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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Visit to Tunisia

Report of the Special Rapporteur on freedom of religion and belief*,**

Summary

The Secretariat has the honor of transmitting to the Human Rights Council the report* of the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, reporting on his mission to Tunisia from 9 to 19 April 2018.

* The present report was submitted after the deadline so as to include the most recent information.
** The summary of the report will be distributed in all official languages. The report itself, which is annexed to the summary, is being circulated in the language of submission and French only.

Annex

Report of the Special Rapporteur on freedom of religion and belief on his visit to Tunisia

I. Introduction

1. The United Nations Special Rapporteur on freedom of religion or belief, Mr Ahmed Shaheed undertook an official country visit to Tunisia from 9-19 April 2018 at the invitation of the government.
2. The Special Rapporteur acknowledges the full cooperation extended by the Tunisian authorities to facilitate meetings with government functionaries and to enable unrestricted access to civil society actors, including members of various registered and unregistered religious or belief groups, academics, groups working on gender-related issues, and journalists. He also met with 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. He also visited the Mornaguia prison and met with prison officials and several inmates.
3. The Special Rapporteur had the opportunity to meet with the heads of governmental institutions including the Ministers and or senior officials at the ministries of Culture, Education, Foreign Affairs, Human Rights, Interior, Justice, Religious Affairs, Women's Affairs, and Youth. He also met with the Truth and Dignity Commission, the High Authority of Audio-visual communication (HAICA), the National Human Rights Commission, CREDIF, and the Commission of Liberty and Equality.
4. At the end of his mission, the Special Rapporteur was received by the Chief of Government of the Republic of Tunisia, His Excellency Youssef Chahed. Chief of Government Chahed reiterated the Government's strong commitment to promote respect for freedom of religion or belief for all persons within the state's jurisdiction and to upholding the country's international human rights obligations. Chief of Government Chahed highlighted the voluminous extent of the legislation currently being considered by Government bodies for effectuating the guarantees promoted by Tunisia's new Constitution. The Chief of Government also stressed the fiscal challenges the country was facing in meeting the rising expectations of the Tunisian people with regard to their social and economic rights, and urged the international community to recognise the importance of contributing to the country's economic development which is integral to consolidating the democratic gains of the revolution.
5. The Special Rapporteur expresses his gratitude to the Government of Tunisia for hosting and facilitating the visit, and thanks all those who engaged in and contributed to activities organized in furtherance of the agenda tasked to him by the Human Rights Council. The Special Rapporteur would also like to thank the Office of the High Commissioner for Human Rights (OHCHR) for the support extended to his work through its offices in Geneva, Switzerland and Tunis, Tunisia.

II. Cooperation with UN Human Rights Mechanisms

6. The Tunisian Government's record of cooperation with the UN human rights mechanism has been improving, especially since 2011. The government extended a standing invitation to UN Special Procedures on 28 February 2011, and since then 16 mandate-holders have been granted visits to the country. Tunisia also hosts a country office of the OHCHR in Tunis which has been functioning since 2011. The Special Rapporteur notes the affable and collaborative posture that authorities have taken towards the OHCHR office, and the contributions that the office has been, therefore, able to make to various measures being developed or implemented by the government to strengthen respect for human rights in the country.

7. Tunisia is a party to fourteen UN human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the first optional protocol to the ICCPR, the Convention on the Elimination of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention Against Torture (CAT), and the Convention on the Elimination of Racial Discrimination (CERD). In 2014, the Government withdrew all the reservations previously made upon its ratification of the CEDAW in 1985.

8. In 2016, the Government submitted reports to the Committee on Enforced Disappearances, the Committee against Torture, and the Committee on Economic, Social and Cultural Rights; and updated its common core document. The Human Rights Committee last reviewed the situation of civil and political rights in the country in 2008. In May 2018, the Committee adopted the list of issues to be considered ahead of the Government's scheduled submission of Tunisia's sixth periodic report. The list does not specifically ask for information on the situation of freedom of religion or belief.

9. Moreover, Tunisia has participated in three cycles of the Universal Periodic Review; in 2008, 2012 (the Government submitted a mid-term progress report in 2014) and in 2017. The Government received 248 recommendations at the outcome of its third review, of which it accepted 189 recommendations. The latter also included the recommendation to establish an interreligious council to facilitate interreligious dialogue and harmony (A/HRC/36/5, para. 126.11 and A/HRC/36/5/Add.1, para. 11).

10. The Special Rapporteur notes that steps taken by the Government to establish institutions for engaging with international human rights enforcement and accountability mechanisms, expanding civic space in the country and a flourishing civil society contributes to this deepening cooperation. This includes the creation of a National Commission for the Coordination, Elaboration and Preparation of the Reports and Follow-up of Recommendations in the field of Human Rights composed of representatives of all Government ministries and chaired by the Minister for Human Rights, which was established in October 2015.

III. Political and Economic Context

11. It is estimated that ninety-nine percent of the population of some 11 million persons in Tunisia are Sunni Muslim. Christians (including Roman Catholics, Protestants, Russian Orthodox, French Reformists, Anglicans, Seventh-day Adventists, Greek Orthodox, and Jehovah's Witnesses), Jews, Ibadis, Shia Muslims, Sufis, Bahais, and nonbelievers constitute less than 1 percent of the population. The Jewish community represents the oldest minority religious community in the country; dating 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. According to Jewish oral tradition, those living in Djerba may have arrived there as early as 586 BC, after the destruction of the temple in Jerusalem.

12. The Tunisian commitment to secular-driven governance has deep roots. This can be observed in such laws as the Ahd al-Aman (Pledge of Security) issued by the ruler Mohammad Bey on 10 September 1857, which was adopted primarily to protect the rights of religious minorities (especially Jewish and Christian), and established the inviolability of persons and property and prohibited religion based discrimination.¹ The Pledge of Security guarantees in its first article complete security is "to all subjects ... regardless of their religious affiliation, nationality and race." Upon independence in 1956, Tunisia reaffirmed its commitment to a secular tradition of governance, beginning with the abolition of religious

¹ The Pledge of Security clearly proclaimed: in its Article 3: « Muslims and other inhabitants of the country will be equal before the law, because this right belongs naturally to humans just because they are humans and not according to any other criterion. » Article 4 states that Jewish citizens « are not coerced into changing their religion and are not impeded from exercising their religion; their synagogues are respected and shielded from any attacks »

courts, and the proclamation of the Constitution of 1959, which re-iterated the commitment to equal citizenship, regardless of religious affiliation.

