

Tunis 19 April 2018

I. Introduction

1. In my capacity as the United Nations Special Rapporteur on freedom of religion or belief, I undertook an official country visit to Tunisia from 9-19 April 2018 at the invitation of the government.
2. I would like to note that I was free to meet with government functionaries, non-governmental organisations and other civil society actors, in addition to members of various religious or belief groups, diplomats and representatives of various UN agencies to openly discuss the situation of freedom of religion or belief in the country. These meetings were held in Tunis and in Djerba. I also visited the Mornaguia prison and met with prison officials and several inmates.
3. I would like to extend my gratitude to the Government of Tunisia for hosting and facilitating my visit, and thank everyone that engaged in activities organized in furtherance of the agenda tasked to me by the Human Rights Council. I would also like to thank the Office of the High Commissioner for Human Rights for the support extended to my work through its offices in Geneva, Switzerland and Tunis, Tunisia.

II. Applicable Standards

4. In accordance with the Code of Conduct of the UN Special Procedures and Human Rights Council Resolution 31/16, the country visit examined the extent to which the right to freedom of thought, conscience and religion or belief was respected, protected and promoted in all its dimensions for all persons within the jurisdiction of Tunisia.
5. International standards stipulate that interference of any kind with what people believe and coercion in matters of religion are prohibited, and that individuals are free to have, adopt or change their religion or belief. The enjoyment of this right is inalienable for all persons, including those holding theistic, non-theistic and atheistic beliefs; and includes both freedom of religion and freedom from religion.
6. The State is obligated to respect the manifestation of religion, either alone or in community with others, whether in public or private, in worship, observance, practice and teaching, which may be limited only in a manner prescribed by law and only to the extent necessary to protect public safety, order, health, morals and the fundamental rights of others, and in any case without vitiating the substance of the right itself. The State must also respect the right of parents or guardians to provide, subject to the evolving capacities of the child, a moral and religious education of their choice.
7. In addition to the rights specifically identified in Article 18 of the International Covenant on Civil and Political Rights (ICCPR), the State is obligated to ensure the enjoyment of the right to freedom of religion or belief without discrimination of any kind on the grounds of race, religion or gender; to ensure equality before the law, and to respect, protect and fulfil the rights of persons belonging to religious minorities. The State is also required to prohibit any advocacy of religious hatred that

constitutes incitement to hostility, discrimination and violence. Moreover, the State must also prohibit the use of the right to freedom of religion or belief to vitiate the human rights of persons within its jurisdiction.

III. General and Historical Context

8. Tunisia is a country with a rich history of religious diversity which in its present context, includes persons of Sunni, Ibadi, Shia, Jewish, Catholic, Orthodox and Protestant faiths, along with persons belonging to newer religious or belief groups such as Salafis, Baha'i, Jehovah's Witnesses, and free thinkers. According to official figures, 99% of the population of 11 million people are identified as Muslim. The Jewish community in the country dates back to over two-and-a-half millennia, with the island of Djerba hosting one of the oldest synagogues in the world, the El Ghriba, which is also a major site of pilgrimage.
9. Tunisia adopted a secular governance model upon its independence in 1956. The pre-Revolutionary governments of President Habib Bourguiba and President Zine-el-abidine Ben Ali pursued secular and/or progressive policies, particularly in regard to certain aspects of women's rights. Tunisia, for example, is the only country in the Arab world to prohibit polygamy. The 1957 Personal Status Code, while providing a unified civil code for all Tunisians, still retained aspects of Islamic Law. A number of cases filed with Tunisia's Truth and Dignity Commission, established in 2013, imply that the top down imposition of social norms may have conflicted with the faith-based convictions and practices of some, such as women who may have found the prohibition on the wearing of the headscarf, in pre-revolutionary era, a coercive intrusion on their religious beliefs.

IV. Current context

10. Tunisia is still in the transitional process following the revolution of 2011, which overthrew the dictatorial regime of President Ben Ali. The country continues to embark on a positive trajectory towards democratisation since 2011, including by way of the adoption of Tunisia's Constitution in 2014, which guarantees the fundamental rights of all Tunisians. The country continues to face numerous challenges to democratic consolidation. This includes economic challenges and difficulties with establishing key institutions mandated by the Constitution, such as the Constitutional Court; struggles with advancing initiatives that facilitate reviews and repeals laws that violate Constitutional standards and international human rights obligations; and uncertainty about the future of the country's transitional justice process.
11. One of the key challenges facing the Government has been that of countering violent extremism and terrorism, which has both national and international dimensions. The national dimension involves several terrorist incidents, which have, in addition to random violence, also targeted politicians, civil society activists and tourists. The international dimension involves the participation of a high number of Tunisian foreign terrorist fighters in conflict areas and some have reportedly returned to the country; posing security and legal challenges for the Government, including issues with criminal justice and the need for de-radicalisation.

