

report

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Identity and Citizenship in Tunisia: The Situation of Minorities after the 2011 Revolution

Silvia Quattrini





Three Jewish boys stand near the Ghirba Synagogue in Djerba, during an annual pilgrimage for the Jewish holiday of Lag Ba'Omer.

Photographer: Zied Haddad

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Key findings

Key findings

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| <ul style="list-style-type: none">• Since the overthrow in January 2011 of the authoritarian President Zine El Abidine Ben Ali, widely credited as the beginning of the Arab Spring, Tunisia has successfully established a functioning democracy and taken a number of positive steps to promote human rights in the country, including the drafting of the progressive 2014 Constitution. This has been followed by a number of other legislative changes that have benefitted its minorities, including the passage in October 2018 of a law criminalizing racial discrimination. | <ul style="list-style-type: none">• For decades, successive Tunisian governments have defined its national identity as Arab and Muslim. This has not only marginalized religious minorities but also sidelined the country's indigenous Amazigh population through a long process of assimilation. The same is true of the country's black population which, while until recently largely invisible in the country's public life, has long been subjected to racial discrimination. |
| <ul style="list-style-type: none">• Despite these encouraging developments, many religious communities continue to contend with the legacy of years of discrimination. While the right to freedom of religion is guaranteed in the Constitution, in practice the only minorities currently recognized are the Christian and Jewish communities. Other groups that are not recognized, such as Bahá'í, face significant restrictions on their ability to worship freely. Pre-revolutionary legislation on apostasy is also still used to penalize Tunisians who have chosen to convert to Christianity or identify as atheist. | <ul style="list-style-type: none">• Tunisia's achievements since the revolution have been driven by a growing recognition of minorities, women and other groups, as well as a willingness to provide a space for these marginalized voices to express their demands freely. However, much remains to be done to realize full equality for all and complete the country's remarkable transition to a vibrant, inclusive democracy. This includes not only the repeal of pre-2011 discriminatory legislation and the implementation of its commitments in international law, but also engagement and education at all levels of Tunisian society, including police, judiciary, religious leaders and the general public. |

Executive summary

In January 2011, after 23 years under the authoritarian rule of President Zine El Abidine Ben Ali, the Tunisian people joined together in an uprising that ultimately brought his regime to an end. The so-called Jasmine Revolution – also known as the ‘Dignity Revolution’ or the ‘social media revolution’ – is widely recognized as the first chapter of the Arab Spring, inspiring a wave of uprisings in its wake across the Middle East and North Africa (MENA) region.

The demonstrations in Tunisia began with the desperate and symbolic gesture of street vendor Mohamed Bouazizi who, on 17 December 2010, set himself on fire in front of the provincial governor’s headquarters in Sidi Bouzid, one of Tunisia’s most economically depressed regions, in protest against police harassment. On the same day, angry citizens had filled the streets in Sidi Bouzid and soon protests spread to other cities until they reached the capital, Tunis, forcing Ben Ali to flee to Saudi Arabia on 14 January 2011.

Nevertheless, the 2011 uprising was also rooted in a much longer history of injustice and discrimination, and had been preceded by a number of protests that highlighted popular discontent against the government. This included months of unrest in Gafsa in 2008, driven by corruption and unemployment, that were brutally repressed by authorities, with three demonstrators killed, many others wounded and several handed lengthy prison sentences.¹ Similar protests that took place in Ben Gardane in August 2010 were also met with violence by police.²

Profound social frustrations, rooted in deep economic inequalities as well as the state’s systematic human rights violations, are commonly accepted as one of the primary drivers of the Tunisian revolution. According to governmental figures from 2011, the unemployment rate was at 18.9 per cent, with even higher rates for certain governorates (South, Centre-West and North-West). The levels were especially high among university graduates, where the rate reached 48 per cent in some cities.³ However, while the human rights environment has improved significantly, the country’s economic challenges remain: indeed, the protests that took place across the country in 2016, starting from Kasserine, attest to the continued difficulties many Tunisians face in securing adequate employment.

The dearth of opportunities in Tunisia’s marginalized peripheries, in particular, has been driving significant

migration of rural dwellers to urban centres in search of employment.⁴ Along with high levels of poverty and joblessness, these regions are typically among those with the most sizeable minority and indigenous populations – yet to date, the perspective of these communities in the development of regional strategies has been largely invisible. More broadly, too, Tunisia’s religious and ethnic minorities still struggle for public recognition. This is due in part to the absence of official disaggregated data on ethnic and religious minorities in general, especially their distribution in different regions, as well as an extended process of Arabization that only increased in the decades following Tunisia’s independence in 1956. These conditions have not only obscured the extent of the country’s diversity, which many are now trying to celebrate and revive today, but have also undermined the rights of these communities to full citizenship.

Today the legacy of the Jasmine Revolution, almost eight years after the removal of Ben Ali, is uncertain. On the one hand, Tunisia’s economic travails continue, reflected in the recent drop in the value of the Tunisian dinar and the persistence of high levels of unemployment. On the other hand, in terms of civil and political rights, while much remains to be done, Tunisia has made remarkable progress since 2011. In many ways, it offers a hopeful model for the promotion of democratic reform and human rights not only to its neighbours in the region, but also other countries across the world.

This report, *Identity and Citizenship in Tunisia: The Situation of Minorities after the 2011 Revolution*, documents Tunisia’s achievements to date and also the significant rights gaps that many Tunisians, including its minority and indigenous populations, face. Drawing on interviews with community representatives and activists conducted between August and October 2018, as well as previous fieldwork and an extensive review of the available literature, legislation and media coverage, it explores the extent to which the Jasmine Revolution and the country’s subsequent democratic transition has benefitted and included its minorities.

Promisingly, reform of Tunisia’s restrictive legislation, introduced in particular during the Presidency of Habib Bourguiba (1956-87), has already begun and entrenched social prejudices, evident in traditional media as well as online, are also now being challenged. Nevertheless, given

the lack of an official discourse on minorities and diversity, as well as a public and education system centred around a narrowly defined Arab-Muslim identity, minorities and indigenous peoples are still treated in some respects as secondary citizens compared to their fellow Tunisians.

On 9 October 2018, while this report was being written, the Tunisian Parliament passed a law criminalizing racial discrimination. This important milestone was made possible by the efforts of Tunisia's flourishing civil society and again sets Tunisia apart as a pioneer in the region. However, continued efforts must be made to strengthen the effective participation of Tunisian

minorities in the country's civic life, as well as combating overt and latent forms of discrimination. Securing full citizenship for all Tunisians and celebrating the country's diversity are essential elements in its future stability and social cohesion: this will require not only governmental efforts, but the broader engagement of schools, media, judiciary, executive bodies and civil society, including Tunisia's majority communities.

'We have to invest in education, teach about difference and history, because diversity has always been there.'
Jewish woman, Djerba, August 2018

Introduction

Democracy, human rights and the legacy of the Jasmine Revolution

Since the outbreak of the 2010/11 Jasmine Revolution and the ousting of the Ben Ali regime after more than two decades of political repression, Tunisia has made remarkable progress in its transition to a functioning democracy. By 2015, only four years after the uprising, Tunisia had already passed a new Constitution and held fair parliamentary elections. A coalition government was formed the same year as a result of the negotiations between the secularist Nidaa Tounes party and the Islamist Ennahda: the latter subsequently dropped its Islamist label in May 2016 to redefine itself as a party of Muslim democrats.

Many reasons have been put forward to explain why Tunisia was the most – if not the only – successful ‘Arab spring’. For some, this was due to the ‘exceptionality’ Tunisia already enjoyed in terms of women’s rights, modern education and religious moderation, as well as its relatively homogenous population and the non-existence of sectarian tensions.⁵ Other factors include the important role of spontaneous youth movements and social media.⁶ The Union Générale Tunisienne du Travail (UGTT) is also credited with playing a major role in the country’s politics, first in guiding the country’s independence movement and subsequently supporting civil society during the revolution and its aftermath.⁷ The contribution of other significant players at key moments, such as the legal profession and the army, has also been acknowledged.⁸

Nevertheless, under Ben Ali Tunisia also suffered many of the same issues – the repression of civil and political freedoms, regular human rights violations, arbitrary detention, imprisonment without trial, torture, harassment of political opponents and state corruption – that plagued other countries in the region on the eve of the Arab Spring. Some of these issues have since been positively addressed. For example, freedom of expression and assembly is now almost absolute: this is reflected in the proliferation of civil society organizations (CSOs),⁹ as well as the new 2014 Constitution which is grounded in civil law and guarantees the basic rights of all citizens.

However, though Tunisia is indeed recognized as a secular state, shari’a law still influences certain laws and practices, as outlined in more detail below – with implications in particular for women as well as minorities.

Furthermore, despite a series of reforms to strengthen individual rights – for example, an amendment of the code of criminal procedures was introduced in 2016 giving detainees the right to a lawyer in pre-charge detention, so reducing the threat of torture and forced confessions¹⁰ – authorities ‘continue to arrest, convict and imprison Tunisian and non-Tunisian men and women based on unconstitutional and therefore obsolete police and judicial practices and legal texts’.¹¹ This is evident in the severe human rights abuses that LGBTQI+ groups still experience, despite the guarantees of individual freedom and integrity in Articles 23 and 24 of the new Constitution, including forced anal examinations.¹² This is in part the result of the continued existence of Article 230 of the Penal Code, which criminalizes homosexuality with a jail sentence of up to three years: as in other areas, recent legislative advances are at times contradicted by older legislation that has yet to be amended.

Minority perspectives on post-revolutionary Tunisia

While Tunisia is regarded as relatively homogenous compared to other countries in the region,¹³ with a population overwhelmingly Arab in its ethnicity and Sunni Muslim in its religion,¹⁴ this image – continuously promoted by the Tunisian government since independence¹⁵ – obscures the country’s significant and longstanding diversity. Indeed, the now dwindling Jewish community is one of the oldest in the world, while Amazigh have been indigenous in the region for millennia, long before the Muslim conquest of North Africa in the seventh century: a significant share of the Tunisian population has Amazigh ancestry.

