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TUNISIA

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Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name 'Alliance Defending Freedom'), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Co-operation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report focuses on the right to freedom of thought, conscience, and religion, the right to education, and Tunisia's failings in promoting and defending these rights.

(a) The Right to Freedom of Thought, Conscience, and Religion

Background

3. In 1964, the Holy See and the Tunisian government made an agreement protecting the free exercise of the Catholic religion in Tunisia.¹ The convention, while protecting the Catholic religion, did not recognize the autonomy or independence of the Catholic Church.
4. The right to freedom of thought, conscience, and religion became fully protected in the Tunisian Constitution in 2014 (the 2014 Constitution).
5. Article 6 of the 2014 Constitution guarantees the right to freedom of thought, conscience, and religion, stating:

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.
6. However, Article 1 of the 2014 Constitution stating that 'Tunisia is a free, independent, sovereign state; its religion is Islam...', and Article 74 of the 2014 Constitution indicating that only Muslim Tunisian-born individuals can stand for election for President may be perceived as limiting the right to freedom of thought, conscience, and religion.
7. The second part of Article 6 of the 2014 Constitution states, 'The state undertakes 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.' In conjunction with Article 1, this may further limit the right to freedom of religion and the right to freedom of expression if such expression may be seen as offensive to Islam.
8. Nonetheless, the 2014 Constitution was a major step in aligning domestic protections and guarantees of the right to freedom of thought, conscience, and religion with international standards. Yet despite the constitutional protection of the right to freedom of thought, conscience, and religion as introduced in 2014, Christians and other religious minorities continue to be discriminated against and prosecuted in Tunisia.

¹ Convention between the Holy See and the Republic of Tunisia, June 27, 1964, art. 1, 56 ACrA APOSTOLICAE SEDIS 917, 917 (1964).

9. In July 2013, Tunisia's population was estimated at 10.8 million with over 99% Muslims.² The remaining less than 1% are Shia Muslims, Baha'is, Jews, and Christians.³ Another source indicated that in 2016 the Tunisian population was at 11.2 million with 24,000 Christians.⁴
10. Because of the ongoing persecution of Christians in Tunisia, Tunisia was rated 32nd on the 2016 World Watch List, which ranks the top 50 countries where Christians are persecuted.⁵ The sources of persecution are Islamic extremism, societal views, and government policies.

Islamic Extremism

11. The main source of persecution of Christians and other religious minorities in Tunisia is Islamic extremism. At present Islamic extremism is on the rise. On 7 March 2016, a clash in Ben Guerdane between Tunisian forces and extremists resulted in over 45 deaths.⁶ The increase in extremism in Tunisia is partially due to the presence of ISIS/Daesh in Libya causing serious concerns about destabilization in the region.
12. Reports suggest that ISIS/Daesh is infiltrating Tunisia in pursuance of its plan to establish the so called 'Islamic State' in North Africa.⁷ ISIS/Daesh is an extremely violent group imposing violent religious ideology and not allowing any religious diversity. ISIS/Daesh targets anyone who opposes its ideology. However, religious and ethnic minorities have particularly suffered at the hands of ISIS/Daesh and on a mass scale. The atrocities committed by ISIS/Daesh in the Middle East have been denounced as genocide by the European Parliament, the Parliamentary Assembly of the Council of Europe, the US Congress, the UK House of Commons, US Secretary of State John Kerry, and the Australian Congress. This recognition was based on irrefutable evidence of ISIS/Daesh targeting Christians and other religious minorities for destruction of the groups, in whole or in part.
13. While ISIS/Daesh is infiltrating Tunisia, it was also reported that over 3,000 Tunisians have already left Tunisia for Syria and Iraq to join ISIS/Daesh.⁸

Government Policies and Societal Views

14. Discrimination against Christians and other religious minorities is also deeply rooted in government policy and in societal views.

² United States Department of State, Bureau of Democracy, Human Rights, and Labour, 2014 Report on International Religious Freedom, <http://www.state.gov/j/drl/rls/irf/2014/nea/238480.htm>.

³ Ibid.

⁴ Open Door, World Watch List 2016, available at: <https://www.opendoorsusa.org/christian-persecution/world-watch-list/tunisia/>

⁵ Ibid.

⁶ The Christian Science Monitor, At least 45 dead following militant attack in Tunisia, available at: <http://www.csmonitor.com/World/Africa/2016/0307/At-least-45-dead-following-militant-attack-in-Tunisia>

⁷ Rashmee Roshan Lall, Tunisia continues to fight against ISIL infiltration, The National, <http://www.thenational.ae/opinion/comment/tunisia-continues-to-fight-against-isil-infiltration>.

