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البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

الزيارة إلى تونس

تقرير المقرر الخاص المعني بحرية الدين أو المعتقد **

موجز

قام المقرر الخاص المعني بحرية الدين أو المعتقد، أحمد شهيد، بزيارة إلى تونس في الفترة من ٩ إلى ١٩ نيسان/أبريل ٢٠١٨. وفي هذا التقرير، يشير المقرر الخاص إلى أن التقاليد التي ينعم بها البلد منذ أمد طويل المتمثلة في التسامح الديني والالتزام بالمساواة، بما في ذلك حقوق المرأة، قد وضعت على مسار إيجابي لتعزيز أوجه حماية حقوق الإنسان. وقد ترسخ هذا الأساس بفضل اعتماد الدستور الجديد في عام ٢٠١٤، الذي ينص على ضمانات قوية لحقوق الإنسان وإطار مؤسسي لكفالة هذه الحقوق. ويشير المقرر الخاص أيضاً إلى أن الدستور يكفل حرية الدين أو المعتقد للجميع، ويحمي الحق في الرأي المخالف الديني واعتناق ديانة أخرى، ويضمن المساواة في المواطنة وعدم التمييز. وإن سحب التحفظات المتعلقة باتفاقية القضاء على جميع أشكال التمييز ضد المرأة واعتماد تشريعات ترمي إلى مواصلة النهوض بحقوق المرأة معلماً هاماً من معالم التقدم الذي أحرزه البلد. ويشير المقرر الخاص كذلك إلى تخفيف حدة التوترات السياسية في مرحلة ما بعد الثورة نتيجة للتسوية التي تم التوصل إليها بين الأحزاب العلمانية والإسلامية الرائدة، والدور الحيوي للمجتمع المدني في تعزيز حقوق الإنسان وعلاقات الحكومة التعاونية مع الأقليات الدينية التقليدية.

* قُدِّم هذا التقرير بعد الموعد المحدد لتضمينه أحدث المعلومات.

** يعمم موجز التقرير بجميع اللغات الرسمية. أما التقرير نفسه، المرفق بهذا الموجز، فيعَمَّم باللغة التي قُدِّم بها وباللغة الفرنسية فقط.



وفي التقرير، يسلط المقرر الخاص الضوء أيضاً على عدد من الشواغل، بما في ذلك التحريض على العنف باسم الدين أو المعتقد، وقوانين مكافحة الإرهاب المصاغة بشكل غامض التي تستهدف التعبير السلمي عن المعتقدات، والقوانين التي تجرم العلاقات الجنسية المثلية التي تمارس بالتراضي، وتسهم في العداوة والعنف ضد أفراد فئة المثليات والمثليين ومزدوجي الميل الجنسي ومغايري الهوية الجنسانية، واستقطاب المجتمع حسب خطوط علمانية ودينية دون إجراء حوار يذكر مع هذه الفئات والمجتمعات، ووجود ثغرات في الإطار القانوني تقوض الضمانات الدستورية.

Annex

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

I. Introduction

1. The Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, undertook an official country visit to Tunisia from 9 to 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 United Nations agencies to openly discuss the situation of freedom of religion or belief in the country. The meetings were held in Tunis and in Djerba. He visited the prison in Mornaguia and met with prison officials and several inmates.

3. The Special Rapporteur had the opportunity to meet with the heads of government institutions, including ministers or senior officials at the ministries for culture, education, foreign affairs, human rights, the interior, justice, religious affairs, women's affairs and youth. He also met with officials of the Truth and Dignity Commission, the Independent High Authority for Audiovisual Communication, the High Committee for Human Rights and Fundamental Freedoms, the Centre for Research, Studies, Documentation and Information on Women, and the Commission on Liberty and Equality.

4. At the end of his visit, the Special Rapporteur was received by the Head of Government of Tunisia, Youssef Chahed. The Head of Government 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 uphold the country's international human rights obligations. He highlighted the voluminous extent of the legislation currently being considered by government bodies to effectuate the guarantees promoted by the new Constitution of Tunisia. The Head 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 recognize the importance of contributing to the country's economic development, which was integral to consolidating the democratic gains of the "Jasmine 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 the 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 and in Tunis.

