

MISSION PERMANENTE DE TUNISIE

AUPRÈS DE L'OFFICE DES NATIONS UNIES À GENÈVE
ET DES ORGANISATIONS INTERNATIONALES EN SUISSE

البعثة الدائمة للجمهورية التونسية
لدى مكتب الأمم المتحدة بجنيف
والمنظمات الدولية بسويسرا

N° 0063

La Mission Permanente de Tunisie auprès de l'Office des Nations Unies à Genève et des Organisations Internationales en Suisse présente ses compliments au Haut Commissariat des Nations Unies aux Droits de l'Homme et, se référant à sa note verbale n° YB/GN/TT du 3 décembre 2012, a l'honneur de lui faire parvenir, ci-joint, la réponse du Gouvernement tunisien au questionnaire du Comité ad hoc sur l'élaboration de normes complémentaires à la Convention internationale sur l'élimination de toutes les formes de discrimination raciale (au titre du paragraphe 4 de la Résolution 21/30).

La Mission Permanente de Tunisie auprès de l'Office des Nations Unies à Genève et des Organisations Internationales en Suisse saisit cette occasion pour renouveler au Haut Commissariat des Nations Unies aux Droits de l'Homme l'assurance de sa très haute considération.



Genève, le 8 février 2013

Haut Commissariat des Nations Unies aux Droits de l'Homme
Palais des Nations
1201 Genève

OHCHR REGISTRY

11 FEB 2013

Recipients: ADS

Republic of Tunisia

Ministry of Justice

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Center for Legal and Judicial Studies

**Ad Hoc Committee on the elaboration of complementary
Standards to the International Convention on the Elimination
of all Forms of Racial Discrimination**

Questionnaire (paragraph 4 of A/HRC/21/30)

Forward :

International human rights instruments generally prohibit racism and racial discrimination; indeed, systematic racial discrimination is often listed as a gross violation of human rights. The same cannot be said for xenophobia and resulting discrimination, xenophobia itself is really mentioned in international instruments and distinctions made between citizens and aliens within a state are sometimes expressly permitted. Basic protections for refugees are contained in the 1951 Geneva Convention on the status. **Tunisia** has widely ratified or acceded to global and regional human rights treaties, namely the International Covenant on Economic, Social and Cultural Rights, the international Covenant and Civil and Political Rights, the United Nations Convention on the Elimination of all forms of Racial Discrimination (**ratified by Tunisia on January 13, 1967**), the UNESCO Convention on discrimination in Education; the ILO Convention Discrimination (Employment and Occupation) and the 1951 Geneva Convention on the Status of Refugees.

In this regard, it should be noted that most national legal texts (including Tunisian laws) do not define racism, racial discrimination or xenophobia. In fact, most legal texts do not mention xenophobia. Defining the scope of the problem is as difficult as regulating it, in part because racism and xenophobia are beliefs or attitudes. In general, efforts are made in law to prohibit manifestations of hatred on preference based on race, colour, decent, or national or ethnic origin. Positive measures may also be taken on the national level to promote tolerance and integration.

Question 1 :

Kindly provide information on the phenomena of xenophobia in your national context including any general trends ?

Tunisia support the view stating that xenophobia should be treated in the same way as other grounds of non-discrimination (thus criminalizing the act, not the attitude). To this end, the existence of national legislation is seen as sufficient, what is required is its implementation or enforcement, insofar as the **Tunisian government** stated that xenophobia is defined as one common form of bias-motivated violence, also known as a “Hate crime” that could be difficult to distinguish from, and sometimes overlaps with, other forms. For example, same cases of xenophobic violence may also be related to other forms of discrimination such a racism, religious intolerance or persecution on the basis of sexual orientation or gender identity.

Tunisian government stated also that the causes of xenophobic violence could be complex in that they could often be closely related to other social, economic and political challenges within a country. For example, xenophobic violence is likely to take place in a context where there is a general negative attitude towards foreign nationals, but it should be noted that negative attitudes towards foreign nationals do not always result in violence.

Question 2:

How is xenophobia addressed in your country (include any legal and judicial frameworks and practices, substantive and procedural measures ?

A number of legislative enactments contain provisions for tackling racism and xenophobia, namely the article 1 of the law n°2003-75 of December 10, 2003 concerning the support of international efforts to combat terrorism and repress money laundering as modified and completed by law n°2009-65 of August 12, 2009 stipulates that: “The current law ensures the right of the society to live in security and peace far from whatever affects its stability, to reject any kind of deviance, violence, fanaticism, racial segregation and terrorism which threaten societies peace and stability. Moreover, it contributes to the support of international efforts to combat all forms of terrorism, to face up to the related financing sources, as well as to the repression of money laundering within the framework of international, regional and bilateral conventions ratified by the Tunisian Republic, while having regard for constitutional guarantees”

For its part, **article 19** of the child protection code stipulates that “Exploitation of the child in different kinds of organized crime, including that of

inculcating him fanaticism and hate and encouraging him for commit violence and terror, shall be prohibited”.