However, centuries of assimilatory Arabization policies, the limited availability of concrete data on Tunisia’s minority and indigenous populations and the barriers communities may themselves experience in terms of identification and self-expression have contributed to

their invisibility. Tunisia's post-colonial politics, beginning with Bourguiba's authoritarian rule from independence (1956) until 1987, followed by Ben Ali's regime until his ouster in 2011, has largely marginalized the role of those groups who fall outside the narrowly defined Arab and Sunni Muslim identity promoted by the state. At the same time, while the bulk of its investment and infrastructure have been concentrated in the country's capital and coastal regions, other areas – in particular, the south and west of Tunisia – have seen little development and experience some of the highest poverty rates.¹⁶ 70 per cent of those living in extreme poverty live in the North-West, Central-West and South-West regions, despite constituting only 30 per cent of the overall population.¹⁷

As many members of ethnic minority and indigenous communities, such as Amazigh and black Tunisians, reside in the impoverished south of the country, these geographic inequalities reinforce their marginalization. While religious minorities are present across Tunisia, a large proportion of the Jewish and Ibā'ī populations are located on the island of Djerba. The general context of economic crisis and unemployment, while affecting the entire population, has had particular implications for those residing in the country's peripheries as they have been forced to migrate to larger towns and cities to find employment, a process that can lead to the attrition of their traditions and beliefs.

In this context, the emergence of a vibrant and more inclusive space of expression for all groups following the revolution, confirmed by the testimonies of respondents in this report, offers a unique opportunity to address the exclusion of its minority and indigenous communities. This process is on-going, however, and gaps remain. For religious minorities, while some groups such as the Jewish community have benefitted from a certain level of recognition even before the revolution, other faiths such as Bahá'í have yet to be recognized despite general legal guarantees of religious freedom already in place. It is largely the case that ethnic minority and indigenous community members have so far seen greater benefits in terms of greater public participation since 2011: for instance, through the creation of Amazigh associations or the passing of the October 2018 anti-racial discrimination law.

For all of these communities, while significant strides have been made in recent years, the struggle for full recognition continues. This report offers an overview of the main challenges groups face in Tunisia today.

'All I care about is to include in the education system that Tunisia is pluralist, that we talk about Christians, Amazighs, et cetera – to show the real Tunisia. That we say that there were Jews in Tozeur [a city in Southern Tunisia], that we don't deny it. There's a whole existing culture. When someone in the media or a Minister says that Tunisia is 100 per cent Muslim, it is a speech of indifference and denigration.'
Jewish woman, Djerba, August 2018

Structure of the report

This introduction gives a brief overview of recent developments in Tunisia following the revolution, especially in terms of human rights and minority rights in particular. It also highlights some of the findings of the field research.

The first section briefly analyses the national jurisprudence and goes into detail on some relevant case law for minority issues, as well as Tunisia's international human rights obligations and international case law.

The next section focuses on religious minorities, in particular Jews, Christians, Ibā'īs and Bahá'í. It also provides a case study on the situation of minorities in Djerba, as an example of successful coexistence, while still highlighting some of the main challenges. Other smaller groups have unfortunately not been included, such as Shi'a and Sufi Muslims, because of lack of space and access to information. A small section is dedicated to atheism.

The section after focuses on ethnic minorities and indigenous peoples, in particular Amazigh and black Tunisians. A case study is provided on black migrants to highlight common issues of racism and other intersectional issues.

The final section at the end of the report includes conclusions about the findings and some recommendations.

Methodology

This report is based on a detailed desk review of primary and secondary sources, monographies, international treaties, national legislation and case law, online resources and NGOs documentation work, accessed in English, French and Arabic. Field interviews with four religious minority representatives, four ethnic minority representatives and one ethnography researcher were also conducted in August and September 2018. First-hand observations also informed the report as the author lived in Tunisia between 2014 and 2017.

The aim of the interviews was to focus on the situation of minorities in post-revolutionary Tunisia, according to the framework provided by the 2014 Constitution, and analyse the ways that the country's official Arab-Muslim identity impacts on Tunisia's minorities and multiculturalism. While respondents were asked a series of set questions, the author also let respondents express themselves on issues they felt were of concern. In October

2018, four other minority representatives were also interviewed to follow up on specific issues.

Overall, respondents felt at ease in expressing themselves about these issues and had no security concerns. The interviews were often conducted in public spaces, such as local coffee houses. Some of the respondents preferred to stay anonymous to avoid complications arising from either their own community or general society.

Legal background: minority and indigenous rights frameworks in Tunisia

This section provides a short overview of Tunisia national and international law as it relates to minority and indigenous rights, focusing primarily on developments over the last 10 years. Beginning with a description of Tunisia's domestic legal frameworks and then moving to its international commitments, it outlines a number of well-established trends in Tunisia. These include, in the area of racial discrimination, the treatment of Amazigh as a culturally assimilated group and the lack of recognition afforded to other ethnic communities such as black Tunisians. In religion, too, despite its guarantees of religious equality and freedom, the Tunisian government is still reluctant to acknowledge other religions besides the officially recognized 'Abrahamic' religions of Islam, Christianity and Judaism, such as the Bahá'í faith.

Nevertheless, as the text below outlines in greater detail, there have been some significant signs of progress since 2011, particularly in the area of racial equality, with the government appearing to be more engaged in international reviews while taking steps to strengthen protections for minorities at home through legal reforms – most notably, the Law on the Elimination of All Forms of Racial Discrimination in October 2018 criminalizing hate speech, incitement to hatred and other acts.

Domestic jurisprudence and case law

The most relevant national jurisprudence that concerns, directly or indirectly, minority groups are the Tunisian Penal Code,¹⁸ the 2014 Constitution, the 1956 Code of Personal Status, and some administrative directives and decree laws. Besides the legal texts themselves, this section will also briefly examine their application while considering some recent cases. It should be noted that there is no public database to access national case law and the help of a Tunisian lawyer is required to access the relevant files in tribunals and courts. The information in this section is therefore based on available information in the public domain.

Tunisia is generally regarded as a secular state. The first modern text guaranteeing secularism was the Pacte de la

Paix introduced in 1857 by Mohammad Bey, granting civil and religious equality to all subjects.¹⁹ Just a few years later, in 1861, the Constitution ensured the protection and equality of all citizens, regardless of their religion.²⁰

The first Republican Constitution, issued in 1959, similarly guaranteed the 'free practice of religious beliefs, provided this does not disturb public order.'²¹ Since 1957, when the Qur'anic and Rabbinical Courts were abolished, Tunisian jurisdictional system has also been unified: official documents, such as birth, marriage and death certificates do not contain information about a citizen's religion (as it is the case in other countries in the region, such as Egypt).²² And while before independence there were three types of tribunals in Tunisia – shari'a (for the Sunni majority), French (for non-Tunisian Christians) and rabbinical (for the Jewish population) – following independence, Bourguiba passed some institutional and legislative changes in order to unify the judiciary system. Since then, one civil code has applied to all citizens, though some traces of Islamic law can be found in branches of law related to issues of marriage and heritage, as is discussed below.

After the 2011 revolution and the elections for a Constituent Assembly, a final version of the Constitution was issued in 2014. This text, the result of long negotiations between more conservative and liberal elements, is highly progressive and enshrines all fundamental freedoms and rights. However, the underlying tension between religion and secularism can be seen by the fact that while Tunisia is described as 'a civil state based on citizenship, the will of the people, and the supremacy of law' (Article 2), it is also stated that 'Tunisia is a free, independent, sovereign state; its religion is Islam, its language Arabic, and its system is republican' (Article 1). While there is no provision that elevates religion to a source of legitimacy for political power, there is nevertheless a tension in the underlying assumption that Tunisia is a Muslim country: this results in the imposition of Islamic precepts into private areas of civic life by police and the judiciary, creating particular problems for the country's minority population.

One area of contention for Muslims is the right to give up or change religion (*Al Ridda* in Islam). Article 6 of the

2014 Constitution is very clear on this issue: ‘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 instrumentalization. The state undertakes to disseminate the values of moderation and tolerance and the protection of the sacred, and the prohibition of all violations thereof. It undertakes equally to prohibit and fight against calls for Takfir and the incitement of violence and hatred.’ This is however threatened by conservative forces within Tunisian society, as well as elements in the police and the judiciary. In fact, conversion is notably not a problem if a non-Muslim citizen wishes to convert to Islam, but strong pressures are exerted to prevent Muslims choosing another faith.²³

Tunisia has long been recognized as the most advanced country in the MENA region in terms of women’s rights.²⁴ The Tunisian Code of Personal Status of 1956 is a paramount achievement in this regard, especially in terms of family law, as it abolished polygamy, eliminated the husband’s right to repudiate his wife and allowed women to file for divorce. Women have also been able to vote since 1957. Article 46 of the 2014 Constitution defines parity as ‘the equality of opportunities between women and men to have access to all levels of responsibility and in all fields. The state seeks to achieve equal representation for women and men in elected councils’. A public debate was sparked around the reference of Article 28 of the Constitution in the 2012 draft Constitution to the ‘complementarity’ of men and women: after a widespread popular outcry, the phrasing was considered controversial and was finally replaced by equality.²⁵

However, gender disparities still persist in Tunisia in many areas of life. For instance, cases of child marriage and forced marriage to rapists – perceived to save ‘family honour’ – have continued to be practiced. Indeed, Article 227 *bis* of the Penal Code allowed for the rapist to marry their victim: however, after a court ruling in December 2016 saw a 13-year-old girl ordered by a court to marry the stepbrother who had made her pregnant, widespread public outrage led to the eventual repeal of the legislation in August 2017.²⁶

Furthermore, while the Code itself is silent concerning mixed marriages, for decades an administrative directive was in place prohibiting Muslim women from marrying non-Muslim men.²⁷ This created issues not only for Muslim women wanting to marry a non-Muslim (who had to convert before the marriage could take place), but also for atheists and those who converted from Islam to other religions. The directive was only formally abolished in September 2017.²⁸ However, some officials have been reluctant to repeal these regulations. For instance, the mayor of Kram, lawyer Fathi Laayouni, announced at a

press conference held in August 2018 his decision to ban in his city hall the marriage of a Tunisian woman with a non-Muslim. He said he would only allow marriages where the latter can prove his conversion to Islam, ‘in application of Articles 1 and 6 of the Constitution and Article 5 of the Personal Status Code (CSP).’

In another announcement the newly installed mayor stated that the municipality would only accept birth registration using first names of Arab origin, ‘being of Arab-Muslim origin as also stipulates the Constitution’.²⁹ Furthermore, the website of the Municipality of Tunis in both its Arabic and French versions still requires paperwork proving that a foreign male spouse has converted to Islam before the marriage is formalized: the website was not yet updated at the time of writing.³⁰

All marriages are registered at the municipality as civil marriages. It is technically up to the couple to decide whether they wish to add a religious ceremony. However, in practice, groups such as Bahá’í and converted Christians testified that they faced difficulties registering their marriages in certain municipalities. According to the Bahá’í respondent, they therefore tend to go to municipalities that are known to the community for allowing their registration.