II. Cooperation with United Nations human rights mechanisms

6. The record of cooperation of the Government of Tunisia with the United Nations human rights mechanisms has been improving, especially since 2011. The Government extended a standing invitation to the special procedure mandate holders on 28 February 2011 and since then 16 special procedures have been granted visits to the country. Tunisia also hosts an OHCHR country office 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 therefore been 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 14 United Nations human rights treaties, including the International Covenant on Civil and Political Rights and its first Optional Protocol, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Convention on the Elimination of All Forms of Racial Discrimination. In 2014, the Government withdrew all of the reservations concerning the Convention on the Elimination of All Forms of Discrimination against Women it had made upon ratification in 1985.

8. In 2016, the Committee on Enforced Disappearances, the Committee against Torture and the Committee on Economic, Social and Cultural Rights reviewed Tunisia based on the respective periodic reports and an updated common core document (HRI/CORE/TUN/2016) submitted by the Government. The Human Rights Committee last reviewed the situation of civil and political rights in the country in 2008. In 2018, the Committee adopted the list of issues prior to reporting in respect of the sixth periodic report of Tunisia (CCPR/C/TUN/QPR/6). The list does not specifically include a request 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 (and the Government submitted a midterm progress report in 2014) and 2017. The Government received 248 recommendations at the outcome of its third review, of which it accepted 189. The recommendations it had accepted included one on establishing an interreligious council to facilitate interreligious dialogue and harmony (A/HRC/36/5, para. 126.11 and 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 mechanisms and international accountability mechanisms, to expand civic space in the country and to have a flourishing civil society contribute to this deepening cooperation. Those steps include the creation in October 2015 of a national commission for the coordination, elaboration and preparation of the reports and follow-up on the recommendations in the field of human rights, composed of representatives of all government ministries and chaired by the Minister for Human Rights.

III. Political and economic context

11. It is estimated that 99 per cent 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, Baha'is, and non-believers constitute less than 1 per cent of the population. The Jewish community represents the oldest minority religious community in the country, dating back over two-and-a-half millennia. The island of Djerba hosts El Ghriba, one of the oldest synagogues in the world and a major site of pilgrimage. According to Jewish oral tradition, those living in Djerba may have arrived there as early as 586 B.C., after the destruction of the temple in Jerusalem.

12. The commitment of Tunisia to secular-driven governance has deep roots. This can be observed in such laws as the law concerning the pledge of security, which was issued by the ruler Mohammad Bey on 10 September 1857. It was adopted primarily to protect the rights of religious minorities (especially Jewish and Christian minorities) and it established the inviolability of persons and property and prohibited discrimination based on religion. The pledge of security guarantees in its first article complete security 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 courts and the proclamation of the Constitution of 1959, which reiterated the commitment to equal citizenship, regardless of religious affiliation.

13. The pre-revolutionary Governments of President Habib Bourguiba and President Zine al-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 Affairs in 1992, and it became the Ministry for Women, the Family, Children and the Elderly in 2004. Its mandate has been to coordinate and develop government policy for the promotion of women. The Ministry had local branches in all 24 regions of Tunisia until at least 2010. These branches are aimed at reinforcing women's participation in public, political and socioeconomic life at the subnational level. The Personal Status Code of 1957, while providing a unified civil code for all Tunisians, retains aspects of Islamic law, which undermine the country's commitment to protect the human rights of women and promote gender equality.

