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Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people.
2. This report highlights the special vulnerability to discrimination and social hostility faced by persons belonging to religious minorities in Tunisia, as well as the lack of adequate protection from the authorities for those facing threats to their safety and rights on the basis of their faith. It also draws attention to the concerning situation of freedom of expression in the country.

(a) Freedom of Religion or Belief

3. As of July 2021, the population of Tunisia was estimated to be 11.9 million people. Over 99% of the population are Sunni Muslims with the remaining less than 1% being comprised of Shia Muslims, Baha'is, Jews, and Christians.¹ Open Doors estimates that there were 22,800 Christians living in Tunisia in 2021.²
4. Article 1 of the 2014 Constitution states that "Tunisia is a free, independent, sovereign state; its religion is Islam". Besides recognising Islam as the state religion, the Constitution requires that only Muslim Tunisian-born individuals can stand for election for President.³
5. Article 6 of the 2014 Constitution of Tunisia purports to protect the right to freedom of religion or belief by stating that, "The state is the guardian of religion. It guarantees freedom of conscience and belief, the free exercise of religious practices and the neutrality of mosques and places of worship from all partisan instrumentalisation."⁴ It further enshrines the country's commitment "to disseminate the values of moderation and tolerance and the protection of the sacred, and the prohibition of all violations thereof. It undertakes equally to prohibit and fight against calls for *takfir* and the incitement of violence and hatred."⁵
6. In his report on the visit to Tunisia, the Special rapporteur on freedom of religion or belief noted that "protection of the sacred" is not sufficiently defined and therefore may lead to laws that discriminate based on religious affiliation, or that "prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith," thereby undermining freedom of religion and expression.⁶
7. Tunisia is ranked number 35 on the 2022 Open Doors Watch List of top 50 States that face the most Christian persecution.⁷ This is due to ongoing societal discrimination and persecution that Christians face throughout the country, especially for recent converts from Islam.⁸ Beyond being socially marginalized, ex-

¹ World Population Report 'Tunisia Population 2022' (2022)

<<https://worldpopulationreview.com/countries/tunisia-population>>.

² Open Doors International 'Tunisia: Full Country Dossier' (January 2022) World Watch List <<https://odusa-media.com/2017/12/Full-Country-Dossier-Tunisia-2022.pdf>>, 6.

³ Id., art. 1.

⁴ Constitution of Tunisia <https://www.constituteproject.org/constitution/Tunisia_2014.pdf>, art. 6.

⁵ Id., art. 6.

⁶ Report of the Special rapporteur on freedom of religion and belief, Visit to Tunisia, A/HRC/40/58/Add.1, 56.

⁷ Id., 6.

⁸ Id., 21-24.

Muslim converts are in some cases kept under surveillance by police. Continued political instability over the past years has been a primary reason for the lack of adequate protection for religious minorities. This is further exacerbated by the continued political influence of extremist factions, including in the parliament, resulting in policies that place undue pressure on non-Muslims throughout Tunisia.⁹

8. In 2016, the Attalaki Association for Liberty and Equality Committee on Religious Freedom was established in response to the pervasive persecution that religious minorities faced. The Attalaki Association is comprised of members from different faith groups with the stated goals of promoting religious freedom and fostering interfaith dialogue among Tunisia's minority religions and Sunni Islam.¹⁰ In 2020, the organization published its first annual report on freedom of religion, which noted a broad "policy of indifference" of the State towards promoting and protecting religious freedom. It highlighted the need to address "the issue of diversity and pluralism in Tunisian society," to prevent inter-religious tensions and social hostility and violence towards persons belonging to minority religious communities.¹¹
9. In March 2020, after enduring violent threats and obscenities, a Christian family living in the capital city of Tunis fell victim to violence. Among other things, neighbors dragged a woman from the family into the street and repeatedly punched her in the face.¹² The case was reported to the police by the Attalaki Association; however, it was allegedly not taken seriously until a medical report was submitted that detailed the extent of the women's injuries. Instead of investigating the crimes perpetrated against the woman, the police took the opportunity to interrogate her about her Christian faith, including her ability to obtain religious literature and where she worships.¹³
10. In August 2021, Algerian Christian convert Sulieman Buhafss was arrested by Tunisia's secret police and subsequently repatriated to Algeria, despite the fact that he had sought political asylum in Tunisia after enduring religious persecution in his home country, including being imprisoned for his faith.¹⁴

Freedom of Religion or Belief in International Law

11. The International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of thought, conscience, and religion for everyone. Article 18 of the ICCPR states, "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice," and that "freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the

⁹ Id., 10-11.