13. The pre-Revolutionary governments of President Habib Bourguiba and President Zine-el-abidine Ben Ali also promoted secular policy objectives, paying particular attention to the promotion of protections for certain aspects of women's human rights. Tunisia, for example, is the only country in the Arab world to prohibit polygamy. President Ben Ali created the State Secretariat for Women and Family's affair in 1992, and it became the Ministry of Women, Family, Childhood and the Elderly in 2004. Its mandate has been to "co-ordinate and develop government policy for women's promotion". The ministry had local branches in all of Tunisia's 24 regions until at least 2010. These branches aimed to "reinforce women's participation in public, political and socio-economic life at the sub-national level". The 1957 Personal Status Code, while providing a unified civil code for all Tunisians, however, still retains aspects of Islamic Law, which undermine the country's commitment to protecting the human rights of women and promoting gender equality.

14. Today, Tunisia is a country in transition and has faced myriad challenges since the departure of President Ben Ali on 14 January 2011, which was prompted by widespread public protests that began on 17 December 2010, demanding civil, political, economic and social rights. These include economic challenges; terrorism and issues involving violent extremism; difficulties with establishing key institutions mandated by the Constitution; struggles with advancing initiatives that facilitate review and repeal of laws which violate newly established Constitutional standards and the country's renewed commitment to international human rights obligations; and uncertainty about the future of the country's transitional justice process.

15. Despite these difficulties, the country has maintained a progressive trajectory towards its objective for democratic consolidation. Tunisia's first free elections since independence in 1956 were held on 23 October 2011, for example, wherein voters selected members of an assembly charged with drafting the country's new constitution and establishing the procedures for parliamentary and presidential elections. A new Constitutional settlement was reached on 26 January 2014, followed by parliamentary elections in October 2014, presidential elections in November and December 2014 and municipal elections in May 2018.

16. President Beji Caid Essebsi was elected to office after winning the country's first democratic presidential elections. Nida Tounes won a plurality of seats in the parliament and formed a coalition with the Ennahda Party and several smaller parties. In February 2015, 166 members of the 217-member parliament adopted a unity government to be led by the Nida Tunis Party under Chief of Government Habib Essid. In August 2016, Chief of Government Essid was replaced by Chief of Government Youssef Chahed (Nida Tounis Party), after parliament removed Habib Essid with a vote of no-confidence resulting from negative views of his handling of economic reforms and security challenges in the country. Chief of Government Chahed's new government is backed by a broad coalition of secular, Islamist and leftist parties, independents and trade union allies which he hopes can deliver on economic reforms. Chief of Government Chahed will serve as the seventh Chief of Government in less than six years since the 2011 uprising that toppled long-time dictator Zine El Abidine Ben Ali.

17. Unemployment has worsened since the 2011 revolution, when President Zine al-Abidine Ben Ali was ousted. More than a third of the young people in Tunisia are without work. One of the country's key industries, tourism, has also been struggling since two terrorist attacks on foreign tourists were carried out in 2015, although interlocutors were optimistic about improving numbers for the sector as of late. Strikes and protests over jobs have likewise negatively impacted the country's important phosphate industry. Chief of Government Chahed warned that austerity programs (with deep cuts for thousands of public sector jobs and increased taxes) are inevitable if Tunisia does not overcome its pressing economic difficulties.

18. One of the key challenges facing the Government's effort to strengthen the economy and secure public safety has been that of countering violent extremism and terrorism. In November 2018, a young woman blew herself up in a public space, in what has widely been viewed as an act motivated by despair over economic deprivation. Moreover, terroristic

activities have engendered the securitisation of the government's approach to some religious groups.

19. In the initial years after the revolution, the country has had to grapple with intermittent incidents of terrorism and random violence targeted at politicians, civil society activists and tourists, alongside problems involving the repatriation of a large number of Tunisian foreign fighters from conflict areas that now reportedly pose security and legal challenges for the Government; including issues with criminal justice and combatting extremism. Continued commitment to ensuring the effective development of strong, responsive and transparent political institutions guided by respect for human rights, including freedom of religion or belief, will be important to the further consolidation of Tunisian democracy.

IV. Legal Framework

20. Tunisia is a party to all international human rights treaties that contain provisions for the protection of freedom of religion or belief, apart from the Convention on the Rights of Migrant Workers and some of the Optional Protocols. The government indicated to the Special Rapporteur its willingness to consider joining these instruments.

21. The constitution refers in its preamble to the highest principles of universal human rights. While Article 20 of the Constitution recognizes provisions promulgated by ratified international instruments to be integral to the country's national legal framework, and as such, international treaty obligations prevail over national laws, they do not, however, override 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 of human rights protections.

22. Tunisians generally view the 2014 Constitution as a very progressive settlement, both in the country's own context and in terms of its 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 protect secular influence on the public sphere. The Constitution stipulates that Tunisia is a civil state based on citizenship, the will of the people, and the supremacy of law (Article 2).

23. Article 1 of the Constitution stipulates that Tunisia's religion is Islam while the Preamble describes a national identity that is defined by several elements; including Islam, the country's Arab heritage and universal human rights. Some legal experts argue that the declaration in Article 1 that Tunisia's religion is Islam, does not imply that Tunisia is an Islamic state whereby laws stem from Islamic Sharia². Many point out that Article 1 of Tunisia's former Constitution (1959) enshrined Islam as the country's religion, but that under the rule of Presidents Bourguiba and Ben Ali, Tunisia could not be characterized as a religious State.

24. Notwithstanding the constitutional commitment to freedom of religion and non-discrimination, the ambiguity of some constitutional provisions which lend themselves to discrimination as it pertains to religion or belief should not be ignored. The Constitution stipulates, for example, that only Muslims are eligible to stand for office of the president (Article 74), 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, it could also be interpreted that this office is also reserved for Muslims alone. Such provisions appear inconsistent with the full guarantee of freedom of religion or belief, and potentially pose negative implications for protections of this right.

25. The Constitution also effectuates the doctrine of the separation of powers and checks and balances, including the judicial branch of government (Chapter V) whose Constitutional Court oversees the constitutionality of laws, and whose judges, prosecutors and lawyers are guaranteed independence as the main actors for the country's judicial system. The judiciary

² Sadok Belaid « *Tunisia is a free, independent, sovereign state, its religion is Islam* » under the General Provisions of the Constitution, ATDC, Tunis, 2010, pp. 31-36.

is comprised of first instance courts, courts of appeal and a Court of cassation. Complaints by individuals against public institutions can be heard in a separate three-tier system of administrative courts. Delays in the election of the members of the Supreme Judicial Council has prevented the establishment of the 12-member Constitutional Court, one-third of whose membership are to be nominated by the Council, with the rest by the President and by the Assembly.

