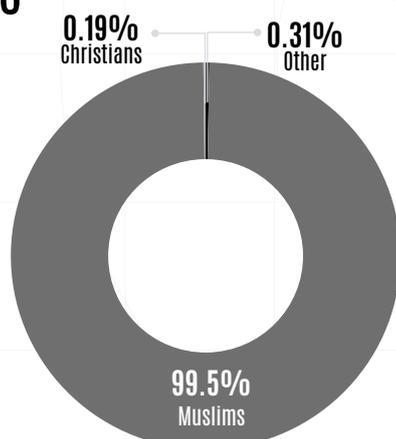




# TUNISIA

## RELIGIONS



## LEGAL FRAMEWORK ON FREEDOM OF RELIGION AND ACTUAL APPLICATION

The post-revolutionary constitution<sup>1</sup> promulgated in January 2014 stresses the Tunisian people's commitment "to the teachings of Islam" and the protection of the country's "cultural heritage". According to Article 1, "Tunisia is a free, independent and sovereign state; its religion is Islam, its language is Arabic, and its system is republican." Article 2 states that "Tunisia is a civil state based on citizenship, the will of the people and the supremacy of the law."

Article 6 reads as follows: "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 [...]. 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."<sup>2</sup> Critics see this article as contradictory.<sup>3</sup> Although the current government has emphasised the importance of religious freedom, that same liberty is - according to critics - undermined by the Constitution, which they see

as legitimising restrictions. According to Fadhel Achour, Secretary General of the Union of Imams, secularism in Tunisia is impossible because Tunisia is historically "a Muslim Nation".<sup>4</sup>

Although Article 74 restricts the presidency to Muslims,<sup>5</sup> the Constitution guarantees freedom of belief and conscience for all believers as well as non-believers. Attempts by Islamists in the Constitutional Assembly to criminalise apostasy have failed. Conversion from Islam to another religion is not illegal under the Constitution.

The Constitution bans campaigns against apostasy and inciting hatred and violence on religious grounds. However, blasphemy remains illegal and police may invoke it as a pretext to arrest people. Islamic education remains a required component of the public education curriculum.<sup>6</sup>

Shari'a (Islamic law) is not mentioned as a source of legislation but it is partly incorporated in the laws that regulate personal status (marriage and inheritance).

Under an agreement between the Holy See and Tunisia, dating from 1964, the Catholic Church is officially recognised and allowed to operate churches and social institutions. A local anonymous Catholic source said: "[The agreement] gives us legal certainty, but also brings restric-

tions. According to this *modus vivendi*, we are not allowed to make public expressions of the Catholic faith such as processions or the like. On the whole, this agreement prohibits any form of proselytising.”<sup>7</sup>

The vast majority of Tunisian citizens are Sunni Muslims but a number have converted to Christianity, with some sources citing figures as high as 12,000. According to the World Religion Database, there are 25,414 Christians living in Tunisia. The majority of foreign Christians are Catholic, with local sources suggesting there may be 22,000.<sup>8</sup> In addition, there are Orthodox and Protestant communities. Most Christians from abroad work or study in Tunisia or are migrants, many of them sub-Saharan Africans.

Tunisia is home to an ancient Jewish community now numbering around 1,900 people.<sup>9</sup> Most Jews left Tunisia after the establishment of the State of Israel. The Tunisian Jews who remain are mainly in Tunis and on the island of Djerba. The Chief Rabbi is paid by the Tunisian government. Although Jewish communities are still exposed to threats, they enjoy relative freedom and police protection.<sup>10</sup>

Although it is not formally illegal for non-Muslims to proselytise Muslims, it is usually viewed as “disturbing the public order,”<sup>11</sup> and can be prosecuted. What is more, “The penal code criminalises speech likely ‘to cause harm to the public order or morality,’ as well as acts undermining public morals in a way that ‘intentionally violates modesty.’”<sup>12</sup>

The late President Beji Caid Essebsi<sup>13</sup> declared a state of emergency in 2015 as a result of extremists’ attacks and fear of foreign infiltration. To the date of this writing, it is still in effect.<sup>14</sup>

## INCIDENTS AND DEVELOPMENTS

In September 2017, the 1973 ban on marriage between a Muslim woman and a non-Muslim man was lifted.<sup>15</sup> However, this has been met with opposition. On 16th August 2018, Fathi Laayouni, the Mayor of El Kram, Tunis Governorate, from the Ennahda party, stated that his municipality would not validate such unions. He cited Articles 1 and 6 of the Constitution stipulating that the State religion is Islam and that the government is the guardian of religion. The then Minister of Local Affairs, Riadh Mouakher, promised “sanctions” against Laayouni.<sup>16</sup> Civil society groups reported that this was not the only case of a mayor refusing to officiate marriages between Muslim women and non-Muslim men. In at least one case, a mayor’s office

also reportedly refused to marry two Christians.<sup>17</sup>

In November 2018, President Essebsi’s cabinet approved a bill on equal inheritance rights for women. The bill was severely criticised by the Islamist party Ennahda<sup>18</sup> and Muslim clerics<sup>19</sup> as ‘contrary to the Quran’.<sup>20</sup> It has not yet been approved by the Parliament.<sup>21</sup>