14. Today, Tunisia is a country in transition. It 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 challenges include economic challenges, terrorism and issues involving violent extremism, difficulties with establishing key institutions mandated by the Constitution, struggles with advancing initiatives that facilitate the review and repeal of laws that 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 of democratic consolidation. For example, the country's first free elections since independence in 1956 were held on 23 October 2011, 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 constitution was adopted 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. The Nidaa Tounes Party won a plurality of seats in 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 Nidaa Tounes Party under Head of Government Habib Essid. In August 2016, Head of Government Essid was replaced by Head of Government Youssef Chahed (Nidaa Tounes Party), after Parliament removed Habib Essid with a no-confidence vote resulting from negative views of his handling of economic reforms and security challenges in the country. Mr. Chahed's new Government is backed by a broad coalition of secular, Islamist and leftist parties, independents and trade union allies; he hopes he can deliver on economic reforms. Head of Government Chahed will serve as the seventh Head of Government in less than six years, that is, since the uprising of 2011 that toppled President Zine al-Abidine ben Ali.

17. Unemployment has worsened since the 2011 revolution. More than one third of 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. Head of Government Chahed warned that austerity programmes (with deep cuts for thousands of public sector jobs and increased taxes) were inevitable if Tunisia does not overcome its pressing economic difficulties.

18. One of the key challenges facing the Government in its effort to strengthen the economy and secure public safety has been 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 securitization of the Government's approach to some religious groups.

19. In the initial years after the revolution, the country had to grapple with intermittent incidents of terrorism and random acts of violence targeting 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, which include issues relating to criminal justice and combating extremism. Continued commitment to ensure 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 democracy in Tunisia.

IV. Legal framework

20. Tunisia is a party to all of the international human rights treaties that contain provisions for the protection of freedom of religion or belief, apart from the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and some of the optional protocols. The Government indicated to the Special Rapporteur its willingness to consider acceding to those instruments.

21. The highest principles of universal human rights are referred to in the preamble to the Constitution. While it is recognized in article 20 of the Constitution that the provisions promulgated by the ratified international instruments are 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 article 27 of the Vienna Convention on the Law of 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 Constitution of 2014 as progressive, both in the context of the country and in terms of its wider regional setting. Many see it as a compromise for diverse interests, especially between the objective to extend greater influence of Islam in public affairs and the objective to protect secular influence in 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 (art. 2).

23. Article 1 of the Constitution stipulates that the religion of Tunisia is Islam, while in the preamble national identity 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 the country's religion is Islam does not imply that Tunisia is an Islamic State whereby laws stem from Islamic law. Many point out that, in article 1 of the former Constitution (1959), Islam was enshrined 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 that lend themselves to discrimination as it pertains to religion or belief should not be ignored. For example, the Constitution stipulates that only Muslims are eligible to stand for the Office of the President (art. 74), and since it is feasible that the Speaker of the Assembly of the Representatives of the People may temporarily assume the position of President of the Republic 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. In the Constitution the doctrine of the separation of powers and checks and balances is effectuated. The judicial branch of government, through the constitutional court, will oversee the constitutionality of laws. Judges, prosecutors and lawyers are guaranteed independence as the main actors for the country's judicial system. The judiciary 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 have 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 the Assembly of the Representatives of the People.

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

27. In article 6 of the Constitution, freedom of religion or belief is guaranteed for everyone. 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 relating to guarantees for equality before the law (art. 21) and those provisions that promote the principle of proportionality required for the establishment of limitations of these rights (art. 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 International Covenant on Civil and Political Rights, rather than the formula provided under article 19 (3) of the Covenant.

28. In article 6 of the Constitution, the neutrality of mosques and places of worship is guaranteed 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* (calling another Muslim an unbeliever) and incitement to violence and hatred. However, while this guarantee of freedom of conscience and its manifestation are guaranteed in article 6, the State is also identified in that article as the guardian of religion, without elaborating on what that entails. Such a provision could be problematic if it 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 the Constitution of 2014 will need to be reconciled to further promote the fulfilment of the constitutional commitment of Tunisia to a civil State and the equality of all citizens. These laws include public order and public morality laws that enforce restrictions on the 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 laws that criminalize 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, the State affairs of Tunisia are facilitated by an expanding arrangement of institutions whose mandates include human rights – from parliamentary committees, judicial bodies, executive agencies and oversight mechanisms, as provided for by the new Constitution. The unicameral Assembly of the Representatives of the People serves as the country'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 Grand Mufti of Tunisia, while the Head of Government selects the Minister for Religious Affairs. The Grand 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 for Religious Affairs include the training, appointment and dismissal of imams, supervising relations with religious communities, ensuring the political neutrality of places of worship and conducting interfaith dialogues.

