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RELIGIOUS FREEDOM IN TUNISIA

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RELIGIOUS FREEDOM IN TUNISIA

SECTION I: LEGAL FRAMEWORK

Introduction

1. Tunisia is a party to the International Covenant on Civil and Political Rights (“ICCPR”).¹ As a party to the ICCPR, Tunisia is subject to the provisions of Articles 18² and 27,³ both of which protect religious freedom. Tunisia has also acceded to the Optional Protocol giving the Human Rights Commission jurisdiction to address complaints against Tunisia under the ICCPR.⁴ Tunisia, however, has failed to fulfill its obligations under the ICCPR in the past. Moreover, the status of religious freedom in Tunisia is uncertain in the wake of the recent turnover of the Tunisian government and the rise to power of the Islamist Ennahda party.

2. Based on Tunisia’s pre-reformation laws, current practices, and anticipated constitutional and legal reforms, religious protections amount to no more than a glossy veneer concealing an increasingly publicly-enforced Islamic order. Religious freedom is subject to a catch-all exception that allows the government to constrict religious freedom whenever it disturbs the Muslim-dominated “public order.” Religious freedom is also limited in practice by judges’ subordination of codified laws to their discretionary interpretations of Islamic law. The guarantee of religious freedom in Tunisia is thus a pretense, allowing systematic discrimination and persecution of religious minorities by the government and private actors.

Population

3. Sunni Muslims compose a vast majority of the 98 percent Muslim population in Tunisia.⁵ Religious minorities, which constitute about 2 percent of the population, include Shia Muslims,

¹ *Status of Treaties, Ch. IV Human Rights, 4. ICCPR Status*, UNITED NATIONS TREATY COLLECTION, (2 Nov. 2011 10:13 AM), http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

² Article 18:

(1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

(2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

International Covenant on Civil and Political Rights art. 28. 16 Dec. 1966, 999 U.N.T.S. 171 [hereinafter ICCPR], available at <http://www2.ohchr.org/english/law/ccpr.htm>.

³ Article 27 addresses religious minority populations, stating, “In those [s]tates in which . . . religious . . . minorities exist, persons belonging to such minorities shall not be denied the right . . . to profess and practise their own religion.” *Id.* art. 27.

⁴ *Status of Treaties, Ch. IV Human Rights, 5, Optional Protocol to the ICCPR Status*, United Nations Treaty Series (11 Nov. 2011, 7:24 AM), http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-5&chapter=4&lang=en.

⁵ U.S. DEP’T OF STATE, *July-December, 2010 International Religious Freedom Report—Tunisia*, § I, at 1 (13 Sept. 2011) [hereinafter *July-December, 2010 Int’l Religious Freedom Report*], <http://paei.state.gov/documents/organization/171746.pdf>.

Bahais, Jews, and Christians.⁶ Christians represent the second largest religious group in the country with approximately 25,000 members.⁷

New Government

4. Social unrest and mass protests, beginning in December 2010, culminated in President Ben Ali's declaration of a state of emergency on 14 January 2011 and subsequent flight from the country.⁸ Within a few weeks, the Prime Minister announced the formation of an interim "national unity government."⁹ On 24 October 2011, elections were held to pick members of an assembly that is tasked with rewriting the constitution and shaping the new coalition government.¹⁰ The Ennahda party, an Islamist party which was repressed under the prior regime, won 41 percent of the vote and will have the most influence in the assembly.¹¹ The Ennahda party will get 89 of the 217 seats on the assembly that will write Tunisia's new constitution.¹²

Constitutional Protections of Religious Freedom

5. According to early reports, the new constitution, which is anticipated to be complete sometime next year, will not impose a particular religion, although it will continue to provide that Islam is the official state religion.¹³ Although the constitution purportedly will not implement Shariah or favor any one religion over another, it has yet to be seen whether the constitution will contain specific protections for religious freedom in Tunisia. Absent entrenched constitutional protections, there is no guarantee against religiously oppressive laws being passed in the future.

6. Currently, many Tunisians fear that, in spite of the Ennahda party's public assurances that its aspirations are to help build a moderate society in which every citizen has equal rights, it will exploit its power and seek to impose a strict form of Islamic law.¹⁴ Although the group has adopted a moderate tone, there have been reports of increased efforts to publicly impose Islam, including forced veiling, forced prayers, and open condemnation of Christian converts as apostates.¹⁵

⁶ *Id.*

⁷ *Id.*

⁸ U.S. CENTRAL INTELLIGENCE AGENCY, *The World Factbook – Tunisia (Introduction/Background)*, <https://www.cia.gov/library/publications/the-world-factbook/geos/ts.html> (last visited 7 Nov. 2011).