In terms of marriage and children, too, religion has been invoked through the interpretation of Book Nine of the Code of Personal Status. Because of this and the aforementioned directive, if a Tunisian man married a non-Tunisian woman (regardless of whether she was Muslim or not), his children were automatically recognized as Tunisian, and the non-Tunisian woman could easily apply for Tunisian citizenship (according to Article 13 of the Code of Tunisian Nationality, she acquired Tunisian nationality from the moment the wedding was celebrated).³¹ However, if a Tunisian woman married a non-Tunisian man, the process of obtaining Tunisian citizenship was much more complicated and children were not recognized by the Tunisian state if the marriage was not recognized. Tunisian women often used to refer to the administrative tribunal to have their marriages recognized.

Ben Ali made an amendment to the Code of Personal Status in July 1993 which gave the right to the woman to pass on her surname and nationality to her children like her husband, even if she was married to a foreigner, on the sole condition that the father of the children had given his approval. While amended again in 2010 to allow men and women alike the ability to pass on their citizenship to their children, this provision appeared to only apply for children born outside the country: those born in Tunisia are recognized as Tunisian ‘if the child’s father and grandfather were also born there.’³² Even if the directive has now been abolished and Tunisian women can marry

non-Tunisian men in Tunisia, problems persist when it comes to the residency status of non-Tunisian husbands.³³

Shari'a law also applies in matters related to inheritance; this branch of law is relatively complex as it does not simply distinguish sons and daughters, but also involves the whole family and considers the degree of proximity to the deceased person. Generally speaking, women still receive half of what their brothers receive from their parents, unless parents decide otherwise, regardless of their religion. As the man is considered to be the main provider, the inheritance always goes through the father's side first, so the wife and his children must share their inheritance with the deceased man's family side. On 13 August 2017, President Mohamed Essebsi called on Parliament to reform the discriminatory inheritance law as well as other laws concerning gender equality and created a commission mandated to propose legal reforms to align existing legislation with the provisions of the 2014 constitution. The commission that was mandated is called the Commission on Individual Freedoms and Equality (COLIBE) and presented its final report in June 2018.

The report proposed several recommendations including complete equality between sons and daughters in terms of inheritance, by referring to the discriminatory nature of Article 119 and other articles in Chapter Five of Book Nine of the Code of Personal Status. They also recommended that children of Tunisians be equally recognized as Tunisians, regardless of the gender of their parents. The report is currently being studied by the Parliament, but was widely criticized by conservative forces, particularly on the issues of equality in inheritance, the decriminalization of homosexuality and the abolition of Muslim/non-Muslim distinctions. A number of demonstrations were held, including a large gathering of thousands of protests outside the Tunisian parliament in August 2018.³⁴ A counter demonstration in support of the COLIBE report was organized in August by civil society organizations. Of a number of different options presented by COLIBE, including granting full equality by law for male and female heirs, the Tunisian Parliament at the time of writing had chosen to allow individuals the right to decide on how to share out their inheritance among their male and female heirs.

Even after the revolution, certain legislation continues to be applied in a way that enforces Muslim observance. In particular, Articles 226 and 226 *bis* of the Penal Code on public decency have been applied very broadly to condemn behaviours that are perceived to go against Islamic beliefs. For instance, while there is not law requiring Tunisians citizens to fast during Ramadan, in June 2017 the Court of First Instance in Bizerte convicted at least five people of 'public indecency': one for smoking and four for eating in public during the day in Ramadan.³⁵

Another area where the law is applied unevenly is with the protection of the sacred and incitement of hatred, which is generally used only to protect Islam, despite well publicized incidents of hate speech against minorities. The penalties can be substantial. Two Tunisian youths, Ghazi Beji and Jabeur Mejri, were sentenced in 2012 to seven and a half years in prison after posting caricatures of the Prophet Mohammed on Facebook. They were convicted under Article 121 (3) of the Penal Code, for publishing material that is 'liable to cause harm to the public order or public moral.' Beji was convicted in absentia, having fled to Europe, while Mejri was released in 2014 after serving two years.³⁶

Despite some legislative progress, then, Tunisia's pre-2011 legislation continues to influence the human rights environment today. This also has implications for the country's indigenous Amazigh population, who are still affected by the Arabization of the Bourguiba era. In particular, Decree Law no. 59-53 of 1959, which is still valid, prohibits the use of 'names that do not have an Arabic root, unless they have a long-established usage in the Arab Maghreb'.³⁷ This clearly discriminates all non-Arab groups and particularly the Amazigh community, who are obliged to register using Arab names. There have been several cases in recent years of people who wished to register their children with Amazigh names and were prevented from doing so because of this old decree.

The preamble of the 2014 Constitution emphasizes the country's 'Islamic-Arab identity' but makes no mention of the Amazigh community who, besides being ethnically distinct from the Arab majority, have also been indigenous to the country for thousands of years. Yet neither the Constitution, nor other important legislation such as the Penal Code, provide concrete guarantees of indigenous rights in general or Amazigh rights specifically. The 2014 Constitution, while progressive in many areas, has been criticized for overlooking the existence of the Amazigh community in its text.³⁸

For Tunisia's non-Arab population, however, the problem in Tunisia has been not only the presence of discriminatory legislation but also the absence of measures to prevent and prosecute racial discrimination when it occurs. Indeed, until very recently there was no legal acknowledgement of racial hate crime or hate speech in Tunisia, reflecting a broader reluctance within Tunisian society against racism. Despite the 2014 Constitution's affirmation of the equality of all citizens and their rights to live without discrimination,³⁹ until October 2018 there was no specific legislation criminalizing racial discrimination and so no formal judicial avenue for victims of racism to pursue.

Over the last year, however, there has been significant progress made in this area. On 17 January 2018, a draft law against racial discrimination was approved by the

ministerial council and moved to the general assembly. On 23 October 2018, Law no. 50 was approved by the Parliament. The law envisages up to three years of prison and fines for acts of racial discrimination (depending on the gravity of the act) and includes protection of migrants from such acts. Apart from providing legal protection, the law foresees the creation of public policies and practices to support the growth of a positive human rights environment, as well as establish a national committee to combat racial discrimination under the supervision of the Minister of Human Rights. The law also refers to Tunisia's international commitments.

International human rights obligations and international case law

Tunisia has generally ratified the majority of international conventions as soon as they were issued, with a few exceptions.⁴⁰ Tunisia voted in favour of both the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the 2007 Declaration on the Rights of Indigenous Peoples. Finally, Tunisia is also a signatory to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005), where the importance of protecting minorities' and indigenous peoples' cultural expressions is recognised (Articles 2 and 7).

However, in practice Tunisia's observance of international human rights standards up until 2011 was generally poor. While Article 20 of the new Constitution affords international treaties ratified by the government 'a status superior to that of laws and inferior to that of the Constitution',⁴¹ it remains to be seen how this will be reconciled with pre-existing legislation like the Penal Code that is not in line with the international agreements. This section will focus only on the instruments that have dealt with minority rights over the past 10 years.

With regard to Article 27 of the International Covenant on Civil and Political Rights (ICCPR), concerning ethnic, religious and linguistic minorities and their right to enjoy their culture, religion and language, Tunisia affirmed in its last report from 2007 that 'Berbers [*Imazighen*], representing the indigenous population, do not form a minority asserting its specific character since they are citizens who are fully and completely integrated into the social fabric'.⁴² In its response, the UN body responsible for supervising implementation of the treaty, the Human Rights Committee (HRC), countered that the Amazigh community was demanding the protection and promotion of their culture and language.⁴³ Tunisia

rejected this, however, claiming that 'No attempt has ever been made in Tunisia to assert rights belonging to a specific category. Unlike in other countries, there is no such thing as an ethnic minority in Tunisia'.⁴⁴ No remark was made regarding this point in the HRC's 2008 concluding observations.⁴⁵

As for the Committee on the Elimination of Racial Discrimination (CERD), the last report submitted by Tunisia dates to 2007. In its introduction the state said: 'Although the Committee has stated clearly that it "does not accept any State party's assertion that there is no racial discrimination in the State party, and recommends that Tunisia avoid such generalizations in future reports" (CERD/C/62/CO/10, para. 9), it must be reaffirmed that the phenomenon of racial discrimination is basically non-existent in Tunisia. The country has been a melting pot for diverse peoples and civilizations, so that most Tunisians are no longer aware of their ethnic and racial origin, and feel no need to look into the matter'.⁴⁶ The committee recommended that the government 'conduct studies in order to effectively assess and evaluate the occurrence of de facto racial discrimination by individuals, groups or organizations'.⁴⁷ It also called for the government 'to take account of the way in which the Amazigh perceive and define themselves', with a view to strengthening the protection of their language, culture and identity,⁴⁸ as well as increase its focus on the human rights situation of its sub-Saharan African migrant population.⁴⁹ In this case, too, there was neither an official response from the Tunisian government nor a follow-up report by CERD.

All this confirms the longstanding reluctance of the Tunisian government to acknowledge the existence of racism. While it is impossible to say what Tunisia's position will be in future reporting periods, a number of positive improvements concerning the national bill on racial discrimination and the acknowledgement of the existence of racism within Tunisia by the Ministry of Human Rights suggest that the state's attitude is evolving positively towards a stronger emphasis on inclusion. While the country's next report to the HRC, due in 2018, was not published at the time of writing, a partial shift in official policy is evident in the two most recent review processes: the Committee on Economic, Social and Cultural Rights (CESCR) and the Universal Periodic Review (UPR).

In the CESCR review, which took place in 2016, neither the initial state report nor the committee's list of issues included any mention of the Amazigh people. However, the *Congres Mondial Amazigh*, an international Amazigh umbrella NGO, submitted a shadow report highlighting issues of cultural assimilation and marginalization,⁵⁰ some of which were taken into consideration by the committee. Indeed, some of the committee's concluding observations

called on the government to recognize Amazigh language and culture and provide education in these areas, as well as allow the use of Amazigh names and collect disaggregated data to determine the actual situation of the Amazigh community. The committee also prompted the state to provide a legal framework against discrimination based on Article 2.2 of the Covenant, which includes racial discrimination. It also noted that the economic inequalities between the coastal and internal regions in areas such as poverty and unemployment also had strong ethnic dimensions, with certain groups disproportionately affected.⁵¹ While the state has yet to provide any reply or a follow-up report on the implementation of the concluding observations, making it difficult to determine to what extent the government's position has in practice shifted, it is encouraging that the *Congres Mondial Amazigh* organized their annual international meeting in Tunisia for the second time in October 2018.