31. Article 128 of the Constitution mandates the creation of a human rights commission to monitor the protection and promotion of human rights and fundamental freedoms, and to make proposals to develop the human rights system. The Constitution requires that the human rights 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 six-year term and are required to be independent and impartial.

32. Legislation (bill No. 42 of 2016) to enact article 128 has been before Parliament since 2016. Once the bill has been adopted and the legislation is in force, the human rights commission will replace the High Committee for 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 principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), accorded B status to the High Committee for partial non-compliance. On 29 October 2018, Parliament adopted Organic Law No. 51 of 2018 relating to the human rights body.

33. Other bodies with a constitutional mandate to oversee or promote human rights include the Independent High Authority for Audiovisual Communication. In article 127 of the Constitution, the commission is rendered responsible for the regulation and development of the audiovisual communication sector and is tasked with ensuring 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 bodies overlap and some unresolved questions about financial autonomy and the procedures for appointing members to these bodies remain. It is 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 the State'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 the 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 have access to information relating to government affairs and is responsible for examining complaints about denials of access to such information.

37. Decree Law No. 116 of 2 November 2011 on the freedom of audiovisual communication and the creation of the Independent High Authority for Audiovisual Communication seeks to ensure that the exercise of freedom of expression does not impinge on freedom of belief. The Authority was set up to regulate the audiovisual sector in accordance with the principle of a plural, diverse and balanced audiovisual media spectrum, and to strengthen the values of freedom, justice and non-discrimination. The decisions of the Authority, while countering hate speech, including religious-based hate speech in public and private broadcasting, frequently cite the International Covenant on Civil and Political Rights. Its decisions can be annulled by the administrative courts. As of April 2016, only 2 out of 20 decisions by the Authority had been annulled by an administrative court.

38. The Independent High Authority for Audiovisual Communication also developed a national "barometer" to monitor hate speech that constitutes incitement to discrimination, hostility or violence, and promoted these standards across broadcasting media outlets in 2015. Subjects for such monitoring include, inter alia, religious leaders' speeches, religious programmes and public debates on religious issues. The results of the monitoring activities are expected to be published in 2018. The Authority's methodology for monitoring hate speech is rooted in international human rights approaches, including those contained in the six-part test of the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (A/HRC/22/17/Add.4, appendix, para. 29)¹ to identify speech that reaches the threshold of advocacy of national, racial or religious hatred constituting incitement to discrimination,

¹ See also OHCHR, "Beirut Declaration and its 18 commitments on 'Faith for Rights'" (2019). Available at www.ohchr.org/Documents/Press/Faith4Rights.pdf.

hostility or violence. The test was developed into a practical tool to identify hate speech broadcasted in the national media.

39. This polymorphic institutional infrastructure for protecting and promoting human rights in Tunisia is 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 was globally acclaimed in 2015 when those actors won the Nobel Peace Prize, thousands have thrived since the revolution and continue to play a leading role in advancing the country's progress. In July 2018, over 90 such civil society organizations issued a pact for equality and individual freedoms to advance human rights for all. The Special Rapporteur is therefore concerned that the passage of Law No. 52 of 29 October 2018 on the national register of companies, which tightens regulations on non-governmental organizations in a bid to halt money-laundering and terrorist financing, might have chilling effects on the work and contributions of civil society organizations, particularly those that work in the field of human rights, through the securitization of their work.

40. The Special Rapporteur also notes that the new constitutional court, mandated by the Constitution of 2014, was not established within the prescribed time frame 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 relating to the rule of law. This includes allegations involving failures to observe due process rights, assertions about ambiguity in the law and concerns about impunity. While Tunisia continues to pursue the vision formulated in the Constitution, the backlog of legislation necessary 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 laws in Tunisia are modelled on the Napoleonic Code, judges continue to apply Islamic law in regard to family inheritance disputes and matters of personal status.