26. The Supreme Judicial Council, established by articles 112 to 114 of the Constitution, is an independent body responsible for the effective administration of justice and ensuring the independence of the judiciary. This includes its responsibility of ensuring the Branch's financial independence by overseeing the preparation of budgets for parliamentary consideration (Article 113).

27. Article six of the Constitution guarantees freedom of religion or belief for everyone.³ Other Constitutional provisions reinforce this guarantee through a commitment to fundamental human rights, especially those relating to freedom of religion, association and peaceful assembly; those related to guarantees for equality before the law (Article 21); and those provisions that promote the principle of proportionality required for the establishment of limitations of these rights (Article 49). In the absence of a law specific to guaranteeing freedom of religion or belief, it remains to be seen whether the limitations applicable to freedom of religion or belief will comply fully with the exhaustive list of grounds for limitation identified by Article 18 (3) of the ICCPR, rather than the formula provided under Article 19 (3) of the Covenant.⁴

28. Article 6 of the Constitution also guarantees the 'neutrality' of mosques and places of worship from all partisan instrumentalization. The state endeavours to promote the values of moderation and tolerance, the protection of the sacred and the prohibition of all violations thereof. The Government also prohibits and works to combat calls for Takfir and the incitement of violence and hatred. However, while article 6 provides this guarantee of freedom of conscience and its manifestation, it also identifies the State as the guardian of religion, without elaborating on what that entails. Such a provision could be problematic if this provision is interpreted as an obligation upon the State to protect religion per se, rather than individuals.

29. A number of existing laws that precede the adoption of Tunisia's 2014 constitution will need to be reconciled to further promote Tunisia's constitutional commitment to a civil state and equality of all citizens. These include the enforcement of public order and public morality laws that enforce restrictions on public consumption of food during the daylight hours of Ramadan, the month during which practising Muslims observe a daily fast; inheritance laws that undermine guarantees of equality before the law for women; and the criminalisation of consensual same-sex relations. Beyond the law, a number of social pressures exist that undermine equal rights, such as in the case of persons who convert from Islam.

V. Institutional Context and the Rule of Law

30. Today, Tunisian state affairs are facilitated by an expanding arrangement of institutions whose mandates include human rights—from parliamentary committees, judicial

³ The Article 6 states: «*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 Article 49 states: «*The law shall determine the limitations related to the rights and freedoms that are guaranteed by this Constitution as well as their exercise, on the condition that it does not compromise their essence. These limitations can only be set where necessary in a civil democratic state, with the aim to protect the rights of others or based on the requirements of public order, national defense, public health or public morals. Proportionality between these limitations and their motives must be respected. Judicial authorities shall ensure that rights and freedoms are protected from all violations. No amendment that undermines any human rights acquisitions or freedoms guaranteed in this Constitution is allowed*».

bodies, executive agencies and oversight mechanisms, as provided for by the new Constitution. The unicameral Assembly of the People's Representatives serves as Tunisia's legislature, whose members are elected to five-year terms. All laws that relate to freedoms and human rights, the duties of citizens and personal status require an absolute majority of the Assembly's membership. The President, who is directly elected, invites the party or a coalition of political parties that can command a majority in the Assembly to form the government. The President appoints and dismisses the General Mufti of Tunisia, while the Head of the government selects a Minister for Religious Affairs. The General Mufti is mandated to declare religious holidays, issue certificates of conversion to Islam, respond to citizens' inquiries about Islam, and offer advice on school curricula and the study of Islam. The duties of the Ministry of Religious Affairs include training, appointment and dismissal of Imams, supervising relations with the religious communities, ensuring the political neutrality of places of worship, and conducting inter-faith dialogues.

31. Article 128 of the Constitution mandates the creation of a Human Rights Commission to oversee respect for, and promotion of, human freedoms and rights, and to make proposals to develop the human rights system. The Constitution requires that the Commission be consulted on draft laws that fall within the domain of its mandate, and that the body examine violations of human rights with a view to addressing or referring them to the competent authorities. Commissioners are appointed to serve a single 6-year term and are required to be independent and impartial.

32. Legislation (Bill no.42-2016) for enacting Article 128 has been before the parliament since 2016. Once adopted and in force, the Commission will replace the High Committee for the Protection of Human Rights and Fundamental Freedoms, which was established by a decree in 1991 and reconstituted by a framework law in 2008. This body was mandated to publish a triennial report but the practice in the pre-revolutionary era was to highlight positive developments. At its last review in 2009, the Global Alliance of National Human Rights Institutions which monitors compliance with the Paris Principles, accorded B status to the Commission for partial non-compliance. On 29 October 2018, the organic law n°2018-51 in relation to the Human Rights Body was adopted by the parliament.

33. Other oversight bodies with a constitutional mandate that oversee or promote human rights include the Audio-Visual Communication Commission. Article 127 of the Constitution renders the Audio-Visual Communication Commission responsible for the regulation and development of the audio-visual communication sector and tasks it to ensure freedom of expression and information, and the establishment of a pluralistic media sector that functions with integrity.

34. The Special Rapporteur notes that the mandates of several of these overlap and some unresolved questions about financial autonomy and procedures for appointing members to these bodies remain. It would be important to achieve system-wide coherence and to ensure that the independence and autonomy of these bodies are ensured when any new institutions begin to function.

35. A number of independent bodies, created since 2012, are already in operation. These include the National Authority for the Prevention of Torture, which was established pursuant to Tunisia's ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It has wide-ranging powers and authority with respect to all places of detention. Its members were elected by the Assembly of Representatives of the People and began functioning in 2016.

36. The Commission on Access to Information is mandated to ensure the right of all citizens to access information related to government affairs and responsible for examining complaints about denials of access to such information.

37. The decree n°2011-116 of 2 November 2011 on the freedom of audio-visual communication and the creation of the Independent High Authority for Audio-visual Communications (also known by its French acronym 'HAICA') seeks to ensure that the exercise of freedom of expression also 'respects freedom of belief'. The HAICA is set up to regulate the audio-visual sector in accordance with the principle of a plural, diverse and balanced audio-visual media spectrum; strengthening the values of freedom, justice and non-discrimination. HAICA's decisions while countering hate speech, including religious-based

hate speech in public and private broadcasting, frequently cite the ICCPR. HAICA's decisions can be annulled by Administrative Courts. As of April 2016, only 2 out of 20 decisions by HAICA have been annulled by the Court.⁵

38. The HAICA also developed national 'barometer' for monitoring hate speech that constitutes incitement to discrimination, hostility or violence, and promotes these standards across broadcasting media outlets during 2015. Subjects for monitoring include, inter alia, religious leaders' speeches, religious programs and public debate on religious issues. Results of monitoring activities are expected to be published in 2018. The HAICA methodology for monitoring hate speech is rooted in international human rights approaches, including those offered by the six-part test of the Rabat Plan of Action⁶ for identifying expressions that reach the threshold of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. The test was developed into a practical tool to identify hate speech broadcasted in national media.