On 1st March 2019, Ahmed Shaheed, UN special rapporteur on freedom of religion or belief, presented the report of his 2018 visit to Tunisia to the Human Rights Council.<sup>22</sup> The document recommends, among other things, to “ensure that the Baha’i community is able to secure legal personality to enable them to manifest their faith in accordance with Article 18 of the ICCPR.”<sup>23</sup>

The question of not fasting in public during Ramadan is a recurrent issue. Although no law forbids it, social pressure against it is strong. Various groups have defended the right to eat, drink or smoke in public.<sup>24</sup>

On 29th May 2019, Kairouan’s “Damascus” café owner Imed Zaghouni spent ten days in jail, before receiving a one-month suspended sentence in prison and a fine of 300 dinars (US\$100). Although it is not forbidden to keep a café or restaurant open during Ramadan, authorities used a “vague provision of the penal code on ‘publicly offending morality’ to convict” the café owner.<sup>25</sup>

On 6th November 2019, the counterterrorism prosecutor of the First Instance Court in Tunis opened an investigation against Mounir Baatour, a lawyer and a former presidential candidate, for reposting on “his own page content from a Facebook page called ‘The Untold in Islam’, in which the Prophet Mohamed was accused of being a rapist and a killer, and crudely deriding his sexual life.”<sup>26</sup>

Although apostasy is not punishable under Tunisian law, Baatour, who heads Shams, a group that defends sexual minorities,<sup>27</sup> was charged with “incitement to hatred and to animosity between races, doctrines, and religions,”<sup>28</sup> as well as “incitement to hatred, violence, and segregation toward persons or groups of persons based on racial discrimination,”<sup>29</sup> and for “directly calling for hatred between races, religions, and populations”.<sup>30</sup> Mr Baatour also received several anonymous threats and a well-known preacher called for his death under Islamic law against apostasy. He has since fled to France.<sup>31</sup>

In May 2020, Moroccan blogger Emna Charqui was arrested and interrogated after having posted a message on Facebook in which appears a Quran style message, ‘The

Sura of the Corona<sup>32</sup> in which she was asking people to follow hygiene rules in the style of the Quran. She was found guilty of “inciting hatred between religions”, sentenced to six months in prison and was planning to appeal.<sup>33</sup>

In August 2020, Tunisian President Kais Saied, who had already publicly declared his opposition to gender equality in inheritance issues, reiterated his position, arguing that the Koranic text is “clear and sufficient” enshrining the principle of justice before that of equality.<sup>34</sup>

Since 2015, the Tunisian State has been able to avoid new large-scale terrorist attacks, especially against tourist sites. However, pressure from jihadist groups continues, and small terrorist attacks have taken place over the last two years.<sup>35</sup> In September<sup>36</sup> and October<sup>37</sup> 2019, Tunisian security forces killed two Al Qaeda members.

According to local sources, some Muslim converts to Christianity have been harassed or ostracised by their own families.<sup>38</sup>

#### Covid-19

The day after a meeting between the minister of health, the minister of religious affairs, the Tunisian Grand Mufti and the president of Ez-Zitouna, and a religious higher education institution, the Tunisian government decided in mid-March to suspend all prayers inside mosques. The

president of Ez-Zitouna mosque declared in a communiqué that he objected to this decision, and that it was not the decision taken upon during the meeting. The fundamentalist and pan-Islamist movement, Hizb ut-Tahrir, declared that the decision was an offence against Islam, asking the authorities to end its “siege” on religious houses of worship.<sup>39</sup>

Mosques remained closed through Ramadan and Eid El-Fitr (end of May) and reopened at the beginning of June.<sup>40</sup>

## PROSPECTS FOR FREEDOM OF RELIGION

Overall, official statements and decisions represent positive steps towards religious freedom. But societal and official pressure as well as ambiguous legal texts still present a threat.

How freedom of religion will evolve is likely to depend on President Saied, who has been in office for less than six months at the time of writing this report. Some measures, like adopting the bill for equal inheritance rights for women, might be an indicator of things to come.

The evolution of the economic, political and security situation among Tunisia’s neighbours (Libya, Algeria, Sahel) is a cause of concern for Tunisia, and more broadly, for freedom of religion.