42. Deficiencies in the rule of law can have a multiplier effect on any society and can certainly undermine the protection of human rights, including that of freedom of religion or belief. Many anticipate that, when established and operational, the constitutional court will be able to find ways to reconcile what appears to be contradictions in the legal framework of Tunisia, and expect the body to expedite the 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.

VI. Respect for freedom of religion or belief in Tunisia

Freedom of conscience

43. 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. Articles 57 and 64 of Law No. 52 of 14 May 2001 on the organization of the prison system also protect the freedom of persons deprived of their liberty to worship. 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 is 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 with the protections asserted in the Constitution of 2014 resulted in violations of freedom of religion or belief. Proselytizing Muslims may incur penalties as an activity contrary to public order. While it is 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 who do not wish to join the wider community with 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.

Relations with religious or belief communities

45. Laws and practices in Tunisia appear to recognize only 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. Law No. 34 of 1988 on mosques stipulates that only personnel appointed by the Government may lead activities in mosques. As the Government appoints and dismisses imams 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 their upkeep. In the years immediately following the revolution of 2011, a number of mosques were overseen by Salafist imams who opposed the secular traditions of the country and may have sought to instrumentalize Islam for political purposes; however, 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, Shias and Sufis do not enjoy separate institutional autonomy but practice their faith within the institutional arrangements for the Sunni community. Differences among 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 are based on a law from 1958 that protects the community's 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 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 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 the external funding necessary for the completion of planned projects, such as the completion of a school building in Djerba. Moreover, some individuals stated that they would not display religious dress in public as they did not want to "look different". While societal attitudes towards the Jewish community are generally characterized by a spirit of coexistence, 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, thereby allowing the community to buy and manage real estate assets and facilitate other activities necessary to conduct church services as stipulated in article 1 of the Beylical Decree of 20 July 1933.

49. The concordat of 1964 with the Holy See provides official recognition of the Catholic Church in Tunisia. In article 1 of the concordat it is stated that Tunisia shall protect the free practice of Catholicism in the country. Under this convention, the Catholic Church also agreed to close church buildings permanently, 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 relating 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 an administrative court has been pending for the past four years. Although the law does not in effect require the registration of a religious community in order for its members to practice their faith, without having acquired legal personality the community or its individual members face numerous obstacles to the public manifestation of their faith in worship, observance, practice or teaching.

51. Legal personality is required for a community's performance of several institutional and organizational functions, including the acquisition of property for the conduct of its affairs and the exercise of rights as individuals and as a religious or belief minority group. According to the authorities, the obstacle to the registration of the Baha'i community is the constitutional restriction on the recognition of any group that claims to represent all the members of a faith or belief community. Decree Law No. 88 of 24 September 2011 on the organization of associations and Decree Law No. 87 of 24 September 2011 on the organization of political parties impede the establishment of a non-governmental organization or political party based on religious convictions. They also prevent associations or political parties from encouraging discrimination founded on religion in their statutes, communications, programmes 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 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 members of the Baha'i community to exercise their right to freedom of religion or belief in accordance with articles 18 and 27 of the International Covenant on Civil and Political Rights and the guarantees in the country's Constitution of 2014. 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.

Freedom of expression

53. While there is no specific law or policy that 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 the manifestation of religion or belief.

54. These include the public order and public decency laws used to penalize or discourage proselytizing in public places and to prosecute speech that offends religious sensibilities. Article 226 (2) of the Penal Code makes it an offence 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. That article also provides for 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 of imprisonment. The Court of Cassation upheld the verdict in 2014.