39. This polymorphic institutional infrastructure for protecting and promoting human rights in Tunisia are joined by an increasing number of civil society actors dedicated to monitoring and promoting a broad spectrum of rights in the country. While the work of four of these actors were globally acclaimed in 2015, in winning the Nobel Peace Prize, thousands have thrived in the years after the revolution and continue to play a leading role advancing the country's progress. In July 2018, over 90 such civil society organizations (CSOs) issued a Pact for Equality and Individual Freedoms, to advance human rights for all. The Special Rapporteur is concerned, therefore, that the passage of Law n°2018-52 of 29 October 2018 on the National Register of Companies, tightening regulations on NGOs in a bid to halt money laundering and terrorist financing, might have chilling effects on the work and contributions of CSOs, particularly human rights CSOs, through the securitization of their work.

40. The Special Rapporteur also notes that the new Constitutional Court, mandated by the 2014 Constitution, has not been established in the prescribed timeframe due to the failure among the political branches to agree on the composition of the bench.

41. A number of interlocutors raised concerns about issues related to the rule of law. This includes allegations involving failures to observe due process rights, assertions about ambiguity in the law, and concerns over impunity. While Tunisia continues to pursue the vision formulated in the Constitution, the backlog of legislation needed to update the legal provisions and procedures continues to challenge the ability of citizens to enjoy their human rights entitlements, through gaps and tensions in the legal framework and inconsistencies between law and practice. Although the laws in Tunisia are modelled on the Napoleonic Code, judges continue to apply sharia law in regard to family inheritance disputes and matters of personal status.

42. Deficits in the rule of law can have multiplier effect for any society and can certainly undermine the protection of human rights, including that of freedom of religion or belief. Many anticipate the Constitutional Court, when established and operational, to be able to find ways to reconcile what appears to be contradictions in Tunisia's legal framework, and expect the body to expedite requisite legal reforms. Many interlocutors also noted the importance of capacity-building for the judiciary and legal training in human rights law for law enforcement officials.

⁵ Selected case: Decision, not to re-broadcast a part of an interview of two NCA deputies, January, 27, based on Hate speech and incitement to violence.

All HAICA decisions are published in HAICA official website:

<http://haica.tn/fr/category/declarations-et-decisions-de-linstance/>

⁶ A/HRC/22/17/Add.4, appendix, para. 29. See also the Beirut Declaration and its 18 commitments on "Faith for Rights", available at www.ohchr.org/Documents/Press/Faith4Rights.pdf.

VI. Respect for Freedom of Religion or Belief in Tunisia

43. **Freedom of conscience:** The government generally respects freedom of religion or belief, but the formal and societal conceptions as to what constitutes this right fall short of international standards. Few explicit restrictions on freedom of religion or belief were reported by various faith-based communities. It is welcome that anti-apostasy laws are non-existent and people are free to convert from any religion or belief, as far as the law is concerned. Article 57 and 64 of the prison systems code also protects the freedom of persons deprived of their liberty to worship.⁷ The law prohibits coercion, which would impair the freedom of persons to have or adopt a religion or belief of his or her choice. On this basis, persons are free to choose the belief to which they wish to adhere or may choose to hold no belief at all. However, although conversion to another religion is protected by law, there are societal pressure against the conversion of Muslims to other religious groups. Formerly, Muslims who converted to other religions were subject to social ostracism.

44. Moreover, the ongoing application of laws that have not been aligned to the protections asserted in the 2014 Constitution resulted in violations of the freedom of religion or belief. Proselytising Muslims may incur penalties as an activity contrary to public order. While it was clear that the State does not directly compel persons to observe the rituals of any religion, it appears that public morality concepts can be used to enforce some religious observances in the country. The Special Rapporteur learned that in some cases people had been imprisoned for up to a month for either consuming food or smoking cigarettes in public during the daylight hours of Ramadan. It is unclear whether the law protects these practices for individuals that do not wish to join the wider community in regard to the practice of rituals. The Special Rapporteur would like to assert that the right to freedom of religion or belief includes the right to freedom from religion and that no one can be subject to coercion that would impair the right to adopt a religion or belief of one's choice.

45. **Relations with religious or belief communities:** Laws and practices in Tunisia appear to only recognize the Abrahamic religions, whose followers are able to organize and attain legal personality. However, the government appears to supervise the exercise of religious worship for the Muslim community. The 1988 Law on Mosques stipulates that only personnel appointed by the government may lead activities in mosques. As the government appoints and dismisses Imams (clerics) and remunerates them, Imams are effectively civil servants. A mosque may be constructed by a private person or organization, subject to planning approvals, but once completed, these places of worship become the property of the State which also pays for its upkeep. In the immediate years following the 2011 revolution, a number of mosques were overseen by Salafist Imams who opposed the secular traditions of the country and may have sought to instrumentalise Islam for political purposes; but the State has since rendered these mosques under its control. As such, the government suggests themes for the Friday sermons, but does not regulate content. Mosques were also previously required to remain closed except during scheduled times for worship and other authorized religious ceremonies, such as marriages or funerals, but as of January 2018 local committees have been allowed to manage day-to-day affairs, including regulating when mosques will be open to the public.

46. Non-Sunni Muslim groups, such as Ibadis, Shia and Sufis do not enjoy separate institutional autonomy but practice their faith within the institutional arrangements for the Sunni community. Differences amongst these groups remain invisible or minor, a function of the relatively small number of Ibadi and Shia adherents and their assimilation among the Sunni majority.

47. Relations with the Jewish community is based on a 1958 law that protects their freedom of worship. Direct control over synagogues is vested in the Grand Rabbi who is paid a salary by the State. The State also provides security for all synagogues and partially subsidizes their maintenance and restoration costs, and the Jewish students are able to divide their time between attending secular schools and Jewish schools. Community leaders expressed satisfaction with the level of institutional autonomy enjoyed by the Jewish community, highlighting the participation of senior state functionaries in important festivals

⁷ Law No. 52 dated 14 May 2001 on the prison system.

and their inclusion in major state functions. However, there was concern that certain general regulations such as tighter controls on financial flows were adversely affecting the ability of the community to mobilize necessary external funding for the completion of planned projects, such as for the completion of a school building in Djerba. Moreover, some individuals stated they would not display religious dress in public as they did not want to 'look different'. While generally characterized by a spirit of co-existence, there appear to be societal pressures on Tunisian Jews to reject Zionism as a condition of tolerance.