⁸ John Irish, Tunisia's youth must shun Islamic extremism, set example, Reuters, <http://uk.reuters.com/article/uk-tunisia-france-idUKKCN0WJ33F>.

15. A study conducted by the Arab Institute for Human Rights in 2015 suggested that 2 out of 3 people in Tunisia opposed the right to freedom of thought, conscience, and religion.⁹
16. Any speech that is perceived as offensive to traditional religious values of Tunisia can be prosecuted. Any speech that is 'to cause harm to the public order or public morals' can be prosecuted under the Penal Code of Tunisia. This also applies to acts that 'intentionally disturb[] other persons in a way that offends the sense of public decency.' Additionally, 'harming others or disrupting their lives through public communication networks' can be prosecuted under the Tunisian Telecommunications Code.¹⁰
17. Religious conversion is legal in Tunisia. However, religious converts face discrimination, persecution, and threats of violence from members of society and even from their families. In 2012, there were reports of beheadings of Muslim converts to Christianity.¹¹

Freedom of Thought, Conscience and Religion in International Law

18. The right to freedom of thought, conscience, and religion is affirmed in Article 18 of the ICCPR. Also, the Human Rights Committee confirmed in its General Comment No.22:

The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief.¹²

19. Despite the fact that the Constitution, in line with international law, guarantees the right to thought, conscience, and religion, some of the government's practices limit that freedom and prevent people from professing and practising their faith freely, as guaranteed under international law. This further violates Articles 2 and 26 of the ICCPR, namely, the guarantee of equal rights and freedom from discrimination on the basis of religion, and Article 27, guaranteeing the rights of religious minorities to profess and practise their faith.
20. Tunisia must ensure that the government's practice in relation to the right to freedom of thought, conscience, and religion does not limit this right and adheres to international standards. Tunisia must ensure that Christians and other religious minorities can freely exercise their right to freedom of thought, conscience, and religion, in their worship, observance, practice, and teaching.

⁹ Study: Only one in three Tunisians back religious freedom, available at: <http://www.tunisia-live.net/2015/05/13/religious-freedom-tunisia/>.

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¹¹ The Liveleak, Muslims behead Christian converts, available at: http://www.liveleak.com/view?i=413_1339017292.

¹² UN Human Rights Committee, CCPR General Comment No. 22. 1, available at: <http://www.refworld.org/docid/453883fb22.html>.

(b) Right to Education

Background

21. Islamic religious education is mandatory in public schools. Parents of students belonging to minority religions are not allowed to opt their children out of this education. This infringes not only the right to freedom of thought, conscience, and religion of the children, but also the rights of the parents to have their children educated in accordance with the conscience of the parents.

Right to Education under International Law

22. The right of parents to choose education for their children and to educate their children in accordance with their convictions is protected under international law. Article 26(3) of the Universal Declaration of Human Rights states, 'Parents have a prior right to choose the kind of education that shall be given to their children.'
23. Article 13(3) of the International Covenant on Economic, Social and Cultural Rights is equally explicit in guaranteeing the right to alternative forms of education. It reads:

The States Parties [...] undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

24. Article 18(4) of the ICCPR provides that States must 'undertake to have respect for the liberty of parents and [...] to ensure the religious and moral education of their children in conformity with their own convictions.'
25. Article 18(1) of the Convention on the Rights of the Child states that: 'Parents or, as the case may be, legal guardians have the primary responsibility for the upbringing and development of the child.' Article 14(2) requires States to 'respect the rights and duties of the parents [...] to provide direction to the child in the exercise of his or her right [to freedom of religion] in a manner consistent with the evolving capacities of the child.'
26. Tunisia should review its provisions relating to education and should ensure that the constitutional protection of the parental rights to decide on their children education is reflected in practice.

(c) Recommendations

27. In view of the above, ADF International recommends the following:
 - Take steps to recognize and follow international obligations to protect the right to freedom of thought, conscience, and religion;
 - Ensure that domestic protections of the right to freedom of thought, conscience, and religion meet international law standards in Article 18 of the ICCPR;
 - Take steps to combat Islamic extremism;
 - Take active steps to prevent ISIS/Daesh infiltration into Tunisian society;

- Protect religious minorities from persecution and discrimination;
- Take steps to accommodate interreligious dialogue;
- Ensure that parents' right to choose education for their children and educate their children in accordance with their conviction is duly respected.