## SOURCES / ENDNOTES

1 Tunisia’s Constitution of 2014, [constituteproject.org](https://www.constituteproject.org/constitution/Tunisia_2014.pdf?lang=en), [https://www.constituteproject.org/constitution/Tunisia\\_2014.pdf?lang=en](https://www.constituteproject.org/constitution/Tunisia_2014.pdf?lang=en) (accessed 15th February 2020).

2 Ibid.

3 Amna Guellali, “The Problem with Tunisia’s New Constitution,” Human Rights Watch, 3rd February 2014, <https://www.hrw.org/news/2014/02/03/problem-tunisia-new-constitution> (accessed 15th February 2020).

4 Alessandra Bocchi, “How religiously free is the Arab world’s most democratic country?,” The New Arab, 29th August 2017, <https://www.alaraby.co.uk/english/indepth/2017/8/29/lifting-the-veil-religious-freedoms-in-tunisia> (accessed 14th February 2020).

5 Ibid.

6 “Tunisia”, Freedom in the World 2019, <https://freedomhouse.org/report/freedom-world/2019/tunisia> (accessed 14th February 2020).

7 Oliver Maksan, “Thanks to Pope Francis, people are interested in Christianity,” ACN International, 24th November 2014, <https://aid-church.wordpress.com/2014/11/page/2/> (accessed 14th February 2020).