56. The new Press Code also criminalizes incitement to religious hatred (art. 52), as well as defamation or insult that aims to incite religious, racial or interpersonal hatred (art. 69). The same Code allows non-governmental organizations working on human rights issues to sue the authors of insult that aim to incite religious, racial or interpersonal hatred even if the victim does not lodge a complaint himself or herself. Moreover, some interlocutors expressed concern that the constitutional mandate to protect "the sacred" has not been properly defined. Some officials suggested that 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 provisions relating to public morals as being integral to implementing the Government's mandate to protect the sacred. In its general comment No. 34 (2011, para. 48) on the freedom of opinion and expression, the Human Rights Committee 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, or for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.

Violent extremism and incitement to violence in the name of religion

57. Tunisia has experienced a number of violent incidents carried out in the name of religion in the post-revolutionary 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 faces legitimate challenges in formulating effective responses that counter violent extremism. As a tool of counter-terrorism, Law No. 26 of 7 August 2015 on countering terrorism and money-laundering criminalizes various types of expression. Such offences include incitement to terrorism (art. 5); *takfir*, incitement to *takfir* and incitement to hatred among races, religions and sects (art. 14 (8)), and glorification of terrorism, and apology for terrorism (art. 31).

58. Many of these measures, including a 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 a high threshold for prohibiting expression deemed to incite persons to discrimination, hostility or violence, as required by article 20 of the International Covenant on Civil and Political Rights. They must also meet the test of necessity, legitimacy and proportionality, as stipulated under article 19 of the Covenant. Equally, there is 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 subject to intrusive activities by the police, which could amount to a violation of their freedom of conscience, freedom of movement and right to privacy.

59. OHCHR monitored a number of prosecutions of journalists and bloggers. The primary concerns identified include penalizing undefined conduct such as adopting an extremist ideology or 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 assess restrictions on expression based on necessity, legitimacy and proportionality.

Equality and non-discrimination

60. Non-Muslim communities were not part of the Constituent Assembly that drafted the Constitution of 2014. 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 for in the Penal Code against anyone who destroys, razes, damages, disfigures or defiles religious buildings, monuments, emblems or objects used for worshipping. The 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 disturbance and stipulates the punishment for all threats to the practice of, or to the refrainment from the practice of, a religion. However, the use of public decency and public order and 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 Obligations and Contracts Code 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, Law No. 3 of 1 August 1957 regulating the civil registration of citizens makes no reference to religion, whether for birth, marriage or death certificates. Law No. 112 of 12 December 1983 establishing the general statute of public service protects the 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 Civil and Commercial Procedure Code recognizes the sanctity of non-Muslim religious holidays and prohibits all legal enforcement procedures on Saturdays against Jews and on Sundays against 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 Qur'an 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 the Christian religion. There is a presumption that any child not declared to be either Jewish or Christian must be Muslim.

64. Moreover, there were reports of incidents of social hostility in the form of harassment or pressure directed at converts, as well as threats and attacks on atheists. There were allegations that harassment is also carried out by law enforcement officials, in violation of national laws. There were no reports that religious groups, including newer communities, faced discrimination in gaining access to public services, but some persons reported that they were living in fear amid threats and incitement on social media.

Gender equality

65. Tunisia is ranked the highest in the Middle East and North Africa 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; women occupy 31 per cent of seats in the current Parliament. Tunisians generally attribute these advances to a secular Government and to the moderate interpretations of Islam prevailing among the Sunni majority. Milestones in advancing women's rights include the largely secularized Personal Status Code. Adopted in 1957, the Code 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 women's rights relating to child custody. In 1965, abortion was made legal during the first three months of a pregnancy while amendments to the Code removed the requirement for wives to "obey" their husbands.²

66. On 17 April 2014, Tunisia withdrew the reservations concerning the Convention on the Elimination of All Forms of Discrimination against Women it had upon ratification in 1985. These reservations highlighted some of the gaps between the domestic laws of Tunisia and the Convention in areas such as the rights to transmit nationality (art. 9 (2)), equal rights in marriage and its dissolution (art. 16 (c)), equal rights towards children irrespective of marital status (art. 16 (d)), the granting of family names to children (art. 16 (g)), the acquisition of property through inheritance, and the choice of their residence and domicile (art. 15 (4)).