¹⁰ 'Attalaki NGO' <<https://attalaki.org/>>

¹¹ G. Ayari 'Attalaki releases its first Annual Report on Religious Freedom and the first in Tunisia and the Arab World' (January 2021) Attalaki <<https://attalaki.org/index.php/2021/03/06/elementor-282-3-3/>>.

¹² E. Wood 'Dragged in the street': Christian persecution in Tunisia still rampant decade after revolution' (4 March 2021) Christian Post <<https://www.christianpost.com/news/christian-persecution-in-tunisia-rampant-decade-after-revolution.html>>.

¹³ G. Ayari 'Attalaki releases its first Annual Report on Religious Freedom and the first in Tunisia and the Arab World' (January 2021) Attalaki <<https://attalaki.org/index.php/2021/03/06/elementor-282-3-3/>>.

¹⁴ Christian Solidarity Worldwide 'Christian convert arrested and repatriated from Tunisia' (31 August 2021) <<https://www.csw.org.uk/2021/08/31/press/5385/article.htm>>.

fundamental rights and freedoms of others.”¹⁵

12. Article 26 of the ICCPR commits States to “prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination,” including on the basis of religion.¹⁶ Further, Article 27 of the ICCPR further guarantees that “[i]n those States in which religious minorities exist, persons belonging to such minorities shall not be denied the right, in community, with the other members of their own group [...] to profess and practise their own religion.”¹⁷
13. The Human Rights Committee’s General Comment No. 22 on Article 18 notes that, “The fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents of other religions or non-believers.”¹⁸
14. Furthermore, Tunisia has ratified the 1951 Convention Relating to the Status of Refugees, in which Article 33 explicitly prohibits the repatriation of a refugee “where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”¹⁹ By repatriating an asylum seeker despite clear evidence of a threat of persecution on the basis of his religion, Tunisia has violated its non-refoulement obligations under international law.
15. During its third cycle UPR in 2017, Tunisia supported a recommendation by Sierra Leone to “Establish an interreligious council to facilitate interreligious dialogue and harmony.”²⁰ This commitment was also recalled by the Special rapporteur on freedom of religion or belief in his report in 2019.²¹ As of the start of 2022, Tunisia has not yet fulfilled this important commitment.
16. In order to fully comply with its human rights obligations, Tunisia must do more to effectively protect persons belonging to religious minorities from harassment, discrimination and persecution, including by dedicating increased law enforcement resources, granting asylum to those fleeing persecution for their faith, and promoting interreligious dialogue to promote peaceful coexistence, grounded in freedom of religion or belief for all.

(b) Freedom of Expression

17. Article 31 of the 2014 Constitution guarantees freedom of opinion, thought, expression, information and publication, and that “these freedoms shall not be subject to prior censorship.”²²

¹⁵ International Convention on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art. 18.

¹⁶ *Id.*, art. 26.

¹⁷ *Id.*, art. 27.

¹⁸ UN Human Rights Committee ‘General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)’ (30 July 1993) CCPR/C/21/Rev.1/Add.4, 9.

¹⁹ UN General Assembly ‘Convention Relating to the Status of Refugees’ (adopted 28 July 1951) 189 UNTS 137, art. 33.

²⁰ UN Human Rights Council ‘Report of the Working Group on the Universal Periodic Review: Tunisia, Addendum 1’ (18 September 2017) UN Doc A/HRC/36/5/Add.1, 11.

²¹ Report of the Special rapporteur on freedom of religion and belief, Visit to Tunisia, A/HRC/40/58/Add.1, 91.

²² Constitution of Tunisia, <https://www.constituteproject.org/constitution/Tunisia_2014.pdf>, art. 31.