V. Legal framework

12. Tunisia is party to all international human rights treaties that contain provisions for the protection of the freedom of religion belief, apart from the Convention on the Rights of Migrant Workers and

some of the Optional Protocols. The government indicated a willingness to consider joining these instruments.

13. Tunisians generally view the 2014 Constitution as a very progressive settlement, both in the country's own context and in terms of wider regional setting. Many see it as a compromise among diverse interests, especially between objectives to extend greater influence for Islam in public affairs and objectives to secure secular influence. Thus, while Article 1 establishes Islam as the religion of Tunisia, Article 2 declares that Tunisia is a civil state based on citizenship, dictated by the will of the people and supremacy of the law.
14. The Constitution enshrines a clear commitment to a civil state, characterized by a national identity that is defined by several elements; including Islam, the country's Arab heritage and universal human rights. Article 6 of the Constitution guarantees freedom of conscience or belief and the free exercise of religious practices for all Tunisians, and other Constitutional provisions reinforce this guarantee through a commitment to fundamental human rights, especially those relating to freedom of religion, association, peaceful assembly; guarantees for equality before the law; and the principle of proportionality required for the establishment of limitations of these rights. The State also makes attempts to guarantee that all places of worship are neutral and free from partisan instrumentalisation.
15. The Constitution also declares that international treaty obligations that are duly undertaken will prevail over ordinary law but not constitutional provisions. While this does not fully meet the international standard specified in Art. 27 of the Vienna Convention on the Law on Treaties, the provision lends confidence to the plausibility that international treaty obligations can be invoked in domestic legal proceedings to address tensions and violations.
16. More recent developments further illustrate Tunisia's strong commitment to equality and freedom of religion or belief. These include the withdrawal of all substantive reservations to the UN CEDAW in April 2014, in addition to announcements of the Government's decision to rescind a circular dated 5 November 1973 that imposed a ban on marriages between Tunisian Muslim women and non-Muslim men in September 2017. In addition, Article 46 of the Constitution requires the State to take all steps necessary to eradicate violence against women and the subsequent law criminalizes all forms of gender-based violence. However, I note that it does not specifically criminalize marital rape as a form of violence. A Commission established by the President is also due to report later this year on further ensuring individual liberties and equality.
17. The Constitution requires, however, that the Head of State to be Muslim, and since it is feasible that the Speaker of the Assembly (Parliament) may temporarily assume the position of Head of State in the event of an unexpected vacancy of the post, I am concerned that the position of Speaker of the Assembly could also be interpreted to be restricted to Muslims.
18. Two other provisions in the Constitution were highlighted by various interlocutors as inconsistent with the full guarantee of freedom of religion or belief, which have potentially significant implications for protections of this right. This includes Constitutional declarations that the State is the "guardian of religion" obliged to "protect the sacred" which could be problematic if this provision is interpreted as an obligation upon the state to protect religion per se rather than individuals. In this way, Article 6, in and of itself, is not fully consistent with the international standards for respecting freedom of religion or belief.

19. Moreover, a number of existing laws that precede the 2014 adoption of Tunisia's constitution must be reconciled for the tenability of Tunisia's Constitutional commitment to a civil state. These include the use of public order and public morality concepts to enforce restrictions on ostentatious consumption of food during the daylight hours of Ramadan; inheritance laws that undermine guarantees of equality before the law for women; and the criminalisation of consensual same-sex relations.