The processes around the last UPR, which took place in May 2017, also pointed to some improvements. The state report, besides drawing attention to the creation of a National Commission to Combat Racial Discrimination,⁵² also accepted three related recommendations: to accelerate the process of adoption of a relevant legislative and regulatory framework for combating racial discrimination (Congo); to criminalize racial discrimination and enforce laws which protect the rights of the black population (Sierra Leone); and to adopt a law prohibiting racial discrimination, including criminalizing such behaviour (South Africa).⁵³ This is likely to have contributed to the subsequent passage of Tunisia's law on racial discrimination in October 2018. Moreover, the state also accepted a recommendation to protect the economic, social and cultural rights of Amazigh (Peru).⁵⁴

Tunisia also stated in its 2006 submission to the HRC that its only religious minorities were the Jewish and Christian communities, the latter formed 'mainly of

Western women living in Tunisia who have acquired Tunisian nationality following marriage to a Tunisian man',⁵⁵ and that both enjoy all the rights set forth in the article. In line with what it reported to the HRC in December 2006, the government mentioned that there are 5,000 non-Muslims in Tunisia, of whom 3,000 were Jewish and the remainder Christian.⁵⁶

No reference was made during the last UPR on the rights of religious minorities. However, it is important to note that the Special Rapporteur on freedom of religion or belief, Dr Ahmed Shaheed, visited Tunisia from 9 to 19 April 2018. In a statement on his preliminary findings, delivered on 19 April 2018, he observed that the Constitution requires that the Head of State be a Muslim and that the State is required to be the 'guardian of religion' and to undertake to 'protect the sacred'. He concluded that 'this could be a source of numerous problems, if this provision is interpreted as an obligation upon the state to protect religion per se rather than individuals'.⁵⁷ He also stressed the importance of reconciling certain existing laws with the 2014 Constitution, such as the use of public order codes to prosecute public consumption of food during the day in Ramadan, support inheritance laws that are unfavourable to women, penalize speech that is critical of religion and criminalize same-sex relations. Among other issues, he also highlighted incidents of harassment or coercion directed at converts, as well as threats and attacks on atheists and indirect restrictions on certain groups, such as Bahá'í, who are still not permitted to register as a national association. A final report will be presented in March 2019.

Further reform of the Penal Code has been announced by the Tunisian Government in 2018. It will be interesting to see if the aforementioned legislation, currently used to restrict freedom of religion and belief among certain communities, will be removed or amended in line with the 2014 Constitution.

Religious minorities in Tunisia

Tunisia is not usually considered as a country with a significant minority population, and this is demonstrated by the lack of attention given to this country in published research on minorities in the MENA region.⁵⁸ While it is true that, compared to other countries in the region, Tunisia's demographic appears less diverse, this does not justify the general lack of information on these groups. Indeed, this discourse runs the risk of erasing the existence of communities who have inhabited the region for millennia, so reinforcing their secondary status.

In terms of religion, while many sources cite figures suggesting that between 98 and 99 per cent of Tunisians are Sunni Muslim,⁵⁹ the absence of disaggregated data and the lack of recognition for religions other than Sunni Islam, Christianity and Judaism means this is difficult to confirm. In addition to Christian and Jews, however, there are also small communities of Bahá'í, non-Sunni Muslims such as Ibāḍīs, Shi'a and Sufis, as well as an unknown number of atheists. While strictly speaking, legal texts simply refer to 'Islam' without specifying which school (for example, Article 1 of the Constitution), this refers implicitly and specifically to Sunni Islam, and in particular to the Mālikī school. Shi'a Islam remains largely ostracized and for this reason little information on the community, including population estimates, is available.

The picture is complicated further by the reluctance of some religious communities to be identified as minorities out of fear that this may compromise their claims of equal citizenship. This is rooted in the historic *dhimmī* system, first introduced following the Muslim conquest in the seventh century to provide a measure of protection to *ahl al-kitāb* (literally, 'the people of the book': Jews and Christians). *Dhimmī* status, while guaranteeing the continued existence within Muslim societies of Christianity and Judaism, nevertheless established a separate and ultimately inferior status for these groups. *Dhimmī* communities, though exempt from certain responsibilities applied to Muslims, were also required to pay a special tax (known as *jizya*) and were often not afforded equal political rights.⁶⁰ Another reason for the resistance of some to the concept of minority is the legacy of colonial rule.⁶¹ In fact, minorities were in some cases privileged by colonial authorities – a situation that at times fostered a sense of mistrust among the majority population. This explains the fear of some that a minority

protection framework could actually reintroduce a system of parallel and unequal citizenship.

Tunisian Jews

There were approximately 20,000 Jews at the end of the nineteenth century, of whom an estimated 18,000 had ancestry in Tunisia stretching back to the Roman era, with a smaller group (1,000-2,000) composed of more recent arrivals from Spain and Italy. Those living on the island of Djerba, in Southern Tunisia, may have arrived as early as 586 BCE, according to Jewish oral tradition, after the destruction by the Babylonians of the temple in Jerusalem.⁶²

In 1857 reforms to grant civil and religious equality to all subjects were introduced by Mohammed Bey, prompted also by European economic interests.⁶³ Before the French occupation in 1881, however, Jews in Tunisia had lived for centuries with *dhimmī* status. This provided a level of protection they did not experience in Europe, as well as rights they did not have in Morocco and Algeria,⁶⁴ although accompanied by a measure of inferiority.⁶⁵ During the French protectorate, starting from 1910, Jews could become naturalized French citizens, though they lost this preferential status in 1940 following the occupation of northern France by Nazi Germany and the installation of the collaborationist Vichy Regime in the south.

The Jewish community in Tunisia was in fact affected by a series of discriminatory laws issued by Vichy France, such as a ban on the practice of certain professions. This legislation had to be submitted to the bey for signing, which allowed governors such as Moncef Bey to slow down their implementation. However, this did not prevent anti-Semitic sentiment from spreading and the community was occasionally attacked.⁶⁶ The worst period was during 1942-1943, when Tunisia was under Italo-German occupation and the Jewish population was condemned to forced labour.⁶⁷

By the late 1940s, the Jewish community had reached a peak of around 100,000.⁶⁸ However, this period also saw the beginning of a rapid decline in the Jewish population as many Tunisian Jews decided to emigrate, in three main waves: after the creation of Israel in 1948, following independence in 1956 and in the wake of the Arab-Israeli war in 1967. Their situation improved after the war and in

the years preceding independence. When autonomy was granted in 1954, the Jewish nationalist Albert Bessis was appointed Minister of Urban Planning and Housing and was followed by the Jewish André Barrouh upon independence in 1956. However, according to two of the respondents for this report, these appointments were perceived by many Tunisian Jews as a strategic move to appear inclusive and gain access to an old Jewish cemetery in downtown Tunis. Both figures remained in power for a few months only.

After independence, Bourguiba used Islam as a way of consolidating Tunisian national identity.⁶⁹ While Bourguiba was mindful of the Jewish minority and of distinguishing it from Zionism, which he vigorously denounced,⁷⁰ state control over religion was nevertheless extended over minorities as well, including the Jewish community. As the majority of Tunisian Jews were French-speaking, many feared this process of Arabization would undermine their identity.⁷¹ In the ensuing decades, then, the number of Tunisian Jews declined steadily, falling to a fraction of its former size.

Nowadays, there are only 1,500 to 2,000 Jews remaining in Tunisia,⁷² one third of whom live in the capital and the remainder in Djerba. While the Jewish community enjoys a range of protections and do not generally face direct persecution on account of their beliefs, more subtle and indirect forms of discrimination may take place. Despite the fact that discrimination on the basis of religion in the recruitment of public servants is banned by law, many Tunisian Jews in practice are not represented in certain areas of employment. Respondents for this report identified a range of factors for this, from a lack of self-confidence at an individual level, resistance from other members of their community and the persistence of prejudice from some officials (as well as the larger population) towards them. As a result, many believe that they cannot in practice take part in the army or hold other senior official positions. Moreover, Tunisians assuming certain functions, such as a judge or lawyer, must swear on the Qur'an as part of their induction ceremony. The very few Tunisian Jews and other non-Muslims who managed to overcome the considerable obstacles to studying law must then make this oath if they wish to continue working in this profession.

According to the current Constitution, Tunisian Jews, as well as other non-Muslim citizens, are now not allowed to become president of the Republic: according to Article 74, 'Every male and female voter who holds Tunisian nationality since birth, whose religion is Islam shall have the right to stand for election to the position of President of the Republic.' At the time the new Constitution was being drafted, during 2012-13, none of the members of the Constitutional Assembly involved in this process were Jewish: one community member had presented himself for inclusion but was not elected. More recently, a Jewish candidate ran in the May 2018 municipal elections in Monastir with the Muslim party en-Nahda. In November 2018, Prime Minister Youssef Chahad appointed the Jewish businessman Rene Trabelsi as Minister of Tourism – a significant moment for the Tunisian Jews, since only two previous community members have been appointed to cabinet positions since independence.⁷³

'People ask why Jews do not defend themselves. But why are Jews supposed to defend themselves? They are Tunisians, it's up to Tunisia to defend them.'
Jewish respondent, August 2018

There have been periodic incidents of hostility towards the Jewish community, including an attack in 2002 outside a synagogue in Djerba that left many dead, described in more detail below. A call to kill Tunisian Jews was issued by a Salafi leader in 2012, provoking the reaction of an outspoken representative of the Tunisian Jewish Community, Roger Bismuth, who filed a complaint before the public prosecutor at the Tunis Court of First Instance. In August 2018 a debate was also sparked in local media and online because Ilan Raccach, a Jewish man who was in prison since July 2018, was denied kosher food following pressure on the prison by certain conservative groups who accused Raccach of being an Israeli spy and the prison of treating him with favouritism. A friend of Ilan was subsequently beaten in Tunis by a group of people who also alleged he was also an Israeli spy – a not unusual accusation for Tunisian Jews due to a widespread perception that all Jews are associated in some way with Israel.