18. As part of its previous Universal Periodic Review in 2017, Tunisia supported several recommendations on strengthening and enhancing the implementation laws protecting freedom of expression.²³ However, in practice, individuals continue to be prosecuted for alleged “offenses against religion” under vaguely worded statutes serving as de facto blasphemy laws or being misused to target critics of religious leaders.
19. In July 2020, blogger Amna al-Sharqi was sentenced to six months in prison for content she shared online. Al-Sharqi was found guilty for posting an image that resembled a verse from the Quran with an accompanying caption that claimed COVID-19 was sent from China and that people should wash their hands.²⁴ Specifically, she was charged for “preaching hatred between races, religions or the population by inciting discrimination and the use of hostile means,” and “undermining a licensed religious rite” under Chapters 52 and 53 of the 2011 Decree on Freedom of the Press, Printing and Publication.²⁵
20. In November 2020, a court sentenced blogger Wajdi Mahouechi to two years in prison for video content he posted onto his Facebook page. The video was critical of Tunisia’s public prosecutor for his failure to investigate an imam that justified deadly violence against people who insult the prophet Muhammed.²⁶ Prosecutors charged Mahouechi for “knowingly harming or disturbing others via public telecommunications networks” under Article 128 of the Penal Code and Article 86 of the Telecommunications Code, which sets forth a sentence of up to two years in prison and a fine up to 1,000 Tunisian dinars. They also charged him for the crime of “public calumny” under Article 245 of the Penal Code and for “insulting a public officer during the performance of their duties,” which carries a maximum sentence of one year in prison under Article 125 of the same Code.²⁷

Freedom of Expression in International Law

21. As elaborated above, Article 18 of the ICCPR guarantees the right to freedom of religion or belief, including the right to manifest one’s religion or belief on private as well as public settings.²⁸ Inseparably linked to Article 18 is Article 19, which enshrines the right to freedom of opinion and expression.²⁹ The freedom to express one’s beliefs and opinions is fundamental to the operation and maintenance of an open and free society – even when what is expressed may be unpopular or offensive to some people.
22. Criminalizing “offenses against religion” does not constitute an acceptable derogation from the right to freedom of expression, as article 19(3) of the ICCPR

²³ UN Human Rights Council ‘Report of the Working Group on the Universal Periodic Review – Tunisia’ UN Doc A/HRC/36/5, 125.92, .88, .86.

²⁴ Amnesty International ‘Tunisia: Blogger Emna Chargui sentenced to six months in prison for social media post’ (15 July 2020) <<https://www.amnesty.org/en/latest/news/2020/07/tunisia-blogger-emna-chargui-sentenced-to-six-months-in-prison-for-social-media-post/>>.

²⁵ Id.

²⁶ Human Rights Watch ‘Tunisia: Harsh Sentence Against Blogger’ (24 November 2020) <<https://www.hrw.org/news/2020/11/24/tunisia-harsh-sentence-against-blogger>>.

²⁷ Id.

²⁸ International Convention on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art. 18.

²⁹ Id., art. 19.

only allows restrictions on expression where they are necessary “for the respect of the rights and reputations of others” or “for the protection of national security, public order or public health or morals.”³⁰ Restrictions must serve as a necessary protection of persons, not of religions as such.

23. Article 20(2) of the ICCPR calls on States to prohibit “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, or violence.”³¹ General Comment No. 34 of the Human Rights Committee (CCPR) makes it clear that restrictions on the right to freedom of expression “should not go beyond what is permitted in paragraph 3 [of Article 19] or required under article 20,” and that relevant laws “must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.”³²

24. Article 19(2) of the ICCPR, which affords everyone the right to freedom of expression, includes therein the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.³³ The arrest of a blogger for posting online content that does not lead to incitement of violence is therefore in violation of Tunisia’s obligation to afford everyone the right to seek and impart information under the ICCPR.

(c) Recommendations

25. In light of the foregoing, ADF International suggests the following recommendations be made to Tunisia:

- a. Ensure the full and equal enjoyment of the right to freedom of religion or belief of all persons without discrimination of any kind;
- b. Increase efforts to protect Christians and other religious minorities from all forms of violence, harassment and discrimination;
- c. Ensure the prompt and effective investigation of all crimes committed against persons belonging to religious minorities, with a view to ensuring full accountability for perpetrators and justice for victims;
- d. Protect the right of persons to seek asylum from religious persecution in other countries, and respect fully the principle of non-refoulement;
- e. Promote interfaith dialogue and religious tolerance in order to counter social hostility against religious minorities and prevent radicalization;
- f. Cease the de-facto criminalization of offenses against religion, and ensure that restrictions on free expression do not exceed the narrow scope of permissible limitations established by international law;

³⁰ *Id.*, art. 19.

³¹ *Id.*, art. 20.

³² UN Human Rights Committee, General Comment No. 34 (2011) CCPR/C/GC/34/Rev.1/Art. 19, 49.

³³ International Convention on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art. 19.

- g. Ensure that the right to freedom of expression is duly recognized and respected, including in the context of speech deemed unpopular or offensive;