⁹ *Id.*

¹⁰ *Tunisia*, INT'L HERALD TRIBUNE (28 Oct. 2011),

<http://topics.nytimes.com/top/news/international/countriesandterritories/tunisia/index.html>.

¹¹ *Id.*

¹² Bouazza Ben Bouazza, Associated Press, *Tunisia Issues Final Election Results*, ABC NEWS (14 Nov. 2011), <http://abcnews.go.com/International/wireStory/tunisia-issues-final-election-results-14947818>.

¹³ Tom Heneghan, *Tunisian constitution will make no place for faith*, REUTERS (4 Nov. 2011), <http://in.reuters.com/article/2011/11/04/idINIndia-60331820111104>.

¹⁴ *Id.*; see also Scott Sayare, *Tunisia Is Uneasy Over Party of Islamists*, INT'L HERALD TRIBUNE (15 May 2011), http://www.nytimes.com/2011/05/16/world/africa/16tunis.html?_r=2&pagewanted=all; Katharine Cornell Gorka, *Dreaming of Spring in Tunisia*, WESTMINSTER INSTITUTE, <http://www.westminster-institute.org/articles/dreaming-of-spring-in-tunisia-by-katharine-cornell-gorka/#more-885> (last visited 14 Nov. 2011).

¹⁵ *Christians Flee as Islamist Influence Grows in Tunisia*, BARNABASAID (6 June 2011), <http://barnabasfund.org/US/News/Archives/Christians-flee-as-Islamist-influence-grows-in-Tunisia.html?&quicksearch=tunisia>.

The Republican Pact

7. There are also reports that the “republican pact,” which provides the basis for the new constitution, prohibits any normalization of relations with Israel and fully supports the Palestinian cause.¹⁶ Currently, the government pays the salary of the Grand Rabbi of Tunisia, provides security and subsidizes maintenance costs for all synagogues, maintains the Jewish cemetery, and allows the Jewish community to operate private religious schools.¹⁷ However, if these reports are correct, Tunisian Jews might lose freedoms or suffer other forms of persecution due to the government’s stance towards Israel and Palestine.

Domestic Laws and Policies

8. Tunisia’s current laws (pre-Arab Spring) allow religious freedom on the condition that the religious practice does not disturb the public order.¹⁸ While nominally protecting religious freedom, this law restricts religious expressions of minorities. Additionally, the law criminalizes all attempts to proselytize Muslims, because that is deemed to disturb the public order.¹⁹ The government also restricts religious groups’ freedom of assembly, requiring government approval for religious meetings and services.²⁰

Shariah Law

9. The family code has incorporated many tenets of Shariah. Domestic marriages between Muslim women and non-Muslim men are strictly forbidden unless the man converts to Islam.²¹ Muslim men are allowed to marry non-Muslim women, but they cannot inherit from one another.²² In addition, their children are legally considered Muslims and as such can inherit from their father but not their mother.²³ To avoid the application of Islamic inheritance law, some families execute civil contracts between parents and children; however even the civil law is often subordinated to Islamic law at the discretion of judges.²⁴ Although civil law, including family and inheritance law, is codified, judges have been known to override the codified law when it contradicts their interpretation of Islamic law. Thus, codified civil laws and protections are ultimately subordinated to Islamic law.²⁵

¹⁶ See, e.g., *Tunisia's Draft Constitution May Ban Ties with Israel*, THE JERUSALEM POST (17 July 2011), <http://www.jpost.com/MiddleEast/Article.aspx?id=229774>.

¹⁷ *July-December, 2010 Int'l Religious Freedom Report*, *supra* note 5, § II, at 3-4.

¹⁸ *Id.* § 2, at 2.

¹⁹ *Id.* § II, at 3.

²⁰ *Id.* § II, at 3-4.

²¹ *Id.* § II, at 2.