Coexistence on the island of Djerba

Arriving at the island of Djerba, the unique atmosphere of the place is immediately apparent: different religions have been peacefully coexisting for centuries, including a sizeable Jewish community as well as a number of other minorities such as Christians and Ibādīs. Among male islanders, faith is not a barrier for friendship, socialising and

trade between Djerba's populations. However, despite this mutual respect, there are limits to what is seen as permissible – particularly for women. Both Jewish and Muslim women and girls face considerable pressure not to mix with men if they practice another faith. Inter-marriage between the two communities is not encouraged: those

who fall in love with members of another faith typically face fierce opposition from their own families.

As in other parts of Tunisia, a significant proportion of the Jewish population left Djerba in 1967, with their homes then occupied by Muslims. Those remaining are still in the same neighbourhoods, known as the big and the small Hara, where they continue to adhere closely to their traditions. Visitors to the Hara are immediately enveloped in its welcoming atmosphere, where the smells of Jewish cooking mix with classic Arab songs, such as those of the renowned Egyptian singer Umm Kulthum.

Tragically, Djerba's peacefulness was broken in 2002 when an attack against the synagogue in Djerba, claimed by al-Qaeda, left 21 people dead, the majority German tourists.⁷⁴ Security has been provided by the government since. In general relations have remained cordial, though a number of anti-Semitic incidents have taken place. This included, against a backdrop of unrest across the country, the firebombing of a synagogue and a Jewish school in January 2018 on the islands.⁷⁵ However, generally speaking, relations on the island between different communities have always remained supportive and cordial.

In other areas of life, such as education and politics, a sense of separation persists. One respondent, a Jewish man, left school when he was 14 years old and has been working in the market of Djerba ever since. He is not active in civil society and reports that Tunisian Jews tend not to involve themselves in politics. When asked why, he explains that it reflects a deep-seated attitude that could be traced back to the Bourguiba era. He also states that his daily life had not changed substantively since the revolution, for better or worse: he enjoys the same rights and level of security as before.

In many ways, his experience of the education system was typical: most Jewish residents in Djerba drop out of school relatively early. Though schooling is obligatory is until the age of 16, Tunisian authorities do not check if students drop out of school before then. In the case of Djerba's Jewish community, men already know they will be working in trade, while most women will marry and take care of the house. For this reason, girls are usually allowed to study longer than boys because they do not need to go to work, so they usually remain in education until they get married. Women mostly deal with traditional crafts, sewing or patisserie and as the primary child carers are also responsible for transmitting their religion.

In the past, Saturday was a school day in Tunisia. This discouraged many Jewish children from attending as they had to respect the Sabbath. While this is no longer the

case, Jewish holidays are not publicly recognized to this day, meaning that those enrolled in public schools have an unjustified absence on these days. However, most Jewish children go to the Jewish schools in the Hara. There are three main schools there: one for boys, one for girls, and one that has girls in the morning and boys in the afternoon. Their curriculum is different from the public one and mostly focuses on religious studies, with one or two hours per day for general subjects such as mathematics that will help them once they are in employment.

While members of the Jewish community are not prevented from studying in public schools and universities, respondents felt that the subjects, the timetables and the food were not adjusted to them. They also receive pressure from their family and community, as studying in the public schools would mean studying Islam during the time set aside for religious education. Though a Higher Institute for Technological Studies was created in Djerba in 2013, anyone wanting to study another subject must leave the island, and most Jewish families do not want their children to live far from the community. The majority of the few Jews who decide to continue their studies either go to the capital or to France.

Even those who leave retain strong ties with the island. 'Djerbians will always remain Djerbians, even those who are born somewhere else', according to a Jewish resident there. Just like many others interviewed for this report, she rejects the label of minority. 'I am not a minority in my country'. She is one of the exceptions in the community, since almost all her family finished their studies. Though she has never been personally attacked for being Jewish, when she once happened to visit the police station for other reasons, the officer wrote in her file 'of Jewish origins'. She felt discriminated against as no one would write down 'of Muslim origins' in a police file.

She also feels that her life has not changed after the revolution. In Djerba, people know each other and do not engage in aggressive behaviour towards each other. Yet elements of discrimination at the national level persist, such as the restriction introduced in the 2014 Constitution on Tunisian Jews and members of other religious minorities from holding the highest office. 'Apparently I am an honoured guest in Tunisia. I cannot be President. No one [from the Jewish community] would have even dared trying, but the fact of making it explicit is a clear impairment.' Though she was asked to run in the recent elections, she refused. 'If I did present myself, I would have made the list fail, because people would have said that there is a Zionist in there.'

Christians of Tunisia

Not much information is available about Tunisia's Christian population. In 1856 there were approximately 12,000 European Christians in Tunisia.⁷⁶ As most of them were European, they were associated more closely in the minds of the general population with colonialism than other minorities such as Jewish community.⁷⁷ Nowadays, this religious minority is composed mainly of three communities: Christian Tunisians descended from European migrants and European Christians who are permanent residents of Tunisia; Christian sub-Saharan migrants; and formerly Muslim Tunisians who have converted to Christianity. Estimates by NGOs suggest that the total community does not exceed 5,000, with the large majority – close to 90 per cent – comprised of Catholics.⁷⁸ In 2007, the Tunisian government, in its submission to CERD, stated that there were only around 2,000 Christians in Tunisia.⁷⁹

The perception by many that Christians were connected to colonialism had significant implications for the community after Tunisia achieved independence in 1956. While Bourguiba made efforts to ensure Jewish citizens were able to practice their faith freely, Christians experienced a range of restrictions included in the Modus Vivendi agreement brokered by the Catholic Church in 1964 with the Tunisian government, a prohibition on the construction of new churches and the ringing of bells.⁸⁰

While these restrictions remain in place to this day, there are signs that the community is able to enjoy greater visibility since the 2010/11 revolution. On 15 August 2018, for example, the Festa della Madonna was celebrated for the second time in La Goulette, near Tunis, after decades in which it was not possible. La Goulette is a small town on the sea where there used to be an Italian population, mostly of Sicilian origin, though few families

live there today. Police were at the gate of the church and only people who 'looked Christian' were allowed to go inside. The ceremony followed the Catholic rite and was mostly recited in French, with some parts in Italian. At the end of a speech on coexistence in Tunisia, the sub-Saharan community launched into songs and danced. A big crowd impatiently waited outside the gates to see the statue of the Madonna being carried around.

Djerba also hosts a Christian neighbourhood that was once home to a large number of Maltese and Italian traders who often travelled to the island. According to our respondents, there were as many as 17,000 people living there until the early 1930s, but now only a few thousand remain. The neighbourhood hosts an ancient church, built by Maltese fishers and later abandoned, that is now used as a sport centre by the municipality. A few years ago an Italian priest, Padre Matteo, came to bring new life to it and at Christmas in 2017, he celebrated the holy festivity by inviting all the island's communities to a large concert where Muslims also joined in spiritual songs.

Some civil society organizations, such as the Tunisian Association for the Support of Minorities, report that there is nowadays a growing number of formerly Muslim Tunisians who have converted to Christianity. As discussed further below, while conversion is not criminalized under Tunisian law, the social taboos are so widespread that these groups generally prefer to remain hidden.⁸¹ Many face ostracization and even violence from their own families due to the stigma surrounding conversion.⁸² Converts may also be harassed by security forces and officials. In November 2016, nine young Christian converts were stopped in Gafsa by anti-terrorist forces and threatened if they did not renounce their faith. The security agents claimed they were targeted not on account of their religion but due to suspicious behaviour.⁸³

Case study: The challenges of life as a Christian convert

Badr converted to Christianity 10 years ago. He lost everything that day. Only recently has he managed to get in touch with his family again after he repeatedly tried to send them his love. Wherever he goes, he feels he cannot stay long because he is never safe. He speaks publicly about his conversion and his faith, and because of this he has been attacked on several occasions.

In a number of other countries in the MENA region, conversion from Islam to another religion is regarded as apostasy and can carry heavy penalties, including death, for those who choose to practice another faith. In Tunisia, the 2014 Constitution does not include any prohibitions on conversion and even goes so far, in Article 6, to actively

prohibit attacks on converts. Nevertheless, it remains the case that those who choose to renounce Islam, whether to convert to another faith or out of atheist conviction, can face significant social pressure. This is especially the case if they publicize their beliefs to others.⁸⁴

Neither Badr nor the majority of other Christian converts have changed their names. This is in part because, as Tunisians, they do not want to be associated with other countries: at present, all the churches in Tunisia are foreign. For Badr, the priority for Christian Tunisians like himself is to have a Tunisian church where people can pray in their mother tongue. Right now, converts must either go to foreign churches or attend private churches created

inside their homes. These gatherings are not safe as police could raid them at any time, although at present their existence appears to be tolerated. His group are now allowed to use a French church two hours every week, where they bring a variety of different schools and rites.

Badr has had the opportunity to seek asylum elsewhere, but he decided to stay because 'there are many things to be done here.' As a proud Tunisian, he is nevertheless aware of the continued barriers he faces. 'I am not a minority, I am a citizen, I vote and I pay the taxes. However, I don't have 100 per cent the same rights as everyone else'. Converts are frequently forced to conceal their faith for fear of losing their jobs. For example, a friend of Badr employed in the army was pressured to resign after his conversion. Badr was also

discouraged from doing military service, although he wanted to and military service is normally mandatory for all male Tunisians.

However, Badr is keen to stress that 'not everything is black'. When he used to go to the police to report incidents it was hard at first, but he finds that police are more helpful now. In his opinion the security on display during the Festa della Madonna was meant to protect the community, not to discriminate against it. Before it was impossible to find Bibles in Arabic in Tunisia, while now it is relatively easy.

Badr works closely with other minority groups, such as Bahá'í. 'We are all citizens, I work for human rights. I don't want just a church for myself – I want that Bahá'í also get their place of worship. Together we are stronger'.

Bahá'ism

Though likely numbering in their hundreds,⁸⁵ the exact number of Bahá'í in Tunisia is unknown: since the faith is not recognized by the state, official figures are not available and community representatives themselves are reluctant to produce estimates, given the fact that many remain unknown. The lack of recognition also leads to the absence of a gathering place and a higher discrimination compared to Tunisian Jews and Christians. For these reasons, it is difficult for Bahá'í to engage with each other, but Facebook appears to be the most widely used platform. The Facebook page of the Tunisian Bahá'í community currently numbers some 16,000 'likes'.⁸⁶ Clearly this cannot be considered as a reliable way of assessing the number of Bahá'í living in Tunisia, but it can perhaps be seen as reflecting a growing interest in the community.