VI. Institutional Context and the Rule of Law

20. I am pleased to learn that the 2014 Constitution provides for a National Human Rights Institution (NHRI) and that a bill has been drafted to ensure that the current NHRI will become fully compliant with the Paris Principles.
21. However, a number of interlocutors raised concerns about issues related to the rule of law. This includes allegations of failure to follow due process, assertions about ambiguity in the law, and concerns over issues of impunity. Some of these problems appear to result from ongoing application of laws adopted prior to 2014, such as directives related to eating during daylight hours in violation of religious tenets and broad definitions of public morality and order. I was informed of some cases where people had been imprisoned for up to a month for either consuming food or smoking cigarettes in public during Ramadan. It is not clear if the law protects the public consumption of food or drink as well as smoking during daylight hours of Ramadan. It was clear of course that the law does not directly compel any one to observe any ritual of religion; however, it appears that public morality concepts could be used to enforce abstinence from public consumption of food during Ramadan.
22. In another reported case, two individuals were prosecuted under public order offences for insulting religious sentiment. While the country does not have an anti-blasphemy law, the use of public order provisions to penalise speech that is critical of religion or insults religion amounts to an illegal restriction on the right to freedom of expression, which is a fundamental component of freedom of religion or belief. Some stakeholders also raised concerns about the duty to protect the sacred, specified in the Constitution, which they believe is tantamount to an anti-blasphemy provision.
23. Deficits in the rule of law can have multiplier implications for any society and can certainly undermine the protection of human rights, including that of freedom of religion or belief. Many anticipate that the Constitutional Court, when established and operational, would be able to find ways to reconcile what appears to be contradictions in Tunisia's legal framework, and would expedite requisite legal reforms.

Practices Relating to the Protection of Freedom of Religion or Belief

24. Few explicit restrictions on freedom of religion or belief were reported by various faith-based communities. There are no apostasy laws and people are free to convert into any religion or belief, as far as the law is concerned. However, there were reports of societal pressure on those who converted from one faith or belief to another.
25. People are not required to declare their faith and there do not appear to be official restrictions on worship either alone or in community with others. However, certain forms of public display of religion or belief face restrictions, such as proselytizing in public spaces. Some communities,

notably newer groups, reportedly faced indirect restrictions on aspects of the public manifestation of religion or belief. These restrictions result from the failure of these communities to obtain registration that would grant them requisite legal status for carrying out several institutional functions or public manifestation of religious beliefs. Since the Baha'i community, for example, has failed to secure registration as a national association, which would grant its institutions a legal personality, the community's capacity to engage in activities integral to the function of institutions that represent and support its interests is severely undermined. The laws also prohibit the formation of faith-based political parties. The government's view is that these restrictions are necessary limitations that are prescribed in law for the protection of public order and national unity.

26. The Government undertakes a number of regulatory measures with regard to the various religious communities. Thus, the Grand Mufti is a state appointed official and the government appoints and pays all Imams, essentially rendering them civil servants. The State also pays for the upkeep of the mosques. Relations with the Catholic community are governed by an agreement with the Vatican in July 1964, and the relations with other traditional religious communities are regulated by agreements with the Ministry of Religious Affairs.
27. Education is compulsory from ages 6-16, and public schools provide classes in religious studies which are based on imparting knowledge about Islam. Jewish and Christian students were allowed to opt out of these classes with Jewish children being allowed to attend private schooling to learn about their faith. There was a presumption that any child who did not have Jewish or Christian parents were Muslim. There is no opt out provision for children of parents who did not subscribe to the Jewish or Christian religion.
28. Although the Constitution maintains a commitment to freedom of conscience and religion or belief and the legal framework generally uphold these commitments, the policies of the Government appear to be based on a model of inter-religious toleration, instead of individual liberty, and primarily focus on the traditional faith-based communities. The Ministry of Religious Affairs has undertaken activities pursuant to inter-faith dialogue amongst Muslim, Jewish and Christian communities, but there is little, if any, engagement with newer religions or belief groups. Incidents of displays of social hostility in the form of harassment or pressure directed at converts, as well as threats and attacks on atheists and members of the LGBTI community were reported. Allegations also maintained that harassment is also carried out by law enforcement officials, in violation of national laws. There were no reports that religious groups, including newer communities, faced discrimination in access to public services, but some persons reported to be living in fear amidst threats and incitement on social media.
29. In the post-revolution period, Tunisia has experienced a number of incidents of violence in the name of religion. It therefore faces legitimate concerns in formulating effective responses to counter violent extremism. Many of these measures, such as the ban of glorification of terrorism, and incitement to violence amongst religions and races are clearly fundamental to protecting the space for freedom of religion or belief. However, it would be essential that these measures are applied in strict conformity with the high threshold applicable to the prohibition of incitement to discrimination, hostility and violence under Article 20 of the ICCPR and must meet the test of necessity, legitimacy and proportionality stipulated under Article 19 of the ICCPR. Equally, there is concern that in the context of countering violent extremism, certain forms of peaceful practices of Islam are identified as extremist and people face intrusive questions by the police, which amount to violation of their freedom of conscience and right to privacy.

30. Finally, I would like to thank the Government of Tunisia once again for their cooperative spirit and I look forward to continuing my dialogue with the authorities on these matters that I have highlighted above. I will submit my final report along with recommendations to the UN Human Rights Council in March 2019.