaction and guarantees that it will not be repeated;***
- ***Extend the reparation measures to the close relatives of torture victims who have suffered or continue to suffer personal injury from the torture of their relative, especially if such torture was followed by arbitrary detention of the victim for political or religious reasons or based on confessions signed under duress.***

4-2 Uncertainties as to the mandate of the Truth and Dignity Commission

(INSTANCE VERITE ET DIGNITE – IVD)

IVD was set up in May 2014 and has already received 28,087 complaints. We can only be circumspect given the size of the task. The law only gives IVD five years from its creation to get to the truth of the violations committed over more than 60 years, among many other tasks. The IVD law provides for the creation of special chambers within the courts of first instance based in the courts of appeal. These chambers are supposed to rule on crimes of torture, forced disappearance, manslaughter, sexual violence, and death penalty delivered after an unfair trial. None of these chambers have as yet been set up.
Moreover, there are significant uncertainties as to how the work done by IVD will fit into the judicial system.

ACAT-France and FWB invite the Committee to recommend that the State party:

- ***Ensure that all victims of torture or ill-treatment have the right to bring their complaint before the judicial system, independently of investigations carried out within the IVD;***
- ***clarify the relations between the IVD and the judicial system;***
- ***ensure that the specialised chambers created by the law on transitional justice are aware of all cases of torture and ill-treatment, and not only those which are referred to them through the Truth and Dignity Commission.***

5- USING CONFESSIONS OBTAINED UNDER TORTURE (ARTICLE 15)

Article 155 of the Code of Criminal Procedure provides for the nullity of statements and confessions obtained under torture or duress. In spite of this ban, magistrates still frequently take account of confessions that the defendants allege were signed under duress.

ACAT-France and FWB invite the Committee to recommend that the State party:

- ***amend Article 277 of the Criminal Procedure Code to include taking into account confessions given under duress to the list of use of erroneous facts which can lead to a review of the trial ;***
- ***promptly release or send for retrial those victims of torture in detention who allege that they have been forcde to sign confessions under duress;***
- ***guarantee a compensation to people who were imprisoned based on confessions that they themselves and/or alleged accomplices were forced to sign under torture, independently of the reparation that they must without fail benefit from as victims of torture.***