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COMMISSION ON HUMAN RIGHTS
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IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE SUPPRESSION
AND PUNISHMENT OF THE CRIME OF APARTHEID

Reports submitted by States parties under
article VII of the Convention

Addendum

TUNISIA¹

[14 February 1983]

¹ The initial report submitted by the Government of Tunisia (E/CN.4/1353/Add.9) was considered by the Group of Three at its 1981 session.

Respect for the dignity of the human person, which was a demand of the Tunisian national movement, has become a reality enshrined in and developed by the Constitution.

Even prior to the adoption of the Constitution in 1959, Tunisia, having gained its independence, swiftly joined the United Nations Organization and signed the Universal Declaration of Human Rights (12 November 1956).

Although from the ethnic standpoint the Tunisian population is entirely homogeneous and virtually free of racial friction, our domestic legislation none the less includes provisions reaffirming the dignity and equality of everyone without any discrimination whatsoever.

The overall philosophy of our legal regime is true to the universal human values (I); our legislation punishes any attitude based on racial discrimination (II); this legislation is in fact merely the logical corollary of Tunisia's clear desire to condemn apartheid and join in the international community's efforts to put an end to this crime which is an offence against all mankind (III).

PART I

THE PHILOSOPHY UNDERLYING THE LEGAL REGIME

The history of Tunisia was marked by the bitter struggle against its occupier, who practised tyranny, exploitation and regressive policies. The objective pursued was and is the establishment of a society guaranteeing the development and self-fulfilment of everyone without distinction on ethnic, religious or other grounds.

As a member of the international community, Tunisia displays its attachment to human values not only by enshrining them in its Constitution (A), but also through its ratification of and accession to various international conventions concerning human rights (B).

A. THE CONTRIBUTION OF THE CONSTITUTION

In its preamble, the Constitution emphasizes two basic principles which guide the country's policy:

Attachment to the dignity and integrity of human beings and the equality of everyone before the law.

Support for every activity aimed at maintaining peace, achieving progress and developing free co-operation among nations.

(a) Attachment to universal human values

The Constitution, opting for a just and egalitarian social model, reaffirms and guarantees the inviolability of the individual and the equality of all citizens before the law.

1. Inviolability of the human person.

Inviolability is affirmed in an unqualified manner by article 5; no limitation by legislation or regulation may be envisaged. The article refers to the individual, and not merely to Tunisian citizens, from which two conclusions may be drawn. Firstly, anyone on the national territory, whether as a permanent resident or temporarily, enjoys this guarantee, and secondly, Tunisia displays its determination to defend human dignity as such anywhere within its territory.

The Constitution recognizes the dignity of every human being as an inherent right, and consequently guarantees the fundamental freedoms and civil, political, economic and social rights of every Tunisian citizen. In addition, Tunisian citizenship is granted or acquired without any racial, ethnic or even religious criteria.

2. Equality of all citizens before the law.

This principle is proclaimed by article 6 and cannot be limited in any way. The absolute nature of the principle stems from the wording of the text itself, which provides that "all citizens are equal with respect to their rights and duties and are equal before the law".

The law, as the expression of the will of the people represented in the Chamber of Deputies, is applicable to everyone without discrimination on grounds of race, religion, sex, language or social status.

The rule of the equality of citizens is aimed at ensuring justice, which is one of the three terms of the Republic's motto, "Order, liberty, justice".

(b) Sharing the aspirations of the international community

A few months after becoming independent, Tunisia joined the United Nations and at the same time became a party to the Universal Declaration of Human Rights.

In doing so, it displayed its profound belief in the purposes and principles set forth in the Charter, particularly "respect for the principle of equal rights and self-determination of peoples", and "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion" (Art. 1 of the Charter).

In accordance with these principles, the Tunisian Constitution proclaims the will of the people to maintain its "co-operation with the peoples fighting for justice and for freedom". This co-operation takes place at two levels: by ratifying or acceding to international conventions on human rights, and by taking part in the efforts of the international community to condemn and punish the crime of apartheid (see below, part III).

B. RATIFICATION OF, AND ACCESSION TO, CONVENTIONS RELATING TO HUMAN RIGHTS

Desirous of maintaining international peace and security, and wishing to safeguard and promote fundamental human rights, particularly by setting all peoples free from foreign domination, Tunisia has ratified or acceded to a number of international agreements relating to these rights.

The agreements which it has ratified form an integral part of the domestic legal system; furthermore, they rank above ordinary laws, by virtue of article 32 of the Constitution.

Having this rank, these conventions are binding upon magistrates in the same way as constitutional laws; this is particularly important, as the judge trying a case must set aside the application of domestic law in favour of a rule deriving from international law.

Lastly, it may be mentioned that Tunisia is a party to:

The International Covenant on Civil and Political Rights;

The International Covenant on Economic, Social and Cultural Rights;

The Convention on the Prevention and Punishment of the Crime of Genocide;

The International Convention on the Elimination of All Forms of Racial Discrimination;

The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

PART II

LEGISLATION AND APARTHEID

Having opted for a republican and democratic regime in which the people is sovereign and exercises its sovereignty through the Chamber of Deputies (art. 3 of the Constitution), Tunisia has resolutely chosen the path of safeguarding fundamental human rights.

The population is racially and ethnically homogeneous, and there are only two non-Muslim communities, which are protected, consequently, there is no chance of the crime of apartheid being perpetrated within the country.

However, on purely preventive grounds legislation has been adopted providing for the punishment of incitement to racial hatred (A), as well as the prosecution of any Tunisian citizen guilty of any such offence committed outside Tunisian territory (B), and authorising extradition if the perpetrator of the crime is an alien (C).