It is believed that the Bahá'í faith was introduced to Tunisia in 1921 by Mohieddine Kurdi.⁸⁷ Bahá'í do not have clergy but are organized in local and national spiritual assemblies composed of nine worshippers (both male and female), a sacred number in the Bahá'í faith.

Nevertheless, the community has reported on-going harassment and discrimination. In 2008, a fatwa was issued by the Tunisian Mufti against the Bahá'í faith, with lasting implications for the community: in the words of one respondent, 'we pay the consequences until today'. As their faith is not recognized, Bahá'í are unable to register as a religious or civil organization, and their efforts to register as a CSO have so far have been rejected. In particular, the community has three pending cases. In 2012, the Bahá'í Association of Tunisia tried to register as a civil association advocating for non-discrimination, equality and unity. Their request was refused by the Prime

Minister because of the inclusion of 'Bahá'í' in the name. They went to the administrative tribunal to appeal this decision, but at the time of writing are still waiting for a verdict. They then started procedures for the same case before the Tribunal of First Instance. Their case was rejected there on the basis that the decision rests with the Prime Minister. In late 2017, the community sent a letter to the President of the Republic, the President of Parliament and the Prime Minister, denouncing the discrimination the community faced and asking for the recognition of their faith, in particular the National Spiritual Assembly. So far, they have not received a reply. This followed an incident in September 2017 where a 20-year-old Bahá'í was taken from his home near Monastir by police and questioned for several hours about his religion.⁸⁸ Respondents report that other members of the community have experienced similar episodes.

Tunisian Bahá'í are active in civil society and works within the framework of equal citizenship, organizing several events on coexistence. According to one respondent, 'our priority is to get involved in the societal life. We are not very interested in the legal questions, rather on how to help the country improve its understanding.'⁸⁹ Their main demand is the right to organize and operate legally. Because they are not recognized, they cannot have a bank account, organize money collection for the community or establish facilities to educate their children according to the Bahá'í faith. The community has also petitioned the Minister of Local Affairs to establish a Bahá'í cemetery, but have yet to receive a reply.

The Bahá'í marriage contract, recognized in several countries, is not recognized in Tunisia, but they can

register civil marriages like all other Tunisians. Many, because they do want to operate underground, many contact the municipality before their marriage and inform them that they are Bahá'í. Some municipalities then refuse to perform the civil marriage and they then must look elsewhere until they find one that is willing to perform the act. By now, they have identified the municipalities which are more open to the community. With regards to inheritance, they follow the Tunisian laws like other citizens, but they can make private contracts if they wish to apportion equal shares to their male and female children, as many Muslims in Tunisia also do.

Atheism

The situation today in Tunisia is particularly precarious for the country's atheists, who are usually identified as being culturally Muslim and for which no data is available. In fact, some prefer to stay silent out of fear of prosecution and stigmatization. Others may not consider themselves atheist but simply decide not to follow the common interpretation of Islam, so attracting persecution. A recent example of this was the conviction of non-fasters (*fattaras*) during the month of Ramadan in 2017 on the basis of article 226 and 226 *bis* of the Penal Code (offense to decency and good morals). Cases have been reported of youth being brought to the police stations because they were drinking, eating or smoking during the day in the municipalities of Ariana, Bizerte, Sfax and Beja.⁹⁰

Ethnic minorities and indigenous peoples

Ethnicity remains a controversial issue in Tunisia. Officially, Article 39 of the 2014 Constitution describes the country's identity as 'Arab-Muslim' and there is no mention there of its indigenous Amazigh community. The Tunisian government in a 2007 response to CERD appears to acknowledge the country's significant Amazigh ancestry but that through assimilation the country has become 'ethnically integrated': 'Tunisia's original ethnicity is Berber. Its population has, however, assimilated groups from elsewhere.'⁹¹ Nor is the country's black minority afforded recognition in the 2014 Constitution and until recently there has been a widespread reluctance to acknowledge the specific issues this community faces.

This is the result of a long process of 'Arabization' that has largely invisibilized issues of race and ethnicity. Since the revolution, however, this established narrative has been challenged by Amazigh and black Tunisian activism and associations, bringing greater attention to Tunisia's unacknowledged diversity.

Amazigh

Imazighen (the plural of Amazigh, meaning 'free people') are indigenous to North Africa. They are also known as Berbers, deriving from Greek for 'foreigner, non-Greek speaking, barbaric', though this term – used widely by invading forces and colonial authorities – is largely rejected by Amazigh themselves due to its negative connotations.

The indigenous lands of Imazighen, also called *Tamazgha*, encompasses Morocco, Algeria, Tunisia, Libya, Western Sahara, Mauritania, the Canary Islands and parts of Egypt, Mali and Niger. This region is believed to have been inhabited by Imazighen since 10,000 BC. Their territories were subsequently occupied during the Arab conquests in the seventh and eighth centuries CE and converted to Islam. Tens of thousands of Arabs settled in *Ifriqiya* and intermarried with the local population.⁹² Most Amazigh, since they are an indigenous people, do not wish to be labelled as a minority and some instead use the French expression *groupe minorisé*, meaning a group that has been 'minoritized'.

Compared to Morocco and Algeria, Tunisia nowadays has a very small community of speakers of Amazigh languages, known as *Tamazight*. However, taking

language as the only index of belonging has a significant impact on figures. For instance, *shilha*, a variant mostly spoken in Tunisia, is classified as a threatened language and is nowadays spoken by only around 50,000 people in the governorates of Medenine, Gabes, Tataouine and Tunis.⁹³ Other languages have undergone a similar decline. A study conducted in 1911 on the language of Sened (*Tamazirt*), in Gasfa governorate, reported that the whole town spoke the language:⁹⁴ today, however, this regional variety of *shilha* is practically extinguished. There are of course many similarities between the Tamazight spoken in Tunisia and the variants spoken in other North African countries. Respondents report that some can communicate more easily with each other using Tamazight than through the different varieties of Arabic spoken in their respective countries.

As a result, after centuries of assimilation, many Tunisians may identify themselves as ethnically and culturally Amazigh, although they do not speak the language, thus raising the total population identifying as Amazigh. In Sened today, for instance, there are no official figures available on the proportion of the more than 20,000 inhabitants who are Amazigh. However, if one uses family names as a means of identifying their origins, it would seem likely that the large majority of the population have Amazigh roots. Most of these families, having moved from mountain villages to Sened, no longer speak *shilha* themselves. However, their speech may still carry traces of the language, such as in the pronunciation and in the use of some *shilha* words among the otherwise dominant Tunisian Arabic.

It was forbidden to speak *shilha* during the Bourguiba era. One respondent described an incident where a person was talking on the phone in this language and a policeman came to tell him he was not allowed to do so. Nowadays, while these restrictions are no enforced so strictly, the language is still under threat. One issue is that most of those with a knowledge of *shilha* are just able to speak it: only a small number also know how to write it, employing the system used in Morocco or Algeria. According to two Amazigh respondents interviewed in October 2018 in Tunisia, this poses significant challenges to the integration of *shilha* instruction into the school system. It remains the case that, under the terms of Decree Law no. 59-53 of 1959, the use of non-Arabic names is prohibited and so in

principle Amazigh are obliged to register using Arab names. There have been several cases in recent years of people who wished to register their children with Amazigh names and were prevented from doing so because of this decree. While some members of the community are now exploring legal avenues to claim this right, activists fear that there is little political will at present to abolish the decree.⁹⁵

Though the situation has improved since the revolution, it is still the case that many Amazigh in southern Tunisia face considerable pressure to conceal not only their language but other aspects of their culture, such as traditional clothing, to secure employment and social acceptance. In this context, aspects of their heritage are now under threat, including the traditional Amazigh style of house design. While better suited to the local environment and temperature, their value is not widely recognized and many are opting instead for modern housing. Only a few popular tourist destinations are being preserved, such as Houmt Souk on the island of Djerba.⁹⁶

Nevertheless, in other ways there have been encouraging developments in recent years. All Amazigh respondents highlighted how, though many issues had yet to be resolved, the available space for activists to express themselves freely in public has expanded considerably. 'Before the revolution, we couldn't speak about *Amazighité* – we could only talk about it among ourselves', one respondent said. As a result, a number of Amazigh movements have emerged in the wake of the revolution, energized in particular by young activists with an interest in revitalizing their Amazigh culture. Places where Amazigh movements are strongest are those where the language is still spoken, such as Djerba and Douiret. Some

also try to encourage the revitalization of the Amazigh heritage for economic reasons, seeing it as a potential opportunity for supporting the general development (of the community through tourism, handicrafts and clothing). There are now some 13 Amazigh associations in Tunisia, all of them founded after the revolution, and their activity is increasingly prominent at an international level. In October 2018, for instance, the World Amazigh Congress (CMA) hosted its eight meeting in Tunis on 26-28 October 2018, the second time the congress has taken place in Tunisia (the first time was in Djerba in 2011).

The event was hosted by the Tunisian Association for the Amazigh Culture (ATCA), founded by Jalloul Ghaki in 2011. According to him, no Amazigh association at present receives public funding and he claims that one of the reasons for this is that Amazigh are still perceived as separatists or enemies of Islam. However, he stressed that they are a pacifist movement and have never made self-determination a focus of their advocacy. In the words of their slogan, 'We are for a unified, pluralistic and indivisible Tunisia', and they have four main aims: that the Amazigh language and culture is recognized, protected and valued; the implementation of administrative and legal initiatives to teach Amazigh languages in schools; the abolition of decree no.85, which prevents the use of Amazigh names; and support to civil society initiatives connected to Amazigh culture. Like all the other minority activists interviewed, Jalloul was also keen to stress that the organization operates exclusively through peaceful and non-violent human rights activism.

One underlying obstacle to achieving a political breakthrough on these issues is their lack of political

The Ibāḍī Muslim community

While the majority of Tunisians are Muslim, primarily Mālikī Sunni, Ibāḍīs comprise a much smaller share of the country's population. However, at one point they represented the majority of Muslims in Djerba. By the eighteenth century, however, they had become a minority on the island.⁹⁹ There are more than 300 mosques on the island and most are of Ibāḍī origins, including *Jamaa al-outa* ['the mosque beneath'], Tunisia's only underground mosque. Over time they underwent a series of architectural changes and only a few still operate as Ibāḍī places of worship today.

Nevertheless, Ibāḍīs and Sunnis alike pray next to each other in the same mosques most of the time. While there are a few differences in the way they conduct their prayers, such as in the position of their hands at the beginning of the rite, no tension is reported between members of the two schools. Until the beginning of the

twentieth century, there were no mixed marriages between Ibāḍīs and Mālikīs. Three or four decades on it was still rare and couples would have been marginalized by their own communities. Nowadays, however, it is perceived as normal.