²² *Id.* § II, at 3.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

SECTION 2: REPORTS AND INSTANCES OF RELIGIOUS PERSECUTION AND DISCRIMINATION

Persecution of Christians

10. The Open Doors World Watch List 2011 (covering Nov. 2009 through 31 Oct. 2010) ranked countries based on their degrees of religious intolerance.²⁶ Due to worsening conditions in the country, Tunisia's rank increased by five points (up from 43rd to 37th out of 50 states) during the 2010 reporting period.²⁷ Although Tunisia's constitution purports to respect religious freedom, Christians were sentenced to prison, arbitrarily arrested, and threatened because of their faith.²⁸ Many Christians were also pressured to renounce their faith, and government officials authorized the police to break into Christian homes to "search for evidence, data, etc."²⁹

11. Moreover, while voluntary conversion from Islam to another religion is not explicitly prohibited and no registration requirement exists, government officials have harassed and discriminated against converts.³⁰ Once their faith is made known, converts to Christianity are interrogated and beaten;³¹ they are also denied institutional promotions and benefits.³²

Discrimination against Christian Churches

12. Since Tunisian independence in 1956, the government has only officially recognized the Catholic Church.³³ Other Christian churches, particularly Protestant Christian churches, have been prohibited from applying for legal status,³⁴ and the churches that have been able to apply have had their requests to establish new churches denied.³⁵ Furthermore, the government closely monitors pastors of expatriate churches and foreign Christian residents.³⁶ NGOs are likewise subject to government surveillance and infiltration into their membership.³⁷ Recent evidence suggests that the government has undertaken a campaign to deny visa renewals to any missionary even suspected of proselytizing.³⁸ In August 2010, the government unilaterally cancelled a religious procession organized by the Roman Catholic diocese in Tunis.³⁹ The government announced the cancellation on the day that the procession was scheduled to take place, citing as the reason the diocese's failure to seek official government approval.

²⁶ *Open Doors World Watch List, 2011*, OPEN DOORS 1 (2011), <http://www.opendoorsuk.org/resources/documents/WorldWatchList.pdf> (reporting on the period from 1 Nov. 2009 to 31 Oct. 2010).

²⁷ *Id.* at 10.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *July-December, 2010 Int'l Religious Freedom Report*, *supra* note 5, § II, at 2.

³¹ *Open Doors World Watch List, 2011*, *supra* note 26, at 10.

³² *July-December, 2010 Int'l Religious Freedom Report*, *supra* note 5, § II, at 2.

³³ *Id.* § II, at 4.

³⁴ *Open Doors World Watch List, 2011*, *supra* note 26, at 10.

³⁵ *July-December, 2010 Int'l Religious Freedom Report*, *supra* note 5, § II, at 5.

³⁶ *Open Doors World Watch List, 2011*, *supra* note 26, at 10.

³⁷ *July-December, 2010 Int'l Religious Freedom Report*, *supra* note 5, § II, at 3.

³⁸ *Id.* § II, at 4.

³⁹ *July-December, 2010 Int'l Religious Freedom Report*, *supra* note 5, § II, at 6.

Muslim Takeover of Christian Church

13. In September 2011, Salafist Muslims stormed a Christian basilica in Kef. The group reportedly intended to transform the church into a mosque. The church had been converted into a mosque in the 1700s, but was later transformed back into a church. Police dispersed the Muslim group without incident, and the government invited them to make a request to the government discussing their claim.⁴⁰ Although the government came to the church's aid, the incident bodes ill for future treatment of Christians in Tunisia in the wake of the recent Islamist victory in the government.

Arbitrary Religious Freedom Restrictions

14. Although by law the government can restrict religious freedom when it is deemed to disturb the public order, this law seems to be applied arbitrarily only when the actions in question are contrary to the government's views. The government has permitted religiously motivated actions that seemingly disturb the public order when such actions conform with the religious views of those in government. Recently, political cartoons depicting derogatory caricatures of Jews as a means to criticize Israel were printed and disseminated in Tunisia with no reproof from the government.⁴¹ On the other hand, only recognized churches were allowed to distribute religious materials to their parishioners.⁴² The government considered the distribution of religious materials by other groups to be an illegal disturbance of the public order. Christian groups reported that the government allowed them to distribute "previously approved" religious materials printed in Western languages, but denied permission to distribute Christian texts printed in Arabic. Additionally, the government prohibits followers of the Bahai faith, which it regards as a heretical sect of Islam, to worship in public.⁴³

⁴⁰ *Salafists to turn Tunis Christian site into mosque*, DAILY STAR (17 Sept. 2011), <http://www.dailystar.com.lb/News/Middle-East/2011/Sep-17/149013-salafists-to-turn-tunis-christian-site-into-mosque.ashx#axzz1ZJwQLatr>.

⁴¹ *July-December, 2010 Int'l Religious Freedom Report*, *supra* note 5, § III, at 7.

⁴² *Id.* § II, at 4.

⁴³ *Id.* § II, at 2.