48. The Protestant Church received formal recognition in 1933 and enjoys legal personality under Tunisian law; allowing the community to buy and manage real estate assets and facilitate other activities necessary to conducting church services as stipulated in Article 1 of the Beylical Decree dated 20 July 1933.

49. The Concordat of 1964 with the Holy See provides official recognition for the Roman Catholic Church in Tunisia. Article 1 of the Concordat states that the Tunisian Republic shall protect the free practice of Catholicism in Tunisia. Under this convention, the Catholic Church also agreed to permanently close down church buildings, to hand them over to the State without compensation, and to refrain from constructing any new buildings. Other restrictions from the Bourguiba era sought to restrict the public visibility of Christian practices and included, a ban on the ringing of bells, although there are signs that these limitations are being less stringently enforced, especially with regard to public displays of religious belief related to Christian festivals.

50. Non-traditional faith communities have failed to obtain official recognition and registration in the country. Applications for registration filed by the Baha'i community on two separate occasions have been denied, and an appeal to the Administrative court has been pending for the past four years. Although the law does not require registration for members of a religious community to practice their faith, in effect, without acquiring legal personality, the community faces numerous obstacles to the public manifestation of their faith either alone or community with others, in worship, observance, practice or teaching.

51. Legal personality is required for the performance of several institutional and organizational functions of the community, including the acquisition of property for the conduct of its affairs and the exercise of their rights as individuals and as a religious or belief minority group. According to the authorities, the obstacle to Baha'i registration is the constitutional restriction on the recognition of any group that claims to represent all the members of a faith or belief community. The Decree Law No. 2011-88 dated 24 September 2011 relating to the organization of associations and Decree Law No. 2011-87 dated 24 September 2011 relating to the organization of political parties prohibiting parties and associations, impede the establishment of a non-governmental organisation or political party based on religious convictions. They also prevent associations or political parties from encouraging "(...) discrimination founded on religion" in their statutes, communications, programs or activities. The Government views these restrictions as necessary for the protection of public order and national unity.

52. However, these laws do not meet the international standards for the protection of freedom of association or indeed freedom of religion or belief. The government has failed thus far to discharge its obligation to enable the Baha'i community to exercise their right to freedom of religion or belief in accordance with Articles 18 and 27 of the ICCPR and the guarantees in the country's 2014 Constitution. Although many members of the Baha'i community reported improved relations with the Government in recent years, no meaningful remedy to address their grievances has been reportedly pursued to date.

53. **Freedom of expression:** While there is no specific law or policy which penalizes blasphemy in Tunisia, several existing provisions have been used as, or could be interpreted to be restrictions on freedom of expression and various aspects of manifestation of religion or belief.

54. This includes public order and public decency laws used to penalize or discourage proselytizing in public places and to prosecute allegations of speech that offended religious sensibilities. Article 226(2) of the Penal Code makes it an offense to "distribute, offer for sale, publicly display, or possess, with the intent to distribute, sell, display for the purpose of propaganda, tracts, bulletins, and fliers, whether of foreign origin or not, that are liable to

cause harm to the public order or public morals.” Article 226(2) also recommends a prison punishment for “any person found guilty of undermining public morals by intentionally disturbing other persons in a way that offends the sense of public decency”.

55. Moreover, Tunisian courts have issued decisions restricting the exercise of freedom of expression based on the above-mentioned articles. On 28 March 2012, a trial court in Mahdia convicted two Internet users for posting writings deemed offensive to the sacred values of Islam and sentenced them to seven-and-a-half years imprisonment. The Court of Appeal and cassation upheld the verdict in 2014.

56. The new press code also criminalizes incitement to religious hatred (art 52)⁸ as well as defamation or insult which aims to incite “religious, racial or interpersonal hatred” (Article 69)⁹. The same code allows NGOs working on human rights to sue the authors of insult that aim to incite religious, racial or interpersonal hatred even if the victim does not lodge a complaint themselves. Moreover, some interlocutors expressed concern that the Constitutional mandate to protect the sacred has not been properly defined. Some officials suggested the protection of the sacred amounted to the protection of places of worship and other places with religious purposes such as burial grounds, and others defended the ongoing application of public morals provisions as being integral to implementing the Government’s mandate to protect the “sacred”. The UN Human Rights Committee has stressed that it would be impermissible for laws “to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers”, as well as not permissible “for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”¹⁰

57. **Violent Extremism and Incitement to Violence in the Name of Religion:** Tunisia has experienced a number of violent incidents carried out in the name of religion in the post-revolution period. During the first three years of the revolution, intellectuals, artists, human rights activists, journalists and politicians were the target of several attacks carried out by extremist individuals or groups driven by religious motives. The Government, therefore, face legitimate challenges in formulating effective responses that counter violent extremism. The 2015 law¹¹ on countering terrorism and money laundering criminalizes various types of expression as a tool of counter-terrorism. Such offenses include, “incitement to terrorism” (article 5); takfeer [calling another Muslim an unbeliever]; incitement to takfeer and “incitement to hatred among races, religions and sects” (article 14.8); “glorification of terrorism” and “apology for terrorism” (article 31). Article 14 (8) of the law No. 2015-26 of 7 August 2015 on countering terrorism and money laundering states: “Anyone who incriminates apostasy or calls for the criminalization of apostasy or incitement to hatred between races, religions and religious sects shall be considered guilty of a terrorist offense.”¹²

58. Many of these measures, such as the ban on incitement to violence among religions and races are clearly fundamental to protecting the space for freedom of religion or belief. However, it is essential for these measures to be applied in strict conformity with the high threshold for prohibiting expression deemed to incite persons to discrimination, hostility and violence, as required by Article 20 of the ICCPR. They must also meet the test of necessity, legitimacy and proportionality, as stipulated under Article 19 of the ICCPR. Equally, there is also concern that in the context of countering violent extremism, certain forms of peaceful practices promoted by religion are being identified as extremist and that people may be

⁸ Article 52 provides: “shall be punished by imprisonment from one to three years and a fine of one thousand to two thousand dinars, anyone who directly calls for hatred between races, religions, or populations, by incitement to discrimination and use of hostile means, violence, or propaganda for ideas based on racial discrimination, using one of the means indicated in Article 50 of this decree Law. ”

⁹ Article 69 states: “Defamation or insult refers to a type of person belonging to a particular ethnic group, race or religion and its purpose is incitement to hatred between races, religions or populations, using acts of war, violence or the publication of ideas based on racial discrimination ”.