Most Ibāḍīs in Djerba are Amazigh and still preserve traits of the Amazigh culture: for example in the way they celebrate their weddings. Ibāḍīs try to preserve their language, *shilha*, and transmit it to their children. Until the fifteenth century it was the most commonly spoken language on the island, whereas today it is spoken only in limited areas of Djerba, such as Gallala and Sadwich. The language is only used at home or among members of the community, since Arabic speakers do not understand it. Following the revolution, thanks to the greater possibilities for both public expression and association, some associations have been set up to revitalize the language.

representation. There was no Amazigh representative in the Constituent Assembly when the new Constitution was being drafted, for instance, and their call at the time to institutionalize Amazigh cultural rights was supported by just two of the 217 deputies. As a result, there is no mention of Amazigh or their issues in the Constitution. To date, the main pressure for greater Amazigh rights has come from civil society rather than from policy makers or officials.⁹⁷ Concerning the teaching of the Amazigh language, some associations in Matmata and elsewhere have launched private courses. Teaching Amazigh is therefore not prohibited, but the lack of public funding means that sustained action is a challenge. Activists are currently focusing on revitalizing awareness within the community of their rights to mobilize them.

These movements are generally conducted within a framework of national unity and draw on Tunisian heritage. Some complain about a relative lack of female participation, however, as well as a lack of coordination among different movements. 'If there is no coordination, we cannot make pressure', in the words of one respondent. 'Amazigh have been forgotten by the Arab spring'.⁹⁸

Black Tunisians

No official figures exist on the number of black Tunisians in the country. However, activists claim the extent of the population is considerably larger than is officially acknowledged: according to the Association for Equality and Development (ADAM), for example, the community represents between 10 and 15 per cent of the total population.¹⁰⁰

The history of the black community in North Africa is connected to the slave trade.¹⁰¹ Slavery was abolished in Tunisia in 1846, but black Tunisians still face huge discrimination and marginalization. This is reflected in the everyday use of words such as slave (*oussif*) to refer to a black person. They not only suffer from widespread poverty, exclusion in the job market and limited access to higher education, but are also largely absent from politics, media and other areas of public life. While underrepresented in Tunisian society, many black Tunisians are readily identifiable and subjected as a result to verbal abuse and even violence. In Southern Tunisia the situation is particularly disturbing, as the black community sometimes lives in isolated areas, such as Gosba village. A 2016 report by Al Jazeera revealed the existence of separate buses for black and white students in Sidi Maklouf.¹⁰²

A number of incidents that attracted wider publicity illustrate the prevalence of racism in Tunisia and the particular challenges that black Tunisians face. In 2013, Saadia Mosbah, the president of the CSO Mnenmy, was

told by an attendant at a petrol station that he did not 'serve slaves'. Because of the absence at that time of legislation criminalizing hate speech, she had to initiate legal action on the basis of assault: her son was attacked when he tried to step in. In 2014, Nejiba Hamrouni, the former president of the Journalists' Union, was publicly insulted by Islamists when they posted some caricatures of her image resembling a monkey. Because she could not file a lawsuit, she used social media to raise awareness about racial discrimination. The same year, a black woman was attacked with a rock in Bizerte by her neighbours, but the case was dismissed by the police for lack of evidence, despite several witnesses.¹⁰³

This picture was confirmed by the testimony of black Tunisian respondents who reported similar issues of discrimination they had experienced themselves. One, raised in Zarzis, described the existence of separate cemeteries: nowadays, if a black Tunisian wishes to be buried in the non-black cemetery, people will ask 'Why? You have your own one.' Once, he tried to buy a piece of land from an Arab Tunisian for 40,000 Tunisian dinars. The owner refused the offer and instead gave it to a white person for a significantly lower price. Another respondent, a black Tunisian woman from the south who now works in a radio station, described how she was approached by a large company who after listening to her show wished to interview her for a position. However, when the manager finally came to meet her, he said 'I'm sorry, I don't work with black people.'

This separation is reinforced by a continued taboo around mixed marriages, with respondents reporting that opposition arose from within both communities. One respondent from Tunis, born of a mother who appeared to be of Arab ethnicity and a black father, described the protracted difficulties he faced not only from wider society but also from his father's family, who never accepted the marriage. However, he was optimistic that the situation was now improving as Tunisians began to confront the reality of racism in their own country. For him, the realization of full citizenship is the ultimate aim as black Tunisians were still unable to access many areas of life, such as media and politics: at present, there is only one black Tunisian reporter on national television and a single black parliamentary representative.¹⁰⁴ 'I am not a citizen,' he concluded, 'My citizenship is an on-going project.'

Nevertheless, black Tunisian respondents were generally positive about progress in their situation since 2011, particularly as Tunisians had started to acknowledge racism. In this regard, the passing on 9 October 2018 of a law criminalizing racial discrimination by the Tunisian Parliament – making it the first Arab country to have such legislation – is a major milestone. CSOs such as Mnenmy have been fighting for years to make this possible.

Until then, the absence of anti-discrimination legislation had contributed to the impunity for those who insulted or attacked black people. Respondents highlighted how previously, when subjected to incidents of discrimination, they had generally chosen not to report them – in part because of the lack of effective legislation but also out of fear of abuse by the police themselves. It is hoped the new law will help empower black Tunisians to seek justice in similar situations in future, though the legal change will need to be accompanied by a ‘cultural revolution’¹⁰⁵ to fundamentally transform social attitudes towards them. One black Tunisian respondent stressed the need to build the confidence of the community, ‘because often black people do not have enough self-esteem’. Another welcomed the law, but also believed that ‘the definition of victim’ was missing.

Certain sections of the black Tunisian community may also face intersectional discrimination. Black women,

for instance, suffer from a popular belief that sexual intercourse with them can cure the evil eye.¹⁰⁶ Within the black community there are also cultural minorities, such as Stambeli – a broad term used to refer to a range of Tunisian musical traditions with a strong black or sub-Saharan association which includes healing trance music and a range of various forms and rituals.¹⁰⁷ This community faces racial discrimination because of their ethnicity, though Stambeli also have adepts from the white community; although they follow a different interpretation of Islam to the Maliki Sunni school, they are not particularly targeted for their belief.

Besides black Tunisians, there is a significant population of sub-Saharan migrants who contend with racism while also struggling with the added challenges of documentation, language barriers and cultural differences.

Life as a sub-Saharan migrant in Tunisia

According to the Association for African Students and Interns in Tunisia (AESAT), there were 12,000 sub-Saharan students in Tunisia in 2013, but approximately half of them left in recent years due to public humiliation and verbal or physical assault, including rape.¹⁰⁸ A number of incidents have highlighted the threat that sub-Saharan Africans face, including the stabbing of three Congolese students in 2016 and an assault in August 2018 on a number of Ivorians, including a pregnant woman.¹⁰⁹

The challenges sub-Saharan migrants face is illustrated by the experiences of one respondent, a young Ivorian who left his country because of difficulties he faced due to his sexual orientation. He arrived in Tunisia in October 2017, initially full of hope for a new life. ‘I thought Tunisia would have been more open,’ he says, ‘because it is closer to Europe but I am actually facing double discrimination’.

He was subsequently stopped by the police when he was in a taxi and taken to the police car when they realised his visa had expired. He apologized, explaining that he had come to study but had to wait for the start of another academic year. ‘I was lucky because the policeman let me go. In the same situation, many migrants are obliged to go back to their countries. The expenses for the return flight is on them or their families and many of them cannot afford paying this as well as the penalty fee, so they are put in prison and stay there’. Even those who are not taken by the police cannot leave the country unless they pay the penalty fee: ‘It is,’ he says, ‘still like being in prison’. Since without a residency card he could not apply for university or secure a regular job, his only solution was to become a sex worker.

His life was already unbearable when, a few months later, he was attacked in the street of the neighbourhood in Tunis he was living in along with other people from the Ivory Coast. ‘They told us discriminatory words I could not understand at the time and they threw stones at us’. When he went to the police, they simply told them to change neighbourhood. So he approached an association that supports migrants, Tunisie Terre d’Asile, to seek help and they started legal procedures for him. Nevertheless, he did not feel safe and decided to change neighbourhood. His strategy was to avoid going out at night, staying clear of the places where he might find police. ‘At 9 or 10 pm maximum I am always at home’. According to him, four out of five migrants face problems with the police.

In Tunis, he met someone who was a victim of human trafficking. His new friend had arrived with the promise of a paid job, which soon turned into six months of unpaid work. In fact, once he arrived in Tunisia, the employer told him that he had to pay for the money they had spent to get him there by working. When he moved in with his new friend, almost all the other migrants in the house were looking for work. Thanks to another migrant friend, he found an uncontracted job in a call centre in early 2018.

However, after being paid in full the first month, the second month the owner paid him half his salary and the third month did not pay him at all. She claimed she was having financial problems. But while her Tunisian employees continued to draw a salary, all the irregular migrants working at the centre were not receiving their salary. He continued to press her for the money she owed him. Eventually, she said

they could not complain because they did not have papers. After he pointed out that she could also face difficulties for employing migrants without contracts, she gave him half the money she owed him. Unfortunately, his experience is common among migrants, many of whom undertake work in restaurants or as cleaners only to find that their employers refuse to pay their wages.

He moved to Sousse in September 2018 and now feels safer there: he has now applied to study and is waiting for the registration papers so that he can apply for a study residency card. The municipalities want the papers from the university, the receipt that he paid the fees, a letter of commitment and a bank statement or

proof from his family that they have enough money for him to live there. Once he applies for the residency card, they will give him a temporary one, but in order to receive a final one he must first pay all the penalty fees he has accumulated.

In the meantime, he has been volunteering as a peer educator with several organizations, helping other migrants in similar situations to understand their rights and guiding them to where they can access the support they need. The new life he hoped for has yet to materialize. 'When I came here, it was supposed to be a refuge, but I faced the same problems. I want to be in a place where I can be who I am'.

Conclusion

Generally speaking, Tunisia has made remarkable progress with regards to the human rights environment since the 2011 revolution, reflected in the passage of the 2014 Constitution and a series of reforms to amend areas of discrimination in existing legislation, such as the Code of Civil Status and the Penal Code. However, frustration remains high among certain sectors of society because of the persistently high levels of unemployment and Tunisia's continued economic malaise, particularly in the wake of a number of violent attacks that have targeted the country's tourism industry.