On the other hand, a **new constitution** is being drafted now by the Tunisian Constituent Assembly (a second draft of the constitution has already been presented for discussion) containing provisions protecting human rights and several articles against discrimination. The provisions in the draft constitution hold everyone responsible and any government will be obliged to implement it.

Articles 4, 7, 9, 17, 37, 39 and 104 of the drafts if the constitution contain several provisions that forbid incitement to hatred and violence, which is a punishable crime.

Question 3:

Which national mechanism(s) with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance does your country have in place ? kindly indicate the(ir) mandates(s) and powers, including any proposals for improvement on the basis of national experience..

The **National Mechanisms** for the protection against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance that **Tunisian government** had already set in place are :

1- The higher committee of Human Rights and Fundamental Freedoms established by the law n° 2008-37 dated June 16,2008.

- The core competencies of the committee are stipulated in articles 2,3 and 4 which are the following :

Art. 2 - The Higher Committee of Human Rights and Fundamental Freedoms contributes within the President of the Republic to the consolidation of human rights and fundamental freedoms, as follows :

- giving its opinions on the issues submitted to it and may seize by itself, of any the issues relating to the consolidation and the protection of human rights and fundamental freedoms and draw the attention to the cases of violation of human rights,

- submitting to the President of the Republic, the proposals likely to consolidate the Human Rights and Fundamental Freedoms on the national and international level including those allowing to provide the conformity and the compatibility of the legislation and practical to the international and regional instruments related to the Human Rights and to the Fundamental Freedoms,

- achieving any mission which will be entrusted to it in this fields by the President of the Republic,

- receiving the requests and the complaints concerning the issues regarding the human rights and the fundamental freedoms, examining them, proceeding, if necessary, to the audition of the persons who lodge it, addressing them to any other relevant authority at the end of seizing, informing the lodgers of the requests and the complaints of the means to vindicate their rights and submitting the reports related to it to the President of the Republic.

Art. 3 - The Higher Committee of Human Rights and Fundamental Freedoms is also charged of:

- realizing the researches and studies in the field of human rights and fundamental freedoms,

- contributing to the preparation of draft reports to be presented by Tunisia to the bodies and committees of the United Nations as well as to the regional institutions and bodies and to put forward an opinion,

- following up the observations and the recommendations issued by the bodies and committees of the United Nations and the regional institutions and bodies during the discussion of the reports of Tunisia which have been handed over to them as well as the presentation of proposals in order to draw a helpful conclusion from it,

- contributing to the spreading of the culture of human rights and fundamental freedoms, and this, by organizing international, national and regional seminars, by distributing publications and holding conferences on the issues related to human rights and to fundamental freedoms,

- contributing to the elaboration of plans and programs relating to the education to human rights and participating in the implementation of the related national plans,

- consolidating and promoting established privileges and achievements of Tunisia in the field of human rights and fundamental freedoms.

Art. 4 - The Higher Committee of Human Rights and Fundamental Freedoms is also charged of:

- cooperating within the limits of its attributions, with the relevant institutions of the United Nations, the regional institutions as well as the national institutions of human rights in other countries,

- cooperating with the international committee of the coordination of the national institutions for the promotion and the protection of human rights, effectively contributing to its works and cooperating with the other regional groups of the national institutions of human rights,

- participating in the meetings organized by the national or international institutions of human rights.

2-The Tunisian league of Human Rights (an independent body in charge of monitoring compliance with human rights as well as promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion).

Tunisia's league of human rights was officially born on may 7, 1977 with formal authorization accorded by the ministry of the Interior.

Question 8:

How is assistance provided to victims and/or affected communities of racism, racial discrimination, xenophobia and related intolerance at the domestic level ? How do victims and/or affected communities participate fully and effectively in relevant processes and national mechanisms ?

Please see answer to question N°. 3 above (especially Art. 2 of the Law n° 2008-37 dated June 16, 2008, relating to The Higher Committee of Human Rights and Fundamental Freedoms).

Question 9:

With regard to the topics of this questionnaire:

- a) Kindly indicate any possible recommendations your country would wish to provide; and,*
- b) Are there any additional comments or information your country wishes to provide in relation to xenophobia, national mechanisms or procedural gaps?*

Tunisia noted that the great number of State's reservations to article 4 of the International Convention on the Elimination of all forms of Racial Discrimination was a significant obstacle to its effective implementation.

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