¹⁰ Human Rights Committee general comment no. 34, CCPR/C/GC/34, para. 48.

¹¹ Law No. 2015-26 of 7 August 2015.

¹² After the visit, the Special Rapporteur has been informed about the organic law n°2019-9 of 23 January 2019 on the fight against terrorism and money laundering, which modified law n °2015-26 of 7 August 2015.

subject to intrusive activities by the police, which could amount to violation of their freedom of conscience, freedom of movement and right to privacy.

59. The OHCHR had monitored a number of prosecutions of journalists and bloggers. The primary concerns identified include penalising undefined conduct such as “adopting an extremist ideology/opinion” and the use of a low threshold to distinguish offensive speech and incitement. Moreover, some judiciary decisions have sought to “balance” freedom of expression and the prevention of terrorism rather than assessing restrictions on expression based on necessity, legitimacy and proportionality.

60. **Equality and Non-Discrimination:** Non-Muslim communities were not part of the Constituent Assembly that drafted the document. However, there are a number of provisions in Tunisian law that assert a commitment to non-discrimination and equality as a fundamental norm that undergirds the commitment to equal citizenship. Criminal sanctions are provided in the Penal Code against anyone who destroys, razes, damages, disfigures or defiles religious buildings, monuments, emblems or objects used for worshipping¹³. The Tunisian Penal Code devotes an entire section to the suppression of all obstacles to the practice of religion and to the protection of religious worship or ceremonies from all forms of interference or disturbance¹⁴ and to punish all threats to practice or refrain from practicing a religion¹⁵. However, the use of public decency and public order as well as the identification of certain forms of dress or appearance as threats to public safety limit the protections enjoyed by those who dissent from mainstream beliefs and practices.

61. Article 4 of the Tunisian Code of Obligations and Contracts stipulates that religious differences between Muslims and non-Muslims have no bearing on the capacity to enter into legal contract, nor do such religious differences impact obligations between Muslims and non-Muslims. People are not required to declare their faith, and restrictions on worship either alone or in community with others do not appear to be enforced by State actors.

62. The protection of freedom of belief in Tunisia extends to ensuring that religion remains a purely private affair and thus entails discretion. All citizens shall be protected from the discretions and curiosities of authorities. According to this vision, the law of 1 August 1957 regulating the civil registration of citizens makes no reference to religion whether for birth, marriage or death certificates. The law of December 1983 on the general status of public service protects freedom of conscience of public servants upon entry into service and throughout the course of their career, which should not be positively or negatively influenced by religious affiliation. Moreover, Article 292 of the Code of Civil and Commercial Procedure recognizes the sanctity of non-Muslim religious holidays and prohibits all legal enforcement procedures on Saturdays against Jews and on Sundays against the Christians as well as when they celebrate their religious festivals.

63. Nevertheless, there are direct and hidden forms of discrimination based on religion or belief in the country. As stated earlier, the new Constitution explicitly excludes non-Muslims from standing for the office of the president. Those who take up certain public functions or enter certain professions are required to swear on the Quran as part of their induction. While Jewish and Christian students are allowed to opt out of compulsory classes on Islam, no such provision is made for children of parents who did not subscribe to either the Jewish or Christian religions. There is a presumption that any child not declared to be either Jewish or Christian must be Muslim.

64. Moreover, incidents of social hostility in the form of harassment or pressure directed at converts, as well as threats and attacks on atheists were reported. Allegations maintained that harassment is also carried out by law enforcement officials, in violation of national laws.

¹³ Article 161 of the Penal Code stipulates that: « *Anyone who destroys, razes, damages, disfigures or defiles religious buildings, monuments, emblems or objects used for worshipping shall be liable to a one-year prison term and a fine of 120 dinars.* »

¹⁴ Article 165 of the Code provides that « anyone who impairs or disrupts religious worship or ceremonies shall be punished by six months’ imprisonment and a fine, without prejudice to the more severe penalties which would be incurred in cases of outrage, acts of violence or threats. »

¹⁵ Article 166 of the Penal Code provides that « anyone who, without any legal authority over a person, forces that person by violence or threats to practice or refrain from practicing a religion shall be liable to three months’ imprisonment. »

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.

65. **Gender Equality:** Tunisia is ranked the highest in the Middle East and North Africa (MENA) region for its performance in closing the gender gap in various fields and has a long-standing reputation for the State's progressive policies towards the equal rights of women. Women's participation in politics is increasing, occupying 31% of seats in the current parliament. Tunisians generally attribute these advances to a secular Government and the moderate religious interpretations of religion prevailing amongst the Sunni majority in the country. Milestones in advancing women's rights include a largely secularised Code of Personal Status¹⁶ (CPS), adopted in 1956, which prohibited polygamy, made it legal for women to divorce their husbands, established a minimum age of marriage for girls, and banned forced marriages. It introduced the concept of alimony and increased the women's right to child custody. In 1965, abortion was made legal in the first three months of a pregnancy while amendments to the CPS removed the requirement for wives to "obey" their husbands.¹⁷

66. On 17 April 2014, Tunisia withdrew the reservations that it had entered to CEDAW upon ratification in 1985. These reservations highlighted some of the gaps between Tunisia's domestic laws and CEDAW in areas such as the rights to transmit nationality (Article 9.2); equal rights in marriage and dissolution (Article 16 c); equal rights towards children irrespective of marital status (16 d); the granting of family names to children (Article 16 (g)); the acquisition of property through inheritance; and the choice of their residence and domicile (15.4).

67. Article 46 of the Constitution requires the State to take all steps necessary to eradicate violence against women and to promote equality. On 26 July 2017, the parliament adopted Tunisia's first national law to combat violence against women, which studies show is prevalent, with 50% of women having reported experiencing violence in their lifetime¹⁸. The law criminalised, for the first time, marital rape, and closed a gap in the penal code which provided impunity to a rapist by marrying the victim. In August 2017, the government also rescinded the 5 November 1973 circular which banned marriages between Muslim women and non-Muslim men.

68. On 13 August 2017, President Essebsi, commemorated Women's Day in Tunisia with the establishment of the Commission on Individual Liberties and Equality (COLIBE). The Commission was given a mandate to formulate proposals for further strengthening civil liberties and addressing all aspects of discrimination and promoting gender equality. The Commission submitted its recommendations to the President in June 2018. Based on the report, on 23 November 2018, the Cabinet endorsed a draft law to be submitted to the parliament to guarantee gender equality in regard to inheritance.