The findings of this report demonstrate that much still remains to be done for its minority and indigenous communities, although issues of diversity have begun to be positively addressed: one of the major developments in this regard is the passing of the Law on the Elimination of All Forms of Racial Discrimination in October 2018. More generally, the available space for communities to express themselves freely has expanded significantly since the revolution, encouraged by the 2011 Decree Law No. 88, with a flourishing civil society focusing on issues of diversity and citizenship. In particular, a number of associations advocating for the acknowledgement of the Amazigh identity have emerged, as well as many others working on freedom of religion and belief and coexistence between different communities.

Interviews undertaken for this report also highlight the fact that some communities, such as Tunisia's Jewish population, have not been especially affected by the revolution, partly because of the level of recognition they already enjoyed before. Certain issues of concerns, such as barriers to participation in certain sectors such as the

army, remain unaddressed. Other religious minorities, in particular Bahá'í and Christian converts, still face a level of discrimination and have yet to be officially recognized. Tunisia needs to move beyond its current recognition of freedom of worship for the Abrahamic religions, such as Judaism, to freedom of religion regardless of faith, including the freedom to not practice a religion or to convert to another one.

Other groups, in particular ethnic minorities and indigenous peoples, highlighted the significant impact that developments since 2011 have had on their ability to advocate on claims that they would not have been able to present under the Ben Ali regime. Those issues include addressing racism at the national level, as well as the acknowledgement of Amazigh identity and recognition of their cultural heritage. The black community has also been able to engage to some extent in the process of democratic transition as a result of the greater freedoms afforded them since 2011.

A common concern highlighted by all respondents was the need to focus on the concept of equal citizenship for all, regardless of religion, ethnicity or gender. The Tunisian government has positively addressed some of these issues. It remains to be seen how the Parliament will respond to calls from civil society to undertake a comprehensive reform of the Penal Code to align it with the Constitution and the country's international commitments. It is also important for all Tunisian stakeholders to collaborate on issues related to education and media discourse, supporting a message of tolerance and recognition of the diversity of the Tunisian population.

Recommendations

To the Government of Tunisia:

- **Support the collection of disaggregated data, not only by gender and age but also by religion and ethnicity:** this is needed to provide greater visibility and recognition to the country's minority and indigenous communities and their specific issues.
- **Revise national legislation, such as the Penal Code, to bring it in line with the 2014 Constitution and Tunisia's ratified international agreements:** in this process, particular attention should be given to freedom of religion or belief for unrecognized communities such as Bahá'í, as well as the right to not practice a religion or to convert.
- **Ensure the full implementation of the new Law on the Elimination of All Forms of Racial Discrimination:** in particular, the national committee to combat racial discrimination should be created under the supervision of the Minister of Human Rights to ensure monitoring of cases of discrimination, as well as implementation of policies that proactively encourage the elimination of racism in Tunisian society and the full participation of the country's black community.
- **Take steps to reverse the assimilation of certain groups that has occurred since independence through the state's promotion of an exclusionary Arab-Muslim Tunisian identity:** in particular, Amazigh people should be given active support to protect their identity and use their native language, and the decree forbidding the use of Amazigh names should be abolished.
- **Invest in a more inclusive educational system to promote tolerance and respect for diversity:** this

should include incorporation in school curricula of the history of the Amazigh peoples, as well as other minority communities, such as the Jewish minority.

- **Work with all sectors of Tunisian society, including police, judiciary, religious leaders and the general public, to promote a culture of human rights:** this should extend beyond the country's legislative framework to address discrimination at all levels and drive social change.
- **Promote the inclusion of all regions in the development of the country, particularly disadvantaged regions in the South and West of Tunisia:** these frequently host a large proportion of ethnic minorities in particular and so may also require targeted anti-discrimination interventions.

To Tunisian civil society:

- **Engage with international and regional mechanisms, such as UN human rights treaty bodies, to support the development of Tunisian national law and practice:** this has already proved effective for the advancement of certain human rights since 2011 and could include the possibility of using African mechanisms, such as the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights.
- **Create or strengthen existing links between different sectors of civil society in order to promote effective advocacy campaigns:** these should be built on the principles of anti-discrimination and respect for diversity, while paying particular attention to intersectional forms of discrimination.

Notes

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- 3 OECD, *OECD Investment Policy Reviews: Tunisia*, Paris, Organisation for Economic Co-operation and Development 2012, 30.
- 4 Benner, M., 'The legacy of Sidi Bouzid: Overcoming spatial inequalities in Tunisia', in D. Křížek and J. Záhořík (eds.), *Beyond the Arab Spring in North Africa*, London, Lexington Books, 2012, pp.49-50.
- 5 Masri, S., *Tunisia: An Arab Anomaly*, 2017, New York, Colombia University Press, pp. xxvi-xxvii.
- 6 Aleya-Sghayer, 'The Tunisian Revolution: The Revolution of Dignity' in R. Larémont (ed), *Revolution, Revolt, and Reform in North Africa. The Arab Spring and Beyond*, London/New York, Routledge, 2014, p.39-46; Gana, N., 'Introduction', in N. Gana (ed.), *Making of the Tunisian Revolution: Contexts, Architects, Prospects*, 2013, Edinburgh, Edinburgh University Press, pp.7-8.
- 7 For example, see Masri, *op. cit.*, p.xxxii.
- 8 Aleya-Sghayer, *op. cit.*, pp.43-48.
- 9 The 2011 Decree Law No 88 relaxed the requirements for the registration of CSOs: during Ben Ali's rule, CSOs were either pro-regime or facing repression. It is estimated that only one year after the revolution, 2,000 new associations registered thanks to the new law. UNDP, *La Société Civile dans une Tunisie en Mutation*, 2014, p.11-14.
- 10 Human Rights Watch (HRW), 'Tunisia', World Report 2017: Events of 2016.
- 11 Civil Coalition for Individual Liberties, *2017 State of Individual Liberties: Continuing and Intensifying Violations*, 2017, p1.
- 12 HRW, 'Tunisia: Doctors oppose "anal test" for homosexuality', 12 April 2017.
- 13 Masri, *op. cit.*, p.xxvi.
- 14 Estimates by the United States government put the population at 98 per cent Arab and 99 per cent Sunni Muslim (see Mari, *op. cit.*, pxxx). Estimates by community organizations however diverge significantly from these figures. The Tunisian government in a 2007 response to CERD appears to acknowledge the country's significant Amazigh ancestry but argues that through assimilation the country has become 'ethnically integrated': 'Tunisia's original ethnicity is Berber. Its population has, however, assimilated groups from elsewhere.' HRC, 'Replies of the Tunisian Government to the list of issues (CCPR/C/TUN/Q/5) to be taken up in connection with the consideration of the fifth periodic report of TUNISIA (CCPR/C/TUN/5)', doc. no. CCPR/C/TUN/Q/5/Add.1, 25 February 2008, para 21.
- 15 See preamble and Article 1 of the 2014 Constitution, as well as preamble and Article 1 of the 1959 Constitution.
- 16 Aleya-Sghayer, *op. cit.*, p.31.
- 17 Aldana, A.M. and El Fassi, S., *Tackling Regional Inequalities in Tunisia*, ECDPM briefing note 84, 2016, p.2.
- 18 The first version of the Tunisian Penal Code was published in 1913, however it has gone through multiple amendments over time. The most recent amendment was made in February 2018. For all amendments, please refer to DCAF, 'Législation du secteur de la sécurité en Tunisie', accessed November 2018 at <https://legislation-securite.tn/fr/node/43760>.
- 19 Pacte Fondamental of 10 September 1857, called *Ahd al Amen* (Pacte de la Paix).
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- 21 Republic of Tunisia, *The Constitution of Tunisia*, 1959, Article 5.
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- 29 BusinessNews, 'Fathi Laâyouni : Pas de mariage entre Tunisiennes et non-musulmans au Kram!', 16 August 2018.
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- 33 *Ibid.*
- 34 France24, 'Thousands protest Tunisia gender equality proposals', 11 August 2018.
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- 37 Art4.3 <http://www.legislation.tn/sites/default/files/journal-officiel/1959/1959F/Jo02859.pdf>
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- 39 Government of Tunisia, Tunisia Constitution of 2014, Article 21, 2014.
- 40 The only instruments it has not joined yet are: the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), aiming at the abolition of the death penalty; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Optional Protocol to the Convention on the Rights of the Child on a communications procedure; the International

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- 42 HRC, 'Consideration of reports submitted by states parties under article 40 of the Covenant: Fifth Periodic Report: Tunisia', submitted 14 December 2006 and published 25 April 2007, doc. no. CCPR/C/TUN/5., para. 398.
- 43 HRC, 'List of issues to be taken up in connection with the consideration of the fifth periodic report of TUNISIA (CCPR/C/TUN/5)', doc. no. CCPR/C/TUN/Q/5, 28 November 2007.
- 44 HRC, 'Replies of the Tunisian Government to the list of issues (CCPR/C/TUN/Q/5) to be taken up in connection with the consideration of the fifth periodic report of TUNISIA (CCPR/C/TUN/5)', doc. no. CCPR/C/TUN/Q/5/Add.1, 25 February 2008, para 21.
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Identity and Citizenship in Tunisia: The Situation of Minorities after the 2011 Revolution

Since the overthrow in January 2011 of the authoritarian President Zine El Abidine Ben Ali, widely credited as the beginning of the Arab Spring, Tunisia has successfully established a functioning democracy and taken a number of positive steps to promote human rights in the country, including the drafting of the progressive 2014 Constitution. This has been followed by a number of other legislative changes that have benefitted its minorities, including the passage in October 2018 of a law criminalizing racial discrimination.

Despite these encouraging developments, many communities continue to contend with the legacy of years of discrimination. This includes not only unrecognized religious minorities such as Bahá'í and converts to Christianity, who face significant restrictions on their ability

to worship freely, but also the country's indigenous Amazigh population who, through a long process of assimilation, have been sidelined. The same is true of the country's black population: long marginalized in the country, they are still subjected to racial discrimination.

This report, *Identity and Citizenship in Tunisia: The Situation of Minorities after the 2011 Revolution*, documents Tunisia's achievements to date and also the significant rights gaps that many Tunisians, including its minority and indigenous populations, face. Drawing on interviews with community representatives and activists, as well as an extensive review of the available literature, legislation and media coverage, it explores the extent to which the Jasmine Revolution and the country's subsequent democratic transition has benefitted and included its minorities.

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