67. Article 46 of the Constitution requires the State to take all the steps necessary to eradicate violence against women and to promote equality. On 26 July 2017, Parliament adopted Law No. 58 of 2017, the State's first national law to combat violence against women, which studies show to be prevalent, with 50 per cent of women having reported

² Amnesty International, *Tunisia: Submission to the UN Committee on Economic, Social and Cultural Rights* (London, 2016). Available at www.amnesty.org/download/Documents/MDE3045752016ENGLISH.PDF.

experiencing violence in their lifetime³. The law criminalized, for the first time, marital rape, and closed a gap in the Penal Code that provided impunity to a rapist by marrying the victim. In August 2017, the Government also rescinded the 5 November 1973 circular that banned marriages between Muslim women and non-Muslim men.

68. On 13 August 2017, President Beji Caïd Essebsi commemorated Women's Day in Tunisia with the establishment of the Commission on Liberty and Equality. The Commission was given a mandate to formulate proposals to further strengthen civil liberties, address all aspects of discrimination and promote 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 Parliament to guarantee gender equality with regard to inheritance.

69. Tunisia must be commended for these progressive steps, which render it a leader in the Middle East and North Africa Region in protecting the human rights of women and promoting gender equality. However, a number of challenges that undermine their enjoyment in practice remain; they 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 the Truth and Dignity Commission, established in 2013, identify myriad practices reportedly carried out by government officials during the pre-revolutionary era that were often abusive and violent against women who chose to wear the headscarf, 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. In addition, complaints filed with the Truth and Dignity Commission by members of the Christian community largely focused on the treatment of women converts.

71. Single motherhood remains unrecognized in law and stigmatized by society, and funding for abortion clinics has declined since 2011. While the withdrawal of the reservations concerning the Convention on the Elimination of All Forms of Discrimination against Women should be applauded, the use of Islamic law as an interpretive tool 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 of women.

72. Tunisian laws continue to criminalize sexual relations between homosexuals, and the lesbian, gay, bisexual and transgender community continues to be a target 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 lesbian, gay, bisexual and transgender community. The Special Rapporteur received testimonies from individuals who reported being victims of homophobic hate crimes and who alleged that the criminalization of same-sex relations in Tunisia fostered 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 made to Tunisia during the previous universal periodic review, held in May 2017, that called upon the Government to decriminalize consensual same-sex relations and to develop public awareness programmes to address the stigmatization of lesbian, gay, bisexual, transgender and intersex persons were rejected. Regardless, in December 2017, an organization to promote lesbian, gay, bisexual and transgender rights in Tunisia 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 station has continued to operate. In its report published in 2018, the Commission on Liberty and Equality called for the end to discrimination against

³ United Nations Entity for Gender Equality and the Empowerment of Women, "Tunisia passes historic law to end violence against women and girls", 10 August 2017. Available at www.unwomen.org/en/news/stories/2017/8/news-tunisia-law-on-ending-violence-against-women.

members of the lesbian, gay, bisexual and transgender community. At the time of writing, the Government had not given any indication as to whether it would decriminalize consensual same-sex relations or replace the three-year jail term provided under article 230 of the Penal Code with a fine.

VII. Conclusions and recommendations

74. Tunisia has been a country in transition since the Jasmine Revolution, which ended the authoritarian regime of President Zine al-Abidine ben Ali. While many challenges remain, the country has also made much progress in promoting respect for fundamental rights in the seven years since the revolution. This progress has rendered Tunisia the foremost example in the region vis-à-vis strengthening human rights protections for all persons, including 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 polarized along secular and religious lines with little dialogue among these groups and communities, owing in part to the Government's historical penchant for viewing religion through a security lens (securitizing religion). That view dates 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 Nidaa Tounes and Ennahda parties) to work 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 safe, inclusive spaces in which the moderate voices of political and civil society actors can converge.