69. Tunisia must be commended for these progressive steps which render it a leader in the MENA region in protecting the human rights of women and promoting gender equality. However, a number of challenges that undermine their enjoyment in practice of equal rights remain that are related to deficits in the rule of law, rooted in societal norms and religious practices, and exacerbated by the gaps in the economic and social status of women.

70. Thousands of cases filed with Tunisia's Truth and Dignity Commission, established in 2013, for example, identify myriad practices reportedly carried out by government officials that were often abusive and violent against women that chose to wear the headscarf during the pre-revolutionary era, including harassment, beatings and sexual assault. A circular issued in 1997 that banned religious clothing in higher educational institutions faced sustained civic and legal challenges until it was finally deemed unconstitutional in 2013.

¹⁶ (S.) Ben Achour, «The Tunisian Code Of Personal Status, 50 years after: the scope of ambivalence, » The Year of the Maghreb, II | 2007, 55-70. (<http://anneemaghreb.revues.org/89?lang=en>)

¹⁷ Law and Religion p.312 and Submission by Amnesty International to CESCR 2016 <https://www.amnesty.org/download/Documents/MDE3045752016ENGLISH.PDF>

¹⁸ <http://www.unwomen.org/en/news/stories/2017/8/news-tunisia-law-on-ending-violence-against-women>

Furthermore, complaints filed at the Truth and Dignity Commission by members of the Christian community, largely focused on the treatment of women converts.

71. Single-motherhood also remains unrecognised in law and stigmatized by society, and funding for abortion clinics have declined since 2011. While the withdrawal of the reservations to the CEDAW should be applauded, the use of sharia as interpretive tools is likely to continue to undermine rights guaranteed by the letter of the law. For example, the identification of a man as the head of the family unit has resulted in undermining the child custody rights to women.¹⁹

72. Tunisian laws continue to criminalise sexual relations between homosexuals, and the lesbian, gay, bisexual and transgender (LGBT) community continue to be targets of verbal and physical attacks. Individuals are subjected to forced anal examinations by medical practitioners on the order of judges to establish proof of same sex activity. According to information received by the Special Rapporteur, the authorities did not take appropriate action in response to incitement to murder and hatred towards members of the LGBT community. The Special Rapporteur received testimonies from individuals who reported being victims of homophobic hate crimes and who alleged that criminalization of same-sex relations in Tunisia fosters a permissive environment for homophobic and transphobic hate crimes, as well as harassment and intimidation by family members and the wider community.

73. Several recommendations offered to Tunisia during the last Universal Periodic Review (UPR) held in May 2018 which called on the government to decriminalise consensual same-sex relations and develop public awareness programmes to address stigmatisation of lesbian, gay, bisexual, transgender and intersex persons were rejected. Regardless, in December 2017, a Tunisian LGBT group, Shams, launched Shams Rad, a radio station dedicated to building community awareness about human rights and inclusion. Despite threats of violence and legal challenges, the radio has continued to operate. The Commission for Liberty and Equality in their report published in 2018 recommended to end discrimination against members of the LGBT. At the time of writing, the government has not given any indication as to whether it will decriminalise consensual same sex relations or replace the 3-year jail term provided under article 230 of the Criminal Code with a fine.

VII. Conclusions and Recommendations

74. Tunisia is a country in transition following the Jasmine Revolution that ended the authoritarian regime of President Zine El Abidine Ben Ali. While many challenges remain, the country has also made much progress in promoting respect for fundamental rights in the ensuing seven years; rendering Tunisia the foremost example in the region in strengthening human rights protections for all persons, including for the right to freedom of religion or belief.

75. Difficulties facing the country include the use of terrorism, violent extremism and acts that incite persons to violence in the name of religion or belief against intellectuals, artists, human rights activists, journalists, political figures, tourists, and places of worship. Moreover, Tunisian society remains polarised along secular and religious lines with little dialogue among these groups and communities, due, in part, to the government's historical penchant for viewing religion through a security lens (securitizing religion), dating back to the country's pre-revolutionary era when public expressions of religious belief were regarded as threats to national interests.

76. The Special Rapporteur believes that the strong commitment of leading secular and Islamist political parties (including the Nida Tounes and Ennahda parties) to working together is contributing to the easing of such tensions. In this regard, changes in the Ennahda Party's platform from that of a more strident Islamist agenda to what appears to be a more moderate approach to promoting the interests of its constituencies have likely been key to mitigating friction along the secular-religious divide. Further to this, civil society actors have been, and continue to be pivotal in promoting and protecting human rights and in fostering

¹⁹ Law and Religion, p. 312.

safe, inclusive spaces in which the moderate voices of political and civil society actors can converge.

77. Despite the significant turbulence characterizing Tunisia's political circumstances, the Constitutional settlement of 27 January 2014 and the establishment of several government bodies (i.e. those focused on transitional justice, combatting torture and guaranteeing freedom of expression) appear to be important milestones in the ongoing consolidation of the country's democracy. The Constitution of 2014 guarantees freedom of religion or belief for all, protects the right to religious dissent and conversion, commits to equal citizenship and non-discrimination, and imposes a duty on the State to promote the equal rights of all persons, regardless of gender or belief.

78. At the same time, the Constitution provides that only Muslims are eligible for the presidency, and although Tunisia is described as a civil state based on equal citizenship, the Constitution identifies Islam as the country's religion and mandates the State to protect the sacred.

79. The essential task ahead will be to ensure that (1) institutions mandated by the Constitution are established and allowed to mature; and (2) laws and practices that continue to violate the guarantees under the Constitution are rescinded. Among the key institutions commissioned by the Constitution are an independent judiciary, a Constitutional Court, and an independent National Human Rights Institution (NHRI). Other crucial bodies include Truth and Dignity Commission, with a mandate to examine grievances related to violations of human rights from 1955 to 2013. An ad hoc Commission on Civil Liberties and Equality (COLIBE) formed by President Beji Caid Essebsi to identify all aspects of discrimination and to formulate proposals for redress. Although a petition to secure an extension for the mandate of the Truth and Dignity Commission failed in 2018, it was allowed to complete its work by the end of calendar year. Meanwhile, COLIBE submitted its findings to the President in August 2018. The Special Rapporteur looks forward to engaging with the government on the outcomes of the work of the COLIBE.

80. The situation of freedom of religion or belief in Tunisia is marked by both encouraging and concerning circumstances and developments. The country's long history of religious tolerance and its commitment to equality places Tunisians on a familiar trajectory aimed at better realizing the human rights of persons in the country. The country also has a long tradition of commitment to secular law, based on the Napoleonic Code, as manifested in the Personal Status Code adopted in 1957.