- 8 World Religions Database, <https://worldreligiondatabase.org/wrd/#/results/2613> (accessed 21st July 2020).
- 9 World Religion Database, <https://worldreligiondatabase.org/wrd/#/results/2613> (accessed 21st July 2020).
- 10 Bureau of Democracy, Human Rights and Labor, “Tunisia”, International Religious Freedom Report for 2016, U.S. State Department, <https://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm#wrapper> (accessed 12th February 2020); Alessandra Bocchi, op.cit.
- 11 “Tunisia”, End Blasphemy Laws, <https://end-blasphemy-laws.org/countries/middle-east-and-north-africa/tunisia/> (accessed 14th February 2020).
- 12 Bureau of Democracy, Human Rights and Labor, “Tunisia”, 2018, op.cit.
- 13 President Essebssi passed away on 25 July 2019, while in office. Presidential elections were held in autumn 2019; Kais Saied won the second round with 72.7% of the vote. See “Tunisia presidential election: Kais Saied declared winner”, Al Jazeera, 14th October 2019, <https://www.aljazeera.com/news/2019/10/tunisia-presidential-election-kais-saied-declared-winner-191014163712569.html> (accessed 3rd March 2020).
- 14 “Tunisia - Events of 2019”, Human Rights Watch, <https://www.hrw.org/world-report/2020/country-chapters/tunisia> (accessed 14th February 2020).
- 15 “Tunisia lifts ban on Muslim women marrying non-Muslims”, Al Jazeera, 14th September 2017, <https://www.aljazeera.com/news/2017/09/tunisia-lifts-ban-muslim-women-marrying-muslims-170914154657961.html> (accessed 3rd March 2020).
- 16 Bureau of Democracy, Human Rights and Labor, “Tunisia”, 2018, op.cit.
- 17 Ibid.
- 18 “Tunisia: Ennahda Rejects Inheritance Equality,” Human Rights Watch, 6th September 2018, <https://www.hrw.org/news/2018/09/06/tunisia-ennahda-rejects-inheritance-equality> (accessed 14th February 2020).
- 19 “Tunisia clerics oppose equal inheritance rights for women”, News 24, 17th August 2017, <https://www.news24.com/Africa/News/tunisia-clerics-oppose-equal-inheritance-rights-for-women-20170817> (accessed 14th February 2020).
- 20 George Sadek, “Tunisia: Cabinet Approves Bill Requiring Equal Inheritance Shares for Men and Women”, Library of Congress, 4th December 2018, <https://www.loc.gov/law/foreign-news/article/tunisia-cabinet-approves-bill-requiring-equal-inheritance-shares-for-men-and-women/> (accessed 14th February 2020).
- 21 Akram Belkaïd, “Tunisia balks at inheritance changes”, Middle East Online, 5th August 2019, <https://middle-east-online.com/en/tunisia-balks-inheritance-changes> (accessed 14th February 2020).
- 22 “Tunisia’s religious freedom curbed by societal pressure – UN Rapporteur”, World Watch Monitor, 23rd April 2018, <https://www.world-watchmonitor.org/coe/tunisias-religious-freedom-curbed-by-societal-pressure/> (accessed 14th February 2020).
- 23 Report of the Special Rapporteur on freedom of religion and belief on his visit to Tunisia, A/HRC/40/58/Add.1, 1st March 2019, p. 16, [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKewjtwvP-zs7nAhWHC-wKHULmDIMQFjAAegQIBBA-B&url=https%3A%2F%2Fwww.ohchr.org%2FEN%2FHRCBodies%2FHRC%2FRegularSessions%2FSession40%2FDocuments%2FA\\_HRC\\_40\\_58\\_Add.1.docx&usq=A0vVaw3bgtKgJZk2\\_kmFsv9UXutw](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKewjtwvP-zs7nAhWHC-wKHULmDIMQFjAAegQIBBA-B&url=https%3A%2F%2Fwww.ohchr.org%2FEN%2FHRCBodies%2FHRC%2FRegularSessions%2FSession40%2FDocuments%2FA_HRC_40_58_Add.1.docx&usq=A0vVaw3bgtKgJZk2_kmFsv9UXutw) (accessed 13th February 2020).
- 24 Lilia Blaise, “For Some in Tunisia, Ramadan Is a Test of Personal Freedom”, The New York Times, 13th June 2018, <https://www.nytimes.com/2018/06/13/world/middleeast/ramadan-fasting-end-protest-tunisia.html> (accessed 14th February 2020).
- 25 “Tunisia - Events of 2019”, Human Rights Watch, <https://www.hrw.org/world-report/2020/country-chapters/tunisia> (accessed 14th February 2020).
- 26 “Tunisia: Halt Prosecution of Prominent Activist Accused of Inciting Hatred in a Facebook Post”, Human Rights Watch, 29th January 2020, <https://www.hrw.org/news/2020/01/29/tunisia-halt-prosecution-prominent-activist> (accessed 13th February 2020).
- 27 Ibid.
- 28 Article 14 of the 2015 law on combating terrorism. Ibid.
- 29 Article 9 of the 2018 law on the elimination of all forms of racial discrimination. Ibid.
- 30 Article 52 of the 2011 decree law on freedom of the press. Ibid.
- 31 Ibid; Hugo Greenhalgh, “Mounir Baatour stood in September’s presidential poll and has now fled to Paris”, Openly, 9th January 2020, <https://www.openlynews.com/i/?id=fb2f31d3-bb4d-43b9-8d3f-3515c4b9be5d> (accessed 14th February 2020).
- 32 Barrett Limoges, “Prosecution of blogger over Quran parody ignites renewed fears of censorship”, Al-Monitor, 2nd June 2020, <https://www.al-monitor.com/pulse/originals/2020/05/tunisia-blogger-prosecution-quran-parody-protests.html> (accessed 4th December 2020).
- 33 “Coronavirus: Blogger Emna Charqui given jail term over Koran-style post”, BBC News, 14th July 2020, <https://www.bbc.com/news/world-africa-53408262> (accessed 4th December 2020).
- 34 “Tunisia: President speaks out against equality in inheritance”, The North Africa Post, 17th August 2020, <https://northafricapost.com/43146-tunisia-president-speaks-out-against-equality-in-inheritance.html> (accessed 4th December 2020).
- 35 UK Government, “Foreign travel advice Tunisia”, GOV.UK, <https://www.gov.uk/foreign-travel-advice/tunisia/terrorism> (accessed 14th February 2020).
- 36 Mongi Saidani, “Tunisia Kills ‘Terrorist’ Who Pledged Allegiance to Al-Qaeda”, Asharq Al-Awsat, 16th September 2019, <https://aawsat.com/english/home/article/1905136/tunisia-kills-%E2%80%99terrorist%E2%80%99-who-pledged-allegiance-al-qaeda> (accessed 15th February 2020).
- 37 Mongi Saidani, “Tunisia: Qaeda’s Slain Algerian Leader was Mastermind of Major Terror Attacks”, 22nd October 2019, <https://aawsat.com/english/home/article/1956391/tunisia-qaeda%E2%80%99s-slain-algerian-leader-was-mastermind-major-terror-attacks> (accessed 14th February 2020).
- 38 Bethann Flynn, “A look at being a Christian in Tunisia”, Mission Network News, 17th December 2018, <https://www.mnnonline.org/news/a-look-at-being-a-christian-in-tunisia/> (accessed 14th February 2020).
- 39 Georges Fahmi, “Pray in Your Homes”: Religion and the State in North Africa in Times of COVID-19’, Istituto Affari Internazionali, July 2020, <https://www.iai.it/en/pubblicazioni/pray-your-homes-religion-and-state-north-africa-times-covid-19> (accessed 4th December 2020).
- 40 “Tunisia to reopen mosques, cafes after nearly 3 months”, Middle East Monitor, 21st May 2020, <https://www.middleeastmonitor.com/20200521-tunisia-to-reopen-mosques-cafes-after-nearly-3-months/> (accessed 4th December 2020).