A. INCITEMENT TO RACIAL HATRED CONSTITUTES AN OFFENCE

Act No. 75-32 of 28 April 1975, promulgating the Press Code, provides in article 44 of chapter IV (on crimes and offences committed through the press or by any other means of publication) that 'anyone who by such means has directly incited racial hatred shall be punished by two months' to three years' imprisonment and a fine of 1,000 to 2,000 dinars .

The means referred to in article 44 are defined by article 42 of the same Act: "The press or any other deliberate means of propagation".

Article 46 adds that "where, with regard to offences under articles 42 to 45, the Court has handed down an unsuspended sentence of imprisonment, it may further decide that the convicted person may be neither an elector nor a candidate in an election for a period of not more than five years. This decision, once final, will nullify an existing electoral mandate".

In addition, under article 54, paragraph 4, of the Press Code, insults directed at a group of persons because of their racial origin constitute an offence. The article provides that: "The term of imprisonment shall be up to one year and the fine 1,200 dinars if the insult was directed ... at a group of persons having a specific racial origin or practising a specific religion with the purpose of fomenting hatred among the citizens or inhabitants".

It should be pointed out that so far the Tunisian courts have not had occasion to apply this provision because no such offence has been committed.

B. PROSECUTION OF PERSONS WHO HAVE COMMITTED OFFENCES ABROAD

When the offence of incitement to racial hatred has been committed abroad, this does not ensure impunity.

Under article 305 of the Code of Criminal Procedure (Act No. 68-23 of 24 July 1968, which remodels the Code of Criminal Procedure), "any Tunisian national who, outside the territory of the Republic, has committed a crime or offence punishable by Tunisian law may be prosecuted and tried by the Tunisian courts". However, prosecution or trial cannot take place if the offence is not punishable under the laws of the foreign country, or if a final judgement and conviction have been handed down abroad in the case, and the sentence has been served or prescribed, or if the convicted person has been pardoned.

In the area under consideration here, if the offence of incitement to racial hatred or the crime of apartheid has been committed by a Tunisian in any foreign State and the person who committed the offence returns to Tunisia, he may be liable to prosecution.

C. EXTRADITION OF ALIENS WHO HAVE COMMITTED THE OFFENCE

Tunisia vigorously condemns apartheid and therefore cannot fail to extradite any alien guilty of this crime. Furthermore, an alien who has committed the crime in a State other than the State requesting his extradition cannot plead that he is not a national of that State.

Extradition may be granted, under article 310 of the Code of Criminal Procedure, at the request of a foreign State even if the offence was committed "outside its territory by a non-national of that State in the case of the offences for which Tunisian law authorizes prosecution in Tunisia even when committed by an alien abroad".

PART III

PARTICIPATION BY TUNISIA IN INTERNATIONAL EFFORTS TO SUPPRESS APARTHEID

Tunisia follows an unswerving and active policy aimed at the maintenance of international peace and security, by resolutely opposing apartheid and Zionism, and giving unqualified support to the principles of self-determination of peoples and their right to freedom and independence (A), this policy consists in acting in world affairs in conformity with the purposes and principles of the United Nations Charter (B).

A. POSITION OF TUNISIA ON SOUTHERN AFRICA

Tunisia cannot maintain relations of any kind whatsoever with the racist regime in South Africa, which makes a political system of apartheid.

The practice of apartheid is not only a gross violation of human rights but also a flagrant denial of the right of the black population to self-determination.

The right of self-determination, recognized and confirmed by the international community, must be exercised in conformity with the decisions of the Security Council and the relevant resolutions of the United Nations.

The illegal occupation of Namibia must cease, and the United Nations Council, the only legal authority empowered to administer the country, must be supported in its efforts, the question must be settled in conformity with Security Council resolution 435 (1978).

Furthermore, the unilateral process of transfer of power to the black population of South Africa must be rejected; the policy of bantustanization practised by South Africa is merely a sham independence, as the bantustans remain administratively and economically dependent on South Africa.

Tunisia believes in the legitimacy of the struggle being waged by the peoples of Namibia and South Africa under the leadership of SWAPO and the African National Congress and Pan Africanist Congress, respectively, and therefore cannot fail to give its full diplomatic, material and moral support to these movements.

B. PARTICIPATION BY TUNISIA IN INTERNATIONAL EFFORTS

1. Since the early years of its independence, Tunisia has helped to stimulate United Nations action aimed at a settlement of the problem of southern Africa; following the Sharpeville massacre in 1960, Tunisia, together with other African and Asian countries, submitted a request which led the Security Council to take up the question for the first time.

2. Following the suspicious death of Steve Biko, a further session of the Security Council (24 October to 4 November 1977) was convened at the request of Ambassador Mahmoud Nestiri, as Chairman of the African group; at that session the Council adopted resolution 418 (1977) imposing a partial arms embargo on South Africa.

3. Tunisia took part in the International Conference on Sanctions against South Africa held in Paris in 1981, and associated itself with the sanctions adopted by the Conference. It had earlier expressed satisfaction at the Security Council's unanimous decision of May 1980 calling for the application of an arms embargo against the Pretoria regime.

4. Tunisia responded favourably to the United Nations request to participate in United Nations operations in Namibia. Its reply was transmitted to the Secretary-General of the United Nations on 7 March 1979.

5. Tunisia participates in the various funds for assistance to southern Africa, both within the framework of the United Nations and elsewhere, such as the funds established by the Organization of African Unity or the Movement of the Non-Aligned Countries.