77. Despite the significant turbulence characterizing the country's political circumstances, the constitutional settlement of 27 January 2014 and the establishment of several government bodies (those focused on transitional justice, combating 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 institutions mandated by the Constitution are established and allowed to mature, and that 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. Other crucial bodies include the Truth and Dignity Commission, which has a mandate to examine grievances relating to violations of human rights from 1955 to 2013, and the ad hoc Commission on Liberty and Equality, which was 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, the Commission was allowed to complete its work by the end of the calendar year. Meanwhile, the Commission on Liberty and Equality

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 Commission on Liberty and Equality.

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. Tunisia 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 recognize only communities that identify with the Abrahamic religions. Relations with the Jewish community are based on a law from 1958 that protects their freedom of worship and vests the Grand Rabbi, who is paid a salary by the State, with direct control over synagogues. Community leaders expressed satisfaction with the level of institutional autonomy and security they enjoyed, but they were concerned about the negative impact that tightening restrictions on foreign funds were having on the capacity to meet 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 those on the visibility of church services and celebrations, including banning the ringing of church bells, 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 of the mosques and appoints and dismisses the imams. Non-Sunni Muslim groups such as Ibadis and Shias 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 in sermons appears 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 programmes and property since the Jasmine Revolution.

84. Since 1956, Tunisia has also led the region in promoting both the human rights of women and gender equality. Despite initial pushback on these achievements by some religious actors following the revolution, reforms to advance women's rights and to promote gender equality continue. Tunisia withdrew all the reservations concerning the Convention on the Elimination of All Forms of Discrimination against Women it had made upon ratification in 1985 and 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 interfaith marriage for women was lifted. The Government is also proposing to end gender-based discrimination in inheritance laws.

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 criminalize consensual same-sex relations and contribute to hostility and violence against members of the lesbian, gay, bisexual and transgender 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 the equality provisions of the Personal Status Code. In addition, vaguely worded counter-terrorism laws that 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 should be made to address intolerant societal attitudes that ostracize converts or encourage hostility towards single motherhood.

86. The absence of an organic law detailing the protections of freedom of religion or belief 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 relating to freedom of religion or belief. Public decency and morality laws, for example, have been applied to penalize the non-observance by Muslims of practices relating 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 either of these two categories were Muslim.

89. The Special Rapporteur recommends that the Government:

(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 Constitution of 2014.

(b) Formulate an organic law that effectuates commitments made 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 facilitate its mandate effectively. 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 Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/40/52/Add.1), and ensure that the scope of the activities proscribed under the law does not include protected forms of speech and conduct, and 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 members to manifest their faith in accordance with article 18 of the International Covenant on Civil and Political Rights.

(f) Ensure that the recommendations made during the universal periodic review on decriminalizing 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 by fostering interfaith 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 the fact that the methodology used by the Independent High Authority for Audiovisual Communication for monitoring hate speech is rooted in international human rights approaches, including the six-part

threshold test of the Rabat Plan of Action⁴. Furthermore, he encourages the Government to develop a national action plan, with the participation of the national human rights institution, civil society organizations and development partners, to facilitate the implementation of the Rabat Plan of Action, the Beirut Declaration on Faith for Rights⁵ and the Plan of Action for Religious Leaders and Actors to Prevent Incitement to Violence that Could Lead to Atrocity Crimes (Fez Plan of Action)⁶ by the mass media, judicial authorities, oversight bodies, civil society, religious leaders and faith-based actors.

91. During its third universal periodic review, held in 2017, Tunisia also accepted the recommendation on establishing 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 and a number of practical measures to address the related phenomena of incitement to religious hatred, discrimination and violence.

92. The Special Rapporteur calls upon 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 the capacity-building of the judiciary and contribute to the country's economic development.

⁴ See www.ohchr.org/EN/Issues/FreedomOpinion/Articles19-20/Pages/Index.aspx.

⁵ See www.ohchr.org/EN/Issues/FreedomReligion/Pages/FaithForRights.aspx.

⁶ See www.un.org/genocideprevention/documents/Plan%20of%20Action%20Advanced%20Copy.pdf.