81. Furthermore, the government appears to only recognise communities that identify with the Abrahamic religions. Relations with the Jewish community are based on a 1958 law that protects their freedom of worship, vests the Grand Rabbi who is paid a salary by the State with direct control over the synagogues. Community leaders expressed satisfaction with the level of institutional autonomy and security they enjoyed, but they expressed concern about the negative impact that tightening restrictions on foreign funds are having on the health of community needs.

82. Relations with the Catholic and Protestant communities are also governed by separate agreements that confer all church buildings to state ownership but permit their use by their respective communities. While these agreements impose several restrictions, such as banning of the ringing of church bells and visibility of church services and celebrations, there are signs that some of these restrictions are being relaxed.

83. There appears to be a higher degree of regulation for Muslim communities in the country. The State owns all the mosques and appoints and dismisses the Imams. Non-Sunni Muslim groups such as Ibadis and Shia do not have their own mosques, but no reports of harassment, discrimination, or persecution have been received. Furthermore, the government suggests themes for Friday sermons, but there were no reports that the State controlled their content. However, the promotion of moderate messaging via sermons appear to be a popular solution among government actors for assuring the neutrality of mosques, protecting against partisan instrumentalization and responding to the recent independence of religious leaders in the management of religious programs and property following the Jasmine Revolution.

84. Tunisia has also led the region in promoting the human rights of women and gender equality since 1956. Despite initial pushback on these achievements by some religious actors

following the Revolution, reforms to advance women's rights and promote gender equality continue. Tunisia withdrew all the reservations that it entered to CEDAW in 1985; the government rescinded the ban on donning the headscarf in public buildings, marital rape was criminalized, protections for rapists that marry their victims were withdrawn, and the ban on inter-faith marriage for women was lifted. The government is also proposing to end gender-based discrimination in inheritance.

85. The Government must address a number of national laws and practices in order to better promote its international and constitutional commitments. These include laws that criminalise consensual same-sex relations and contribute to hostility and violence against members of the LGBT community. They involve the potential for sharia principles that discriminate against women to be applied as interpretive tools, especially in custody cases, where a husband may be deemed to be the head of the family to undermine equality provisions of the personal status code. In addition, vaguely worded counter-terrorism laws which appear to target Muslims for the peaceful expression of their beliefs as in the case of forms of dress and appearance, must be reconsidered. Lastly, efforts to address intolerant societal attitudes that ostracise converts or encourage hostility towards single motherhood should be undertaken.

86. The absence of an Organic Law that details the protections of freedom of religion or belief, also raises questions about the exact scope of protections offered by the law. These concerns are aired often in the context of the application of secular laws to restrict rights related to freedom of religion or belief. Public decency and morality laws, for example, have been applied to penalise the non-observance by Muslims of practices related to fasting in the month of Ramadan, and to prosecute speech offensive to religious sensibilities.

87. The government has failed to grant the Baha'i community the requisite rights, including the ability to acquire legal personality to manifest their rights to freedom of religion or belief. The government's position is that the legal framework does not currently permit the registration of any association with a religious affiliation.

88. While the history of Judaism and Christianity is taught at secondary schools, and children of Jewish and Christian parents are given the right to opt-out from compulsory instruction in Islam, there is a presumption that those children who did not fall into these two categories were Muslim.

89. The Special Rapporteur would like to make the following recommendations:

(a) Continue the positive trajectory towards consolidating democracy through legal reforms currently underway that strengthen the country's legal framework, in addition to taking steps that foster the establishment and development of transparent, accountable and responsive institutions, as mandated by the 2014 Constitution.

(b) Formulate an Organic Law that effectuates commitments undertaken under international human rights treaties ratified by Tunisia to promote and protect freedom of religion or belief for all persons; regardless of religion, ethnicity, nationality, race, gender or sexual orientation.

(c) Ensure that the Truth and Dignity Commission is granted ample time and sufficient capacity to effectively facilitate its mandate. This includes its mandate to contribute to addressing impunity in the country by way of exploring grievances identified by the 62,000 petitions filed with the body, including those involving violations of the right to freedom of religion or belief.

(d) Implement the recommendations made by the UN Special Rapporteur on countering terrorism by ensuring that the scope of proscribed activities under the law does not include protected forms of speech and conduct, and to ensure that the rights to freedom of expression, peaceful assembly and association are fully protected.

(e) 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.

(f) Ensure that the recommendations made during the UPR to decriminalise consensual same-sex relations are implemented.

(g) Continue the policies and practices that have been initiated to further strengthen protections for the rights of women and girls, especially against domestic violence, to an equal share in inheritance and to equal standing before the law.

(h) Promote policies of inclusion of all religious and belief groups, through fostering inter-faith communication, increasing the participation of all in public life, and by eliminating indirect and overt forms of discrimination based on religion or belief.

(i) Continue to work with the international community, especially the United Nations human rights mechanisms and international partners, to deepen and consolidate the gains that the country has made in the past seven years, and to share best practices and lessons learned with the international community.

90. The Special Rapporteur welcomes that the methodology used by the HAICA for monitoring hate speech is rooted in international human rights approaches, including the six-part threshold test of the Rabat Plan of Action²⁰. Furthermore, he encourages the Government to develop a national action plan, with the participation of the NHRI, civil society organizations and development partners, to facilitate the implementation of the Rabat Plan of Action, the Beirut Declaration on “Faith for Rights”²¹ and the Fez Plan of Action²², by the mass media, judicial authorities, oversight bodies, civil society, religious leaders and faith-based actors.

91. During its third Universal Periodic Review in 2017, Tunisia also accepted the recommendation to establish an interreligious council to facilitate interreligious dialogue and harmony. In this context, the Special Rapporteur calls upon the Government to invest in the dissemination and implementation of the Rabat Plan of Action the Beirut Declaration on “Faith for Rights” and the Fez Plan of Action which provide a chart of specific commitments of faith-based actors as well as a number of practical measures to address the related phenomena of incitement to religious hatred, discrimination and violence.

92. The Special Rapporteur calls on the international community to sustain support for the consolidation of democracy in Tunisia by continuing to advance initiatives that strengthen the rule of law and good governance, support capacity building of the judiciary, and that contribute to the country’s economic development.

²⁰ See www.ohchr.org/EN/Issues/FreedomOpinion/Articles19-20/Pages/Index.aspx

²¹ See www.ohchr.org/EN/Issues/FreedomReligion/Pages/FaithForRights.aspx

²² See www.un.org/en/genocideprevention/documents/publications-and-resources/Plan%20of%20Action_Religious_Prevent-Incite-WEB-rev3.pdf